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8 **CODY J. JESS, #025066**
9 Attorneys for David A. Tiffany,
10 Chapter 11 Trustee

11 **UNITED STATES BANKRUPTCY COURT**
12 **DISTRICT OF ARIZONA**

13 In re:

14 ELLIPTICAL MOBILE SOLUTIONS, LLC,

15 Debtor.

16 Case No. 2:15-bk-02418-EPB

17 CHAPTER 11

18 **MOTION TO APPROVE SALE OF ASSETS**
19 **FREE AND CLEAR OF LIENS AND**
20 **ENCUMBRANCES PURSUANT TO**
21 **AUCTION SALE AND APPROVED**
22 **BIDDING PROCEDURES**

23 David A. Tiffany, the Chapter 11 Trustee (the “**Trustee**”) for Debtor Elliptical Mobile Solutions,
24 LLC (the “**Debtor**”), hereby files this *Motion to Approve Sale of Assets Free and Clear of Liens and*
25 *Encumbrances* (the “**Sale Motion**”). In the Sale Motion, the Trustee requests the entry of an order
authorizing the sale of all or substantially all of the assets of the bankruptcy estate (the “**Subject**
Assets”), described on Exhibit “1” attached hereto. The sale is to be conducted pursuant to an auction
and competitive bidding process (the “**Auction**”). In conjunction with the Sale Motion, the Trustee has
filed his *Motion to Approve Sale and Bid Procedures* (the “**Procedures Motion**”) [DE 233]. In the
Procedures Motion, the Trustee has requested that the Court enter an order (the “**Procedures Order**”)
establishing the procedures governing the Auction. The hearing on the Procedures Motion (the
“**Procedures Hearing**”) will predate the hearing on the Sale Motion (the “**Sale Hearing**”). The Sale
Motion is supported by the attached Memorandum of Points and Authorities and the entire relevant
record in this case.

1 DATED this 10th day of June, 2016.

2 SCHIAN WALKER, P.L.C.

3
4 By /s/ CODY J. JESS, #025066

5 Scott R. Goldberg

6 Cody J. Jess

7 Attorneys for David A. Tiffany,
8 Chapter 11 Trustee

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **A. BACKGROUND**

11 1. The Court has jurisdiction over this Chapter 11 proceeding under 28 U.S.C. §§ 157 and
12 1334. This matter constitutes a core proceeding under 28 U.S.C. § 157(b)(2). The statutory predicates
13 for the relief requested in this Motion are Code §§ 105, 363, and Local Rule 6004. Venue is proper in
14 this District pursuant to 28 U.S.C. §§ 1408 and 1409.

15 2. On March 9, 2015, the Debtor filed its voluntary petition for relief under Chapter 11 of
16 the United States Bankruptcy Code. On August 13, 2015, the Court entered its order appointing the
17 Trustee [DE 105]. No committee has been appointed in this case. Schian Walker, P.L.C. represents the
18 Trustee in this proceeding pursuant to an order of the Court [DE 113].

19 3. On September 11, 2015, the *Application to Employ GlassRatner Advisory & Capital*
20 *Group LLC as Financial Advisor for the Trustee* was filed (the “**Application**”) [DE 120]. Pursuant to
21 the Application, GlassRatner Advisory & Capital Group LLC (“**GlassRatner**”) was retained to, among
22 other things, provide financial advice to the Trustee and to structure, evaluate, and affect the sale of the
23 Debtor’s assets. *See* Application at 3:14.

24 4. The assets of the bankruptcy estate consist primarily of the Subject Assets, which are
25 patents and other intellectual property rights related to the storage of computer and computer related
electronic equipment and components.

5. The Debtor is no longer operating such that the highest and best use of the Subject Assets

1 is to sell them at Auction. To facilitate the Auction process and to ensure that a fair purchase price is
2 obtained for the Subject Assets, the Trustee, with the assistance of GlassRatner, has filed the Procedures
3 Motion.

4 6. Previously, the Trustee and Managed Admin, LLC (the “**Proposed Buyer**”) were parties
5 to a loan financing arrangement that the Bankruptcy Court approved (the “**Financing Transaction**”)
6 [DE 200]. The Financing Transaction provided for a \$50,000 loan from the Proposed Buyer to the
7 bankruptcy estate secured by the Subject Assets.¹ There are no other liens or security interests against
8 the Subject Assets that are known to the Trustee.

9 7. The Trustee and the Proposed Buyer have entered into an agreement (the “**Agreement**”)
10 wherein the Subject Assets will be sold to the Proposed Buyer for an amount equal to all amounts owing
11 under the Financing Transaction (the “**Credit Bid Amount**”). A copy of the Agreement is attached
12 hereto as Exhibit “2.” The Credit Bid Amount is subject to higher and better offers at the Auction.

13 8. The sale of the Subject Assets shall be without warranties and representations of any kind
14 or description. The proposed sale is not to any known insider of the Debtor. The proposed sale is to be
15 made free and clear of all liens and encumbrances.

16 9. If the Proposed Buyer is not the successful bidder, then the Proposed Buyer’s liens will
17 attach to the sale proceeds. The Subject Assets do not include avoidance actions or any other legal
18 claims. The Trustee requests that the order approving the sale be made effective immediately upon its
19 entry.

20 10. The Trustee has not appraised the Subject Assets because any appraised value would be
21 speculative at best and would cost the estate considerable funds to obtain. Instead, the Trustee is relying
22 upon the services of GlassRatner, the marketplace, and the competitive bidding process of the Auction
23

24 ¹ The Trustee previously filed the *Motion to Sell Personal Property and to Approve Compromise of Claims*
25 *Pursuant to Federal Rule of Bankruptcy Procedure 9019* [DE 217]. The settlement described in this motion
grants the bankruptcy estate a license (the “**License**”) to use certain patented suspension technology and also
provides a cash payment to the estate. Neither the License nor the cash payment is part of the Proposed Buyer’s
collateral. The license will be part of the proposed sale through a sub-license agreement or an assignment.

1 to obtain a fair price for the Subject Assets. Specifically, the Trustee and GlassRatner have and/or will
2 engage in the following marketing efforts:

- 3 a. Draft a one page summary document to solicit to interested buyers;
- 4 b. Prepare a Confidential Information Memorandum;
- 5 c. Consult with parties that have already expressed an interest in the Subject
6 Assets;
- 7 d. Market the Subject Assets to companies that use compatible technologies;
- 8 e. Market the Subject Assets to potential patent infringers;
- 9 f. Meet with private equity firms known to invest in intellectual property;
- 10 g. Place advertisements in relevant online industry publications and blogs;
- 11 h. Create an online data room for ease of due diligence; and
- 12 i. Maintain robust lines of communication with potential buyers.

13
14 **B. RELIEF REQUESTED**

15 11. Although Bankruptcy Code § 363 does not set forth a standard for determining when it is
16 appropriate for a Court to authorize the sale or disposition of a debtor’s assets, Courts have uniformly
17 held that approval of a proposed sale of property under Bankruptcy Code § 363(b) is appropriate if the
18 transaction is supported by the reasonable business judgment. *See Committee of Equity Security*
19 *Holder v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063 (2d Cir. 1983); *see also In re Delaware &*
20 *Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991) (holding that a court must be satisfied that there is a
21 “sound business reason” justifying the pre-confirmation sale of assets); *In re Abbotts Dairies*
22 *Pennsylvania Inc.*, 788 F.2d 143 (3d Cir. 1986); *Stephens Indus. v. McClung*, 789 F.2d 386, 389-90 (6th
23 Cir. 1986).

24 12. Under the business judgment test, the sale should be approved if it will benefit the estate.
25 *Robertson v. Pierce (In re Chi-feng Huang)*, 23 B.R. 798, 801 (Bankr. 9th Cir. 1982). The Trustee’s
business judgment should be accepted unless the evidence shows that it is “clearly erroneous, too

1 speculative, or contrary to the provisions of the Bankruptcy Code.” *Allied Technology, Inc. v. R.B.*
2 *Brunemann & Sons (In re Allied Technology, Inc.)*, 25 B.R. 484, 495 (Bankr. S.D. Ohio 1982).

3 13. When considering a decision made in the Trustee’s business judgment, bankruptcy courts
4 “should presume that that the Trustee acted prudently, on an informed basis, in good faith, and in the
5 honest belief that the action taken was in the best interests of the bankruptcy estate.” *In re Pomona*
6 *Valley Med. Grp., Inc.*, 476 F.3d 665, 670 (9th Cir. 2007) (discussing the general concepts behind the
7 business judgment rule while considering a debtor’s motion to reject an executory contract). *See also, In*
8 *re Lahijani*, 325 B.R. 282, 288-89 (B.A.P. 9th Cir. 2005) (With respect to a proposed sale under Section
9 363(b), “[o]rdinarily, the position of the trustee is afforded deference, particularly where business
10 judgment is entailed in the analysis . . .”).

11 14. In the instant case, the Trustee submits that his business decision to sell the Subject
12 Assets is reasonable and prudent because the Debtor is no longer operating and the sale of the Subject
13 Assets will reduce administrative storage and other expenses. The Trustee, therefore, submits that the
14 facts and circumstances described in this Sale Motion are entirely consistent with the longstanding
15 rationale for authorizing a sale outside a Chapter 11 plan. *See Lionel Corp.*, 722 F.2d 1063.

16 15. Furthermore, there are ample grounds to support a finding that the Trustee is pursuing the
17 sale of the Subject Assets in good faith and in a proper exercise of his business judgment. As noted, the
18 Debtor is no longer operating. Consequently, a sale of the Subject Assets through an auction process
19 provides the best opportunity to maximize the value of the Subject Assets for the benefit of the estate
20 and creditors.

21 16. The Trustee is also pursuing the sale under Bankruptcy Code § 363(f) free and clear of all
22 liens and encumbrances. To the best of the Trustee’s knowledge and belief, the Proposed Buyer is the
23 only party with a lien on the Subject Assets and the Proposed Buyer consents to the sale of the Subject
24 Assets – so that the requirement of Bankruptcy Code § 363(f)(2) has been satisfied.

25 17. If the Proposed Buyer is not the successful bidder, then the liens of the Proposed Buyer

1 will attach to the sale proceeds, except for the proceeds associated with the License, which is not part of
2 the Proposed Buyer's collateral.²

3 18. Notice of the Sale Motion will be provided to all creditors and interest parties entitled to
4 receive such notice in accordance with Bankruptcy Rule 2002(a)(2), and Local Bankruptcy Rule 6004(1)
5 upon receipt of the date of the Sale Hearing.

6 WHEREFORE, the Trustee respectfully requests that the Court enter an order approving the Sale
7 Motion and such other and further relief as is appropriate under the circumstances.

8 DATED this 10th day of June, 2016.

9 SCHIAN WALKER, P.L.C.

10
11 By /s/ CODY J. JESS, #025066

12 Scott R. Goldberg
13 Cody J. Jess
14 Attorneys for David A. Tiffany,
15 Chapter 11 Trustee

16 COPY of the foregoing
17 e-mailed or mailed this 10th day
18 of June, 2016, to:

19 Elliptical Mobile Solutions
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21 Chandler, Arizona 85255
22 Debtor

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24 Parker Schwartz, PLLC
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Special Counsel for Trustee
ischwartz@psazlaw.com

Larry L. Watson, Esq.
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² See n.1.

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25 /s/ JULIE LARSEN

EXHIBIT “1”

Elliptical Mobile Solutions

List of Patents and Patent Applications and Additional Intellectual Property Assets

May 27, 2016

US Patents

No.	Patent No./ Date of Issue	Serial No./ Application Date	Title	Inventors	Notes
1	7,461,849 12/9/2008	11317414 12/22/2005	Method And Apparatus For An Electronic Equipment Rack	Jody G. Robbins William E. Woodbury, II Richard M. Chaput	
2	7,556,271 7/7/2009	11608561 12/8/2006	Method And Apparatus For An Electronic Equipment Rack	Jody G. Robbins William E. Woodbury, II Richard M. Chaput Scott A. Boster Mark J. Miskill Simon J. Rohrich	
3	7,611,157 11/3/2009	11321970 12/29/2005	Method and apparatus for an electronic equipment rack	Jody G. Robbins William E. Woodbury, II Richard M. Chaput	
4	7,628,409 12/8/2009	11608386 12/8/2006	Method and apparatus for an electronic equipment rack	Jody G. Robbins William E. Woodbury, II Richard M. Chaput Scott A. Boster Mark J. Miskill Simon R. Rohrich	Patent Expired: Maintenance Fees not paid.
5	7,740,234	11608708	Method and apparatus for a low-profile	Jody G. Robbins	

	6/22/2010	12/8/2006	suspension system	William E. Woodbury, II Richard M. Chaput Scott A. Boster Mark J. Miskill	
6	8,424,885 4/23/2013	12620510 11/18/2009	Method and apparatus for an environmentally-protected electronic equipment enclosure	William E. Woodbury, II Simon R. Rohrich	Maintenance Fee window will open 4/23/2016 and close 4/24/2017 (Surcharge due after 10/25/2016).

Pending US Patent Applications

This is a list of the pending patent applications for EMS. This list is based on publicly available information.

No.	Patent No./ Date of Issue	Serial No./ Application Date	Title	Inventors	Notes
1		13849513 3/24/2013	Method And Apparatus For A Distributed Cooling System For Electronic Equipment Enclosures	William E. Woodbury, II	This patent application was abandoned on Feb. 15, 2016 EMS is taking steps to have this application reinstated.
2		13251511 10/3/2011	Method And Apparatus For A Close-Coupled Cooling System	Scott A. Good Simon R. Rohrich	This application was abandoned in March

				William E. Woodbury, II	2015.

International Patents and Applications

Information from World Intellectual Property Organization filings.

No.	Ref. No.	Application No.	Application Date	Inventors	Title
1	WO/2013/052379	PCT/US2012/057988		GOOD, Scott, A.; ROHRICH, Simon, R.; WOODBURY, William, E., II;	Method And Apparatus For A Close-Coupled Cooling System Add'l Info: Filed in Canada and Korea. This is the international application for the US Patent listed as Application No. 13251511 (Ref. No. 20130081778).
1.a		2851078	3/4/2014		Method And Apparatus For A Close-Coupled Cooling System Canada application based on International application 1 above.
1.b.		1020147012205	7/5/2014		Korea application based on international application 1 above.
2.	WO2007076287	PCT/US2006/062065		Jody G. Robbins	Method And Apparatus For An

				William E. Woodbury Richard Chaput Scott A. Boster Mark J. Miskill	Electronic Equipment Rack
2.a		2633891 Canada	June 10, 2008		Canada National application of International application 11 above.
2.b.		200680048216.9 China	Dec. 14, 2006		China National application of International application 11 above.
2.c.		N/A Germany	N/A		Germany National application of International application 11 above. This application was withdrawn.
2.d.		2006840256 EPO	May 7, 2008		European Patent application of International application 11 above. This was withdrawn in Jan. 2014
2.e.		4626/DELNP/2008 India	May 29, 2008		India National application of International application 11 above. Status: published.
2.f.		1020087017871 Korea	July 21, 2008		Korea National application of International application 11 above. Granted May 31, 2010.
3.	WO2007076289	PCT/US2006/062069		Jody G. Robbins William E. Woodbury Richard Chaput Scott A. Boster Mark J. Miskill	METHOD AND APPARATUS FOR AN ELECTRONIC EQUIPMENT RACK
3.a		2633892 Canada	June 10, 2008		Canada National application of International application 11 above.
3.b.		200680049762.4 China	Dec. 14, 2006		China National application of International application 11 above.
3.c.		N/A Germany	N/A		Germany National application of International application 11 above. This application was withdrawn in 2008.
3.d.		2006846613	May 7, 2008		European Patent application of

		EPO (also EP 1965999)			International application 11 above. This was withdrawn in Jan. 2014
3.e.		4627/DELNP/2008 India	May 29, 2008		India National application of International application 11 above. Status: published.
3.f		1020087017872 Korea	July 21, 2008		Korea National application of International application 11 above. Granted May 31, 2010.

Notes: Most of these references are just the international listing for the publication of the US applications listed above.

Bolded items indicate live international patent applications or international patents.

Elliptical Mobile Solutions
List of Additional Intellectual Property Assets

Copyrights

No Registered copyrights found.

Copyright protection exist in the following unregistered works, as a matter of law:

All website content for all websites created or owned by Elliptical Mobile Solutions

All marketing materials created by Elliptical Mobile Solutions

All user manuals created by Elliptical Mobile Solutions

Trademarks

Federal Trademark Applications and Registrations

Mark: ELLIPTICAL MOBILE SOLUTIONS

U.S. Trademark Application Ser. No. 76668585 Filed: Nov. 6, 2006

Reg. No. 3,557,958 issued Jan. 6, 2009

Status: Cancelled Aug. 7, 2015 – for failure to file a Sec. 8 Affidavit.

EMS has remaining common law rights in the name. (Registered Owner listed as EMIPH, LLC).

Mark: MICRO MODULAR DATA CENTER

U.S. Trademark Application Ser. No. 85812577 Filed: Dec. 29, 2012

Status: Abandoned as of Oct. 24, 2013 – EMS may have remaining common law rights in the name.

Mark: IN MOTION ENGINEERING

U.S. Trademark Application Ser. No. 76668573 Filed: Nov. 6, 2006

Status: Abandoned as of Nov. 1, 2010 – EMS may have remaining common law rights in the name.

Mark: POWER N PLACE

U.S. Trademark Application Ser. No. 76668583 Filed: Nov. 6, 2006

Status: Abandoned as of March 1, 2010 – EMS may have remaining common law rights in the name. (Filed by EMIPH, LLC)

Mark: ELLIPTICAL MEDIA

U.S. Trademark Application Ser. No. 76668595 Filed: Nov. 6, 2006

Status: Abandoned as of Mar. 30, 2009 – EMS may have remaining common law rights in the name. (Filed by EMIPH, LLC).

Arizona State Trademark Registrations

None

Domain Names

Elliptical Mobile Solutions.com

Registered Owner: Elliptical Media, LLC

Reg. Expires 10/24/2018 Registered with GoDaddy

EllipticalMedia.org

Registered Owner: Domains By Proxy, LLC

Reg. Expires May 30, 2016 Registered with GoDaddy

Other Intellectual Property Assets

Website content for Elliptical Mobile Solutions.

EXHIBIT “2”

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (the “Agreement”) is hereby made and executed as of May ___, 2016 by and between (a) the Chapter 11 bankruptcy estate (the “Bankruptcy Estate” or “Seller”) of Elliptical Mobile Solutions, LLC, pending in the United States Bankruptcy Court for the District of Arizona (the “Bankruptcy Court”), Case No. 2:15-bk-02418-EPB (the “Bankruptcy Case”), by and through David A. Tiffany, the duly appointed Chapter 11 Trustee (the “Trustee”), and (b) Managed Admin LLC, an Arizona limited liability company (“Proposed Buyer”, and with Seller, the “Parties”).

RECITALS

A. **The Debtor.** Elliptical Mobile Solutions, LLC is the debtor in the Bankruptcy Case.

B. **The Trustee.** The Trustee is the duly-authorized representative of the Bankruptcy Estate, having been appointed pursuant by order of the Bankruptcy Court dated August 13, 2015 [DE 105].

C. **The Subject Assets.** The Bankruptcy Estate is comprised of assets consisting of certain patents, intellectual property rights, and personal property as described in Exhibit “A” hereto (the “Subject Assets”).

D. **No Contracts Assigned.** No contracts or leases related to the Subject Assets, if any, will be assumed by, and assigned to, Proposed Buyer.

E. **Authorization.** Proposed Buyer is an Arizona limited liability company. The undersigned representative for Proposed Buyer warrants and represents that he or she is authorized to enter into this Agreement on behalf of Proposed Buyer.

F. **The Loan Documents.** Proposed Buyer and Seller are parties to certain loan and security agreements (collectively, the “Loan Documents”) pursuant to which Proposed Buyer, as lender, loaned the Bankruptcy Estate \$50,000.00 secured by the Subject Assets. *See* DE 174.

G. **The Credit Bid Amount.** The amount loaned under the Loan Documents plus all fees, costs, interest and penalties required to be paid under the Loan Documents shall be referred to as the “Credit Bid Amount.”

H. **Agreement to Sell.** Proposed Buyer desires to purchase the Subject Assets by credit bidding the Credit Bid Amount, and the Trustee is willing to sell the Subject Assets to the Proposed Buyer for the Credit Bid Amount, subject, however, to the terms and conditions set forth herein.

I. **No Warranties.** Proposed Buyer understands and agrees that the Subject Assets are being sold by the Bankruptcy Estate without warranties or representations of any kind or description, and are being sold in “as is, where is” condition.

J. **No Reliance.** Proposed Buyer represents and warrants that it is purchasing the Subject Assets on the basis of Proposed Buyer's independent due diligence and investigation, and not based upon any written or oral representations of the Trustee or his agents.

K. **Bankruptcy Court Approval Required.** Proposed Buyer understands and acknowledges that this Agreement is not binding upon the Bankruptcy Estate if and until it is approved by the Bankruptcy Court.

L. **The Auction.** Proposed Buyer understands, consents, and acknowledges that the Subject Assets will be sold pursuant to an auction (the "Auction") to be conducted in the Bankruptcy Case to the person making the highest and best bid (the "Successful Bidder") for the Subject Assets, as determined in the Trustee's reasonable business judgment.

M. **The Sale Hearing.** Proposed Buyer understands, consents, and acknowledges that the Successful Bidder must be approved at a hearing to be conducted by the Bankruptcy Court (the "Sale Hearing").

N. **Successful Bidder-Auction.** The Trustee makes no representations or assurances that Proposed Buyer will be the Successful Bidder at the Auction.

O. **Successful Bidder-Sale Hearing.** The Trustee makes no representations or assurances that the Bankruptcy Court would, if applicable, approve the Proposed Buyer as the Successful Bidder at the Sale Hearing.

P. **The Procedures and Sale Motions.** The Trustee agrees to timely submit to the Bankruptcy Court a motion or motions seeking authorization to conduct the Auction, to establish procedures for the Auction, and to sell the Subject Assets. The Parties understand that the final procedures and sale terms will ultimately be determined by the Bankruptcy Court, and that the Bankruptcy Court may for whatever reason deny the motions described above.

Q. **The Approval Date.** The date the Bankruptcy Court's order approving the Auction procedures (the "Procedures Order") becomes a final and non-appealable order shall be referred to as the approval date (the "Approval Date").

R. **The Sale Date.** The date the Bankruptcy Court's order approving the sale of the Subject Assets to the Successful Bidder becomes final and non-appealable order shall be referred to as the sale date (the "Sale Date").

S. **Jurisdiction.** Proposed Buyer consents to the jurisdiction of the Bankruptcy Court to enter a final order over any disputes related to this Agreement. Proposed Buyer waives all rights to a jury trial. In any dispute related to this Agreement, Proposed Buyer agrees not to contest the jurisdiction of the Bankruptcy Court or the constitutional authority of the Bankruptcy Court to enter a final order resolving such disputes.

AGREEMENT

1. **Purchase Price.** Proposed Buyer shall purchase the Subject Assets in an amount equal to the Credit Bid Amount.
2. **Auction Participation.** Nothing in this Agreement shall preclude Proposed Buyer from increasing its bid to purchase the Subject Assets at the Auction. Proposed Buyer shall become eligible to bid at the Auction by complying with the Procedures Order, unless the Trustee waives such requirements in his reasonable business judgment.
3. **Free and Clear Purchase.** Proposed Buyer shall purchase the Subject Assets free and clear of all claims and interests under Bankruptcy Code §§ 363(b) and (f), and the order approving the sale to Buyer shall so provide (the "Sale Order").
4. **No Contingencies or Conditions.** Proposed Buyer's obligations to pay the Credit Bid Amount to purchase the Subject Assets is unconditional and is without contingencies of any kind or description except as set forth in paragraph 3 above.
5. **Attendance Required.** Proposed Buyer shall attend the Sale Hearing to give testimony regarding the fairness of the purchase and sale transaction and to its right to receive the protections afforded under Bankruptcy Code § 363(m).
6. **No Breakup Fee.** The Proposed Buyer shall not be entitled to any expense reimbursement or to any breakup fee or to assert any claim against the Bankruptcy Estate (other than for repayment of sums due under the Loan Documents) if it is not the Successful Bidder or under any other circumstance.
7. **Higher and Better Bids.** Proposed Buyer understands and agrees that the Trustee will be actively marketing the Subject Assets to potential bidders before and after the Approval Date, and that Trustee has no duty or obligation to sell the Subject Assets to Buyer except as set forth herein.
8. **Transfer Document.** If Proposed Buyer is the Successful Bidder, then the Subject Assets shall be conveyed pursuant to a bill of sale or other such document(s) mutually acceptable to the Parties, and all amounts due and owing under the Loan Documents shall be deemed paid in full.
9. **Further Assurances.** The Parties shall execute, acknowledge, and deliver all such further assignments and other instruments of transfer and other assurances and documents, and shall take such other action consistent with the terms of this Agreement (the "Deliverables") if Potential Buyer is approved by the Bankruptcy Court as the Successful Bidder.
10. **Closing.** If the Proposed Buyer is the Successful Bidder, the Credit Bid Amount (plus any amount in excess of the Creditor Bid Amount, as applicable) shall be paid within five (5) business days after the Sale Order is entered (the "Closing Date"). Any and all Deliverables will be exchanged on the Closing Date.

11. **Governing Law.** This Agreement and all documents executed and delivered hereunder shall be deemed to be contracts under the laws of Arizona, and for all purposes shall be construed in accordance with such laws, and suit to enforce any provision of this Agreement or to obtain any remedy with respect hereto shall be brought for final adjudication to the Bankruptcy Court for the District of Arizona where the Bankruptcy Case is pending.

12. **Attorneys' Fees.** In the event suit is brought or an attorney is retained by either party to enforce the terms of this Agreement or to collect any moneys due hereunder or to collect money damages for breach hereof, the prevailing party shall be entitled to recover, in addition to any other remedy, reimbursement for reasonable attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith.

13. **Time of Essence.** Time is of the essence with respect to the performance of all terms, conditions and provisions of this Agreement.

14. **Section Headings.** The section headings utilized herein are for reference purposes only and are not intended in any way to describe, interpret, define, or limit the scope, extent, or intent of this Agreement or any part hereof.

15. **Waiver.** The failure by either Proposed Buyer or Seller to enforce against the other party any term or provision of this Agreement shall be deemed not to be a waiver of the right of either Proposed Buyer or Seller to enforce against the other party the same or any other such term or provision

16. **Counterparts.** This Agreement may be executed in multiple originals or counterparts, each of which shall be an original and, when Proposed Buyer and Seller have each signed at least one (1) copy, such copies together shall constitute a fully executed and binding agreement. Signatures delivered by telecopier or electronic mail shall be binding as originals.

17. **Entire Agreement.** This Agreement sets forth the entire agreement between the parties. All negotiations relative to the matters contemplated by this Agreement are merged herein and there are no other understandings or agreements relating to the matters and things herein set forth, other than those incorporated in this Agreement. No provision of this Agreement shall be altered, amended, revoked or waived, except by an instrument in writing signed by the parties sought to be charged with such amendment, revocation or waiver. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

(signature page attached)

DATED: 6/10/16

SELLER:

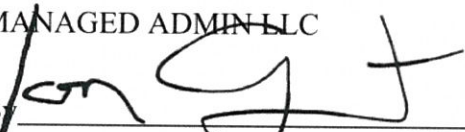
ELLIPTICAL MOBILE SOLUTIONS, LLC

By 
David Tiffany, Chapter 11 Trustee

DATED: 06 / 01 / 2016

PROPOSED BUYER:

MANAGED ADMIN LLC

By 
Its Owner