A Guide to Selling Your Middle Market Business

Includes Sample Purchase Document, Letter of Intent & Due Diligence Data List/Timeline

Sharing Lessons From Wall Street With Main Street

A Resource Guide to Help Middle Market Business Owners Maximize their Sale Proceeds & Close their Transaction.

About the Author

Dean Ferguson has sold businesses for 25 years at the time of this book publication. After getting his MBA he began his career with a national middle market investment bank which was subsequently acquired by the behemoth Citigroup. Working with Citigroup, Dean received the benefit of investment banking training from of one of the world's largest and most prestigious M&A firms. Dean worked with Citigroup investment bank on global transactions and received training in New York and worked with some of the greatest investment bankers in the world. Dean spent years in the ivory towers of Wall Street and strategized with Citigroup bankers and executives at the Company's strategic forest compound located outside of Manhattan in Westchester County.

The goal of this book is to share what Dean believes to be an elite level of specialized knowledge in M&A with business owners interested in selling their companies. The objective is to help business owners better understand the M&A process by sharing Dean's knowledge and experiences. Real world examples of situations Dean encountered are inserted throughout the book. With knowledge gleaned from reading, or simply perusing this publication, the hope is that business owners, because they better understand the M&A process, are able to generate the greatest value for their businesses upon sale and also find the ideal buyer/partner in terms of a custodian to take care of and grow the business that the seller has so painstakingly built, often the seller's life's work.

Introduction

I wrote this book as an effort to provide answers to the most common questions that we get asked every day by business owners interested in selling their businesses. We investment bankers know that business owners know more than anyone else about their business and their markets and their industries, but because what we do is very specialized and something that most business owners only do once in their lives, business owners understand very little about the world of mergers & acquisitions. And yet if a business owner is reaching out to us they are contemplating doing something that typically has life changing effects on them and their families and so they have so many questions about what we do and what this means regarding the potential sale of their business. We spend countless hours providing first time business owners with feedback on the world of M&A and the process of selling their company and so I wanted to provide something tangible that I hope business owners would find very useful and could use to reference whenever they needed answers to specific M&A questions.

The format of this book follows the process of selling a company from beginning to finish. I begin with the basics of understanding how to value a business and follow the process to preparing a company for market, marketing a company, negotiating with the goal of maximizing a company's value during an auction process, selecting and negotiating a letter of intent and finally due diligence and closing a transaction. I broke down the process into as many micro segments as possible so that readers can quickly reference specific segments of the M&A process should they quickly want to get answers to questions about a specific micro segment of the entire process. Finally I included as many examples as I could from real transactions to help illustrate deal points I break down. I hope this helps readers to better understand every component of the M&A process.

I hope this book helps you better understand all components of the M&A process. It can be used to assist any business owner going thru the M&A process or beginning to consider selling their company. It can also be used to better prepare a company for sale by understanding what buyers are looking for in an acquisition and focusing on and developing relevant attributes of their company with the hope of improving their company value and prospect for a sale.

Thank you for taking the time to better understand the M&A process by picking up this book. I hope it enables you to generate more value from the sale of your business.

Sincerely

Dean Ferguson

Table of Contents

What's My Business Worth?

When I am on the front lines discussing and debating the value of a client's business with either a strategic (another company) or a PE (private equity) buyer, we are typically discussing a range of multiples from 4 to 6 times some metric of cash flow (that metric more often than not being EBITDA: Earnings Before Interest, Taxes, Depreciation & Amortization). This is the range of multiples that typically apply to businesses with values between $5 mm and $100 mm (this size of business is what we define as a "middle market" business). Larger companies can achieve slightly higher multiples (because larger size comes with characteristics that reduce risk: more customers, more employees so less dependent on owner, etc.), but to achieve a materially larger multiple, the selling company has to affect the seller's income statement in a positive fashion (increasing cash flow) resulting in a higher valuation and that larger valuation being subsequently computed as a multiple of the seller's original cash flow. Clear as mud I assume.

This is why I wrote this book. To wipe away the mud if you will and explain the language of mergers & acquisitions (M&A) using real examples of situations I have encountered over 25 years of selling businesses and providing definitions of the terminology used in the world of M&A. The hope is that a business owner contemplating selling their business can use this book as a reference guide to help them understand M&A terminology and the process of selling a middle market business from start to finish, and better prepare them for discussions with M&A advisors, CPAs, bankers, piers and friends about how best to move forward to sell their business. In this vein we have included examples of a typical purchase document, letter of intent, offering memorandum and business profile in the Appendix of this book to help round out the reader's knowledge. So we forge ahead now and begin to decipher this conversation about the value of a client's business based on a multiple of some profit and/or cash flow number.

A potential client was referred to us from former client and her first words to me were "My friend sold his business for 15 times earnings so I would assume my business is worth the same." This is one of those "if I had a nickel for every time I heard this" situations. So let's objectively compare these two businesses which, because they generate the same EBITDA, our potential client believes her business has the same value as her friend's business. And let's remember that at the end of the day a buyer is the one that has to believe in the value to be paid. And it is when we all, buyers, sellers, bankers and advisors, play by the same generally accepted rules of the M&A world (the rules as outlined in this book), that we can accurately predict what the value paid for our client's business will be.

So we compare the two businesses. The friend had multiple distribution channels, sells a brand name product that was widely accepted in the market place as one of superior effectiveness compared with competitors' products, and has many patents related to the manufacture of these products. The buyer was a global conglomerate with global distribution channels through which it could sell the seller's patented products, thereby immediately expanding profits/cash flow of the seller by approximately ten times, let's say from $2 mm to $20 mm. So the income statement that the seller passed over to the buyer will actually generate $20 mm in cash flow. If we apply a multiple for valuation of 4x to this business, the beginning value at $2 mm cash flow was $8 mm. At $20 mm cash flow and a 4x the value is $80 mm. So in our example since the business is actually generating the $2 mm cash flow yet the value to the buyer is $80 mm, the seller could receive a multiple of 40 times on their $2 mm. As you can see this enormous multiple is entirely see this enormous multiple is entirely a function of the new income statement the buyer was able to generate via the combined companies. So at the end of the day the seller is getting a huge multiple on their company's cash flow, but the buyer is really paying what would be considered a "normal" multiple for this business, at 4 times in our example, based on the $20 mm cash flow that the selling business will generate for them.

Illustration: Two Companies with Different Growth Profiles

	Company A	Company B
Business	Mfr VCR Tapes	Garbage Collection
EBITDA	$5 mm	$5 mm
Growth Prospects	Not Good	Steady
Value	Low	High

The second company, that of our potential new client, while the same size in terms of current EBITDA, is a one location mega VCR tape rental store and the year is 2010 for example. So guess what? With the onset of online video streaming and related, the growth prospects for this business are less than exciting, and there are no synergies similar to the distribution channels of the conglomerate in our first example, that are going to help increase the sales of these VCR tapes. This business is not going to get a large multiple. In part because its forecasted EBITDA will likely decline to $0, it might not receive any multiple. It may not be saleable.

As evidenced in the previous discussion, the first question most business owners ask when contemplating selling their business is "What is my company worth?" So this seems an appropriate place to start. As a footnote to this first and very important question, the second question should pertain to what we call the "distribution of proceeds", which addresses exactly the dollars and cents that a seller will receive and pay when the transaction closes. As you can imagine there usually are multiple assets retained and liabilities which must be satisfied by a seller when a transaction closes. Assets retained might be personal items such as automobiles, computers, and any number of miscellaneous items that the business owner has previously determined should be retained by the company being sold. We have seen airplanes, boats, recreational vehicles, paintings, public company stocks and any number of other assets addressed at closing. At the risk of running off on a tangent, when the selling company is a C corporation, dealing with the tax consequences of "distributing" these assets to the seller prior to closing can be material enough of a tax burden that the actual sale of the company can be threatened. We had a small company that owned a very expensive jet airplane in its C corporation structure cause this very issue for us. So understanding the distribution of proceeds is almost as important a question as is the value of the company.

Carving Airplane Out of Business

Many business owners own assets used for personal purposes within their business entity. We have had a number of Companies we have worked with own airplanes within their companies. This provides numerous tax advantages like deducting the cost of gas, pilots, repairs and the like as costs of the business in order to reduce their Company's tax burden. When it comes time to sell their company however, these personal assets must be "carved out" of the business so that they are retained by the seller (the assets in this case are not contributing to the revenue generation of the business and are not required by the buyer). In a C corporation, removing the airplane from the company in this case will trigger a tax to the seller and this tax expense must be considered in the calculation of proceeds

As we begin our discussion about the various methods used to value a company and when those models are typically applied and by whom, it's imperative to understand there exists only one mathematically accepted method to value a company and that is the DCF (discounted cash flow) model. You may hear valuations for different businesses based on multiples or the number of beds for a healthcare facility as an example. These are really just derivations of the DCF model math or formulas that are highly correlated with the results generated by the DCF model. These valuation shortcuts are typically relied upon when buyers and sellers are in the very initial stages of a company valuation and trying to understand "big picture" valuations for easy comparison and analysis - quick assessment if you will, so that buyers can make an informed decision as to their interest in the selling company. As an example we often get calls for client companies to make certain the client is not looking for some outrageous multiple like 8 or 9 times EBITDA. The buyers know they typically cannot make such a valuation work and so they are making certain the seller is looking for a "reasonable" valuation before committing resources to the project. Professionals that work in the M&A field need these shortcuts to efficiently make M&A related decisions.

Methods to Value a Business

Key Takeaway: If you are selling your business, the only value that matters is that which buyers are willing & able to pay. For PE buyers this is based on the ability to finance a business. If you are lucky enough to have a synergistic buyer, the quantifiable synergies you provide the buyer are critical in maximizing your value.

While there can be a variety of specialty formulas used to value businesses in certain industries, like valuing certain healthcare facilities based on the number of beds, or the previous example based on the number of workover rigs in service, there are really only a handful of widely accepted methods used to value a private business, and as previously stated one model is universally accepted above all others for its mathematical soundness in valuing a business. That valuation method is the discounted cash flow model and we look at that model first.

Oilfield Workover Rig Company Valued Based on Number of Rigs in Service

In the oilfield, workover rigs are used to repair problems with oil wells. They are large trucks with an adjustable tower that facilitates extracting pipe from oil wells. They are substantial pieces of equipment and cost approximately $1 mm each. A rule of thumb to facilitate a quick approximate valuation of such a company is to multiply the number of workover rigs a company has in service by 1.4. So a company with 10 rigs in services would be valued at $14 mm. Such a rule of thumb works simply because the EBITDA margins of a workover rig company are consistent and the application of the 1.4 multiple has proven highly correlated with the value that results when using the DCF model for the same valuation.

Discounted Cash Flow Model

Key Takeaway: This is the only true way to value a business

This is the only true way to value a business and the basis for most other valuation formulas. The discounted cash flow method to business valuation involves creating a pro forma income statement, balance sheet and cash flow statements for the business being valued any number of years into the future. The net present value of these future period cash flow is then determined resulting in the net present value for the business. In the model illustrated here, we forecast our revenue and net income for 5 years and then add an additional column to represent our cash flow and growth into perpetuity which the model requires. The model discounts all period cash flows to determine the net present value of those cash flows today resulting in the current net present value of the business. This model

Illustration: Discounted Cash Flow Valuation Model

	Year					
	1	2	3	4	5	5
Revenue	5,000	5,500	6,050	6,655	7,321	7,321
Net Income	500	550	605	666	732	732
NPV*	417	382	350	321	294	1,731
Total NPV	3,494					
* Net Present Value						

facilitates changing income statement assumptions for the individual years the model forecasts. This is the flexibility and accuracy this model provides. For example if we had a business generating a certain EBITDA today based on low oil prices but oil prices were expected to increase to higher levels in two years, this model facilitates the ability to adjust the forecasted income statements to reflect this change in the business' revenue and earnings thereby providing an accurate valuation. A multiple by contrast could not incorporate such a change as it assumes constant EBITDA going forward.

The DCF model uses a discount rate that a) represents the ROI (Return on Investment) as a percentage required by the investor and b) can be "built up" beginning with the risk free rate of return for the lowest available risk related investment (typically US short term treasuries) and adding risk to account for the fact that this is a privately held business. You can see how this model is viewed as the most precise method of business valuation as you must input actual future expected cash flows and then discount those to a value today based on a predetermined rate of return.

EBITDA: The Holy Grail

Key Takeaway: Maximize the EBITDA (on paper) of the selling business.

Before continuing with the discussion of the various valuation methods, we want to introduce the concept of EBITDA – the form of business profits/cash flow which will be paired with our multiple to generate the business valuation.

The use of a multiple to value a business requires two variables, the multiple and a number to multiply. The number we use with our multiple is none other than the famous "EBITDA". All businesses are valued based on the cash flow they generate. Cash is king. It is important to understand the cash flow with which we are concerned is not simply "receipts minus payments". When defining EBITDA, our concern is only with the cash flow generated by the business operations and does not include receipts/payments of a capital nature such as borrowings, debt repayments, interest payments thereon, investments in capital assets such as equipment, property, etc., dividends, and any other receipt/payment not directly related to the business operations. The metric for business cash flow is the business' EBITDA (Earnings Before Interest, Taxes, Depreciation and Amortization). Some use variations of EBITDA like EBITDA less capital expenditures (as capital expenditures are an annual cash outflow) but we will stick with EBITDA as defined above. To get to EBITDA we add back depreciation and amortization expenses to operating income because these are noncash expenses. Interest is added back because it is a capital structure item. Taxes are an expense after operating profits are determined so we add back those as well. We end up with EBITDA which is the metric we use to value a business alongside our multiple.

EBITDA: For What Time Period

The value of a business is based on the future cash flow the business can generate. The EBITDA of importance then is future EBITDA. For use with a multiple, what we are interested in is what EBITDA will be in the first 12 months after a deal is closed. Since we don't know what EBITDA will be in the future, we use whatever period EBITDA that will provide us with the best estimate for the next 12 months post transaction closing (we assume that EBITDA will be similar in the future indefinitely which is why the next 12 months works). To estimate this, we use the best estimate we can get which is typically the trailing twelve month EBITDA or the current years forecasted EBITDA if for example we are enough months into the relevant year that we can fairly accurately project the current year's EBITDA.

Key Point: The goal of the TTM is to accurately forecast the first twelve months of EBITDA post transaction closing. The TTM is being used as the best available measure of this first twelve month EBITDA. I have heard bankers say that because there was an anomaly during the TTM period, for example the fall of oil prices which caused a softening of a company's income statement, they could not sell the company. Not so. If there is an anomaly in the TTM period, one can "normalize" (eliminate) the anomaly in order to get an accurate TTM EBITDA. As an example if it snowed in one month of the TTM period and a company's service trucks could not get to customers and so revenue and EBITDA for the given month were down, adjustments to the P&L can be made to eliminate the effects of the snow in order to return revenue and EBITDA to what would be considered "normal" levels. The assumption in this case must be that it will not likely snow in the future and disrupt the P&L. So the snow truly was an anomaly. So this may apply to a state like Florida but likely not Utah.

MAKE CERTAIN TTM EBITDA ACCURATELY FORECASTS FUTURE EBITDA

We had a client that was a workover rig company in the oil industry. We were looking at the Trailing Twelve Month (TTM) EBITDA to use with a multiple to value the business. We noticed however that one of the months was materially different than other months. Upon examination we learned that this month was particularly cold and snow prevented the company from performing its normal work. Since the severity of the weather conditions had never occurred before we considered it appropriate to adjust that month's EBITDA to what it would have been with normal weather conditions. As a result we were able to have a viable TTM and a more accurate forecast for the future. Of course the buyer, as part of the negotiation, claimed that there was a chance that it could again be that cold so maybe the TTM should not be adjusted. At the end of the day this particular buyer did not allow our adjustment, whereas another buyer for another deal with the same weather issue affecting the TTM EBITDA did allow us to make the adjustment.

Adjusted EBITDA

Key Takeaway: Be comprehensive in identifying non pure business expenses to add back to business EBITDA in order to maximize EBITDA and business value

When valuing a business we are interested in presenting the business as if it were operating similar to a public company, the goal of which is to maximize profits. Because the emphasis of most private companies is to minimize taxes, we often find nonrecurring, owner-related, and/or extraordinary expenses on the income statement which would not appear on the income statement after sale of the business. We add these expenses back to the income statement thereby maximizing our EBITDA, which in turn maximizes our business value. Examples include expenses reloated to boats, planes, vacation homes, inflated owners' salaries, family members on the payroll not working at the business, roof repairs, building construction, and items that are expensed that could be capitalized. Te seller must be comprehensive in adding back these non-business-related expenses so as to maximize EBITDA and/or profits used in the DCF model or in conjunction with a multiple. This is imperative because it maximizes the selling price for the business owner. So don't be shy when identifying expenses to be added back to the income statement.

Multiples

Key Takeaway: There is only a small range of multiples for a business. Getting a higher multiple than this requires the buyer to be able to increase the selling company's EBITDA post acquisition via synergies thereby making the resulting multiple of the seller's original EBITDA greater.

How many times have we heard of friends selling their business for some huge multiple that defies all logic? I can tell you without reservation that either the source is mixing his or her variables to come up with their multiple (e.g. using net income with a valuation multiple intended to be used with EBITDA) or if it is true, what has occurred is the buyer has been able to increase the seller's EBITDA, and by extension the overall value, via synergies gained through the acquisition, with the resulting value being a very large multiple of the original seller EBITDA. Base multiples never change because they are based on the ability to finance a company which includes participation and very stringent lending rules of a bank. However the valuation may increase due to synergies and a more robust post acquisition income statement resulting in the multiple growing simply because the larger value is divided by the original seller EBITDA.

On the front lines when we are marketing a business we discuss the value of the business in question in terms of multiples as it is the only efficient way to discuss value in the short amount of time available. Using multiples is simply a short cut to valuing a business and multiples are actually derived mathematically from the DCF model employing some simple assumptions.

To understand how a multiple relates to the DCF model, we will illustrate the derivation of a multiple from the DCF model to prove the validity of the use of a multiple. To derive a multiple, we begin with the future cash flows of a seller business. The base DCF model uses 5 years of forecasted revenue and profits and ultimately EBTIDA and then an extra year of forecasted EBITDA for which the model applies a growth factor into perpetuity. If we apply the following assumption to the DCF model, we understand the math behind a multiple:

Inappropriate Use of Multiples When Forecast Variables Change

We had an offer for a company that transports water in the oil industry. Oil prices were down 200% from $80 and as such the water hauler had EBITDA down 100%. The buyer had suggested a current offer of 5x current EBITDA. This assumes constant EBITDA going forward. The industry expected oil prices to rise in next 2 years and as such EBITDA at this company will rise. Using a multiple of current EBITDA would result in a value of 5x $500k (EBITDA) = $2.5 mm. We needed to use the DCF model to show increased EBITDA in 2 years to $1 mm. So true value using DCF model is $4.1 mm. So you can see that since we must change the forecasted EBITDA, the DCF model must be used to incorporate this change and get the true value of the selling company.

Assume that the profits/EBITDA of the business being valued will be the same going forward every yearwith some consta e constant growth fact growth factor.n This assumption allows us to switch from using a discount rate for every future year of earnings/EBITDA, to using just one discount rate (because the annual earnings are all the same), which is called a capitalization rate. We theoretically have to adjust our capitalization rate for our constant growth factor into perpetuity but this adjustment is so minor we ignore it in our simple illustration here. The standard discount rate is 20% and since we are ignoring our growth rate adjustment due to immateriality in this example, this 20% becomes our capitalization rate.

The final step is to apply our capitalization rate of 20% to our EBITDA. Application means we will capitalize our EBITDA by 20%, or divide EBITDA by 20%, or simply multiply EBITDA by 1 divided by 20%, which is 5 (1/.2=5). We end up with our standard multiple of 5x. So we have simplistically, we hope, illustrated why we can use a multiple to value a

business, when really the only way to value a business is to apply the DCF model. So by making some simplifying assumptions, using a multiple to value a business is analogous to applying the DCF model to value the business, which is the correct way to value a business.

Discount Rate Standard 20%: We mentioned in our narrative above that the standard discount rate used is 20%. As a brief explanation of where this comes from, it is the rate at which we discount/capitalize our EBITDA to account for the risk involved in a company generating relevant EBITDA. The 20% is "built" and compares the risk of a company's EBITDA with the levels of risk in other investments (investing in government treasury bills, junk bonds, etc). The 20% is essentially built by beginning with the lowest level of risk in terms of financial investing which would be short term government securities and then builds to 20% by adding levels of risk to get to the level of risk appropriate for a private company's EBITDA. This build up method and the factors involved can be looked up on a variety of financial web sites and we will not describe its characteristics here.

So Which Multiple Applies to Your Business?

Companies with more barriers to entry, greater growth prospects, and lower overall risk are valued at higher multiples. For example a larger company, all else equal, will get a higher multiple because it is less risky than its smaller counterpart. We assume the larger company has more customers generating more revenue and so the risk of such a company losing all these customers is lower than a smaller company. Specific characteristics of larger companies that reduce risk are:

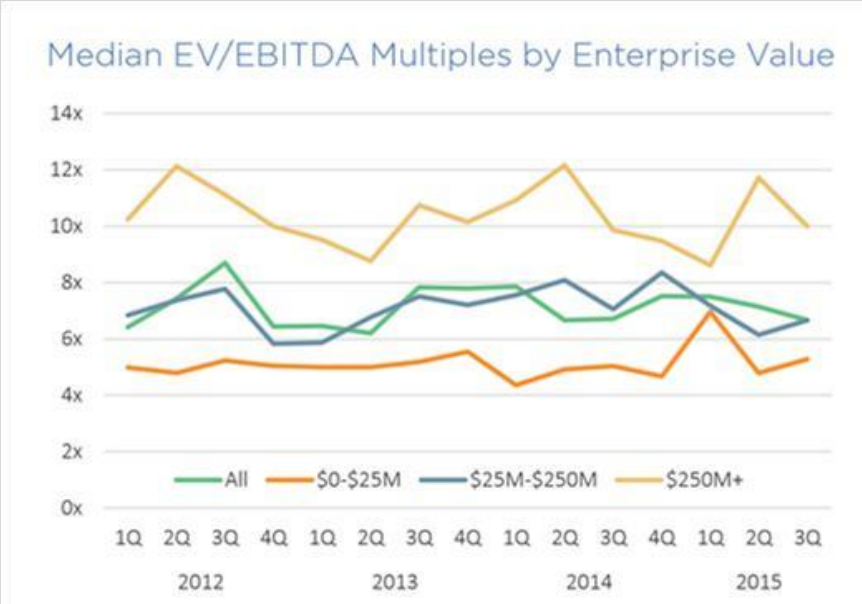
Audited Financial Statements: Not always but often larger companies come with more accurate and professionally prepared financial statements than their smaller counterparts.

Larger Revenue Base: A larger revenue base means lower risk related to losing customers and revenues.

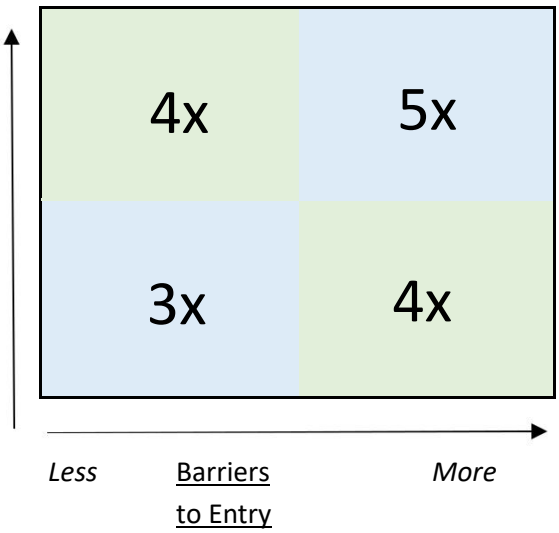
Greater Number of Customers: A larger company will have a larger number of customers meaning the loss of any one customer will result in a lower % of overall revenue.

Better Computer Systems: Typically a larger company will have more advanced computer systems to manage operations and link with financial reporting. This represents more credibility in the information as a whole that the company manages.

The graph below illustrates multiples paid for various sizes of companies.



In addition to size, the greater the degree of barriers to entry a selling company exhibits the higher the multiple it will generate. The graph to the right reflects the fact that companies with these greater barriers to competitor market entry and larger size, as characterized by such things as patents, trademarks, exclusive vendors or customer markets, contracts in place and the like generate larger multiples. The lower left quadrant of the graph represents companies of smaller size and lower barriers to entry resulting in lower multiples. Contrast this with the top right quadrant where companies that are larger with greater barriers generate higher multiples. Any company can be plotted on this matrix to determine the approximate multiple it would generate.



Multiples: Why Can't I get a high multiple like a 10?

Key Takeaway: A larger than normal multiple is a function of the buyer economically expanding the seller's income statement via synergies causing the resulting multiple of the seller's original EBITDA to be larger.

The most straight forward reason why a seller is limited to multiples between the range of 3x to 6x is because banks are involved in most acquisitions and the amount of money they will lend on a given deal is limited. Here is the relevant math:

Multiple Math:

1.5 – 2.0 x EBITDA: Equity contributed from buyer

2.0 – 4.0 x EBITDA: Debt contributed from bank

Add the range of numbers above and you get a 3.5 x to 6x range for multiples which is pretty typical.

Based on the math above you can see where the money for a transaction comes from most often. The equity contributed by a private equity group is based on getting a certain ROI (return on investment). They may stretch a little on occasion but they cannot stretch much. The amount contributed by the bank can typically be further broken into a portion to be contributed by an asset based lender and a portion to be contributed by a cash based lender. There are very specific formulas for each of the amounts and there is very little room for stretching available funds from a bank. The buyer will split the debt required for a deal between an asset based lender and a cash based lender in order to maximize the amount available from the asset based lender because it comes with a lower interest rate as it is secured by assets. Typically a buyer cannot get enough asset based debt to complete 100% of the funding needed for the acquisition which is why they must go to the cash based lender for additional funds to get to the level required to pay the seller. The more

cash based debt than asset based debt the higher the cost of the money becomes which begins to put pressure on the ROI the buyer is seeking with their equity investment.

You can see then why multiples are limited to a range of approximately 3x to 6x because of the ROI required by the buyer and their equity and the constraints on amounts that banks can lend on a deal which are a function of the assets and cash flow unique to a given deal.

Again, larger multiples than those defined here are attained from strategic acquirers that can find and get economic benefit from synergies in the company they are acquiring, as base multiples are constrained to their normal levels.

Illustration: Asset Valuation ($000s)

Assets	
Accounts Receivable	213
Inventory	435
Total	648
Fixed Assets	567
Total Assets	1,215
Liabilities Accounts Payable Accrued	112
Expenses	23
Total	135
Equity	1,080
Liabilities & Equity	1,215

Asset Based Valuation

The asset based value of a business is simply the net equity that results from liquidating the company's assets and paying off its liabilities. Typically this value is the lowest way to value a company. The illustration to the right shows the derivation of an asset valuation. If the Company in the illustration were to sell their assets and pay off their debts in the marketplace, they would end up with$1,080,000, which is the equity on the company's balance sheet.

Valuation based on Ability to Finance a Transaction

A company is only as valuable as one can put together the financing for its acquisition is the theory and practice behind this form of valuation. As described later in this book, a bank will typically lend 2 to 3 times the cash flow of a business (includes the asset based debt) and the buyer's equity will represent the remaining 1 to 2 times cash flow getting to the approximately 5x it takes to acquire a business. At the end of the day this is the easiest way to explain to most sellers why they will not get a 10x multiple or higher for their business and why their buddy couldn't either. Banks have policies from which

Illustration: Financing Based Multiple

Equity Investor*	1.5 x
* based on ROI	
Asset Based Lender**	2 x
** based on asset base	
Cash Flow Lender	1 x
*** based on cash flow	
Total Multiple	4.5 x

they cannot deviate and the investor has an ROI requirement which together places a ceiling on a valuation around 5x pretty quickly.

Public Company Comparables

We use public company comparable data to estimate the value of our private companies. To begin, we select a group, say 5 or 6 public companies that are similar to our private company. For example if we are selling a furniture manufacturer we would find public companies that manufacturer furniture. Then we find the valuation data for the public company comparables which is fairly easy (PE times shares outstanding + long term and short term debt (not working capital)) and divide by the companies EBITDA, to get a multiple.

Illustration: Public Company Generated Multiple

A) Public Company Stock Price $	2.00
B) Shares Outstanding	4,000
A x B = Equity Value	8,000
Value of Debt	2,000
Total Company Value	10,000
EBITDA	1,500
Multiple	6.67 x
Marketability Discount	35%
Discounted/Comparable Multipl	4.3 x

Since our pubic company comparable companies are typically less risky than our private companies because they are larger and more transparent, we have to apply a discount to our public company data to make it more comparable to our private companies. There are studies which suggest these discounts are approximately 35% but your public company comparable might require a different discount depending on the magnitude of its differences with your private company. At the end of the day this can become fairly subjective.

Private Company Comparables

Private company transactions can be fantastic comparables. The problem is they are almost impossible to find and if you do find data you again have to make adjustments for any difference between the private company and your company. There are a number of databases which claim to publish this data. A big problem with this data is that you never know exactly what is or is not included in published EBITDA or value metrics from certain databases. So it is difficult to place much value in this information.

Of course in house data from investment banks and M&A firms is ideal because we know exactly the deal terms and EBITDA. So using in house private company comparable data can be ideal. The problem typically is that you cannot disclose the name of the company with the valuation metrics due to confidentiality agreements with your clients.

Final Thoughts on Valuation

In a valuation report you will typically find the use of the DCF and asset models along with public and private company comparable analyses. When actually selling a business the buyer is likely to use the DCF model and talk to the seller in terms of multiples. Ultimately, however, the ability to finance the purchase and the ROI the buyer envisions, based on the forecasted EBITDA of the seller, will determine the purchase price.

Preparing Your Company for Sale

KEY TAKEAWAY: Buyers want to acquire companies that minimize their risk. When preparing your company for sale attempt to minimize the buyer's perceived risk as is related to all the attributes that your company possess that Buyer's consider important.

Positive Company Attributes	*Negative Company Attributes*
Larger Size	*Smaller Size*
Customer Diversification	*Customer Concentration*
Patents	*Low Barriers to Entry*
Brand Name Products	*Many Competitors*
Strong Management Team	*Weak Management Team*
Strong Growth Prospects	*Low Growth Prospects*
Barriers to Entry	*Bid Type Revenue*
Strong Competitive Advantages	
Recurring Revenue	

When we talk about preparing a company for sale, we visualize a snapshot of a company that possesses all the positive company attributes that buyers look for and compare that with a snapshot of the seller's company so we can determine what the seller should and should not highlight. The seller's company wants to have as many of the positive attributes possible. When we talk about preparing a company for sale, the preparation would entail a seller taking the time to change relevant selling characteristics, where possible, which would further minimize the buyer's risk. For example if the seller has no one to take over the company when the owner departs, we would characterize this as a weak management team. The owner might consider hiring an executive a year before actually selling so that this executive could be trained, get acquainted with the company and represent the management succession plan. In so doing the seller has shifted its management team risk, as perceived by buyers, from high to low. As a second example, a seller's company may have significant customer concentration because it generates 85% of its revenue from one customer. This often happens in certain industries because the seller's company is doing everything it can to take care of its primary customer. If possible however the seller's company could take the time to diversify its revenue and secure

additional customers thereby decreasing its customer concentration. As far as it is perceived by buyers, the risk related to this company's customer concentration has shifted from high to low.

We describe below the characteristics which are most important to buyers when making an acquisition. A seller wants each of these characteristics to be perceived as low risk by buyers.

Competitive Advantages:

Typically when we ask our clients why their customers choose them over their competitors, we are seeking to understand their competitive advantages. In response we often hear that the seller provides higher quality services, has better equipment, larger availability of equipment and service personnel, quality and certified personnel, a better product and the like. The more competitive advantages the better. And the more these competitive advantages cannot be replicated by competitors the better. For example a patented product that customers adore is wonderful because it cannot be replicated by competitors. The competitive advantage of having zero competition represents the lowest possible risk to a buyer and makes this company acquisition very attractive. Conversely a janitorial company which claims only that it provides better services than competitors risks the loss of customers to competitors who can provide better services. So the apparent competitive advantage does not reduce a buyers risk as revenue can quite easily be lost to competitors who simply provide better services. It's all about the types of competitive advantages the selling company has and how strong those advantages are versus competing firms.

Patents and/or Brand Name Products

As mentioned above, patents and brand names that are recognized and accepted in the marketplace are competitive advantages at the highest level because they create significant barriers to competitor market entry. These are companies on which buyers place significant value.

As an example of a brand name product representing significant value I worked on the sale of Sister Schubert's Homemade Rolls. Sister Schubert began baking for church bake sales in Alabama and people loved her rolls so much that she eventually established a company and expanded. We sold her company for a premium value because the "Sister Schubert" brand was well known at the time and the buyer, a huge food conglomerate, saw the opportunity to insert the Sister Schubert rolls product line into their much larger and more established distribution

channels and retail supermarket slotting programs and dramatically increase sales and EBITDA. The well established "Sister Shubert" brand name and proprietary recipes represented a product line that was well protected from competitor products and so the buyer could increase revenues without worrying about customer competition.

Revenue: Recurring is the Best

Revenue is typically the first thing that any buyer looks at when evaluating a selling business. Being able to easily identify where revenue comes from is of significant value to buyers. Recurring revenue is the gold standard. For example services that are provided and billed monthly exemplifies the most valued type of revenue as it is easy for buyers to understand where tomorrow's revenue will come from. Contracted revenue is also of value - however there is a time when contracts need to be renewed. Waste removal is also an example of valued recurring revenue as waste needs to be removed regularly be it monthly or weekly, and invoiced accordingly.

By contrast, revenue from projects requiring bidding is the least favorite type of revenue for buyers because a company first needs to win bids and then, typically, there is further risk since the profits from the project are contingent upon the company properly bidding the job. One bad project can turn a good profitable year into a loss quickly for a construction company.

Janitorial Service Recurring Revenue

Janitorial services are typically provided daily and billed monthly. This is a great example of recurring revenue as buyers have great visibility into where next months and next year's revenue will come from.

Construction Revenue Non-Recurring

Buyers often identify construction revenue as non-recurring as jobs typically must be bid and so you don't have good visibility into future revenue because you don't know what kind of jobs will be available for bid nor what a company will win.

Management Team

The importance of having a management team or person to continue the management of the company post transaction is dependent upon the buyer. PE groups are often more concerned about this than strategic buyers and in some cases PE buyers won't even consider an acquisition unless there exists a management team to lead the company post transaction. For reference, PE buyers are investors and not business operators. They add value via capital and aiding with systems, processes, contracts and the like. They are typically a very hands off group of investors with regard to the day to day operations. They are focused on growing and "corporatizing" a company they acquire so they can sell it at a future date. Strategic buyers by contrast are operations focused and so typically are less concerned with management teams because they already know how to operate in the seller's industry and likely want the

seller to adopt their practices and processes. For PE buyers it is very important to have management teams in place. For strategic buyers it is less important.

When we discuss the management team that exists post transaction, the best scenario is that in which the business owner has already removed him or herself from the company day to day operations and the company operates with a standalone management team with no input from the owner. This scenario provides the buyer the assurance that the company has an independent, capable, go forward management team because it is currently operating with
such. There is no risk to the buyer that the company being sold will be negatively affected by the departure of the current owner and no customer relationships or operating knowledge will be lost.

By contrast we consider a small engineering company where the business owner is the only PE (professional engineer) in the firm, participates regularly with the rest of the staff on jobs including estimating and bidding, and spends time entertaining customers. In this case the buyer would see significant risk related to the go forward management team because the current owner is so deeply involved in all aspects of the successful operation of the company. In preparing for a sale we would want the business owner to take the time to pass on as many of his/her current responsibilities to other staff members and in particular not be the exclusive team member socializing with customers. The goal is to minimize the selling company's need for its owner. As you can imagine this can be difficult for some owners because, and deservedly so, they are very proud of the company they have built and want to communicate how important they are to the success of the company. We advise our clients to specifically pay attention to this and to not oversell their importance to the current success of the company. Of course the only answer is the truth when answering questions from buyers but this is one area where the seller typically finds it difficult not to communicate their importance to the selling company and in so doing are lowering the value of the company in the eyes of the buyer.

Proprietary Anything

Businesses that have something proprietary like food recipes or patents or exclusive vendor relationships or trademarks/brand names with value find themselves more valuable than those without. Again this is because the barriers to competitor market entry that these proprietary items represent are strong. This value should translate into the income statement of the company in the form of greater revenue and stronger profit margins than competitors. Buyers understand that these proprietary items can translate into significant growth post acquisition (as described in the Sister Schubert's story previously) and so the value of companies with these proprietary characteristics are often bid higher than the value that the income statement reflects (because via synergies gained the buying company can generate incremental income which translates into greater value).

Software Company With Proprietary Software

We sold a software company that had a number of products used for scheduling airline personnel hours and flights. The software was programmed by the Company's employees and was therefore proprietary. This was something that no other Company had and so the Company was valued higher than would a company without such a competitive advantage.

Documentation

The business should have good records, either electronic or paper form. Good record keeping is an indication of an organized company. Items like licenses, certifications, contracts and the like should be organized and up to date. During due diligence all these records are reviewed and verified. It reflects favorably if, prior to due diligence, a company shows it has good information management practices.

We sold a company once that had a brand name for its fasteners in all states in the US, or so we thought. During due diligence the buyer uncovered the fact that the brand name or trade name had not been properly registered in three states. Because of certain rules and regulations, there was a chance that this trade name could not be registered and protected in these states. The buyer reduced the purchase price for this reason. So proper records and certifications and related matters need to be well documented, organized and comprehensive as they are all going to be inspected by the buyer's due diligence team.

Oilfield Drill Pipe Inspection Company Inspector Certifications

We sold a number of oilfield drill pipe inspection companies and in each case it was extremely important that the Company have the inspector training level certifications on file and up to date. It became apparent that if these certifications were not on file it could have been called into question as to whether the Company in fact had the qualified personnel it required to operate its business. If the Company did not have the certifications on file the entire deal could have fallen apart.

Taxes

Due diligence in any transaction will reveal any unpaid taxes of any kind. A selling company wants to make certain that all its taxes are paid and that proper records are maintained. Any identified unpaid taxes are typically paid by the seller at closing so that the buyer has no exposure to any related liability post-closing. We have also seen situations where the buyer's lawyers found the potential for tax liability. In our case it was state sales taxes for which the seller did not think the company was liable. The buyer's lawyers felt they could become a liability in the future if the states in question pursued the matter. In this case, because the buyer did not want to pay taxes incurred by the seller prior to closing, the seller had to establish an escrow account into which a certain amount of the sale proceeds was deposited, for a period, so funds would be available if any of these potential tax liabilities became actual tax liabilities.

Taxes can be a complex issue. Buyers typically understand that a selling company has done its best to pay all taxes and usually all is fine. The best advice here is simply to stay in good standing and keep reasonable records

Legal Issues

Legal issues arise and are a fairly typical part of operating a business. Examples include labor issues, product liability issues and traffic accidents with company vehicles. It is preferable to sell a company with no legal issues but sometimes this is out of everyone's control. Typically we see insurance as the first line of defense in dealing with legal issues and then, if necessary, an escrow account can be set up at closing to address any portion of a legal issue the buyer's attorney believes could become an actual liability for the buyer after closing.

Most businesses we work with don't have material legal issues on the table at the time of a transaction. The more numerous and material any legal issues a company has had or exist on the table during the selling process, will likely dissuade a buyer from having significant interest in the company. With legal issues on the table, while we can always push for a stock deal and fence up the legal issue for the buyer, the buyer will prefer an asset deal in an attempt to keep as much distance as possible between themselves and whatever legal issues exist. This becomes a material issue for the seller if the entity being sold is a C corporation because an asset structure will trigger double taxation to the seller and make the sale less attractive.

Customer Diversification

It is critical not to have revenue concentration with a single customer. This is very often a deal killer as most buyers are too afraid of all the revenue walking out the door if the customer decides to change suppliers. We understand that when a company has a large customer and continually bends over backward to serve this customer, the natural evolution is simply that this customer becomes the largest the selling company serves and results in customer concentration. The buyer risk here is significant as they fear with one decision all of this revenue could disappear. Businesses with customer concentration are very hard to sell and will often require a deal structure in the form of long term notes and/or earnouts to ensure a long term relationship with the customer in question. So wherever possible diversify revenue as much as possible prior to a sale.

Customer Relationships

What we don't want is for the selling company's customer relationships to be only with the departing owner. A buyer would be very concerned that if the company's success depended on such personal relationships, the value of the company would be far less with the departure of the owner. As much as possible we want customer relationships in the hands of "the company" and shared among company personnel. We want to be able to tell our buyers that when customers call the company for service and related matters they deal with any number of company employees/solution providers and that any relationships with the owner exclusively no longer exist. This is important. It is damaging to tell a buyer that you, as a seller, have so great a relationship with your customers that you have family barbecues every weekend. We had a client say this on a conference call thinking they were reducing risk as perceived by the buyer. They could not have been more wrong.

Capital Expenditures

Buyers don't like to buy businesses which require upcoming large capital expenditures. As an example an oil workover rig company with a fleet of vehicles costing in the neighborhood of $1 mm each are 20 years old and in need of replacement is not a target company buyers will fall in love with. Buyers tend to look at a multiple of EBITDA less annual capital expenditures to compensate for the anticipated capital outlays. The best scenario is one where the company has regularly invested in its capital assets thereby avoiding this issue.

We advise sellers not to make large capital expenditures during the 6 month period prior to selling their company because they will not receive full value for this capital expenditure from a buyer.

Heavy Equipment Company with Material Capital Expenditures Pending

We were accepting LOIs for a workover rig company one year with 25 workover rigs. One of our buyers determined that the rigs required overhauls every 5 years at a cost of $200k per rig. With 25 rigs that would be $1 mm each year in what we call "maintenance capital expenditures". As some buyers use EBITDA less Capex to value companies this buyer was now deducting $1 mm per year from our $5 mm EBITDA. So our 5x company went from $25 mm to $20 mm. Thankfully, we had multiple bidders and others did not incorporate this maintenance capital outflow annually. This illustrates how capital expenditures can hurt a company valuation and why its imperative to have multiple buyers at the table.

However, all else being equal, buyers do prefer companies with newer equipment and the more specialty in nature the equipment is, the better as specialty equipment also represents a barrier to competitor market entry.

Contracts

Selling businesses with contracted revenue are better than those without as the contracts represent low risk in terms of future revenue. Of course the contracts have to be renewed in the future.

Multiple Locations

Typically multiple location businesses are better than single location businesses serving multiple geographic territories theoretically reduces a buyer's risk. If one geographic market slows the business has the others to fall back on. As an example, in oilfield services buyers prefer companies which service multiple oil basins so if one basin slows (because it's a gas based basin and gas prices fall) the companies move their equipment to another, more productive basin (in

Multiple Location Franchise Company

We sold Jan Pro Cleaning Company many years ago. Jan Pro is now a public company which indicates how strong its competitive advantages were. Jan Pro was a francihse commercial cleaning company which operated by setting up Master Franchises in certain geographic territories and underneath the Master Franchise would operate a number of individual franchises each cleaning a certain number of cleaning customer accounts. I believe Jan Pro had over 25 Master Franchises when we sold it which means over 25 geographic markets and multiple franchises below each Master. So effectively Jan Pro had so many geographic locations diversifying its revenue that any problem in one geographic region. A heavy snowfall prevented the crews from getting to the jobs one night causing revenue to go to zero that day had minimal impact on the company.

our case the company with equipment in the gas basin can move it to an oil heavy basin). Multiple basins minimized the company's risk.

Technology

In general the more a company uses modern technology in the business to maintain better records and/or provide better and more efficient services to customers the better the business is viewed by a buyer. Aside from general technology, certain companies use software unique to their industries. Some companies may have custom software that has been developed just for them. To the degree that technology helps a business compete and creates barriers to entry, the more the technology contributes to the value of the business.

Acidizing Company With High Tech Equipment

We sold an oilwell acidizing company once that required acidizing pump trucks that were hundreds of thousands of dollars each and also required significant customer mechanical work on top of what could be acquir4ed from a dealership. The specialty rigging provided these trucks enabled a remote control mechanism to operate mutlple trucks at the well site at one time, thereby cutting down on labor costs. The extreme high cost of these trucks and their specialty nature represented significant barriers to entry and this company commanded a fairly high mul

Environmental

Make sure your backyard is clean. Buyers will visit your facilities and there is no larger red flag than apparent environmental issues. It could be spilled oil or a truck washing area with no concrete enclosures or drums full of special sauces sitting around the yard. Make certain you clean things up. Buyers typically will get a phase 1 environmental report during due diligence to see if there is an indication of any problems. The phase 1 report we hope reveals no material issues and serves to establish a baseline regarding the state of the property at closing.

A Problem With Chemicals On the Property

We once had a client that was in the acidizing business in Midland, TX. They operated in a yard that had an environmental issue related to chemicals spilled on the property. The simple solution would be to structure the transaction as an asset sale so that the buyer could avoid any of these related legal issues attaching themselves to the buyer. Unfortunately the client was a C corporation and so an asset sale would trigger double taxation which made the proceeds from a sale too small to motivate the seller. As a solution we were able to find a buyer that would do a stock transaction but had the seller pay for an insurance policy that would protect the seller and buyer from extraordinary costs related to a potential clean up.

Financials

I had a client once suggest that his Florida based business was worth more money than a similar business in, for example the Midwest because of the Florida sunshine. The fact is that any incremental value that one business has relative to any other business is revealed in the Company's financial statements and specifically the income statement. If sunshine has value this "sunshine" business should have better profit margins than the non-sunshine business. If not then the sunshine is adding no incremental value to the business.

The financial statements tell the story about the selling business. They reveal the size of the business, how much customers want the company's products/services, and whether the product/service delivered is capital/equipment versus labor intensive as indicated by the cost of sales breakdown and gross margin. The selling, general and administrative expenses communicate the type of support the business requires from a selling and administrative perspective and the size of facility or facilities that the business needs to support its operation.

At the end of the day the determination of the value of any business is based upon the financial statements of the company in question. Everything about the company, including the value of sunshine, is captured in the company financial statements. The financial statements

have to be competently analyzed and adjusted to ensure they are presented a) according to GAAP and b) EBITDA is maximized and consistent with EBITDA generated under "normal" operating conditions.

Tax Saving vs Profit Maximization

The goal of many private companies is to minimize taxes. We often find business expenses for numerous "non-pure business" items booked on the income statements of private companies. This would include payments for things like boats, planes, vacation homes, personal travel, family members on the payroll who don't work for the company and the like. Since we want to maximize EBITDA for selling purposes we need to "add back" all "non-pure business" expenses for the marketing of a private company. In so doing we end up with financials that are comparable to a public company, the goal of which is to maximize profits. By maximizing profits we maximize the value of the company.

The Need for GAAP Financial Statements

Private company financial statements come in a variety of shapes and sizes. Most typically we are looking at financials that are audited, reviewed, compiled or company prepared/internal. On top of this the financials might be tax versus GAAP based and/or cash versus accrual. In order to sell a company its financials must be presented according to GAAP. If you have any knowledge of financial statement preparation you know that if you don't present your financial statements according to GAAP, you could be perceived as selling oranges and receive an LOI based on apples, but during diligence the buyer discovers you are selling lemons. Or vice versa. You then have to explain to your client and the buyer why the financial statements were presented inaccurately and everybody just wasted time and resources because a $50 mm offer turned into a $30 mm offer and now the company is too small for the buyer and the seller did not want to sell at any amount less than $45 mm. So you now have a pretty large issue. Make certain the selling company financials as presented to buyers are in conformance with GAAP.

GAAP: Generally Accepted Accounting Principles

This is the standard for financial statements and ultimately the basis of purchase. We want our financials to be in conformance with GAAP at the time of sale because during due diligence the buyer will audit our financials and any change will affect the purchase price. If the financials reflect less EBITDA, the purchase price is coming down and our deal will

likely blow up. If our financials reflect higher EBITDA and a greater value, the buyer will not tell the seller and the seller will have left value on the table.

Audit, Review, Compilation, Back of Napkin

There are three different kinds of prepared financial statements: compiled, reviewed and audited. A fourth, and most prevalent, is the company prepared internal financials generated by QuickBooks or whatever type of financial system the company uses. Every buyer loves to see audited statements but as you can imagine most companies have only company prepared financials. At the end of the day we take whichever form of financial statements the company has and we make adjustments to get them consistent with GAAP. This is what the buyer's due diligence will be based upon, so in order to support the purchase price, the seller needs their review to confirm that the financials on which the offer was made are in fact accurate and in conformance with GAAP.

Cash vs Accrual

Beginning and end of year revenue bookings can throw your financials off materially. Get them right. Why? Cash based accounting requires you to recognize revenue when the cash is received as opposed to when services are rendered or products sold. This breaks the GAAP rule of matching costs and revenue and allows the business to delay booking revenue enabling a business owner to reduce taxes by deferring revenue from one tax period to the next.

Percentage of Completion Accounting

Percentage of completion accounting is used in businesses where the process of completing a product or project is lengthy creating a situation where, based on invoicing practices, revenues and costs do not match. Construction projects and the manufacture of large pieces of equipment are good examples where percentage of completion accounting is applied to conform with GAAP. It makes use of estimates for costs and related revenues based on material and labor used through a given period and matches estimated revenue to costs based on percentage formulas. Watch for businesses that should be using % of completion accounting but are not. Adjustments must be made to their financials to conform to GAAP.

Inventory: Millions in dollars of value lost or gained.

Inventory is one item you have to make certain you properly account for in the seller's financial statements. We often find that selling companies claim to be reporting accrual financials yet will record inventory as a cost and report no inventory on the balance sheet. In so doing they are not matching revenue and expenses but trying to reduce taxes. We often have to look at the selling company's annual statements to make certain they are adjusted to properly match revenue and costs and ensure all forms of inventory - raw materials, work in process and finished goods are reported on the balance sheet. Failure to properly report inventories can understate or overstate the value of the selling company.

Can I Keep my AR?

I can't tell you the number of times a seller will hope to sell their business for a multiple of cash flow and retain their Accounts Receivable. Let's be clear about this. When you sell for a multiple of cash flow you must turn over all "normal" working capital which, at a minimum, includes AR, inventory and accounts payable. Assuming your business has healthy enough margins, the cash flow value of your business should be much greater than the asset value, the latter being the valuation method which allows you to keep your AR because you are selling the capital assets and liabilities of your business. When selling for a multiple, you value the business based on the DCF model. That model assumes certain future cash flows. If you attempt to retain any AR, you eliminate a portion of the future cash flow stream reducing the value of the business.

View WC as Part of a Piece of Equipment

As an example of why you must turn over all working capital when selling a business based on a multiple of cash flow, look at the business as if it is a piece of equipment you are selling, say a printing press. The printing press must be able to print newspapers, for example, to generate the cash flow the buyer is paying for. If you remove a part or the ink from the printing press it will no longer work and the buyer will not generate the cash flow they paid for without investing additional capital in the equipment. This is the same as a business. If you remove the AR for example, the buyer will have to reinvest the exact amount you remove to keep the cash flow flowing that the buyer has paid for.

C Corp vs S Corp vs LLC

There are a number of types of ownership structures for private companies. The three that we work with are the C corporation, S corporation and LLC (limited liability company). When preparing for a sale every business owner should be familiar with the legal type of entity they are selling and what that means with regard to taxation, liabilities and depreciation recapture, among other things.

The C Corporation should be avoided if possible as it triggers what we call double taxation. The seller is taxed once at the corporate level when the C corp sells its assets and then again when the proceeds from the sale are distributed to the seller. As a result we try whenever possible to sell this form of entity as a stock sale to trigger only single taxation when the seller receives the proceeds from selling the stock. The problem here can be that buyers prefer asset transactions because it allows them to write up the value of the assets and avoid assuming the selling company liabilities which occurs in a stock transaction. While it might trigger a valuation related tax when a C corp switches to an S corp or LLC prior to a sale, we suggest the switch be made as it provides the seller much more flexibility when selling their company. Sometimes a buyer simply won't do a stock transaction and if you own a C corp this may prevent you from selling, given the double taxation issue.

The S corp and LLC forms of business provide much more flexibility for a seller. Both are pass through entities and result in a single taxation to the seller when selling their company, regardless of whether the deal is structured as an asset or stock sale.

When to Sell

The timing of selling one's company is analogous to the timing one should pursue when selling a public stock. One always wants to sell public stock and their company "too early". The point is that the growth prospects have to be strong or very few people or companies will be interested in acquiring your company. You never want to wait until your industry dynamics start to soften or if you are in the commodity industry you don't want prices to fall. This is what we mean by selling too early. You want to sell when everything is going well, the industry is strong and prospects for growth are good. Typically we find selling companies are in transition where they need to add sales personnel and "corporatize" the organization as they begin to grow to the next level. This is the kind of story you want to be able to tell a buyer - that all lights are green but you need help of some form, capital or management expertise and/or related,

to take the company to the next level, or you simply want to retire from the business. You never want to sell your company when the prospects for growth are weak or uncertain.

Always sell too early. There is not much anyone can do with a company that waits too long to sell and the industry related risks appear too great for any buyer to get involved.

Advisors

Key Takeaway: Understand the limits of each advisor's advice. Listen to the experts.

Attorney: Any attorney will not do. You need an M&A attorney.

CPA: They are good at debit and credits. They are not M&A specialists

Investment Banker: Provide you with pre marketing value insight relevant to your company. Maximize value for your company. Provide feedback on purchase documents.

Wealth Advisors: Provide expertise in managing your money and proceeds from a sale.

It seems a good time to discuss the various advisors someone selling their business should engage as we have just discussed how to prepare one's company for sale. The seller should engage certain required advisors to assist with preparing their company for sale where certain expertise may be required. The CPA should be consulted to ensure the historic financials are available and in what form (tax, audit, review, compilation, etc.). Often we work with a client's wealth planning advisor as the proceeds from the sale of the business will typically go into the accounts of the wealth planning firm and be managed by the wealth planning advisor. We often work with the wealth planning advisor at the beginning and end of the process; at the beginning to discuss our services and the process of selling, and at the end when the transaction closes and the funds are wired to the wealth planning firm. Finally a lawyer must be consulted and eventually engaged. We advise clients to engage an attorney who understands how to close M&A transactions.

Investment banker

These are the folks who sell businesses with greater than $1 mm in adjusted EBITDA. We distinguish here between the premier bank investment bankers at the behemoths like Citigroup, Goldman Sachs and the like who typically work on companies with values over $1 billion and depending on their volume of deals will dip down towards the $500 mm value level companies. The other group of investment bankers are those like myself who are the middle market bankers and work on companies which have values between $10 mm and $500 mm.

Business Broker

These are the guys and gals who typically work on smaller businesses like local restaurants and retail businesses with adjusted EBITDA less than $1 mm. Their general approach to marketing is posting a business for sale on the internet and hoping someone calls. They typically don't spend the tens of thousands of dollars on the databases necessary to market businesses to professional buyers.

The CPA

The CPA is useful primarily to make certain your financials are in accordance with GAAP at the beginning of the process and then for tax planning at the LOI stage. It also makes a lot of sense to obtain tax planning advice at the beginning of the process so the seller knows the after tax proceeds they will be receiving. More than once we have worked with clients who have been negatively shocked by their after tax proceeds when they waited until closing to do the relevant math.

The Attorney

The attorney is useful to review all documents involved in the process. Some documents are obviously more important than others. The most important is the purchase document. You really want an M&A attorney as opposed to an attorney who does not understand M&A but whom you trust. Don't spend an inordinate amount of time with your attorney on the LOI if it is nonbinding and no breakup fee or similar cost is included.

The Wealth Planning Advisor

We love wealth planning advisors. We want our clients to take the proceeds from the sale of their company and have those funds invested wisely and continue to grow. As such we see wealth planning advisors all the time work with clients to make certain the proceeds from their sale are managed according to the goals of the client. We have worked for years with the advisors at Smith Barney under the Citigroup umbrella and we always worked very closely and well together.

Preparation for Marketing

Key Takeaway:

1) **HAVE YOUR FINANCIALS CONFORM TO GAAP**
2) **MAKE CERTAIN YOUR EBITDA IS MAXIMIZED FOR PRESENTATION TO BUYERS**
3) **YOUR MARKETING DOCUMENTS MUST HIGHLIGHT BUYER TRIGGERS**

Let's start with an overview of the selling process illustrated below. The illustration breaks the selling process into three distinct phases which is how we as investment bankers look at it. The three phases are

The Selling Process: An Overview

Selling a privately held and/or family owned business typically takes between 4 and 9 months. Below is a diagram that shows the 3 major phases of selling a company with comments about each phase.

OFFERING MEMO: This is a book that describes the selling company and includes financials. This document requires a significant amount of information and must be written to highlight the seller's key attributes that buyers really like.

RECAST FINANCIALS: We must make certain we have accrual financials and if not make necessary adjustments. We must recast the financials to maximize EBITDA to maximize seller's value.

BUYERS: A list of buyers both strategic and private equity must be assembled. We research the portfolio companies of private equity groups as well as strategic initiatives of strategic buyers. We want to include all potential buyers to maximize the number of offers for the seller.

MARKETING: Buyers are contacted and sent the offering memorandum after executing a non disclosure. We know how many buyers must execute NDAs in order to get multiple offers.

CONFERENCE CALLS BETWEEN BUYER AND SELLER: Buyers interatct with sellers to learn first hand about the business and meet one another over the phone.

BUYER VISITS: Visits are hosted with buyers that qualify.

OFFERS: Offers in the form of Letters of Intent are collected and a signle LOI is negotiated and executed.

BUYER DUE DILIGENCE: The buyer conducts their due diligence and verifies all areas of finance, HR, operations, tax, legal, etc.

PURCHASE DOCUMENT COMPLETION: Purchase documentation in the form of an asset of stock purchase agreement and any ancillary documents (employment, consulting, note, earnout, non compete, etc) are negotiated.

CLOSING: Documents are signed and funds are wired. Deal is closed.

Preparation, Marketing, and Closing (Diligence & Document Preparation).

How Large Are You

Most professional buyers require $2 mm in adjusted EBITDA to be interested in your business. It is simply a box they must check to ensure the time, effort and money required to acquire a business makes sense to them given the amount of money they have raised from investors and need to put to work per deal and in a given year. Some buyers will dip as low as $1 mm.

Illustration: Buyers Prefer Larger Companies

Company EBITDA	% Buyers
EBITDA $1 mm to $2 mm	10%
EBITDA > $2 mm	65%
EBITDA > $3 mm	80%

Get your financials in order

As much as some business owners will hate to hear this, the value of any business is based on the income statement and balance sheet. The EBITDA generated from the income statement is the primary basis for company valuation. It makes sense then that our goal is to maximize our EBITDA before entering the market. The balance sheet, and the degree to which it is heavy in assets, contributes mostly to the structure of deal. The more the assets, the easier to finance a deal with lower cost asset based financing.

Financial Presentation

Get the numbers right! It takes accounting knowledge to make certain you have your financials ready for a sale. Step one is to ensure they are in accordance with GAAP. Step two is to adjust them, based on industry accepted practices to make certain the company EBITDA reflects what the company would earn under normal operating conditions, and the balance sheet reflects what the buyer is getting via the acquisition. Have an expert to ensure maximum EBITDA. I have heard of car salesmen selling people's companies and with all due respect to car salesmen because I don't know the first thing about selling a car, I hope the car experts were able to make certain they had the financial statements in accordance with GAAP, reflecting the maximum EBITDA the company could generate, and adjusted to reflect the balance sheet items that were transferred to the buyer upon sale.

What Documents Do We Use To Market a Company

When marketing a company, we use two documents to communicate the information about a company to our potential buyers: the business profile and the offering memorandum.

Business Profile

The business profile, or "teaser" as it is commonly known in the industry, is typically a three page document. The front page contains highlights about the selling business (the kind the buyers want to hear) and the second contains a more detailed overview of the business and includes a summary of the company's financials. The final page of the business profile is a nondisclosure agreement the potential buyer signs and returns in order to receive the second document, the offering memorandum, we describe below. The business profile does not disclose the name of the company for sale nor does it disclose any information which could reveal the company's identify. For example we don't disclose the specific city in which the business is located nor do we disclose any other characteristics from which a company could be identified. The purpose of the business profile is to have the potential buyer sign the NDA to receive the OM. Below is an example of a business profile.

Offering Memorandum

The second document we use to market a company for sale is called the Offering Memorandum (OM). The OM is a book describing in detail the key components which, combined, make the company the special entity it is. This document discloses the name and location of the company and any unique characteristics which make the company special. One must be very careful when crafting the key characteristics of a company as there are certain characteristics buyers place value on and others they consider negative. The OM is typically 50 to 100 pages in length and requires years of experience to craft correctly, legally (you have to follow proper guidelines and laws, both state and federal, to ensure you are legally introducing the company to investors who are qualified to make such an acquisition), and to maximize value for the seller.

Buyer List: Where Do Buyers Really Come From?

We have read a lot about sell side advisors having special banquets or meetings where potential buyers are on hand, or the idea that international buyers are the best type of buyer for a client's company. We want to cut through this "noise" and explain where buyers come from so sellers can choose their advisors appropriately.

For every deal a buyer list must be created. The goal is to get the selling business in front of as many qualified buyers as possible. We use databases, for which we pay tens of thousands of dollars, to look at which PE groups own which companies, and which strategic companies are in or could get into our seller's industry, so we can effectively target our buyers.

Buyers are of two basic types: 1) Private Equity Groups or 2) Strategic buyers (another company). We exclude individuals, angel and venture capital groups from this discussion because these buyer types apply only to the smallest of companies (EBITDA less than $1 mm) or companies that are very extreme in some way which doesn't represent our audience - the 99.9 % of companies for sale which are "meat and potatoes" companies generating over $1 mm in EBITDA.

Strategic buyers, or companies, purchase other companies which are in some way strategic to them. Typically there are any number of synergies between the buyer and seller making the acquisition beneficial to the acquiring company. For example a food processing company would likely look at acquiring a specialty food company to add to its product mix. An advisor finds potential buyers by researching in their buyer database all the companies which process food and could benefit from adding this new product. The advisor brings as many of these similar food companies/buyers to the table as possible to maximize the number of eyeballs on the seller's company and the number of potential offers. It is important to note that buyers know what they are seeking and to them it does not matter if the advisor has a special relationship with them, hosts a special meeting or banquet at which they attend, or anything similar. Any special relationship between an advisor and a buyer is not in the best interest of the seller as it does not promote maximum exposure or the number of offers required to maximize

value for the seller. Only the objective method of searching buyer databases for all of the companies that are in the same or similar industry as the seller and bringing these buyers to the table is in the best interest of the seller.

PE firms evolve with respect to the types of companies they are interested in but typically have a range of industries they like, based on the experience of the partners, and/or they look for specific characteristics in companies. Regardless, the only method for an advisor to maximize the number of PE groups looking at a seller's company is to use a PE database and research all the PE groups with portfolio companies in the same or similar industry as the seller and get these PE groups looking at the seller. Any special relationship with PE groups is not in the interest of the seller. Make certain your advisor has the resources to invest in buyer databases necessary to make certain all potential buyers are brought to the table at the same time.

At Ferguson White we search our buyer databases for both strategic and PE acquirers who are either in the same or similar industry or own subsidiaries or portfolio companies in the same or similar industry as our client. These are the primary potential acquirers of our client's company and we make certain we bring the selling company to their attention.

Examples of Ferguson White Buyer Data Used When Identifying Buyers for Client Companies

At Ferguson White our buyer database is a significant investment but we know it is the only way to ensure we maximize the value of our client company's sale. Although our objective research enables us to identify the majority of potential buyers, we supplement the list with buyers we have worked with on prior deals and buyers that contact us. But at the end of the day you need to make certain as a seller that your advisor has the resources to invest in buyer databases to bring all the potential buyers to the table at the same time to create a confidential auction process. Below is a snap shot of the buyers tracked at Ferguson White via our databases.

QUICK COUNTS			
Companies:	685,336	Investments:	471,018
Pre-venture	130,763	Angel & Seed	64,939
Venture Capital	80,727	VC Deals	148,575
Private Equity	81,870	PE Deals	98,960
M&A	97,145	Strategic M&A	116,059
Publicly Listed	35,076	IPOs & PIPEs	23,198
Other Private Companies	307,545	Investors:	145,131
		Angels	21,412
Funds:	33,054	Incubators	2,254
Open	6,829	VC Firms	12,449
Closed & Evergreen	25,986	PE Firms	9,726
		Strategic Acquirers	91,552
People:	1,063,311		
Limited Partners:	21,629	Service Providers:	24,796

Finally, we have worked with international buyers on a variety of deals. We have noticed that some advisors promote their relationships with international buyers, or their ability to contact international buyers as a valuable resource for a seller. We can tell you first hand that for an international buyer to make the investment necessary to acquire a North America based company, the company being purchased has to be of significant size to make the investment worth the effort. By size we mean, typically a company with a minimum of $50 mm in value. Our point is international buyers are very rare at the size of company we are talking about. Yes we live in a global economy and technology has compressed international borders but a company still has to be of fairly significant size for any international buyer to have interest. Of course one can always include international buyers as part of their marketing strategy, but at the end of the day you will likely end up with 0 or 1% international buyers and 99% domestic buyers for your company.

So at the end of the day potential buyers typically come from the buyer databases that require significant annual investment to

ensure buyer information is current. Don't fall for any other promotion or the tease of international buyers. The buyers for 99% of US companies are right here in North America and our databases, prior deal acquirers and interested groups should make up 99% of the buyers looking at your company.

Don't leave money on the table. Make certain your advisor has access to the buyer data and proactively brings all buyers to your deal to generate multiple offers and the confidential auction to maximize your company's value.

With all due respect to the local business broker who posts selling companies on a web site and hopes for a phone call, this is not what the business seller needs. Posting something to a website can be a complementary strategy but the process the seller needs is a proactive one where the advisor contacts potential buyers and creates a confidential auction process for the seller.

Entering the Market: Marketing Marketing Marketing

Key Takeaway: Maximizing your sale price depends upon multiple buyers

Maximizing value and making certain you find at least one buyer for a company is all about marketing. I mean continuous contact with a large number of potential buyers of all types until you feel you have exhausted all possible buyers. The goal is to have multiple offers which means multiple potential buyers contacted - many more than the number of buyers you ultimately want at the table when the initial phase of marketing is complete.

Auction Auction Auction Auction……

This is where the Investment Banker makes his or her money. It takes commitment and hard work to contact qualified buyers and get the client's company in front of the buyers who should be interested. I have seen many an investment banker get 5 to 10 NDAs signed for a deal and wonder why they cannot find a buyer. Our firm's goal is typically to get 60 NDAs executed for each deal. This is the number that usually ensures we have multiple buyers for our client thereby creating the auction environment and allowing us to bid up the price of the company. In my opinion this is the most important step in the M&A process.

Buyer Types: Private Equity & Strategic

Key Takeaway: Strategic buyers typically pay more and are more likely to close

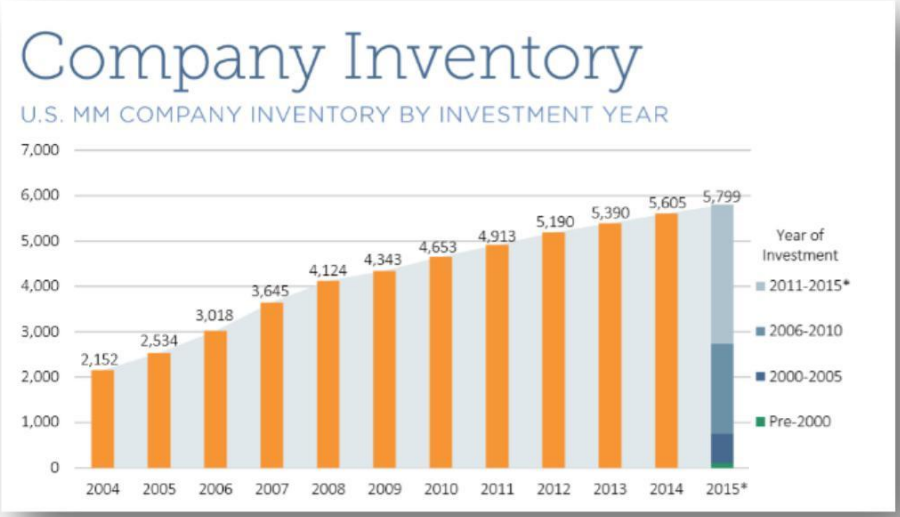
There are three types of buyers seeking to purchase your company for sale. They are: Strategic, Private Equity (PE), and PE with existing similar portfolio companies (existing synergies).

Strategic Buyers

Strategic buyers (companies) are viewed as the premier type of buyer for a seller's company. The reason is that one assumes a strategic buyer has a synergistic need to make the acquisition and so will be hard pressed to not close a transaction once started. Secondly a strategic buyer typically will pay more for a company than a PE firm because it has quantifiable synergies with a selling company whereas a PE firm has no synergies with the company being acquired and has valuation limits placed on it by the banks lending a portion of the money to the PE firm to complete the transaction.

PE (Private Equity) Groups

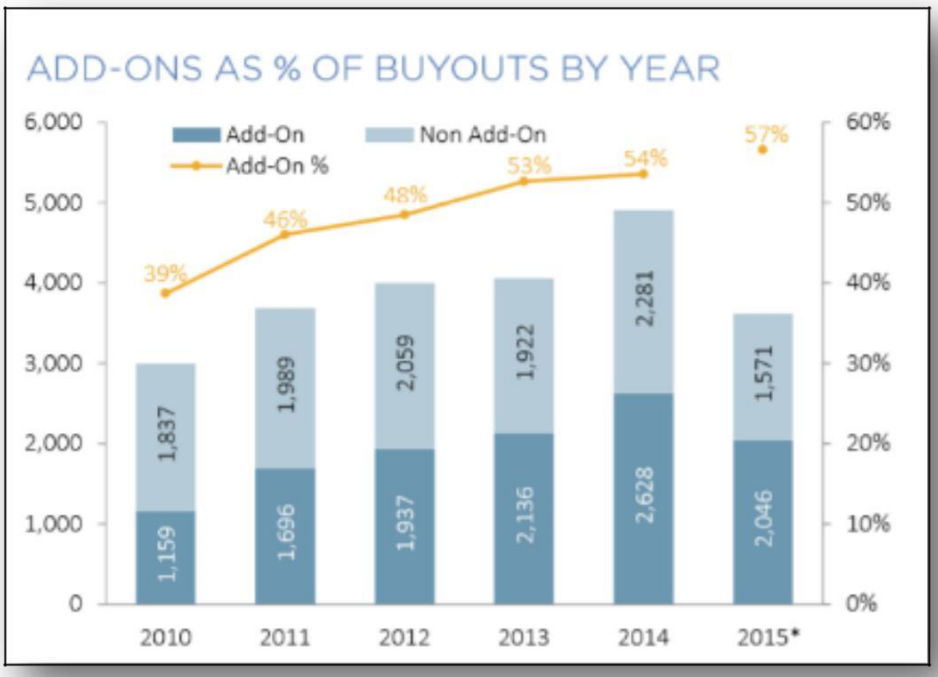
PE groups look at a variety of companies for sale but typically have a preferred group of industries as a result of the industry experience of the PE partners and/or board members. Aside from industry experience, a PE group invests in a company if the business model appears that it will continue to be successful in the future (may have material barriers to entry, patented products, quality management team, etc.) and the company can be grown with the addition of capital and/or assistance from the PE group (use relationships to add customers, grow into new geographic regions, etc.). PE firms are investors, not company managers. Accordingly they need a management team to remain with the selling company for an extended period of time after the deal closes to continue to manage the company. This is in contrast to a strategic buyer who



can often move management personnel into the seller's business if needed. As you can see from the graph above, PE firms own many of the companies we see every day. PE firms currently own 5,799 US companies.

PE Firms with Portfolio Company Holdings:

A good buyer for a company is a PE group which owns a company having synergies with the selling company. For example a PE group owning a tire distributor in the Northeast might be interested in a tire distributor in the southeast to expand market share. A manufacturer of tires for cars might see synergies in owning a manufacturer of tires for trailers and other equipment because the manufacturing processes are similar. Often a PE group with a portfolio company having synergies with your selling company is a better buyer than a PE group with no related portfolio company and therefore no synergies to motivate a purchase. As indicated in the graphic above, 54% of all buyouts in 2015 were add-on acquisitions for PE portfolio companies.

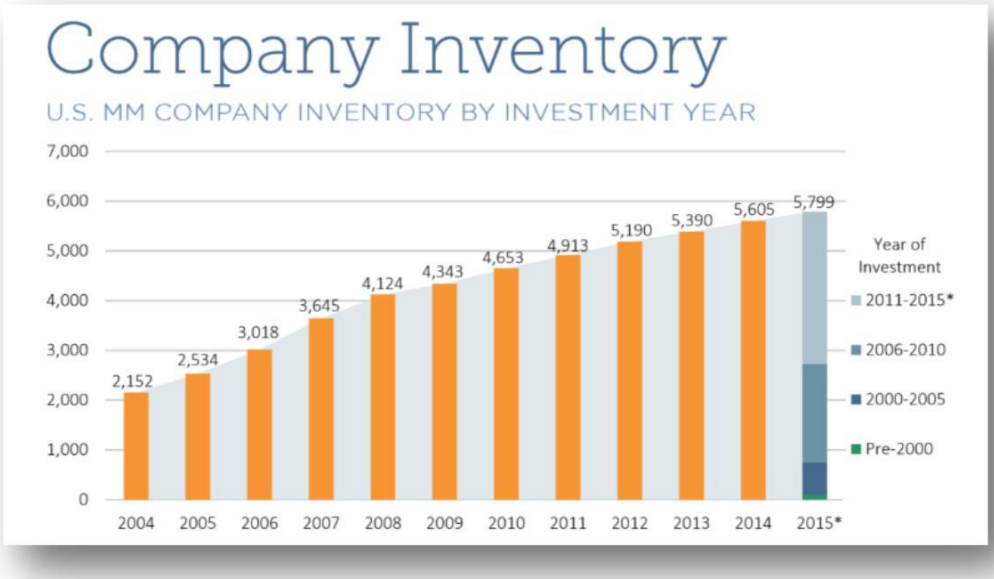


The World of PE Groups and Why They Buy Your Company:

Key Takeaway: Know What PE Group Buyers are looking for when buying companies

Private Equity groups own many of the companies we see every day and yet most people don't even know they exist. So it's no wonder most people or families who consider selling their company have no idea this group of buyers exist.

Private Equity (PE) Groups operate in a number of different forms but essentially they raise money and use that money to buy businesses. The goal of a PE group is to generate a return on investment (ROI) for the money they invest. They typically will use a portion of their own money plus a portion of money from a bank to purchase companies. They then hold these companies, grow them and then sell them, typically 3 to 7 years after their purchase. The proceeds from that sale generate the return on their originally invested capital.



There are thousands of PE groups in the Unites States and Canada and each will focus on different industries depending on the industry experience of the PE partners and/or board members. There are also a number of tiers of PE groups, defined by the size of companies they acquire, a function of the amount of money they must invest, in turn a function of the amount of money they raise from investors. For example if you

raise $1 billion to invest in a given year, you cannot buy companies worth $5 mm as it would take you too long to invest your money. You would likely be looking at companies in the $250 mm range so you would have time, within the year to invest your capital. So based on the capital PE groups must invest, we have the tiers we defined. These tiers provide buyers from one group to be sellers to the next. For example a PE group that buys a company for $25 mm and grows it to $100 mm, would look to PE groups buying companies at this level rather than PE groups buying companies at lower levels. These tiers of PE groups provide an enormous market to deal directly with each other in buying/selling companies.

Cozying Up With Buyers – Why?

We get calls all the time from local PE buyers, and out of state buyers, asking if we would like to go to lunch. We know these buyers want to "get cozy" with us so that we will show them our deals and maybe they can get a first crack at them. But our goal is to get the highest offer and best partner for our clients and the fact is no buyer is going to invest in a company because we are "cozy" with them. They will only invest if the company fits all their investment related criteria. So given that there are

over 6,000 PE firms, and our job is to be objective and get the best offer (s) for our client, we have never understood the value of having lunch with buyers, giving up time we should use working for clients.

The Exit Strategy

One of a buyer's investment criteria is to understand the probable exit strategy; who are they going to sell the company to in 4 to 7 years after they grow it? If we help them have a clear vision of this exit strategy we reduce their risk and they are much more likely to invest.

Multiple Buyers a Must

Multiple buyers for any given selling company is extremely important. It provides the foundation for the seller to receive the highest price via the confidential auction process as multiple buyers will bid up the price of the seller, it provides for back up buyers in the form of the buyers that don't bid the highest price, and it enables one to learn from one buyer in order to market to another.

Buyers: Red flags are Probably Red flags. Run for the hills.

There are many PE groups, or variations of PE groups, which cannot close deals and will waste your time. Time after time we see sellers enticed by valuations that no other buyer will offer and then get strung out and ultimately not close. Beware of these buyers. Often if something appears too good to be true it is. Look at a buyer's track record to make certain they can close a transaction.

Also beware of the buyer who tells you why the company you are marketing is worth less than you are seeking. Multiple buyers is the

EXIT STRATEGY

We were working with a small company that provided industrial insulation and scaffolding services. We were having a difficult time finding interested buyers because the company was so small and all the strategic buyers were telling us they liked the company but needed larger size. So we took what we were hearing and revised our documentation to show 1) that the company could be grown larger and then the strategic buyers would be interested, 2) that strategic companies were in fact adding this service to their mix, and 3) that one of the strategics actually started as an industrial insulation company. We were much more successful in finding buyers because we painted the picture of the exit strategy for the buyers. That they could grow the company and then easily sell it to one of the industry's strategic giants.

answer to these folks. We only close deals with buyers willing to step up to the plate on valuation.

The LOI test: Watch for red flags when a buyer is asked to submit an LOI. There is standard language and related information we seek in every LOI. We had one buyer recently tell us the LOI was coming day after day and finally asked us for an LOI template because they did not have one. We walked away from this buyer and never communicated with them again.

First Offers 60% to 80%

We have found that most first offers are usually in the 60% to 80% range of the final offer. This is not a hard and fast rule and it's not uncommon that the final price paid for a company is many times greater than the percentage of the first offer. But for PE groups in general we find they typically come in at approximately 60% to 80% of what they are willing to pay. Ultimately, however, a successful auction will determine the final price.

One buyer is no buyer.....yet it only takes one

It seems like we are talking out both sides of our mouth here and we are. We always say that one buyer is no buyer and it's true. One buyer can nickel and dime the seller, delay the process, and really make closing a transaction difficult. So we always want multiple buyers. But, at the end of the day, it only takes one buyer to do a deal. If, after truly exhausting the marketing process, you only have one buyer, you have to make that buyer think there are more buyers and/or that you are waiting for other offers, and leverage the best you can to get your seller a strong deal. One has to be very careful here. You don't want to lose your buyer because you only have one.

Backup Buyers

A wonderful side effect of running a successful seller auction is that you will have bidders who were not successful but whose offers were almost identical to the one the client accepted – backup buyers. I would guess that 25% of the time we have been forced to go to a backup buyer to close a deal. It's good to leverage the backup buyers with your primary buyer to keep the process running efficiently and prevent any renegotiation of terms if minor things arise during due diligence and the primary buyer tries to take advantage of the situation. Backup buyers help keep the primary buyer fixed on the original deal pricing and to an efficient closing timeline.

Buyer Visits & Conference Calls

Key Takeaway: Don't say the wrong thing

Buyer Conference Calls

Late in the marketing phase, when potential buyers have signed the NDAs, reviewed the OM and likely followed up with some questions, some who decide they have a material interest in the company, will ask to have a conference call with the owner of the business or the key members of the management team. Conference calls are extremely important as this is the first time the buyer will have a chance to speak with the seller. It is always helpful to be prepared for these conference calls even though the only answers to the questions asked are honest responses from the seller. There is a core group of questions that are always asked and it helps to prepare by reviewing them prior to the call. The typical questions are the following:

- You have a very nice business that has obviously taken you years to build. Can you give us some of the major milestones over the years and tell us how you got started?

- Why are you interested in selling now? (Buyer wants to make certain the seller is not selling for a reason harmful to the business going forward. Example: Nobody wants to buy VCR tapes anymore so I am selling before I go out of business)

- Can you describe the basic operations of the business? (this may be the manufacturing process or the service delivery process)

- What keeps you up at night? (Are you worried about customers leaving? Are you afraid of your equipment breaking down? The buyer wants to know if there is a large risk factor they need to know about.)

- Who are they key people and what are their responsibilities and day to day activities? (The buyer wants to know which people are

key to the success of the business and why. They want to know how much time each owner or employee spends working at the company. This information will translate into employment/consulting agreements to make certain the buyer retains critical personnel.)

- As the business owner, what does your day to day activity look like? (The buyer is trying to make certain that the owner does not perform day to day activities vital to the success of the company if the owner plans to leave quickly post sale.)

- Who holds the customer relationships at the company? (The buyer is trying to make certain the business owner does not hold all the key customer relationships so that if he/she leaves the business, the customers will also leave.)

- When was the last price increase and how was it received? (The buyer wants to understand how price increases may be received in the market.)

- Are there any major capital expenditures required? (The larger and more short term the need for capital expenditures, the less interest a buyer will have, or the lower the price offered may be as the buyer needs to prepare for upcoming additional capital outlays.)

- What are the normal annual replacement capital expenditures for the business (buyer wants to make certain they understand what their annual cash will be for replacement capex.)
- Assuming you have a blank check book and were remaining with the business, what growth opportunities would you pursue? (This is very important to buyers because they only want to acquire companies they can grow. We need to be prepared for this question and provide the buyer with a comprehensive list of growth opportunities. The more specific the ideas here the more excited buyers typically get).

- Do you have any customer revenue concentration and what % of your sales are to them (Customer concentration is a bad thing and the buyer is inquiring into this potential problem.)

- Have you lost any customers recently and if so why? (The buyer will be concerned if you have lost customers for competitive reasons. We typically hear reasons like a change in a customer's management (e.g. a new manager brought into their service group; or a customer lost over price but returns when they discover the cheaper alternative could not provide the same quality of service as your company. These are good answers to this issue if it happens to your company.)

- Do you have a material employee turnover issue? (Buyer wants to understand if employees like to work for your company or if there is a business culture issue.)

- How long are you willing to remain with the company following the sale? (The best answer here is that you are flexible depending on the deal and the plan the buyer has for growth and the like. It doesn't make sense to be inflexible if you don't have to be. It sends the wrong message to the buyer.)

Buyer Visits

Buyer visits are critical to the selling process. The buying groups want to see the business first hand and meet the owner or management team to evaluate their credibility and abilities to manage the business going forward if a partnership of some kind is going to be in place. The facility visit allows the buying team to see the layout of people and equipment and their interaction, the storage and use of materials and tools, and the size of the facility.

The Value of the Management Presentation

More often than not we do not have a formal presentation to a visiting buyer but default to a question and answer period of 1.5 to 3 hours and a tour of the facility, the operations and possibly into the field to see the product or service at work. I have discovered, however, that if the management team is capable of executing a presentation, the buyer is more impressed – this goes to the value of the management team, and is clearly a way to enhance the value of a selling company.

The Goals of the Buyer Visit

1) Make a Connection

Seek to make a connection with your buyer team. Common interests, people known in the industry, similar business models are good examples where we see seller and buyer develop a bond. We find any kind of bond tends to contribute to a buyer being more interested in a selling company and helps with maximizing value.

2) The Facility Shows Well

Facilities that are clean and well laid out with equipment in its place and the like reflects well upon a seller and gives the buyer the impression of a well managed company. When a company has spilled chemicals in the yard and/or tools all over the place it tends to give buyers the impression of lack of control and possible environmental issues and possibly lost tools and related.
Spend the time to make certain a seller's facility shows well.

3) Introduce Competent People

While many buyer visits are hosted confidentially either after hours when no employees are around or under the guise of the buyer team being insurance people or related, often there can be employees working at a facility during a buyer visit and it can help to introduce people that are competent and even explain to a buyer what they are doing and why. This reinforces with the buyer the idea that the business has a capable staff to operate without the owner if necessary and as well the employee base is capable of support growth.

4) Quality Management Team

A capable management team that is both competent and capable of generating and supporting company growth is so critical to convincing a buyer that a selling company is a good investment. The selling company management team should prepare for a buyer visit by researching the buyer and having intelligent questions for the buyer. The management team should also be ready to discuss opportunities for growth and ideas for supporting such growth.

5) Be Prepared

As touched on above, be prepared for a buyer visit by attending to the preparedness of the facility and the staff.

Plan that certain equipment will be operational and/or available to both impress and educate the buyer team. Finally as mentioned before do some research on the buyer and have some questions prepared about the availability of capital for growth and strategic goals that may serve both the seller and buyer going forward.

Set the Hook

The goal of management team conference calls and buyer visits is to set the hook as we like to say. The buyer, prior to this phase very much likes the company and so if the company shows well and management comes across strong enough, the buyer will likely leave thinking this is a company they want to purchase. This is our goal as the next step is to request an LOI from the buyer.

The LOI

Key Takeaway: Make certain your buyer is credible. The LOI is non-binding so move along quickly with any comments to keep your buyer committed to your deal. We have had clients take so long with an LOI that our buyer was lost to another deal they preferred that dropped on the buyer's desk.

It's Rarely 100% Cash

I once advised a client who wanted all cash for their business. I advised them that very few businesses sold for 100% cash and the next day I received a message from my boss that the client wanted a new banker because their current banker, me, could not get them all cash. Everything worked out, and I cannot remember the details of the final deal structure, but very few deals are all cash deals. Most have what we call structure, which, in addition to cash, includes notes, earnouts, contingent notes, consulting agreements, employment agreements and the like. Buyers include these non-cash elements when structuring a deal to minimize their risk by keeping the seller involved in the business after closing to maintain continuity of key business elements such as customer relationships, vendor relationships, employee management and the like. More often than not we get the client the cash they wanted plus the other elements of structure. Both parties are happy as the seller receives the cash they wanted and the buyer has included the additional elements of structure that they feel necessary to keep the buyer involved post transaction in order to maintain complete continuity of the business.

Don't try to negotiate too much in the LOI. You can't identify what the indemnifications should be because the buyer has not done their due diligence, so you are pretty much left with the material economics and structure of the transaction. The LOI is simply a meeting of the minds and usually nonbinding aside from confidentiality. Unless there is a breakup fee in the LOI, move on quickly from the LOI. Don't give the buyer too much time to lose focus while you critically review a nonbinding LOI - not a good strategy.

Deposits: Asking for a deposit is for very small deals like small local restaurants and the like. Businesses usually with value less than $1 mm. It's not customary for middle market deals. The assumption is the buyer

will be spending hundreds of thousands of dollars on due diligence with lawyers, accountants and, today, third party firms which provide comprehensive due diligence services to include proof of earnings and related data, and a comprehensive report to the buyer.

Deal Structures

There are numerous types of deal structures available to the seller and, since most offers are not 100% cash, it makes sense to review the standard forms of all structures.

Cash

Cash is king and every seller wants 100% cash for their company at closing. This rarely happens. For the buyer it's all about risk and paying all cash for a deal at closing is extremely risky. Buyers more often than not want to supplement cash with other forms of deal structure, which in addition to minimizing the buyer's risk, defers certain of the buyer's payments over time and keeps the seller involved in the business in some form or fashion after closing to maintain customer relationships, employee relationships and the like. We repeat – do not let these forms of structure alarm you - we typically get the cash the seller needs and these additional items of value are incremental value.

Notes

Notes are often included as a component of a deal structure because they enable the buyer to defer payment of a portion of the purchase price. While a legal liability, since these notes are rarely personally guaranteed by the buyer should, heaven forbid the business go bankrupt or otherwise be unable to continue payments, full payment of the liability would be unlikely. Personal guarantees are simply not something that makes sense for PE group buyers and obviously, large corporate/strategic buyers. So typically the only guarantee is made by the buying entity which is most often a new business form of the original seller. So effectively the guarantee is being provided by the original selling entity only.

Earnouts

Sellers dislike earnouts but they are very common and a form of deal structure that simply forces the seller to put their money where their mouth is. An earnout is typically structured as a payment made to the seller after a certain period in the future, if a certain predetermined goal, or "trigger" is exceeded. As an example, assume at the end of the first year after closing the seller will be paid 50% of EBITDA exceeding $2 mm. Since the value of any business is based on future EBITDA, these earnouts take the buyer's risk out of the performance of the business going

forward and forces the seller to wait until the target is achieved before getting paid.

Earnouts can be effective if a seller wants a value for their business that is larger than the current value of their company because, for example, they are forecasting large increases in EBITDA going forward. The earnout allows them to get paid if the increases are achieved.

Retaining Stock in the Selling Entity

This is our favorite structure of transaction, allowing the seller to sell their company twice effectively and, quite frankly, many more times if they wish. We call this structure a Majority Recap and it allows the seller to take "2 bites at the apple" as we say. Here is how the structure works followed by an example of a company worth $40 mm, and how the mathematics work:

1) A seller sells less than 100% of stock in his/her company but more than 50%

2) The seller receives MORE than the pro rata value of stock sold in cash, or similar value, depending on the deal negotiated

3) The seller partners with the buyer, typically a private equity firm, to continue to grow the company. The capital used for growth is from the buyer. The seller's proceeds are safe in the bank.

   Typically the seller takes on a different, higher level role than s/he had prior to the transaction as the goal of the seller was to exit the daily grind. The seller might move into a role of strategic planning and growth and focus on possible additional acquisitions to facilitate growth.

4) After a period of time, typically between 3 and 7 years, if the goal to grow the selling company was achieved, and the company is now materially larger than it was when originally sold, the seller now sells all or a portion of the stock s/he retained from the original sale. The proceeds per share from this sale, should be higher than the first sale.

5) The seller can always to keep a portion of stock, continue to partner with the new buyer to grow the company, and sell more stock at the next exit.

<u>Numeric Example:</u>

1) Let's start with a company that is worth $40 mm. The seller in this example sells 75%. The seller you would think receives $30k for 75% but in fact receives approximately $35 mm (we will elaborate on the math behind this later).

2) The buyer is a PE (private equity) group which partners with the seller to grow the company. The PE group does not want to get involved in the daily activity of the business. They will contribute the necessary capital, provide ideas based on things that have worked in their other companies, provide introductions to people and companies they know will facilitate growth, and work with their other portfolio companies to also facilitate growth.

3) The Company triples in size in 7 years as new branches are opened, etc., with capital contributed from the investment group. The Company is sold for $120 mm and the seller receives 25% of this value, or $30 mm.

After the two sales of stock in the example above, the seller has walked away with $80 mm from the sale of a company that was originally worth $40 mm.

This type of deal structure is very common and probably takes place with 50% of the transactions we close. It is very good for sellers who don't want to completely retire from the business, or sellers who have children to carry the torch after the first sale and reap the benefits of the second sale. From a wealth planning perspective it is a preferred structure because it allows a seller to take chips off the table immediately (from the first sale) while continuing to roll the dice with the remaining stock in the company. The original $40 mm in our example is, however safe forever in terms of family wealth. This is very important for many business owners where most of their net worth is tied up in the value of the business.

From an operating standpoint, buyers really like this type of structure because it minimizes their risk related to an owner leaving the business. In our case the owner, or their children, remain in the business and maintain management team consistency after the transaction. In many cases buyers are even willing to bid higher for companies when this type of structure is in place.

When is this the best type of deal structure to pursue?

1) When the seller is not ready to walk away completely and is willing to partner with an equity group to grow the business.

2) When a seller has children in the business who can remain and work with the private equity partner to grow the business. The children cash in on the value of the stock they retain based on the future growth they facilitate. The original owner, the parent(s), take most, if not all, the cash from the original sale.

3) When an owner or management team is relatively young and simply wants to take chips off the table via the first sale and get help, or need help, via the capital of an equity group, to continue the growth of the company.

There is very little downside to this type of structure. From a wealth management standpoint, the seller takes family wealth off the table and banks it so it is no longer at risk. If the future unfolds the way the seller plans, there is a second bite of the apple. If for some reason the future does not unfold as planned, then more often than not, the seller sold at the right time.

The Closing Process

Key Takeaway: Time is of the essence. Use an M&A attorney that specializes in this kind of transaction. As the seller, execute your due diligence responsibilities quickly.

Time is of the Essence

We lost a deal because while our client's attorney was reviewing the LOI, the buyer received another deal more attractive than ours and left us at the altar. We tell our clients all the time that time is of the essence yet it still, after 20 years, amazes me that clients and their advisors spend far too long reviewing certain documentation prior to responding to the buyer. We are not saying the advisors don't care but they typically have extremely heavy schedules and the seller simply must direct them to work more quickly to protect their millions. In our case we took 7 days to respond to the buyer's LOI, a nonbinding document. During that time the buyer found a better deal.

I wish it was not the case but we've had deals not close because the company's advisors, the accountants and attorneys, spent so much time reviewing the documentation we missed important time-related targets and external factors changed. Such developments have cost our clients millions of dollars. An example is our experience with oil related companies. So much time was spent reviewing documentation that when oil prices declined a number of our deals collapsed. As we mentioned at the beginning of this book, buyers are not interested in companies with questionable growth prospects. If you wait too long, and growth prospects diminish, your deal is gone. Failed deals mean lost millions of dollars, delayed prospects for retirement and a company reduced in value. At the end of the day it is not the advisors shedding tears. The takeaway here is to control your advisors to ensure they represent your interests in the most expeditious and competent manner.

Due Diligence

The buyer sends over a very long list of items they need to review. The list is typically divided into the following sections: Financials, Tax, HR, Benefits, Operations, Legal, and Environmental. An example is included in the appendix. I tell every seller to take a deep breath and not panic when they see the length of the due diligence list. It basically includes

every document the seller prepared or received, for at least the last 3 years.

We advise our clients to review the due diligence list to a) identify and remove items without relevancy and b) identify items which can easily be dealt with. The remaining items are those requiring time and effort to prepare responses. The intent of the due diligence list is not to produce documents but to provide information related to the seller's representations in the purchase document and relevant to the seller's management of the business. Accordingly not all the items on the due diligence list are relevant. For example, if the list asks for budget and forecast data, unless the seller uses these management tools its irrelevant data and does not require a response. If a buyer really needs additional information they'll ask for it at a later date.

This documentation is reviewed by the buyer' attorney, CPA, third party diligence provider and/or other advisors. Sometimes we set up the data at the seller's location and have the buyer visit. These days we make extensive use of online data depositories and electronically transmit the documents to the buyer where their advisors can access the information.

Financial Audit/Proof of Earnings

During due diligence every buyer verifies that the financials they are relying upon are accurate in accordance with GAAP. The buyer might engage an outside firm to audit the financials or use their in house accounting team. Lately, buyers have been hiring third party firms specializing in what is called a "proof of earnings" analysis. Accordingly it is imperative, when a seller begins marketing, their financials are in accordance with GAAP. If not, during due diligence the buyer will identify material differences between GAAP based statements and the statements used to market the company. Material differences cause deals to fall apart or be repriced. Typically we ask the questions needed to be asked of the client during premarketing and make any necessary adjustments to ensure the financials are as much as possible, in accordance with GAAP. As a result any due diligence differences we experience are minimal. However we have seen payroll items not properly booked or insurance items not properly accounted for, etc., which can lead, arguably to differences between the financial statements. As a seller you usually have a several hundred thousand dollar buffer before a buyer suggests a change in the deal structure. Most of our transactions have no such issues.

No Surprises

Buyers and lenders hate surprises. Examples include unpaid payroll taxes, lawsuits, brand names and/or patents not registered properly and the like. If you discover a surprise provide full details to the buyer. If you don't your buyer will likely assume the worst.

Document Preparation

Don't panic. A purchase document is basically an insurance policy for the buyer. It is important to remember the buyer knows very little about your business and the seller knows everything. You need to put yourself in the buyer's shoes and understand that all this document is attempting to do is protect them. It does not protect them from future things that happen; it protects them from things the seller knows or should know about that have already happened. The purchase document also defines the representations and warranties the seller is making and under indemnification, provides certain recourse options under certain conditions.

Make certain you have an M&A qualified attorney. Unfortunately some attorneys tell their clients they are qualified to do M&A deals but are not. We have been the unfortunate bystander of deals that have cratered because the client's attorney advised them the purchase agreement was inappropriate to sign, even though it was standard as far as we were concerned. We have also seen attorneys, who don't know what they are doing spending far too much time on immaterial and meaningless items. Again, get yourself an M&A attorney. To not do so risks not closing your deal for no good reason.

The attorneys for both the buyer and seller work together, constructing and negotiating the purchase documents based on instructions from the buyer and seller. At the end of the day most deal documents contain provisions that are customary and standard for middle market deals. In other words they all look similar.

There are studies by attorney groups summarizing all document provisions negotiated in a given year so readers can see what is negotiated most often and what is normal for similar middle market deals. These are very helpful in preventing inexperienced advisors of any kind from advising things that we call atypical or "nonmarket".

After a period of back and forth negotiation the attorneys communicate with the buyer and seller to resolve any unresolved issues. Additional give and take might be required after which the documents are finalized.

Ancillary documents can include notes, employment agreements, consulting agreements, stock options, and the like.

A word of note on the employment agreements - they always contain standard provisions for being terminated with and/or without cause. Don't be offended. This is simply a necessary evil.

Potential Deal Killers

Softening Financials

Due Diligence can take 60 to 120 days. During this time it is imperative the selling company's financials stay materially on track. There is nothing worse than a company's revenue or profit margins materially softening during due diligence. We tell our clients to keep their eye on the ball and do not slow down during due diligence. Make sure your company continues to perform well. It's analogous to getting the football all the way over the goal line. Don't stop working before you get to the end zone.

We've had companies experience slowing financials during due diligence. In some cases we've been able to explain it away, for example as a function of weather or holidays. In some cases we've lost the battle and the buyer has left the table. In some cases the buyer will stay but some of the purchase price has to be converted to an earnout or other form of contingent payment. The issue is the buyer is afraid they are no longer getting the company they thought they were.

Lost Customers

Losing major customers, those representing 20% or more of the business, can be an ugly issue during due diligence because, obviously, it means significant lost revenue. We have to explain why the customer left and why they may or may not come back. If it can be explained that this customer will be replaced in short order this does not have to be an issue. Worst case scenario – you'll be asked to move some cash at closing to an earnout contingent upon this lost revenue being replaced by any new customer (s).

Lawsuits

These are usually not an issue and can be handled by insurance and/or, if necessary, some small amount of cash from the closing proceeds placed in an escrow account to alleviate the buyer's concern and potential liability. Of course if we are talking a major lawsuit threatening the viability of the business that is a different matter and likely a deal killer.

Employee Defections

Depending on how vital to the company this can be a problem. This is the primary reason we tell sellers to keep everything completely confidential until after the deal closes.

Attorneys

Unfortunately some attorneys are just not helpful in getting deals done. One of the worst situations is when you have an attorney without M&A experience working on the deal because s/he is who the client trusts. Many clients believe the title "attorney" qualifies all attorneys to work on M&A deals. This could not be farther from the truth. Inexperienced attorneys focus on the wrong things and do not know the actions necessary to keep deals together. I have seen it first hand and it is painful to watch.

Purchase Documents

These should not be a problem with a qualified deal attorney. A non M&A attorney will often make big issues of items not requiring attention and ask for things we consider "nonmarket". As a result the buyer will not accept what we provide and we fail to get a negotiated deal. Your attorney must understand what is considered "market" in terms of every component of a purchase agreement if one is to be successfully negotiated.

Employment Agreement

What should be a benign document more often than not becomes a problem, usually because of the section in every employment agreement addressing the seller's termination for cause. For some reason, even though these requirements are standard, sellers are offended by having to address these contingencies.

Leases

While I have never had an issue, businesses leasing their facilities can have issues if the lessor does not want to transfer the lease to the new buyer. I have heard of lessors threatening to raise rental rates or sell the property. It always helps to check with one's landlord at the beginning of a sale process to determine their reaction to the possible transaction. Of course confidentiality must always be maintained so the lessor must adhere to strict confidentiality.

7

Distribution of Proceeds at Closing

As we mentioned in an earlier section of this book, it's always good to check the distribution of proceeds math at closing to make certain, as a seller, you are getting the after tax cash you are expecting. There might be liabilities to be settled or assets to be retained. Look at the calculations early in the process so you know what your after tax proceeds will be.

Funds Flow

Before closing a schedule is always prepared outlining the flow of funds on the day of closing. The schedule details the inflows from the banks and buyers and the outflows to the seller and any advisors and others. Obviously the seller needs to review this prior to closing. This schedule is also included as an appendix in the purchase document.

Debt Retirement

Businesses are always sold on a debt free basis similar to selling a house and having to pay off the mortgage at or pre closing. Imagine borrowing $49 mm to build a $50 mm dollar business. A seller does not pocket the $50 mm without paying down the $49 mm in debt first or at closing.

Working capital accounts like accounts payable, accrued expenses or similar short term liabilities are not included in this debt retirement.

Working Capital

Working capital, in a situation where the value of the company has been determined by a multiple of cash flow, is turned over to the buyer. A target for "normal" working capital is determined prior to closing and included in the purchase document. The seller is responsible for this at closing, that is, the balance sheet the buyer assumes at closing must have this target level of WC. The purchase document includes an adjusting mechanism reimbursing either the seller or buyer the difference between the WC delivered at closing and the target. The math related to this ensures neither buyer nor seller are harmed. A post transaction audit determines WC at closing for the adjustment mechanism.

Can I keep my AR or Inventory? Nope

Contrary to what many sellers think, they cannot keep their AR or Inventory or WC if they are selling on a multiple of cash flow. The only

way to keep these items is to sell based on an asset valuation and/or negotiate down the purchase price by the amount of AR and/or inventory the seller wants to keep. If a seller keeps a WC asset the DCF valuation model is invalidated and the value of the business will fall because future cash flows have been reduced. See the example earlier in this book where we compare the sale of a business to the sale of a printing press.

Vacation Pay

Watch out for accrued expenses not on the balance sheet. At closing the financials will be audited and all expenses, accrued or otherwise will be determined. Vacation pay accruals, for example, must always be determined at closing and reported on the selling company's balance sheet. It's typically not a lot of money but ensure it's done.

Personal assets

It's customary to allow a seller to retain personal assets owned by the business as long as these assets are not a material part of the success of the operating business. Personal cars, paintings, atvs, boats, computers can typically be retained without affecting purchase price.

Transaction Taxes

Transaction taxes are something we always defer to our client's advisors but there are some basic tax issues to highlight.

S Corp vs C Corp vs LLC

As mentioned previously, the S Corp and LLC business forms provide maximum flexibility for the seller with respect to an asset or stock sale because they avoid the double taxation a C corporation triggers for an asset transaction.

As long as a business is held for longer than one year, current US tax law says they are taxed at the capital gains rate which is much less than the ordinary income tax rate.

Depreciation Recapture

One item worth noting is depreciation recapture that is a cost to the seller in an asset sale scenario. The buyer in this case is permitted to write up the value of the assets to their market value in order to maximize the depreciation that can be expensed. The difference between the market value and the current tax depreciation value on the selling company's tax return, is taxed to the seller at the ordinary rate of tax. The IRS is basically claiming back tax the seller avoided but is now payable.

Capital Gains vs Ordinary Income Tax

The goal when selling a private company is to maximize the percentage of the sale qualifying for the capital gains tax rate which is usually the lowest rate of tax.

Appendices

Appendix 1: Sample Purchase Agreement

Appendix 2: Sample LOI (Letter of Intent)

Appendix 3: Sample Offering Memorandum

Appendix 4: Business Profile (Teaser)

APPENDIX 1: Sample Purchase Agreement

ASSET PURCHASE AGREEMENT

by and among

X OILFIELD SERVICES, LLC,

X OIL FIELD RENTALS, INC.,

X A. X,

and

X F. X

Dated as of _____, 2018

TABLE OF CONTENTS

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of _____, 2018, by and among X Oilfield Services, LLC, a Delaware limited liability company ("Buyer"), X Oil Field Rentals, Inc., a New Mexico corporation ("Seller"), X A. X ("X"), and X F. X ("X" and together with X, the "Shareholders"). Buyer and Seller may together be referred to as the "Parties" and individually as a "Party."

RECITALS

WHEREAS, the Shareholders own of record and beneficially all of the issued and outstanding equity interests of Seller; and

WHEREAS, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, the Assets (as defined herein), subject to the terms and condition set forth herein.

NOW, THEREFORE, in consideration of these premises, the mutual promises herein made, and in consideration of the representations, warranties, and covenants herein contained, the Parties hereto agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Definitions. For purposes of this Agreement, capitalized terms not otherwise defined herein have the meanings assigned to them in this Section 1.1.

"Accounts Receivable" - (i) all trade accounts receivable and other rights to payment from customers of Seller and the full benefit of all security for such accounts or rights to payment, including all trade accounts receivable representing amounts receivable in respect of goods shipped or products sold or services rendered to customers of Seller, (ii) all other accounts or notes receivable of Seller and the full benefit of all security for such accounts or notes, and (iii) any claim, remedy or other right related to any of the foregoing.

"Active Employees" - as defined in Section 5.10(a).

"Agreement" - as defined in the first paragraph of this Agreement.

"Appurtenances" - all privileges, rights, easements, hereditaments and appurtenances belonging to or for the benefit of the land, including all easements appurtenant to and for the benefit of any land (a "Dominant Parcel") for, and as the primary means of access between, the Dominant Parcel and a public way, or for any other use upon which lawful use of the Dominant Parcel for the purposes for which it is presently being used is dependent, and all rights existing in and to any streets, alleys, passages and other rights-of-way included thereon or adjacent thereto (before or after vacation thereof) and vaults beneath any such streets.

"X" - as defined in the first paragraph of this Agreement.

"Assets" - as defined in Section 2.1(b).

"Assumed Contracts" - as defined in Section 2.1(a)(ii).

"Assumed Liabilities" - as defined in Section 2.3(a).

"Balance Sheet" - as defined in Section 3.4.

"Bill of Sale" - means that certain Bill of Sale, by and between Buyer and Seller, pursuant to which Seller will sell all of the Final Closing Assets to Buyer, in substantially the form attached hereto as Exhibit A.

"Breach" - any breach of, or any inaccuracy in, any representation or warranty or any breach of, or failure to perform or comply with, any covenant or obligation, in or of this Agreement or any other Contract, or any event that with the passing of time or the giving of notice, or both, would constitute such a breach, inaccuracy or failure.

"Bulk Sales Laws" - as defined in Section 5.14.

"Business" - the provision of comprehensive oil and gas well flowback testing services and related complementary and supportive rental equipment.

"Buyer" - as defined in the first paragraph of this Agreement.

"Buyer Indemnified Persons" - as defined in Section 7.2.

"Buyer's Closing Documents" - means all of the documents delivered by Buyer pursuant to Section 2.12(a)(ii) and Section 2.12(b)(ii).

"Buyer's Determination" - as defined in Section 2.6(a).

"Closing Date Net Working Capital" - as defined in Section 2.6(a).

"COBRA" - as defined in Section 3.12(e).

"Code" - the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated thereunder.

"Collected Accounts Receivable" – as defined in Section 2.5(b).

"Competing Business" - as defined in Section 3.21.

"Confidential Information" - includes any and all of the following information of Seller: (i) all information that is a trade secret under applicable trade secret or other law; (ii) all information concerning design, data, know-how, processes, models, sketches, photographs, drawings, and ideas, past, current and planned research and development, current and planned maintenance methods and processes, customer lists, current and anticipated customer requirements, price lists, market studies, business or marketing plans, computer hardware, software and computer software and database technologies, systems, structures and architectures;

and (iii) all information concerning the business and affairs of Seller (which includes historical and current financial statements, financial projections and budgets, tax returns and accountants' materials, historical, current and projected sales, capital spending budgets and plans, business plans, strategic plans, marketing and advertising plans, publications, client and customer lists and files, contracts, the names and backgrounds of key personnel and personnel training techniques and materials, however documented).

"Consent" - any approval, consent, ratification, waiver or other authorization.

"Contemplated Transactions" - the transactions contemplated by this Agreement.

"Contract" - any agreement, contract, Lease, consensual obligation, commitment, arrangement, promise or undertaking (whether written or oral and whether express or implied), whether or not legally binding.

"Copyrights" - as defined in Section 3.20(a)(iii).

"Core Representations" - shall mean Sections 3.10 (Taxes), 3.12 (Employee Benefits), and 3.18 (Environmental Matters).

"X" - as defined in the first paragraph of this Agreement.

"Current Real Property" - the Real Property leased by Seller at 1561 Hwy 82, Plains, Texas.

"Customer" - as defined in Section 3.23(a).

"Damages" - as defined in Section 7.2.

"Deficiency Amount" - as defined in Section 2.6(c)(ii).

"Deposits" - as defined in Section 2.1(a)(ix).

"Disclosure Schedules" - the disclosure schedules delivered by Seller to Buyer concurrently with the execution and delivery of this Agreement.

"Disputed Items" - as defined in Section 2.7(c).

"Employee Plans" - as defined in Section 3.12(a).

"Employment Agreement" - means that certain Employment Agreement, by and between Buyer and X, in substantially the form attached hereto as Exhibit B.

"Encumbrance" - any charge, claim, community or other marital property interest, condition, equitable interest, lien (statutory or otherwise), option, pledge, security interest, mortgage, right of way, easement, encroachment, servitude, right of first option, right of first refusal or restriction of any kind, including any restriction on use, voting (in the case of any security or equity interest), transfer, receipt of income or exercise of any other attribute of ownership.

"Environment" - soil, land surface or subsurface strata, surface waters (including navigable waters and ocean waters), groundwaters, drinking water supply, stream sediments, ambient air (including indoor air), plant and animal life, and any other environmental medium or natural resource.

"Environmental Law" - all applicable past, present, and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, authorizations, and similar items of all Governmental Bodies and all principles of common law pertaining to the regulation and protection of human health, safety, and damages to natural resources, including, without limitation, Releases and threatened Releases or otherwise relating to the operation, manufacture, processing, distribution, use, treatment, storage, disposal, transport, or handling of Hazardous Materials. Environmental Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended; the Federal Insecticide, Fungicide and Rodenticide Act, as amended; the Resource Conservation and Recovery Act, as amended; the Toxic Substances Control Act, as amended; the Food, Drug, and Cosmetic Act as amended; the Clean Air Act, as amended; the Federal Water Pollution Control Act, as amended; the Oil Pollution Act of 1990, as amended; the Fish and Wildlife Coordination Act, as amended; the Endangered Species Act, as amended; the National Environmental Policy Act of 1969; the Wild and Scenic Rivers Act, as amended; the Rivers and Harbors Act of 1899, as amended; the Water Resource Research Act of 1984, as amended; the Occupational Safety and Health Act, as amended; and the Safe Drinking Water Act, as amended; and their state and local counterparts or equivalents, all as amended from time to time.

"Environmental Liabilities" - any and all administrative, regulatory or judicial actions or causes of action, suits, obligations, liabilities, losses, proceedings, executory decrees, judgments, penalties, fees, demands, demand letters, orders, directives, claims (including any claims involving toxic torts or liability in tort, strict, absolute or otherwise), liens, notices of noncompliance or violation, or legal fees or costs of investigations, monitoring or proceedings, relating in any way to any Environmental Laws or any Governmental Authorization issued under any such Environmental Laws, or arising from the presence, Release or threatened Release (or alleged presence, Release or threatened Release) into the environment of any Hazardous Materials including, without limitation, and regardless of the merit of such Environmental Liabilities resulting from, arising out of, or related to any and all claims by any Governmental Body or by any Person for enforcement, cleanup, remediation, removal, response, remedial or other actions or damages, contribution, indemnification, cost recovery, compensation, or injunctive relief pursuant to any Environmental Law or for any property damage or personal injury (including death) or threat of injury to health, safety, natural resources, or the environment.

"ERISA" - the Employee Retirement Income Security Act of 1974.

"ERISA Affiliate" - as defined in Section 3.12(a).

"Escrow Agent" – means Carrollton Bank, an Illinois banking corporation.

"Escrow Agreement" - means that certain Escrow Agreement, by and among Buyer, Seller, the Shareholders, and the Escrow Agent, dated to the date hereof.

"Escrow Amount" - as defined in Section 2.8(a).

"Excluded Assets" - as defined in Section 2.2.

"Final Closing" - as defined in Section 2.11(b).

"Final Closing Assets" - as defined in Section 2.1(b).

"Final Closing Date" - as defined in Section 2.11(b).

"Final Closing Purchase Price" - as defined in Section 2.4(c).

"Fundamental Representations" - shall mean Sections 3.1 (Organization and Good Standing), 3.2 (Enforceability; Authority; No Conflict), 3.3 (Capitalization; Shares), 3.7 (Title to Assets; Real Property), and 3.22 (Brokers or Finders).

"Funded Indebtedness" - shall be defined as (i) all financial debt of any kind (including, but not limited to, any amounts owed to the Shareholders); (ii) accrued interest; (iii) all guaranties; (iv) all deferred purchase price items, earn out obligations and similar matters; (v) all obligations under all capitalized leases of the Company as determined in accordance with Seller's historical accounting treatment; (vi) all issued but uncashed checks outstanding at the Initial Closing (to the extent not included as assumed liabilities in the Closing Date Net Working Capital calculation); and (vii) any fees, premiums, penalties or expenses associated with the prepayment of any indebtedness, including interest rate swap breakage costs.

"GAAP" - generally accepted accounting principles for financial reporting in the United States, applied on a consistent basis.

"Governing Documents" - with respect to any particular entity, (i) if a corporation, the articles or certificate of incorporation and the bylaws, (ii) if a general partnership, the partnership agreement and any statement of partnership, (iii) if a limited partnership, the limited partnership agreement and the certificate of limited partnership, (iv) if a limited liability company, the articles of organization and operating agreement, (v) if another type of Person, any other charter or similar document adopted or filed in connection with the creation, formation or organization of the Person, (vi) all equity-holders' agreements, voting agreements, voting trust agreements, joint venture agreements, registration rights agreements or other agreements or documents relating to the organization, management or operation of any Person or relating to the rights, duties and obligations of the equity-holders of any Person, and (vii) any amendment or supplement to any of the foregoing.

"Governmental Authorization" - any Consent, license, registration or permit issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Legal Requirement.

"Governmental Body" - any (i) nation, state, county, city, town, borough, village, district or other jurisdiction, (ii) federal, state, local, municipal, foreign or other government, (iii) governmental or quasi-governmental authority of any nature (including any agency, branch, department, board, commission, court, tribunal or other entity exercising governmental or quasi-

governmental powers), (iv) multinational organization or body, (v) body exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or (vi) official of any of the foregoing.

"Hazardous Material" - any substance, material or waste which is or will foreseeably be regulated by any Governmental Body, including any material, substance or waste which is defined as a "hazardous waste," "dangerous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "contaminant," "toxic waste," "pollutant," "chemical of concern," or "toxic substance" under any provision of Environmental Law, and including petroleum, petroleum products, asbestos, presumed asbestos-containing material or asbestos-containing material, urea, formaldehyde and polychlorinated biphenyls.

"Improvements" - all buildings, structures, fixtures and improvements located on the Real Property or assets of Seller, including those under construction.

"Indemnification Escrow Amount" - as defined in Section 2.8(a).

"Indemnified Person" - as defined in Section 7.6(a).

"Indemnifying Person" - as defined in Section 7.6(a).

"Initial Closing" - as defined in Section 2.11(a).

"Initial Closing Assets" - as defined in Section 2.1(a).

"Initial Closing Date" - as defined in Section 2.11(a).

"Initial Closing Purchase Price" - as defined in Section 2.4(b).

"Intellectual Property Assets" - as defined in Section 3.20(a).

"Interim Balance Sheet" - as defined in Section 3.4.

"IRS" - the United States Internal Revenue Service and, to the extent relevant, the United States Department of the Treasury.

"Knowledge" - an individual will be deemed to have Knowledge of a particular fact or other matter if that individual is actually aware of that fact or matter, or a prudent individual could be expected to discover or otherwise become aware of that fact or matter in the course of conducting a reasonably comprehensive investigation regarding the accuracy of any representation or warranty contained in this Agreement. Seller will be deemed to have Knowledge of a particular fact or other matter if either Shareholder or any member of management of Seller has Knowledge of such fact or other matter.

"Lease" - any lease, sublease or rental agreement, license, concession, right to use or installment and conditional sale agreement to which Seller is a party and any other Seller Contract pertaining to the leasing or use of any Real Property or Tangible Personal Property.

"Legal Requirement" - any federal, state, local, municipal, foreign, international, multinational or other constitution, law, ordinance, principle of common law, code, regulation, statute or treaty.

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

"Marks" - as defined in Section 3.20(a)(i).

"Net Names" - as defined in Section 3.20(a)(v).

"Net Working Capital" - means, as of 11:59 p.m. on the day prior to the Initial Closing Date, the total of accounts receivable, prepaid expenses and other current assets of Seller (excluding work in progress), less the total of accounts payable (with all outstanding checks recorded as a liability in accounts payable), accrued payroll-related expenses, accrued bonus amounts payable to any employees of Seller, accrued Taxes (other than income Taxes) and other accrued expenses of Seller, all prepared on a consolidated basis and consistent with Schedule 2.5.

"New Lease" - means that certain Lease, by and between Buyer and Raider Land, LLC, pursuant to which Buyer will lease the New Real Property, in substantially the form attached hereto as Exhibit C.

"New Real Property" means the Real Property located at 1557 Hwy 82/380, Plains, TX 79355 to be leased by Buyer at the Final Closing.

"NWC Escrow Amount" - as defined in Section 2.8(a).

"Order" - any order, injunction, judgment, decree, ruling, assessment or arbitration award of any Governmental Body or arbitrator.

"Ordinary Course of Business" - an action taken by a Person will be deemed to have been taken in the Ordinary Course of Business only if that action:

(a) is consistent in nature, scope and magnitude with the past practices of such Person and is taken in the ordinary course of the normal, day-to-day operations of such Person;

(b) does not require authorization by the board of directors or shareholders of such Person (or by any Person or group of Persons exercising similar authority) and does not require any other separate or special authorization of any nature; and

(c) is similar in nature, scope and magnitude to actions customarily taken, without any separate or special authorization, in the ordinary course of the normal, day-to-day operations of other Persons that are in the same line of business as such Person.

"Party" and "Parties" - as defined in the first paragraph of this Agreement.

"Patents" - as defined in Section 3.20(a)(ii).

"Permitted Encumbrances" - as defined in Section 3.7(a).

"Person" - an individual, partnership, corporation, business trust, limited liability company, limited liability partnership, joint stock company, trust, unincorporated association, joint venture or other entity or a Governmental Body.

"Preliminary Net Working Capital" – as defined in Section 2.5(a).

"Proceeding" - any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body or arbitrator.

"Purchase Price" - as defined in Section 2.4(a).

"Real Property" - all (i) parcels and tracts of land in which Seller owns or has a leasehold interest or which are used in the operation of the Business as of the date hereof (including the Current Real Property), or which Seller will own or have a leasehold interest or which will be used in the operation of the Business as of the Final Closing (including the New Real Property), (ii) Improvements thereon and (iii) Appurtenances thereto. For purposes of remedial action and Section 3.18 and Article 7, "Real Property" includes any real property, leasehold or other interest in land currently or formerly owned or operated by Seller, including the Tangible Personal Property used or operated by Seller at the respective locations of the Real Property.

"Related Person" - With respect to a particular individual:

(a) each other member of such individual's Family;

(b) any Person that is directly or indirectly controlled by any one or more members of such individual's Family;

(c) any Person in which members of such individual's Family hold (individually or in the aggregate) a Material Interest; and

(d) any Person with respect to which one or more members of such individual's Family serves as a director, officer, partner, executor or trustee (or in a similar capacity).

With respect to a specified Person other than an individual:

(e) any Person that directly or indirectly controls, is directly or indirectly controlled by or is directly or indirectly under common control with such specified Person;

(f) any Person that holds a Material Interest in such specified Person;

(g) each Person that serves as a director, officer, partner, executor or trustee of such specified Person (or in a similar capacity);

(h) any Person in which such specified Person holds a Material Interest; and

(i) any Person with respect to which such specified Person serves as a general partner or a trustee (or in a similar capacity).

For purposes of this definition, (i) "control" (including "controlling," "controlled by," and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise, and shall be construed as such term is used in the rules promulgated under the Securities Act of 1933; (ii) the "Family" of an individual includes (A) the individual, (B) the individual's spouse, (C) any other natural person who is related to the individual or the individual's spouse within the second degree and (D) any other natural person who resides with such individual; and (iii) "Material Interest" means direct or indirect beneficial ownership (as defined in Rule 13d-3 under the Exchange Act of 1934) of voting securities or other voting interests representing at least ten percent (10%) of the outstanding voting power of a Person or equity securities or other equity interests representing at least ten percent (10%) of the outstanding equity securities or equity interests in a Person.

"Release" - any actual or threatened release, spill, emission, leaking, pumping, pouring, dumping, emptying, injection, deposit, disposal, discharge, dispersal, leaching or migration on or into the Environment or into or out of any property.

"Representative" - with respect to a particular Person, any director, officer, manager, employee, agent, consultant, advisor, accountant, financial advisor, legal counsel or other representative of that Person.

"Retained Liabilities" - as defined in Section 2.3(b).

"Reviewing Accountants" - as defined in Section 2.7(c).

"Securities Purchase Agreement" - that certain Securities Purchase Agreement, by and among Buyer, X, and certain other parties thereto, dated the date hereof.

"Seller" - as defined in the first paragraph of this Agreement.

"Seller Contracts" - as defined in Section 3.16(a).

"Seller's Closing Documents" - means all of the documents delivered by Seller pursuant to Section 2.12(a)(i) and Section 2.12(b)(i).

"Services Agreement" - means that certain Services Agreement, by and between Buyer and Seller, dated the date hereof.

"Shareholder Note" - that certain Subordinated Note in the principal amount of $2,000,000, issued by Seller to X, dated the date hereof.

"Shareholders" - as defined in the first paragraph of this Agreement.

"Subsidiary" - with respect to any Person (the "Owner"), any corporation or other Person of which securities or other interests having the power to elect a majority of that corporation's or other Person's board of directors or similar governing body, or otherwise having the power to direct the business and policies of that corporation or other Person (other than securities or other interests having such power only upon the happening of a contingency that has not occurred), are held by the Owner or one or more of its Subsidiaries.

"Supplier" - as defined in Section 3.23(b).

"Tangible Personal Property" - all machinery, equipment (all accessories, attachments and ancillary devices necessary for the operation of the machinery and equipment as they are currently operating), tools, fixtures, tooling, dies, gauges, furniture, office equipment, computer hardware, supplies, materials, vehicles and other items of tangible personal property of every kind owned or leased by Seller (wherever located and whether or not carried on Seller's books), together with any express or implied warranty by the manufacturers or Seller or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.

"Target Net Working Capital" - as defined in Section 2.5(a).

"Tax" - any income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, property, environmental, windfall profit, customs, vehicle, airplane, boat, vessel or other title or registration, capital stock, franchise, employees' income withholding, foreign or domestic withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, value added, alternative, add-on minimum and other tax, fee, assessment, levy, tariff, charge or duty of any kind whatsoever and any interest, penalty, addition or additional amount thereon imposed, assessed or collected by or under the authority of any Governmental Body or payable under any tax-sharing agreement or any other Contract.

"Tax Return" - any return (including any information return), report, statement, schedule, notice, form, declaration, claim for refund or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Body in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any Legal Requirement relating to any Tax.

"Third-Party Claim" - any claim against any Indemnified Person by a third party, whether or not involving a Proceeding.

"Trade Secrets" - as defined in Section 3.20(a)(iv).

1.2 Usage.

(a) Interpretation. In this Agreement, unless a clear contrary intention appears:

(i) the singular number includes the plural number and vice versa;

(ii) reference to any Person includes such Person's successors and assigns but, if applicable, only if such successors and assigns are not prohibited by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

(iii) reference to any gender includes each other gender;

(iv) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof;

(v) reference to any Legal Requirement means such Legal Requirement as amended, modified, codified, replaced or reenacted, in whole or in part, and in effect from time to time, including rules and regulations promulgated thereunder, and reference to any section or other provision of any Legal Requirement means that provision of such Legal Requirement from time to time in effect and constituting the substantive amendment, modification, codification, replacement or reenactment of such section or other provision;

(vi) "hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Section or other provision hereof;

(vii) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;

(viii) "or" is used in the inclusive sense of "and/or";

(ix) with respect to the determination of any period of time, "from" means "from and including" and "to" means "to but excluding"; and

(x) references to documents, instruments or agreements shall be deemed to refer as well to all addenda, exhibits, schedules or amendments thereto.

(b) Accounting Terms and Determinations. Unless otherwise specified herein, all accounting terms used herein shall be interpreted and all accounting determinations hereunder shall be made in accordance with GAAP.

(c) Legal Representation of the Parties. This Agreement was negotiated by the parties with the benefit of legal representation, and any rule of construction or interpretation otherwise requiring this Agreement to be construed or interpreted against any party shall not apply to any construction or interpretation hereof.

ARTICLE 2
PURCHASE AND SALE OF THE SHARES

2.1 Assets.

(a) Initial Closing Assets. Upon the terms and subject to the conditions set forth in this Agreement and effective as of the Initial Closing, Seller hereby sells, conveys, assigns, transfers and delivers to Buyer, and Buyer hereby purchase and acquire from Seller, free and clear of any Encumbrances, other than Permitted Encumbrances, all right, title and interest in and to all property and assets, tangible and intangible, of every kind and description, wherever located, owned by Seller or used in the Business (the "Initial Closing Assets"), consisting of the following (but excluding the Final Closing Assets and Excluded Assets):

(i) all Tangible Personal Property not used exclusively at the Current Real Property, including those items identified on Schedule 2.1(a)(i);

(ii) all Contracts set forth on Schedule 2.1(a)(ii) (the "Assumed Contracts");

(iii) all Accounts Receivable, including those items identified on Schedule 2.1(a)(iii);

(iv) all Governmental Authorizations and all pending applications therefor or renewals thereof, including those listed in Schedule 3.13(b);

(v) all data and records related to the operations of Seller, including personnel records, customer lists and contact information, sales, financial and purchasing records, referral sources, research reports, service and warranty records, insurance records, equipment logs, operating guides and manuals, financial and accounting records, creative materials, advertising materials, promotional materials, compliance reports, studies, reports, correspondence and other similar documents and records;

(vi) all Intellectual Property Assets;

(vii) all insurance benefits, including rights and proceeds, arising from or relating to the Initial Closing Assets;

(viii) all claims of Seller against third parties relating to the Initial Closing Assets, whether choate or inchoate, known or unknown, contingent or noncontingent;

(ix) all rights of Seller relating to deposits, pre-paid expenses, refunds, security deposits, and pre-paid amounts ("Deposits"); and

(x) all cash, cash equivalents, and short-term investments (A) included in the Net Working Capital, or (B) related to any Deposits to the extent such Deposits relate to prepaid customer accounts.

(b) Final Closing Assets. Upon the terms and subject to the conditions set forth in this Agreement and effective as of the Final Closing, Seller shall sell, convey, assign, transfer and deliver to Buyer, and Buyer shall purchase and acquire from Seller, free and clear of any Encumbrances, other than Permitted Encumbrances, all right, title and interest in and to the following property and assets owned by Seller or used in the Business (the "Final Closing Assets" and collectively with the Initial Closing Assets, the "Assets"), consisting of the following (but excluding the Excluded Assets):

(i) all Tangible Personal Property used exclusively at the Current Real Property, including those items identified on Schedule 2.1(b)(i);

(ii) all insurance benefits, including rights and proceeds, arising from or relating to the Final Closing Assets; and

(iii) all claims of Seller against third parties relating to the Final Closing Assets, whether choate or inchoate, known or unknown, contingent or noncontingent.

2.2 Excluded Assets. Notwithstanding anything to the contrary contained in Section **Error! Reference source not found.** or elsewhere in this Agreement, the following assets of Seller (collectively, the "Excluded Assets") are not part of the sale and purchase contemplated hereunder, are excluded from the Assets and will remain the property of Seller after the Initial Closing and the Final Closing:

(a) all Real Property, including the Current Real Property;

(b) all cash, cash equivalents, and short-term investments, other than the cash the cash, cash equivalents, or short-term investments (A) included in the Net Working Capital, or (B) related to any Deposits;

(c) all minute books, stock records and corporate seals;

(d) the shares of capital stock of Seller held in treasury;

(e) those rights relating to deposits, pre-paid expenses, refunds, security deposits, and pre-paid amounts listed in Schedule 2.2(e);

(f) all insurance policies and rights and proceeds thereunder not arising from or relating to the Assets;

(g) all of the Contracts of Seller not listed in Schedule 2.1(a)(ii);

(h) all claims for refund of Taxes and other governmental charges of whatever nature;

(i) all rights in connection with and assets of the Employee Plans;

(j) all rights of Seller under this Agreement and any agreements delivered hereunder; and

(k) the property and assets expressly listed in Schedule 2.2(k).

2.3 Liabilities.

(a) Initial Closing Assumed Liabilities. As of the Initial Closing, Buyer will assume and agree to discharge only the following Liabilities of Seller (the "Assumed Liabilities"):

(i) those Liabilities, including accounts payable, pre-billed accounts receivable, and purchased receipts accrual, incurred in the Ordinary Course of Business and listed on Schedule 2.3(a)(i);

(ii) any Liability arising after the Initial Closing under the Assumed Contracts (other than any Liability arising out of or relating to a Breach that occurred prior to the Initial Closing); and

(iii) any Liability of Seller explicitly listed in Schedule 2.3(a)(iii).

(b) Retained Liabilities. The Retained Liabilities will remain the sole responsibility of and will be retained, paid, performed and discharged solely by the applicable Seller. "Retained Liabilities" means every Liability of Seller, other than the Assumed Liabilities, including but not limited to the following:

(i) any Liability under any Assumed Contract that arises out of or relates to any action, inaction, or Breach that occurred prior to the Initial Closing (unless included in the calculation of Net Working Capital);

(ii) any Liability for Taxes, including (A) any Taxes arising as a result of Seller's operation of the Business or ownership of the Assets, (B) any Taxes that will arise as a result of the sale of the Assets pursuant to this Agreement and (C) any deferred Taxes of any nature;

(iii) any Liability under any Contract not assumed by Buyer under Section 1.1(k)(a)(ii) including any Liability arising out of or relating to the Lease or Seller's credit facilities or any security interest related thereto;

(iv) any Environmental Liabilities arising out of or relating to the operation of the Business or Seller's leasing, ownership or operation of Real Property, including the Current Real Property;

(v) any Liability under the Employee Plans or relating to payroll, workers' compensation, unemployment benefits, pension benefits, employee stock option or profit-sharing plans, bonuses, earned and accrued commissions related to Accounts Receivable collected prior to the Initial Closing Date, retirement plans, health care plans or benefits or any other employee plans or benefits of any kind for Seller's employees or former employees or both, as well as any accrued vacation that exceeds amounts accrued in the current year pursuant to applicable employment policies, paid time off and sick leave pay obligations to Seller's employees or former employees or both;

(vi) any Liability under any employment, severance, retention or termination agreement with any employee of Seller or any of its Related Persons;

(vii) any Liability arising out of or relating to any employee grievance whether or not the affected employee is, or employees are, hired by Buyer;

(viii) any Liability arising out of any Proceeding pending as of the Initial Closing;

(ix) any Liability arising out of any Proceeding commenced after the Initial Closing and arising out of or relating to any occurrence or event prior to the Initial Closing;

(x) any Liability arising out of or resulting from Seller's compliance or non-compliance with any Legal Requirement or Order of any Governmental Body;

(xi) any Liability of Seller under this Agreement or any other document executed in connection with the Contemplated Transactions;

(xii) all insurance claims against Seller prior to the Initial Closing or arising out of or relating to any occurrence or event prior to the Initial Closing Time;

(xiii) any Liability of Seller based upon Seller's acts or omissions occurring after the Initial Closing;

(xiv) any Liability to any retired employee or partner of Seller, or their dependents, now receiving benefits or scheduled to receive benefits in the future; and

(xv) the Funded Indebtedness.

2.4 Consideration

(a) The consideration for the Assets (the "Purchase Price") will be Eleven Million Dollars ($11,356,000), plus or minus the adjustments to the Purchase Price pursuant to Sections 2.6, 2.7, 2.10, and Article 7.

(b) At the Initial Closing on the date hereof, the following portion of the Purchase Price (the "Initial Closing Purchase Price") shall be paid by Buyer to Seller as follows:

(i) an amount equal to $2,000,000 to X by delivery of the Seller Subordinated Promissory Note; and

(ii) an amount equal to (A) $8,356,000, (B) minus the NWC Escrow Amount, (C) minus the Indemnification Escrow Amount, and (D) minus any negative adjustment for Preliminary Net Working Capital set forth in Section 2.5, paid as follows:

i. $4,178,000 in cash to X;

ii. $2,678,000 in cash to X;

iii. A warrant to JJA Capital, LLC convertible only to 375,000 preferred units in X Oilfield Services, LLC;

iv. A Senior Subordinated Secured Note in the principal amount of $1,125,000 where JJA Capital, LLC is Lender and X Oilfield Services, LLC is the Borrower; and

v. Any remaining funds are to be paid equally and directly to X and X.

(c) At the Final Closing, the remaining $1,000,000 of the Purchase Price (the "Final Closing Purchase Price") shall be paid in cash by Buyer equally and directly to X and X.

2.5 Preliminary Balance Sheet and Preliminary Purchase Price.

(a) Prior to the Initial Closing, Seller delivered to Buyer a preliminary statement, consistent with the methodology set forth in Schedule 2.5, reflecting its good faith estimate of the Net Working Capital on the Initial Closing Date ("Preliminary Net Working Capital"). If the Preliminary Net Working Capital is greater than One Million Four Hundred Fifty Thousand Dollars ($1,450,000.00) (the "Target Net Working Capital"), the Purchase Price will be increased by an amount equal to the difference between the Preliminary Net Working Capital and the Target Net Working Capital. If the Preliminary Net Working Capital is less than the Target Net Working Capital, then the Purchase Price paid at Initial Closing shall be reduced by an amount equal to the difference between the Target Net Working Capital and the Preliminary Net Working Capital. In conjunction with the preparation of the Preliminary Net Working Capital, Buyer and its representatives shall be entitled to review all work papers, schedules and other supporting materials and consult with Seller, the Shareholders and their representatives regarding the methods used to calculate the Preliminary Net Working Capital.

(b) If the Purchase Price is to be increased pursuant to Section 2.5(a), then after the Initial Closing, Buyer shall pay to Seller a portion of all Accounts Receivable outstanding as of the Initial Closing collected by Buyer (the "Collected Accounts Receivable") equal to 25% of the Collective Accounts Receivable until Seller has received an aggregate amount equal to the difference between the Preliminary Net Working Capital and the Target Net Working Capital, payable in accordance with the foregoing provisions:

(i) Within 10 days of the end of each calendar month after the Initial Closing, Buyer shall pay to Seller 25% of (A) the Collected Accounts Receivable received by Buyer during such month, plus (B) the Collected Accounts Receivable received by Buyer in a previous month but not paid to Seller in accordance with Section 2.5(b)(ii).

(ii) The payments by Buyer to Seller in Section 2.5(b)(i) shall be subject to a monthly cap of $50,000. If Seller does not receive the 25% of any Collected Accounts Receivable received by Buyer during a month as a result of such cap, then such portion of the Collected Accounts Receivable shall be treated as if it were collected during the succeeding month for purposes of this Section 2.5(b).

(iii) If by March 31, 2019 Seller has not received the aggregate amount equal to the difference between the Preliminary Net Working Capital and the Target Net Working Capital pursuant to this Section 2.5, then notwithstanding Section 2.5(b)(ii), the payment to be made by Buyer to Seller for March 2019 shall be equal to the full outstanding balance due under Section 2.5(a).

2.6 Working Capital Adjustment.

(a) Buyer Determination. Within ninety (90) days after the Initial Closing Date, Buyer shall determine the Net Working Capital as of the Initial Closing Date (the "Closing Date Net Working Capital") determined consistent with Schedule 2.5 and shall provide to Seller notice of such determination, along with reasonable supporting information and calculations ("Buyer's Determination").

(b) Seller's Review. If Seller objects to Buyer's Determination, then it shall provide Buyer notice thereof within 30 days after receiving Buyer's Determination; provided, that Seller and Buyer shall be deemed to have agreed upon all items and amounts that are not disputed by Seller in such notice. Any disputes concerning the Closing Date Net Working Capital will be resolved pursuant to Section 2.7. If Seller does not object to Buyer's Determination within the time period and in the manner set forth in the first sentence of this Section 2.6 or if Seller accept Buyer's Determination, the Closing Date Net Working Capital as set forth in the Buyer's Determination shall become final and binding upon the Parties for all purposes hereunder.

(c) Net Working Capital Settlement.

(i) If the final Closing Date Net Working Capital is greater than the Preliminary Net Working Capital, Buyer shall pay to Seller the difference between the final Closing Date Net Working Capital and the Preliminary Net Working Capital, and the Escrow Agent shall pay to Seller the NWC Escrow Amount in the manner set forth in the Escrow Agreement. If the Buyer is to make the payment to Seller pursuant to the preceding sentence, then within 10 days of the end of each calendar month following the determination of the Closing Date Net Working Capital, Buyer shall pay Seller 10% of all accounts receivable collected during such month by Buyer, or Seller pursuant to the terms of the Services Agreement, until Seller has received or retained an aggregate amount equal to the difference between the Closing Date Net Working Capital and the Preliminary Net Working Capital.

(ii) If the final Closing Date Net Working Capital is less than the Preliminary Net Working Capital, the Escrow Agent shall pay to Buyer the amount by which the Preliminary Net Working Capital exceeds the final Closing Date Net Working Capital (the "Deficiency Amount") up to the balance of the NWC Escrow Amount. If the Deficiency Amount is greater than the balance of the NWC Escrow Amount, then the Escrow Agent shall pay to Buyer the difference between the Deficiency Amount and the NWC Escrow Amount out of the balance of the Indemnification Escrow Amount. If the Deficiency Amount is greater than the balance of the NWC Escrow Amount and the Indemnification Escrow Amount, Seller shall pay to Buyer the difference between the Deficiency Amount and the sum of the NWC Escrow Amount and the Indemnification Escrow Amount.

(d) Any payments required under this Section 2.6 must be made within ten (10) days after determination of the final Closing Date Net Working Capital.

2.7 Dispute Resolution. Any dispute pursuant to Section 2.6 shall be resolved pursuant to this Section 2.7.

(a) Notice of Dispute. If Seller disputes any calculations shown in Buyer's Determination of Closing Date Net Working Capital, it shall give notice thereof to Buyer no later than 30 days after receipt thereof. Such notice of dispute shall include a reasonably detailed description of the disputed items.

(b) Good Faith Efforts to Resolve Dispute. During the thirty (30) days immediately following the delivery of a notice of dispute, Seller and Buyer shall seek in good faith to resolve in writing any differences that they may have with respect to any matter specified in the notice of dispute. During any period of dispute, Seller and its agents and representatives shall have reasonable access (during normal business hours and upon reasonable notice) to the working papers of Buyer relating to the notice of dispute. If Seller and Buyer are unable to resolve such dispute within thirty (30) days of receipt by Buyer of Seller's notice of dispute, then such dispute shall be finally resolved by the Reviewing Accountants in accordance with the procedures set forth in Section 2.7(c) hereof.

(c) Reviewing Accountants. At the end of the thirty (30) day period described in Section 2.7(b) Seller and Buyer shall submit to a mutually agreeable accounting firm (the "Reviewing Accountants") for review and resolution of any and all matters (but only such matters) remaining in dispute and that were included in the notice of dispute (the "Disputed Items"). Buyer and Seller shall instruct the Reviewing Accountants to make a final determination of the Disputed Items in accordance with the guidelines and procedures set forth in this Agreement. Buyer and Seller shall cooperate with the Reviewing Accountants during the term of its engagement. Buyer and Seller shall instruct the Reviewing Accountants not to assign a value to any item in dispute greater than the greatest value for such item assigned by Buyer, on the one hand, or Seller, on the other hand, or less than the smallest value for such item assigned by Buyer, on the one hand, or Seller, on the other hand. Buyer and Seller shall also instruct the Reviewing Accountants to make the determination based solely on presentations by Buyer and Seller that are in accordance with the guidelines and procedures set forth in this Agreement (i.e., not on the basis of an independent review). Buyer and Seller shall have the right to present additional documents, materials, and other information concerning the Disputed Items and the Reviewing Accountants may contact Buyer and Seller to seek clarification on information submitted in connection with the Disputed Items. The resulting Closing Date Net Working Capital shall become final and binding on the Parties hereto on the date the Reviewing Accountants deliver a final resolution in writing to Buyer and Seller (which final resolution shall be requested by Buyer and Seller to be delivered not more than thirty (30) days following submission of such disputed matters). All of the fees and expenses of the Reviewing Accountants pursuant to this Section 2.7(c) shall be borne one-half by Buyer and one-half by Seller.

2.8 Escrow Agent; Escrow Amount.

(a) Buyer shall deliver to the Escrow Agent $1,050,000 of the Purchase Price (the "Escrow Amount") to be held in escrow and disbursed by Escrow Agent at the time, in the manner, and for the purposes described in the Escrow Agreement. Of the Escrow Amount, $150,000 shall be held in escrow with respect to the Net Working Capital adjustment (the "NWC Escrow Amount") and the remainder shall be held in escrow for indemnification claims (the "Indemnification Escrow Amount"). Claims of Buyer for payment for indemnification pursuant to

Article 7 of this Agreement shall be satisfied first from the Indemnification Escrow Amount and then as set forth in Section 7.4(e).

(b) Within 30 days of the completion of Buyer's audited financial statements for fiscal year 2018, Buyer and Seller shall cause the Escrow Agent to release to Seller the portion of the Indemnification Escrow Amount such that, following such release, the remaining portion of the Indemnification Escrow Amount equals (A) $650,000, plus (B) a reasonable reserve amount determined by Buyer in good faith in respect of any and all outstanding claims for indemnification submitted by Buyer prior to such date in accordance with Article VII that remain pending as of such date.

(c) Within 30 days of the completion of Buyer's audited financial statements for fiscal year 2019, Buyer and Seller shall cause the Escrow Agent to release to Seller the portion of the Indemnification Escrow Amount such that, following such release, the remaining portion of the Indemnification Escrow Amount equals a reasonable reserve amount determined by Buyer in good faith in respect of any and all outstanding claims for indemnification submitted by Buyer prior to such date in accordance with Article VII that remain pending as of such date.

2.9 Additional Consideration.

(a) Buyer shall pay to X the following amounts if the following targets are met:

(i) $500,000 if the aggregate of (A) EBITDA of Seller for the portion of fiscal year 2018 prior to the Initial Closing Date, and (B) EBITDA of Buyer the portion of fiscal year 2018 beginning on the Initial Closing Date exceeds $4,000,000;

(ii) $500,000 if EBITDA of Buyer for fiscal year 2019 exceeds $5,000,000;

(iii) $500,000 if EBITDA of Buyer for fiscal year 2020 exceeds $6,000,000; and

(iv) $500,000 if EBITDA of Buyer for fiscal year 2021 exceeds $7,000,000.

(b) In the event that (i) Buyer undergoes a Change of Control prior to the end of fiscal year 2021, and (ii) at the time of such Change in Control the trailing 12-month EBITDA of the Company is at least $4,000,000, then at or prior to the closing of the Change of Control transaction Buyer shall pay to X an amount equal to $500,000 for the each uncompleted fiscal year set forth in Section 2.9(a). For purposes of this Section 2.9(b), a "Change of Control" shall mean (i) the sale of all or substantially all of the assets of Buyer, or (ii) a sale of the equity of Buyer such that voting control of Buyer is not vested in the equity holders of Buyer prior to such sale, or (iii) the merger of Buyer with or into any other entity such that the control of the surviving entity is not vested in the equity holders of Buyer prior to such merger.

(c) EBITDA of Seller and Buyer shall be computed in accordance with Seller's historical accounting treatment consistently applied throughout the periods involved. The calculation of EBITDA of Buyer for purposes of this Section 2.9 shall exclude (i) any earnings from Persons Buyer acquires or merges with, (ii) any management fees paid by Buyer to its affiliates (including Williams Fork Capital LLC), (iii) any audit fees of Buyer; (iv) any expenses of the board of managers of Buyer, and (v) expenses not directly attributable to the operations of

Buyer. All payments pursuant to this Section 2.9 shall be made by Buyer within sixty (60) days of the completion of Buyer's audited financial statements for the applicable fiscal year.

2.10 Allocation. The Purchase Price will be allocated in accordance with Schedule 2.10. After the Initial Closing, the parties will make consistent use of the allocation, fair market value and useful lives specified in Schedule 2.10 for all Tax purposes and in all filings, declarations and reports with the IRS in respect thereof, including the reports required to be filed under Section 1060 of the Code. Buyer will prepare and deliver IRS Form 8594 to Seller within sixty (60) days after the Initial Closing Date to be filed with the IRS. In any Proceeding related to the determination of any Tax, neither Buyer, Seller, nor Shareholders may contend or represent that such allocation is not a correct allocation.

2.11 Closings.

(a) The purchase and sale of the Initial Closing Assets and the assignment and assumption of the Assumed Liabilities (the "Initial Closing") will be deemed to take place at the offices of Husch Blackwell LLP at 4801 Main Street, Suite 1000, Kansas City, Missouri 64112, commencing at 10:00 a.m. (local time) on the date hereof (the "Initial Closing Date"), unless Buyer and Seller otherwise mutually agree.

(b) The purchase and sale of the Final Closing Assets (the "Final Closing") will be deemed to take place at the offices of Husch Blackwell LLP at 4801 Main Street, Suite 1000, Kansas City, Missouri 64112, commencing at 10:00 a.m. (local time) on the date that is three days following the satisfaction of the conditions to the Final Closing set forth in Article 6 (the "Final Closing Date"), unless Buyer and Seller otherwise mutually agree.

2.12 Closing Obligations.

(a) Initial Closing Obligations. In addition to any other documents to be delivered under other provisions of this Agreement, at the Initial Closing:

(i) Seller shall deliver to Buyer the following agreements, certificates, and conveyance documents:

(A) the Services Agreement, duly executed by Seller;

(B) the Escrow Agreement, duly executed by Seller;

(C) the Securities Purchase Agreement, duly executed by X;

(D) payoff letters from the Persons set forth on Schedule 2.12(a)(i)(D), in a form approved by Buyer; and

(E) all documents required to transfer the title to all of the vehicles set forth on Schedule 2.12(a)(i)(E);

(F) such other documents and other instruments as may reasonably be requested by Buyer.

(ii) Buyer shall deliver to Seller the following agreements, certificates, and conveyance documents:

(A) The cash portion of the Initial Closing Purchase Price determined in accordance with Section 2.4(b) by wire transfer to the accounts for each of X and X, as designated by Seller prior to the date hereof;

(B) the Services Agreement, duly executed by Buyer;

(C) the Escrow Agreement, duly executed by Buyer;

(D) the Shareholder Note, duly executed by Buyer; and

(E) such other documents and other instruments as may reasonably be requested by Seller.

(b) Final Closing Obligations. In addition to any other documents to be delivered under other provisions of this Agreement, at the Final Closing:

(i) Seller shall deliver to Buyer the following agreements, certificates, and conveyance documents:

(A) the Bill of Sale, duly executed by Seller;

(B) the Employment Agreement, duly executed by X;

(C) the New Lease, duly executed by Raider Land, LLC;

(D) all documents required to transfer the title to all of the vehicles set forth on Schedule 2.12(b)(i)(D);

(E) a certificate of a duly authorized officer of Seller certifying that Seller has complied with the conditions set forth in Section 6.1(a) and (b); and

(F) such other documents and other instruments as may reasonably be requested by Buyer.

(ii) Buyer shall deliver to Seller the following agreements, certificates, and conveyance documents:

(A) The cash portion of the Final Closing Purchase Price determined in accordance with Section 2.4(c) by wire transfer to the accounts designated by Seller at least three days before the Final Closing Date;

(B) The Bill of Sale, duly executed by Buyer;

(C) the Employment Agreement, duly executed by Buyer;

(D) the New Lease, duly executed by Buyer;

(E) a certificate of a duly authorized officer of Buyer certifying that Buyer has complied with the conditions set forth in Section 6.2(a) and (b); and

(F) such other documents and other instruments as may reasonably be requested by Seller.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Buyer as follows:

3.1 Organization and Good Standing.

(a) Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of New Mexico. Seller has full corporate power and authority to conduct its business as it is now being conducted, to own or use the properties and assets that it purports to own or use. Seller is duly qualified to do business as a foreign corporation and is in good standing under the laws of each state or other jurisdiction in which either the ownership or use of the properties owned or used by Seller, or the nature of the activities conducted by Seller, requires such qualification.

(b) Seller has delivered to Buyer complete and accurate copies of the Governing Documents of Seller, as currently in effect.

(c) Seller does not have any Subsidiaries nor does Seller own any shares of capital stock or other securities of any other Person.

3.2 Enforceability; Authority; No Conflict.

(a) This Agreement constitutes the legal, valid and binding obligation of Seller and each Shareholder, enforceable against them in accordance with its terms. Upon the execution and delivery by Seller or each Shareholder (as applicable) of the Seller's Closing Documents, each Seller's Closing Document will constitute the legal, valid and binding obligation of each of Seller and the Shareholders that is a party thereto, enforceable against each of them in accordance with its terms. Seller has the absolute and unrestricted right, power and authority to execute and deliver the Seller's Closing Documents to which it is a party and to perform its obligations under the Seller's Closing Documents, and such action has been duly authorized by all necessary action by the Shareholders and Seller's board of directors. Seller and each Shareholder has all necessary legal capacity to enter into this Agreement and the Seller's Closing Documents to which Seller and each Shareholder is a party and to perform his obligations hereunder and thereunder.

(b) Neither the execution and delivery of this Agreement nor the consummation or performance of any of the Contemplated Transactions will, directly or indirectly (with or without notice or lapse of time) (i) breach any provision of the Governing Documents of Seller, (ii) breach or otherwise give any Person the right to accelerate the performance required under any Seller Contract or under any other Contract by which Seller is a party or by which any assets or properties of Seller are bound, (iii) result in the imposition or creation of any Encumbrance on or with respect to any assets or properties of Seller, or (iv) violate any Legal Requirement applicable to Seller or

any Governmental Authorization that is held by Seller or that otherwise relates to the assets or properties of Seller or the operation of the Business.

(c) Except as set forth in Schedule 3.2(c), neither Seller nor either Shareholder is required to give any notice to or obtain any Consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of any of the Contemplated Transactions.

3.3 Capitalization; Shares.

(a) The authorized capital stock of Seller consists of 100,000 shares of common stock, with 1,000 shares of common stock issued and outstanding. There are no outstanding rights of purchase relating to the issued or unissued capital shares or other equity interests of Seller which obligate or may obligate Seller to issue, deliver or sell, or cause to be issued, delivered or sold, additional shares or other equity interests of Seller or to grant, extend or enter into any such rights of purchase. All of the issued and outstanding shares of common stock of Seller are duly authorized, validly issued, fully paid and nonassessable, have been offered, issued, sold and delivered in compliance with applicable Legal Requirements and the Governing Documents of Seller and have not been issued in violation of any rights of purchase.

(b) Each of X and X holds and beneficially owns 500 shares of common stock, constituting fifty percent (50%) of the issued and outstanding shares of common stock of Seller, free and clear of all Encumbrances. There are no voting trusts, irrevocable proxies or other Contracts or understandings to which either Shareholder is a party or is bound with respect to the issued and outstanding shares of common stock of Seller. Neither Shareholder is a party to any rights of purchase with respect to or affecting any of the issued and outstanding shares of common stock of Seller.

3.4 Financial Statements**.** Set forth in Schedule 3.4 is the following: (i) an unaudited balance sheet of Seller as of December 31, 2017 (including the notes thereto, the "Balance Sheet"), and the related unaudited statements of income, changes in shareholders' equity and cash flows for the fiscal year then ended, including in each case the notes thereto; (ii) an unaudited balance sheet of Seller as of December 31, 2016 and the related unaudited statements of income, changes in shareholders' equity and cash flows for the fiscal year then ended, including in each case the notes thereto; and (iii) an unaudited balance sheet of Seller as of July 31, 2018, (the "Interim Balance Sheet") and the related unaudited statements of income, changes in shareholders' equity, and cash flows for the seven (7) months then ended. Such financial statements fairly present the consolidated financial condition and the results of operations, changes in shareholders' equity and cash flows of Seller as of the respective dates of and for the periods referred to in such financial statements, all in accordance with Seller's historical accounting treatment. The financial statements referred to in this Section 3.4 reflect the consistent application of such accounting principles throughout the periods involved, except as disclosed in the notes to such financial statements. Such financial statements have been and will be prepared from and are in accordance with the accounting records of Seller.

3.5 Books and Records. The books of account and other financial records of Seller, all of which have been made available to Buyer, are complete and correct and represent actual, bona

fide transactions and have been maintained in accordance with sound business practices including the maintenance of an adequate system of internal controls.

3.6 Accounts Receivable. All Accounts Receivable of Seller represent or will represent valid obligations arising from sales actually made or services actually performed by Seller in the Ordinary Course of Business, are or will be good, current and collectible and will not be more than ninety (90) days past their normal credit terms and will be collected in full, without any setoff, within ninety (90) days after the day on which it first becomes due and payable. No such Accounts Receivable are due from employees or affiliates of Seller.

3.7 Title to Assets; Real Property.

(a) Seller owns good, valid and transferable title to all of the assets, properties, rights (including contractual rights), titles or interests (whether tangible or intangible) used by Seller in the Business, free and clear of any Encumbrances other than those set forth on Schedule 3.7(a) ("Permitted Encumbrances"). At the time of the Initial Closing and the Final Closing, all such assets, properties, rights (including contractual rights), titles or interests (whether tangible or intangible) used by Seller in the Business shall be free and clear of all Encumbrances other than Permitted Encumbrances.

(b) Schedule 3.7(b) lists (i) the street address of each parcel of the New Real Property; and (ii) the current use of such property. Seller has delivered or made available to Buyer true, complete and correct copies of any Leases affecting the Real Property. Seller is not a sublessor or grantor under any sublease or other instrument granting to any other Person any right to the possession, lease, occupancy or enjoyment of any leased Real Property.

(c) Seller does not own any Real Property. The only Real Property leased by Seller is the Current Real Property.

3.8 Sufficiency and Condition of Assets.

(a) The Assets: (a) constitute all of the assets, tangible and intangible, of any nature whatsoever, necessary to operate the Business in the manner presently operated by Seller (other than the Current Real Property), (b) include all of the operating assets of Seller, and (c) include no assets other than those used in the operation of the Business.

(b) Use of the New Real Property for the various purposes for which it is presently being used is permitted as of right under all applicable zoning legal requirements and is not subject to "permitted nonconforming" use or structure classifications. All Improvements on the New Real Property are in compliance with all applicable Legal Requirements, including those pertaining to zoning, building and the disabled, are in good repair and in good condition, ordinary wear and tear excepted, and are free from latent and patent defects. No Improvement on the New Real Property encroaches on any real property not included in the New Real Property, and there are no buildings, structures, fixtures or other improvements primarily situated on adjoining property that encroach on any part of the New Real Property. The New Real Property abuts on and has direct vehicular access to a public road or has access to a public road via a permanent, irrevocable, appurtenant easement benefiting such New Real Property and comprising a part thereof, is supplied with public or quasi-public utilities and other services appropriate for the operation of the Improvements

located thereon. To the Seller's Knowledge, there is no existing or proposed plan to modify or realign any street or highway or any existing or proposed eminent domain proceeding that would result in the taking of all or any part of the New Real Property or Improvement or that would prevent or hinder the use of the New Real Property in the conduct of the Business.

(c) Each item of Tangible Personal Property is in good repair and good operating condition, ordinary wear and tear excepted, with no known needed repairs, is suitable for immediate use in the Ordinary Course of Business, and is free from latent and patent defects. No item of Tangible Personal Property is in need of repair or replacement other than as part of routine maintenance in the Ordinary Course of Business. All Tangible Personal Property used in the Business is in the possession of Seller.

3.9 No Undisclosed Liabilities. Except as set forth in Schedule 3.9, Seller has no Liability except for Liabilities reflected or reserved against in the Interim Balance Sheet and current liabilities incurred in the Ordinary Course of Business of Seller since the date of the Interim Balance Sheet and which are not, individually or in the aggregate, material in amount.

3.10 Taxes.

(a) Seller has filed or caused to be filed on a timely basis all Tax Returns and all reports with respect to Taxes that are or were required to be filed pursuant to applicable Legal Requirements. All Tax Returns and reports filed by Seller are true, correct and complete and were prepared in substantial compliance with all applicable Legal Requirements. Seller has paid, or made provision for the payment of, all Taxes that have or may have become due for all periods covered by the Tax Returns or otherwise, or pursuant to any assessment received by Seller. No claim has ever been made or is expected to be made by any Governmental Body in a jurisdiction where Seller does not file Tax Returns or that Seller is or may be subject to taxation by that jurisdiction. There are no Encumbrances on any of the assets of Seller that arose in connection with any failure (or alleged failure) to pay any Tax, and there is no basis for assertion of any claims attributable to Taxes that, if adversely determined, would result in any such Encumbrance.

(b) The charges, accruals and reserves with respect to Taxes on the records of Seller are adequate (determined in accordance with Seller's historical accounting treatment) and are at least equal to Seller's liability for Taxes. There exists no proposed tax assessment or deficiency against Seller, except as disclosed in the Interim Balance Sheet.

(c) All Taxes that Seller is or was required by Legal Requirements to withhold, deduct or collect have been duly withheld, deducted and collected and, to the extent required, have been paid to the proper Governmental Body or other Person. All Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed in compliance with all applicable Legal Requirements.

(d) A valid and timely election under Section 1362 of the Code, and corresponding elections under applicable provisions of state or local Legal Requirements to the extent available, were made to treat Seller as an "S corporation" within the meaning of Section 1361 of the Code on January 1, 2014, and such election(s) continue to be effective since such date. Seller is not subject to the built-in gains tax under Code Section 1374. Neither Seller nor any of the

Shareholders or former shareholders of Seller has taken any action, or, in the case of the Shareholders or former shareholders of Seller, is the type of Person, that could have terminated Seller's S corporation status. Seller's status as an S corporation shall continue up to and include the Final Closing Date.

3.11 No Material Adverse Change. Since the date of the Balance Sheet, there has not been any material adverse change in the Business, operations, prospects, assets, results of operations or condition (financial or other) of Seller, and no event has occurred or circumstance exists that may result in such a material adverse change.

3.12 Employee Benefits.

(a) Set forth in Schedule 3.12(a) is a complete and correct list of all "employee benefit plans" as defined by Section 3(3) of ERISA, all specified fringe benefit plans as defined in Section 6039D of the Code, and all other bonus, incentive-compensation, deferred compensation, profit-sharing, equity or equity based arrangement, savings, severance, change-in-control, supplemental unemployment, layoff, salary continuation, retirement, pension, health, life-insurance, disability, accident, paid time off, fringe-benefit or welfare plan, and any other employee compensation or benefit plan, agreement, policy, practice, commitment, contract or understanding (whether qualified or nonqualified, currently effective or terminated, written or unwritten) and any trust, escrow or other agreement related thereto that (i) is maintained or contributed to by Seller or any other corporation or trade or business controlled by, controlling or under common control with Seller (within the meaning of Section 414 of the Code) ("ERISA Affiliate") or has been maintained or contributed to in the last six (6) years by Seller or any ERISA Affiliate, or with respect to which Seller or any ERISA Affiliate has or may have any liability, and (ii) provides benefits, or describes policies or procedures applicable to any current or former director, officer, employee or service provider of Seller or any ERISA Affiliate, or the dependents of any thereof, (collectively, the "Employee Plans").

(b) Seller has delivered to Buyer true and complete copies of: (i) the documents comprising each Employee Plan (or, with respect to any Employee Plan which is unwritten, a detailed written description of the terms of such Employee Plan); (ii) all trust agreements, insurance contracts or any other funding instruments related to the Employee Plans; (iii) all rulings, determination letters, no-action letters or advisory opinions from the IRS, the U.S. Department of Labor, or any other Governmental Body that pertain to each Employee Plan and any open requests therefor; (iv) the most recent actuarial and financial reports (audited and/or unaudited) and the annual reports filed with any Governmental Body with respect to the Employee Plans during the current year and each of the three preceding years; (v) all collective bargaining agreements pursuant to which contributions to any Employee Plan(s) have been made or obligations incurred (including both pension and welfare benefits) by Seller or any ERISA Affiliate, and all collective bargaining agreements pursuant to which contributions are being made or obligations are owed by such entities; and (vi) all summary plan descriptions, summaries of material modifications and memoranda, employee handbooks and other written communications regarding the Employee Plans.

(c) Full payment has been made of all amounts that are required under the terms of each Employee Plan to be paid as contributions and premiums with respect to all periods prior to

and including the last day of the most recent fiscal year of such Employee Plan ended on or before the date of this Agreement and all periods thereafter prior to the Final Closing Date, and Seller has paid in full all required insurance premiums, subject only to normal retrospective adjustments in the ordinary course for all policy years or other applicable policy periods ending on or before the Final Closing Date.

(d) No Employee Plan is subject to Title IV of ERISA or Section 412 of the Code. No Employee Plan is a "multi-employer plan" within the meaning of Section 4001(a)(3) of ERISA.

(e) Seller has, at all times, complied in all material respects with the applicable continuation requirements for its welfare benefit plans, including (i) Section 4980B of the Code and Sections 601 through 608, inclusive, of ERISA ("COBRA"), and (ii) any applicable state statutes mandating health insurance continuation coverage for employees or dependents.

(f) The form of all Employee Plans is in compliance with the applicable terms of ERISA, the Code, and any other applicable Legal Requirements, and such plans have been operated in compliance with such Legal Requirements and the written Employee Plan documents.

(g) Each Employee Plan that is intended to be qualified under Section 401(a) of the Code has received a favorable determination letter from the IRS, and Seller does not have any Knowledge of any circumstances that will or could result in revocation of any such favorable determination letter. Each trust created under any Employee Plan has been determined to be exempt from taxation under Section 501(a) of the Code. No Employee Welfare Benefit Plan (as defined in Section 3(1) of ERISA) utilizes a funding vehicle described in Section 501(c)(9) of the Code or is subject to the provisions of Section 505 of the Code.

(h) There is no material pending or threatened Proceeding relating to any Employee Plan, nor is there any basis for any such Proceeding. Neither Seller nor any fiduciary of an Employee Plan has engaged in a transaction with respect to any Employee Plan that could, assuming the taxable period of such transaction expired as of the date hereof, could subject Seller or Buyer to a Tax or penalty imposed by either Section 4975 of the Code or Section 502(l) of ERISA or a violation of Section 406 of ERISA. The Contemplated Transactions will not result in the potential assessment of a Tax or penalty under Section 4975 of the Code or Section 502(l) of ERISA nor result in a violation of Section 406 of ERISA. Neither Seller nor any fiduciary of an Employee Plan has violated the requirements of Section 404 of ERISA.

(i) Seller has maintained workers' compensation coverage as required by applicable state law through purchase of insurance and not by self-insurance or otherwise except as set forth on Schedule 3.12(i).

(j) Except as required by Legal Requirements, the consummation of the Contemplated Transactions will not accelerate the time of vesting or the time of payment, or increase the amount, of compensation due to any director, employee, officer, former employee or former officer of Seller. There are no contracts or arrangements providing for payments that could subject any person to liability for tax under Section 4999 of the Code.

(k) The Contemplated Transactions will not result in an amendment, modification or termination of any of the Employee Plans. No written or oral representations have been made to

any employee or former employee of Seller promising or guaranteeing any employer payment or funding for the continuation of medical, dental, life or disability coverage for any period of time beyond the end of the current plan year (except to the extent of coverage required under COBRA). No written or oral representations have been made to any employee or former employee of Seller concerning the employee benefits of Buyer.

3.13 Compliance With Legal Requirements; Governmental Authorizations.

(a) Except as set forth in Schedule 3.13(a) (i) Seller is, and at all times has been, in full compliance with each Legal Requirement that is or was applicable to Seller or to the conduct or operation of the Business or the ownership or use of any of the assets or property of Seller; (ii) no event has occurred or circumstance exists that (with or without notice or lapse of time) (A) may constitute or result in a violation by Seller of, or a failure on the part of Seller to comply with, any Legal Requirement, or (B) may give rise to any obligation on the part of Seller to undertake, or to bear all or any portion of the cost of, any remedial action of any nature; and (iii) Seller has not received any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding (A) any actual, alleged, possible or potential violation of, or failure to comply with, any Legal Requirement, or (B) any actual, alleged, possible or potential obligation on the part of Seller to undertake, or to bear all or any portion of the cost of, any remedial action of any nature.

(b) Schedule 3.13(b) contains a complete and accurate list of each Governmental Authorization that is held by Seller or that otherwise relates to the Business or the assets or property of Seller. Each Governmental Authorization listed or required to be listed in Schedule 3.13(b) is valid and in full force and effect. Except as set forth in Schedule 3.13(b), (i) Seller is, and at all times has been, in full compliance with all of the terms and requirements of each Governmental Authorization required to be identified in Schedule 3.13(b); (ii) no event has occurred or circumstance exists that may (with or without notice or lapse of time or both): (A) constitute or result directly or indirectly in a violation of or a failure to comply with any term or requirement of any Governmental Authorization listed or required to be listed in Schedule 3.13(b), or (B) result directly or indirectly in the revocation, withdrawal, lapse, suspension, limitation, cancellation or termination of, or any modification to, any Governmental Authorization listed or required to be listed in Schedule 3.13(b); (iii) Seller has not received any notice or other communication (whether oral or written) from any Governmental Body or any other Person regarding (A) any actual, alleged, possible or potential violation of or failure to comply with any term or requirement of any Governmental Authorization, or (B) any actual, proposed, possible or potential revocation, withdrawal, suspension, cancellation, termination of or modification to any Governmental Authorization; and (iv) all applications required to have been filed for the renewal of the Governmental Authorizations required to be listed in Schedule 3.13(b) have been duly filed on a timely basis with the appropriate Governmental Bodies, and all other filings required to have been made with respect to such Governmental Authorizations have been duly made on a timely basis with the appropriate Governmental Bodies. The Governmental Authorizations listed in Schedule 3.13(b) collectively constitute all of the Governmental Authorizations necessary to permit Seller to lawfully conduct and operate their business in the manner in which Seller currently conducts and operates such business and to permit Seller to own and use assets in the manner in which Seller currently owns and uses such assets. There are no circumstances that would prevent Buyer from

obtaining any Governmental Authorization to replace a Governmental Authorization held by Seller that cannot be transferred.

3.14 Legal Proceedings; Orders.

(a) Except as set forth in Schedule 3.14(a), there is no pending or, to Seller's Knowledge, threatened Proceeding (i) by or against Seller or that otherwise relates to or may affect Seller or any of the Assets or Assumed Liabilities; or (ii) that challenges, or that may have the effect of preventing, enjoining, delaying, making illegal or otherwise interfering with, the Contemplated Transactions. No event has occurred or circumstance exists that is reasonably likely to give rise to or serve as a basis for the commencement of any such Proceeding. Seller has delivered to Buyer copies of all pleadings, correspondence and other documents relating to each Proceeding listed in Schedule 3.14(a).

(b) To the Knowledge of Seller, no officer, director, agent or employee of Seller is subject to any Order that prohibits such officer, director, agent or employee from engaging in or continuing any conduct, activity or practice relating to the Business. Except as set forth in Schedule 3.14(b) there is no Order to which Seller, its business or any of the assets or properties of Seller is subject. Seller is and at all times has been in compliance with all of the terms and requirements of each Order to which Seller or any of the assets or properties of Seller is or has been subject.

3.15 Absence of Certain Changes and Events. Except as set forth in Schedule 3.15, since the date of the Interim Balance Sheet, Seller has conducted its business only in the Ordinary Course of Business and there has not been any:

(a) change in Seller's authorized or issued capital stock, grant of any stock option or right to purchase shares of capital stock of Seller or issuance of any security convertible into such capital stock;

(b) amendment to the Governing Documents of Seller;

(c) payment (except in the Ordinary Course of Business) or increase by Seller of any bonuses, salaries or other compensation (including the acceleration of the vesting or payment of compensation) to any shareholder, director, officer, employee or independent contractor or entry into any employment, severance or similar Contract with any director, officer, employee, or independent contractor;

(d) adoption of, amendment to or increase in the payments to or benefits under, any Employee Plan;

(e) damage to or destruction or loss of any asset or property of Seller, whether or not covered by insurance;

(f) entry into, termination of or receipt of notice of termination of (i) any license, distributorship, dealer, sales representative, joint venture, credit, or similar Contract to which Seller is a party, or (ii) any Contract or transaction involving a total remaining commitment by Seller of at least Ten Thousand dollars ($10,000) individually or Twenty-Five Thousand dollars ($25,000) in the aggregate;

(g) sale, lease, license or other disposition of or grant of right over any asset or property of Seller (including the Intellectual Property Assets) or the creation of any Encumbrance on any asset or property of Seller (including the Intellectual Property Assets);

(h) cancellation or waiver of any claims or rights with a value to Seller in excess of Ten Thousand dollars ($10,000) individually or Twenty-Five Thousand dollars ($25,000) in the aggregate;

(i) indication by any corporate or ongoing customer or supplier of an intention to discontinue or change the terms of its relationship with Seller;

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

(k) purchase, lease or other acquisition of the right to own, use or lease any property or assets for an amount in excess of Ten Thousand dollars ($10,000), individually (in the case of a lease, per annum) or Twenty-Five Thousand dollars ($25,000) in the aggregate (in the case of a lease, for the entire term of the lease, not including any option term);

(l) material change in the accounting methods used by Seller;

(m) Contract by Seller to do any of the foregoing or any act or omission that would result in any of the foregoing.

3.16 Contracts, no Defaults.

(a) Seller is not a party to any Contract other than those Contracts set forth in Schedule 3.16(a) (the "Seller Contracts"). Seller has delivered to Buyer a true and correct copy of each Seller Contract.

(b) Except as set forth in Schedule 3.16(b), neither Shareholder has nor may acquire any rights under, and neither Shareholder has nor may become subject to any obligation or liability under, any Seller Contract.

(c) Except as set forth in Schedule 3.16(c), (i) each Seller Contract is in full force and effect and is valid and enforceable in accordance with its terms; (ii) each Seller Contract is assignable by Seller to Buyer without the Consent of any other Person; and (iii) no Seller Contract will upon completion or performance thereof have a material adverse effect on Seller, the Assets, or the Assumed Liabilities.

(d) Except as set forth in Schedule 3.16(d), (i) Seller is, and at all times has been, in compliance with all applicable terms and requirements of each Seller Contract to which Seller is a party; (ii) to the each other Person that has or had any obligation or liability under any Seller Contract is, and at all times has been, in full compliance with all applicable terms and requirements of such Contract and no such other Person has provided or received any notice of any intention to terminate, any Seller Contract; (iii) no event has occurred or circumstance exists that (with or without notice or lapse of time) may contravene, conflict with or result in a Breach of, or give

Seller or other Person the right to declare a default or exercise any remedy under, or to accelerate the maturity or performance of, or payment under, or to cancel, terminate or modify, any Seller Contract; (iv) no event has occurred or circumstance exists under or by virtue of any contract to which Seller is a party (whether or not it is an Seller Contract) that (with or without notice or lapse of time) would cause the creation of any Encumbrance affecting any of the assets or properties of Seller; (v) Seller has not given to or received from any other Person any notice or other communication (whether oral or written) regarding any actual, alleged, possible or potential violation or Breach of, or default under, any Seller Contract; (vi) there are no material disputes pending or threatened under any Seller Contract; and (vii) Seller is not a party to any Contract that may be terminated by any party to the Contract on less than ninety (90) days written notice.

(e) There are no renegotiations of, attempts or requests to renegotiate or outstanding rights to renegotiate any Seller Contract and no Person has the contractual or statutory right to demand or require such renegotiation.

3.17 Insurance. Schedule 3.17 hereto is a true and accurate list and a brief description of property, fire, casualty, liability, life, worker's compensation, and other forms of insurance of any kind owned or held by Seller. All such policies (i) are in full force and effect and are valid, (ii) insure against risks of the kind customarily insured against and in the amounts customarily carried by entities similarly situated, and (iii) provide that they will remain in full force and effect through the respective dates set forth in Schedule 3.17. A true and correct copy of each policy listed on Schedule 3.17 has been provided to Buyer.

3.18 Environmental Matters.

Except as disclosed in Schedule 3.18:

(a) Seller is, and at all times has been, in full compliance with, and has not been and is not in violation of or liable under, any Environmental Law. Neither Seller nor the Shareholders have any basis to expect, nor has any of them or any other Person for whose conduct they are or may be held to be responsible received, any actual or threatened order, notice or other communication from (i) any Governmental Body or Person, or (ii) the current or prior owner or operator of any Real Property, of any actual or potential violation or failure to comply with any Environmental Law, or of any actual or threatened obligation to undertake or bear the cost of any Environmental Liabilities with respect to any Real Property or other property or asset (whether personal or mixed) in which Seller has or had an interest, or with respect to any Real Property at or to which Hazardous Materials were generated, transferred, imported, used or processed by Seller or any other Person for whose conduct Seller may be held responsible, or from which Hazardous Materials have been transported, treated, stored, handled, transferred, disposed, recycled or received, or where other properties for which Hazardous Materials were disposed.

(b) There are no pending or, to the Knowledge of Seller, threatened claims, Encumbrances, or other restrictions of any nature resulting from any Environmental Liabilities or arising under or pursuant to any Environmental Law with respect to or affecting any Real Property or any other property or asset (whether personal or mixed) in which Seller has or had an interest, or any other properties for which Hazardous Materials were disposed.

(c) Seller has no Knowledge of or any basis to expect, nor has any of them, or any other Person for whose conduct they are or may be held responsible, received any citation, directive, inquiry, notice, Order, summons, warning or other communication that relates to Hazardous Materials, or any alleged, actual, or potential violation or failure to comply with any Environmental Law, or of any alleged, actual, or potential obligation to undertake or bear the cost of any Environmental Liabilities with respect to any Real Property or property or asset (whether personal or mixed) in which Seller has or had an interest, or with respect to any property or facility at or to which Hazardous Materials generated, manufactured, refined, transferred, imported, used or processed by Seller or any other Person for whose conduct it is or may be held responsible, have been transported, treated, stored, handled, transferred, disposed, recycled or received.

(d) Neither Seller nor any other Person for whose conduct Seller may be held responsible has any Environmental Liabilities with respect to any Real Property or, to the Knowledge of Seller, with respect to any other property or asset (whether personal or mixed) in which Seller (or any predecessor) has or had an interest or at any property geologically or hydrologically adjoining any facility or any such other property or asset.

(e) There are no Hazardous Materials present in, on, or under Real Property, including any Hazardous Materials contained in barrels, aboveground or underground storage tanks, landfills, land deposits, dumps, equipment (whether movable or fixed) or other containers, either temporary or permanent, and deposited or located in land, water, sumps, or any other part of the Real Property or such adjoining property, or incorporated into any structure therein or thereon. Neither Seller nor any Person for whose conduct Seller may be held responsible or to the Knowledge of Seller has any other Person permitted, conducted, or is aware of, any activity conducted with respect to any Real Property or any other property or assets (whether personal or mixed) in which Seller has or had an interest except in full compliance with all applicable Environmental Laws.

(f) There has been no Release or, to the Knowledge of Seller, threat of Release, of any Hazardous Materials at, on, under, from or emanating to, or by any Real Property where any Hazardous Materials were generated, manufactured, refined, transferred, produced, imported, used, or processed, or from any other property or asset (whether personal or mixed) in which Seller has or had an interest, whether by Seller or any other Person.

(g) Seller has delivered to Buyer true and complete copies and results of all reports, assessments, audits, studies, analyses, tests, or monitoring possessed or initiated by Seller pertaining to Hazardous Materials in, on, or under the Real Property, or concerning compliance, by Seller or any other Person for whose conduct Seller is or may be held responsible, with Environmental Laws.

3.19 Employees.

(a) Schedule 3.19(a) contains a complete and accurate list of the following information for each employee (whether full or part-time), director, independent contractor, consultant and agent of Seller, including each employee on leave of absence or layoff status: employer; name; job title; date of hiring or engagement; whether the individual is covered by an employment agreement or retention agreement; date of commencement of employment or engagement; current

compensation (in whatever form, including formal and informal bonuses) paid or payable and any change in compensation in the twelve (12) months prior to the date of this Agreement; sick, vacation, and other paid leave that is accrued but unused; and service credited for purposes of vesting and eligibility to participate under any Employee Plan, or any other employee or director benefit plan.

(b) Seller has not violated the WARN Act or any similar state or local Legal Requirement. Seller assumes all liability for WARN Act compliance through the Final Closing, even if a violation is subsequently alleged.

(c) To the Knowledge of Seller, no officer, director, agent, employee, consultant, or contractor of Seller is bound by any Contract that purports to limit the ability of such officer, director, agent, employee, consultant, or contractor to engage in or continue or perform any conduct, activity, duties or practice relating to the Business. No former or current employee of Seller is a party to, or is otherwise bound by, any Contract that in any way adversely affected, affects, or will affect the ability of Seller or Buyer to conduct the Business. Seller has provided to Buyer copies of all of Seller's agreements with any independent contractor and third party that has developed or researched any Intellectual Property Asset or has a right in any Intellectual Property Asset that is used in or necessary for the conduct of the Business.

(d) Seller is and has complied in all respects with all Legal Requirements relating to employment practices, terms and conditions of employment, equal employment opportunity, nondiscrimination, nonharassment, nonretaliation, reasonable accommodation, leaves of absence, immigration, wages, hours, benefits, worker's compensation, the payment of social security and similar Taxes and occupational safety and health. Buyer is not and will not be liable or otherwise responsible for the payment of any Taxes, fines, penalties, or other amounts, however designated, for failure to comply with any of the foregoing Legal Requirements.

(e) There is not pending or, to Seller's Knowledge, threatened against or affecting Seller, any Proceeding relating to the alleged violation of any Legal Requirement pertaining to labor relations or employment matters, including any complaint (formal or informal), charge, demand, grievance or cause of action filed with any federal, state or local administration agency or court, and no application or petition for an election of or for certification of a collective bargaining agent is pending. Seller has not been, and is not now, a party to any collective bargaining agreement or other labor contract; there has not been, there is not presently pending or existing, and to Seller's Knowledge there is not threatened, any strike, slowdown, picketing, work stoppage or employee grievance process involving Seller. To Seller's Knowledge no event has occurred or circumstance exists that could provide the basis for any work stoppage or other labor dispute.

3.20 Intellectual Property Assets.

(a) The term "Intellectual Property Assets" means all intellectual property owned or licensed (as licensor or licensee) by Seller or the Shareholders in which Seller or either Shareholder has a proprietary interest, including:

(i) all assumed fictional business names, trade names, registered and unregistered trademarks, trade dress, service marks and applications (collectively, "Marks");

(ii) all patents, patent applications and inventions and discoveries that may be patentable (collectively, "Patents");

(iii) all registered and unregistered copyrights in both published works and unpublished works and fixed and unfixed works, including software and content or information included on internet websites (collectively, "Copyrights");

(iv) all know-how, ideas, formulas, trade secrets, business methods and information, research and development, customer and supplier lists, software, technical information, data, formulae, manufacturing processes, designs, process technology, plans, drawings, historic and currently used engineering designs, blue prints, architectural plans, and models (collectively, "Trade Secrets");

(v) all rights in internet web sites and internet domain names presently used by Seller (collectively "Net Names"); and

(vi) Confidential Information of Seller or the Shareholders relating to the Business.

(b) Except as set forth in Schedule 3.20(b), the Intellectual Property Assets include all such assets necessary for the operation of Seller's business as it is currently conducted or as it has historically been conducted. Seller is the exclusive owner or licensee of all right, title and interest in and to each of the Intellectual Property Assets used in or necessary for the conduct of the Business by Seller, free and clear of all Encumbrances, and has the right to use without payment to a third party all of the Intellectual Property Assets, other than in respect of licenses listed in Schedule 3.20(b). Each employee and independent contractor of Seller and any third party that has developed or researched any Intellectual Property Asset or has a right in any Intellectual Property Asset that is used in or necessary for the conduct of the Business has executed a valid and enforceable proprietary rights assignment agreement in favor of Seller. All copies of any such agreements have been provided to Buyer.

(c) Schedule 3.20(c) contains a complete and accurate list and summary description of all Patents in which Seller has a proprietary interest. All of such Patents are currently in compliance with formal legal requirements, are valid and enforceable, and are not subject to any maintenance fees or taxes or actions falling due within ninety (90) days after the Initial Closing Date. No such Patent has been or is now involved in any interference, reissue, reexamination, or opposition Proceeding. No Patent is infringed or has been challenged or threatened in any way and none of the products manufactured or sold, nor any process or know-how used, by Seller infringes or is alleged to infringe any patent or other proprietary right of any other Person. All products made, used or sold under the Patents have been marked with the proper notice.

(d) Schedule 3.20(d) contains a complete and accurate list and summary description of all Marks in which Seller has a proprietary interest. All such Marks have been registered with the United States Patent and Trademark Office, are currently in compliance with all formal Legal

Requirements, are valid and enforceable and are not subject to any maintenance fees or taxes or actions falling due within ninety (90) days after the Initial Closing Date. No such Mark has been or is now involved in any opposition, invalidation or cancellation Proceeding and no such action is threatened with respect to any of the Marks. There is no potentially interfering trademark or trademark application of any other Person. No such Mark is infringed or has been challenged or threatened in any way. None of the Marks used by Seller infringes or is alleged to infringe any trade name, trade dress, trademark or service mark of any other Person. All products and materials containing a Mark bear the proper federal registration notice where permitted by law.

(e) Schedule 3.20(e) contains a complete and accurate list and summary description of all Copyrights in which Seller has a proprietary interest. All of the registered Copyrights are currently in compliance with formal Legal Requirements, are valid and enforceable, and are not subject to any maintenance fees or taxes or actions falling due within one hundred eighty (180) days after the date of Initial Closing. No Copyright is infringed or has been challenged or threatened in any way. None of the subject matter of any of the Copyrights infringes or is alleged to infringe any copyright of any Third Party or is a derivative work based upon the work of any other Person. All works encompassed by the Copyrights have been marked with the proper copyright notice.

(f) With respect to each Trade Secret, the documentation relating to such Trade Secret is current, accurate and sufficient in detail and content to identify and explain it and to allow its full and proper use without reliance on the knowledge or memory of any individual. Seller has taken all reasonable precautions to safeguard and protect the secrecy, confidentiality and value of all Trade Secrets (including the enforcement by such Seller of a policy requiring each employee or contractor to execute proprietary information and confidentiality agreements substantially in Seller's standard form, and all current and former employees and contractors of Seller have executed such an agreement). Seller has good title to and an absolute right to use its Trade Secrets. The Trade Secrets are not part of the public knowledge or literature and, to Seller's Knowledge, have not been used, divulged or appropriated either for the benefit of any Person (other than Seller) or to the detriment of Seller. No Trade Secret is subject to any adverse claim or has been challenged or threatened in any way or infringes any intellectual property right of any other Person.

(g) Schedule 3.20(g) contains a complete and accurate list and summary description of all Net Names in which Seller or either Shareholder has a proprietary interest. All such Net Names have been registered in the name of Seller and are in compliance with all formal Legal Requirements, are valid and enforceable, and are not subject to any maintenance fees, taxes, renewal fees, or other actions falling due within one hundred eighty (180) days after the Initial Closing Date. No such Net Name has been or is now involved in any dispute, opposition, invalidation or cancellation Proceeding and no such action is threatened with respect to any Net Name. To Seller's Knowledge, there is no domain name application pending of any other person that would or would potentially interfere with or infringe any Net Name. No Net Name is infringed or has been challenged, interfered with or threatened in any way. No Net Name infringes, interferes with or is alleged to interfere with or infringe the trademark, copyright or domain name of any other Person.

3.21 Relationships With Related Persons. Except as disclosed in Schedule 3.21, neither Seller nor the Shareholders nor any Related Person of any of them has, or has had, any interest in

any property (whether real, personal or mixed and whether tangible or intangible) used in or pertaining to the Business. Neither Seller nor the Shareholders nor any Related Person of any of them owns, has owned, of record or as a beneficial owner, an equity interest or any other financial or profit interest in any Person that has (i) had business dealings or a material financial interest in any transaction with Seller, except for business dealings or transactions disclosed in Schedule 3.21, each of which has been conducted in the Ordinary Course of Business with Seller at substantially prevailing market prices and on substantially prevailing market terms, or (ii) engaged in competition with Seller with respect to any line of the products or services of Seller (a "Competing Business") in any market presently served by Seller, except for ownership of less than one percent (1%) of the outstanding capital stock of any Competing Business that is publicly traded on any recognized exchange or in the over-the-counter market. Except as set forth in Schedule 3.21, neither Seller nor the Shareholders nor any Related Person of any of them is a party to any Contract with, or has any claim or right against, Seller.

3.22 Brokers or Finders. Except as set forth in Schedule 3.22, none of Seller, the Shareholders, or any of their Representatives have incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payments in connection with the sale of Seller's business or the Assets or the Contemplated Transactions.

3.23 Customers and Suppliers.

(a) Schedule 3.23(a) accurately identifies each customer or other Person who accounted for revenues of Seller in calendar years 2015, 2016, or 2017 (each a "Customer").

(b) Schedule 3.23(b) accurately identifies each supplier of Seller in calendar years 2015, 2016, or 2017 (each a "Supplier").

(c) Except as set forth on Schedule 3.23(c), neither Seller nor either Shareholder has received any notice or other communication (in writing or otherwise) indicating that, and Seller does not have any reason to believe that, any Customer (i) may cease dealing with Seller; (ii) may materially decrease their volume of orders or purchases from Seller, (iii) is, or may become, unable to satisfy all of such Person's current and future monetary and other obligations to Seller, or (iv) may materially change any significant order or purchase terms or pricing or other economic terms.

(d) Except as set forth on Schedule 3.23(d), Seller has not received any notice or other communication (in writing or otherwise) indicating that, and Seller does not have any reason to believe that, any Supplier may materially change any significant supply terms or pricing or other economic terms after the Initial Closing Date other than price increases in the ordinary course of business. Each Supplier has the ability to meet all delivery times requested by Seller.

(e) To the Knowledge of Seller, the transactions contemplated by this Agreement will not adversely affect Seller's relations with any of Seller's customers or suppliers.

3.24 Disclosure.

(a) No representation or warranty or other statement made by Seller in this Agreement, the Disclosure Schedules, any supplement to the Disclosure Schedules or otherwise in connection

with the Contemplated Transactions contains any untrue statement or omits to state a material fact necessary to make any of them, in light of the circumstances in which it was made, not misleading.

(b) Seller does not have Knowledge of any fact that has specific application to Seller (other than general economic conditions) and that may materially adversely affect the assets, business, prospects, financial condition or results of operations of Seller or the Business that has not been set forth in this Agreement or the Disclosure Schedules.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as follows:

4.1 Organization and Good Standing. Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, with full power and authority to conduct its business as it is now conducted.

4.2 Authority, no Conflict.

(a) This Agreement constitutes the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms. Upon the execution and delivery by Buyer of the Buyer's Closing Documents, each of the Buyer's Closing Documents will constitute the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with its respective terms. Buyer has the absolute and unrestricted right, power and authority to execute and deliver this Agreement and the Buyer's Closing Documents and to perform its obligations under this Agreement and the Buyer's Closing Documents, and such action has been duly authorized by all necessary limited liability company action.

(b) Neither the execution and delivery of this Agreement by Buyer nor the consummation or performance of any of the Contemplated Transactions by Buyer will give any Person the right to prevent, delay or otherwise interfere with the Contemplated Transactions pursuant to (i) any provision of Buyer's Governing Documents; (ii) any resolution adopted by the members or managers of Buyer; (iii) any Legal Requirement or Order to which Buyer may be subject; or (iv) any Contract to which Buyer is a party or by which Buyer may be bound. Buyer is not and will not be required to obtain any Consent from any Person in connection with the execution and delivery of this Agreement or the consummation or performance of the Contemplated Transactions.

4.3 Certain Proceedings. There is no pending Proceeding that has been commenced against Buyer and that challenges, or may have the effect of preventing, delaying, making illegal or otherwise interfering with, the Contemplated Transactions. To Buyer's Knowledge, no such Proceeding has been threatened.

4.4 Brokers or Finders. Neither Buyer nor any of its Representatives have incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with the Contemplated Transactions.

4.5 Independent Investigation. Buyer has conducted its own independent investigation, review, and analysis of the Business, and acknowledges that it has relied solely upon this independent investigation and the express representations and warranties of Seller set forth in Article 3 of this Agreement (including the related portions of the Disclosure Schedules) in making its decision to enter into this Agreement, enter into the Escrow Agreement, and consummate the transactions contemplated hereby and thereby.

ARTICLE 5
COVENANTS

5.1 Tax Matters.

(a) All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees (including any penalties and interest) incurred in connection with this Agreement and any document delivered hereto, regardless of the Person against whom they are assessed, shall be borne and paid by Seller when due. Seller shall, at its own expense, timely file any Tax Return or other document with respect to such Taxes or fees (and Buyer shall cooperate with respect thereto as necessary).

(b) Buyer and Seller, upon reasonable request by any other party, shall use all reasonable commercial efforts to obtain any certificate or other document from any Governmental Body or any other Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed with respect to the Contemplated Transactions.

5.2 Further Assurances. Buyer, on one hand, and Seller and the Shareholders, on the other hand, shall cooperate reasonably with each other and with their respective Representatives to facilitate their respective obligations under this Agreement, and shall (i) furnish upon request to each other such further information; (ii) execute and deliver to each other such other documents; and (iii) do such other acts and things, all as the other parties may reasonably request for the purpose of carrying out the intent of this Agreement and the Contemplated Transactions.

5.3 Confidentiality.

(a) Seller and the Shareholders acknowledge the confidential and proprietary nature of the Confidential Information and agree that following the Initial Closing, such Confidential Information (i) shall be kept confidential; and (ii) without limiting the foregoing, shall not be disclosed to any Person, except with the prior written consent of Buyer. Seller and the Shareholders shall (i) enforce the terms of this Section 5.3 as to their respective Representatives; (ii) take such action to the extent necessary to cause their respective Representatives to comply with the terms and conditions of this Section 5.3; and (iii) be responsible and liable for any breach of the provisions of this Section 5.3 by them or their respective Representatives; provided that the provisions of this Section 5.3 shall not apply to that part of the Confidential Information that Seller or the Shareholders demonstrate becomes generally available to the public other than as a result of a breach of this Section 5.3 by Seller, either Shareholder, or any of their Representatives.

(b) If Seller or a Shareholder becomes compelled in any Proceeding or is requested by a Governmental Body to make any disclosure that is prohibited or otherwise constrained by this Section 5.3, Seller or such Shareholder shall provide Buyer with prompt notice of such compulsion

or request so that Buyer may seek an appropriate protective order or other appropriate remedy or waive compliance with the provisions of this Section 5.3. In the absence of a protective order or other remedy, Seller or such Shareholder, as applicable, may disclose that portion (and only that portion) of the Confidential Information that, based upon advice of Seller's or such Shareholder's counsel that Seller or such Shareholder is legally compelled to disclose or that has been requested by such Governmental Body, provided, however, that Seller or such Shareholder shall use reasonable efforts to obtain reliable assurance that confidential treatment will be accorded by any Person to whom any Confidential Information is so disclosed. The provisions of this Section 5.3 do not apply to any Proceedings between the Parties.

5.4 Restrictive Covenants. In consideration of the Purchase Price, as a material inducement to enter into this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and each Shareholder covenants to Buyer as follows:

(a) Non-Competition. Until the four-year anniversary of the Final Closing Date, Seller and each Shareholder shall not, and shall not permit any of Seller's or such Shareholder's Related Persons to, directly or indirectly, either alone or as a stockholder, member, partner, employee, officer, director, associate, consultant, owner, agent, creditor, coventurer of any other Person, or in any other capacity, directly or indirectly, engage in the Business, any other business competing with the Business, any other business that Buyer engages in in during such four-year period, any other oil field services business, or render services to any other Person engaged in any of the foregoing anywhere in the United States or Canada; provided that, nothing herein shall prohibit Seller or any Shareholder from (i) being an owner of not more than two percent (2%) of the outstanding stock of any class of a publicly traded corporation, so long as Seller or such Shareholder does not actively participate in the business of such corporation; (ii) being an owner or operator of an oil and gas production and exploration firm; or (iii) owning and or operating an oil field supply store. Seller and each Shareholder further agrees that he, she or it shall not directly or indirectly engage in any business at any time under or using a trademark or trade name that is confusingly similar to or may connote an association with any trademark, trade name or logo of Buyer, whether in existence before or after the Final Closing Date.

(b) Non-solicitation. For a period of five years after the Final Closing Date, Seller and each Shareholder will not, directly or indirectly hire, retain or attempt to hire or retain any current or former (within the two-year period preceding the solicitation at issue) employee or independent contractor of Seller or in any way interfere with the relationship between Buyer and any of its employees or independent contractors.

(c) Non-disparagement. After the Final Closing Date, (i) Seller and each Shareholder will not disparage Buyer or any of Buyer's partners, members, managers, officers, employees or agents, and (ii) Buyer will not disparage Seller or either Shareholder.

(d) Interference with Business Relations. For a period of five years after the Final Closing Date, Seller and each Shareholder shall not, and shall not permit any of Seller's or such Shareholder's Related Persons to, directly or indirectly, solicit, induce or attempt to solicit or induce any supplier, licensee or other business relation of Buyer to cease doing business with Buyer, or in any way interfere with the relationship between any customer or business relation of

Buyer (including, without limitation, making any negative statements or communications about Buyer or the Business).

(e) Scope. If, at the time of enforcement of this Section 5.4 a court shall hold that the duration, scope or area restrictions stated herein are unreasonable under circumstances then existing, the parties agree that the maximum duration, scope or area reasonable under such circumstances shall be substituted for the stated duration, scope or area.

(f) Remedies. Seller and each Shareholder agrees that if he, she or it shall commit or threaten to commit a breach of any of the covenants and agreements contained in this Section 5.4, then Buyer shall have the right to seek and obtain all appropriate injunctive and other equitable remedies therefor, in addition to any other rights and remedies that may be available at law, it being acknowledged and agreed that any such breach would cause irreparable injury to Buyer and that money damages would not provide an adequate remedy therefor. If Seller or any Shareholder violates any of the terms of this Section 5.4, the running of the periods of limitation referred to in this Agreement shall be tolled as to such party until such violation shall cease and shall begin to run again only when Seller or such Shareholder is in compliance with the terms hereof, whether voluntarily or pursuant to an order of a court.

5.5 Conduct of Business Prior to the Final Closing. From the date hereof until the Final Closing, except as otherwise provided in this Agreement or consented to in writing by Buyer (which consent shall not be unreasonably withheld or delayed), Seller shall (a) conduct the Business in the ordinary course of business consistent with past practice with respect to the Final Closing Assets, (b) use commercially reasonable efforts to maintain the Final Closing Assets until the Final Closing, in the same condition as on the date hereof, excepting the effects of ordinary wear and tear, (c) not engage in any extraordinary transactions with respect to the Final Closing Assets, or (d) sell or dispose of any of the Final Closing Assets

5.6 Access to Information. From the date hereof until the Final Closing, Seller shall (a) afford Buyer and its Representatives full and free access to and the right to inspect all of the New Real Property and the Final Closing Assets, and (b) provide Buyer and its Representatives with such documents and information concerning the New Real Property and the Final Closing Assets as Buyer may reasonably request.

5.7 Notification of Certain Events. From the date hereof until the Final Closing, Seller shall promptly notify Buyer in writing of (a) any event, condition, or circumstance of which Seller has Knowledge and that would reasonably be expected to result in any representation or warranty of Seller contained in this Agreement to be inaccurate in any material respect as of the Final Closing Date, (b) any event, condition, or circumstance of which Seller has Knowledge that could reasonably be expected to result in any of the conditions set forth in Article 6 not being satisfied on or prior to the Final Closing Date, and (c) any breach by Seller of any covenant contained in this Agreement.

5.8 Relocation to the New Real Property. After the date hereof, Seller shall us its best efforts to take such actions as may be necessary to (a) relocate the Final Closing Assets and all of the operations of Seller from the Current Real Property to the New Real Property prior to

November 15, 2018, and (b) cease all operations at, and remove all assets from, the Current Real Property.

5.9 Transfer or Replacement of Assumed Contracts. After the date hereof, Seller shall take such actions as may be necessary to either (a) obtain Consents necessary to transfer each Assumed Contract to Buyer, or (b) cause the counterparty to each Assumed Contract to agree to enter into a replacement for such Assumed Contract with Buyer, in each case as soon as is practicable. Seller shall keep Buyer informed on the status of the Consent or replacement for each Assumed Contract. Prior to either (a) obtain Consents necessary to transfer each Assumed Contract to Buyer, or (b) cause the counterparty to each Assumed Contract to agree to enter into a replacement for such Assumed Contract with Buyer, and in accordance with the terms of the Services Agreement, Seller shall (a) hold all rights under such Assumed Contract for the benefit of Buyer, and (b) perform all obligations and pay all liabilities of Seller with respect to such Assumed Contract.

5.10 Employees and Employee Benefits.

(a) Information on Active Employees. For the purpose of this Agreement, the term "Active Employees" shall mean all employees of Seller employed on the Final Closing Date, including employees on temporary leave of absence, including family medical leave, military leave, temporary disability or sick leave, but excluding employees on long-term disability leave.

(b) Employment of Active Employees by Buyer.

(i) Buyer is not obligated to hire any Active Employee. Subject to Legal Requirements, Buyer will have access, upon reasonable prior notice during normal business hours, to the personnel records (including performance appraisals, disciplinary actions, and grievances of Seller) for the purpose of preparing for and conducting employment interviews with all Active Employees, will conduct the interviews as expeditiously as possible prior to the Final Closing Date, and will have the right to hire any such Active Employees as it sees fit. Effective immediately before the Final Closing, Seller will terminate the employment of all of its Active Employees that Buyer desires to hire; shall provide whatever WARN Act notices are required in connection with such layoff, if any; and shall hold Buyer harmless from any WARN Act liabilities that result from Seller's termination or Buyer's failure to hire a sufficient number of terminated employees.

(ii) It is understood and agreed that (A) Buyer's expressed intention to extend offers of employment shall not constitute any commitment, Contract or understanding (expressed or implied) of any obligation on the part of Buyer to a post- Final Closing employment relationship of any fixed term or duration or upon any terms or conditions other than those that Buyer may establish pursuant to individual offers of employment, and (B) employment offered by Buyer is "at will" and may be terminated by Buyer or by an employee at any time for any reason (subject to any written commitments to the contrary made by Buyer or an employee and Legal Requirements). Nothing in this Agreement shall be deemed to prevent or restrict in any way the right of Buyer to make any and all employment-related decisions with respect to Active Employees after the Final Closing Date.

(c) Salaries and Benefits.

(i) Seller shall be responsible for: (A) the payment of all wages and other remuneration due to Active Employees for their services as employees of Seller through the conclusion of Active Employees' employment with Seller, including pro rata bonus payments and all vacation, paid time off and sick leave pay obligations to the extent accrued prior to the Final Closing Date; (B) the payment of any termination or severance payments and the provision of health plan continuation coverage in accordance with the requirements of COBRA and Sections 601 through 608 of ERISA; (C) any and all payments to employees required under the WARN Act, if any; and (D) compliance with IRS §409A, if applicable.

(ii) Seller shall be liable for any claims made or incurred by Active Employees and/or their beneficiaries through the Final Closing Date, including, but not limited to, claims made under any Legal Requirement or under the Employee Plans, and Seller agrees to indemnify and to hold Buyer harmless from any costs incurred related thereto, including attorneys' fees. For purposes of the immediately preceding sentence, a claim will be deemed incurred when the conduct that is the subject of the claim occurs or when services that are the subject of the claim are performed and, in the case of other benefits (such as disability or life insurance), when an event has occurred or when a condition has been diagnosed that entitles the employee to the benefit.

(d) Seller's Retirement and Savings Plans. All Active Employees who are participants in Seller's retirement plan shall retain their accrued benefits under Seller's retirement plans as of the Final Closing Date, and Seller (or Seller's retirement plans) will retain sole liability for the payment of such benefits as and when such Active Employees become eligible therefor under such plans. All Active Employees will become fully vested in their accrued benefits under Seller's retirement plans as of the Final Closing Date, and Seller will so amend such plans if necessary to achieve this result.

(e) No Transfer of Assets. Neither Seller nor Owners nor their respective Related Persons will make any transfer of pension or other employee benefit plan assets to Buyer.

(f) Employment Matters. Buyer will set its own initial terms and conditions of employment for each hired Active Employee and others it may hire, including employment policies and practices, work rules, benefits and salary and wage structure, all as permitted by Legal Requirements. Seller will be solely liable for any severance payment required to be made to its employees due to the Contemplated Transactions.

(g) General Employee Provisions.

(i) Seller and Buyer shall give any notices required by Legal Requirements and take whatever other actions with respect to the plans, programs and policies described in this Section 5.10 as may be necessary to carry out the arrangements described in this Section 5.10.

(ii) Seller shall provide Buyer with such plan documents and summary plan descriptions, employee data or other information as may be reasonably required to carry out the arrangements described in this Section 5.10.

(iii) Seller shall provide Buyer with completed I-9 forms and attachments with respect to all hired Active Employees, except for such employees as Seller certify in writing to Buyer are exempt from such requirement.

(iv) Buyer shall not have any responsibility, liability or obligation, whether to Active Employees, former employees, their beneficiaries or to any other Person, with respect to any employee benefit plans, practices, programs or arrangements (including the establishment, operation or termination thereof and the notification and provision of COBRA coverage extension) maintained by Seller.

(h) At-Will Employment. No provision of this Agreement shall be construed as a guarantee of continued employment of any manager or other employee of Seller, and this Agreement shall not be construed so as to prohibit Buyer from having the right to terminate the employment of any such employee, subject to any Legal Requirements or contractual obligations.

5.11 Change of Name. On or prior to the date that is 10 business days following the later of (a) the Final Closing Date, and (b) the date that Seller obtains the Consent of the counterparty to transfer each Assumed Contract. Seller shall amend its Governing Documents and take all other actions necessary to change its name to one sufficiently dissimilar to Seller's present name, in Buyer's judgment, to avoid confusion.

5.12 Final Closing Conditions. From the date hereof until the Final Closing, each party hereto shall use reasonable best efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in Article 6 hereof.

5.13 Accounts Receivables and Deposits. From and after the Initial Closing, if Seller or any of its Affiliates receives or collects any funds relating to any Accounts Receivable, Deposits, or any other Asset, Seller or its Affiliate shall remit such funds to Buyer within five days after its receipt thereof.

5.14 Bulk Sales Laws. Buyer and Seller hereby waive compliance with the bulk-transfer provisions of the Uniform Commercial Code (or any similar law) ("Bulk Sales Laws") in connection with the Contemplated Transactions.

ARTICLE 6
FINAL CLOSING CONDITIONS

6.1 Conditions Precedent to Buyer's Obligations. The obligations of Buyer under this Agreement are subject to the satisfaction on or before the Final Closing Date, or such other date as herein provided, of each of the conditions set forth below (any of which may be waived by Buyer in Buyer's sole discretion, unless otherwise stated herein):

(a) Seller's Representation and Warranties. (i) The representations and warranties of Seller contained in this Agreement (other than the Fundamental Representations and Core

Representations) shall be true and correct in all material respects on and as of the date hereof and on and as of the Final Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects), and (ii) the Fundamental Representations and Core Representations shall be true and correct in all respects on and as of the date hereof and on and as of the Final Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects)

(b) Performance of Covenants by Seller. Seller shall have performed, in all material respects, all covenants and agreements that are required by this Agreement and the Seller's Closing Documents to be performed by Seller at or prior to the Final Closing.

(c) No Order. No Order preventing the consummation of the Contemplated Transactions shall be in effect.

(d) Seller's Closing Documents. Seller shall have delivered to Buyer all of the Seller's Closing Documents.

6.2 Conditions Precedent to Seller's Obligations. The obligations of Seller under this Agreement are subject to the satisfaction on or before the Final Closing Date, or such other date as herein provided, of the conditions set forth below (any of which may be waived by Seller in its sole discretion, unless otherwise stated herein):

(a) Buyer's Representation and Warranties. (i) The representations and warranties of Buyer contained in this Agreement shall be true and correct in all respects on and as of the date hereof and on and as of the Final Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects)

(b) Performance of Covenants by Buyer. Buyer shall have performed, in all material respects, all covenants and agreements that are required by this Agreement and the Buyer's Closing Documents to be performed by Buyer at or prior to the Final Closing.

(c) No Order. No Order preventing the consummation of the Contemplated Transactions shall be in effect.

(d) Buyer's Closing Documents. Buyer shall have delivered to Seller all of the Buyer's Closing Documents.

ARTICLE 7
INDEMNIFICATION

7.1 Survival. All representations, warranties, covenants and obligations in this Agreement, the Disclosure Schedules, and any other certificate or document delivered pursuant to this Agreement will survive the Final Closing and the consummation of the Contemplated Transactions, subject to Section 7.4. The right to indemnification, reimbursement or other remedy

based upon such representations, warranties, covenants and obligations will not be affected by any investigation (including any environmental investigation or assessment) conducted with respect to, or any Knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Initial Closing Date, with respect to the accuracy or inaccuracy of or compliance with any such representation, warranty, covenant or obligation. The waiver of any condition or the performance of or compliance with any covenant or obligation will not affect the right to indemnification, reimbursement or other remedy based upon any representations, warranties, covenants and obligations.

7.2 Indemnification and Reimbursement by Seller and the Shareholders. Seller and the Shareholders, jointly and severally, will indemnify and hold harmless Buyer, and its Representatives, partners, subsidiaries and Related Persons (collectively, the "Buyer Indemnified Persons"), and will reimburse Buyer Indemnified Persons for any loss, liability, claim, damage, expense (including costs of investigation and defense and reasonable attorneys' fees and expenses) or diminution of value, whether or not involving a Third-Party Claim (collectively, "Damages"), arising from or in connection with:

(a) any and all Breaches of (i) any representation or warranty made by Seller or either Shareholder in this Agreement, (ii) the Disclosure Schedules, (iii) any transfer instrument, or (iv) any other certificate, document, writing or instrument delivered by Seller or the Shareholders pursuant to this Agreement;

(b) any and all Breaches of any covenant or obligation of Seller or the Shareholders in this Agreement or in any other certificate, document, writing or instrument delivered by Seller or the Shareholders pursuant to this Agreement;

(c) any and all brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding made, or alleged to have been made, by any Person with Seller or the Shareholders (or any Person acting on their behalf) in connection with any of the Contemplated Transactions;

(d) any and all Liabilities arising out of the ownership or operation of the Initial Closing Assets prior to the Initial Closing or the Final Closing Assets prior to the Final Closing, other than the Assumed Liabilities;

(e) any and all Taxes of Seller or the Shareholders;

(f) any and all Liabilities of Seller existing as of the date hereof that are not incurred in the Ordinary Course of Business and included in the calculation of Net Working Capital;

(g) any and all retention, success, or performance bonuses due to employees of Seller as a result of the Contemplated Transaction;

(h) any and all noncompliance with any Bulk Sales Laws or fraudulent transfer law in respect of the Contemplated Transactions;

(i) any and all Liability under the WARN Act or any similar state or local Legal Requirement that may result from an "Employment Loss", as defined by 29 U.S.C. sect.

2101(a)(6), caused by any action of Seller prior to the Final Closing or by Buyer's decision not to hire previous employees of Seller;

(j) any Environmental Liabilities arising out of or relating to: (i) the ownership or operation by any Person at any time on or prior to the Final Closing Date of any of the Assets or the Business of Seller, or (ii) any Hazardous Materials or other contaminants present in, on, or under the Current Real Property at any time;

(k) any and all claims made or incurred by Active Employees and/or their beneficiaries as set forth in Section 5.10(c);

(l) any and all Employee Plan established or maintained by Seller; and

(m) any and all Excluded Assets or Retained Liabilities.

7.3 Indemnification and Reimbursement by Buyer. Buyer will indemnify and hold harmless Seller and the Shareholders, and will reimburse Seller and the Shareholders, for any Damages arising from or in connection with:

(a) any Breach of any representation or warranty made by Buyer in this Agreement or in any certificate, document, writing or instrument delivered by Buyer pursuant to this Agreement;

(b) any Breach of any covenant or obligation of Buyer in this Agreement or in any other certificate, document, writing or instrument delivered by Buyer pursuant to this Agreement;

(c) any claim by any Person for brokerage or finder's fees or commissions or similar payments based upon any agreement or understanding made, or alleged to have been made, by such Person with Buyer (or any Person acting on Buyer's behalf) in connection with any of the Contemplated Transactions;

(d) any and all Liabilities arising out of the ownership or operation of the Initial Closing Assets after the Initial Closing or the Final Closing Assets after the Final Closing; and

(e) any Assumed Liabilities.

7.4 Limitations.

(a) Seller and the Shareholders will have liability (for indemnification or otherwise) with respect to any Breach of (i) a representation or warranty (other than the Fundamental Representations and Core Representations) only if Buyer notifies Seller or the Shareholders of a claim specifying the factual basis of the claim in reasonable detail to the extent then known by Buyer within eighteen (18) months following the Final Closing Date; (ii) any Core Representations, which shall survive until the expiration of the applicable statute of limitations plus three (3) months, and (iii) any Fundamental Representations, which shall survive indefinitely.

(b) Buyer will have liability (for indemnification or otherwise) with respect to any Breach of a representation or warranty, only if Seller or the Shareholders notify Buyer of a claim

specifying the factual basis of the claim in reasonable detail to the extent then known by Seller or the Shareholders within eighteen (18) months following the Final Closing Date.

(c) Seller and the Shareholders shall not be obligated to pay for any liabilities for a Breach of a representation or warranty in this Agreement (other than Fundamental Representations and Core Representations) until the amount of such liabilities exceeds, in the aggregate, $225,000, in which event Seller and the Shareholders shall be liable from the first dollar. In no event shall aggregate liability of Seller and the Shareholders arising out of or relating to (i) a Breach of any representation or warranty of this Agreement (other than the Fundamental Representations or Core Representations) exceed 15% of the Purchase Price, or (ii) a Breach of any of the Core Representations exceed the Purchase Price.

(d) The limitations set forth in this Section 7.4 shall not apply in the event of fraud by the Indemnifying Person.

(e) Payments. Claims of Buyer for payment for indemnification pursuant to this Article 7 of this Agreement shall be made as follows:

(i) First, from the Indemnification Escrow Amount;

(ii) Then, upon full depletion or distribution of the Indemnification Escrow Amount pursuant to the terms of the Escrow Agreement, pursuant to Buyer's right of setoff set forth in Section 7.5; and

(iii) Then, directly from Seller or either Shareholder.

7.5 Right of Setoff. Upon notice to Seller or either Shareholder that a claim or claims have exceeded the Indemnification Escrow Amount, Buyer may set off any amount to which it may be entitled under this Section 7 against amounts otherwise payable to Seller or either Shareholder; including payments under Section 2.9 of this Agreement, the Shareholder Note, or any obligations of Buyer in connection with the Securities Purchase Agreement and the documents delivered thereto. Neither the exercise of nor the failure to exercise such right of setoff will constitute an election of remedies or limit Buyer in any manner in the enforcement of any other remedies that may be available to it.

7.6 Third-Party Claims.

(a) Promptly after receipt by a Person entitled to indemnity under Sections 7.2 or 7.3 (an "Indemnified Person") of notice of the assertion of a Third-Party Claim against it, such Indemnified Person shall give notice to the Person obligated to indemnify under such Section (an "Indemnifying Person") of the assertion of such Third-Party Claim, provided that the failure to notify the Indemnifying Person will not relieve the Indemnifying Person of any liability that it may have to any Indemnified Person, except to the extent that the Indemnifying Person demonstrates that the defense of such Third-Party Claim is prejudiced by the Indemnified Person's failure to give such notice.

(b) If an Indemnified Person gives notice to the Indemnifying Person pursuant to Section 7.6(a) of the assertion of a Third-Party Claim, the Indemnifying Person will be entitled to

participate in the defense of such Third-Party Claim and, to the extent that it wishes (unless (i) the Indemnifying Person is also a Person against whom the Third-Party Claim is made and the Indemnified Person determines in good faith that joint representation would be inappropriate, or (ii) the Indemnifying Person fails to provide reasonable assurance to the Indemnified Person of its financial capacity or willingness to defend such Third-Party Claim and provide indemnification with respect to such Third-Party Claim), to assume the defense of such Third-Party Claim with counsel satisfactory to the Indemnified Person. After notice from the Indemnifying Person to the Indemnified Person of its election to assume the defense of such Third-Party Claim, the Indemnifying Person will not, so long as it diligently conducts such defense, be liable to the Indemnified Person under this Section 7.6 for any fees of other counsel or any other expenses with respect to the defense of such Third-Party Claim, in each case subsequently incurred by the Indemnified Person in connection with the defense of such Third-Party Claim. If the Indemnifying Person assumes the defense of a Third-Party Claim, (i) such assumption will conclusively establish for purposes of this Agreement that the claims made in that Third-Party Claim are within the scope of and subject to indemnification, and (ii) no compromise or settlement of any such Third-Party Claim may be effected by the Indemnifying Person without the Indemnified Person's prior Consent (which may not be unreasonably withheld), unless (i) there is no finding or admission of any violation of any Legal Requirement or any violation of the rights of any Person, (ii) the sole relief provided is monetary damages that are paid in full by the Indemnifying Person, and (iii) the Indemnified Person will have no liability with respect to, or otherwise be adversely effected by, any compromise or settlement of such Third-Party Claims effected without its Consent. If notice is given to an Indemnifying Person of the assertion of any Third-Party Claim and the Indemnifying Person does not, within ten (10) days after the Indemnified Person's notice is given, give notice to the Indemnified Person of its election to assume the defense of such Third-Party Claim, the Indemnifying Person will be bound by any determination made in such Third-Party Claim or any compromise or settlement effected by the Indemnified Person.

(c) Notwithstanding the foregoing, if an Indemnified Person determines in good faith that there is a reasonable probability that a Third-Party Claim may adversely affect it or its Related Persons other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the Indemnified Person may, by notice to the Indemnifying Person, assume the exclusive right to defend, compromise and/or settle such Third-Party Claim, but the Indemnifying Person will not be bound by any determination of its liability hereunder for any Third-Party Claim so defended or any compromise or settlement effected without its prior Consent (which may not be unreasonably withheld).

(d) Notwithstanding the provisions of Section 8.4, Seller and the Shareholders hereby consent to the nonexclusive jurisdiction of any court in which a Proceeding in respect of a Third-Party Claim is brought against any Buyer Indemnified Person for purposes of any claim that a Buyer Indemnified Person may have under this Agreement with respect to such Proceeding or the matters alleged therein and agree that process may be served on Seller or the Shareholders with respect to such a claim anywhere in the world.

(e) With respect to any Third-Party Claim subject to indemnification under this Section 7.6: (i) both the Indemnified Person and the Indemnifying Person, as the case may be, shall keep the other Person fully informed of the status of such Third-Party Claim and any related Proceedings at all stages thereof where such Person is not represented by its own counsel, and (ii) the Parties

agree (each at its own expense) to render to each other such assistance as they may reasonably require of each other and to cooperate in good faith with each other in order to ensure the proper and adequate defense of any Third-Party Claim.

(f) With respect to any Third-Party Claim subject to indemnification under this Section 7.6, the Parties agree to cooperate in such a manner as to preserve in full (to the extent possible) the confidentiality of all Confidential Information and the attorney-client and work-product privileges. In connection therewith, each party agrees that: (i) it will use its best efforts, in respect of any Third-Party Claim in which it has assumed or participated in the defense, to avoid production of Confidential Information (consistent with applicable Legal Requirements and rules of procedure), and (ii) all communications between any party hereto and counsel responsible for or participating in the defense of any Third-Party Claim shall, to the extent possible, be made so as to preserve any applicable attorney-client or work-product privilege.

7.7 Other Claims. A claim for indemnification for any matter not involving a Third-Party Claim may be asserted by notice to the party from whom indemnification is sought and shall be paid promptly after such notice.

7.8 Indemnification in Case of Strict Liability or Indemnitee Negligence.

THE INDEMNIFICATION PROVISIONS IN THIS ARTICLE 7 SHALL BE ENFORCEABLE REGARDLESS OF WHETHER THE LIABILITY IS BASED UPON PAST, PRESENT OR FUTURE ACTS, CLAIMS OR LEGAL REQUIREMENTS (INCLUDING ANY PAST, PRESENT OR FUTURE ENVIRONMENTAL LAW, FRAUDULENT TRANSFER ACT, OCCUPATIONAL SAFETY AND HEALTH LAW AND ANY PRODUCTS LIABILITY, SECURITIES OR OTHER LEGAL REQUIREMENT) AND REGARDLESS OF WHETHER ANY PERSON (INCLUDING THE PERSON FROM WHOM INDEMNIFICATION IS SOUGHT) ALLEGES OR PROVES THE SOLE, CONCURRENT, CONTRIBUTORY OR COMPARATIVE NEGLIGENCE OF THE PERSON SEEKING INDEMNIFICATION OR THE SOLE OR CONCURRENT STRICT LIABILITY IMPOSED UPON THE PERSON SEEKING INDEMNIFICATION.

ARTICLE 8
MISCELLANEOUS

8.1 Expenses. Except as otherwise provided in this Agreement, each Party to this Agreement will bear its respective fees and expenses incurred in connection with the preparation, negotiation, execution and performance of this Agreement and the Contemplated Transactions, including all fees and expenses of its Representatives.

8.2 Public Announcements. Any public announcement, press release or similar publicity with respect to this Agreement or the Contemplated Transactions will be issued, if at all, at such time and in such manner as Buyer and Seller agree. Except with the prior Consent of Buyer or as permitted by this Agreement, neither Seller, the Shareholders, nor any of their Representatives will disclose to any Person any information about the Contemplated Transactions, including the existence or status of such discussions or negotiations, the execution of any

documents (including this Agreement) or any of the terms of the Contemplated Transactions or the related documents (including this Agreement).

8.3 Notices. All notices, Consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a Party when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid); (b) sent by e-mail with confirmation of transmission by the transmitting equipment; or (c) received or rejected by the addressee, if sent by certified mail, return receipt requested, in each case to the following addresses, facsimile numbers or e-mail addresses and marked to the attention of the person (by name or title) designated below (or to such other address, facsimile number, e-mail address or person as Buyer may designate by notice to Seller, or that Seller may designate by notice to Buyer):

Seller:

X Oil Field Rentals, LLC
8910 CR 6860
Lubbock, TX 79407
Attention: X X
E-mail: XX@icloud.com

with a mandatory copy to:

Brady & Hamilton, LLP
1602 13th Street
Lubbock, TX 79401
Attention: Zach Brady
E-mail: zach@bhlawgroup.com

Buyer:

X Oilfield Services, LLC
c/o Williams Fork Capital LLC
11522 East Ida Ave.
Englewood, CO 80111
Attention: Pål Berg
E-mail: pberg@denargo.com

with a mandatory copy to:

Husch Blackwell LLP
190 Carondelet Plaza, Suite 600
St. Louis, MO 63105
Attention: Mary Anne O'Connell
E-mail address: MaryAnne.OConnell@huschblackwell.com

8.4 Jurisdiction Service of Process. Subject to Section 7.6, any Proceeding arising out of or relating to this Agreement or any Contemplated Transactions may be brought in the courts of the State of Delaware, or, if it has or can acquire jurisdiction, in the United States District Court for the District of Delaware, and each of the Parties irrevocably submits to the exclusive jurisdiction of each such court in any such Proceeding, waives any objection it may now or

hereafter have to venue or to convenience of forum, agrees that all claims in respect of the Proceeding shall be heard and determined only in any such court and agrees not to bring any Proceeding arising out of or relating to this Agreement or the Contemplated Transactions in any other court. The Parties agree that they may file a copy of this paragraph with any court as written evidence of the knowing, voluntary and bargained agreement between the Parties irrevocably to waive any objections to venue or to convenience of forum. Process in any Proceeding referred to in the first sentence of this section may be served on any party anywhere in the world.

8.5 Enforcement of Agreement. Seller and the Shareholders acknowledge and agree that Buyer would be irreparably damaged if any of the provisions of this Agreement are not performed in accordance with their specific terms and that any Breach of this Agreement by Seller or the Shareholders could not be adequately compensated in all cases by monetary damages alone. Accordingly, in addition to any other right or remedy to which Buyer may be entitled, at law or in equity, it will be entitled to enforce any provision of this Agreement by a decree of specific performance and to temporary, preliminary and permanent injunctive relief to prevent Breaches or threatened Breaches of any of the provisions of this Agreement,

8.6 Waiver, Remedies Cumulative. The rights and remedies of the Parties to this Agreement are cumulative and not alternative. Neither any failure nor any delay by any Party in exercising any right, power or privilege under this Agreement or any of the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable Legal Requirements, (a) no claim or right arising out of this Agreement or any of the documents referred to in this Agreement can be discharged by one Party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the applicable other Party; (b) no waiver that may be given by a Party will be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one Party will be deemed to be a waiver of any obligation of that Party or of the right of the Party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

8.7 Entire Agreement and Modification. This Agreement supersedes all prior agreements, whether written or oral, between the Parties with respect to its subject matter (including that certain letter of intent between Seller and Denargo Capital LLC dated April 9, 2018, and any supplements thereto, if any) and constitutes (along with the Appendices, the Disclosure Schedules, Exhibits and other documents delivered pursuant to this Agreement) a complete and exclusive statement of the terms of the agreement between the Parties with respect to its subject matter. This Agreement may not be amended, supplemented, or otherwise modified except by a written agreement executed by Seller and Buyer.

8.8 Disclosure Schedules. If there is any inconsistency between the statements in this Agreement and those in the Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules with respect to a specifically identified representation or warranty), the statements in this Agreement will control. The statements in the Disclosure Schedules, and those in any supplement thereto, relate only to the provisions in the Section of this Agreement to which they expressly relate and not to any other provision in this Agreement.

8.9 Assignments, Successors and no Third-Party Rights. Neither Seller nor the Shareholders may assign any of their rights or delegate any of their obligations under this Agreement without the prior Consent of Buyer. Subject to the preceding sentence, this Agreement will apply to, be binding in all respects upon and inure to the benefit of the successors and permitted assigns of the Parties. Nothing expressed or referred to in this Agreement will be construed to give any Person other than the Parties any legal or equitable right, remedy or claim under or with respect to this Agreement or any provision of this Agreement, except such rights as shall inure to a successor or permitted assignee pursuant to this Section 8.9.

8.10 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Legal Requirements, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Legal Requirements, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement, which shall be interpreted or re-formed to the extent necessary to effectuate, to the extent reasonably possible, the intent of the Parties as memorialized in this Agreement.

8.11 Construction. The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation. All references to "Exhibits" "Sections" and "Schedules" refer to the corresponding Exhibits, Sections and Schedules of this Agreement and the Disclosure Schedules.

8.12 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

8.13 Governing Law. This Agreement will be governed by and construed under the laws of the State of Delaware without regard to conflicts-of-laws principles that would require the application of any other law.

8.14 Execution of Agreement. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or by e-mail shall be deemed to be their original signatures for all purposes.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

BUYER:

X Oilfield Services, LLC

By:_____

Name: _____

Title: _____

SELLER:

X Oil Field Rentals, Inc.

By:_____

Name: _____

Title: _____

SHAREHOLDERS:

_____

X A. X

_____

X F. X

APPENDIX 2: Sample LOI (Letter of Intent)

July 16, 2020

To: Dean Ferguson – Ferguson White
Fr: x

Re: Letter of Intent ("LOI"):

x Industries, LLC ("Bridge"), is pleased to submit the following LOI to acquire substantially all of the assets of x.

x is a Cleveland-based holding company that invests in engineered products and services companies in partnership with ownership/management teams, with the goal of long-term growth and expansion. We have enjoyed learning about the long-established history of x and the exciting transformation over the last few years. The time we spent in Lake x with x was very productive, and we would be excited to form a partnership with their team in order to help develop and execute their growth plan.

Along with capital and strategic support for the management team and business plan, x would provide the following benefits to x derived from past experiences and significant background in x's current and target markets:

1. x's current portfolio business, xh Energy, has deep customer relationships throughout the energy sector, developed with an active sales team, and supported by a Houston engineering office and McGregor, TX fabrication facility. x has tripled its revenues since xs 2013 acquisition with a proven formula; investing in sales, engineering, and operations, supported by strong internal systems and active internet marketing program. We expect that similar opportunities will be available to x with strategic, capital, and systems support from x. Based

upon our discussions, we are confident that the team at x could provide many productive sales contacts and leads in the midstream and upstream markets.

2. x has a depth of experience with multi-generation family businesses, and the development from entrepreneurial roots to a comprehensive strategic and business plan, including geographic expansion, enhanced systems, and addition of new products and services. xn had a 30-year history when we formed our partnership. x and his team were in a similar situation to x, facing many growth opportunities, but lacking in capital, systems and strategic support to make it happen. Our seven-year partnership resulted in growth from $10M to 130M, national expansion, and successful transition to new ownership based upon x's stated retirement goals.

3. x's relationships with prior portfolio companies x (production equipment/flares/burner management systems) and x Products (artificial lift), have developed broad industry contacts that could potentially helpx penetrate new markets. x's team has vast experience in other x target markets such as industrial, petrochemical, and LNG, and is comfortable dealing with the large multi-national customers inherent to those industries.

With these considerations in mind, we are prepared to move forward with respect to the transaction as outlined below:

1. Purchase Price – Subject to the terms and conditions specified in this LOI, x, through one of its affiliates ("Buyer"), is prepared to acquire substantially all of the assets of the Company for total consideration of $23,000,000 (the "Purchase Price"). Our valuation assumes that the Company will be delivered at closing (a) free of all debt and cash, (b) possessing a mutually agreed upon level of working capital, and (c) free of any extraordinary off-balance sheet or contingent liabilities, including legal, pension, environmental, among others. The valuation is based solely on the Company's historical financial performance and projections as presented in the Ferguson White offering memorandum and materials received to date. The Purchase Price is also subject to confirmation that the business achieved its targeted December 31, 2018 fiscal year end revenue of $27,000,000 and Adjusted EBITDA of $3,600,000 and is on track to achieve its forecasted 2019 revenue and Adjusted EBITDA of $27,000,000 and $3,600,000, respectively.

2. Sources and Uses – Our anticipated sources and uses of funds for the transaction are as follows:

Sources and Uses			
($ in '000)			
Sources		Uses	
Equity	$6,750	Cash	$13,000
Senior Bank	7,000	Seller Note	5,000
Seller Note	5,000	Earnouts	5,000
Earnout 1	1,000	Total Purchase Price	$23,000
Earnout 2	4,000		
		Closing Fees and Expenses	750
Total Sources	$23,750	Total Uses	$23,750

3. Financing – We plan to fund the Purchase Price with a combination of equity and debt capital. We are mindful of the growth potential for x and would suggest these leverage levels will both support the growth plans of the Company and maximize returns for all shareholders. We will also have a revolving credit line available through a bank to support the ongoing working capital needs of the business.

    a. Equity Financing – We plan to anchor the financing with equity from x and potentially mezzanine financing. Bridge would also plan to support the Company's long-term growth through capital investments and potential strategic acquisitions.

    b. Debt Financing – We have discussed the transaction with and expect support from a range of debt financing institutions including local commercial banks and non-bank institutional lenders, many of which we have worked with on prior transactions.

    c. Seller Note – A portion of the consideration shall be paid pursuant to a subordinated note ("Seller Note") to Sellers in the amount of $5,000,000. The Seller Note shall carry an interest rate 5.00% per annum, payable in cash quarterly. The principal of the Seller Note shall be paid in equal quarterly payments in years 5, 6 and 7. Such Seller Note shall be subordinated to all third-party institutional financing. The Seller Note will include a fair market rate for default interest including customary cure period if the Company has defaulted on principal payments. The Seller Note shall also be subject to a clawback provision if the Company achieves less than $3,600,000 of Adjusted EBITDA (with "Adjusted EBITDA" to be defined in the Definitive Agreements and to exclude any non-operating,x Industries direct expenses) for the first twelve-month period after closing. For every $1.00 of Adjusted EBITDA the Company earns less than $3,600,000 for the defined twelve-month period, the Seller Note shall be reduced by $1.00 of consideration. The clawback shall be capped only by the closing value of the Seller Note.

    d. Earnout 1 – The Sellers shall be eligible to earn $1,000,000 of aggregate consideration (the "Earnout 1") based on achieving Adjusted EBITDA of $3,600,000 for the first twelve-month period after the deal. If earned, the Earnout 1 consideration will be paid in cash.

    e. Earnout 2 – The Sellers shall be eligible to earn up to $4,000,000 of aggregate consideration (the "Earnout 2") based on exceeding the Adjusted EBITDA floor of $3,600,000 for each of the first two twelve-month periods after the deal. For every $1.00 of Adjusted EBITDA the Company earns over $3,600,000 for each defined

twelve-month period, the Sellers shall earn an additional $1.00 of consideration. Aggregate consideration earned for both twelve-months periods shall be capped at $4,000,000. The Earnout 2 consideration will be paid 100% in a subordinated note, as earned. Terms of the subordinated note will mirror the Seller Note described in Section 3(c).

4. Management Team Investment – Upon the closing, we anticipate that the Sellers would roll over a portion of their transaction proceeds into the Buyer, representing at least 30% post-closing equity ownership in Buyer. The parties would work together to achieve the most tax-efficient structure. Any rollover investment from the shareholders would be invested in the same security as Bridge (i.e., on a pari passu basis).

5. Management Incentive Plan – We consider the Company's management team to be a significant driver of the Company's success, and we expect the team to remain a vital part of the Company going forward. We have a philosophy of partnering with key management members to align both x's and the key management members' interests. In order to promote the retention and future recruitment of members of the Company's management team, other key employees and independent board of directors' members, xintends to develop and implement an equity incentive program that would represent 5 – 10% of Buyer's fully diluted common equity (the "Management Incentive Pool"). Select members of the Company's senior management team would be entitled to grants under this program, with such grants subject to customary vesting terms and repurchase rights. xe would work with the team to determine the appropriate allocations but would anticipate leaving a portion of the pool unallocated to allow for continued growth in the senior leadership team.

6. Management Agreements – x recognizes the critical importance of x to the Company's continued success. On the closing date, each will receive a multi-year employment agreement, with such terms to be mutually agreed upon, including, salary (based on the adjusted cost structure as defined by the EBITDA adjustments in the Ferguson White information memorandum), benefits, and customary non-competition provisions.

7. Bonus Pool – Additionally, beginning in 2020, Bridge intends to develop and implement an annual bonus program based on the Company achieving and exceeding a yearly Adjusted EBITDA target, as set during the annual budgeting process. Once earned, it is anticipated that the senior leadership team would be responsible for determining the appropriate allocations of the bonus pool to the full management team.

8. Real Estate – On the closing date, the Buyer will assume the current leases or enter into new lease agreements associated with the operational real estate of the Company. Specifically associated with the x, it is anticipated that the Buyer will be granted flexible lease terms due to the team's potential desire to move the facility.

9. Capital Expenditures – x is excited to support the business plan and long-term growth prospects ofx. It is anticipated that Company will have sufficient access to capital to invest in its growth, including, but not limited to, capital for additional locations, equipment, infrastructure, trucks, systems and staff.

10. Internal Approvals – e has thoroughly reviewed and approved this LOI and is subject only to (a) satisfactory completion of confirmatory due diligence and (b) the negotiation and execution of Definitive Agreements. No further internal approvals will be required from our organization. In addition, we do not anticipate any regulatory impediments to the completion of the transaction.

11. Due Diligence – As you know xe has expended considerable time, effort and resources on its preliminary due diligence review. We stand ready to deploy the full resources of x and our external advisors/experts to complete financial, business and legal diligence based in accordance with the Estimated Process & Due Diligence Timeline in Schedule I. We are committed to move expeditiously toward the closing, including the completion of such diligence within the Exclusivity Period described below.

12. Fees and Expenses – Each party hereto will bear its own expenses in connection with the proposed transaction described in this LOI, regardless of whether the transaction is consummated.

13. Definitive Agreements – The proposal set forth above is subject to the additional terms and conditions to be set forth in definitive, legally binding written agreements to be negotiated and entered into by and among the parties (the "Definitive Agreements").

14. Exclusivity – Subsequent to the acceptance and execution of this LOI, x will incur substantial out-of-pocket expenses in connection with due diligence efforts and document preparation, including accounting and legal expenses. Understanding that x will be incurring these costs and expenses, the Company and the Sellers agree not to solicit, entertain or negotiate offers for the sale of the Company or a majority of the assets or equity of the Company which could adversely affect the closing from any other party for a period of sixty (60) days following the execution date of this LOI (the "Exclusivity Period").

15. Access and Cooperation – Until such time as this LOI has terminated in accordance with the provisions of paragraph 16 below, x shall provide x and its financing sources, and their respective advisors and representatives, with reasonable access to its employees, counsel, auditors, representatives, books, and records in order to complete our confirmatory due diligence investigation as outlined herein.

16. Termination – If so accepted, this LOI will terminate at the earliest of: (i) the execution by all parties of the Definitive Agreements; or (ii) the termination of the Exclusivity Period; provided that the provisions of Section 12 and 17, and the first sentence of Section 18 will survive any termination of this letter. Notwithstanding anything to the contrary in this paragraph, the termination of this letter will not affect any rights any party has with respect to the breach of this letter by another party prior to termination of this letter.

17. Confidentiality – Except to the extent necessary to obtain the consents required hereby, all parties to this LOI agree that the existence and terms of this LOI must be treated confidentially, and therefore each party agrees not to disclose its existence or terms without first obtaining the consent of Buyer prior to any such disclosure, that the parties hereto may disclose this LOI to their respective legal and accounting advisors and, with respect to Buyer, to its lender(s) and equity investors.

18. Miscellaneous – THIS LETTER AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, REGARDLESS OF THE LAWS THAT MIGHT OTHERWISE GOVERN UNDER APPLICABLE PRINCIPLES OF CONFLICTS OF LAW OR CHOICE OF LAW. This letter agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one agreement. The headings of the various paragraphs of this letter agreement have been inserted for reference only and shall not be deemed to be a part of this letter agreement. This letter agreement does not constitute a

binding agreement among xorx (or any of their respective affiliates or principals) to enter into a definitive purchase agreement or consummate the Transaction contemplated herein but does constitute a binding agreement between the parties hereto with respect to Section 12, 17 and the first sentence of Section 18. No party will have any obligation to close the proposed Transaction unless definitive purchase agreements are duly executed and delivered by all of the parties thereto (and then only if and when required pursuant to the terms thereof).

Our team has experienced success in the energy and industrial engineered products/services market place, and we believe that there could be an excellent opportunity to form a strong partnership with the x team to help achieve their goals.

As mentioned in our meetings, x is very selective in its approach, and we focus on situations that provide a high likelihood of mutual success. Our attraction to x is based upon x. We are impressed by what has been built thus far, would be excited to have them on our team, and strongly believe that our partnership model can help propel future success.

We are excited to take the next step towards long lasting partnership with x. If you have any questions regarding this proposal, please feel free to contact me on cell number at x

Sincerely,

x, LLC

By: _____
x, President

Accepted this ___ day of April, 2019

X

By: _____
x, Shareholder

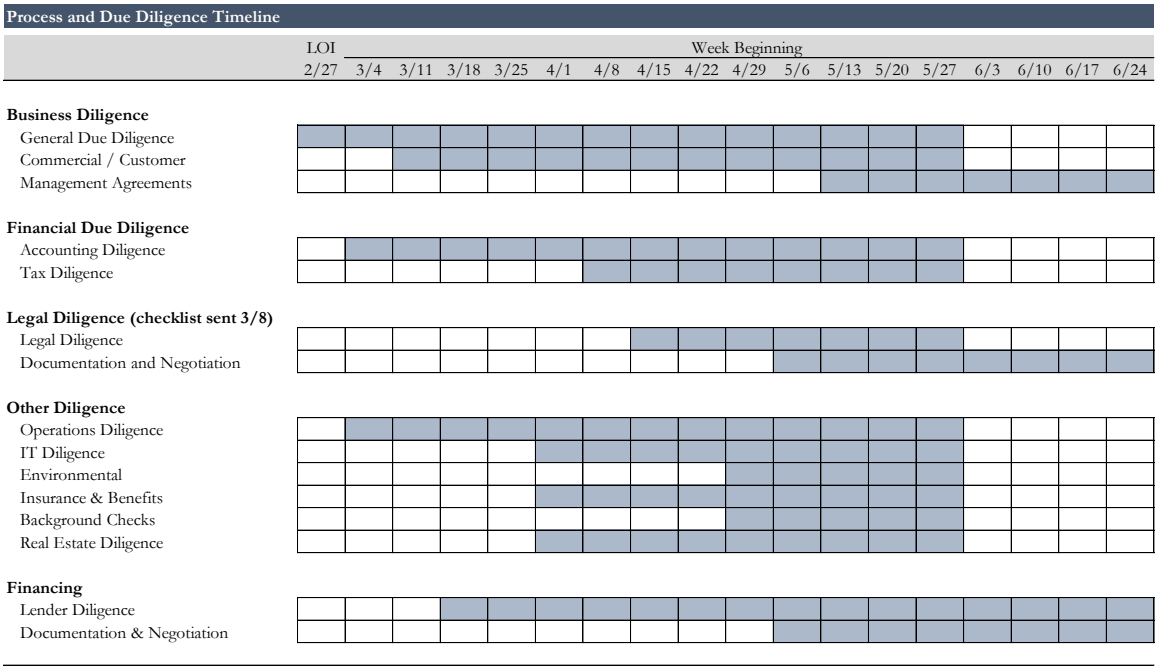
X, LLC.

By: _____

x

Schedule I

Estimated Process & Due Diligence Timeline



Appendix 3: Sample Offering Memorandum

The Offering Memorandum (OM) is effectively a book that describes the Company and includes financial information. The OM is formatted to objectively describe the business being sold but it is also a very important sales tool. The OM needs to surround the objective company information with all of the Company positives and most importantly highlight all of the Company characteristics that we know the buyers are specifically looking for and spin in a positive light any negatives that we see. The OM financial section also presents the selling Company's financial statements to the buyer/investor along with any adjustments and so the OM positions the buyer at the income/EBITDA/cash flow number that we want the buyer to use for valuation purposes. Imagine if you don't have an expert M&A firm preparing the seller's financials but instead simply send raw financials (unadjusted by M&A firm) to buyer thereby allowing the buyer to determine their own profit number for valuation purposes. I can tell you from first hand experience that their valuation profit number will be a lot lower that what the seller would like and the professional M&A firm will have prepared.

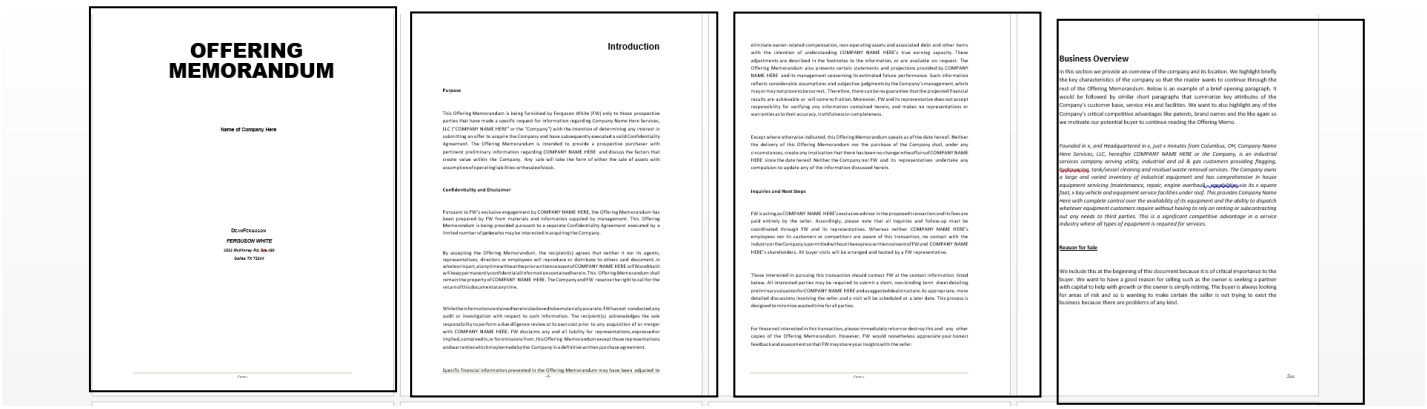
To continue with our overview of the importance of the OM, let's use an oilfield service company as an example and let's take it a step further and assume it is a company providing pipe hard banding services. Because the OM is a selling tool this is an area where it is very important to have a specialist M&A firm that knows what buyers are looking for and what they consider high risk. The OM is the primary document that buyers/investors will read before deciding if they want to pursue this acquisition and so you don't want an M&A firm crafting your OM that does not understand what buyers/investors in the industry are seeking and not seeking. As a quick example then, for our oilfield hardbanding company, the OM will want to highlight the following:

- Company services pipe used in "production" versus "drilling". Production wells are wells in place and already "producing" and hence should provide recurring service as opposed to pipe used for new drilling which we assume are not required after used for the drill in question or if reused certainly will not be used if and when drilling stops when oil prices fall.

  Our company manufactures its own proprietary equipment. The equipment is patented and performs better than other products on the market. We want to highlight this competitive advantage and also expand that the in house manufacturing provides the company with parts and the ability to service and repair the equipment immediately thereby never not able to service customers. Compare this to competitors that use inferior equipment and have service delays when equipment fails and they must wait for parts and service from the third party manufacturer.

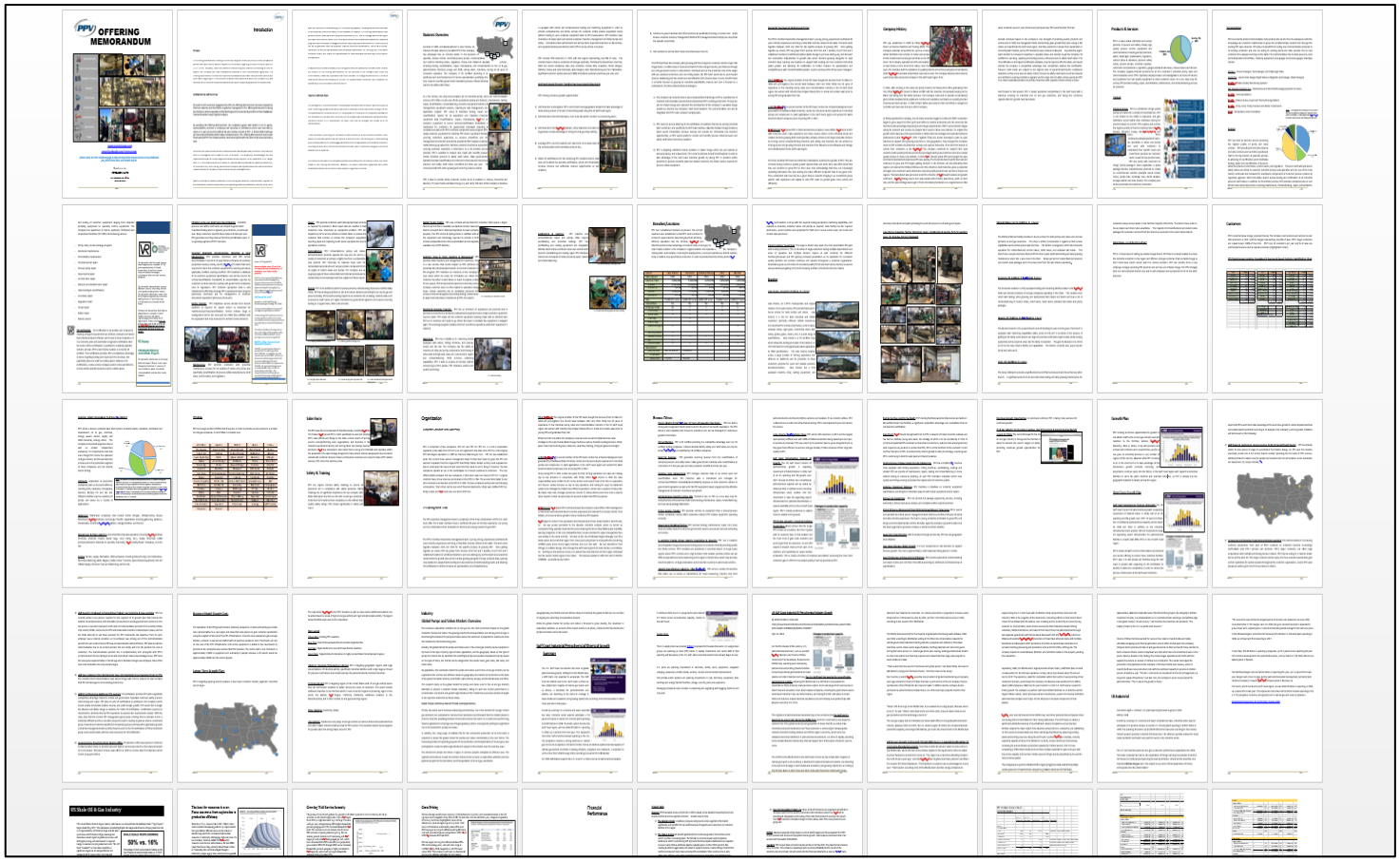
- The economics of hardbanding pipe versus buying new pipe are very attractive and its imperative that this is included in the OM so that investors understand that economically this Company's business model is in high demand.
-
- The business model of this company is very attractive to oilfield service company buyers because each service team requires minimal labor and the cost to manufacture the proprietary hardbanding equipment is minimal. Combine this with the number of jobs that can be performed per day and the business model with its low capital cost and labor costs related to growth is very acctractive. Its imperative to include these numbers in the OM so the investor can understand the attractiveness of growing this business.
-

These are examples of just some of the imperative characteristics of this oilfield service company that must be included in the OM to increase the probability that this Company is sold and that price is maximized via bringing multiple buyers to the table. Again it is imperative that the M&A firm you hire is either a specialist in your industry and knows enough that they can craft your OM



with all of the unique characteri

stics of your Company to get it sold.



Offering Memorandum Sections & Comments

1) Business Overview: A brief overview of the Company highlighting the Company's postive characteristics to ensure you really capture the attention of the reader.

2) Reason for Selling: We always want a positive reason for selling so the buyer is not fearful the owner is selling for fear he does not think the compay will be successful in the future. Positive reasons for selling include: retiring due to age, so much growth potential that the seller wants to bring in a partner with capital, etc.

3) Company History: If a Company has been in busines long enough the history can help the buyer understand how the business has growth. If there are major milestones where we can highlight times that the Company improved its competitiveness and the like it is always beneficial.

4) Products & Services: In this section we provide details of the Company's products and/or services. We want to highlight all areas of competitive advantage and/or barriers to entry.

5) Customers: We want to be able to summarize a large and diverse customer base. We hope there is no customer concentration which is always a major risk factor for buyers. Buyers prefer when customers are repeat and purchase year over year and don't leave for quality reasons.

6) Organization: This section provides an organization chart and a summary of employees by function.

7) Management Team: The quality of the management team is critical and so we want to provide brief summaries for key management team members that includes current areas of responsibility, years at company and in industry and prior related work experience.

8) Success Drivers: This is very important and where we want to highlight the factors that motivate customers to use this company over competitors. It could be patents, proprietary brands, high level of quality, better equipment, etc. This section is critical in motivating a potential acquirer to move forward with an acquisition.

9) Investment Highlights: Similar in importance to above, we want to highlight why this company would be a good acquisition. Reasons may include low capital investment needs, enormous growth opportunities, growing market for company services, etc.

10) Industry: Simply an overview of relevant industry factors. A good OM will tie the industry section here to the attractiveness of the acquisition For example if the Company's market is growing this will be included I the industry section.

11) Growth: A critical section as typically very few buyers want to invest in a company that is not growing. Its important to gain insight from the selling Company's management team regarding all areas for growth they envision. We want to summarize all of these potential areas for growth and often the more specific we can be in terms ofr financial projects the more the buyer will by in to the growth scneario in the OM.

12) Facilities: This section summarizes the Company's acreage, offices, production areas, and the like. Company's that "show well" typically have newer facilities that are well maintained and safe.

13) Financials: This section includes historical balance sheets and income statements as well as forecasted income statements and notes to all the financials. The goal in preparation of the income statements is that the M&A advisor maximizes the selling company's cash flow/EBITDA in the OM, after having made adjustments for non recurring and/or owner perk related expenses, in order to position the EBITDA on which the buyers will make their offers, thereby maximizing the value for the seller.

Appendix 4: Sample Business Profile (Teaser)

The business profile, or teaser as it is often referred to in the industry, is a short description of the Company designed to provide characteristics of the Company without disclosing who the company is. The business profile is sent to prospective purchasers along with an NDA. The goal is to provide the buyer with enough motivation in acquiring the company to sign and return the NDA so that they can receive the Offering Memorandum.

As with the Offering Memo, you want to have an experienced M&A professional with knowledge about your industry and the buyers therein to prepare the profile with enough selling company highlights to motivate the buyer to sign the NDA to receive the book.

We have seen profiles so bad that the best they do is highlight that a company for sale had sales increases of 10% last year, is located in the western USA, and has tremendous opportunities for growth. This is what I have actually seen from M&A professionals that should not be in the industry. Your advisor needs to highlight unique and industry specific competitive advantages and investment highlights such as: customer base of over 200 in a variety of industries; successfully operating for 75 years; proprietary equipment manufactured in house; low capital intensive business model; growth driven by growing number of USA wells in production with year over year incremental drilling, etc.

Available for Acquisition/Seeking Equity Partner for Growth

Window Manufacturing & Installation

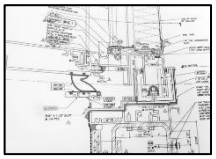
Fuller Service Commercial Glazing

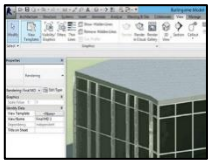
(Design/Engineering/Fabrication-Manufacturing/Installation)

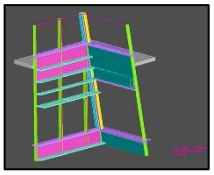
Revenue: $ 25 MM EBITDA: $ 6 MM Location: South

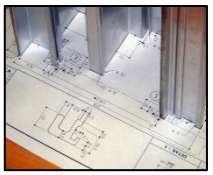
- **Specialized Niche Market with Limited Competition**
- **Elite Industry Size & Status (Reputation for Capabilities)**
- **In House CNC Manufacturing**: Seeking to add more CNC equipment for growth & Improve manufacturing process
- **In House Design & Engineering Team**: Latest Tech
- **Fragmented Industry**
- **Mgmt Team With 150 Yrs Combined Experience Remaining to Partner With Equity Group for Growth**
- **Database of Historical Projects From Which to Draw**
- **Complex Job Specialty (Highly Trained Specialized Employees-won't hire part time or contract labor)**
- **Backlog Signed Contracts = $35 mm/1.5 yrs**
- **Enormous Barriers to Entry:** Elite status in industry, management team experience, in house engineering & design capabilities /expertise /experience, expertise & experience in custom/complex/large projects, In house manufacturing, database of historical projects from which to draw, prime contractor relationships, specialized employee base of 90.
- **Enormous Growth Opportunities**: Customers asking for Company to grow into new geographic markets, additional CNC equipment needed to provide improved profit margins, new products & services.

Company seeking additional CNC/mfg equip & process improvements to increase profit margins & eliminate bottlenecks. The goal is to expand from current manufacturing/operations above to more efficient mfg similar to below.









- **Reason for Seeking Equity Partner**: This Company is facing numerous opportunities for growth and is at an inflection point in its growth cycle. The owner is seeking an equity partner with whom he can partner and get the capital and expertise to help the company get to the next level in terms of manufacturing processes & capabilities, geographic growth, technology, and other aspects of "corporatization" to move the company to the next level.

Current Design/Engineering Team Uses State of the Art Technology

Current Complex Specialty Installation Process

FERGUSON WHITE
3523 McKinney Rd
Dallas, TX 75204
Dean Ferguson, Partner
dferguson@fergusonwhite.com
www.fergusonwhite.com

FERGUSON WHITE
MERGERS & ACQUISITIONS

BUSINESS DESCRIPTION

Located in the southern United States, this Company is recognized as one of the elite full service glazing companies (would currently rank approximately #25 in Glazing Magazine's Top 25 Glazing Companies nationwide) in the southern United States. The Company just finished the largest interior glazing project in its region in history. As a full service window glass and glazing service company the Company provides comprehensive commercial, industrial and institutional glass and framing design/engineering, manufacturing and installation. The Company offers a wide range of customer glass and glazing services typical for the industry to the exterior and interior commercial, industrial and institutional markets. As a full service company, in house capabilities include glass and framing design based upon architectural renderings utilizing state of the art technology, aluminum framing & parts manufacturing utilizing state of the art CNC equipment, and complete glass and framing system installation enabling full control of the entire process and ensuring timely service, superior product quality and overall safety.

The Company services a diverse customer base of commercial, industrial and institutional clients through primarily a group of repeat prime contractors. Approximately 70% are negotiated contracts versus 30% that are pure competitive bid. The reason that so many contracts are negotiated versus competitive bid is that there are not many glazing competitors in the region with the comprehensive capabilities, successful track record with large sophisticated projects, and expertise and size to execute highly complex and large full service (design, build, install) jobs that can the Company. The Company estimates that it wins approximately 25% of its pure competitive bid situations. Backlog of projects is currently $35 million, or 1.5 years of revenue.

The Company employs 90 full time people (does not hire part time or contract labor due to specialty nature of work) at its headquarters in a brand new state of the art 16,200 square foot state of the art facility on 1.79 acres built in 2015.The facility has 4,000 square feet of offices and 12,200 square feet of fabrication and warehouse space with 3 bay doors facilitating vehicle access.

Reason for Sale/Recapitalization: The Company has enormous opportunities for growth as well as internal opportunities to reduce process time and manufacturing bottlenecks and increase profit margins via adding additional state of the art manufacturing equipment. In addition the Company has outgrown its current facility (much of its inventory has to be housed outside the facility to provide enough internal space for manufacturing). As such the Company is at an inflection point in its development and growth and the owner is looking to an equity partner with the capital and expertise to help him take the Company to the next level.

assurance that any projected results are attainable or will be realized. Ferguson White does not assume responsibility for verifying any of such statements, estimates, information and projections, and neither the Company nor Ferguson White makes any representations or warranties as to their accuracy, truthfulness or completeness. Except where otherwise indicated, this Confidential Business Profile speaks as of the date hereof. Neither the delivery of this Confidential Business Profile nor the purchase of the Company shall, under any circumstances, create any implication that there has been no change in the affairs of the Company since the date hereof. In furnishing this Confidential Business Profile, neither the Company nor Ferguson White undertakes any obligation to update any of the information contained herein.

FERGUSON | WHITE

MERGERS & ACQUISITIONS

To: Dean Ferguson
Email: Dferguson@fergusonwhite.com
From: _____
(Please print)

CONFIDENTIALITY AGREEMENT

Client: Full Service Glazing

This Confidentiality Agreement ("Agreement") will confirm our mutual understanding in connection with Ferguson White ("Ferguson White") providing, and your receipt of, information regarding the number-designated Company listed above ("The Company").

1. Information means all oral or written data, reports, records or materials ("Information") obtained from Ferguson White or The Company, including the name, address and type of business of The Company, the knowledge that The Company may be considering a sale, or even the fact that Information has been provided. Information shall not include, and all obligations as to non-disclosure by the undersigned shall cease to any part of, such Information to the extent that such Information: (i) is or becomes public other than as a result of acts by the undersigned; (ii) can be shown was already known to the undersigned at the time of its disclosure hereunder; (iii) is independently obtained by the undersigned from a third party having no duty of confidentiality to The Company; (iv) is independently developed by the undersigned without use of any Information supplied hereunder; or (v) is obligated to be disclosed pursuant to applicable law, regulation or legal process.

2. Information is being furnished solely in connection with your consideration of the acquisition of The Company and shall be treated as "secret" and "confidential" and no portion of it shall be disclosed to others, except to those of your employees and agents whose knowledge of the Information is required for you to evaluate The Company as a potential acquisition and who shall assume the same obligations as you under this Agreement. The undersigned hereby assumes full responsibility for the compliance of such employees or agents to the terms of this Agreement.

   The undersigned further agrees that it will not interfere with any business of The Company through the use of any Information or knowledge acquired under this Agreement nor use any such Information for its own account.

3. It is understood that The Company is the intended party and beneficiary whose rights are being protected and may enforce the terms of this Agreement as if it were a party to this Agreement.

4. All Information shall be promptly returned or destroyed, as directed by Ferguson White or The Company.

5. It is understood that: (a) no representations or warranties are being made as to the completeness or accuracy of any Information; and (b) any and all representations and warranties shall be made solely by The Company in a signed acquisition agreement or purchase contract and then be subject to the provisions thereof.

6. The undersigned acknowledges the responsibility to perform a due diligence review at its own cost and expense prior to any acquisition.

7. The respective obligations of the parties under this Agreement shall survive for a period of two years following the date hereof.

8. Ferguson White and its affiliates may publicize any transaction between you and the Company, at its own expense, and you grant Ferguson White and its affiliates the right to use your name and logo and disclose relevant public information in connection therewith; provided that Ferguson White will submit a copy of any advertisement to be placed in a periodical of general circulation to you for approval, which approval shall not be unreasonably withheld or delayed.

Name (please print): _____ Title: _____

Company: _____

Address: _____ Tel: _____

_____ Fax: _____

(City, State, Zip)

Email: _____

Signature: _____

Date: _____