UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SCHOOL SPECIALTY, INC., *et al.*,	Case No. 13-10125 (PJW)
Debtors.[1]	Joint Administration Requested
	Hearing Date: TBD **Objection Deadline: TBD**

DEBTORS' MOTION FOR ENTRY OF (A) AN ORDER (I) SCHEDULING HEARING ON APPROVAL OF ASSET SALE, ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS TO BAYSIDE SCHOOL SPECIALTY, LLC (OR ITS ASSIGNEE) AND ASSUMPTION OF CERTAIN LIABILITIES, AND (II) APPROVING BIDDING PROCEDURES, ASSUMPTION & ASSIGNMENT PROCEDURES, BREAKUP FEE AND EXPENSE REIMBURSEMENT, AND FORM AND MANNER OF NOTICE THEREOF; AND (B) AN ORDER (I) APPROVING THE ASSET PURCHASE AGREEMENT; (II) AUTHORIZING THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS OR ENCUMBRANCES; (III) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (IV) GRANTING RELATED RELIEF

School Specialty, Inc. ("School Specialty") and its affiliated debtors and debtors-in-possession (each a "Debtor" and collectively the "Debtors") file this motion (this "Motion")[2] for the entry of (a) an order, substantially in the form attached hereto as **Exhibit A** (the "Bidding Procedures Order"), (i) scheduling a hearing (the "Sale Hearing") on approval of its asset sale, assumption and assignment of executory contracts, to Bayside School Specialty, LLC (or its assignee) (the "Proposed Purchaser" or the "Purchaser," as applicable) and assumption of certain

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number and state of incorporation, are: School Specialty, Inc. (Wisc.; 1239), Bird-In-Hand Woodworks, Inc. (N.J.; 8811), Califone International, Inc. (Del.; 3578), Childcraft Education Corp. (N.Y.; 9818), ClassroomDirect.com, LLC (Del.; 2425), Delta Education, LLC (Del.; 8764), Frey Scientific, Inc. (Del.; 3771), Premier Agendas, Inc. (Wash.; 1380), Sax Arts & Crafts, Inc. (Del.; 6436), and Sportime, LLC (Del.; 6939). The address of the Debtors' corporate headquarters is W6316 Design Drive, Greenville, Wisconsin 54942.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement, or the Bidding Procedures, as applicable.

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liabilities; (ii) approving proposed bidding and sale procedures (the "Bidding Procedures"), proposed assumption and assignment procedures (the "Assumption and Assignment Procedures"), the Breakup Fee (defined below) and the Expense Reimbursement (defined below), and form and manner of notice thereof; and (b) an order, substantially in the form attached hereto as **Exhibit B** (the "Sale Order"), (i) approving an asset purchase agreement, substantially in the form attached hereto as **Exhibit C** (the "Asset Purchase Agreement"), for the sale of all or substantially all of the assets of the Debtors to the Purchaser or to the Prevailing Bidder (defined below) to be identified at the Auction (defined below), (ii) authorizing the sale of all or substantially all of the assets of the Debtors free and clear of all Liens, Claims, Interests or Encumbrances (other than Permitted Liens), (iii) authorizing the assumption and assignment of certain executory contracts and unexpired leases (the "Assigned Contracts") to the Purchaser or the Prevailing Bidder, and (iv) granting related relief. In support of this Motion, the Debtors rely on the Declaration of Gerald T. Hughes in Support of Chapter 11 Petitions and First Day Relief (the "First Day Declaration")[3] and respectfully state as follows:

Jurisdiction and Venue

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory bases for the relief requested herein are sections 105(a), 363, 365, 503 and 507 of the Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), Rules 2002, 3007, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the

[3] The First Day Declaration is being filed substantially contemporaneous with this Motion and is incorporated herein by reference.

"Bankruptcy Rules"), and Rules 6004-1 and 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Bankruptcy Rules").

Background

3. As described in the First Day Declaration, School Specialty is the largest supplier of educational products and equipment to the pre-kindergarten through twelfth grade market in the United States. School Specialty offers more than 75,000 different items, including basic school supplies, furniture, and proprietary branded products such as agendas and curriculum programs, for sale to public school districts, individual private and parochial schools, educators and individual customers. School Specialty believes that, in fiscal year 2012, it supplied approximately 70% of the estimated 130,000 schools in the United States, reaching a majority of the 3.8 million teachers at those schools. School Specialty maintains their corporate headquarters in Greenville, Wisconsin, and leases or owns a total of 15 facilities throughout the country. As of the date hereof (the "Petition Date"), the Debtors employed approximately 2,000 employees, including approximately 300 seasonal employees.

4. The global financial crisis that began in 2008 has had an extremely negative impact on the funding that is available for schools at all levels of government. Faced with diminishing funding, school districts have been forced to take dramatic steps to reduce spending. This has caused a material and ongoing reduction in the overall size of the school-supply market in which the Debtors operate. Consequently, the Debtors have experienced a dramatic downturn in their financial performance.

5. As a result of this downturn and increasing pressure on their liquidity position, on January 4, 2013, the Debtors reported that they were not in compliance with the month-end $20.0 million minimum liquidity covenant (the "Minimum Liquidity Covenant") under both their

revolving senior secured asset-based credit facility agreement (as amended, modified, and/or restated from time to time, the "ABL Agreement") between School Specialty and certain of its subsidiaries, as borrowers, Wells Fargo Capital Finance, LLC, as administrative agent, and certain financial institutions, as lenders (the "ABL Lenders") and their term loan agreement (as amended, modified, and/or restated from time to time, the "Term Loan Agreement" and, together with the ABL Agreement, the "Prepetition Loan Agreements") among School Specialty and certain of its subsidiaries, as borrowers, and Bayside Finance, LLC, as administrative agent, collateral agent and lender ("Bayside"). The Debtors' failure to satisfy the Minimum Liquidity Covenant triggered events of default under the Prepetition Loan Agreements.

6. On January 4, 2013, Bayside exercised its right to accelerate the debt and declare the amounts outstanding under the Term Loan Agreement immediately due and payable. However, pursuant to negotiated forbearance agreements dated as January 4, 2013 (the "Forbearance Agreements"), both Bayside and the ABL Lenders agreed to forebear from exercising their rights with respect to the Debtors' breach of the Minimum Liquidity Covenant until the earlier of February 1, 2013 and certain specified events.

7. The Forbearance Agreements reduced the Minimum Liquidity Covenant in the Prepetition Loan Agreements from $20.0 million to $3.0 million. In exchange, the Forbearance Agreements required that the Debtors, among other things, engage and appoint a Chief Restructuring Officer ("CRO"). The Debtors selected Thomas E. Hill from Alvarez & Marsal North America, LLC to serve as the Debtors' CRO.

8. After careful review of strategic alternatives and extensive, good faith, and arm's-length negotiations with Bayside and the ABL Lenders regarding a consensual path forward premised upon a long-term solution to the Debtors' capital structure and liquidity challenges, the

Debtors, in consultation with the CRO and their legal and financial advisors, determined that an orderly sale of the Debtors' assets would likely provide the most effective and efficient means to maximize a return for the Debtors, their estates, and all parties in interest. Moreover, Bayside's postpetition financing proposal was conditioned on certain milestones, including a sale of all or substantially all of the Debtors' assets by way of a section 363 auction process, with Bayside or its affiliate serving as the stalking horse bidder. The milestones set forth in the DIP Credit Agreement were hotly contested and strenuously negotiated and are an integral part of the sales process.

9. On the Petition Date, each of the Debtors filed a petition with the Court under chapter 11 of the Bankruptcy Code to permit them to effectuate a sale of their assets to the Purchaser. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated. Concurrently with the filing of this Motion, the Debtors have requested procedural consolidation and joint administration of these chapter 11 cases.

The Debtors' Efforts to Sell Substantially All of Their Assets

10. Prior to the Petition Date, the Debtors and their advisors explored multiple strategic alternatives, including the sale of all or specific portions of the Debtors' operations, a new debt or equity infusion, and a comprehensive restructuring of the Debtors' balance sheet. To assist the Debtors' management and board of directors in their evaluation of these alternatives, the Debtors engaged Perella Weinberg Partners ("Perella Weinberg") as financial advisors in late October 2012. In connection with the parties' negotiations of the Forbearance Agreements, the parties also engaged in extensive negotiations regarding a possible sale of the

Debtors' assets. With the help of Perella Weinberg, the Debtors began to explore the sale of all or specific portions of the Debtors' operations, and developed a list of parties who they believed might potentially be interested in a purchase of the Debtors' assets and who the Debtors reasonably believed would have the financial resources to consummate a sale. During the course of the Debtors' negotiations of the Forbearance Agreements, however, it became clear that a sale of the Debtors' assets to the Purchaser would maximize the value of the Debtors' estates.

11. Specifically, Bayside, the Debtors' prepetition term loan lender, indicated an interest in acquiring substantially all of the Debtors' assets through a credit bid of its secured debt under the Term Loan Agreement and the DIP Credit Agreement. To facilitate an orderly sale process, Bayside, together with the agent under the ABL Agreement, is funding the Debtors' postpetition financing (the "DIP Facilities"). The DIP Facilities are comprised of (a) a $175,000,000 revolving loan facility from the ABL Lenders (the "ABL DIP Facility") and (b) a $50,000,000 incremental term loan from Bayside and the roll up of approximately $94,667,000 of prepetition term loan debt (collectively, the "Bayside DIP Facility"). The Debtors are separately seeking this Court's approval of the DIP Facilities.

12. To ensure the Debtors receive the highest or best offer for the sale of their assets in their chapter 11 cases, once the bidding and auction procedures are approved by the Court, the Debtors, together with Perella Weinberg, will launch a marketing process and contact a wide range of potential strategic investors and financial investors, including existing stakeholders, that might be interested in purchasing some or all of the Debtors' assets. To the extent the Debtors receive competitive offers, based on the qualification criteria described below, the Debtors intend to utilize section 363 of the Bankruptcy Code to host an auction to determine the highest or best bid for the Debtors' assets. The primary purpose of the sale process will be to provide for a sale

of substantially all of the Debtors' assets and operations as a going concern to the party that submits the highest or best offer in accordance with the Bidding Procedures (as described more fully below).

The Asset Purchase Agreement[4]

13. The Debtors have engaged in extensive, good faith and arm's-length negotiations with the Purchaser regarding the terms of the Asset Purchase Agreement. These negotiations culminated in the execution of the Asset Purchase Agreement with the Purchaser on January 28, 2013. The Debtors believe that, subject to the receipt of higher or better proposals through the Bidding Procedures, the Asset Purchase Agreement represents the best alternative currently available to the Debtors.

14. The Asset Purchase Agreement contemplates the sale of the Acquired Assets, subject to higher or better bids, on the following material terms:

(a) **Proposed Purchaser**: Bayside School Specialty, LLC, a Delaware limited liability company.

(b) **Sellers**: School Specialty, Inc., a Wisconsin corporation, and each of its Subsidiaries listed on the signature pages of the Asset Purchase Agreement (each a "Seller" and collectively, the "Sellers").

(c) **Purchase Price**:

i. As set forth in Section 3.1 of the Asset Purchase Agreement, the purchase price (the "Purchase Price") for the purchase, sale, assignment and conveyance of Sellers' right, title and interest in, to and under the Acquired Assets to Purchaser or its Designees shall consist of: (i) an amount equal to $95,000,000, which amount shall be payable in the form of a credit bid of an amount of the obligations then outstanding under the DIP Credit Agreement and the Term Loan Agreement (such amount as may be increased pursuant to Section 3.1(b) of the Asset Purchase

[4] The summary of the Asset Purchase Agreement contained in this Motion is qualified in its entirety by reference to the Asset Purchase Agreement, substantially in the form attached as Exhibit C hereto. Any conflict between the terms described in this Motion and the Asset Purchase Agreement shall be resolved in favor of the Asset Purchase Agreement and any court order approving the Debtors' entry into the Asset Purchase Agreement. Moreover, per Local Bankruptcy Rule 6004-1(b), the Debtors are required to highlight certain provisions of the Asset Purchase Agreement.

Agreement, the "Credit Bid Amount"); (ii) unless such obligations have been assumed by the Purchaser pursuant to Section 2.3(e) of the Asset Purchase Agreement, an amount in cash equal to the outstanding obligations under the ABL Agreement; and (iii) the assumption by Purchaser of the Assumed Liabilities.

ii. For the avoidance of doubt, at any time, and from time to time, during the Auction, Purchaser may increase the Purchase Price, including by increasing the Credit Bid Amount to the full amount then outstanding and owing under the DIP Credit Agreement and the Term Loan Agreement and or paying additional cash consideration.

(d) **Sale Free and Clear**: As set forth in Section 2.1 of the Asset Purchase Agreement, the sale of the Acquired Assets shall be free and clear of all Liens, Claims, Interests or Encumbrances (other than Permitted Liens).

(e) **Closing and Other Deadlines**: Pursuant to Section 11.1(c) of the Asset Purchase Agreement, the Asset Purchase Agreement may be terminated at any time prior to the consummation and effectuation of the transactions contemplated in the Asset Purchase Agreement pursuant to the terms and conditions therein (the "Closing") by the Purchaser, if, among other things:

i. the Court has not entered (A) an interim order with respect to the DIP Credit Agreement within three (3) business days of the Petition Date and (b) a final order with respect to the DIP Credit Agreement within thirty (30) days of the Petition Date, in each case, (x) which date Purchaser may waive or extend in its sole discretion and (y) in form and substance acceptable to Purchaser in its sole discretion;

ii. the Bidding Procedures Order shall not have been entered by February 8, 2013, unless agreed to in writing by Purchaser;

iii. the Auction has not commenced by March 25, 2013, unless agreed to in writing by Purchaser;

iv. the Court has not entered the Sale Order by March 27, 2013 (or such later date as Purchaser may have designated in writing to School Specialty); or

v. the Closing shall not have occurred by April 11, 2013, and such failure to close is not caused by or the result of Purchaser's breach of the Asset Purchase Agreement.

(f) **Breakup Fee and Expense Reimbursement**: Pursuant to Section 11.3 of the Asset Purchase Agreement:

i. If the Asset Purchase Agreement is terminated pursuant to Section 11.1(b)(ii) or Section 11.1(b)(iii), then Purchaser shall be deemed to have earned an amount equal to $2,850,000 (the "Breakup Fee"). Additionally,

if the Asset Purchase Agreement is terminated pursuant to Section 11.1(c)(v) due to a material violation or breach of any representation, warranty or covenant contained therein that is within the control of Sellers and within nine (9) months after such termination, Sellers consummate an Alternate Transaction, then Purchaser shall be deemed to have earned the Breakup Fee. The Breakup Fee shall be paid in cash, without further order of the Bankruptcy Court, immediately following the consummation of the Alternate Transaction.

ii. If the Asset Purchase Agreement is terminated pursuant to any provision of Section 11.1 other than Section 11.1(d), then Purchaser shall be deemed to have earned the reasonable out-of-pocket costs, fees and expenses (including legal, financial advisory, accounting and other similar costs, fees and expenses) incurred by Purchaser or its Affiliates (other than Sellers) in connection with the negotiation, documentation and implementation of the Asset Purchase Agreement and the transactions contemplated thereby and all proceedings incident thereto (the "Expense Reimbursement"). Provided that under no circumstances shall the amount of the Expense Reimbursement exceed $1,000,000 in the aggregate. The Expense Reimbursement shall be paid in cash, without further order of the Bankruptcy Court, promptly following such termination.

iii. The parties acknowledge that the agreements contained in Section 11.3 of the Asset Purchase Agreement are an integral part of the transactions contemplated by the Asset Purchase Agreement and that without these agreements neither Sellers nor Purchaser would enter into this Agreement.

iv. Payments pursuant to Section 11.3 of the Asset Purchase Agreement shall be an administrative expense priority obligation under Section 364(c)(1) of the Bankruptcy Code with priority over all expenses of the kind specified in Sections 503(b) and 507 of the Bankruptcy Code, subject to any super-priority claims of Sellers' post-petition lenders, and in all circumstances subject to the rights of the lenders under the Term Loan Agreement and the DIP Credit Agreement.

(g) **Exclusivity**: Section 6.6 of the Asset Purchase Agreement provides that for the period beginning on the Execution Date until the date of the Court's approval and entry of the Bidding Procedures Order, Sellers and their respective Affiliates and Related Persons shall not, directly or indirectly, (i) solicit, initiate discussions with or engage in negotiations with any Person (whether such negotiations are initiated by Sellers or otherwise), other than Purchaser and its Affiliates, relating to the acquisition of any of the Acquired Assets (other than sales of inventory and dispositions of assets, in each case in the ordinary course of business), whether by way of purchase of equity or assets or otherwise (a "Potential Transaction"); or (ii) enter into an agreement, letter of intent or similar document (whether or not binding) with any Person, other than Purchaser or its Affiliates, providing for or relating to any Potential Transaction. If Sellers or their respective Affiliates or

Related Persons receive an inquiry, offer or proposal relating to any of the above (unsolicited or otherwise), Sellers shall immediately notify Purchaser in writing. Upon the execution and delivery of this Agreement, Sellers and their respective Affiliates and Related Persons shall immediately cease all discussions, negotiations and communications with all other Persons regarding any Potential Transaction.

(h) **Tax Exemption**: The Asset Purchase Agreement does not claim any specific exemption from Transfer Taxes. Rather, Section 7.1 of the Asset Purchase Agreement provides that the Purchaser shall promptly pay directly to the appropriate Tax Authority all applicable Transfer Taxes that may be imposed upon or payable or collectible or incurred in connection with the Asset Purchase Agreement or the transactions contemplated therein, or that may be imposed upon or payable or collectible or incurred in connection with the transactions contemplated by this Agreement. Section 7.2 of the Asset Purchase Agreement provides that in the event that Sellers elect to file a plan of reorganization or liquidation in conjunction with the transactions contemplated by the Asset Purchase Agreement, Purchaser and Sellers covenant and agree that they will use their reasonable best efforts to obtain an order from the Court pursuant to section 1146 of the Bankruptcy Code exempting, to the maximum extent possible, the Transfer of the Acquired Assets from Sellers to Purchaser from any and all Transfer Taxes. To the extent the transactions contemplated by the Asset Purchase Agreement or any portion of the transactions contemplated by the Asset Purchase Agreement are not exempt from Transfer Taxes under section 1146 of the Bankruptcy Code, Purchaser shall be responsible for and shall pay all Transfer Taxes in accordance with Section 7.1 of the Asset Purchase Agreement. Purchaser and Sellers shall cooperate in providing each other with any appropriate certification and other similar documentation relating to exemption from Transfer Taxes (including any appropriate resale exemption certifications), as provided under applicable Law.

(i) **Record Retention**: As set forth in Section 6.1(b) of the Asset Purchase Agreement, Sellers shall (i) provide Purchaser and its Related Persons reasonable access, upon reasonable notice and during normal business hours, to the Facilities, offices and personnel of Sellers and to the books and records of Sellers, related to the Business or the Acquired Assets as reasonably requested by Purchaser if reasonably necessary to comply with the terms of this Agreement or the Ancillary Agreements or any applicable Law; (ii) furnish Purchaser with such financial and operating data and other information with respect to the condition (financial or otherwise), businesses, assets, properties or operations of Sellers related to the Business as Purchaser shall reasonably request; and (iii) permit Purchaser to make such reasonable inspections and copies thereof as Purchaser may require; provided, however, that (A) any such access shall be conducted in a manner not to unreasonably interfere with the businesses or operations of Sellers or the duties of any Employee, (B) such access or information shall not, based on advice of counsel to the Sellers, result in the waiver of any attorney-client privilege and (C) neither Purchaser nor any of its Related Persons shall conduct or cause any

invasive sampling or testing with respect to the Owned Real Property or the Leased Real Property without the prior written consent of Sellers (in their sole discretion).

(j) **Acquisition of Avoidance Actions**: Section 2.1 of the Asset Purchase Agreement provides for the Purchaser to acquire the estates' causes of action under chapter 5 of the Bankruptcy Code.

Bidding Procedures[5]

15. The Debtors propose to solicit bids for the Acquired Assets utilizing the Bidding Procedures summarized below. The Bidding Procedures describe, among other things, the assets available for sale, the manner in which bids become "qualified," the coordination of diligence efforts among bidders and the Debtors, the receipt and negotiation of bids received, the conduct of any auction, and the selection and approval of the Prevailing Bidder.

16. The Bidding Procedures (as summarized below) were developed consistent with the Debtors' competing needs to conduct an expedited sale process, to promote participation and active bidding, and to comply with the terms and conditions of the DIP Facilities. The Bidding Procedures reflect the Debtors' objective of conducting the Auction in a controlled, but fair and open, manner while ensuring that the highest or best bid is generated for the Acquired Assets.

17. The following sets forth a summary of the key provisions of the Bidding Procedures:

(a) **Qualification as Bidder**: Any person that wishes to participate in the bidding process (each, a "Potential Bidder") must become a "Qualifying Bidder." As a prerequisite to becoming a Qualifying Bidder (and, thus, being able to conduct due diligence), a Potential Bidder: (i) must deliver an executed confidentiality agreement substantially in the form of Exhibit 2 attached to the Bidding Procedures; and (ii) must be able, as reasonably determined by the Debtors, to demonstrate the financial wherewithal to consummate a transaction if selected as

[5] The summary of the Bidding Procedures contained in this Motion is qualified in its entirety by reference to the Bidding Procedures, as set forth in the Bidding Procedures Order. Any conflict between the terms described in this Motion and the Bidding Procedures shall be resolved in favor of the Bidding Procedures, as set forth in the Bidding Procedures Order. Moreover, per Local Bankruptcy Rule 6004-1(b) and (c), the Debtors are required to highlight certain provisions of the Bidding Procedures.

the successful bidder for the Acquired Assets. The Proposed Purchaser is deemed a Qualifying Bidder and the Asset Purchase Agreement constitutes a Qualifying Bid (defined below) for all purposes.

(b) **Due Diligence**: The Debtors may afford reasonable due diligence access and the time and opportunity to conduct reasonable due diligence to any Qualifying Bidder. The due diligence period shall extend through and include the Bid Deadline (defined below). The Debtors and their representatives may but shall not be obligated to furnish any due diligence information after the Bid Deadline.

For any Qualifying Bidder who is a competitor of the Debtors or is affiliated with any competitor of the Debtors, the Debtors reserve the right, in consultation with their advisors, to withhold or limit access to any due diligence information that the Debtors determine is business-sensitive or otherwise not appropriate for disclosure to such Qualifying Bidder.

Due diligence access may include such management presentations as may be scheduled by the Debtors, access to the virtual data room, and such other matters which a Qualifying Bidder may reasonably request and as to which the Debtors may agree. The Debtors will designate a representative of Perella Weinberg to coordinate all reasonable requests for additional information and due diligence access from Qualifying Bidders. Qualifying Bidders are advised to exercise their own discretion before relying on any information regarding the Acquired Assets provided by anyone other than the Debtors or their representatives.

Each bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Acquired Assets prior to submitting its bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Acquired Assets, or the completeness of any information provided in connection with the bidding process outlined in the Bidding Procedures, except as expressly stated in the definitive purchase agreement, if any, between such bidder and the Debtors.

(c) **Bid Requirements**:

i. *Qualified Bid.* To be deemed a "Qualifying Bid," a bid must be received from a Qualifying Bidder by a date no later than the Bid Deadline and satisfy each of the following requirements (each, a "Bid Requirement"):

a. be in writing;

b. set forth the purchase price to be paid by such bidder (or in the case of the Proposed Purchaser, the Credit Bid Amount);

c. not propose payment in any form other than cash (or in the case of the Proposed Purchaser, a credit bid);

d. state the liabilities proposed to be paid or assumed by such bidder;

e. state that such Qualifying Bidder offers to purchase all or any portion of the Acquired Assets upon the terms and conditions substantially as set forth in the Asset Purchase Agreement and be accompanied by a clean and duly executed purchase agreement (the "Modified Asset Purchase Agreement") and a marked Modified Asset Purchase Agreement reflecting any variations from the Asset Purchase Agreement executed by the Proposed Purchaser;

f. state that such Qualifying Bidder's offer is irrevocable until the closing of the Asset Sale if such Qualifying Bidder is the Prevailing Bidder or the Second-Highest Bidder (defined below);

g. state that such Qualifying Bidder is financially capable of consummating the transactions contemplated by the Modified Asset Purchase Agreement and provides written evidence in support thereof;

h. contain such financial and other information to allow the Debtors to make a reasonable determination as to the Qualifying Bidder's financial and other capabilities to consummate the transactions contemplated by the Modified Asset Purchase Agreement, including, without limitation, such financial and other information setting forth adequate assurance of future performance under contracts and leases to be assumed pursuant to section 365 of the Bankruptcy Code in a form requested by the Debtors to allow the Debtors to serve, within one (1) business day after such receipt, such information on counter-parties to any contracts or leases being assumed or assumed and assigned in connection with the proposed sale that have requested, in writing, such information;

i. identify with particularity each and every executory contract and unexpired lease, the assumption and, as applicable, assignment of which is a condition to closing;

j. commit to, at the earlier of (i) the entry of the Sale Order and (ii) within 48 hours of the closing of the Auction, (x) repay Bayside by wire transfer of immediately available funds, the full amount of any obligations owed to Bayside under the Bayside DIP Facility, including any fees that may be payable, and (y) assume or arrange for a suitable third party to assume all of the rights and ongoing funding obligations (if any) of Bayside under the Bayside DIP

Facility (and the Debtors shall simultaneously grant a full release to Bayside with respect to the Bayside DIP Facility);

k. unless otherwise agreed to by the Wells DIP Agent (defined below), commit to, at the earlier of (A) the entry of the Sale Order and (B) within 48 hours of the closing of the Auction, repay, by certified check drawn on a domestic bank or wire transfer of immediately available funds, all amounts, including any fees that may be payable, outstanding under the ABL DIP Facility with Wells Fargo Capital Finance, LLC or an affiliate acting as administrative agent (in such capacity, the "Wells DIP Agent") for itself and a syndicate of financial institutions;

l. not request or entitle such Qualifying Bidder to any break-up fee (other than the Breakup Fee that only the Proposed Purchaser is entitled to receive), expense reimbursement (other than the Expense Reimbursement that only the Proposed Purchaser is entitled to receive) or similar type of payment;

m. fully disclose the identity of each entity that will be bidding in the Asset Sale or otherwise participating in connection with such bid, and the complete terms of any such participation;

n. result in a value to the Debtors' estates that is more than the aggregate of the value of the sum of: (i) the Credit Bid Amount set forth in the Asset Purchase Agreement; plus (ii) the assumed liabilities, as identified in the Asset Purchase Agreement; plus (iii) $4,500,000 (the "Initial Overbid Amount");

o. (i) does not contain any financing contingencies of any kind; (ii) provides for expiration of any due diligence contingency on or before the day that is one (1) day prior to the Auction Date (defined below); and (iii) contains evidence that the Qualifying Bidder has received debt and/or equity funding commitments or has financial resources readily available sufficient in the aggregate to consummate the Asset Sale, which evidence is reasonably satisfactory to the Debtors;

p. sets forth each regulatory and third-party approval required for the bidder to consummate its purchase, and the time period within which the bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than 15 days following execution and delivery of an asset purchase agreement, those actions the bidder will take to ensure receipt of such approval(s) as promptly as possible);

q. includes a commitment to close on or before April 11, 2013 (the "Projected Closing Date") subject to any regulatory approvals;

r. provides for the Qualifying Bidder to serve as a backup bidder (the "Second-Highest Bidder") if it is the next highest and best bid after the Prevailing Bid (the "Second-Highest Bid") in accordance with the terms of the Asset Purchase Agreement or Modified Asset Purchase Agreement, as applicable;

s. includes evidence of authorization and approval from the Qualifying Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of the Modified Asset Purchase Agreement;

t. provides for liquidated damages in the event of the bidder's breach of contract under the Modified Asset Purchase Agreement equal to the deposit; and

u. provides a cash purchase deposit equal to ten percent (10%) of the purchase price contained in the Modified Asset Purchase Agreement; provided, however, that the Proposed Purchaser is not required to make a cash deposit.

A competing bid satisfying all the above requirements, as determined by the Debtors in their reasonable business judgment, shall constitute a Qualifying Bid. For the avoidance of doubt, no waiver of any Bid Requirement shall be permitted without the consent of the Proposed Purchaser. Each Potential Bidder submitting a bid shall be deemed to acknowledge and represent that it is bound by these Bidding Procedures.

ii. *Bid Deadline*. A Qualifying Bidder that desires to make a bid shall *deliver* a written or electronic copy of its bid to: (i) School Specialty, Inc., W6316 Design Drive, Greenville, WI 54942, Attn: Michael P. Lavelle, Chief Executive Officer; (ii) Paul, Weiss, Rifkind, Wharton & Garrison LLP, Attn: Alan W. Kornberg, Jeffrey D. Saferstein & Tarun Stewart, 1285 Avenue of the Americas, New York, NY 10019, attorneys for the Sellers; (iii) Perella Weinberg Partners, Attn: Derron Slonecker and Agnes Tang, 767 Fifth Avenue, New York, NY 10153, financial advisors for the Sellers; (iv) Akin Gump Strauss Hauer & Feld, LLP, Attn: Michael Stamer, Stephen Kuhn & Meredith Lahaie, One Bryant Park, New York, NY 10036, attorneys for the Proposed Purchaser; and (v) Goldberg Kohn, Attn: Randall Klein & Jeremy Downs, 55 East Monroe Street, Suite 3300, Chicago, IL 60603, attorneys for the ABL Credit Parties (as defined in the Asset Purchase Agreement); in each case so as to be received by a date no later than March 19, 2013 (the "Bid Deadline").

iii. *Evaluation of Qualifying Bid.* The Debtors shall make a determination regarding whether a bid is a Qualifying Bid and shall notify bidders whether their bids have been determined to be qualified by a date no later than two (2) days prior to the Auction Date. In the event a bid is determined not to be a Qualifying Bid, the bidder shall be notified by the Debtors and shall have one (1) day from the date of such notification to modify its bid to render it a Qualifying Bid. One (1) day prior to the Auction, the Debtors shall determine, in their reasonable judgment, which of the Qualifying Bids, at such time, is the highest or best for purposes of constituting the opening bid of the Auction.

(d) **No Qualifying Bids**: If no timely, conforming Qualifying Bids other than the Qualifying Bid submitted by the Proposed Purchaser are submitted by the Bid Deadline, the Debtors shall not hold an Auction and instead shall request at the Sale Hearing that the Bankruptcy Court approve the Asset Purchase Agreement with the Proposed Purchaser.

(e) **Auction**: In the event that the Debtors timely receive one or more Qualifying Bids other than the Asset Purchase Agreement, the Debtors shall conduct an auction (the "Auction") no later than March 25, 2013 (the "Auction Date"). Following the Auction, the Debtors will determine, in consultation with their advisors, which individual bid is in the best interests of the Debtors and their estates. The Auction shall be governed by the following procedures:

i. the Auction shall be held at the law offices of Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019 on March 25, 2013, beginning at 10:00 a.m.;

ii. only the Proposed Purchaser and the other Qualifying Bidders shall be entitled to make any subsequent bids at the Auction;

iii. the Proposed Purchaser and the other Qualifying Bidders shall appear in person at the Auction, or through a duly authorized representative;

iv. only the Debtors, the Proposed Purchaser, the Qualifying Bidders, the ABL Credit Parties, the official committee of unsecured creditors (if one has been appointed) and advisors to each of these parties, may attend the Auction;

v. the Debtors and their professional advisors shall direct and preside over the Auction and the Auction shall be transcribed;

vi. bidding shall commence at the amount of the highest Qualifying Bid submitted by the Qualifying Bidders prior to the Auction;

vii. Qualifying Bidders may submit successive bids in increments of at least the Initial Overbid Amount higher than the Qualifying Bid of the Proposed Purchaser and then continue in minimum increments of at least $500,000

higher than the previous bid; provided that (i) each such successive bid must be a Qualifying Bid and (ii) the Debtors shall retain the right to modify the bid increment requirements at the Auction;

viii. the Auction may include individual negotiations with the Qualified Bidders and/or open bidding in the presence of all other Qualified Bidders;

ix. all material terms of the bid that is deemed to be the highest and best bid for each round of bidding shall be fully disclosed to all other Qualifying Bidders and the Proposed Purchaser;

x. the Debtors may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make subsequent bids) for conducting the Auction, provided that such rules are (i) not inconsistent with the Bidding Procedures Order, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the District of Delaware, or any order of the Bankruptcy Court entered in connection with these chapter 11 cases, and (ii) disclosed to each Qualified Bidder.

xi. all Qualifying Bidders, including the Proposed Purchaser, at the Auction shall be deemed to have consented and submitted to the core jurisdiction of the Bankruptcy Court and waive any right to a jury trial in connection with any disputes relating to the marketing process, the Auction and the construction and enforcement of the Qualifying Bidder's contemplated transaction documents, as applicable;

xii. pursuant to Bankruptcy Code section 363(k), the Proposed Purchaser shall be entitled to credit bid all or a portion of the obligations then outstanding under (A) the DIP Credit Agreement and (B) the Term Loan Agreement, together with accrued interest, fees (including the Early Payment Fee) and any other claims in respect thereof;

xiii. all Qualifying Bidders, including the Proposed Purchaser, shall have the right to make additional modifications to the Asset Purchase Agreement or Modified Asset Purchase Agreement in conjunction with each Qualifying Bid submitted in each round of bidding during the Auction, provided that (i) any such modifications to the Asset Purchase Agreement or Modified Asset Purchase Agreement on an aggregate basis and viewed in whole, shall not, in the Debtors' business judgment, be less favorable to the Debtors than the terms of the Asset Purchase Agreement and (ii) each Qualifying Bid shall constitute an irrevocable offer and be binding on the Qualified Bidder submitting such bid until either such party shall have submitted a subsequent Qualifying Bid at the Auction or the Auction shall have concluded without such bid being selected as the Prevailing Bid or the Second-Highest Bid;

xiv. the Debtors shall have the right to request any additional financial information that will allow the Debtors to make a reasonable determination as to the Qualifying Bidder's financial and other capabilities to consummate the transactions contemplated by the Modified Asset Purchase Agreement, as further amended during the Auction, and any further information that the Debtors may believe is reasonably necessary to clarify and evaluate the Qualifying Bidder's bid;

xv. the Auction shall continue until the Debtors determine, subject to Bankruptcy Court approval, that the offer or offers for the Acquired Assets is or are the highest or best from among the Qualifying Bids submitted at the Auction (the "Prevailing Bid"). In making this decision, the Debtors shall consider, without limitation, the amount of the purchase price, the likelihood of the bidder's ability to close a transaction and the timing thereof, the number, type and nature of any changes to the Asset Purchase Agreement requested by each bidder, and the net benefit to the Debtors' estates. The bidder submitting such Prevailing Bid shall become the "Prevailing Bidder," and shall have such rights and responsibilities of the Proposed Purchaser, as set forth in the applicable Asset Purchase Agreement or Modified Asset Purchase Agreement; provided that the Debtors may, in their discretion, designate the Second-Highest Bid (and the corresponding Second-Highest Bidder) to purchase the Assets in the event the Prevailing Bidder does not close the Asset Sale; and

xvi. within one (1) business day after adjournment of the Auction, the Prevailing Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Prevailing Bid was made.

EACH OF THE PREVAILING BID AND THE SECOND-HIGHEST BID SHALL CONSTITUTE AN IRREVOCABLE OFFER AND BE BINDING ON THE PREVAILING BIDDER AND THE SECOND-HIGHEST BIDDER, RESPECTIVELY, FROM THE TIME THE BID IS SUBMITTED UNTIL THE EARLIEST OF (A) TWO (2) BUSINESS DAYS AFTER THE SALE HAS CLOSED; OR (B) THIRTY (30) DAYS AFTER THE SALE ORDER IS ENTERED. EACH QUALIFIED BID (INCLUDING THE BID OF THE PROPOSED PURCHASER) THAT IS NOT THE PREVAILING BID OR THE SECOND-HIGHEST BID SHALL BE DEEMED WITHDRAWN AND TERMINATED AT THE CONCLUSION OF THE SALE HEARING.

(f) **Sale Hearing**: The Prevailing Bid and the Second-Highest Bid (or the Asset Purchase Agreement if no Qualifying Bid other than that of the Proposed Purchaser is received) will be subject to approval by the Court. The Sale Hearing shall take place on March 27, 2013.

(g) **Return of Deposits**: All deposits shall be returned to each bidder not selected by the Debtors as the Prevailing Bidder no later than five (5) business days following

the substantial consummation of the sale to the Prevailing Bidder or the Second Highest Bidder (if such bidder is deemed the Prevailing Bidder).

(h) **Reservation of Rights**: Notwithstanding any of the foregoing, the Debtors reserve their right, with the consent of the Proposed Purchaser, to modify the Bidding Procedures at or prior to the Auction, including, without limitation, extending the deadlines set forth therein, modifying bidding increments, waiving terms and conditions set forth therein with respect to any or all potential bidders, imposing additional terms and conditions with respect to any or all potential bidders, adjourning or cancelling the Auction at or prior to the Auction and/or adjourning the Sale Hearing in open court without further notice.

(i) **Backup Bidder**:

i. Notwithstanding any of the foregoing, in the event that the Prevailing Bidder fails to consummate such sale prior to the Projected Closing Date (or such date as may be extended by the Debtors), the Second Highest Bidder will be deemed to be the back-up bidder at the price of its last bid. The Second-Highest Bidder will be deemed to be the Prevailing Bidder and the Debtors will be authorized, but not directed, to effectuate the Asset Sale to the Second-Highest Bidder subject to the terms of the Second-Highest Bid without further order of the Bankruptcy Court.

ii. For the avoidance of doubt, in the event that there is a Prevailing Bidder other than the Proposed Purchaser and the Proposed Purchaser is the Second-Highest Bidder, the Proposed Purchaser will be deemed to be the back-up bidder at the price of its last credit bid and will be subject to the terms contained in Section 13(a) in the Bidding Procedures

Proposed Notice Procedures

18. The Debtors also request approval of the sale notice (the "Sale Notice"), substantially in the form attached hereto as **Exhibit D**. Specifically, within five (5) days of entry of the Bidding Procedures Order, the Debtors will serve the Sale Notice by first class mail, postage prepaid, upon (collectively, the "Notice Parties"): (a) the U.S. Trustee; (b) counsel to the agent under the Debtors' ABL Agreement; (c) counsel to the agent under the Debtors' Term Loan Agreement; (d) counsel to the agent under the Bayside DIP Facility; (e) counsel to the agent under the ABL DIP Facility; (f) the indenture trustee for the Debtors' convertible debentures; (g) counsel for the *ad hoc* group of convertible debenture holders; (h) the holders of

the forty (40) largest unsecured claims against the Debtors, on a consolidated basis; (i) all counterparties to the Assigned Contracts; (j) all entities reasonably known to have asserted any claim, lien, interest or encumbrance against the Debtors' right, title and interest in Acquired Assets; (k) all entities reasonably known to have expressed an interest in a transaction with respect to the Acquired Assets during the past nine (9) months; (l) the Internal Revenue Service; (m) the United States Department of Justice; and (n) such other entities as may be reasonably requested by the Purchaser. In addition, the Debtors shall provide electronic notification of this Motion, the Sale Notice and the Bidding Procedures Order through the Bankruptcy Court's website and through posting on the website of the Debtors' claims and noticing agent.

19. Within five (5) days of entry of the Bidding Procedures Order or as soon as practicable, the Debtors will also cause the Sale Notice to be published once in the *Wall Street Journal*.

Proposed Assumption and Assignment Procedures

20. To facilitate and effect the sale of the Acquired Assets, the Debtors seek authority to assume and assign certain of the Debtors' executory contracts and unexpired leases designated in the Asset Purchase Agreement (or Modified Asset Purchase Agreement, applicable), consistent with the procedures established in the Bidding Procedures Order and the Asset Purchase Agreement. The Debtors propose that the Assumption and Assignment Procedures set forth in the Bidding Procedures Order apply whether the Purchaser or another party is the Prevailing Bidder.

21. The proposed Assumption and Assignment Procedures are as follows:

(a) Within two (2) business days after receiving the schedule from each Qualified Bidder of those executory contracts and unexpired leases it wishes to assume (the "Designated Contracts"), and no later than six (6) days before the Sale Hearing (subject to adjustment as provided below), the Debtors shall file with the Court and serve on each counterparty to an executory contract or unexpired lease set

forth on such schedule a notice of assumption, assignment, and cure (the "Assumption Notice"), substantially in the form attached hereto as **Exhibit E**. The Assumption Notice shall include the Purchaser's calculation of the cure costs (the "Cure Costs") for each such Designated Contract. A list of the Designated Contracts and Cure Costs shall be posted on the website of the Debtors' claims and noticing agent by two (2) days after the Bid Deadline and updated as modified by each bidder.

(b) Any counterparty to a Designated Contract shall file and serve any objections to (i) the proposed assumption and assignment set forth in the Assumption Notice and (ii) if applicable, the proposed Cure Costs, no later than two (2) days before the Sale Hearing. If any executory contract or unexpired lease is added to the schedule of Designated Contracts, a copy of the applicable Assumption Notice shall be served on the counterparty by overnight courier service within one (1) business day of such addition (and in no event less than one (1) business day before the Sale Hearing) and any counterparty may file an objection as aforesaid at any time that is two hours prior to the Sale Hearing.

(c) At the Sale Hearing, only those contracts (and the corresponding Cure Costs) listed on the Assumption Notice that have been selected to be assumed by the Prevailing Bidder at the Auction (the "Selected Contracts") shall be subject to approval by the Bankruptcy Court, and the Debtors shall reserve their rights for all other contracts. If no objection to the Assumption Notice with respect to the Selected Contracts is timely received, (i) the counterparty to a Selected Contract shall be deemed to have consented to the assumption and assignment of the Selected Contract to the Prevailing Bidder and shall be forever barred from asserting any objection with regard to such assumption and assignment, and (ii) the Cure Costs set forth in the Assumption Notice shall be controlling, notwithstanding anything to the contrary in any Selected Contract, or any other document, and the counterparty to a Selected Contract shall be deemed to have consented to the Cure Costs and shall be forever barred from asserting any other claims related to such Selected Contract against the Debtors or the Prevailing Bidder, or the property of any of them.

(d) At the direction of the Prevailing Bidder (and subject to approval by the Bankruptcy Court), the Debtors may supplement the Designated Contracts list at any time prior to the Designation Deadline, *provided that* the Debtors must serve an Assumption Notice on the counterparties to any supplemental Designated Contracts and provide such counterparties at least seven (7) days' notice to object to the assumption and assignment of the supplemental Designated Contracts.

Relief Requested

22. The Debtors respectfully request the entry of (a) an order (i) scheduling a date for the Sale Hearing, (ii) approving the Bidding Procedures, notice procedures and the Breakup Fee

and the Expense Reimbursement; and (b) an order (i) approving the Asset Purchase Agreement, (ii) authorizing the sale of all or substantially all of the assets of the Debtors free and clear of all Liens, Claims, Interests or Encumbrances (other than Permitted Liens), (iii) authorizing the assumption and assignment of the Assigned Contracts to the Proposed Purchaser or the Prevailing Bidder, and (iv) granting related relief.

Basis for Relief Requested

I. The Bidding Procedures Are Appropriate and in the Best Interests of the Debtors, Their Estates, and Their Creditors.

A. The Bidding Procedures Are Reasonable, Appropriate and Will Maximize Value.

23. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004) (debtor in possession "had a fiduciary duty to protect and maximize the estate's assets"); *Official Comm. of Unsecured Creditors of Cybergenics, Corp* v. *Chinery*, 330 F.3d 548, 573 (3d Cir. 2003) (same); *Four B. Corp.* v. *Food Barn Stores, Inc. (In re Barn Stores, Inc.)*, 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, "a primary objective of the Code [is] to enhance the value of the estate at hand").

24. To that end, courts uniformly recognize that procedures to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy transactions. *See In re O'Brien Envtl. Energy, Inc.*, 181 F.3d 527, 537 (3d Cir. 1999); *see also Official Comm. of Subordinated Bondholders* v. *Integrated Res. Inc. (In re Integrated Res. Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (bidding procedures "encourage bidding and . . . maximize the value of the debtor's assets").

25. The Debtors believe that the Bidding Procedures establish the parameters under which the value of the Alternate Transaction may be tested at the Auction. The Bidding

Procedures will increase the likelihood that the Debtors will receive the greatest possible consideration because they will ensure a competitive and fair bidding process.

26. The Debtors also believe that the Bidding Procedures will promote active bidding from seriously interested parties and will confirm the best and highest offer reasonably available for the Acquired Assets. The Bidding Procedures will allow the Debtors to conduct the Auction in a controlled, fair and open manner that will encourage participation by financially capable bidders who demonstrate the ability to close an Alternate Transaction. The Debtors believe that the Bidding Procedures will encourage bidding, that they are consistent with other procedures previously approved by courts in this and other districts and that the Bidding Procedures are appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings. *See In re O'Brien Envtl. Energy, Inc.*, 181 F.3d at 537; *see also In re Dura Auto. Sys., Inc.*, No. 06-11202 (Bankr. D. Del. July 24, 2007); *In re New Century TRS Holdings, Inc.*, No. 07-10416 (Bankr D. Del. Apr. 20, 2007); *In re Three A's Holdings, L.L.C.*, No. 06-10886 (Bankr. D. Del. Sept. 7, 2006).

27. Similar bidding procedures have been previously approved by bankruptcy courts in this District. *See, e.g.*, *In re Vertis Holdings, Inc.*, Case No. 12-12821 (CSS) (Bankr. D. Del. Nov. 2, 2012 (D.I. 206); *In re Northstar Aerospace (USA) Inc.*, Case No. 12-11817 (MFW) (Bankr. D. Del. June 27, 2012) (D.I. 119); *In re Traffic Control & Safety Corp.*, Case No. 12-11287 (KJC) (Bankr. D. Del. May 14, 2012) (D.I. 128); *In re Real Mex Rests. Inc.*, Case No. 11-13122 (BLS) (Bankr. D. Del. Nov. 9, 2011) (D.I. 393); *In re Friendly Ice Cream Corp.*, Case No. 11-13167 (Bankr. D. Del. Nov. 3, 2011) (D.I. 289); *In re Nortel Networks, Inc.*, Case No. 09-10138 (KG) (Bankr. D. Del. June 30, 2009) (D.I. 1012); *In re Tweeter Home Etm't Group,*

Inc., Case No. 07-10787 (PJW) (Bankr. D. Del. June 27, 2007) (D.I. 211); *In re Radnor Holdings Corp.*, Case No. 06-10894 (PJW) (Bankr. D. Del. Sept. 22, 2006) (D.I. 277).

28. Additionally, the Debtors are required to complete the sale process on the timetable proposed in the Bidding Procedures and required under the Asset Purchase Agreement, which requirements are reflected in the milestones contained in the Debtors' DIP Facilities. As noted above, Bayside's postpetition financing proposal was conditioned on such sales milestones, which are integral to the sale process and fair and reasonable in light of the circumstances.

29. Accordingly, the Bidding Procedures are reasonable, appropriate and within the Debtors' sound business judgment under the circumstances because the Bidding Procedures are designed to maximize the value to be received by the Debtors' estates.

B. The Initial and Subsequent Overbids Are Reasonable and Appropriate.

30. One important component of the Bidding Procedures is the "overbid" provisions. To be deemed a Qualifying Bid, a bid must, among other things, result in a value to the Debtors' estates that is more than the aggregate of the value of the sum of: (i) the credit bid amount set forth in the Asset Purchase Agreement; plus (ii) the assumed liabilities, as identified in the Asset Purchase Agreement; plus (iii) $4,500,000. Once the Debtors hold the Auction, Qualifying Bidders may submit successive bids in increments of at least the Initial Overbid Amount higher than the Qualifying Bid of the Proposed Purchaser and then continue in minimum increments of at least $500,000 higher than the previous bid.

31. The Debtors believe that such bid increments are reasonable under the circumstances, and will enable the Debtors to maximize the value for the Acquired Assets while limiting any chilling effect in the marketing process. The overbid increments are also consistent with such increments previously approved by courts in this District in chapter 11 cases involving

assets of comparable value. *In re Dura Auto. Sys., Inc.*, No. 06-11202 (Bankr. D. Del. July 24, 2007) (approving $750,000 increment); *In re New Century TRS Holdings, Inc.*, No. 07-10416 (Bankr D. Del. Apr. 20, 2007) (approving $500,000 increment); *In re Three A's Holdings, L.L.C.*, No. 06-10886 (Bankr. D. Del. Sept. 7, 2006) (approving $300,000 increment).

C. The Breakup Fee and the Expense Reimbursement are Reasonable and Appropriate.

32. The Breakup Fee and the Expense Reimbursement were negotiated at arm's-length and in good faith and are necessary to secure the Proposed Purchaser's participation in the Debtors' sale process. The Debtors have determined that pursuing a going-concern sale transaction is in the best interests of the Debtors, their creditors, and their estates, and therefore submit that agreeing to the Breakup Fee and the Expense Reimbursement were actual, necessary costs of preserving their estates.

33. In the Third Circuit, bid protections, including traditional breakup fees and expense reimbursement provisions, will be approved where they are necessary for the preservation of the debtor's estate. *See, e.g.*, *In re Reliant Energy Channelview* LP, 594 F.3d 200, 206 (3d Cir. 2010) (citing *Calpine Corp.* v. *O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.)*, 181 F.3d 527 (3d Cir. 1999). Accordingly, bid protections may be awarded where they induce the stalking horse bidder to make an initial bid or adhere to its bid after the court orders an auction and where they promote more competitive bidding. *In re O'Brien*, 181 F.3d at 537.

34. Here, the Breakup Fee and the Expense Reimbursement should be approved, and accorded administrative expense status under sections 503(b)(1)(A) and 507 of the Bankruptcy Code, because they provide a clear benefit to the Debtors' estates, and the Purchaser has expressly conditioned its willingness to enter into the Asset Purchase Agreement upon the

Debtors' agreement to, and Court approval of, the Breakup Fee and the Expense Reimbursement, as set forth in the Asset Purchase Agreement. The Breakup Fee and the Expense Reimbursement will enable the Debtors to secure an adequate floor and, thus, insist that competing bids be materially higher or otherwise better than any agreement that might be entered into with the Proposed Purchaser. Accordingly, the Debtors' ability to offer the Breakup Fee and the Expense Reimbursement enables them to ensure the sale of substantially all of the Acquired Assets to a contractually-committed bidder at a price they believe to be fair while, at the same time, providing them with the potential of even greater benefit to their estates.

35. The Debtors submit that the amount of the Breakup Fee and the Expense Reimbursement is reasonable and appropriate in light of the size and nature of the transaction and the efforts that have been and will be expended by the Proposed Purchaser, including conducting the legal and financial diligence necessary to negotiate and enter into the Asset Purchase Agreement, which will serve as the baseline for other bids for the Acquired Assets. The Debtors further submit that the Breakup Fee and the Expense Reimbursement played a material role in inducing the Proposed Purchaser to enter into the Asset Purchase Agreement.

36. In addition, payment of the Breakup Fee and the Expense Reimbursement will not diminish the Debtors' estates. The Debtors do not intend to terminate the Asset Purchase Agreement if to do so would incur an obligation to pay the Breakup Fee, unless to accept an alternative bid, which bid must exceed the consideration offered by the Proposed Purchaser by an amount sufficient to pay the Breakup Fee and the Expense Reimbursement. With respect to the Expense Reimbursement, only reasonable out-of-pocket costs, fees and expenses will be reimbursed by the Debtors.

37. The Breakup Fee, which represents 3.0% of the Purchase Price, is reasonable and consistent with the range of bid protections typically approved by bankruptcy courts in this District. *See, e.g., In re Vertis Holdings, Inc.*, Case No. 12-12821 (CSS) (Bankr. D. Del. Nov. 2, 2012) (D.I. 206) (court approved break-up fee of 3.0% in connection with a $258 million sale of assets); *In re Solyndra LLC*, Case No. 11-12799 (MFW) (D.I. 1113) (Bankr. D. Del. Sept. 28, 2012) (court approved break-up fee of 2.6% in connection with $90 million sale of assets); *Northstar Aerospace (USA) Inc.*, Case No. 12-11817 (MFW) (Bankr. D. Del. June 27, 2012) (D.I. 119) (court approved breakup fee of 3.5% in connection with $70 million sale of assets); *In re Global Motorsport Group, Inc.*, Case No. 08-10192 (KJC) (Bankr. D. Del. Feb. 14, 2008) (D.I. 101) (court approved breakup fee of approximately 4% or $500,000 in connection with sale of assets); *In re Global Home Prods. LLC*, Case No. 06-10340 (KG) (Bankr. D. Del. July 14, 2006 (court approved breakup fee of approximately 3.1% or $650,000 in connection with sale of assets).

D. The Proposed Notice Procedures Are Reasonable and Appropriate.

38. Pursuant to Bankruptcy Rules 2002(a) and (c), the Debtors are required to notify creditors of the proposed sale of the Acquired Assets, including a disclosure of the time and place of any auction, the terms and conditions of the proposed sale, and the deadline for filing any objections.

39. The Debtors submit that the notice procedures described above fully comply with Bankruptcy Rule 2002 and are reasonably calculated to provide timely and adequate notice of the proposed sale of the Acquired Assets, the Bidding Procedures, the Auction, and the Sale Hearing to the Debtors' creditors and all other parties in interest that are entitled to notice, as well as those parties that have expressed a bona fide interest in acquiring the Acquired Assets.

40. Accordingly, the Debtors respectfully request that the Court approve the notice procedures set forth in this Motion, including the form and manner of service of the Sale Notice, and that no other or further notice of the sale, the Bidding Procedures or the Auction is required.

E. The Proposed Notice Procedures for the Assigned Contracts Are Reasonable and Appropriate.

41. As part of the Motion, the Debtors also seek authority under sections 105(a) and 365 of the Bankruptcy Code to assume and assign the Assigned Contracts to the Proposed Purchaser or the Prevailing Bidder. The Bidding Procedures Order specifies the process by which the Debtors will serve the Assumption Notice and the procedures and deadlines for counterparties to Assigned Contracts to file and serve objections (which procedures are set forth in Paragraph 21 herein).

42. The proposed notice procedures for the Assigned Contracts ensure that all counterparties to the Assigned Contracts will have ample notice of such assumption and assignment and an opportunity to contest any asserted Cure Costs, as well as the ability of the Proposed Purchaser or the Prevailing Bidder to provide adequate assurance of future performance.

43. Accordingly, the Debtors submit that the notice procedures for the Assigned Contracts are fair and reasonable and respectfully request that the Court approve such notice procedures.

II. Approval of the Proposed Sale Transaction Is Appropriate and in the Best Interests of the Estates.

A. The Sale of the Acquired Assets is Authorized by Section 363 of the Bankruptcy Code as a Sound Exercise of the Debtors' Business Judgment.

44. Section 363 of the Bankruptcy Code provides that a debtor, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the

estate[.]" 11 U.S.C. § 363(b). Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of the estate, courts routinely authorize sales of a debtor's assets if such sale is based upon the sound business judgment of the debtor. *See Meyers* v. *Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991); *In re Trans World Airlines, Inc.*, No. 01-00056 (PJW), 2001 WL 1820326, at *10 (Bankr. D. Del. Apr. 2. 2001).

45. Courts typically consider the following factors in determining whether a proposed sale satisfies this standard: (a) whether a sound business justification exists for the sale; (b) whether adequate and reasonable notice of the sale was given to interested parties; (c) whether the sale will produce a fair and reasonable price for the property; and (d) whether the parties have acted in good faith. *See In re Decora Indus., Inc.*, 2002 WL 32332749, at *2 (D. Del. May 20, 2002) (citing *In re Delaware & Hudson Ry. Co.*, 124 B.R. at 176); *In re United Healthcare Sys. Inc.*, No. 97-1159, 1997 WL 176574, at *4 & n.2 (D.N.J. Mar. 26, 1997).

46. A sound business purpose for the sale of a debtor's assets outside the ordinary course of business may be found where such a sale is necessary to preserve the value of assets for the estate, its creditors or interest holders. *See, e.g., In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (3d Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983); *see also In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (stating that the paramount goal in any proposed sale of property of the estate is to maximize value).

47. Furthermore, "[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not

entertain objections to the debtor's conduct." *Comm. of Asbestos-Related Litigants and/or Creditors* v. *Johns-Manville Corp. (In re Johns-Manville Corp)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). There is a presumption that "in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company." *In re Integrated Res.*, 147 B.R. at 656 (quoting *Smith* v. *Van Gorkcom*, 488 A.2d 858, 872 (Del. 1985)). Thus, if a debtor's actions satisfy the business judgment rule, then the transaction in question should be approved under section 363(b)(1) of the Bankruptcy Code. Indeed, when applying the business judgment standard, courts show great deference to a debtor's business decisions. *See Pitt* v. *First Wellington Canyon Assocs. (In re First Wellington Canyon Assocs.)*, 1989 WL 106838, at *3 (N.D. Ill. Sept. 8, 1989) ("Under this test, the debtor's business judgment . . . must be accorded deference unless shown that the bankrupt's decision was taken in bad faith or in gross abuse of the bankrupt's retained discretion.").

48. The value of the Acquired Assets will be tested through the Auction pursuant to the Bidding Procedures. Consequently, the fairness and reasonableness of the consideration to be paid by the Proposed Purchaser or the Prevailing Bidder ultimately will be demonstrated by adequate "market exposure" and an open and fair auction process — the best means for establishing whether a fair and reasonable price is being paid.

49. Thus, the Debtors submit that the Asset Purchase Agreement with the Proposed Purchaser or the Modified Asset Purchase Agreement with the Prevailing Bidder, as applicable, will constitute the highest or best offer for the Acquired Assets, and will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. As such, the Debtors' determination to sell the Acquired Assets through an Auction process is a

valid and sound exercise of the Debtors' business judgment. Accordingly, the Debtors respectfully request that the sale of the Acquired Assets to the Proposed Purchaser or the Prevailing Bidder be approved.

B. The Sale of the Acquired Assets Free and Clear of Liens, Claims, Interests or Encumbrances (other than Permitted Liens) Is Authorized by Section 363(f) of the Bankruptcy Code.

50. In the interest of attracting the best bids for the Acquired Assets, the Debtors submit that the sale of the Acquired Assets should be free and clear of all Liens, Claims, Interests or Encumbrances (other than Permitted Liens) in accordance with section 363(f) of the Bankruptcy Code, with any such Liens, Claims, Interests or Encumbrances (other than Permitted Liens) attaching to the net sale proceeds of the Acquired Assets, as and to the extent applicable.

51. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests, and encumbrances if:

(a) applicable nonbankruptcy law permits sale of such property free and clear of such interests;

(b) such entity consents;

(c) such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;

(d) such interest is in bona fide dispute; or

(e) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

52. Section 363(f) is supplemented by section 105(a) of the Bankruptcy Code, which provides that "[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a).

53. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Acquired Assets "free and clear" of all Liens, Claims, Interests or Encumbrances (other than Permitted Liens). *See In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002) ("Section 363(f) is written in the disjunctive, not the conjunctive, and if any of the five conditions are met, the debtor has the authority to conduct the sale free and clear of all liens."); *see also Citicorp Homeowners Servs., Inc.* v. *Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (same); *In re Dundee Equity Corp.*, No. 89-10233 (FGC), 1992 WL 53743, at *4 (Bankr. S.D.N.Y. Mar. 6, 1992) (same).

54. The Debtors submit that one or more of the conditions set forth in section 363(f) of the Bankruptcy Code will be satisfied with respect to the transfer of the Acquired Assets pursuant to the Asset Purchase Agreement (or Modified Asset Purchase Agreement, as applicable). In particular, the Debtors believe that at least section 363(f)(2) of the Bankruptcy Code will be satisfied because each of the parties holding liens on the Acquired Assets, if any, will consent, or absent any objection to this Motion, will be deemed to have consented to, the sale and transfer of the Acquired Assets.

55. Any lienholder also will be adequately protected by having its liens, if any, attach to the sale proceeds received by the Debtors for the sale of the Acquired Assets to the Proposed Purchaser or the Prevailing Bidder, in the same order of priority, with the same validity, force and effect that such creditor had prior to such sale, subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

56. With respect to each creditor asserting an Interest, one or more of the standards set forth in Bankruptcy Code § 363(f)(1)-(5) has been satisfied. Those holders of Interests who

did not object or who withdrew their objections to the sale or the Motion are deemed to have consented to the Motion and sale pursuant to Bankruptcy Code § 363(f)(2). Those holders of Interests who did not object fall within one or more of the other subsections of Bankruptcy Code § 363(f).

57. Accordingly, the Debtors respectfully request that the Acquired Assets be sold and transferred to the Proposed Purchaser or the Prevailing Bidder free and clear of any such Liens, Claims, Interests or Encumbrances (other than Permitted Liens) pursuant to section 363(f) of the Bankruptcy Code.

C. The Purchaser is Entitled to Full Protection of Section 363(m) of the Bankruptcy Code, and the Transfer and Sale of the Acquired Assets Does Not Violate Section 363(n) of the Bankruptcy Code.

58. Section 363(m) of the Bankruptcy Code protects the sale of a debtor's property to a good faith purchaser. Specifically, section 363(m) provides:

> The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

59. While the Bankruptcy Code does not define "good faith," the Third Circuit in *In re Abbotts Dairies of Pa., Inc.* held that the misconduct that would destroy a purchaser's good faith status at a judicial sale typically involves "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." 788 F.2d at 147 (citation omitted); s*ee also Kabro Assocs. of West Islip, L.L.C.* v. *Colony Hill Assocs. (In re Colony Hill Assocs.)*, 111 F.3d 269, 276 (2d Cir. 1997) ("[t]ypically, the misconduct that would destroy a [buyer]'s good faith status at a judicial sale involves fraud, collusion between

the [buyer] and other bidders or the trustee or an attempt to take grossly unfair advantage of other bidders").

60. The terms and conditions of the Asset Purchase Agreement were negotiated by the Debtors and the Proposed Purchaser at arm's-length and in good faith with the assistance of counsel and the Debtors' other advisors. Moreover, neither the Debtors nor the Proposed Purchaser have engaged in any conduct that would cause or permit the Asset Purchase Agreement to be avoided under Bankruptcy Code section 363(n). If, following the Auction, the Proposed Purchaser is not the Prevailing Bidder, the Debtors will negotiate an asset purchase agreement with such Prevailing Bidder in good faith and at arm's-length. Accordingly, the Debtors request that the Court make a finding at the Sale Hearing that the Purchaser or the Prevailing Bidder purchased the Acquired Assets in good faith and is entitled to the full protections of section 363(m) of the Bankruptcy Code.

D. Credit Bidding Should Be Authorized under Section 363(k) of the Bankruptcy Code.

61. Pursuant to section 363(k) of the Bankruptcy Code, unless the court for cause orders otherwise, the holder of a claim secured by property that is the subject of the sale "may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property." 11 U.S.C. § 363(k). Even if a secured creditor is undersecured as determined in accordance with section 506(a) of the Bankruptcy Code, section 363(k) allows such secured creditor to bid the full face value of its claim and does not limit the credit bid to the claim's economic value. *See Cohen* v. *KB Mezzanine Fund II, LP (In re Submicron Sys. Corp.)*, 432 F.3d 448, 459-60 (3d Cir. 2006) (stating that interpreting section 363(k) of the Bankruptcy Code to cap credit bids at the economic value of the underlying collateral "is theoretically nonsensical").

62. The Proposed Purchaser is entitled to credit bid some or all of the claims for its collateral pursuant to section 363(k) of the Bankruptcy Code. Because the Proposed Purchaser holds claims that are secured by substantially all of the Acquired Assets, the Proposed Purchaser should be allowed to credit bid the full amount of any of its secured claims (including the Early Payment Fee) to effectuate the transactions under the Asset Purchase Agreement.

E. Consumer Privacy Ombudsman Is Not Required.

63. Section 363(b)(1) of the Bankruptcy Code requires the appointment of a consumer privacy ombudsman pursuant to section 332 of the Bankruptcy Code if a debtor, in connection with offering a product or a service, discloses a consumer privacy policy prohibiting the transfer of personally identifiable information to persons not affiliated with the debtor, and the sale of an individual's personally identifiable information is inconsistent with such privacy policy. 11 U.S.C. § 363(b)(1). The Debtors believe that they have not disclosed to any individual any policy prohibiting the transfer of personally identifiable information. Accordingly, the Debtors submit that the requirements of section 332(b)(l) of the Bankruptcy Code are inapplicable, so section 363(b)(1) does not apply, and a consumer privacy ombudsman is not required.[6]

III. Assumption and Assignment of the Assigned Contracts Is Authorized by Section 365 of the Bankruptcy Code.

A. Assumption and Assignment Based on Debtors' Business Judgment.

64. Sections 365(a) and (b) of the Bankruptcy Code authorize a debtor in possession to assume, subject to the court's approval, executory contracts or unexpired leases of the debtor. Under section 365(a) of the Bankruptcy Code, a debtor, "subject to the court's approval, may

[6] If, after filing the Motion, the Debtors learn that they have disclosed a policy prohibiting the transfer of personally identifiable information to persons not affiliated with the Debtors, and the sale contemplated herein is inconsistent with such policy, the Debtors will promptly inform the Court and seek appointment of a consumer privacy ombudsman.

assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). Section 365(b)(1) of the Bankruptcy Code, in turn, codifies the requirements for assuming an unexpired lease or executory contract of a debtor, providing that:

> (b)(l) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—
>
> > (A) cures or provides adequate assurance that the trustee will promptly cure, such default . . . ;
> >
> > (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
> >
> > (C) provide adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

65. The standard applied by the Third Circuit in determining whether an executory contract or unexpired lease should be assumed is the "business judgment" test, which requires a debtor to determine that the requested assumption or rejection would be beneficial to its estate. *See Sharon Steel Corp.* v. *Nat'l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989); *see also NLRB* v. *Bildisco & Bildisco*, 465 U.S. 513, 523 (1984) (describing business judgment test as "traditional") (superseded in part by 11 U.S.C. § 1113).

66. Courts generally will not second-guess a debtor's business judgment concerning the assumption of an executory contract. *See In re Decora Indus., Inc.*, 2002 WL 32332749, at *8 (D. Del. May 20, 2002); *Official Comm. for Unsecured Creditors* v. *Aust (In re Network Access Solutions, Corp.*, 330 B.R. 67, 75 (Bankr. D. Del. 2005) ("The standard for approving the assumption of an executory contract is the business judgment rule"); *In re Exide Techs.*, 340

B.R. 222, 239 (Bankr. D. Del. 2006) ("The propriety of a decision to reject an executory contract is governed by the business judgment standard").

67. To determine if the business judgment standard is met, the court is "required to examine whether a reasonable business person would make a similar decision under similar circumstances." *In re AbitibiBowater Inc.*, 418 B.R. 815, 831 (Bankr. D. Del. 2009). "This is not a difficult standard to satisfy and requires only a showing that rejection will benefit the estate." *Id.* (citations omitted). Specifically, a court should find that the assumption or rejection is elected on "an informed basis, in good faith, and with the honest belief that the assumption . . . [is] in the best interests of [the debtor] and the estate." *In re Network Access Solutions Corp.*, 330 B.R. 67, 75 (Bankr. D. Del. 2005). Under this standard, a court should approve a debtor's business decision unless that decision is the product of bad faith or a gross abuse of discretion. *See In re Federal Mogul Global, Inc.*, 293 B.R. 124, 126 (D. Del. 2003).

68. In the present case, the Debtors' assumption and assignment of the Assigned Contracts to the Proposed Purchaser or the Prevailing Bidder meets the business judgment standard and satisfies the requirements of section 365 of the Bankruptcy Code. The assumption and assignment of the Assigned Contracts are necessary for the Proposed Purchaser or any Prevailing Bidder to conduct business going forward, and since no purchaser would take the Acquired Assets without certain contracts and leases, the assumption and assignment of such contracts and leases is essential to securing the highest or best offer for the Acquired Assets. Further, upon consummation of the proposed sale of the Acquired Assets, the Debtors will no longer continue to operate their businesses and will therefore have no use for any of the contracts and leases utilized in their businesses.

69. Consequently, the Debtors submit that the Assumption and Assignment Procedures are fair and reasonable and, accordingly, respectfully request that the Court approve such procedures and authorize the Debtors to assume and assign the Assigned Contracts to the Proposed Purchaser or the Prevailing Bidder, as applicable.

B. Adequate Assurance of Future Performance.

70. A debtor in possession may assign an executory contract or an unexpired lease of the debtor if it assumes the agreement in accordance with section 365(a) of the Bankruptcy Code, and provides adequate assurance of future performance by the assignee, whether or not there has been a default under the agreement. *See* 11 U.S.C. § 365(c)(2).

71. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." *EBG Midtown South Corp.* v. *McLaren/Hart Envtl. Eng'g Corp. (In re Sanshoe Worldwide Corp.)*, 139 B.R. 585, 592 (S.D.N.Y. 1992) (citations omitted), *aff'd*, 993 F.2d 300 (2d Cir. 1993); *In re Prime Motor Inns Inc.*, 166 B.R. 993, 997 (Bankr. S.D. Fla. 1994); *In re Rachels Indus. Inc.*, 109 B.R. 797, 803 (Bankr. W.D. Tenn. 1990); *Carlisle Homes, Inc.* v. *Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988).

72. Significantly, among other things, adequate assurance may be provided by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. *See, e.g.*, *In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (stating that adequate assurance of future performance is present when the prospective assignee of a lease from the debtor has financial resources and has expressed willingness to devote sufficient funding to the business in order to give it a strong likelihood of succeeding).

73. Pursuant to the Bidding Procedures, the Debtors will require potential Bidders to provide evidence constituting adequate assurance of future performance, to be provided to

counterparties to Assigned Contracts upon their request. Moreover, counterparties to Assigned Contracts will have the opportunity to object to adequate assurance of future performance by any of the bidders. Accordingly, the Debtors submit that the assumption and assignment of the Assigned Contracts as set forth herein should be approved.

C. Anti-Assignment Provisions Should be Deemed Unenforceable.

74. To facilitate the assumption, assignment and sale of the Assigned Contracts, the Debtors also request that the Sale Order provide that anti-assignment provisions in the Assigned Contracts shall not restrict, limit or prohibit the assumption, assignment and sale of the Assigned Contracts and are deemed and found to be unenforceable anti-assignment provisions within the meaning of section 365(f) of the Bankruptcy Code.

75. Section 365(f)(1) of the Bankruptcy Code permits a debtor to assign unexpired leases and contracts free from such anti-assignment restrictions, providing, in pertinent part, that:

> [N]otwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease under paragraph (2) of this subsection.

11 U.S.C. § 365(f)(1).

76. Section 365(f)(1) of the Bankruptcy Code, by operation of law, invalidates provisions that prohibit, restrict, or condition assignment of an executory contract or unexpired lease. *See, e.g.*, *Coleman Oil Co., Inc.* v. *The Circle K Corp. (In re The Circle K Corp)*, 127 F.3d 904, 910-11 (9th Cir. 1997) ("no principle of bankruptcy or contract law precludes us from permitting the Debtors here to extend their leases in a manner contrary to the leases' terms, when to do so will effectuate the purposes of section 365") *cert. denied*, 522 U.S. 1148 (1998). Section 365(f)(3) of the Bankruptcy Code goes beyond the scope of section 365(f)(1) of the Bankruptcy Code by prohibiting enforcement of any clause creating a right to modify or

terminate the contract or lease upon a proposed assumption or assignment thereof. *See, e.g., In re Jamesway Corp.*, 201 B.R. 73 (Bankr. S.D.N.Y. 1996) (section 365(f)(3) of the Bankruptcy Code prohibits enforcement of any lease clause creating right to terminate lease because it is being assumed or assigned, thereby indirectly barring assignment by debtor; all lease provisions, not merely those entitled anti-assignment clauses, are subject to court's scrutiny regarding anti-assignment effect).

77. Other courts have recognized that provisions that have the effect of restricting assignments cannot be enforced. *See In re Rickel Home Ctrs., Inc.*, 240 B.R. 826, 831 (D. Del. 1998) ("In interpreting Section 356(f) [sic], courts and commentators alike have construed the terms to not only render unenforceable lease provisions which prohibit assignment outright, but also lease provisions that are so restrictive that they constitute de facto anti-assignment provisions."). Similarly, in *In re Mr. Grocer, Inc.*, the court noted that:

> [the] case law interpreting § 365(f)(1) of the Bankruptcy Code establishes that the court does retain some discretion in determining that lease provisions, which are not themselves ipso facto anti-assignment clauses, may still be refused enforcement in a bankruptcy context in which there is no substantial economic detriment to the landlord shown, and in which enforcement would preclude the bankruptcy estate from realizing the intrinsic value of its assets.

77 B.R. 349, 354 (Bankr. D.N.H. 1987). Thus, the Debtors request that any anti-assignment provisions be deemed not to restrict, limit or prohibit the assumption, assignment and sale of the Assigned Contracts and be deemed and found to be unenforceable anti-assignment provisions within the meaning of section 365(f) of the Bankruptcy Code.

Notice

78. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the U.S. Trustee; (b) counsel to the agent under the Debtors' ABL

Agreement; (c) counsel to the agent under the Debtors' Term Loan Agreement; (d) counsel to the agent under the Bayside DIP Facility; (e) counsel to the agent under the ABL DIP Facility; (f) the indenture trustee for the Debtors' convertible debentures; (g) counsel for the *ad hoc* group of convertible debenture holders; (h) the holders of the forty (40) largest unsecured claims against the Debtors, on a consolidated basis; (i) all entities reasonably known to have asserted any claim, lien, interest or encumbrance against the Debtors' right, title and interest in Acquired Assets; (j) all entities reasonably known to have expressed an interest in a transaction with respect to the Acquired Assets during the past nine (9) months; (k) the Internal Revenue Service; and (l) the United States Department of Justice. Following the first day hearing in this case, this Motion will be served on those persons who have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

79. No prior request for the relief sought in this Motion has been made by the Debtors to this or any other court.

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WHEREFORE, the Debtors respectfully request entry of orders granting the relief requested herein and such other and further relief as is just and proper.

Dated: January 28, 2013
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Maris J. Kandestin

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Proposed Counsel to the Debtors and Debtors-in-Possession

EXHIBIT A

Bidding Procedures Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SCHOOL SPECIALTY, INC., *et al.*,	Case No. 13-10125 (___)
Debtors.[1]	Joint Administration Requested
	Re: Docket No. ___

ORDER UNDER 11 U.S.C. §§ 105(A), 363 AND 365, AND FED. R. BANKR. P. 2002, 6004, 6006 AND 9014: (I) SCHEDULING HEARING ON APPROVAL OF ASSET SALE, ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS TO BAYSIDE SCHOOL SPECIALTY, LLC (OR ITS ASSIGNEE) AND ASSUMPTION OF CERTAIN LIABILITIES, AND (II) APPROVING BIDDING PROCEDURES, ASSUMPTION AND ASSIGNMENT PROCEDURES, BREAKUP FEE AND EXPENSE REIMBURSEMENT, AND FORM AND MANNER OF NOTICE THEREOF

Upon the motion (the "Motion")[2] of School Specialty, Inc. and its affiliated debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors") for entry of (a) an order (i) scheduling a hearing (the "Sale Hearing") on approval of its asset sale and the assumption and assignment of executory contracts to Bayside School Specialty, LLC or its assignee (the "Proposed Purchaser") and assumption of certain liabilities; (ii) approving proposed bidding and sale procedures (the "Bidding Procedures") attached hereto as Exhibit 1, proposed assumption and assignment procedures (the "Assumption and Assignment Procedures"), the Breakup Fee and Expense Reimbursement, and form and manner of notice thereof (the "Notice Procedures"); and (b) an order (the "Sale Order") (i) approving an asset

---

1 The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number and state of incorporation, are: School Specialty, Inc. (Wisc.; 1239), Bird-In-Hand Woodworks, Inc. (N.J.; 8811), Califone International, Inc. (Del.; 3578), Childcraft Education Corp. (N.Y.; 9818), ClassroomDirect.com, LLC (Del.; 2425), Delta Education, LLC (Del.; 8764), Frey Scientific, Inc. (Del.; 3771), Premier Agendas, Inc. (Wash.; 1380), Sax Arts & Crafts, Inc. (Del.; 6436), and Sportime, LLC (Del.; 6939). The address of the Debtors' corporate headquarters is W6316 Design Drive, Greenville, Wisconsin 54942.

2 Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion or Asset Purchase Agreement (as defined herein), as applicable.

purchase agreement (the "Asset Purchase Agreement") for the sale of the Acquired Assets to the Proposed Purchaser or to the Prevailing Bidder to be identified at the Auction, (ii) authorizing the sale of all or substantially all of the assets of the Debtors free and clear of all Liens, Claims, Interests or Encumbrances (other than Permitted Liens), (iii) authorizing the assumption and assignment of certain executory contracts and unexpired leases (the "Assigned Contracts") to the Proposed Purchaser or the Prevailing Bidder, as applicable, and (iv) granting related relief; and the Court having reviewed the Motion; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefore, it is hereby

FOUND AND DETERMINED THAT:[3]

A. The Court has jurisdiction to hear and determine the Motion and to grant the relief requested in the Motion pursuant to 28 U.S.C. § 157 and 1334.

B. Venue of this case and the Motion in this district is proper under 28 U.S.C. § 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

C. The statutory and legal predicates for the relief requested in the Motion are Bankruptcy Code sections 105, 363 and 365, and Bankruptcy Rules 2002, 6004, 6006, and 9014, and Local Bankruptcy Rules 6004-1 and 9013-1(m).

D. In the Motion and at the hearing on the Motion, the Debtors articulated and exercised good and sufficient notice of the relief granted by this Order has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief

[3] Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact to the fullest extent of the law. *See* Fed. R. Bankr. P. 7052.

granted by this Order has been afforded to those parties entitled to notice pursuant to Local Bankruptcy Rule 2002-1(b).

E. The Debtors' proposed sale notice, substantially in the form attached to the Motion as Exhibit D (the "Sale Notice"), is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Bidding Procedures, the Auction (if necessary), the Sale Hearing, and any and all objection deadlines and no other or further notice is required.

F. The Bidding Procedures, substantially in the form attached hereto as Exhibit 1, are fair, reasonable, and appropriate and are designed to maximize recovery with respect to the sale of the Acquired Assets by the Debtors' estates.

G. Under the circumstances, timing, and procedures set forth herein, in the Motion and in the Asset Purchase Agreement, the Debtors have demonstrated compelling and sound business justifications for entry into the Asset Purchase Agreement and its terms, including the associated Breakup Fee and Expense Reimbursement.

H. The Breakup Fee and Expense Reimbursement were: (i) negotiated by the Debtors and Bayside Finance, LLC (in its capacity as agent and lender under the Debtors' prepetition term loan credit agreement and as agent and lender under the Debtors' postpetition incremental term loan facility, "Bayside") on behalf of the Proposed Purchaser in good faith and at arm's-length; (ii) are reasonable and appropriate given, among other things, the size and nature of the transaction and the efforts that have been expended and will continue to be expended by Bayside and the Proposed Purchaser; and (iii) are a material inducement for, and a condition of, the Proposed Purchaser's entry into the Asset Purchase Agreement. The Breakup Fee and Expense Reimbursement are commensurate with the real and substantial postpetition benefits

conferred upon the Debtors' estates by the Proposed Purchaser and constitute actual and necessary costs and expenses incurred by the Debtors in preserving the value of their estates within the meaning of Bankruptcy Code section 503(b).

I. Entry into the Asset Purchase Agreement with the Proposed Purchaser as a "stalking-horse" is in the best interests of the Debtors and their estates and creditors and, based on the information set forth in the Motion and presented to the Court, is an appropriate exercise of the Debtors' business judgment. The Asset Purchase Agreement will enable the Debtors to secure an adequate floor for the Auction and will provide a clear benefit to the Debtors' estates, their creditors, interest holders and all other parties in interest.

J. The Assumption and Assignment Procedures, including the notice of the proposed Cure Costs substantially in the form attached as Exhibit E to the Motion (the "Assumption Notice"), are reasonable and appropriate and consistent with the provisions of Bankruptcy Code section 365 and Bankruptcy Rule 6006. The Assumption and Assignment Procedures have been tailored to provide adequate opportunity for all non-Debtor counterparties to the Assigned Contracts to raise any objections to the proposed assumption and assignment or to the Cure Costs.

K. Entry of this Order is in the best interests of the Debtors and their estates, creditors, and interest holders and all other parties in interest herein; and it is therefore

ORDERED, ADJUDGED AND DECREED THAT:

1. Those portions of the Motion seeking approval of the Debtors' entry into the Asset Purchase Agreement and all of its terms (including the Breakup Fee and Expense Reimbursement), the Assumption and Assignment Procedures, the Bidding Procedures and the

Notice Procedures, setting the time, date and place of the Sale Hearing, and establishing the process for objecting, as necessary, to each of the foregoing are GRANTED.

2. All objections, if any, to the Motion or the relief provided herein that have not been withdrawn, waived or settled, and all reservations of rights included therein, hereby are overruled and denied on the merits.

3. The form of the Asset Purchase Agreement (which may be downloaded at [KCC website] or obtained from counsel to the Debtors upon written request to Lauren Shumejda at lshumejda@paulweiss.com), is hereby approved and is appropriate and reasonably calculated to enable the Debtors and other parties in interest to easily compare and contrast the differing terms of the bids presented at the Auction.

4. Except as expressly provided herein, nothing herein shall be construed as a determination of the rights of any party in interest, including, without limitation, the Debtors, Bayside and the Proposed Purchaser, in these chapter 11 cases.

The Bidding Procedures

5. The Bidding Procedures attached hereto as Exhibit 1 are hereby APPROVED. The failure to specifically include or reference any particular provision, section or article of the Bidding Procedures in this Order shall not diminish or impair the effectiveness of such procedure, it being the Court's intent that the Bidding Procedures be authorized and approved in their entirety. The Debtors are hereby authorized to conduct a sale by auction of the Acquired Assets pursuant to the Bidding Procedures and the terms of this Order.

6. The Proposed Purchaser shall be deemed a Qualifying Bidder pursuant to the Bidding Procedures for all purposes.

7. The Bidding Procedures shall apply to the Qualifying Bidders and the conduct of the sale of the Acquired Assets and the Auction.

The Asset Purchase Agreement

8. In no event shall the Debtors be responsible or liable for any losses or liabilities under the Asset Purchase Agreement that are consequential, in the nature of lost profits, diminution in the value of property, special or punitive, or otherwise not actual damages.

9. Bayside is not a party to the Asset Purchase Agreement and, other than with respect to the obligation in that certain Commitment Letter by Bayside in favor of the Proposed Purchaser to contribute to or for the benefit of the Proposed Purchaser, as of the Closing and subject to the satisfaction or waiver of the closing conditions in the Asset Purchase Agreement, the indebtedness owed to Bayside under (a) the Credit Agreement dated as of May 22, 2012 (as amended, restated, supplemented or otherwise modified from time to time) among School Specialty, Inc., the borrowers and guarantors party thereto, the lenders party thereto and Bayside, as administrative agent and (b) the Senior Secured Super Priority Debtor-in-Possession Credit Agreement, dated as of January [28], 2013 (as amended, restated, supplemented or otherwise modified from time to time) among School Specialty, Inc., the borrowers and guarantors party thereto, the lenders party thereto and Bayside, as administrative agent, shall have no obligations to the Debtors thereunder, except to reduce the amount of Bayside's allowed secured claim in the event that the credit bid is used to consummate the purchase of the Acquired Assets.

The Assumption and Assignment Procedures

10. The Assumption and Assignment Procedures as set forth in the Motion are hereby authorized, approved and made part of this Order as if fully set forth herein.

11. The Debtors' decision to assume and assign the Assigned Contracts to the Prevailing Bidder is subject to Court approval and the consummation of a sale of the Acquired Assets. Accordingly, absent the closing of such sale(s), the Assigned Contracts shall not be

deemed assumed or assigned, and shall in all respects be subject to further administration under the Bankruptcy Code.

12. The inclusion of a contract on an Assumption Notice, which shall be substantially in the form attached to the Motion as Exhibit E, shall not constitute or be deemed a determination or admission by the Debtors, Bayside, the Proposed Purchaser or any other party in interest that such document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code (all rights with respect thereto being expressly reserved).

13. The Assumption and Assignment Procedures are appropriate and fair to all non-Debtor counterparties and comply in all respects with the Bankruptcy Code.

Notice Procedures

14. The Sale Notice, in substantially the form annexed to the Motion as Exhibit D of the Bidding Procedures, the Auction, the Sale Hearing, and the Assumption and Assignment Procedures, and the associated objection periods are reasonably calculated to provide notice to any affected party and afford the affected party the opportunity to exercise any rights affected by the Motion as it relates to the Auction, Sale Hearing and the proposed assignment and assumption of the Assigned Contracts pursuant to Bankruptcy Rules 2002(a)(2), 6004 and 6006, and are hereby approved.

15. Immediately after entry of this Bidding Procedures Order (or as soon as reasonably practicable thereafter), the Debtors (or their agent) shall serve the Sale Notice, in substantially the form attached as Exhibit D to the Motion, by first-class mail, postage prepaid, upon (i) all entities reasonably known to have expressed an interest in a transaction with respect to the Acquired Assets during the past nine (9) months, (ii) all entities reasonably known to have asserted any claim, lien, interest or encumbrance against the Debtors' right, title and interest in the Acquired Assets, (iii) all counterparties to the Assigned Contracts (each a "Counterparty"),

(iv) all known or potential creditors of the Debtors and (v) the general service list established in these chapter 11 cases pursuant to Bankruptcy Rule 2002 and Local Bankruptcy Rule 2002-1.

16. The Debtors also shall publish the Sale Notice in the [*Wall Street Journal*] within five (5) days of entry of this Order or as soon as reasonably practicable thereafter. Such publication conforms to the requirements of Bankruptcy Rules 1005, 2002(l), 2002(n) and 9008, and is reasonably calculated to provide notice to any affected party, including any potential bidders for the Acquired Assets, and afford the affected party the opportunity to exercise any rights affected by the Motion.

17. The Assumption Notice is reasonably calculated to provide sufficient, effective notice to all non-Debtor counterparties to Assigned Contracts and any other affected parties of the Debtors' intent to assume and assign some or all of the Assigned Contracts and to afford the non-Debtor counterparty to each Assigned Contract the opportunity to exercise any rights affected by the Motion pursuant to Bankruptcy Rules 2002(a)(2), 6004(a) and 6006(c), and is hereby approved. Each Assumption Notice shall set forth the following information: (i) the name and address of the Counterparty, (ii) notice of the proposed effective date of the assignment (subject to the Debtors' and the Proposed Purchaser's right to withdraw such request for assumption and assignment pursuant to the Asset Purchase Agreement and the Bidding Procedures), (iii) identification of the Assigned Contract, (iv) the Cure Cost, (v) a description of the Proposed Purchaser and a statement as to the Proposed Purchaser's ability to perform the Debtors' obligations under the Assigned Contracts, and (vi) the objection deadline.

18. The Debtors (or their agent) shall serve the Assumption Notice on each counterparty pursuant to the Assumption and Assignment Procedures set forth in the Motion. Additionally, from time to time as set forth in section 2.5 of the Asset Purchase Agreement, the

Debtors (at the direction of the Proposed Purchaser) shall file with the Court notices of assignment of contracts that set forth: (i) the name and address of each Counterparty; (ii) notice of the proposed effective date of each assignment (subject to the Debtors' and the Proposed Purchaser's right to withdraw such request for assumption and assignment pursuant to the Asset Purchase Agreement); (iii) a description of each Assigned Contract; (iv) the Cure Cost, if any; and (vi) and the objection deadline.

Objection Procedures

19. Any party that seeks to object to the relief requested in the Motion pertaining to approval of the sale of the Acquired Assets, including (without limitation) the sale, assumption and assignment of the Assigned Contracts, shall file a formal objection that complies with the objection procedures as set forth in the Motion. Each objection shall state the legal and factual basis of such objection. To the extent that any party to an Assigned Contract does not timely file an objection to the Motion pursuant to the procedures set forth therein, such party shall be (i) deemed to have stipulated that the Cure Cost(s) set forth in the Assumption Notice as determined in good faith by the Debtors are correct, (ii) shall be forever barred, estopped and enjoined from asserting any additional Cure Cost under the Assigned Contract(s), and (iii) will be forever barred from objecting to the assignment of the Assigned Contracts to the Prevailing Bidder or to the Prevailing Bidder adequate assurance of future performance.

20. If a timely objection to the assumption and assignment of an Assigned Contract is received and such objection cannot be resolved by the parties, the Court will hear such objection at the Sale Hearing; *provided, however*, that the Debtors, in consultation with Proposed Purchaser and, if applicable, the Prevailing Bidder(s), may continue such hearing to a subsequent hearing date. To the extent such hearing is not continued, the objecting non-Debtor counterparty

to the Assigned Contract(s) shall be prepared to present evidence to support its asserted Cure Cost at the Sale Hearing.

21. An objection solely to the Cure Cost related to the assumption and assignment of an Assigned Contract may not prevent or delay the Debtors' assumption and assignment of an Assigned Contract. If a party objects solely to a Cure Cost, the Debtors may, with the consent of the Proposed Purchaser, hold the claimed Cure Cost in reserve pending further order of the Court or mutual agreement of the parties. So long as the Debtors hold the claimed Cure Cost in reserve, and there are no other unresolved objections to assumption and assignment of the applicable Assigned Contracts, the Debtors can, without further delay, assume and assign the Assigned Contract that is the subject of the objection. Under such circumstances, the objecting non-Debtor counterparty's recourse is limited to the funds held in reserve.

22. Any and all written objections as contemplated by this Order (including, without limitation, any objection to the assumption and assignment of any Assigned Contract or the Cure Cost under any contract) must be: (a) in writing; (b) signed by counsel or attested to by the objecting party; (c) in conformity with the Bankruptcy Rules and the Local Bankruptcy Rules; (d) filed with the Bankruptcy Court; and (e) served in accordance with the Local Bankruptcy Rules so as to be received on or before the appropriate deadline as set forth in the Motion upon: (a) (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, Attn: Alan W. Kornberg, Jeffrey D. Saferstein and Elizabeth R. McColm, 1285 Avenue of the Americas, New York, NY 10019 and (ii) Young, Conaway, Stargatt & Taylor, LLP, Attn: Pauline K. Morgan and Joel Waite, Rodney Square, 1000 North King Street, Wilmington, DE 19801, attorneys for the Debtors; (b) (i) Akin Gump Strauss Hauer & Feld, LLP, Attn: Michael Stamer, Stephen Kuhn & Meredith Lahaie, One Bryant Park, New York, NY 10036 and (ii) Pepper Hamilton LLP, Attn: David Stratton &

David Fournier, Hercules Plaza, Suite 5100, 1313 N. Market Street, Wilmington, DE 19801, attorneys for Bayside and the Proposed Purchaser, (c) (i) Goldberg Kohn, Attn: Randall Klein & Jeremy Downs, 55 East Monroe Street, Suite 3300, Chicago, IL 60603, and (ii) Richards, Layton and Finger, P.A., Attn: Paul Heath, One Rodney Square, 920 North King Street, Wilmington, DE 19801, each as attorneys for the agent under the prepetition ABL facility and the and postpetition ABL DIP facility, (d) Baker & Mackenzie, Attn: Carmen Lonstein, 300 East Randolph Street, Suite 5000, Chicago, IL 60601, attorneys for the ad hoc group holders of convertible debentures, and (e) the U.S. Trustee.

23. Failure to object to the relief requested in the Motion shall be deemed to be "consent" for purposes of Bankruptcy Code section 363(f); *provided, however*, that the consent of the ABL Credit Parties (as defined in the Asset Purchase Agreement) is subject to payment in full of the Obligations under the ABL Credit Agreements (as defined in the Asset Purchase Agreement) as contemplated by Section 3.1 of the Asset Purchase Agreement..

24. All objections to the Motion or the relief requested therein (and all reservations of rights included therein), as they pertain to the entry of this Order, are overruled to the extent they have not been withdrawn, waived or otherwise resolved.

Other Relief Granted

25. Except as otherwise provided in the Asset Purchase Agreement, the Bidding Procedures or this Bidding Procedures Order, the Debtors further reserve the right to, as they may reasonably determine to be in the best interests of the estates: (i) determine which bidders are Qualifying Bidders; (ii) determine which bids are Qualifying Bids; (iii) determine which Qualifying Bid is the highest or best proposal; (iv) reject any bid that is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bidding Procedures or the Bankruptcy Code, or (c) contrary to the best interests of the Debtors or their estates; (v) remove

any material Acquired Assets from the Auction; (vi) waive terms and conditions set forth herein with respect to all potential bidders; (vii) impose additional terms and conditions with respect to all Potential Bidders; (viii) extend the deadlines set forth herein; (ix) adjourn or cancel the Auction and/or Sale Hearing in open Court without further notice; and (x) modify the Bidding Procedures as the Debtors may determine to be in the best interests of the estates or to withdraw the Motion at any time with or without prejudice; *provided, however*; that the Debtors may take the actions in (v) – (x) above only with the consent of the Proposed Purchaser.

26. Subject to the Debtors' compliance with their obligations to deliver a copy of any Qualifying Bids to the Proposed Purchaser in accordance with the terms of section 7 of the Bid Procedures, the Auction, if necessary, is scheduled for 10:00 a.m. (ET) on March 25, 2013 at the law offices of Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019. If no Qualifying Bid other than the Qualifying Bid submitted by the Proposed Purchaser is received by the Bid Deadline, then the Auction will not be held and the Debtors shall promptly seek Bankruptcy Court approval of the Asset Purchase Agreement.

27. Each Qualifying Bidder participating at the Auction will be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale.

28. The Auction will be conducted openly; *provided, however*, that only Qualifying Bidders will be allowed to submit bids for the Acquired Assets at the Auction.

29. Bidding at the Auction shall be transcribed.

30. The Sale Hearing shall be held in this Court on March 27, 2013 at [TIME] (ET), unless otherwise determined by the Court. The Sale Hearing may be adjourned or rescheduled by the Debtors, with the consent of the Proposed Purchaser, without further notice by an announcement of the adjourned date at the Sale Hearing or by the filing of a hearing agenda.

31. The Debtors are authorized to conduct the Asset Sale without the necessity of complying with any state or local bulk transfer laws or requirements.

32. In the event there is a conflict between this Order and the Motion or the Asset Purchase Agreement, this Order shall control and govern.

33. This Court shall retain jurisdiction with respect to all matters arising or related to the implementation or interpretation of this Order.

34. This Order shall be effective immediately upon entry, and any stay of orders provided for in Bankruptcy Rules 6004 or 6006 or any other provision of the Bankruptcy Code or Bankruptcy Rules is expressly lifted. The Debtors are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order, and may, in their discretion and without further delay, take any action and perform any act authorized under this Order.

Dated: _____, 2013
Wilmington, Delaware

_____
THE HONORABLE [ ]
UNITED STATES BANKRUPTCY JUDGE

Schedule 1:

Bidding Procedures

BIDDING PROCEDURES

Set forth below are the bid procedures (the "Bidding Procedures") to be employed by School Specialty, Inc. (together with its affiliated debtors and debtors-in-possession, the "Debtors") and all direct and indirect subsidiaries who are guarantors (collectively with the Debtors, the "Sellers") in connection with that certain purchase agreement, dated January 28, 2013 between the Debtors and Bayside School Specialty, LLC, a Delaware limited liability company (the "Proposed Purchaser"), pursuant to which the Proposed Purchaser shall acquire all or substantially all of the Debtors' assets all on the terms and conditions specified therein (the "Asset Purchase Agreement"), a copy of which is attached hereto as Exhibit 1.

ANY PARTY INTERESTED IN BIDDING ON ANY OF THE DEBTORS' ASSETS SHOULD CONTACT THE DEBTORS' ADVISORS, AS FOLLOWS:

Perella Weinberg Partners: Derron Slonecker (dslonecker@pwpartners.com, 212-287-3361), 767 Fifth Avenue New York, NY 10153

1. Assets to be Sold

The Debtors shall offer for sale all or substantially all of the property and assets of the Debtors' businesses (the "Asset Sale") as identified in further detail in the Asset Purchase Agreement (collectively the "Assets"); provided that the Debtors determine that the aggregate consideration offered by any Bid or combination of Bids for all or substantially all of the Debtors' assets satisfies the requirements set forth in section 5(n) below. A list of the Assets will be posted in the virtual data room.

2. Participation Requirements

Any person that wishes to participate in the bidding process (each, a "Potential Bidder") must become a "Qualifying Bidder." As a prerequisite to becoming a Qualifying Bidder (and, thus, being able to conduct due diligence), a Potential Bidder:

- must deliver an executed confidentiality agreement substantially in the form of Exhibit 2 attached hereto; and
- must be able, as reasonably determined by the Debtors, to demonstrate the financial wherewithal to consummate a transaction if selected as the successful bidder for the Assets.

The Proposed Purchaser is deemed a Qualifying Bidder and the Asset Purchase Agreement constitutes a Qualifying Bid (as defined below) for all purposes.

3. Form of Agreement

The Asset Purchase Agreement is an offer to purchase all of the Assets. Bidders should reference the Asset Purchase Agreement in connection with their bids. As set forth in section 5 below, Bidders who intend to submit bids must include with their bids (i) a clean asset purchase agreement that contains substantially the same or terms more favorable to the Debtors than those

in the Asset Purchase Agreement and (ii) a marked modified asset purchase agreement reflecting any variations from the Asset Purchase Agreement executed by the Proposed Purchaser.

4. Due Diligence

The Debtors may afford reasonable due diligence access and the time and opportunity to conduct reasonable due diligence to any Qualifying Bidder. The due diligence period shall extend through and include the Bid Deadline (as defined below). The Debtors and their representatives may but shall not be obligated to furnish any due diligence information after the Bid Deadline.

For any Qualifying Bidder who is a competitor of the Debtors or is affiliated with any competitor of the Debtors, the Debtors reserve the right, in consultation with their advisors, to withhold or limit access to any due diligence information that the Debtors determine is business-sensitive or otherwise not appropriate for disclosure to such Qualifying Bidder.

Due diligence access may include such management presentations as may be scheduled by the Debtors, access to the virtual data room, and such other matters which a Qualifying Bidder may reasonably request and as to which the Debtors may agree. The Debtors will designate a representative of Perella Weinberg Partners to coordinate all reasonable requests for additional information and due diligence access from Qualifying Bidders. Qualifying Bidders are advised to exercise their own discretion before relying on any information regarding the Assets provided by anyone other than the Debtors or their representatives.

Each bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to submitting its bid, that it has relied solely upon its own independent review, investigation and/or inspection of any documents in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection with the bidding process outlined herein, except as expressly stated in the definitive purchase agreement, if any, between such bidder and the Debtors.

5. Bid Requirements

To be deemed a "Qualifying Bid," a bid must be received from a Qualifying Bidder by a date no later than the Bid Deadline (as defined below) and satisfy each of the following requirements (each, a "Bid Requirement"):

(a) be in writing;

(b) set forth the purchase price to be paid by such bidder (or in the case of the Proposed Purchaser, the credit bid amount);

(c) not propose payment in any form other than cash (or in the case of the Proposed Purchaser, a credit bid);

(d) state the liabilities proposed to be paid or assumed by such bidder;

(e) state that such Qualifying Bidder offers to purchase all or any portion of the Assets upon the terms and conditions substantially as set forth in the Asset Purchase Agreement and be accompanied by a clean and duly executed purchase agreement (the "Modified Asset Purchase Agreement") and a marked Modified Asset Purchase Agreement reflecting any variations from the Asset Purchase Agreement executed by the Proposed Purchaser;

(f) state that such Qualifying Bidder's offer is irrevocable until the closing of the Asset Sale if such Qualifying Bidder is the Prevailing Bidder (as defined below) or the Second-Highest Bidder (as defined below);

(g) state that such Qualifying Bidder is financially capable of consummating the transactions contemplated by the Modified Asset Purchase Agreement and provides written evidence in support thereof;

(h) contain such financial and other information to allow the Debtors to make a reasonable determination as to the Qualifying Bidder's financial and other capabilities to consummate the transactions contemplated by the Modified Asset Purchase Agreement, including, without limitation, such financial and other information setting forth adequate assurance of future performance under contracts and leases to be assumed pursuant to section 365 of title 11 of the United States Code (the "Bankruptcy Code") in a form requested by the Debtors to allow the Debtors to serve, within one (1) business day after such receipt, such information on counter-parties to any contracts or leases being assumed or assumed and assigned in connection with the proposed sale that have requested, in writing, such information;

(i) identify with particularity each and every executory contract and unexpired lease, the assumption and, as applicable, assignment of which is a condition to closing;

(j) commit to, at the earlier of (i) the entry of an order by the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") approving the Asset Sale (the "Sale Order") and (ii) within 48 hours of the closing of the Auction (as defined below), (x) repay Bayside Finance, LLC (or the applicable beneficial lender under the Bayside DIP Facility (as defined below)) ("Bayside") by wire transfer of immediately available funds, the full amount of any obligations owed to Bayside under the superpriority debtor-in-possession financing facility made available by Bayside to the Sellers (the "Bayside DIP Facility"), and (y) assume or arrange for a suitable third party to assume all of the rights and ongoing funding obligations (if any) of Bayside under the Bayside DIP Facility (and the Debtors shall simultaneously grant a full release to Bayside with respect to the Bayside DIP Facility);

(k) unless otherwise agreed to by Wells DIP Agent (as defined below), commit to, at the earlier of (A) the entry of the Sale Order and (B) within 48 hours of the closing of the Auction (as defined below), repay, by certified check drawn on a domestic bank or wire transfer of immediately available funds, all amounts

outstanding under the super-priority revolving debtor-in-possession credit facility made available to certain of the Sellers in an aggregate principal amount of up to $175,000,000 (the "Wells DIP Facility") with Wells Fargo Capital Finance, LLC or an affiliate acting as administrative agent (in such capacity, the "Wells DIP Agent") for itself and a syndicate of financial institutions;

(l) not request or entitle such Qualifying Bidder to any break-up fee (other than the break-up fee that only the Proposed Purchaser is entitled to receive), expense reimbursement (other than the expense reimbursement that only the Proposed Purchaser is entitled to receive) or similar type of payment;

(m) fully disclose the identity of each entity that will be bidding in the Asset Sale or otherwise participating in connection with such bid, and the complete terms of any such participation;

(n) result in a value to the Debtors' estates that is more than the aggregate of the value of the sum of: (i) the credit bid amount set forth in the Asset Purchase Agreement; plus (ii) the assumed liabilities, as identified in the Asset Purchase Agreement; plus (iii) $4,500,000 (the "Initial Overbid Amount");

(o) (i) does not contain any financing contingencies of any kind; (ii) provides for expiration of any due diligence contingency on or before the day that is one (1) day prior to the Auction Date (as defined below); and (iii) contains evidence that the Qualifying Bidder has received debt and/or equity funding commitments or has financial resources readily available sufficient in the aggregate to consummate the Asset Sale, which evidence is reasonably satisfactory to the Debtors;

(p) sets forth each regulatory and third-party approval required for the bidder to consummate its purchase, and the time period within which the bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than 15 days following execution and delivery of an asset purchase agreement, those actions the bidder will take to ensure receipt of such approval(s) as promptly as possible);

(q) includes a commitment to close on or before April 11, 2013 (the "Projected Closing Date") subject to any regulatory approvals;

(r) provides for the Qualifying Bidder to serve as a backup bid (the "Second-Highest Bidder") if it is the next highest and best bid after the Prevailing Bid (the "Second-Highest Bid") in accordance with the terms of the Asset Purchase Agreement or Modified Asset Purchase Agreement, as applicable;

(s) includes evidence of authorization and approval from the Qualifying Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of the Modified Asset Purchase Agreement;

(t) provides for liquidated damages in the event of the bidder's breach of contract under the Modified Asset Purchase Agreement equal to the deposit; and

(u) provides a cash purchase deposit equal to ten percent (10%) of the purchase price contained in the Modified Asset Purchase Agreement; provided, however, that the Proposed Purchaser is not required to make a cash deposit.

A competing bid satisfying all the above requirements, as determined by the Debtors in theirreasonable business judgment, shall constitute a Qualifying Bid. For the avoidance of doubt, no waiver of any Bid Requirement shall be permitted without the consent of the Proposed Purchaser. Each Potential Bidder submitting a bid shall be deemed to acknowledge and represent that it is bound by these Bidding Procedures.

6. Bid Deadline

A Qualifying Bidder that desires to make a bid shall deliver a written or electronic copy of its bid to: (i) School Specialty, Inc., W6316 Design Drive, Greenville, WI 54942, Attn: Michael P. Lavelle, Chief Executive Officer; (ii) Paul, Weiss, Rifkind, Wharton & Garrison LLP, Attn: Alan W. Kornberg, Jeffrey D. Saferstein & Tarun Stewart, 1285 Avenue of the Americas, New York, NY 10019, attorneys for the Sellers; (iii) Perella Weinberg Partners, Attn: Derron Slonecker and Agnes Tang, 767 Fifth Avenue, New York, NY 10153, financial advisors for the Sellers; (iv) Akin Gump Strauss Hauer & Feld, LLP, Attn: Michael Stamer, Stephen Kuhn & Meredith Lahaie, One Bryant Park, New York, NY 10036, attorneys for the Proposed Purchaser; and (v) Goldberg Kohn, Attn: Randall Klein & Jeremy Downs, 55 East Monroe Street, Suite 3300, Chicago, IL 60603, attorneys for the ABL Credit Parties (as defined in the Asset Purchase Agreement); in each case so as to be received by a date no later than March 19, 2013 (the "Bid Deadline").

7. Evaluation of Qualifying Bids

The Debtors shall make a determination regarding whether a bid is a Qualifying Bid and shall notify bidders whether their bids have been determined to be qualified by a date no later than two (2) days prior to the Auction Date (as defined below). In the event a bid is determined not to be a Qualifying Bid, the bidder shall be notified by the Debtors and shall have one (1) day from the date of such notification to modify its bid to render it a Qualifying Bid. One (1) day prior to the Auction (as defined below), the Debtors shall determine, in its reasonable judgment, which of the Qualifying Bids, at such time, is the highest or best for purposes of constituting the opening bid of the Auction.

8. No Qualifying Bids

If no timely, conforming Qualifying Bids other than the Qualifying Bid submitted by the Proposed Purchaser are submitted by the Bid Deadline, the Debtors shall not hold an Auction (as defined below) and instead shall request at the Sale Hearing (as defined below) that the Bankruptcy Court approve the Asset Purchase Agreement with the Proposed Purchaser.

9. Auction

In the event that the Debtors timely receive one or more Qualifying Bids other than the Asset Purchase Agreement, the Debtors shall conduct an auction (the "Auction") no later than March 25, 2013 (the "Auction Date"). Following the Auction, the Debtors will determine, in

consultation with its advisors, which individual bid is in the best interests of the Debtors and their estates.

The Auction shall be governed by the following procedures:

(a) The Auction shall be held at the law offices of Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019 on March 25, 2013, beginning at 10:00 a.m.;

(b) only the Proposed Purchaser and the other Qualifying Bidders shall be entitled to make any subsequent bids at the Auction;

(c) the Proposed Purchaser and the other Qualifying Bidders shall appear in person at the Auction, or through a duly authorized representative;

(d) only the Debtors, the Proposed Purchaser, the Qualifying Bidders, the ABL Credit Parties, the official committee of unsecured creditors (if one has been appointed) and advisors to each of these parties, may attend the Auction;

(e) the Debtors and their professional advisors shall direct and preside over the Auction and the Auction shall be transcribed;

(f) bidding shall commence at the amount of the highest Qualifying Bid submitted by the Qualifying Bidders prior to the Auction;

(g) Qualifying Bidders may submit successive bids in increments of at least the Initial Overbid Amount higher than the Qualifying Bid of the Proposed Purchaser and then continue in minimum increments of at least $500,000 higher than the previous bid; provided that (i) each such successive bid must be a Qualifying Bid and (ii) the Debtors shall retain the right to modify the bid increment requirements at the Auction;

(h) the Auction may include individual negotiations with the Qualified Bidders and/or open bidding in the presence of all other Qualified Bidders;

(i) all material terms of the bid that is deemed to be the highest and best bid for each round of bidding shall be fully disclosed to all other Qualifying Bidders and the Proposed Purchaser;

(j) The Debtors may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make subsequent bids) for conducting the Auction, provided that such rules are (i) not inconsistent with the Bid Procedures Order, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Bankruptcy Rules for the District of Delaware, or any order of the Bankruptcy Court entered in connection with these chapter 11 cases, and (ii) disclosed to each Qualified Bidder.

(k) all Qualifying Bidders, including the Proposed Purchaser, at the Auction shall be deemed to have consented and submitted to the core jurisdiction of the Bankruptcy Court and waive any right to a jury trial in connection with any disputes relating to the marketing process, the Auction and the construction and enforcement of the Qualifying Bidder's contemplated transaction documents, as applicable;

(l) Pursuant to Bankruptcy Code section 363(k), the Proposed Purchaser shall be entitled to credit bid all or a portion of the obligations then outstanding under (A) the DIP Credit Agreement (as defined in the Asset Purchase Agreement) and (B) the Pre-Petition Credit Agreement (as defined in the Asset Purchase Agreement), together with accrued interest, fees (including the Early Payment Fee, as defined in the Asset Purchase Agreement) and any other claims in respect thereof;

(m) all Qualifying Bidders, including the Proposed Purchaser, shall have the right to make additional modifications to the Asset Purchase Agreement or Modified Asset Purchase Agreement in conjunction with each Qualifying Bid submitted in each round of bidding during the Auction, provided that (i) any such modifications to the Asset Purchase Agreement or Modified Asset Purchase Agreement on an aggregate basis and viewed in whole, shall not, in the Debtors' business judgment, be less favorable to the Debtors than the terms of the Asset Purchase Agreement and (ii) each Qualifying Bid shall constitute an irrevocable offer and be binding on the Qualified Bidder submitting such bid until either such party shall have submitted a subsequent Qualifying Bid at the Auction or the Auction shall have concluded without such bid being selected as the Prevailing Bid or the Second-Highest Bid;

(n) the Debtors shall have the right to request any additional financial information that will allow the Debtors to make a reasonable determination as to the Qualifying Bidder's financial and other capabilities to consummate the transactions contemplated by the Modified Asset Purchase Agreement, as further amended during the Auction, and any further information that the Debtors may believe is reasonably necessary to clarify and evaluate the Qualifying Bidder's bid;

(o) the Auction shall continue until the Debtors determine, subject to Bankruptcy Court approval, that the offer or offers for the Assets is or are the highest or best from among the Qualifying Bids submitted at the Auction (the "Prevailing Bid"). In making this decision, the Debtors shall consider, without limitation, the amount of the purchase price, the likelihood of the bidder's ability to close a transaction and the timing thereof, the number, type and nature of any changes to the Asset Purchase Agreement requested by each bidder, and the net benefit to the Debtors' estates. The bidder submitting such Prevailing Bid shall become the "Prevailing Bidder," and shall have such rights and responsibilities of the purchaser, as set forth in the applicable Asset Purchase Agreement or Modified Asset Purchase Agreement; provided that the Debtors may, in its discretion, designate the

Second-Highest Bid (and the corresponding Second-Highest Bidder) to purchase the Assets in the event the Prevailing Bidder does not close the Asset Sale; and

(p) within one (1) business day after adjournment of the Auction, the Prevailing Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Prevailing Bid was made.

EACH OF THE PREVAILING BID AND THE SECOND-HIGHEST BID SHALL CONSTITUTE AN IRREVOCABLE OFFER AND BE BINDING ON THE PREVAILING BIDDER AND THE SECOND-HIGHEST BIDDER, RESPECTIVELY, FROM THE TIME THE BID IS SUBMITTED UNTIL THE EARLIEST OF (A) TWO (2) BUSINESS DAYS AFTER THE SALE HAS CLOSED; OR (B) THIRTY (30) DAYS AFTER THE SALE ORDER IS ENTERED. EACH QUALIFIED BID (INCLUDING THE BID OF THE PROPOSED PURCHASER) THAT IS NOT THE PREVAILING BID OR THE SECOND-HIGHEST BID SHALL BE DEEMED WITHDRAWN AND TERMINATED AT THE CONCLUSION OF THE SALE HEARING.

10. Sale Hearing

The Prevailing Bid and the Second-Highest Bid (or the Asset Purchase Agreement if no Qualifying Bid other than that of the Proposed Purchaser is received) will be subject to approval by the Bankruptcy Court. The hearing to approve the Prevailing Bid and the Second-Highest Bid (or the Asset Purchase Agreement if no Qualifying Bid other than that of the Proposed Purchaser is received) (the "Sale Hearing") shall take place on March 27, 2013.

11. Return of Deposits

All deposits shall be returned to each bidder not selected by the Debtors as the Prevailing Bidder no later than five (5) business days following the substantial consummation of the sale to the Prevailing Bidder or the Second Highest Bidder (if such bidder is deemed the Prevailing Bidder).

12. Reservation of Rights

Notwithstanding any of the foregoing, the Debtors reserve its right, with the consent of the Proposed Purchaser, to modify these Bidding Procedures at or prior to the Auction, including, without limitation, extending the deadlines set forth herein, modifying bidding increments, waiving terms and conditions set forth herein with respect to any or all potential bidders, imposing additional terms and conditions with respect to any or all potential bidders, adjourning or cancelling the Auction at or prior to the Auction and/or adjourning the Sale Hearing in open court without further notice.

13. Backup Bidder

(a) Notwithstanding any of the foregoing, in the event that the Prevailing Bidder fails to consummate such sale prior to the Projected Closing Date (or such date as may

be extended by the Debtors), the Second Highest Bidder will be deemed to be the back-up bidder at the price of its last bid. The Second-Highest Bidder will be deemed to be the Prevailing Bidder and the Debtors will be authorized, but not directed, to effectuate the Asset Sale to the Second-Highest Bidder subject to the terms of the Second-Highest Bid without further order of the Bankruptcy Court.

(b) For the avoidance of doubt, in the event that there is a Prevailing Bidder other than the Proposed Purchaser and the Proposed Purchaser is the Second-Highest Bidder, the Proposed Purchaser will be deemed to be the back-up bidder at the price of its last credit bid and will be subject to the terms contained Section 13(a) herein.

EXHIBIT B

Proposed Sale Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	**Chapter 11**
SCHOOL SPECIALTY, INC., et al.,[1]	:	**Case No. 13-10125 ( )**
	:	**Jointly Administered**
Debtors.	:	

ORDER (I) APPROVING THE ASSET PURCHASE AGREEMENT; (II) AUTHORIZING THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS OR ENCUMBRANCES; (III) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (IV) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of School Specialty, Inc. and its affiliated debtors and debtors-in-possession in the above-captioned cases (each, a "Debtor," and collectively, the "Debtors"), requesting entry of (a) an order (i) scheduling a hearing (the "Sale Hearing") on approval of its asset sale, assumption and assignment of executory contracts, to Bayside School Specialty, LLC (or its assignee) (the "Purchaser") and assumption of certain liabilities; (ii) approving proposed bidding and sale procedures (the "Bidding Procedures"), the procedures for assumption and assignment of executory contracts and unexpired leases, the Breakup Fee and Expense Reimbursement, and form and manner of notice thereof; and (b) an order (the "Sale Order"), (i) approving an asset purchase agreement (the "Asset Purchase Agreement"), for the sale of the Acquired Assets to the Purchaser or to the Prevailing Bidder to be identified at the

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1 The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number and state of incorporation, are: School Specialty, Inc. (Wisc.; 1239), Bird-In-Hand Woodworks, Inc. (N.J.; 8811), Califone International, Inc. (Del.; 3578), Childcraft Education Corp. (N.Y.; 9818), ClassroomDirect.com, LLC (Del.; 2425), Delta Education, LLC (Del.; 8764), Frey Scientific, Inc. (Del.; 3771), Premier Agendas, Inc. (Wash.; 1380), Sax Arts & Crafts, Inc. (Del.; 6436), and Sportime, LLC (Del.; 6939). The address of the Debtors' corporate headquarters is W6316 Design Drive, Greenville, Wisconsin 54942.

2 Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

Auction, (ii) authorizing the sale of all or substantially all of the assets of the Debtors free and clear of all Liens, Claims, Interests or Encumbrances (other than Permitted Liens), (iii) authorizing the assumption and assignment of certain executory contracts and unexpired leases (the "Assigned Contracts") to the Purchaser or the Prevailing Bidder, and (iv) granting related relief; and the Court having entered an order approving, among other things, the Bidding Procedures (the "Bidding Procedures Order") [ECF No. XXX] based upon the evidence presented at the hearing held on [DATE], 2013 (the "Bidding Procedures Hearing"); [and the Auction having been held in accordance with the Bidding Procedures Order; and at the conclusion of the Auction, the Purchaser having been chosen as the Prevailing Bidder; and the Court having conducted the Sale Hearing on March 27, 2013; and all parties in interest having been heard or having had the opportunity to be heard regarding the Asset Purchase Agreement; and it appearing that this Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; and it appearing that venue of the Debtors' chapter 11 cases (the "Chapter 11 Cases") and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that adequate and proper notice of the Motion has been given and that no other or further notice need be given; and a hearing having been held to consider the relief requested in the Motion; and upon the record of the hearing and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties in interest; and that the legal and factual bases set

forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:[3]

A. Jurisdiction. The Court has jurisdiction to hear and determine the Motion and to grant the relief requested in the Motion pursuant to 28 U.S.C. § 157(b)(1) and 1334(b).

B. Venue. Venue of this case and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

C. Statutory Predicates. The statutory and legal predicates for the relief requested in the Motion are Bankruptcy Code sections 105, 363 and 365, Bankruptcy Rules 2002, 6004, 6006, and 9014, and Local Rule 6004-1.

D. Notice. Notice of the Motion and the Sale Hearing has been provided to: (i) all entities reasonably known to have expressed an interest in a transaction with respect to the Acquired Assets during the past nine (9) months; (ii) all entities reasonably known to have asserted any claim, lien, interest or encumbrance against the Debtors' right, title and interest in the Acquired Assets; (iii) the attorneys general for all states in which Acquired Assets owned by the Debtors are located, all federal and state taxing authorities including, without limitation, the SEC, the EPA, state environmental protection agencies, the IRS, and the Department of Labor and similar state labor or employment agencies; (iv) all counterparties to the Assigned Contracts; (v) all known creditors or known potential creditors of the Debtors; and (vi) the general service list established in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002 and Local Rule 2002-1, including, but not limited to, [the Official Committee of Unsecured Creditors (the

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[3] Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact to the fullest extent of the law. *See* Fed. R. Bankr. P. 7052.

"Committee")]; and (vii) other parties through publication of the Sale Notice, all in accordance with and as provided by the Bidding Procedures Order. As required by the Bidding Procedures Order, the Publication Notice was published in [*The Wall Street Journal*] on [February 13],[4] 2013.

E. Notice Sufficient. Based upon the affidavits of service filed with the Court and the evidence presented at the Sale Hearing: (a) notice of the Motion and the Sale Hearing was adequate and sufficient under the circumstances of these Chapter 11 Cases and these proceedings and complied with the various applicable requirements of the Bankruptcy Code, the Bankruptcy Rules and the Bidding Procedures Order; and (b) a reasonable opportunity to object and be heard with respect to the Motion and the relief requested therein was afforded to all interested persons and entities. The foregoing notice was good, sufficient and appropriate under the circumstances and provided in accordance with the orders previously entered by the Court, and no other or further notice of the Motion, the Sale (as defined below), the Auction, or the Sale Hearing is required.

F. Assets Property of the Estate. The Acquired Assets sought to be transferred and/or assigned by the Debtors to the Purchaser pursuant to the Asset Purchase Agreement are property of the Debtors' estates and title thereto is vested in the Debtors' estates.

G. Sufficiency of Marketing. The Debtors and their professionals marketed the Acquired Assets and conducted the marketing and sale process as set forth in and in accordance with the Motion and the Bidding Procedures. Based upon the record of these proceedings, all creditors and other parties in interest and all prospective purchasers have been afforded a reasonable and fair opportunity to bid for the Acquired Assets.

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[4] Tto be no more than 5 days after entry of the Bidding Procedures Order.

H. Asset Purchase Agreement. On [January 28], 2013, the Debtors entered into the Asset Purchase Agreement subject to higher or better offers. In accordance with the Bidding Procedures Order, the Asset Purchase Agreement was deemed a Qualifying Bid and the Purchaser was eligible to participate in the Auction.

I. Bidding Procedures. The Bidding Procedures were substantively and procedurally fair to all parties and all potential bidders and afforded notice and a full, fair and reasonable opportunity for any person to make a higher or otherwise better offer to purchase the Acquired Assets. The Debtors conducted the sale process (including the Auction) without collusion and in accordance with the Bidding Procedures.

J. Auction. After the conclusion of the Auction held on March 25, 2013, the Debtors determined in a valid and sound exercise of their business judgment that the highest and best Qualifying Bid for the Acquired Assets was that of the Purchaser[, as increased as a result of the Auction]. The Purchaser is an acquisition vehicle formed by Bayside Finance, LLC (together with its affiliates and subsidiaries, "Bayside"), a secured creditor of the Debtors holding an allowed secured claim, as of the Petition Date, in the amount of approximately $94,667,000.00, (including the Early Payment Fee, as defined in the Prepetition Term Loan Agreement) plus costs under the Prepetition Term Loan Agreement (collectively, the "Allowed Claim"). Pursuant to the Bidding Procedures, the Purchaser was authorized to credit bid any or all of the Allowed Claim at the Auction. At the Auction, the Purchaser credit bid $[__] million, which credit bid was a valid and proper offer pursuant to the Bidding Procedures Order and Bankruptcy Code sections 363(b) and 363(k) (the "Credit Bid").

K. Corporate Authority. Subject to the entry of this Order, the Debtors: (i) have full power and authority to execute the Asset Purchase Agreement and all other

documents contemplated thereby; (ii) have all of the power and authority necessary to consummate the transactions contemplated by the Asset Purchase Agreement (collectively, the "Transactions"), and (iii) have taken all company action necessary to authorize and approve the Asset Purchase Agreement and the sale of the Acquired Assets (the "Sale"), and any actions required to be performed by the Debtors in order to consummate the transactions contemplated in the Asset Purchase Agreement. No consents or approvals, other than those expressly provided for in the Asset Purchase Agreement or this Order, are required for the Debtors to consummate the Sale.

L. Arm's-Length Sale and Purchaser's Good Faith. The Asset Purchase Agreement was negotiated and is undertaken by the Debtors and the Purchaser at arm's length without collusion or fraud, and in good faith within the meaning of Bankruptcy Code section 363(m). The Purchaser is not an "insider" of the Debtors as that term is defined by Bankruptcy Code section 101(31). The Purchaser (i) recognized that the Debtors were free to deal with any other party interested in acquiring the Acquired Assets, (ii) complied with the Bidding Procedures Order and (iii) willingly subjected its bid to the competitive Bidding Procedures approved in the Bidding Procedures Order. All payments to be made by the Purchaser and other agreements or arrangements entered into by the Purchaser in connection with the Sale have been disclosed, the Purchaser has not violated Bankruptcy Code section 363(n) by any action or inaction, and no common identity of directors or controlling stockholders exists between the Purchaser and the Debtors. As a result of the foregoing, the Purchaser is entitled to the protections of Bankruptcy Code section 363(m), including in the event this Order or any portion thereof is reversed or modified on appeal, and otherwise has proceeded in good faith in all respects in connection with the proceeding.

M. Sale Highest or Best Offer. The total consideration provided by the Purchaser for the Acquired Assets as reflected in the Asset Purchase Agreement is the highest or best offer received by the Debtors. No other person or entity or group of persons or entities has offered to purchase the Acquired Assets for an amount that would provide greater value to the Debtors than the Purchaser. The Court's approval of the Motion and the Asset Purchase Agreement is in the best interests of the Debtors, their estates and creditors and all other parties in interest.

N. No Fraudulent Transfer. The Purchase Price constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act and any other applicable laws, and may not be avoided under Bankruptcy Code section 363(n). The Asset Purchase Agreement was not entered into, and the Sale is not being consummated, for the purpose of hindering, delaying or defrauding creditors of the Debtors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law. Neither the Debtors nor the Purchaser has entered into the Asset Purchase Agreement or is consummating the Sale with any fraudulent or otherwise improper purpose.

O. No Liability under Section 363(n). Neither the Debtors nor the Purchaser engaged in any conduct that would cause or permit the Asset Purchase Agreement or the consummation of the Sale to be avoided, or costs or damages to be imposed, under Bankruptcy Code section 363(n).

P. Free and Clear Findings Required by Purchaser. The Purchaser would not have entered into the Asset Purchase Agreement and would not consummate the Sale if the Sale of the Acquired Assets to the Purchaser were not free and clear of all Liens, Claims, Interests or

Encumbrances (other than Permitted Liens) pursuant to Bankruptcy Code section 363(f), or if the Purchaser would, or in the future could, be liable for any of such Liens, Claims, Interests or Encumbrances. Effective upon the Closing and payment in full of the Purchase Price, the Purchaser shall not be responsible for any Liens, Claims, Interests or Encumbrances (other than Permitted Liens), including in respect of the following: (i) any labor or employment agreements; (ii) all mortgages, deeds of trust and security interests; (iii) intercompany loans and receivables between the Debtors and any non-debtor subsidiary; (iv) any pension, multiemployer plan (as such term is defined in Section 3(37) or Section 4001(a)(3) of ERISA), health or welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plan of the Debtors or any multiemployer plan to which the Debtors have at any time contributed to or had any liability or potential liability; (v) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (a) the Employee Retirement Income Security Act of 1974, as amended, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (g) the Americans with Disabilities Act of 1990, (h) the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, including, without limitation, the requirements of Part 6 of Subtitle B of Title I of ERISA and Section 4980B of the Code and of any similar state law (collectively, "COBRA"), (i) state discrimination laws, (j) state unemployment compensation laws or any other similar state laws, or (k) any other state or federal benefits or claims relating to any employment with the Debtors or any of their predecessors; (vi) any Environmental Laws with respect to any assets

owned or operated by the Debtors or any corporate predecessor at any time prior to the Closing; (vii) any bulk sales or similar law; (viii) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; and (ix) any liabilities. A Sale of the Acquired Assets other than one free and clear of all Liens, Claims, Interests or Encumbrances (other than Permitted Liens) would yield substantially less value for the Debtors' estates, with less certainty, than the Sale as contemplated. Therefore, the Sale contemplated by the Asset Purchase Agreement is in the best interests of the Debtors, their estates and creditors, and all other parties in interest.

Q. Satisfaction of Section 363(f) Standards. The Debtors may sell the Acquired Assets free and clear of all Liens, Claims, Interests or Encumbrances (other than Permitted Liens) because, with respect to each creditor asserting a Lien, Claim, Interest or Encumbrance, one or more of the standards set forth in Bankruptcy Code section 363(f)(1)-(5) has been satisfied. Those holders of Liens, Claims, Interests or Encumbrances who did not object [or who withdrew their objections] to the Sale or the Motion are deemed to have consented to the Motion and Sale pursuant to section 363(f)(2). [Those holders of Liens, Claims, Interests or Encumbrances who did object fall within one or more of the other subsections of section 363(f).] Except as may otherwise be agreed to in writing by all of the ABL Credit Parties (as defined in the Asset Purchase Agreement), the consent of the ABL Credit Parties to the sale of the Acquired Assets free and clear of the Liens in favor of the Agents under the ABL Credit Agreements (as defined in the Asset Purchase Agreement) is conditioned upon entry of this Order and payment in full in cash of the Obligations under the ABL Credit Agreements in the manner and in such amount as provided for in Section 3.1 of the Asset Purchase Agreement.

R. No Successor Liability. The Purchaser is not holding itself out to the public as a continuation of the Debtors and is not an "insider" or "affiliate" of the Debtors, as those terms are defined in the Bankruptcy Code, and no common identity of incorporators, directors or stockholders existed between the Purchaser and the Debtors. The conveyance of the Acquired Assets does not amount to a consolidation, merger or *de facto* merger of the Purchaser and the Debtors and/or Debtors' estates, there is not substantial continuity between the Purchaser and the Debtors, there is no continuity of enterprise between the Debtors and the Purchaser, the Purchaser is not a mere continuation of the Debtors or their estates, and the Purchaser does not constitute a successor to the Debtors or their estates. The Purchaser's acquisition of the Acquired Assets shall be free and clear of any "successor liability" claims of any nature whatsoever, whether known or unknown and whether asserted or unasserted as of the Closing. The Purchaser's operations shall not be deemed a continuation of the Debtors' business as a result of the acquisition of the Acquired Assets purchased. The Purchaser would not have acquired the Acquired Assets but for the foregoing protections against potential claims based upon "successor liability" theories.

S. Assigned Contracts. Each and every provision of the Assigned Contracts or applicable non-bankruptcy law that purports to prohibit, restrict, or condition, or could be construed as prohibiting, restricting, or conditioning assignment of any Assigned Contract has been satisfied or is otherwise unenforceable under Bankruptcy Code section 365. Any party having the right to consent to the assumption and assignment of an Assigned Contract that failed to object to such assumption and assignment is deemed to have consented to such assumption and assignment as required by Bankruptcy Code section 365(c), and the Purchaser shall enjoy all of the rights and benefits under each such Assigned Contract as of the applicable date of

assumption and assignment without the necessity of obtaining such non-debtor party's written consent to the assumption or assignment thereof. The Purchaser has demonstrated adequate assurance of future performance of all Assigned Contracts within the meaning of Bankruptcy Code section 365. Upon the assignment and Sale to the Purchaser, the Assigned Contracts shall be deemed valid and binding, in full force and effect in accordance with their terms, subject to the provisions of this Order, and shall be assigned and transferred to the Purchaser, notwithstanding any provision in the Assigned Contracts or other restrictions prohibiting assignment or transfer. The Debtors have demonstrated that it is an exercise of their sound business judgment to assume and assign the Assigned Contracts to the Purchaser in connection with the consummation of the Sale of the Acquired Assets, and the assumption and assignment of the Assigned Contracts is in the best interests of the Debtors, their estates and creditors, and other parties in interest. The Assigned Contracts being assigned to the Purchaser are an integral part of the Sale of the Acquired Assets and, accordingly, their assumption and assignment are reasonable and an enhancement to the value of the Debtors' estates.

T. Sale as Exercise of Business Judgment. Entry into the Asset Purchase Agreement constitutes the exercise by the Debtors of sound business judgment, and such acts are in the best interests of the Debtors, their estates and creditors, and all parties in interest. The Court finds that the Debtors have articulated good and sufficient business reasons justifying the Sale of the Acquired Assets to the Purchaser. Additionally: (i) the Asset Purchase Agreement constitutes the highest or best offer for the Acquired Assets; (ii) the Asset Purchase Agreement and the closing thereon will present the best opportunity to realize the value of the Acquired Assets and avoid further decline and devaluation of the Acquired Assets; (iii) there is risk of deterioration of the value of the Acquired Assets if the Sale is not consummated promptly; and

(iv) the Asset Purchase Agreement and the closing thereon will provide a greater recovery for the Debtors' creditors than would be provided by any other presently available alternative. The Debtors have demonstrated compelling circumstances and a good, sufficient and sound business purpose and justification for the Sale prior to, and outside of, a plan of reorganization.

U. Compelling Reasons for an Immediate Sale. Good and sufficient reasons for approval of the Asset Purchase Agreement have been articulated by the Debtors. The Debtors have demonstrated compelling circumstances for the Sale outside: (a) the ordinary course of business, pursuant to Bankruptcy Code section 363(b); and (b) a plan of reorganization, in that, among other things, the immediate consummation of the Sale to the Purchaser is necessary and appropriate to preserve and maximize the value of the Debtors' estates. To maximize the value of the Acquired Assets and preserve the viability of the business to which the Acquired Assets relate, it is essential that the Sale occur promptly. Time is of the essence in consummating the Sale.

V. Assets Assignable. Each and every provision of the documents governing the Acquired Assets or applicable non-bankruptcy law that purports to prohibit, restrict, or condition, or could be construed as prohibiting, restricting, or conditioning assignment of any of the Acquired Assets, if any, have been satisfied or are otherwise unenforceable under Bankruptcy Code section 365.

W. Cure/Adequate Assurance. Pursuant to the Asset Purchase Agreement, the Cure Costs will be paid by Debtors to the extent of available cash on the Debtors' balance sheet and the Purchaser will be assuming and paying the balance of any Cure Costs not paid by the Debtors as "Assumed Liabilities" under the Asset Purchase Agreement. The Purchaser has demonstrated its ability to cure any default with respect to any act or omission that occurred prior

to the Closing under any of the Assigned Contracts to be assumed and assigned to the Purchaser as of Closing within the meaning of Bankruptcy Code section 365(b)(1)(A). The Cure Costs are deemed the amounts necessary to "cure" (within the meaning of Bankruptcy Code section 365(b)(1)) all "defaults" (within the meaning of Bankruptcy Code section 365(b)) under such Assigned Contracts. The Purchaser's promises to perform the obligations under the Assigned Contracts after the Closing shall constitute adequate assurance of its future performance of and under the Assigned Contracts, within the meaning of Bankruptcy Code sections 365(b)(1) and 365(f)(2) with respect to all Assigned Contracts to be assumed and assigned to the Purchaser as of Closing. All counterparties of the Assigned Contracts who did not or do not (pursuant to paragraph Z.17.d] hereof) timely file an objection to the assumption and assignment of the Assigned Contract(s) to which they are counterparty are deemed to consent to the assumption by the Debtors of their respective Assigned Contract(s) and the assignment thereof to the Purchaser. The Court finds that with respect to all such Assigned Contracts, the payment of the Cure Costs as provided in the Asset Purchase Agreement is appropriate and is deemed to fully satisfy the Debtors' obligations under Bankruptcy Code sections 365(b) and 365(f). Accordingly, all of the requirements of Bankruptcy Code sections 365(b) and 365(f) have been satisfied for the assumption by the Debtors, and the assignment by the Debtors to the Purchaser, of each of the Assigned Contracts to be assumed and assigned to the Purchaser as of Closing. To the extent any Assigned Contract is not an executory contract within the meaning of Bankruptcy Code section 365, it shall be transferred to the Purchaser in accordance with the terms of this Order that are applicable to the Acquired Assets, and the Purchaser shall have no liability or obligation for any (a) defaults or breaches under such agreement that relate to acts or omissions that occurred in the period, or otherwise arose, prior to the date of the entry of this Order, and

(b) claims, counterclaims, offsets, or defenses (whether contractual or otherwise, including without limitation, any right of recoupment) with respect to such Assigned Contract, that relate to any acts or omissions that arose or occurred prior to the date of the entry of this Order. Notwithstanding any other provision in this Order, the Debtors may assume and assign any Assigned Contract following the entry of this Order, provided the Purchaser comply with the applicable cure provisions contained herein and in the Asset Purchase Agreements.

X. Unenforceability of Anti-Assignment Provisions. Anti-assignment provisions in any Assigned Contract do not restrict, limit or prohibit the assumption, assignment, or sale of the Assigned Contracts and should be, and hereby are, deemed and found to be unenforceable anti-assignment provisions within the meaning of Bankruptcy Code section 365(f).

Y. No Sub Rosa Plan. The Sale does not constitute a *sub rosa* chapter 11 plan. The Sale neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates a liquidating plan of reorganization for the Debtors.

Z. Final Order. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds that there is no just reason for delay in the implementation of this Order and expressly directs entry of judgment as set forth herein.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. Motion Granted. The relief requested in the Motion is GRANTED.

2. Objections Overruled. All objections with regard to the relief sought in the Motion that have not been withdrawn, waived, settled or otherwise dealt with as expressly

provided herein or on the record at the Sale Hearing are hereby overruled on the merits, with prejudice.

3. Approval. Pursuant to Bankruptcy Code sections 105, 363 and 365, the Asset Purchase Agreement, the assumption of the Assigned Contracts to be assumed and assigned to the Purchaser as of Closing, the Credit Bid and the Sale of the Acquired Assets are hereby approved and the Debtors are authorized to comply with the Asset Purchase Agreement. Pursuant to Bankruptcy Code sections 105, 363 and 365, the Debtors and the Purchaser are each hereby authorized and directed to take any and all actions necessary or appropriate to: (a) consummate the Sale of the Acquired Assets to the Purchaser and the Closing of the Sale, the Asset Purchase Agreement and this Order, (b) assume and assign the Assigned Contracts to be assumed and assigned to the Purchaser as of Closing, and (c) perform, consummate, implement and close fully the Asset Purchase Agreement together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Asset Purchase Agreement. The Debtors are hereby authorized and directed to perform each of their covenants and undertakings as provided in the Asset Purchase Agreement prior to or after Closing without further order of the Court. The Purchaser and the Debtors shall have no obligation to close the Sale except as is contemplated and provided for in the Asset Purchase Agreement.

4. Binding Effect of Order. This Order and the Asset Purchase Agreement shall be binding in all respects upon all known and unknown creditors of and holders of equity interests in the Debtors, including any holders of Interests (including holders of rights or claims based on any successor or transferee liability), all counterparties to the Assigned Contracts, all successors and assigns of the Purchaser, the Debtors' Affiliates and subsidiaries and any trustees subsequently appointed in the Chapter 11 Cases or upon a conversion to cases under chapter 7 of

the Bankruptcy Code, and this Order shall not be subject to amendment or modification and the Asset Purchase Agreement shall not be subject to rejection by any subsequently appointed trustee.

5. Transfer Free and Clear. Upon the Closing and payment in full of the Purchase Price:

a. the Debtors are hereby authorized and directed to consummate, and shall be deemed for all purposes to have consummated, the sale, transfer and assignment of all of the Debtors' right, title and interest in the Acquired Assets to the Purchaser free and clear of (i) subject to paragraph Q hereof, any and all Liens (other than Permitted Liens), including any lien (statutory or otherwise), mortgage, pledge, security interest, hypothecation, deed of trust, deemed trust, option, right of use, right of first offer or first refusal, servitude, encumbrance, handicap, hindrance, charge, prior claim, lease, conditional sale arrangement or other similar restriction of any kind or consequence; (ii) any and all Liabilities, including debts, liabilities and obligations, whether accrued or fixed, direct or indirect, liquidated or unliquidated, absolute or contingent, matured or unmatured, known or unknown or determined or undeterminable, including any tax liability, with such interests to attach to the sale proceeds in the same validity, extent and priority as immediately prior to the Sale, subject to any rights, claims and defenses of the Debtors and other parties in interest; (iii) any and all Claims, including rights or causes of action (whether in law, equity, or admiralty), obligations, demands, restrictions, interests and matters of any kind or nature whatsoever, whether arising prior to or subsequent to the commencement of this case, and whether imposed by agreement, understanding, law, equity or otherwise (including, without limitation, any claims and encumbrances: (x) that purport to give to any party a right or option to effect a forfeiture, modification, right of

first refusal or termination of the Debtors' or the Purchaser's interest in the Acquired Asset; or (y) in respect of taxes); (iv) any Interests; and (v) any Encumbrances; and

b. except as otherwise expressly provided in the Asset Purchase Agreement, subject to paragraph Q hereof, all such Liens, Claims, Interests and Encumbrances shall not be enforceable as against the Purchaser or the Acquired Assets. Subject to paragraph Q, the Purchaser shall not be responsible for any Liens, Claims, Interests and Encumbrances (other than Permitted Liens), including in respect of the following: (i) any labor or employment agreements; (ii) all mortgages, deeds of trust and security interests; (iii) intercompany loans and receivables between the Debtors and any non-debtor subsidiary; (iv) any pension, multiemployer plan (as such term is defined in Section 3(37) or Section 4001(a)(3) of ERISA), health or welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitation, any pension plan of the Debtors or any multiemployer plan to which the Debtors have at any time contributed to or had any liability or potential liability; (v) any other employee, worker's compensation, occupational disease or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (A) the Employee Retirement Income Security Act of 1974, as amended, (B) the Fair Labor Standards Act, (C) Title VII of the Civil Rights Act of 1964, (D) the Federal Rehabilitation Act of 1973, (E) the National Labor Relations Act, (F) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (G) the Americans with Disabilities Act of 1990, (H) COBRA, (I) state discrimination laws, (J) state unemployment compensation laws or any other similar state laws, or (K) any other state or federal benefits or claims relating to any employment with

the Debtors or any of their predecessors; (vi) Liens, Claims, Interests or Encumbrances arising under any Environmental Laws with respect to any assets owned or operated by the Debtors or any corporate predecessor of the Debtors at any time prior to the Closing and the Debtors' liabilities other than the Assumed Liabilities; (vii) any bulk sales or similar law; (viii) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; and (ix) any liabilities (other than Assumed Liabilities). A certified copy of this Order may be filed with the appropriate clerk and/or recorder to act to cancel all Liens, Claims, Interests or Encumbrances of record.

6. Surrender of Possession. Any and all Acquired Assets in the possession or control of any person or entity, including any vendor, supplier or employee of the Debtors shall be transferred to the Purchaser or its Designees free and clear of all Liens, Claims, Interests and Encumbrances (other than Permitted Liens), as otherwise provided in Sections 2.1, 2.4 and 3.3 of the Asset Purchase Agreement and shall be delivered to the Purchaser and deemed delivered at the time of Closing (or such other time as provided in the Asset Purchase Agreement) and payment in full of the Purchase Price including as contemplated by paragraph Q hereof.

7. Valid Transfer; Attachment to Sale Proceeds. Effective upon the Closing and payment in full of the Purchase Price, the transfer to the Purchaser or its Designees of the Debtors' right, title and interest in the Acquired Assets pursuant to the Asset Purchase Agreement shall be, and hereby is deemed to be, a legal, valid and effective transfer of the Debtors' right, title and interest in the Acquired Assets, and vests with or will vest in the Purchaser or its Designees all right, title and interest of the Debtors in the Acquired Assets, free and clear of all Liens, Claims, Interests and Encumbrances of any kind or nature whatsoever (other than Permitted Liens), with such Liens, Claims, Interests and Encumbrances attaching to

the sale proceeds in the same validity, extent and priority as immediately prior to the Sale, subject to any rights, claims and defenses of the Debtors and other parties in interest.

8. Exculpation and Release. None of the Purchaser or its Designees, affiliates, successors and assigns (collectively, the "Purchaser Releasees") shall have or incur any liability to, or be subject to any action by the Debtors or any of their predecessors, successors or assigns, arising out of the negotiation, investigation, preparation, execution, delivery of the Asset Purchase Agreement and the entry into and consummation of the Sale, except as expressly provided in the Asset Purchase Agreement and this Order.

9. Injunction. Except as expressly provided in the Asset Purchase Agreement or by this Order, effective upon the Closing and payment in full of the Purchase Price (including as contemplated by paragraph Q hereof) all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, vendors, suppliers, employees, trade creditors, litigation claimants and other persons holding Liens, Claims, Interests or Encumbrances of any kind or nature whatsoever (other than Permitted Liens) against or in the Debtors or the Debtors' interests in the Acquired Assets (whether known or unknown, legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of these Chapter 11 Cases, whether imposed by agreement, understanding, law, equity or otherwise), shall be and hereby are forever barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing Liens, Claims, Interests or Encumbrances against the Purchaser or its Designees, affiliates, successors and assigns, the Acquired Assets, or the interests of the Debtors in such Acquired Assets. Following the Closing and payment in full of the Purchase Price (including as contemplated by paragraph Q hereof), no

holder of an Interest against the Debtors shall interfere with the Purchaser's or its Designees' title to or use and enjoyment of the Debtors' interests in the Acquired Assets based on or related to such Liens, Claims, Interests or Encumbrances, and all such Liens, Claims, Interests or Encumbrances, if any, shall be, and hereby are transferred and attached to the proceeds from the Sale in the order of their priority, with the same validity, force and effect which they have against such Acquired Assets as of the Closing, subject to any rights, claims and defenses that the Debtors or their estates, as applicable, may possess with respect thereto. All persons are hereby enjoined from taking action that would interfere with or adversely affect the ability of the Debtors to transfer the Acquired Assets in accordance with the terms of the Asset Purchase Agreement and this Order.

10. Good Faith Purchaser. The Asset Purchase Agreement has been entered into by the Purchaser in good faith and the Purchaser is a good faith purchaser of the Acquired Assets as that term is used in Bankruptcy Code section 363(m). The Purchaser and its Designees are entitled to all of the protections afforded by Bankruptcy Code section 363(m).

11. No Bulk Sales. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Sale. Except as approved in connection with the retention of the Debtors' financial advisor, no brokers were involved in consummation of the Sale, and no brokers' commissions are due to any person in connection with the Sale.

12. Consumer Privacy Ombudsmen. The Acquired Assets do not contain personally identifiable information and do not violate the Debtors' privacy policies. The appointment of a consumer privacy ombudsman pursuant to Bankruptcy Code section 363(b)(1) is not required.

13. Fair and Equivalent Value. The consideration provided by the Purchaser for the Acquired Assets under the Asset Purchase Agreement shall be deemed for all purposes to

constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable law, and the Sale may not be avoided, or costs or damages imposed or awarded under section 363(n) or any other provision of the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act or any other similar state laws.

14. Transfer of Marketable Title. Upon the Closing and payment in full of the Purchase Price, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of all of the Debtors' right, title and interest in the Acquired Assets or a bill of sale transferring good and marketable title in such Acquired Assets to the Purchaser or its Designees at the Closing (as defined in the Asset Purchase Agreement) pursuant to the terms of the Asset Purchase Agreement, free and clear of all Liens, Claims, Interests or Encumbrances (other than Permitted Liens).

15. No Successor Liability. The consummation of the Sale does not amount to a consolidation, merger or *de facto* merger of the Purchaser and the Debtors and/or their estates, there is not substantial continuity between the Purchaser and the Debtors, there is no continuity of enterprise between the Debtors and the Purchaser, the Purchaser is not a mere continuation of the Debtors or their estates, and the Purchaser does not constitute a successor to the Debtors or their estates. Upon the Closing and payment in full of the Purchase Price the Purchaser's acquisition of the Acquired Assets shall be free and clear of any "successor liability" claims of any nature whatsoever, whether known or unknown and whether asserted or unasserted as of the time of Closing. The Purchaser's operations shall not be deemed a continuation of the Debtors' business as a result of the acquisition of the Acquired Assets purchased.

16. Authorization to Assign. Notwithstanding any provision of any contract governing the Acquired Assets or any Assigned Contract to be assumed and assigned to the

Purchaser as of Closing, pursuant to Bankruptcy Code section 365(f) or applicable non-bankruptcy law that prohibits, restricts, or conditions the assignment of the Acquired Assets or the Assigned Contracts, the Debtors are authorized to (a) assign the Acquired Assets to the Purchaser or its Designees and (b) assume and assign the Assigned Contracts to be assumed and assigned to the Purchaser as of Closing, in each case, which assignment shall take place on and be effective as of the Closing or as otherwise provided by order of this Court.

a. There shall be no accelerations, assignment fees, increases, or any other fees charged to the Purchaser or the Debtors as a result of the assumption and assignment of the Acquired Assets.

b. The Debtors have met all requirements of Bankruptcy Code section 365(b) for each of the Assigned Contracts to be assumed and assigned to the Purchaser as of Closing. Notwithstanding the foregoing, unless required by the Purchaser under the Asset Purchase Agreement, no Debtor shall be required by the Court to assume and assign any Assigned Contracts, and, if no such assumption and assignment occurs, no Cure Costs shall be due and no adequate assurance of future performance shall be required.

c. The Debtors' assumption of the Assigned Contracts is subject to the consummation of the Sale of the Acquired Assets to the Purchaser. To the extent that an objection by a counterparty to any Assigned Contract, including an objection related to the applicable Cure Cost, is not resolved prior to the Closing, the Debtors, in consultation with the Purchaser, may, without any further approval of the Court or notice to any party, elect to (i) not assume such Assigned Contract or (ii) postpone the assumption of such Assigned Contract until the resolution of such objection; provided that the Debtors, the

Purchaser, and the relevant non-debtor counterparty under each Assigned Contract shall have authority to compromise, settle or otherwise resolve any objections to proposed Cure Costs without further order of the Bankruptcy Court. Any Cure Costs outstanding at the Closing shall be paid to the appropriate counterparty as a condition subsequent to such assumption and/or assumption and assignment of the relevant Assigned Contract.

17. Assigned Contracts. As of the Closing, subject to the provisions of this Order, the Purchaser shall succeed to the entirety of the Debtors' rights and obligations in the Assigned Contracts to be assumed and assigned to the Purchaser as of Closing first arising and attributable to the time period occurring on or after the Closing and shall have all rights thereunder.

a. Upon Closing, (i) all defaults (monetary and non-monetary) under the Assigned Contracts to be assumed and assigned to the Purchaser as of Closing, through the Closing, shall be deemed cured and satisfied in full through the payment of the Cure Costs, (ii) no other amounts will be owed by the Debtors, their estates or the Purchaser with respect to amounts first arising or accruing during, or attributable or related to, the period before Closing with respect to the Assigned Contracts to be assumed and assigned to the Purchaser as of Closing and (iii) any and all persons or entities shall be forever barred and estopped from asserting a claim against the Debtors, their estates, or the Purchaser or the Acquired Assets that any additional amounts are due or defaults exist under the Assigned Contracts that arose or accrued, or relate to or are attributable to the period before the Closing. The Purchaser's promise pursuant to the terms of the Asset Purchase Agreement to pay the Cure Costs (to the extent the Debtors have insufficient cash on hand to pay the Cure Costs, as set forth in the Asset Purchase Agreement) and to perform the obligations under the Assigned Contracts after the Closing shall constitute

adequate assurance of its future performance under the Assigned Contracts being assigned to it as of Closing within the meanings of Bankruptcy Code sections 365(b)(l)(C) and (f)(2)(B).

b. Upon assumption of those Assigned Contracts to be assumed by the Debtors and assigned to the Purchaser as of Closing, such Assigned Contracts shall be deemed valid and binding, in full force and effect in accordance with their terms, subject to the provisions of this Order, and shall be assigned and transferred to the Purchaser or its Designees, notwithstanding any provision in the contracts or other restrictions prohibiting assignment or transfer. To the extent any executory contract or unexpired lease is assumed and assigned to the Purchaser under this Order, such assumption and assignment will not take effect until the Closing. Furthermore, other than Assigned Contracts, no other contract shall be deemed assumed by and assigned to the Purchaser pursuant to Bankruptcy Code section 365, subject to the rights of Purchaser under the Asset Purchase Agreement to designate additional Contracts to be Assigned Contracts until the Designation Deadline. The failure of the Debtors or the Purchaser to enforce at any time one or more terms or conditions of any Assigned Contract shall not be a waiver of such terms or conditions, or of the Debtors' and the Purchaser's rights to enforce every term and condition of the Assigned Contracts.

c. All counterparties to the Assigned Contracts to be assumed and assigned to Purchaser as of Closing shall cooperate and expeditiously execute and deliver, upon the reasonable request of the Purchaser, and shall not charge the Debtors or the Purchaser or its Designees for, any instruments, applications, consents, or other documents which

may be required or requested by any public or quasi-public authority or other party or entity to effectuate the applicable transfers in connection with the Transactions.

d. Notwithstanding the foregoing, in accordance with and pursuant to the terms and conditions of Section 2.5 of the Asset Purchase Agreement, the Debtors may, at the Purchaser's direction, amend or supplement the list of Assigned Contracts prior to the date on which the Bankruptcy Code or Bankruptcy Court otherwise would require a determination to assume or reject any potential Assigned Contract; *provided, however*, that notice of such amendment or supplement must be given to all affected non-debtor counterparties to each Assigned Contract. Each affected non-debtor counterparty shall have the ability to object to the proposed assumption and assignment, or the proposed Cure Cost, by serving an objection on counsel to the Debtors and the Purchaser within seven (7) days of the date of the notice of such amendment or supplement. Any such objection shall state, with specificity, the nature of such non-debtor counterparty's objection, including the amount of any discrepancy in the Cure Cost. If an objection is timely received, the Debtors and the Purchaser shall engage in good-faith discussions with the objecting non-debtor counterparty to resolve the objection. If no resolution is reached within seven (7) days of the objection, the Debtors and the objecting non-debtor counterparty shall seek to have the Court determine the merits of the objection (it being understood that such request may be made on an expedited basis). If no timely objection is received, the non-debtor counterparty shall be deemed to be bound by the terms of this Order.

18. Release of Liens, Claims, Interests or Encumbrances. Effective upon the Closing and payment in full of the Purchase Price (including as contemplated by paragraph Q hereof),

this Order: (a) is and shall be effective as a determination that all Liens, Claims, Interests and Encumbrances (other than Permitted Liens) of any kind or nature whatsoever existing as to the Acquired Assets prior to the Closing have been unconditionally released, discharged and terminated, and that the conveyances described herein have been effected; (b) is and shall be binding upon and shall authorize all entities, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies or units, governmental departments or units, secretaries of state, federal, state and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Acquired Assets conveyed to the Purchaser; and (c) all recorded Liens, Claims, Interests and Encumbrances (other than Permitted Liens) against the Acquired Assets from their records, official and otherwise shall be deemed stricken.

19. Approval to Release Liens, Claims, Interests and Encumbrances. If any person or entity which has filed statements or other documents or agreements evidencing Liens or Encumbrances on, or Claims or Interests in, the Acquired Assets shall not have delivered to the Debtors before the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary for the purpose of documenting the release of all Liens, Claims, Interests or Encumbrances (other than Permitted Liens) that the person or entity has or may assert with respect to the Acquired Assets, the Debtors and the Purchaser are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Acquired Assets. Notwithstanding the foregoing, this

paragraph 19 shall not apply to the ABL Credit Parties until satisfaction of the Obligations under the ABL Credit Agreements as contemplated by the Asset Purchase Agreement and paragraph Q hereof.

20. Governmental Authorization to Effectuate Sale and Assignments. Each and every federal, state and governmental agency or department, and any other person or entity, is hereby authorized to accept any and all documents and instruments in connection with or necessary to consummate the transactions contemplated by the Asset Purchase Agreement. No governmental unit may revoke or suspend any lawful right, license, trademark or other permission relating to the use of the Acquired Assets sold, transferred or conveyed to the Purchaser or its Designees on account of the filing or pendency of these Chapter 11 Cases or the consummation of the Transactions. For the avoidance of doubt, the Sale of the Acquired Assets authorized herein shall be of full force and effect, regardless of whether the Debtors or any of their affiliates lack good standing in any jurisdiction in which such entity is formed or authorized to transact business.

21. Inconsistencies with Prior Orders, Pleadings or Agreements. To the extent this Order is inconsistent with any prior order or pleading with respect to the Motion in these Chapter 11 Cases, the terms of this Order shall govern. To the extent there is any inconsistency between the terms of this Order and the terms of the Asset Purchase Agreement (including all ancillary documents executed in connection therewith), the terms of this Order shall govern.

22. Subsequent Orders and Plan Provisions. This Order shall not be modified by any chapter 11 plan confirmed in these Chapter 11 Cases or subsequent order of this Court.

23. Binding Effect of Order. This Order and the Asset Purchase Agreement shall be binding in all respects upon all creditors and interest holders of the Debtors, [the Committee,] all

successors and assigns of the Debtors and their affiliates and subsidiaries, and any trustees, examiners, "responsible persons" or other fiduciaries appointed in the Chapter 11 Cases or upon a conversion to chapter 7 under the Bankruptcy Code, and the Asset Purchase Agreement shall not be subject to rejection or avoidance under any circumstances. If any order under Bankruptcy Code section 1112 is entered, such order shall provide (in accordance with Bankruptcy Code sections 105 and 349) that this Order and the rights granted to the Purchaser and its Designees hereunder shall remain effective and, notwithstanding such dismissal, shall remain binding on parties in interest.

24. Failure to Specify Provisions. The failure specifically to include or make reference to any particular provisions of the Asset Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Asset Purchase Agreement is authorized and approved in its entirety.

25. Retention of Jurisdiction. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order, including, without limitation, the authority to: (i) interpret, implement and enforce the terms and provisions of this Order (including the injunctive relief provided in this Order) and the terms of the Asset Purchase Agreement, all amendments thereto and any waivers and consents thereunder; (ii) protect the Purchaser, or the Acquired Assets, from and against any of the Liens, Claims, Interests or Encumbrances (other than Permitted Liens); (iii) compel delivery of all Acquired Assets to the Purchaser or its Designees; (iv) compel the Purchaser to perform all of its obligations under the Asset Purchase Agreement; and (v) resolve any disputes arising under or related to the Asset Purchase Agreement or the Sale.

26. No Material Modifications. The Asset Purchase Agreement and any related agreements, documents or other instruments may be modified, amended, or supplemented through a written document signed by the parties thereto in accordance with the terms thereof without further order of the Court; *provided, however*, that any such modification, amendment or supplement is neither material nor materially changes the economic substance of the transactions contemplated hereby; and *provided further* than no modification to the provisions relating to the payment and other satisfaction of the Obligations under the ABL Credit Agreements may be made without the prior written consent of the Agents thereunder..

27. Immediate Effect. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding any provision in the Bankruptcy Rules to the contrary, the Court expressly finds there is no reason for delay in the implementation of this Order and, accordingly: (i) the terms of this Order shall be immediately effective and enforceable upon its entry; (ii) the Debtors are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order; and (iii) the Debtors may, in their discretion and without further delay, take any action and perform any act authorized under this Order.

28. Provisions Non-Severable. The provisions of this order are nonseverable and mutually dependent.

29. Satisfaction of Conditions Precedent. Neither the Purchaser nor the Debtors shall have an obligation to close the Transactions until all conditions precedent in the Asset Purchase Agreement to each of their obligations to close the Transactions have been met, satisfied, or waived in accordance with the terms of the Asset Purchase Agreement.

Dated: [March __], 2013
Wilmington, Delaware

THE HONORABLE [JUDGE]
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

Asset Purchase Agreement

EXECUTION VERSION

ASSET PURCHASE AGREEMENT

DATED AS OF JANUARY 28, 2013

AMONG

BAYSIDE SCHOOL SPECIALTY, LLC,

SCHOOL SPECIALTY, INC.,

AND

THE OTHER SELLERS NAMED HEREIN

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EXHIBITS

SCHEDULES

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of January 28, 2013 (the "Execution Date"), is made by and among (i) Bayside School Specialty, LLC, a Delaware limited liability company ("Purchaser"), and (ii) School Specialty, Inc., a Wisconsin corporation ("SS") and each of its Subsidiaries listed on the signature pages of this Agreement (together with SS, each a "Seller" and collectively, "Sellers").

RECITALS

WHEREAS, on January 28, 2013 (the "Petition Date"), Sellers filed voluntary petitions for reorganization relief (the "Bankruptcy Cases") with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") pursuant to Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code");

WHEREAS, Sellers desire to sell, transfer and assign to Purchaser, and Purchaser desires to acquire and assume from Sellers, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, the Acquired Assets and the Assumed Liabilities as more specifically provided herein;

WHEREAS, the board of directors, board of managers or applicable governing body of each Seller has determined that it is advisable and in the best interests of their respective estates and the beneficiaries of such estates to consummate the transactions provided for herein pursuant to the Bidding Procedures Order and the Sale Order and has approved this Agreement; and

WHEREAS, the transactions contemplated by this Agreement are subject to the approval of the Bankruptcy Court and will be consummated only pursuant to the Sale Order to be entered in the Bankruptcy Cases.

NOW, THEREFORE, in consideration of the foregoing and their respective representations, warranties, covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Sellers and Purchaser hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Certain Terms Defined. As used in this Agreement, the following terms have the following meanings:

"ABL Credit Agreements" means (a) the Debtor-In-Possession Credit Facility, dated as of January 28, 2013, by and among the borrowers and guarantors named therein, Wells Fargo Capital Finance, LLC, as agent, and the lenders party thereto from time to time, as amended from time to time (the "ABL DIP Credit Agreement") and (b) the Existing Loan Agreement (as defined in the ABL DIP Credit Agreement).

"ABL Credit Parties" means all Agents and all lenders party to the ABL Credit Agreements.

"Acquired Assets" are those assets described in Section 2.1.

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

"Agreement" has the meaning set forth in the Preamble.

"Allocation Statement" has the meaning set forth in Section 3.2.

"Alternate Transaction" means a transaction or series of related transactions pursuant to which Sellers (a) accept a bid, other than that of Purchaser, as the highest or best offer in the Auction or (b) sell, transfer, lease or otherwise dispose of, directly or indirectly, including through an asset sale, stock sale, merger, reorganization, or bankruptcy plan of reorganization or liquidation, or other similar transaction (by Sellers or otherwise), including a Court-approved stand-alone plan of reorganization or refinancing, all or substantially all of the Acquired Assets (or agrees to do any of the foregoing) to a party or parties other than Purchaser.

"Ancillary Agreement" means any agreement, document or instrument (other than this Agreement) that any Seller or Purchaser, as applicable, enters into or delivers in connection with the consummation of the transactions contemplated hereby.

"Assigned Contract" means any Purchased Contract, other than the Excluded Contracts.

"Assignment and Assumption Agreement" means the Assignment and Assumption Agreement in substantially the form annexed hereto as Exhibit A evidencing the assignment to and assumption by Purchaser of all rights and obligations under the Assigned Contracts.

"Assumed Liabilities" has the meaning set forth in Section 2.3.

"Assumed Plans" has the meaning set forth in Section 6.5(g).

"Assumption Order" means an order of the Bankruptcy Court authorizing the assumption or the assumption and assignment of a Contract pursuant to Section 365 of the Bankruptcy Code.

"Avoidance Action" means any claim, right or cause of action of Sellers arising under sections 544 through 553 of the Bankruptcy Code.

"Auction" means the auction for the sale of Sellers' assets conducted by Sellers if, and only if, any Qualified Bid is received pursuant to the Bidding Procedures Order.

"Bankruptcy Cases" has the meaning set forth in the Recitals.

"Bankruptcy Code" has the meaning set forth in the Recitals.

"Bankruptcy Court" has the meaning set forth in the Recitals.

"Bidding Procedures Order" means an order, in all material respects in the form of Exhibit C, issued by the Bankruptcy Court that, among other things, establishes procedures for an auction process to solicit competing bids and authorizes payment of the Breakup Fee and the Expense Reimbursement in accordance with the terms and subject to the conditions in such order.

"Bill of Sale" means the Bill of Sale in all material respects in the form of Exhibit D conveying to Purchaser title to all of the Acquired Assets.

"Breakup Fee" means an amount equal to $2,850,000.

"Budget" means the Approved Budget as defined in the DIP Credit Agreement and as provided to the administrative agent pursuant to the DIP Credit Agreement and attached thereto as an exhibit.

"Business" means Sellers' business of providing instructional solutions that address a broad spectrum of educational needs, including basic school supplies, supplemental learning products, classroom equipment and furniture, and standards-based curriculum solutions.

"Business Day" means any day other than Saturday, Sunday and any day that is a legal holiday or a day on which banking institutions in New York are authorized by Law or other governmental action to close.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. § 9601 et seq.), and any regulations promulgated thereunder.

"Claim" has the meaning ascribed by Bankruptcy Code § 101(5), including all rights, claims, causes of action, defenses, debts, demands, damages, offset rights, setoff rights, recoupment rights, obligations, and liabilities of any kind or nature under contract, at Law or in equity, known or unknown, contingent or matured, liquidated or unliquidated, and all rights and remedies with respect thereto.

"Closing" has the meaning set forth in Section 10.1.

"Closing Date" has the meaning set forth in Section 10.1.

"COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1985.

"Code" means the Internal Revenue Code of 1986, as amended, and the regulations issued thereunder.

"Contract" means any agreement, contract, lease, sublease, purchase order, arrangement, license, commitment or other binding arrangement or understanding, whether written or oral, and any amendments, modifications or supplements thereto, including, for the avoidance of doubt, any Real Property Lease and any customer agreement or contract.

"Contract & Cure Schedule" has the meaning set forth in Section 2.5(a).

"Contract Notice" has the meaning set forth in Section 2.5(c).

"Copyrights" means any non-United States or United States copyright registrations and applications for registration thereof, and any nonregistered copyrights, including copyrights in compilations, collective works and all content and information contained on any website and "mask works" (as defined under 17 U.S.C. § 901) and any registrations and applications for "mask works."

"Credit Bid Amount" has the meaning set forth in Section 3.1(a).

"Cure Cost" means any amounts required by Section 365(b)(1) of the Bankruptcy Code under any applicable Designated Contract.

"Designated Contracts" means all Contracts set forth on the Contract & Cure Schedule.

"Designation Deadline" means 5:00 p.m., New York time, on the date that is 120 days after the Petition Date (or if such date is not a Business Day, the last Business Day immediately prior thereto), or such later date to which Purchaser and Sellers shall mutually agree and as the Bankruptcy Court may authorize.

"Designee" has the meaning set forth in Section 3.3.

"DIP Credit Agreement" means that certain Senior Secured Super Priority Debtor-In-Possession Credit Agreement dated as of January 28, 2013 among School Specialty, Inc., Classroomdirect.Com, LLC, Delta Education, LLC, Sportime, LLC, Childcraft Education Corp., Bird-In-Hand Woodworks, Inc., Califone International, Inc., and Premier Agendas, Inc., as Borrowers, Select Agendas, Corp., Frey Scientific, Inc., and Sax Arts & Crafts, Inc., as Guarantors, the Lenders, as defined therein, and Bayside Finance, LLC, as Administrative Agent and as Collateral Agent.

"DIP Obligations" means all Indebtedness as of the Closing outstanding under the DIP Credit Agreement.

"DIP Orders" means the interim and final orders of the Bankruptcy Court approving Sellers' entry into the DIP Credit Agreement.

"Documents" means all files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, ledgers, journals, title policies, customer lists, regulatory filings, operating data and plans, technical documentation (including design specifications, functional requirements, operating instructions, logic manuals and flow charts), user documentation (including installation guides, user manuals, training materials, release notes and working papers), marketing documentation (including sales brochures, flyers, pamphlets, Internet Web pages and any Internet Web page content), cost and pricing information, business plans, quality control records and procedures, blueprints, accounting and tax files, customer files and documents (including credit information), personnel files for employees, supplier lists, records, literature and correspondence, including materials relating to inventories,

services, marketing, advertising, promotional materials, documents evidencing or constituting Intellectual Property, and other similar materials to the extent related to, used in, or held for use in, the Business or the Acquired Assets, in each case whether or not in electronic form, whether or not physically located on any of the Leased Real Property or the Owned Real Property, but excluding (a) personnel files for Employees who are not hired by Purchaser as of the Closing Date (except records necessary for Purchaser to provide COBRA coverage if required by Law) and (b) any materials exclusively related to any Excluded Assets.

"Electronic Delivery" has the meaning set forth in Section 12.12.

"Employee" means any employee of Sellers as of the Closing Date.

"Employee Benefit Plans" has the meaning set forth in Section 4.11(a).

"Encumbrances" means, to the extent not considered a Lien, any security interest, lien, collateral assignment, right of setoff, debt, pledge, levy, charge, encumbrance, option, right of first refusal, restriction (whether on transfer, disposition or otherwise), other similar agreement terms tending to limit any right or privilege of any Seller under any Contract, conditional sale contract, title retention contract, mortgage, lease, deed of trust, hypothecation, indenture, security agreement, easement, license, servitude, proxy, voting trust, transfer restriction under any shareholder or similar agreement, or any other agreement, arrangement, contract, commitment or binding obligation of any kind whatsoever, whether written or oral, or imposed by any Law, equity or otherwise.

"Environmental Laws" has the meaning set forth in Section 4.12.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Affiliates" has the meaning set forth in Section 4.11(a).

"Excluded Assets" has the meaning set forth in Section 2.2.

"Excluded Contracts" means (a) the Contracts set forth on Schedule 1.1(a) as updated pursuant to Section 2.5 and (b) Contracts relating to the Excluded Assets and the Excluded Liabilities.

"Excluded Environmental Liabilities" means any Liability or other investigatory, corrective or remedial obligation, whenever arising or occurring, arising under Environmental Laws with respect to Sellers, the Business, the Acquired Assets, the Facilities or the Leased Properties (including any arising from the on-site or off-site Release, threatened Release, treatment, storage, transportation, processing, disposal, or arrangement for disposal of Hazardous Materials) whether or not constituting a breach of any representation or warranty herein and whether or not set forth on any schedule attached hereto, but only to the extent related to pre-Closing conditions.

"Excluded Liabilities" has the meaning set forth in Section 2.4.

"Execution Date" has the meaning set forth in the Preamble.

"Expense Reimbursement" means the reasonable out-of-pocket costs, fees and expenses (including legal, financial advisory, accounting and other similar costs, fees and expenses) incurred by Purchaser or its Affiliates (other than Sellers) in connection with the negotiation, documentation and implementation of this Agreement and the transactions contemplated hereby and all proceedings incident thereto; provided, that under no circumstances shall the amount of the Expense Reimbursement exceed $1,000,000 in the aggregate.

"Facilities" means all facilities owned or leased by the Sellers at which the Business is conducted including all Leased Real Property and Owned Real Property.

"FF&E" means all equipment, machinery, fixtures, furniture and other tangible property owned by Sellers (unless sold to any third party in the ordinary course of business and not in violation of this Agreement), located at any of the Facilities, stored in any offsite location or used, held for use or useful in the operation of the Business or the Acquired Assets (including all such property that is damaged), including all work in process, raw materials, inventory, stores and supplies, tools, finished products, spare parts, packaging and shipping containers, and other materials.

"Furnished Reports" has the meaning set forth in Section 4.14(a).

"GAAP" has the meaning set forth in Section 4.14(b).

"Governmental Authority" means any U.S. or foreign, federal, state or local, court, tribunal, governmental department, agency, board or commission, regulatory, taxing or supervisory authority, or other administrative, governmental or quasi-governmental body, subdivision or instrumentality.

"Hazardous Materials" shall mean (a) any petroleum products or byproducts, radioactive materials, friable asbestos or polychlorinated biphenyls or (b) any waste, material, or substance defined as a "hazardous substance," "hazardous material," or "hazardous waste" or "pollutant" or otherwise subject to regulation, investigation, control or remediation under any applicable Environmental Law.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

"Improvements" means, with respect to any Real Property, all buildings, fixtures, structures, systems, facilities, easements, rights-of-way, privileges, improvements, licenses, hereditaments, appurtenances and all other rights and benefits belonging, or in any way related, to such Real Property.

"Indebtedness" with respect to any Person means any obligation of such Person for borrowed money, and in any event shall include (a) any obligation of such Person incurred for all or any part of the purchase price of property or other assets or for the cost of property or other assets constructed or of improvements thereto, other than accounts payable included in current liabilities and incurred in respect of property purchased in the ordinary course of business, (b) the face amount of all letters of credit issued for the account of such Person, (c) obligations of such Person secured by Liens or Encumbrances, (d) capitalized lease obligations of such Person, (e) all guarantees and similar obligations of such Person, (f) all accrued interest, fees and charges in

respect of any indebtedness of such Person and (g) all prepayment premiums and penalties, and any other fees, expenses, indemnities and other amounts payable as a result of the prepayment or discharge of any indebtedness of such Person.

"Intellectual Property" means all rights of Sellers in and to: (a) Trademarks; (b) Patents; (c) Copyrights; (d) Software; (e) rights of publicity and privacy relating to the use of the names, likenesses, voices, signatures and biographical information of real persons; (f) inventions (whether or not patentable), discoveries, improvements, know-how, formulae, methodologies, business methods, processes, technology, drawings, specifications and data, and applications, registrations or grants in any jurisdiction pertaining to the foregoing, including re-issues, continuations, divisions, continuations-in-part, reexaminations, renewals and extensions; (g) Internet websites, web pages, domain names and applications and registrations pertaining thereto and all intellectual property used in connection with or contained in websites; (h) trade secrets, inventions and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, business and marketing plans and proposals, assembly, test, installation, technical, operating and service and maintenance manuals and data, hardware reference manuals and engineering, programming, service and maintenance notes and logs), (j) any and all other intellectual property and proprietary rights; (k) all rights under agreements relating to the foregoing; (l) all books and records pertaining to the foregoing; (m) all claims or causes of action arising out of or related to past, present or future infringement or misappropriation of the foregoing and (n) goodwill related to all of the foregoing.

"Interest" means "interest" as that term is used in Bankruptcy Code Section 363(f).

"Inventory" means all raw materials, work-in-process, inventory, supplies, finished goods and goods in transit, packaging materials and other consumables of Sellers, including inventory (i) in the possession of the Company or (ii) that is to be delivered by the vendor of such inventory to Sellers pursuant to an order made by or on behalf of Sellers prior to the Closing, but in each case excluding inventory, supplies, finished goods and goods in transit of the Company that are (x) damaged or otherwise designated as "return to vendor" or (y) designated to be sold as part of a bulk sale.

"IP Licenses" has the meaning set forth in Section 4.6(a)(xiii).

"IRS" means the U.S. Internal Revenue Service.

"Law" means any law, statute, ordinance, regulation, rule, code or rule of common law or otherwise of, or any order, judgment, injunction or decree issued, promulgated, enforced or entered by, any Governmental Authority.

"Leased Real Property" means all Real Property leased, subleased or licensed by Sellers, as lessee, sublessee or licensee, all of which are identified on Schedule 4.7(a).

"Liability" means any liability or obligation (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether

liquidated or unliquidated, and whether due or to become due and regardless of when asserted), including any liability for Taxes.

"License Agreements" has the meaning set forth in Section 4.8(b).

"Lien" has the meaning given to that term in the Bankruptcy Code.

"Material Adverse Effect" means a state of facts, event, change or effect with respect to the Business, the Acquired Assets or the Assumed Liabilities that results in or would reasonably be expected to result in a material adverse effect on the results of operations or condition (financial or otherwise) of the Sellers, the Acquired Assets and the Business, taken as a whole, but excludes any state of facts, event, change or effect relating to (a) changes or conditions affecting the industries in which Sellers operate generally; (b) changes in economic, regulatory or political conditions generally; (c) changes in financial, banking or securities markets; (d) changes in applicable Law or GAAP or interpretations thereof; (e) any act of war, terrorism or armed conflict; (f) the public announcement, pendency or completion of the transactions contemplated by this Agreement and (g) the filing of the Bankruptcy Cases and the effect thereof; provided, in each of clauses (a) through (e), that any such change does not have a disproportionate effect on the Acquired Assets and the Business taken as a whole.

"Material Contracts" has the meaning set forth in Section 4.6(b).

"Non-Assignable Contracts" has the meaning set forth in Section 2.5(f).

"Orders" means the Sale Order and the Bidding Procedures Order.

"Owned Intellectual Property" has the meaning set forth in Section 4.8(d).

"Owned Real Property" has the meaning set forth in Section 4.7(a).

"Patents" means all patents, patent applications and non-United States counterparts thereof, and industrial designs (including any continuations, divisionals, continuations-in-part, renewals, reissues, and applications for any of the foregoing).

"Permits" means all certificates of occupancy or other certificates, permits, authorizations, filings, approvals and licenses possessed by Sellers, or through which Sellers have rights, that are used, useable or useful in the operation of the Business or the use or enjoyment or benefit of the Acquired Assets.

"Permitted Lien" means: (a) Liens and Encumbrances for Taxes not yet due and payable or which are being contested in good faith by appropriate proceedings and for which adequate reserves with respect thereto are maintained on the books of Sellers; (b) statutory liens of carriers, warehousemen, mechanics, repairmen, workmen, suppliers or materialmen imposed by Law and arising in the ordinary course of business that are not delinquent and that do not, individually or in the aggregate, materially affect the ownership, lease, value or use of the affected asset or of the Acquired Assets as a whole; (c) pledges or deposits in connection with workers' compensation, unemployment insurance and other social-security Laws; (d) with respect to Real Property, any Lien or Encumbrance which a reputable title insurance company

would be willing to omit as an exception, or affirmatively insure, in its title insurance policy for the applicable parcel of Real Property; (e) with respect to Real Property, any condition that may be shown by a current and accurate survey, or that would be apparent as part of a physical inspection, of the applicable parcel of Real Property, in each case which does not materially adversely interfere with the present use of the parcel of Real Property it affects; (f) Liens and Encumbrances that will be released prior to or as of Closing; (g) with respect to leased or licensed property (including the Leased Real Property), the terms and conditions of the lease or license applicable thereto to the extent constituting a Purchased Contract; (h) all defects, exceptions, restrictions, easements, rights-of-way and other similar encumbrances of record other than monetary encumbrances, judgments and monetary liens that in each case (1) would not in any case, individually or in the aggregate, reasonably be expected to materially and adversely impair the ownership or lease of nor materially and adversely detract from the value or use of the property subject thereto or (2) would not be reasonably expected to materially interfere with the ordinary conduct of the business of Sellers at the property subject thereto; (i) zoning, entitlement, building and other land use regulations and codes imposed by any Governmental Authority having jurisdiction over the Real Property, which are not violated by the current use, occupancy or operation of the Real Property; (j) any right, title or interest of a lessor, sublessor or licensor under any of the Real Property Leases; and (k) in the case of the Leased Real Property, any Lien or Encumbrance to which the fee simple interest (or any superior leasehold interest) is subject.

"Person" means any individual, corporation, partnership, limited liability company, firm, joint venture, association, joint-stock company, trust, sole proprietorship, unincorporated organization, Governmental Authority or other entity.

"Petition Date" has the meaning set forth in the Recitals.

"Potential Transaction" has the meaning set forth in Section 6.6.

"Pre-Petition Credit Agreement" means that certain Credit Agreement dated as of May 22, 2012 by and among the Sellers, the lenders party thereto, the guarantors defined therein and Bayside Finance, LLC, as Administrative Agent, Collateral Agent and lender, as amended or modified through the Execution Date.

"Pre-Petition Loan Documents" means the "Loan Documents" as defined in the Pre-Petition Credit Agreement, and all other documents referred to therein or delivered in connection therewith.

"Proceeding" has the meaning set forth in Section 2.4(a)(ix).

"Purchase Price" has the meaning set forth in Section 3.1(a).

"Purchased Contracts" has the meaning set forth in Section 2.1(e).

"Purchaser" has the meaning set forth in the Preamble and includes each Designee in accordance with Section 3.3.

"Purchaser Employees" means the Employees of Sellers who accept an offer of employment with Purchaser based on the initial terms and conditions set by Purchaser.

"Qualified Bid" means competing bids pre-qualified for the Auction in accordance with the Bidding Procedures Order.

"Real Property" means all of the Owned Real Property and the Leased Real Property, together with all buildings and Improvements thereon and all appurtenances and rights thereto.

"Real Property Leases" means all of Sellers' right, title and interest in all leases, subleases, licenses, concessions and other agreements (written or oral) and all amendments, extensions, renewals, guaranties and other agreements with respect thereto, pursuant to which Sellers hold a leasehold or subleasehold estate in, or are granted a license or other right to use, the Leased Real Property.

"Related Person" means, with respect to any Person at any time of determination, all directors, officers, members, managers, stockholders, employees, controlling persons, Affiliates, agents, professionals, attorneys, accountants, lenders, investment bankers or representatives of any such Person.

"Release" shall have the meaning set forth in CERCLA.

"Sale Hearing" means the hearing to consider the entry of the Sale Order.

"Sale Motion" has the meaning set forth in Section 8.1.

"Sale Order" means an order, in all material respects in the form of Exhibit B, entered by the Bankruptcy Court, which Sale Order shall be acceptable to Purchaser.

"SEC Documents" has the meaning set forth in Section 4.14(a).

"Schedules" has the meaning set forth in Section 6.1(c).

"Seller" and "Sellers" have the meaning set forth in the Preamble.

"Sellers' Knowledge" means the actual (and not constructive) knowledge of Michael Lavelle, David Vander Ploeg and Gerald Hughes, in each case, after due inquiry.

"Software" means any computer program, operating system, application, system, firmware or software of any nature, point-of-entry system, peripherals, and data whether operational, active, under development or design, nonoperational or inactive, including all object code, source code, comment code, algorithms, processes, formulae, interfaces, navigational devices, menu structures or arrangements, icons, operational instructions, scripts, commands, syntax, screen designs, reports, designs, concepts, visual expressions, technical manuals, tests scripts, user manuals and other documentation therefor, whether in machine-readable form, virtual machine-readable form, programming language, modeling language or any other language or symbols, and whether stored, encoded, recorded or written on disk, tape, film, memory device, paper or other media of any nature, and all databases necessary or appropriate in connection with the operation or use of any such computer program, operating system, application, system, firmware or software.

"SS" has the meaning set forth in the Preamble.

"Straddle Period Property Tax" has the meaning set forth in Section 7.1(d).

"Subsidiary" means, with respect to any Person: (a) any corporation of which more than 50% of the total voting power of all classes of the equity interests entitled (without regard to the occurrence of any contingency) to vote in the election of directors is owned by such Person directly or through one or more other Subsidiaries of such Person and (b) any Person other than a corporation of which at least a majority of the equity interests (however designated) entitled (without regard to the occurrence of any contingency) to vote in the election of the governing body, partners, managers or others that will control the management of such entity is owned by such Person directly or through one or more other Subsidiaries of such Person.

"Tax" or "Taxes" means all taxes, however denominated, including any interest, penalties or additions to tax that may become payable in respect thereof, imposed by any Governmental Authority, whether payable by reason of contract, assumption, transferee liability, operation of Law or Treasury Regulation Section 1.1502-6(a) (or any predecessor or successor thereof or any analogous or similar provision under Law), which taxes shall include all net or gross income, gross receipts, net proceeds, sales, use, ad valorem, value added, franchise, bank shares, withholding, payroll, medicare, employment, excise, property, abandoned property, escheat, deed, stamp, alternative or add-on minimum, environmental, profits, windfall profits, transaction, license, lease, service, service use, occupation, severance, energy, sales, use, transfer, real property transfer, recording, documentary, stamp, registration, stock transfer taxes and fees, unemployment, social security, workers' compensation, capital, premium, and other taxes, assessments, customs, duties, fees, levies, or other governmental charges of any nature whatever, whether disputed or not, and other assessments or obligations of the same or a similar nature, whether arising before, on or after the Closing Date.

"Tax Authority" means any Governmental Authority with responsibility for, and competent to impose, collect or administer, any form of Tax.

"Tax Return" means any report, return, information return, filing declaration, statement, or claim for refund, including any schedules, exhibits or attachments thereto, and any amendments to any of the foregoing required to be filed, distributed or maintained in connection with the calculation, determination, assessment or collection of any Taxes (including estimated Taxes).

"Trademarks" means any trademarks, service marks, trade names, corporate names, Internet domain names, designs, trade dress, product configurations, logos, slogans, and general intangibles of like nature, together with all translations, adaptations, derivations and combinations thereof, all goodwill, registrations and applications in any jurisdiction pertaining to the foregoing.

"Transfer Taxes" means all sales, use, value added, transfer, stamp, registration, documentary, excise, real property transfer or gains, or similar Taxes incurred as a result of the transactions contemplated by this Agreement.

"Treasury Regulation" means any of the regulations promulgated by the Department of the Treasury under the Code.

"WARN Act" means the Worker Adjustment and Retraining Notification Act, as amended, or any similar applicable state or local Law.

1.2 Interpretation. When a reference is made in this Agreement to a section or article, such reference shall be to a section or article of this Agreement unless otherwise clearly indicated to the contrary.

(a) Whenever the words "include," "includes" or "including" are used in this Agreement they shall be deemed to be followed by the words "without limitation."

(b) The words "hereof," "herein" and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole and not to any particular provision of this Agreement, and article, section, paragraph, exhibit and schedule references are to the articles, sections, paragraphs, exhibits and schedules of this Agreement unless otherwise specified.

(c) The meaning assigned to each term defined herein shall be equally applicable to both the singular and the plural forms of such term. Where a word or phrase is defined herein, each of its other grammatical forms shall have a corresponding meaning.

(d) A reference to any party to this Agreement or any other agreement or document shall include such party's successors and permitted assigns.

(e) A reference to any legislation or to any provision of any legislation shall include any amendment to, and any modification or reenactment thereof, any legislative provision substituted therefor and all regulations and statutory instruments issued thereunder or pursuant thereto.

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

(g) Any reference in this Agreement to $ shall mean U.S. dollars.

(h) The parties hereto have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

ARTICLE 2
PURCHASE AND SALE OF THE ACQUIRED ASSETS

2.1 Purchase and Sale of Assets. Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, on the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall purchase, acquire and accept from Sellers, and Sellers shall sell, transfer, assign, convey and deliver to Purchaser, all of Sellers' right, title and interest in, to and under the Acquired Assets, free and clear of all Liens, Claims, Interests or Encumbrances (other than Permitted Liens). "Acquired Assets" shall mean all of the, direct or indirect, right, title and interest of Sellers in and to the tangible and intangible assets, properties, rights, claims and Contracts (but excluding Excluded Assets) as of the Closing, including:

(a) all cash (including undeposited checks and uncleared checks), cash equivalents and short-term investments;

(b) all accounts receivable, rebates, refunds (whether related to Taxes or otherwise) and other receivables of Sellers however evidenced;

(c) all Inventory of Sellers;

(d) all deposits (including, with respect to the Acquired Assets, customer deposits and security deposits (whether maintained in escrow or otherwise) for rent, electricity, telephone or otherwise), credits and prepaid charges and expenses of Sellers that relate to the Acquired Assets;

(e) all Contracts of Sellers that are assumed by and assigned to Purchaser pursuant to an Assumption Order on or prior to the Designation Deadline (the "Purchased Contracts"), together with all rights thereunder from and after the Closing Date, and any causes of action relating to past or present breaches of the Purchased Contracts;

(f) all of Sellers' interests in and to all Improvements located on the Leased Real Property subject to each Real Property Lease, any other appurtenances thereto, and all of Sellers' rights in respect thereof;

(g) all Owned Real Property together with all Improvements thereto and thereon;

(h) all FF&E;

(i) all Intellectual Property;

(j) all telephone and facsimile numbers and all email addresses;

(k) all Documents;

(l) all Permits;

(m) all rights, recoveries, refunds and rights of set-off against third parties;

(n) the capital stock or other equity interests of any Subsidiaries of Sellers that are not guarantors of the obligations under the Pre-Petition Credit Agreement;

(o) all rights under or arising out of all insurance policies relating to the Business or the Acquired Assets, unless non-assignable as a matter of Law;

(p) other than with respect to the Excluded Contracts, all rights of Sellers under non-disclosure or confidentiality, non-compete, or non-solicitation agreements with Purchaser Employees or agents of Sellers or with third parties (other than with Purchaser or any of its Affiliates under this Agreement or any Ancillary Agreements), including non-disclosure or confidentiality, non-compete, or non-solicitation agreements entered into in connection with the Auction;

(q) all rights, claims or causes of action of Sellers or otherwise relating to the Business and the Acquired Assets, including all Avoidance Actions..

(r) all rights of Sellers under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers and contractors to the extent relating to products sold, or services provided, to Sellers or to the extent affecting any Acquired Assets other than any warranties, representations and guarantees pertaining to any Excluded Assets;

(s) all interests of Sellers in, and all assets relating to, the Assumed Plans (if any);

(t) subject to Section 2.5(f), any asset that requires the consent of a third party to be transferred, assumed or assigned notwithstanding the provisions of Section 365 of the Bankruptcy Code, as to which such consent has not been obtained as of the Closing Date; upon receipt of such consent on or after the Closing Date and entry of an appropriate Assumption Order as provided in Section 2.5(f); and

(u) all goodwill and other intangible assets associated with the Business and the Acquired Assets.

2.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, nothing herein shall be deemed to sell, transfer, assign or convey the Excluded Assets to Purchaser, and Sellers shall retain all right, title and interest to, in and under, and all obligations with respect to, the Excluded Assets. For all purposes of and under this Agreement, and as the same may be amended pursuant to Section 2.5, the term "Excluded Assets" shall mean:

(a) any asset of Sellers that otherwise would constitute an Acquired Asset but for the fact that it is conveyed, leased or otherwise disposed of, in the ordinary course of Sellers' business prior to the Closing Date not in violation of this Agreement;

(b) the certificates of incorporation and articles of incorporation or, as applicable, formation, qualifications to conduct business as a foreign corporation or, as applicable, limited liability company, taxpayer and other identification numbers, seals, stock transfer books, blank stock certificates, corporate books and records of internal corporate or limited liability company proceedings, tax and accounting records, work papers and other

records relating to the organization or maintenance of corporate or limited liability company existence of Sellers and any other records that Sellers are required by Law to retain; provided, however, that copies of the foregoing items shall be provided by Sellers to Purchaser following the Closing Date upon Purchaser's request at Purchaser's sole expense;

(c) the rights of Sellers under this Agreement and the Ancillary Agreements and all consideration payable or deliverable to Sellers under this Agreement, but excluding cash flows under any Assigned Contract;

(d) all rights and interests in connection with, and assets of, any Employee Benefit Plan other than the Assumed Plans;

(e) the capital stock or other equity interests of any Seller;

(f) all rights under or arising out of insurance policies that are non-assignable as a matter of Law;

(g) the assets listed on Schedule 2.2(g);

(h) all Excluded Contracts;

(i) all rights (including rights under insurance policies), claims or causes of action with respect to or arising in connection with Excluded Assets; and

(j) all deposits (including, with respect to the Excluded Assets, customer deposits and security deposits (whether maintained in escrow or otherwise) for rent, electricity, telephone or otherwise) and prepaid charges and expenses of Sellers that relate exclusively to the Excluded Assets to the extent such deposits, prepaid charges or expenses are rightfully and legally offset against corresponding accounts payable of Sellers arising prior to the Petition Date.

2.3 Assumption of Liabilities. Upon the terms and subject to the conditions of this Agreement, Purchaser agrees, effective at the time of the Closing, to assume, pay, perform and discharge the following Liabilities (the "Assumed Liabilities"):

(a) all of Sellers' Liabilities under the Assigned Contracts; provided, however, that Purchaser's obligations with respect to monetary defaults under any Assigned Contract upon the assumption thereof by Purchaser shall be limited to Cure Costs, subject to the terms of Section 2.5;

(b) to the extent not already paid or included in the DIP Obligations, all ordinary course Liabilities with respect to the Acquired Assets (including ordinary course trade payables) arising after the Petition Date to the extent (i) relating to the conduct of the Business after the Petition Date through the Closing Date and (ii) set forth in the Budget; provided, however, under no circumstances shall Purchaser assume or be liable for any such Liabilities in excess of an amount to be determined by Purchaser in its sole discretion; and provided, further however, that such Liabilities shall specifically exclude any fees and expenses of any attorneys, financial advisors, consultants or other representatives of the Sellers or anyone else for any legal, accounting, investment banking, brokerage or similar fees or expenses incurred by any Seller or

any predecessor of any Seller or anyone else in connection with, resulting from or attributable to (A) the Bankruptcy Cases or the transactions contemplated by this Agreement or (B) in pursuing or supporting claims, objections, avoidance actions, or any other litigation against Purchaser;

(c) all Liabilities relating to the Assumed Plans, if any;

(d) all Liabilities relating to Taxes as set forth on Schedule 2.3(d); and

(e) with the prior written consent of each ABL Credit Party, all Liabilities arising under the ABL Credit Agreements; if such Liabilities are not paid in full in cash as of Closing in the amount required under the ABL Credit Agreements.

2.4 Excluded Liabilities.

(a) Notwithstanding anything to the contrary in this Agreement or otherwise, Purchaser shall not assume or for any reason be deemed to have assumed or be liable for any Claims, Liens, Encumbrances, Interests or Liabilities of Sellers of any nature whatsoever, whether presently in existence or arising hereafter (other than the Assumed Liabilities), including, but not limited to, the following (collectively, the "Excluded Liabilities"):

(i) all Claims or Liabilities of Sellers that relate to any of the Excluded Assets (including under any Excluded Contracts);

(ii) the Excluded Environmental Liabilities (regardless of whether such Liabilities are technically Liabilities of any Seller);

(iii) any Liability relating to (A) events or conditions occurring or existing in connection with, or arising out of, the Business as operated prior to the Closing, or (B) the ownership, possession, use, operation or sale or other disposition prior to the Closing of any Acquired Assets (or any other assets, properties, rights or interests associated, at any time prior to the Closing, with the Business);

(iv) any Liability relating to the Acquired Assets based on events or conditions occurring or existing prior to the Closing Date and connected with, arising out of or relating to: (A) claims relating to employee health and safety, including claims for injury, sickness, disease or death of any Person or (B) compliance with any applicable Law relating to any of the foregoing; in each case except for any such Liability that may not be discharged by the Sale Order;

(v) all Claims or Liabilities of Sellers or for which Sellers or any Affiliate of any Seller could be liable relating to Taxes that are not expressly assumed by Purchaser under Schedule 2.3(d);

(vi) all Claims or Liabilities for any legal, accounting, investment banking, brokerage or similar fees or expenses incurred by any Seller or any predecessor of any Seller in connection with, resulting from or attributable to the Bankruptcy Cases or the transactions contemplated by this Agreement or otherwise;

(vii) all Indebtedness of any Seller;

(viii) all Liabilities of Sellers related to the right to or issuance of any capital stock or other equity interest of any Seller, including any stock options or warrants;

(ix) all Liabilities of Sellers resulting from, caused by or arising out of, or which relate to, directly or indirectly, the ownership, lease or license of any properties or assets or any properties or assets previously used by Sellers or any predecessor of any Seller at any time, or other actions, omissions or events occurring prior to the Closing and which (A) constitute, may constitute or are alleged to constitute a tort, breach of contract or violation of any rule, regulation, treaty or other similar authority or (B) relate to any and all Claims, disputes, demands, actions, Liabilities, damages, suits in equity or at Law, administrative, regulatory or quasi-judicial proceedings, accounts, costs, expenses, setoffs, contributions, attorneys' fees or causes of action of whatever kind or character ("Proceeding") against Sellers, whether past, present, future, known or unknown, liquidated or unliquidated, accrued or unaccrued, pending or threatened;

(x) any Liability arising out of any Proceeding commenced against Sellers or any predecessor of any Seller after the Closing and arising out of, or relating to, any occurrence or event happening prior to the Closing;

(xi) all Claims or Liabilities with respect to the Employees or former employees (or their representatives) of Sellers or any predecessor of any Seller based on any action or inaction occurring prior to and including on the Closing Date, including payroll, vacation, sick leave, workers' compensation, unemployment benefits, pension benefits, employee stock option or profit sharing plans, health care plans or benefits (including COBRA), or any other employee plans or benefits or other compensation of any kind to any employee, and obligations of any kind including any Liability pursuant to the WARN Act;

(xii) any Liability arising under any Employee Benefit Plan or any other employee benefit plan, policy, program, agreement or arrangement (other than an Assumed Plan) at any time maintained, sponsored or contributed to by Sellers or any ERISA Affiliate, or with respect to which Sellers or any ERISA Affiliate has any Liability including with respect to any underfunded pension Liability; provided, that for the avoidance of doubt, all Liabilities arising under the Assumed Plans shall be assumed by Purchaser pursuant to Section 2.3(c).

(xiii) any Liability arising out of or relating to services or products of Sellers to the extent performed, marketed, sold or distributed prior to the Closing;

(xiv) any Liability under any Excluded Contract;

(xv) any Liability under any employment, collective bargaining agreement, severance, retention or termination agreement with any employee, consultant or contractor (or their representatives) of Sellers, except if an Assumed Liability;

(xvi) any Liability arising out of or relating to any grievance by current or former employees of Sellers, whether or not the affected employees are hired by Purchaser;

(xvii) any Liability to any shareholder or other equity holder of any Seller, which Liability relates to such Person's capacity as a shareholder or other equity holder of a Seller;

(xviii) any Liability arising out of or resulting from non-compliance or alleged non-compliance with any Law, ordinance, regulation or treaty by Sellers;

(xix) any Liability for infringement or misappropriation of any Intellectual Property arising out of or relating to any conduct of any Seller or operation of the Business on or before the Closing;

(xx) any Liability of Sellers under this Agreement or any Ancillary Agreements;

(xxi) any Liability of Sellers related to all Indebtedness as of the Closing under the Pre-Petition Loan Documents;

(xxii) the Liabilities specifically identified and described on Schedule 2.4(a)(xxii); and

(xxiii) any other Liabilities of Sellers not expressly assumed by Purchaser pursuant to Section 2.3.

(b) The parties acknowledge and agree that disclosure of any Liability on any Schedule to this Agreement shall not create an Assumed Liability or other Liability of Purchaser, except where such disclosed Liability has been expressly assumed by Purchaser as an Assumed Liability in accordance with the provisions of Section 2.3.

2.5 Real Property Lease and Contract Designation; Cure Costs.

(a) Contract and Cure Schedule. Within ten (10) days following the date hereof, SS shall deliver to Purchaser a schedule that contains a list of each Contract along with the Sellers' good faith estimate of the amount of Cure Costs applicable to each such Contract (as such schedule may be amended, supplemented or otherwise modified from time to time in accordance with the terms of this Agreement, the "Contract & Cure Schedule"); provided, that if no Cure Cost is estimated to be applicable with respect to any particular Contract, the amount of such Cure Cost has been designated for such Contract as "$0.00". From the date the Contract & Cure Schedule is provided through (and including) the Designation Deadline, promptly following any changes to the information set forth on such Schedule (including any new Contracts included in the Acquired Assets to which a Seller becomes a party and any change in the Cure Cost of any such Contract), the Sellers shall provide Purchaser with a schedule that updates and corrects the Contract & Cure Schedule. Purchaser may, at any time and from time to time through (and including) the Designation Deadline as described below, include or exclude any Designated Contract from the Contract & Cure Schedule and require the Sellers to give

notice to the counterparties to any such Designated Contracts of the Sellers' proposed assumption and assignment thereof to Purchaser or Purchaser's Designee and the amount of Cure Costs, as approved by Purchaser, associated with such Designated Contract. If any Designated Contract is added to (or excluded from) the Contract & Cure Schedule as permitted by this Section 2.5(a), then Purchaser and the Sellers shall make appropriate additions, deletions or other changes to any applicable Schedule to reflect such addition or exclusion.

(b) Designation. During the period from the date the Contract and Cure Schedule is provided through the Designation Deadline and pursuant to the terms of this Section 2.5, Purchaser may designate each Designated Contract as an Assigned Contract or an Excluded Contract. Sellers hereby appoint Purchaser as their agent-in-fact from and after the Closing Date for the sole purpose of allowing Purchaser to continue to operate under the Designated Contracts until such time as Purchaser either designates such Designated Contract as an Assigned Contract or an Excluded Contract.

(c) Contract Notice. At any time prior to the Designation Deadline, Purchaser shall have the right, which right may be exercised at any time and from time to time in Purchaser's sole and absolute discretion, to provide written notice to Sellers (each such notice, a "Contract Notice") of Purchaser's election to deem the Designated Contracts identified in the subject Contract Notice(s) an Assigned Contract and require Sellers to use reasonable best efforts, subject to entry of an Assumption Order by the Bankruptcy Court, to assume and assign such Designated Contracts to Purchaser or Purchaser's Designee. In any such Contract Notices, Purchaser also may designate any Designated Contract as an Excluded Contract. Within fifteen (15) days following the date Purchaser delivers a Contract Notice to Sellers electing to deem a Designated Contract as an Assigned Contract, Sellers shall, at no additional cost or expense to Purchaser, take all requisite actions (including actions required under § 363 and/or 365 of the Bankruptcy Code, as applicable) to assume and assign such Designated Contracts to Purchaser or its Designee. Without limiting the generality of the foregoing, upon receipt of a Contract Notice electing to deem a Designated Contract as an Assigned Contract, Sellers shall use reasonable best efforts to obtain the entry of an Assumption Order by the Bankruptcy Court approving the assumption and assignment of such Designated Contracts to Purchaser or its Designee and fixing the Cure Costs relating to each of such Designated Contracts, provided, however, that if the Cure Costs to be fixed by the Bankruptcy Court for any Designated Contract in a proposed Assumption Order either are greater than the amount set forth in the Contract & Cure Schedule and are not consented to by Purchaser no later than the hearing before the Bankruptcy Court to consider the assumption and assignment of such Designated Contract, then Purchaser shall be permitted at such hearing to forthwith revoke its designation of any such Designated Contract as an Assigned Contract and thereupon such Designated Contract shall be deemed to be an Excluded Contract for all purposes of this Agreement. Promptly following the entry of an Assumption Order by the Bankruptcy Court, Purchaser shall and shall cause its Designees to assume from Sellers the Assigned Contracts pursuant to Section 365 of the Bankruptcy Code and an Assignment and Assumption Agreement.

(d) Bankruptcy Court Matters. Sellers shall give written notice to Purchaser prior to the submission of any motion in their Bankruptcy Cases to assume or reject any Designated Contracts together with a copy of the proposed Assumption Order, and, without the prior written consent of Purchaser, Sellers shall not assume or reject any Designated Contracts.

Sellers shall promptly reject any Designated Contract that (i) Purchaser has designated as an Excluded Contract pursuant to a Contract Notice, (ii) has been deemed to be an Excluded Contract pursuant to Section 2.5(b) above or (iii) any Designated Contract that Purchaser has not designated as an Assigned Contract by the Designation Deadline (all such Designated Contracts being deemed to be Excluded Contracts for purposes of this Agreement). Any Designated Contracts that are rejected subject to Bankruptcy Court approval or are the subject of a rejection motion at the Designation Deadline, after complying with the provisions of this Section 2.5 shall constitute Excluded Contracts. Purchaser shall not have any obligation or liability with respect to Excluded Contracts from and after the earliest of: (x) delivery of such a Contract Notice, (y) after such Designated Contract has been deemed to be an Excluded Contract pursuant to Section 2.5(b) above or (z) after the Designation Deadline, as applicable.

(e) Cure Costs; Adequate Assurance. To the extent that any Designated Contract requires the payment of Cure Costs in order to be assigned to Purchaser and assumed pursuant to Section 363 and 365 of the Bankruptcy Code, the Cure Costs related to such Designated Contract shall be paid by the Sellers to the extent of available cash on the Sellers' balance sheet. In the event that the aggregate amount of Cure Costs payable for all Assigned Contracts exceeds the amount of available cash on the Sellers' balance sheet, Purchaser or its Designees shall satisfy such excess Cure Costs. Purchaser shall not be required to make any payment of Cure Costs for, or otherwise have any Liabilities with respect to, any Contract that is not an Assigned Contract. Purchaser will provide adequate assurance of future performance on its behalf and on behalf of its Designees as required under the Bankruptcy Code, including Section 365(f)(2)(B) thereof. Purchaser and the Sellers agree that they will promptly take all actions reasonably required to assist in obtaining a Bankruptcy Court finding that there has been an adequate demonstration of adequate assurance of future performance under each Assigned Contract, such as furnishing affidavits, non-confidential financial information or other documents or information for filing with the Bankruptcy Court and making Purchaser's and the Sellers' employees and representatives available to testify before the Bankruptcy Court, as necessary.

(f) Non-Assignable Contracts. To the extent that any Assigned Contract is not capable of being assigned under Section 365 of the Bankruptcy Code (or, if inapplicable, pursuant to other applicable Laws or the terms of such Contract) to Purchaser or a Designee without the consent of the other party thereto or any Person (including a Government Entity), and such consent has not been obtained (collectively, the "Non-Assignable Contracts"), this Agreement will not constitute an assignment thereof, or an attempted assignment, unless any such consent is obtained. Any payment to be made in order to obtain any consent required by the terms of any Non-Assignable Contract shall be the responsibility of Sellers to the extent of available cash on Sellers' balance sheet. In the event that the aggregate amount of consent fees payable for all Non-Assignable Contracts exceeds the amount of available cash on the Sellers' balance sheet, Purchaser or its Designees shall satisfy such excess consent fees. If, after giving effect to the provisions of Sections 363 and 365 of the Bankruptcy Code, such consent is required but not obtained, the Sellers shall cooperate with Purchaser in any reasonable arrangement designed to provide for Purchaser the benefits and obligations of or under any such Non-Assignable Contract, including enforcement for the benefit of Purchaser of any and all rights of the Sellers against a third party thereto arising out of the breach or cancellation thereof by such third party. Any assignment to Purchaser of any Assigned Contract that shall, after

giving effect to the provisions of Sections 363 and 365 of the Bankruptcy Code, require the consent of any third party for such assignment as aforesaid shall be made subject to such consent being obtained. Any contract that would be an Assigned Contract but is not assigned in accordance with the terms of this Section 2.5(f) shall not be considered an "Assigned Contract" for purposes hereof unless and until such contract is assigned to Purchaser following the Closing Date upon receipt of the requisite consents to assignment and Bankruptcy Court approval.

ARTICLE 3
CONSIDERATION

3.1 Purchase Price.

(a) The purchase price (the "Purchase Price") for the purchase, sale, assignment and conveyance of Sellers' right, title and interest in, to and under the Acquired Assets to Purchaser or its Designees shall consist of (i) an amount equal to $95,000,000, which amount shall be payable in the form of a credit bid of an amount of the obligations then outstanding under the DIP Credit Agreement and the Pre-Petition Credit Agreement (such amount as may be increased pursuant to Section 3.1(b), the "Credit Bid Amount"); (ii) unless such obligations have been assumed by Purchaser pursuant to Section 2.3(e), an amount in cash allocated solely for the benefit of the ABL Credit Parties in order to cause the "payment in full" of the Obligations under each of the ABL Credit Agreements (within the meaning of such phrase under the ABL Credit Agreements), including the Letter of Credit Collateralization (as defined in the ABL DIP Credit Agreement) and Payment in Full of ABL Priority Debt (as such term is used the Existing Split Lien Intercreditor Agreement (as defined in the ABL DIP Credit Agreement) and the Split Lien Intercreditor Agreement (as defined in the ABL DIP Credit Agreement); and (iii) the assumption by Purchaser of the Assumed Liabilities.

(b) For the avoidance of doubt, at any time, and from time to time, during the Auction, Purchaser may increase the Purchase Price, including by increasing the Credit Bid Amount to the full amount then outstanding and owing under the DIP Credit Agreement and the Pre-Petition Credit Agreement and or paying additional cash consideration.

3.2 Allocation of Purchase Price. If the transaction contemplated by this Agreement is an "Applicable Asset Acquisition" as defined in Section 1060(c) of the Code, then by the Designation Deadline, Purchaser shall prepare and deliver to Sellers a statement allocating the sum of the Purchase Price, the Assumed Liabilities and other relevant items among the Acquired Assets in accordance with Section 1060 of the Code (such statement, the "Allocation Statement"), and the Allocation Statement shall be finalized upon reasonable consultation with Sellers. Except as otherwise required by applicable Law, the parties shall follow the Allocation Statement for purposes of filing IRS Form 8594 (and any supplements to such form) and all other Tax Returns, and shall not voluntarily take any position inconsistent therewith. If the IRS or any other taxation authority proposes a different allocation, Sellers or Purchaser, as the case may be, shall promptly notify the other party of such proposed allocation. Sellers or Purchaser, as the case may be, shall provide the other party with such information and shall take such actions (including executing documents and powers of attorney in connection with such proceedings) as may be reasonably requested by such other party to carry out the purposes of this section. Except as otherwise required by applicable Law or pursuant to a "determination" under

Section 1313(a) of the Code (or any comparable provision of United States state, local, or non-United States law), (i) the transactions contemplated by Article 2 of this Agreement shall be reported for all Tax purposes in a manner consistent with the terms of this Section 3.2; and (ii) neither party (nor any of their Affiliates) will take any position inconsistent with this Section 3.2 in any Tax Return, in any refund claim, in any litigation or otherwise. Notwithstanding the allocation of the Purchase Price set forth in the Allocation Statement, nothing in the foregoing shall be determinative of values ascribed to the Acquired Assets or the allocation of the value of the Acquired Assets in any plan of reorganization or liquidation that may be proposed.

3.3 Assignment to Subsidiaries of Purchaser. Prior to the Closing, Purchaser shall have the right to assign its rights to receive all or any part of the Acquired Assets and its obligations to assume all or any part of the Assumed Liabilities, in each case, to one or more Affiliates or Subsidiaries of Purchaser (each, a "Designee") by providing written notice to SS and each such Designee shall be deemed to be a Purchaser for all purposes hereunder and under the Ancillary Agreements, except that no such assignment shall relieve Purchaser of any of its obligations hereunder.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers hereby represent and warrant to Purchaser as follows:

4.1 Organization. Each Seller is duly organized, validly existing and in good standing under the Laws of its state of incorporation or formation and has all necessary power and authority to own, lease and operate its properties and to conduct its business in the manner in which its business is currently being conducted. Except as a result of the commencement of the Bankruptcy Cases, each Seller is qualified to do business and is in good standing in all jurisdictions where it owns its properties and assets and conducts the Business.

4.2 Subsidiaries and Investments. Except as set forth in Schedule 4.2, Sellers do not, directly or indirectly, own, of record or beneficially, any outstanding voting securities, membership interests or other equity interest in any Person.

4.3 Authorization of Agreement. Subject to entry of the Sale Order and authorization as is required by the Bankruptcy Court:

(a) Each Seller has, or at the time of execution will have, all necessary power and authority to execute and deliver this Agreement and each Ancillary Agreement to which such Seller is or will become a party and to perform its obligations hereunder and thereunder;

(b) The execution, delivery and performance of this Agreement and each Ancillary Agreement to which a Seller is or will become a party and the consummation of the transactions contemplated hereby and thereby have been, or at the time of execution will be, duly authorized by all necessary action on the part of such Seller and no other proceedings (shareholder, member or otherwise) on the part of Sellers are necessary to authorize such execution, delivery and performance; and

(c) This Agreement and each Ancillary Agreement to which a Seller is or will become a party have been, or when executed will be, duly and validly executed and delivered by such Seller and (assuming the due authorization, execution and delivery by the other parties hereto or thereto) this Agreement and each Ancillary Agreement to which a Seller is or will become a party constitutes, or will constitute, when executed and delivered, such Seller's valid and binding obligation, enforceable against such Seller in accordance with its respective terms except as may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and similar Laws of general applicability relating to or affecting creditors' rights, or by general equity principles, including principles of commercial reasonableness, good faith and fair dealing.

4.4 Conflicts; Consents of Third Parties.

(a) Except as set forth on Schedule 4.4(a), subject to entry of the Bankruptcy Order, the execution, delivery and performance by each Seller of this Agreement and each Ancillary Agreement, the consummation of the transactions contemplated hereby and thereby, and compliance by each Seller with any of the provisions hereof or thereof do not, or will not at the time of execution, result in the creation of any Lien or Encumbrance upon the Acquired Assets and do not, or will not at the time of execution, conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of payment, termination, modification, acceleration or cancellation under any provisions of:

(i) such Seller's certificates of incorporation, bylaws or comparable organizational documents of such Seller;

(ii) subject to entry of the Sale Order, any material Assigned Contract or Permit to which such Seller is a party or by which any of the Acquired Assets are bound;

(iii) subject to entry of the Sale Order, any order, writ, injunction, judgment or decree of any Governmental Authority applicable to such Seller or any of the Acquired Assets; or

(iv) subject to entry of the Sale Order, any applicable Law.

(b) Subject to entry of the Sale Order, and except (i) for such authorizations, orders, declarations, filings and notices as may be required under the HSR Act and (ii) as set forth on Schedule 4.4(b), no consent, waiver, approval, order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Authority is required on the part of any Seller in connection with the execution, delivery and performance of this Agreement or any Ancillary Agreement to which it is or will become a party, the compliance by such Seller with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby, or the assignment or conveyance of the Acquired Assets.

4.5 Title to Acquired Assets. Except as set forth on Schedule 4.5, Sellers have good, and marketable title to, or a valid and marketable leasehold interest in, the Acquired Assets, and, subject to entry of the Sale Order, Purchaser will be vested, to the maximum extent permitted by Sections 363 and 365 of the Bankruptcy Code, with good and marketable title to, and a valid and

marketable leasehold interest in, the Acquired Assets free and clear of all Liens, Claims, Interests and Encumbrances, other than Permitted Liens.

4.6 Contracts.

(a) Schedule 4.6 sets forth a complete list, as of the date hereof, of all Contracts to which any Seller is a party or by which it is bound and that are used in or related to the Business or the Acquired Assets, meeting any of the descriptions set forth below:

(i) all reseller or distribution agreements with respect to which any Seller recognized cumulative revenue during the fiscal year ended April 28, 2012 in excess of $100,000;

(ii) any Contract with any current customer of any Seller with respect to which such Seller recognized cumulative revenue during the twelve-month period ended December 31, 2012 in excess of $100,000;

(iii) any Contract with any supplier of goods and/or services, including any personal property leases, with respect to which any Seller made cumulative expenditures during the twelve-month period ended December 31, 2012 greater than $100,000;

(iv) any material Contract with any sole source suppliers, or any other material contract that licenses or otherwise authorizes any third party to design, manufacture, reproduce, develop or modify the products, services or technology of the Sellers;

(v) any material Contracts that contain provisions granting any exclusive rights, rights of first refusal, rights of first negotiation or similar rights to any Person;

(vi) any Contract limiting in any material respect the right of any Seller to engage in any line of business, compete with any Person in any line of business or the manner or locations in which any of them may engage;

(vii) any Contract with any officer of any Seller, any Contract with any employee of any Seller, any Contract that promises any payment or benefit to any officer of any Seller or any Contract that promises any payment or benefit to any employee of any Seller;

(viii) any Contract with any Affiliate of any Seller;

(ix) any evidence of Indebtedness in excess of $100,000;

(x) any joint venture, partnership, cooperative arrangement or any other agreement involving a sharing of profits or development costs;

(xi) any material Contract or arrangement pursuant to which any Seller sells or licenses any product outside of the United States;

(xii) any Contract with respect to the discharge, storage or removal of effluent, waste or pollutants;

(xiii) except for licenses for third party commercially available Software that (A) is word processing, financial or other business software, or (B) has an individual acquisition cost or annual licensing fee of $100,000 or less, any Contract pursuant to which (x) any Seller has been granted or otherwise receives any right to use third party Intellectual Property rights used by any Seller in the Business or (y) any Seller has granted a third party rights to use any Intellectual Property owned by any Seller; in each case of (x) and (y), with annual or one-time license fees in excess of $100,000 ("IP Licenses");

(xiv) any material power of attorney, proxy or similar instrument;

(xv) any Contract for the purchase, sale or license of any material assets of any Seller other than in the ordinary course of business or any Contract granting an option or preferential rights to purchase, sell or license any material assets of any Seller other than in the ordinary course of business;

(xvi) to the extent not otherwise set forth on Schedule 4.6, any Contract under which a Seller has continuing material indemnification obligations to any Person;

(xvii) any Contract relating to the acquisition by any Seller of a business or the equity interests of any other Person (whether or not completed) entered into within the last two (2) years;

(xviii) any other Contract (other than those excluded by an express exception from the descriptions set forth in the subsections above) which provides for payment or performance by either party thereto having an aggregate value of $100,000 or more (unless terminable without payment or penalty on ninety (90) days (or less) notice);

(xix) any Real Property Leases; and

(xx) any agreement to enter into any of the foregoing.

(b) The foregoing are collectively referred to as the "Material Contracts." Purchaser shall receive or be provided access within seven (7) days after the Execution Date to true, correct and complete copies of such written Contracts and any and all amendments, modifications, supplements, exhibits and restatements thereto and thereof in effect as of the date of this Agreement.

4.7 Real Property.

(a) Schedule 4.7(a) sets forth a list of each parcel of Real Property currently owned ("Owned Real Property"), leased, licensed or subleased by Sellers. Sellers shall deliver

or make available to Purchaser within seven (7) days after the Execution Date true, correct and complete copies of the Real Property Leases in effect as of the Execution Date (including all amendments thereto, assignments and subleases in respect thereof) relating to the Leased Real Property. One or more Sellers owns and has good and marketable title to all of the Owned Real Property and has valid leasehold or subleasehold (or a valid license) interests in all of the Leased Real Property, in each case, free and clear of any and all Encumbrances (except for Permitted Liens and Encumbrances listed on Schedule 4.5). Except as would not have a Material Adverse Effect, each Real Property Lease to which any Seller is a party is valid and enforceable in accordance with its terms. Except as set forth on Schedule 4.7(a), (i) no Seller has received written notice that it is in default under any such Real Property Lease other than as has been cured or would be cured pursuant to this Agreement and the entry of the Sale Order, (ii) to Sellers' Knowledge, no circumstances exist which, with notice, the passage of time or both, would reasonably be expected to constitute a default by any Seller under any such Real Property Lease other than defaults that may be alleged to have occurred by a landlord under a Real Property Lease as a result of the initiation of the Bankruptcy Cases and (iii) to Sellers' Knowledge, no other party to any such Real Property Lease is in default thereunder.

(b) Except as set forth on Schedule 4.7(b), no Seller has received written notice of any pending condemnation proceeding with respect to any parcel of Real Property nor, to such Sellers' Knowledge, is there any threatened condemnation that would preclude or impair the use of any Real Property by Purchaser for the purposes for which it is currently used.

(c) Other than as set forth in any of the Real Property Leases and other than the right of Purchaser pursuant to this Agreement, there are no other options or rights of first offer or rights of first refusal or similar rights or options to purchase, lease or otherwise acquire any interest in any of the Owned Real Property or any of the leases or subleases relating to the Leased Real Property have been granted by any Seller to any Person (other than Purchaser) that are enforceable.

(d) Except as set forth on Schedule 4.7(d), no Seller has made or given any security deposit to or for the benefit of any landlord or sublandlord in respect of any Leased Real Property and none is required.

4.8 Intellectual Property.

(a) Schedule 4.8(a) sets forth a complete and accurate list of all (i) United States and non-United States Patents and Patent applications owned by Sellers; (ii) United States and non-United States Trademark registrations and Internet domain registrations, Trademark applications and material unregistered Trademarks owned by Sellers; and (iii) United States and non-United States Copyright and mask work registrations, Copyright applications and material unregistered Copyrights owned by Sellers.

(b) Schedule 4.8(b) sets forth a complete and accurate list of all (i) IP Licenses and (ii) Contracts to which Sellers are a party or otherwise bound restricting Sellers' rights to use any Intellectual Property, including license agreements, development agreements, distribution agreements, settlement agreements, consent to use agreements, and covenants not to

sue (collectively, the "License Agreements"). Sellers have not licensed or sublicensed its rights in any Intellectual Property other than pursuant to the License Agreements.

(c) Sellers own or possess rights to use all Intellectual Property material to the conduct of the Business. All registrations with and applications to Governmental Authorities set forth on Schedule 4.8(a) are in full force and effect, have not, except in accordance with the ordinary course practices of Sellers, lapsed, expired or been abandoned, are not the subject of any opposition or other action challenging the ownership, validity or scope thereof filed with the United States Patent and Trademark Office or any other applicable Intellectual Property registry, court of law, or tribunal.

(d) Except as identified in the Contracts set forth in Schedule 4.8(b), to Sellers' Knowledge, no present or former employee, officer or director of Sellers, or agent, outside contractor or consultant of Sellers, holds any right, title or interest, directly or indirectly, in whole or in part, in or to any Intellectual Property and necessary for the conduct of the Business. Other than with respect to copyrightable works Sellers hereby represent to be "works made for hire" within the meaning of Section 101 of the Copyright Act of 1976 owned by Sellers or as identified in the Contracts set forth in Schedule 4.8(b), Sellers have obtained from all individuals who participated in any respect in the invention or authorship of any Intellectual Property created by or for Sellers and necessary for the conduct of the Business (the "Owned Intellectual Property"), as consultants, as employees of consultants or otherwise, effective waivers of any and all ownership rights of such individuals in the Owned Intellectual Property and/or written assignments to Sellers of all rights with respect thereto.

(e) As of the date hereof, Sellers have not received any written notice and to Sellers' Knowledge no verbal notice, that it is, or they are, currently in default (or with the giving of notice or lapse of time or both, would be in default) under any IP Licenses. Sellers have not received any written notice of any claim of invalidity of any Intellectual Property set forth on Schedule 4.8(a). Except as set forth on Schedule 4.8(e), to Sellers' Knowledge, no material Intellectual Property rights of Sellers are being infringed by any other Person. Except as set forth on Schedule 4.8(e) or claims that have been resolved, Sellers have not received any written notice of any claim of infringement or conflict with any Intellectual Property right of others within the six (6) years prior to the date hereof.

(f) To Sellers' Knowledge, no Software material to Sellers' Business contains source code that requires as a condition of use, modification or distribution of such source code that such source code or other Intellectual Property incorporated into, derived from or distributed with such source code (i) be disclosed or distributed in source code form; (ii) be licensed for the purpose of making derivative works, as that term is defined by U.S. copyright law; or (iii) be redistributed at no charge.

4.9 Taxes.

(a) All federal, state, foreign, county, local and other Tax Returns required to be filed by or on behalf of Sellers have been timely filed, or extensions of the time to file have been obtained, and when filed were true and correct in all material respects, and the taxes due and owing thereon were paid or adequately accrued, except to the extent contested in good faith

by proper proceedings. True and complete copies of all Tax Returns filed by Sellers for each of its three (3) most recent fiscal years shall be delivered or made available to Purchaser within seven (7) days after the Execution Date. Sellers have duly withheld and paid all material Taxes required to have been withheld and paid relating to any employee, independent contractor, creditor, stockholder, or other third party, and all material Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed and distributed.

(b) Since October 27, 2012, Sellers have not incurred any material Taxes other than Taxes incurred in the ordinary course of business consistent in type and amount with past practices.

(c) The federal and state income Tax Returns of Sellers have been audited by the IRS and appropriate state Tax Authorities for the periods, as applicable, and to the extent set forth in Schedule 4.9(c), and to Sellers' Knowledge, Sellers have not received from the Internal Revenue Service or from the Tax Authorities of any state, county, local or other jurisdiction any notice of underpayment of Taxes or other deficiency which has not been paid nor any objection to any return or report filed by any Seller. There is no material dispute or claim concerning any Tax liability of any Seller either (i) claimed or raised by any Tax Authority in writing or (ii) as to which any Seller has knowledge based upon personal contact with any agent of such Tax Authority.

(d) There are no outstanding agreements or waivers extending the statutory period of limitations applicable to any Tax Return or report of any Seller or the period of time within which any Tax Return of any Seller must be filed.

(e) No Seller has been a United States real property holding corporation within the meaning of Section 897(c)(2) of the Code during the applicable period specified in 897(c)(1)(A)(ii) of the Code. No Seller is a party to or bound by any tax allocation or sharing agreement. No Seller (A) has been a member of an affiliated group filing a consolidated federal income Tax Return (other than a group the common parent of which was one of Sellers) or (B) has any liability for the Taxes of any Person (other than any other Seller) under Treas. Reg. §1.1502-6 (or any similar provision of state, local, or foreign law), as a transferee or successor, by contract.

(f) During the last two (2) years, no Seller has (i) applied for any tax ruling with respect to non-income Taxes, (ii) entered into a closing agreement with any Tax Authority with respect to non-income Taxes, or (iii) been a party to any Tax allocation or Tax sharing agreement (other than with any other Seller).

(g) Except as described on Schedule 4.9(g), no Seller will be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) ending after the Closing Date as a result of any:

(i) Change in method of accounting for a taxable period ending on or prior to the Closing Date;

(ii) "Closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign income Tax Law) executed on or prior to the Closing Date;

(iii) Intercompany transactions or any excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of state, local or foreign income Tax law);

(iv) Installment sale or open transaction disposition made on or prior to the Closing Date; or

(v) Prepaid amount received on or prior to the Closing Date.

(h) No Seller has distributed stock of another Person, or has had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Section 355 of the Code in the two years prior to the date of this Agreement.

(i) No Seller has engaged in a "listed transaction", within the meaning of Treasury Regulation §1.6011-4.

4.10 Collective Bargaining Agreements, Employment Agreements, etc.

(a) Schedule 4.10(a) lists (i) all union, collective bargaining or other employee association agreements (indicating duration and expiration date for each), and all other written agreements providing for any material salary, bonus, benefits, perquisites, severance, management fees or other compensation relating to service to be paid to any director, officer or employee of Sellers and (ii) fees paid to independent contractors of Sellers during the twelve-month period ended December 31, 2012.

(b) No Seller (i) and to Sellers' Knowledge, no other party thereto, has breached or otherwise failed to comply in any material respect with any provision of any agreement set forth on Schedule 4.10(a), (ii) has employees organized as a bargaining unit or the like by any labor organization except as disclosed on Schedule 4.10(a), (iii) is, nor has it been, within the last two (2) years, subject to any unfair labor practice complaints before the National Labor Relations Board (except as set forth on Schedule 4.10(b)), (iv) is, nor has it been, within the last two (2) years subject to any activities or proceedings of any labor union (or representatives thereof) to organize any unorganized employees, and (v) is, nor has it been, within the last two (2) years subject to any strikes, organized slowdowns, work stoppages or lockouts and, to the best of Sellers' Knowledge, no matter or occurrence referred to in subclauses (ii) through (v) is planned, pending or threatened, as applicable.

(c) Except as set forth on Schedule 4.10(c), no Seller is in violation, in any material respect, and no Seller has received within the last two (2) years written notice of any claim with respect to a material violation or alleged material violation, of any federal or state civil rights law, the Fair Labor Standards Act, as amended, the Age Discrimination in Employment Act, as amended, the National Labor Relations Act, as amended, the Occupational Safety and Health Act, as amended, the Americans with Disabilities Act, as amended, ERISA (with respect to any Employee Benefit Plan), or the Vocational Rehabilitation Act of 1973, as

amended, any applicable state or local laws analogous to the federal laws listed above or any other employee protective law of any jurisdiction and, to the best of Sellers' Knowledge, no claim referred to in this Section 4.10(c) is planned, pending or threatened.

(d) For each current Employee, Schedule 4.10(d) sets forth each such Employee's name, title, date of hire, annualized compensation, bonus, commission, FLSA classification and union representation, if applicable.

4.11 Employee Benefit Plans.

(a) Schedule 4.11(a) lists all: (i) employee pension or welfare benefit plans (as defined in Section 3(2) and 3(1) of ERISA, respectively), (A) which are maintained or administered by any Seller; (B) to which any Seller contributes, or is legally obligated to contribute; or (C) under which any Seller has any liability including due to any Seller's relationship with any entity that along with such Seller is treated as a "single employer" under Section 414 of the Code ("ERISA Affiliates") and (ii) all other material plans or arrangements maintained by Sellers for the benefit of current or former employees, their beneficiaries or dependents (collectively, the "Employee Benefit Plans").

(b) Except as set forth on Schedule 4.11(b), no Seller currently contributes to any "multiemployer plan" within the meaning of Section 4201 of ERISA, and no Seller has incurred any withdrawal liability within the meaning of Section 4201 of ERISA with respect to any multiemployer plan which has not been satisfied.

(c) With respect to each Employee Benefit Plan, Sellers shall make available to Purchaser within seven (7) days after the Execution Date a true and correct copy of (i) the most recent annual report (Form 5500), if any, filed with the IRS or the United States Department of Labor, (ii) the plan document(s) and all amendments thereto, if any, and all summary plan descriptions, summaries of material modifications, and copies or samples of any material administrative documents for such Employee Benefit Plan, and (iii) each trust agreement, group annuity Contract and insurance policy, if any, relating to such Employee Benefit Plan. Each Employee Benefit Plan (A) has been administered in all material respects in accordance with its terms and (B) complies in all material respects in form with, and has been operated and administered in all material respects in accordance with, any and all applicable laws, including ERISA and the Code. Each Employee Benefit Plan and each trust (in each case including any amendments to such plans) that is intended to qualify under Section 401(a) and 501(a) of the Code is covered by a favorable determination or opinion letter from the IRS that remains in effect on the date hereof, and remains current with respect to any actual or legally required plan amendment for which the applicable remedial amendment period under IRS Revenue Procedure 2007-44 has expired.

(d) All contributions and premiums required by Law under any Employee Benefit Plan or by the terms of any Employee Benefit Plan or any agreement relating thereto have been timely made.

(e) With respect to the Employee Benefit Plans, individually and in the aggregate, to Sellers' Knowledge, no event has occurred that could subject any Seller or any of

its ERISA Affiliates to any material liability under ERISA, the Code or any other applicable Law, including any non-exempt "prohibited transaction" (as defined in Section 406 of ERISA and Section 4975(c) of the Code).

(f) There are no material Proceedings against any Employee Benefit Plan, the assets of any such plan or against Sellers, the plan administrator, or fiduciary of any Employee Benefit Plan with respect to the operation of any such plan (other than routine benefit claims), and, to Sellers' Knowledge, there are no facts or circumstances which could form the basis for any such Proceedings. To Sellers' Knowledge, no Seller is in default with respect to any order, writ, judgment or decree of any court or governmental department, bureau, agency or instrumentality, with respect to any Employee Benefit Plan insofar as it relates to any current or former employee.

(g) Sellers have at all times complied with the requirements of COBRA and Schedule 4.11(g) lists all of the individuals covered under any health care plan of Sellers pursuant to COBRA and the date for each such individual when COBRA coverage began.

(h) Except as set forth on Schedule 4.11(h), Sellers have no obligations under any Employee Benefit Plan and/or any collective bargaining agreement to provide health or life insurance benefits to former employees (or their beneficiaries or dependents) for periods after termination of employment, except as specifically required by COBRA or any other applicable state or federal Law.

4.12 Environmental Matters. Except as set forth in Schedule 4.12 and except as would not reasonably be expected to result in a Material Adverse Effect, (a) the Acquired Assets are in compliance with all applicable Laws relating to pollution or the protection of the environment or human health and safety as it relates to Hazardous Materials ("Environmental Laws"); (b) Sellers have obtained and are in compliance with all material Permits that are required pursuant to Environmental Laws for the occupation of their facilities and the operation of the Business, and such Permits are in full force and effect; (c) no Seller has received written or oral notice of any Proceeding relating to or arising under Environmental Laws with respect to the Acquired Assets or the Business, nor to Sellers' Knowledge are any of the same being threatened against any Seller; (d) no Seller has received any written or oral notice or report regarding any actual or alleged violation of Environmental Law or any Liabilities, including any investigatory, remedial or corrective Liabilities, relating to any of them or their facilities arising under Environmental Laws; (e) no Seller has received any written or oral notice of, or entered into, any obligation, order, settlement, judgment, injunction, or decree involving outstanding requirements, including any investigatory, remedial or corrective Liabilities relating to or arising under Environmental Laws; (f) none of the following exists at any property or facility owned or leased by any Seller: (i) under or above-ground storage tanks, (ii) asbestos containing material in any form or condition, (iii) materials or equipment containing polychlorinated biphenyls, or (iv) landfills, surface impoundments, or disposal areas; (g) no Seller has Released any Hazardous Material, into the environment at, onto, or from any property owned or leased by any Seller (and no such property is contaminated by any such substance) which has resulted in or would reasonably be expected to result in Liability for response costs, corrective action costs, personal injury, property damage or natural resources damages, or Claims relating to any Environmental Law; and (h) the transactions contemplated hereby will not result in any Liabilities for site investigation or

cleanup, or require the consent of any Person, pursuant to any Environmental Laws, including any so-called "transaction-triggered" or "responsible property transfer" requirements.

4.13 Insurance. Sellers maintain the insurance policies set forth on Schedule 4.13, which Schedule sets forth all insurance policies covering the property, assets, employees and operations of the Business (including policies providing property, casualty, liability and workers' compensation coverage). Such policies are in full force and effect. Sellers have paid all premiums on such policies due and payable prior to the Execution Date.

4.14 Financial Statements.

(a) Sellers have filed all forms, reports, statements, certifications and other documents (including all exhibits, amendments and supplements thereto) required to be filed by them with the SEC since January 1, 2011 (all such forms, reports, statements, certificates and other documents filed, since January 1, 2011 and prior to the date hereof, collectively, the "SEC Documents"), and Sellers have furnished all reports and other documents (including all exhibits, amendments and supplements thereto) required to be furnished by them with the SEC since January 1, 2011 (all such reports and other documents furnished, since January 1, 2011 and prior to the date hereof, collectively, the "Furnished Reports"). As of the date hereof, there are no outstanding or unresolved comments in comment letters received from the SEC staff with respect to the SEC Documents or Furnished Reports. No executive officer of Sellers has failed to make the certifications required of him or her under Section 302 or 906 of the Sarbanes-Oxley Act with respect to any SEC Documents. None of the Sellers nor any of their executive officers has received written notice from any Governmental Authority challenging or questioning the accuracy, completeness or manner of filing of the certifications required by the Sarbanes-Oxley Act and made by its principal executive officer and principal financial officer.

(b) Each of the audited consolidated financial statements included in or incorporated by reference into the SEC Documents (including any related notes and schedules) have been prepared in accordance with United States generally accepted accounting principles ("GAAP") applied on a consistent basis throughout the periods involved (except as may be indicated in the notes thereto) and fairly present in all material respects the consolidated financial position of SS and its Subsidiaries at the respective dates thereof and the results of operations, changes in equity and cash flows. Each of the unaudited condensed consolidated financial statements included in or incorporated by reference into the SEC Documents (including any related notes) have been prepared in accordance with GAAP applied on a consistent basis throughout the periods involved (except as may be indicated in the notes thereto or may be permitted by the SEC under the Exchange Act) and fairly present in all material respects the consolidated financial position of the Company and its Subsidiaries as of the respective dates thereof and the results of their operations, changes in equity and cash flows for the periods indicated (subject to notes and normal period-end adjustments that will not be material in amount or effect).

4.15 No Brokers or Finders. No agent, broker, finder or investment or commercial banker, or other Person or firm engaged by, or acting on behalf of, any of Sellers in connection with the negotiation, execution or performance of this Agreement or the transactions contemplated by this Agreement, other than as set forth on Schedule 4.15, the fees and expenses

of which Sellers shall bear, is or will be entitled to any brokerage or finder's or similar fees or other commissions as a result of this Agreement or such transaction.

4.16 Affiliate Transactions. Except as disclosed in Schedule 4.16, no Affiliate of any Seller (other than any other Seller) (a) is a competitor, creditor, debtor, customer, distributor, supplier or vendor of any Seller, (b) is a party to any Material Contract with any Seller, (c) has any Proceeding against any Seller, (d) has a loan outstanding from any Seller or (e) owns any assets that are used in the Business.

4.17 Litigation; Proceedings. Except as set forth on Schedule 4.17, there is no claim, action, suit, Proceeding, complaint, charge, hearing, grievance or arbitration pending or, to Sellers' Knowledge, threatened against or related to the Business, whether at Law or in equity, whether civil or criminal in nature or by or before any arbitrator or Governmental Authority, nor are there any investigations relating to the Business, pending or, to Sellers' Knowledge, threatened by or before any arbitrator or any Governmental Authority, which could reasonably be expected to results in a Material Adverse Effect, and none of the Acquired Assets is subject to any judgment, injunction, order, consent, or decree of any Governmental Authority or any settlement agreement with any Person, which could reasonably be expected to results in a Material Adverse Effect.

4.18 Compliance with Laws. Each Seller (i) is and at all times since January 1, 2011 has been in compliance with, is in compliance with and has operated the Business in compliance, in all material respects, with all applicable Laws and (ii) holds all material Permits, concessions, grants, licenses, easements, variances, exemptions, consents, orders, franchises, authorizations and approvals of all Governmental Authorities necessary for the lawful conduct of the Business (except where the absence of which would not reasonably be expected to have a Material Adverse Effect) and is in compliance with all of the foregoing in all material respects. Since January 1, 2011, no Seller has received any written notice or other written communication from any Governmental Authority or other Person (i) asserting any violation of, or failure to comply with, any requirement of any Permit or (ii) notifying a Seller of the non-renewal, revocation or withdrawal of any Permit in each of case (i) or (ii), which would reasonably be expected to result in a Material Adverse Effect.

4.19 Accounts Receivable. The accounts receivable reflected on the most recent audited financial statements in the SEC Documents and the accounts receivable arising after the date thereof (a) have arisen from bona fide transactions entered into by Sellers involving the sale of goods or the rendering of services in the ordinary course of business consistent with past practice; and (b) constitute only valid, undisputed claims of Sellers not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the ordinary course of business consistent with past practice. Additionally, the material accounts receivable reflected on the most recent audited financial statements in the SEC Document, subject to a reserve for bad debts shown in the most recent audited financial statements included in the SEC Documents, and the material accounts receivable arising after the date thereof, subject to a reserve for bad debts on the accounting records of the Business, are due within 90 days after billing. The reserve for bad debts shown on the most recent audited financial statements included in the SEC Documents or, with respect to accounts receivable arising after the date of such financial statements included in the SEC Documents, on the accounting records of the

Business have been determined in accordance with GAAP, consistently applied, subject to normal year-end adjustments and the absence of disclosures normally made in footnotes.

4.20 Inventory. All Inventory of Sellers, whether or not reflected on the most recent audited financial statements included in the SEC Documents, consists of items of a quality useable or saleable in the ordinary course of business, for the purposes for which they are intended, subject to normal and customary allowances for damage and obsolescence and assuming sufficient market demand. Sellers do not hold any Inventory on consignment.

4.21 Warranties Are Exclusive. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SELLERS MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, IN RESPECT OF THE BUSINESS OR ANY OF THEIR ASSETS (INCLUDING THE ACQUIRED ASSETS), LIABILITIES (INCLUDING THE ASSUMED LIABILITIES) OR OPERATIONS, INCLUDING, WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ANY SUCH OTHER REPRESENTATIONS OR WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED AND NONE SHALL BE IMPLIED AT LAW OR IN EQUITY.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Sellers as follows:

5.1 Organization. Purchaser is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware and has all requisite limited liability company power and authority to own its properties and assets and to conduct its business as now conducted.

5.2 Authorization and Validity. Purchaser has, or at the time of execution will have, all necessary limited liability company power and authority to execute and deliver this Agreement and any Ancillary Agreement to which Purchaser is or will become a party and to perform its obligations hereunder and thereunder. The execution and delivery of this Agreement and any Ancillary Agreement to which Purchaser is or will become a party and the performance of Purchaser's obligations hereunder and thereunder have been, or at the time of execution will be, duly authorized by all necessary action by Purchaser. This Agreement and each Ancillary Agreement to which Purchaser is or will become a party have been, or at the time of execution will be, duly executed by Purchaser and constitute, or will constitute, when executed and delivered, Purchaser's valid and binding obligations, enforceable against it in accordance with their respective terms except as may be limited by bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer and similar Laws of general applicability relating to or affecting creditors' rights, or by general equity principles, including principles of commercial reasonableness, good faith and fair dealing.

5.3 No Conflict or Violation. The execution, delivery and performance by Purchaser of this Agreement and any Ancillary Agreement to which Purchaser is or will become a party do not or will not at the time of execution (a) violate or conflict with any provision of the

organizational documents of Purchaser, (b) violate any provision of applicable Law, or any order, writ, injunction, judgment or decree of any Governmental Authority applicable to Purchaser, or (c) violate or result in a breach of or constitute (with due notice or lapse of time, or both) an event of default or default under any Contract to which Purchaser is party or by which Purchaser is bound or to which any of Purchaser's properties or assets are subject.

5.4 Consents and Approvals. No consent, waiver, authorization or approval of any Person and no declaration to or filing or registration with any Governmental Authority is required in connection with the execution and delivery by Purchaser of this Agreement and each Ancillary Agreement to which Purchaser is or will become a party or the performance by Purchaser of its obligations hereunder or thereunder, except for applicable requirements under the HSR Act.

5.5 No Brokers or Finders. No agent, broker, finder or investment or commercial banker, or other Person or firm engaged by, or acting on behalf of, Purchaser in connection with the negotiation, execution or performance of this Agreement or the transactions contemplated by this Agreement is or will be entitled to any brokerage or finder's or similar fees or other commissions as a result of this Agreement or such transaction.

5.6 Financial Wherewithal. Purchaser has, or at the time of Closing will have access to, all assets necessary to pay the Purchase Price pursuant to Section 3.1.

5.7 Litigation; Proceedings. As of the date hereof, there is no claim, action, suit, Proceeding, complaint, charge, hearing, grievance or arbitration pending or, to the Purchaser's knowledge, threatened against the Purchaser, whether at Law or in equity, whether civil or criminal in nature or by or before any arbitrator or Governmental Authority, nor are there any investigations relating to the Purchaser pending or, to the Purchaser's knowledge, threatened by or before any arbitrator or any Governmental Authority, which could reasonably be expected to result in a material adverse effect on the Purchaser's ability to consummate the transactions contemplated hereby or would reasonably be expected to prevent, restrict or delay the consummation of the transactions contemplated in this Agreement or the Ancillary Agreements.

5.8 As Is Transaction. PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN ARTICLE 4 OF THIS AGREEMENT, THE SELLERS MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER RELATING TO THE ACQUIRED ASSETS OR THE BUSINESS. WITHOUT IN ANY WAY LIMITING THE FOREGOING, PURCHASER ACKNOWLEDGES THAT THE SELLERS HAVE NOT GIVEN, WILL NOT BE DEEMED TO HAVE GIVEN AND HEREBY DISCLAIM ANY WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO ANY PORTION OF THE ASSETS. ACCORDINGLY, PURCHASER SHALL ACCEPT THE ACQUIRED ASSETS AT THE CLOSING "AS IS," "WHERE IS," AND "WITH ALL FAULTS."

ARTICLE 6
COVENANTS AND OTHER AGREEMENTS

6.1 Pre-Closing Covenants of Sellers. Sellers covenant to Purchaser that, during the period from and including the Execution Date through and including the Closing Date or the earlier termination of this Agreement:

(a) Cooperation. Sellers shall use reasonable best efforts to obtain, and assist Purchaser in obtaining, at no cost to Purchaser (other than Cure Amounts payable at or after the Closing), such consents, waivers or approvals of any third party or Governmental Authority required for the consummation of the transactions contemplated hereby, including the sale and assignment of the Acquired Assets. Sellers shall take, or cause to be taken, all commercially reasonable actions and do, or cause to be done, all things necessary or appropriate, consistent with applicable Law, to consummate and make effective as soon as possible the transactions contemplated hereby.

(b) Access to Records and Properties. Sellers shall (i) provide Purchaser and its Related Persons reasonable access, upon reasonable notice and during normal business hours, to the Facilities, offices and personnel of Sellers and to the books and records of Sellers, related to the Business or the Acquired Assets as reasonably requested by Purchaser if reasonably necessary to comply with the terms of this Agreement or the Ancillary Agreements or any applicable Law; (ii) furnish Purchaser with such financial and operating data and other information with respect to the condition (financial or otherwise), businesses, assets, properties or operations of Sellers related to the Business as Purchaser shall reasonably request; and (iii) permit Purchaser to make such reasonable inspections and copies thereof as Purchaser may require; provided, however, that (A) any such access shall be conducted in a manner not to unreasonably interfere with the businesses or operations of Sellers or the duties of any Employee, (B) such access or information shall not, based on advice of counsel to the Sellers, result in the waiver of any attorney-client privilege and (C) neither Purchaser nor any of its Related Persons shall conduct or cause any invasive sampling or testing with respect to the Owned Real Property or the Leased Real Property without the prior written consent of Sellers (in their sole discretion).

(c) Notification of Certain Matters. The Sellers shall give written notice to the Purchaser promptly after becoming aware of (i) the occurrence of any event, which would be likely to cause any condition set forth in Section 9.2 to be unsatisfied in any material respect at any time from the date hereof to the Closing Date or (ii) any notice or other communication from (A) any Person alleging that the consent of such Person is or may be required in connection with any of the transactions contemplated by this Agreement or (B) any Governmental Authority in connection with any of the transactions contemplated by this Agreement; provided, however, that the delivery of any notice pursuant to this Section 6.1(c) shall not limit or otherwise affect the remedies available hereunder to the Purchaser.

(d) Disclosure Schedules and Supplements.

(i) Sellers shall provide the disclosure schedules (the "Schedules") to this Agreement within seven (7) days after the Execution Date. Purchaser shall provide

any Schedules for which it is responsible to Sellers within five (5) days after receipt of the Schedules from Sellers.

(ii) Sellers shall notify Purchaser of, and shall supplement or amend the Schedules to this Agreement with respect to any matter that makes it necessary to correct any information in the Schedules to this Agreement or in any material representation, warranty or covenant of Sellers that has been rendered materially inaccurate thereby; provided, however, that the Sellers may not supplement or amend any Schedule which adds or deletes, directly or indirectly, any asset as an "Acquired Asset" or adds or deletes, directly or indirectly, any Liability as an "Assumed Liability." Each such notification and supplementation, to the extent known, shall be made promptly after discovery thereof and no later than three (3) days before the date set for the Closing. The Schedules shall be deemed amended by all such supplements and amendments for all purposes (except for purposes of determining whether the conditions set forth in Section 9.2(a) of this Agreement have been satisfied), unless within ten (10) days from the receipt of such supplement or amendment Purchaser provides notice in good faith that the facts described in such supplement or amendment would reasonably be expected to have a Material Adverse Effect on the Acquired Assets or the Business.

(e) Conduct of Business Prior to Closing. From the Execution Date through the Closing Date or the earlier termination of this Agreement, except as expressly contemplated by this Agreement or with Purchaser's prior written consent, and except for any limitations directly imposed on Sellers as a result of, and related to, their status as debtors-in-possession in the Bankruptcy Cases, and except to the extent expressly required or permitted under the DIP Credit Agreement, the Bankruptcy Code, other applicable Law or any ruling or order of the Bankruptcy Court:

(i) Sellers shall not take any action that would reasonably be expected to result in an Event of Default (as defined therein) under the DIP Credit Agreement;

(ii) Sellers shall not directly or indirectly sell or otherwise transfer, or offer, agree or commit (in writing or otherwise) to sell or otherwise transfer, any of the Acquired Assets other than (A) the sale of inventory in the ordinary course of business, (B) the use of cash collateral in accordance with the DIP Credit Agreement or the DIP Orders or (C) pursuant to any Alternate Transaction entered into in accordance with the Bidding Procedures Order and subsequently approved by the Bankruptcy Court;

(iii) Sellers shall not permit, offer, agree or commit (in writing or otherwise) to permit, any of the Acquired Assets to become subject, directly or indirectly, to any Lien, Claim, Interest or Encumbrance, except for Permitted Liens, Liens granted in connection with the DIP Credit Agreement and Liens set forth on Schedule 4.5;

(iv) Sellers shall notify Purchaser promptly in writing of any Material Adverse Effect;

(v) Sellers shall not (1) increase the annual level of compensation payable or to become payable by Sellers to any of their directors or Employees, other

than increases in the ordinary course of business to an Employee with a base salary of less than $100,000 per year, (2) grant, or establish or modify any targets, goals, pools or similar provisions in respect of, any bonus, benefit or other direct or indirect compensation to or for any director or Employee, or increase the coverage or benefits available under any (or create any new) Employee Benefit Plan, or (3) enter into any employment, deferred compensation, severance, consulting, non-competition or similar agreement (or amend any such agreement) to which any Seller is a party or involving a director or Employee of Sellers, except, in each case, as required by Law, or as required by any plans, programs or agreements existing on the Execution Date and disclosed on Schedule 4.10(a) or Schedule 4.11(a);

(vi) Sellers shall comply in all material respects with all Laws applicable to Sellers or having jurisdiction over the Business or any Acquired Asset;

(vii) Sellers shall not (1) enter into any Contract (other than in the ordinary course of business) that would constitute a Material Contract, if in effect on the Execution Date or (2) assume, amend, modify or terminate any Material Contract to which any Seller is a party or by which any Seller is bound and that is used in or related to the Business or the Acquired Assets (including any Assigned Contract), or fail to exercise any renewal right with respect to any Material Contract (including any Real Property Lease) that by its terms would otherwise expire;

(viii) Sellers shall not cancel or compromise any material debt or claim or waive or release any right of Sellers that constitutes an Acquired Asset;

(ix) Sellers shall not enter into any commitment for capital expenditures, except pursuant to the Budget;

(x) Sellers shall not assign, sublet, pledge, encumber, terminate (other than those Real Property Leases that will terminate by their terms), amend or modify in any manner any Real Property Lease or Owned Real Property;

(xi) Subject to the impact of the Bankruptcy Cases on the Business, Sellers shall use reasonable best efforts to (1) conduct the Business in substantially the same manner as conducted as of the Execution Date only in the ordinary course, (2) preserve the existing business organization and management of the Business intact, (3) keep available the services of the Employees, to the extent reasonably feasible, and (4) maintain the existing relations with customers, distributors, suppliers, creditors, business partners, employees and others having business dealings with the Business, to the extent reasonably feasible;

(xii) Sellers shall use best efforts to pay all accounts payable and collect all Accounts Receivable only in the ordinary course of business;

(xiii) Sellers shall at all times maintain all of the tangible Acquired Assets, used, held for use or useful in the conduct of the Business and keep the same in good repair, working order and condition (taking into consideration ordinary wear and

tear) and from time to time make, or cause to be made, all necessary or appropriate repairs, replacements and improvements thereto consistent with past practice;

(xiv) Sellers file all material Tax Returns and pay or deposit all material Taxes on a timely basis and in accordance with past practice;

(xv) No Seller shall make or change any election, change an annual accounting period, adopt or change any accounting method, file any amended Tax Return, enter into any closing agreement, settle any Tax claim or assessment relating to any Seller, surrender any right to claim a refund of Taxes, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment relating to any Seller, or take any other similar action relating to the filing of any Tax Return or the payment of any Tax; and

(xvi) Sellers shall not take, or agree, commit or offer (in writing or otherwise) to take, any actions in violation of the foregoing.

6.2 Pre-Closing Covenants of Purchaser. Purchaser covenants to Sellers that, during the period from the Execution Date through and including the Closing or the earlier termination of this Agreement, Purchaser shall take, or cause to be taken, all commercially reasonable actions and to do, or cause to be done, all things necessary or appropriate, consistent with applicable Law, to consummate and make effective as soon as possible the transactions contemplated hereby; provided that the foregoing shall not require Purchaser to participate as a bidder in the Auction.

6.3 Antitrust Notification. If required, Sellers and Purchaser shall use their reasonable best efforts to promptly obtain any clearance required under the HSR Act for the consummation of this Agreement and the transactions contemplated hereby and shall keep each other apprised of the status of any communications with, and any inquiries or requests for additional information from, the United States Federal Trade Commission and the United States Department of Justice and shall comply promptly with any such inquiry or request. If required, the parties hereto commit to instruct their respective counsel to cooperate with each other and use reasonable best efforts to facilitate and expedite the identification and resolution of any such issues and, consequently, the expiration of the applicable HSR Act waiting period at the earliest practicable date. Said reasonable best efforts and cooperation include counsel's undertaking (i) to keep each other appropriately informed of communications from and to personnel of the reviewing antitrust authority, and (ii) to confer with each other regarding appropriate contacts with and response to personnel of said antitrust authority.

6.4 Transfer of Permits. Except for those Permits that are not transferable by Law, Sellers shall use reasonable best efforts to cause the issuance or transfer of all Permits included in the Acquired Assets to Purchaser on or before the Closing Date. Sellers shall give and make all notices and reports Sellers are required to make to the appropriate Governmental Authorities and other Persons with respect to the Permits that may be necessary for the sale of the Acquired Assets to Purchaser at the Closing.

6.5 Employment Covenants and Other Undertakings.

(a) Employment. Purchaser shall offer to employ, on such terms and conditions of employment as determined by Purchaser in its sole discretion, substantially all of the Employees of Sellers. Only Employees of Sellers who are offered and then accept such offer of employment with Purchaser will become a Purchaser Employee after the Closing. Notwithstanding the foregoing, nothing in this Agreement will, after the Closing Date, impose on Purchaser any obligation to retain any Purchaser Employee in its employment. Except as described in the remaining sentences of this Section 6.5, the employment of each such Purchaser Employee with Purchaser will commence immediately after the Closing. In the case of any individual who is offered employment by Purchaser and accepts such offer, but who is absent from active employment and receiving short-term disability or workers' compensation benefits, the employment of any such individual with Purchaser would commence upon his or her return to active work, and such individual would become an Purchaser Employee as of such date. Purchaser Employees will be given full credit for years of service with any Seller for purposes of any employee benefit plan, program, policy or arrangement of Purchaser to the same extent and purpose as such service was taken into account by such Seller immediately prior to the Closing Date and credit Purchaser Employees for any earned or accrued paid time off.

(b) Other Obligations. Except as otherwise required by Law, specified in this Agreement, or otherwise agreed in writing by Purchaser or its Affiliates, neither Purchaser nor its Affiliates shall be obligated to provide any severance, separation pay, or other payments or benefits, including any key employee retention payments, to any Employee on account of any termination of such Employee's employment on or before the Closing Date, and such benefits (if any) shall remain obligations of Sellers.

(c) Forms W-2 and W-4. Sellers and Purchaser shall adopt the "standard procedure" for preparing and filing IRS Forms W-2 (Wage and Tax Statements) and Forms W-4 (Employee's Withholding Allowance Certificate) regarding the Purchaser Employees. Under this procedure established by Revenue Procedure 2004-53, Sellers (so long as they remain in existence) shall keep on file all IRS Forms W-4 provided by the Purchaser Employees for the period required by applicable Law concerning record retention and Purchasers will obtain new IRS Forms W-4 with respect to each Purchaser Employee.

(d) No Right to Continued Employment. Nothing contained in this Agreement shall confer upon any Purchaser Employee any right with respect to continuance of employment by Purchaser, nor shall anything herein interfere with the right of Purchaser to terminate the employment of any Purchaser Employees at any time, with or without notice, or restrict Purchaser, in the exercise of its business judgment in modifying any of the terms or conditions of employment of the Purchaser Employees after the Closing.

(e) Employee Communications. Prior to making any written or oral communications to the Employees pertaining to their employment, termination, compensation, benefit or other terms and conditions of employment that are affected by the transactions contemplated by this Agreement, Sellers shall consult with Purchaser and provide Purchaser with a copy of the intended communication.

(f) Employee Benefit Plans. As of the Closing, all of the Purchaser Employees will cease participation in any of the Employee Benefit Plans that such Purchaser Employees participated in immediately prior to the Closing that are not Assumed Plans. In accordance with Treasury Regulation Section 54.4980B-9 Q&A-7, as of the Closing Date, Purchaser will assume all liability for providing and administering all required notices and benefits under Section 4980B of the Code and Part 6 of Subtitle B of Title I of ERISA (usually referred to as "COBRA") to all current and former employees of Sellers (including Purchaser Employees). Prior to the Closing Date, Sellers shall provide to Purchaser detailed information reasonably requested by Purchaser (including all pertinent information concerning individuals who have elected or continue to have a right to elect COBRA continuation coverage and/or any COBRA subsidy pursuant to the American Recovery and Reinvestment Act of 2009) sufficient to enable Purchaser to carry out its obligations under this Section 6.5(f). Sellers will have no COBRA Liability to such current and former employees after the Closing Date, except with respect to any violations of Law that occurred prior to the Closing Date.

(g) Assumed Plans. Purchaser shall notify Sellers in writing no later than two (2) Business Days prior to the Closing as to which Employee Benefit Plans Purchaser shall adopt and assume, if any (the "Assumed Plans"). With respect to each Assumed Plan, Purchaser or, any entity designated by Purchaser, will be substituted for the applicable Seller as the plan sponsor under any such Assumed Plan and Purchaser shall have all rights of such Seller thereunder, including full authority to maintain, amend or terminate any such Assumed Plan at any time, in Purchaser's sole discretion. Sellers agree to cooperate with Purchaser in adopting and effectuating any plan amendments to the Assumed Plans reasonably requested by Purchaser, so long as such amendments are effective as of, or after, the Closing Date and are consistent with applicable Law and other agreements under which Sellers are obligated. The parties agree to cooperate in all respects and take any actions necessary to implement the assumption by Purchaser of the Assumed Plans. Before, or as soon as administratively practicable after, the Closing, Sellers will provide Purchaser with (i) all records concerning participation, vesting, accrual of benefits, payment of benefits, and election forms of benefits under each Assumed Plan, and (ii) any other information reasonably requested by Purchaser as necessary or appropriate for the administration of each Assumed Plan, each subject to the provision of consent by any Purchaser Employee to the extent and in the manner required by Law. Purchaser will make all required filings or reports with or to the IRS, or any other governmental agency, and the participants and their beneficiaries with respect to each Assumed Plan on a timely basis for all plan years ending before, on or after the Closing Date or as may be required with respect to such Assumed Plan, provided the initial deadline for such filing or report is after the Closing Date. All parties recognize that a reasonable transition period may be necessary after the Closing Date and prior to Purchaser's implementation of its assumption of the Assumed Plans before full compliance with this Section 6.5 is achieved, during which some or all of the Purchaser Employees and other participants and beneficiaries of the Assumed Plans may not be able to (i) make (and Purchaser may not be able to process) elective deferral contributions, loan repayments, investment changes, distribution requests, benefit payment requests or reimbursement requests or (ii) exercise or enjoy other rights or features of the Assumed Plans, and that during such transition period Purchaser shall not be considered to be in violation of this Section 6.5. Notwithstanding the foregoing, Purchaser shall not assume or succeed to any of Sellers' past, current or future Liabilities (including any withdrawal liability, termination liability

or mass withdrawal liability) with respect to any multiemployer plan to which any Seller or any ERISA Affiliate contributes or has ever contributed.

(h) Compliance with WARN Act. With respect to the Employees, Sellers will have full responsibility under the WARN Act caused by any action of Sellers. Sellers shall be responsible for all WARN Act Liabilities relating to the periods prior to and on the Closing Date, including any such Liabilities that result from Employees' separation of employment from Sellers and/or Employees not becoming Purchaser Employees pursuant to this Section 6.5.

(i) Successor Employer Status. Sellers shall provide Purchaser with all necessary records and documentation required by Purchaser as a "successor employer" within the meaning of Sections 3121 and 3306 of the Code.

6.6 Exclusivity. For the period beginning on the Execution Date until the date of the Bankruptcy Court's approval and entry of the Bidding Procedures Order, Sellers and their respective Affiliates and Related Persons shall not, directly or indirectly, (i) solicit, initiate discussions with or engage in negotiations with any Person (whether such negotiations are initiated by Sellers or otherwise), other than Purchaser and its Affiliates, relating to the acquisition of any of the Acquired Assets (other than sales of inventory and dispositions of assets, in each case in the ordinary course of business), whether by way of purchase of equity or assets or otherwise (a "Potential Transaction"); or (ii) enter into an agreement, letter of intent or similar document (whether or not binding) with any Person, other than Purchaser or its Affiliates, providing for or relating to any Potential Transaction. If Sellers or their respective Affiliates or Related Persons receive an inquiry, offer or proposal relating to any of the above (unsolicited or otherwise), Sellers shall immediately notify Purchaser in writing. Upon the execution and delivery of this Agreement, Sellers and their respective Affiliates and Related Persons shall immediately cease all discussions, negotiations and communications with all other Persons regarding any Potential Transaction until entry of the Bid Procedures Order.

6.7 Casualty. Notwithstanding any provision in this Agreement to the contrary, if, before the Closing, all or any portion of the Acquired Assets is (a) condemned or taken by eminent domain, or (b) a material portion is damaged or destroyed by fire or other casualty, Sellers shall notify Purchaser promptly in writing of such fact, and (i) in the case of condemnation or taking, Sellers shall assign or pay, as the case may be, any proceeds thereof to Purchaser at the Closing, and (ii) in the case of fire or other casualty, Sellers shall, at the option of Purchaser, either use any insurance proceeds to restore such damage or assign such insurance proceeds therefrom to the Purchaser at Closing. Notwithstanding the foregoing, the provisions of this Section 6.7 shall not in any way modify the Purchaser's other rights under this Agreement, including any applicable right to terminate the Agreement if any condemnation, taking, damage or other destruction resulted in a Material Adverse Effect.

6.8 Name Change. Within ten (10) days after the Closing Date, Sellers and their Subsidiaries shall take such corporate and other actions necessary to change their corporate and company names to ones that are not similar to, or confusing with, their current names, including any necessary filings required by applicable Law.

6.9 Release of Claims. At the Closing, Sellers shall provide a release of all rights, claims or causes of action of Sellers arising under Chapter 5 of the Bankruptcy Code.

6.10 Transition Services. The Parties shall cooperate with each other, and shall use their reasonable best efforts to cause their respective Related Persons to cooperate with each other, to provide an orderly transition of the Business from Sellers to Purchaser and to minimize the disruption to the Business resulting from the transactions contemplated hereby as requested by any Party, including facilitating the transition of the business relationship with Regents of the University of California acting on behalf of its Lawrence Hall of Science in respect of the FOSS contracts and other key partner/client relationships.

6.11 Alternate Transactions. Subject to Section 11.3, nothing in this Agreement shall restrict Sellers' right to pursue one or more Alternate Transactions, including marketing Sellers' assets or providing due diligence materials, solely to the extent permitted by the Bidding Procedures Order.

6.12 Post-Closing Access. On and after the Closing Date, upon reasonable advance notice, Purchaser will afford promptly to Sellers (and their successors and assigns) and their counsel, advisors and other agents reasonable access during normal business hours to Purchaser's properties, books, records, employees, auditors and counsel to the extent necessary for financial reporting and accounting matters, employee benefits matters, the preparation and filing of any Tax returns, reports or forms, the defense of any Tax audit, Claim or assessment, the reconciliation of Claims in the Bankruptcy Cases, to permit Sellers to determine any matter relating to its rights and obligations hereunder, or in connection with addressing any other issues arising in connection with or relating to the Bankruptcy Cases; provided, however, that any such access by Sellers shall not unreasonably interfere with the conduct of the business of Purchaser; provided, further, that, subject to applicable Law, Purchaser may destroy materials relating to the Purchased assets and Business after the two year anniversary of Closing provided that it gives written notice to Sellers, to the extent that Sellers are still in existence, with respect to its intent to do so and gives Sellers the opportunity to make copies of the same prior to destruction thereof.

6.13 Purchaser Financing Cooperation. From the Execution Date through and including the Closing or the earlier termination of this Agreement, Sellers shall use their reasonable best efforts to, and shall cause their officers, employees and other representatives to use their respective reasonable best efforts to assist Purchaser in obtaining any financing necessary to fund the Business after the Closing, including by taking the following actions: (i) make senior management, representatives and advisors of Sellers reasonably available for meetings and due diligence sessions with prospective financing sources, (ii) cooperate with prospective lenders, placement agents, initial purchasers and their respective advisors in performing their due diligence, and (iii) assist Purchaser in procuring credit agreements, hedging arrangements, notes, mortgages, pledge and security documents, landlord waivers, estoppels, consents, and approvals and other definitive financing documents or other requested certificates or documents (including solvency certificates to the extent required), it being understood that in no event shall Sellers be obligated or required to execute any such document. Nothing in this Section 6.13 shall require such cooperation from Sellers to the extent it would unreasonably interfere with the ongoing operations of Sellers.

ARTICLE 7
TAXES

7.1 Tax Matters.

(a) Purchaser and the Sellers agree that the Purchase Price is exclusive of any Transfer Taxes. Purchaser shall promptly pay directly to the appropriate Tax Authority all applicable Transfer Taxes that may be imposed upon or payable or collectible or incurred in connection with this Agreement or the transactions contemplated herein, or that may be imposed upon or payable or collectible or incurred in connection with the transactions contemplated by this Agreement.

(b) In the event that Sellers elect to file a plan of reorganization or liquidation in conjunction with the transactions contemplated by this Agreement, Purchaser and Sellers covenant and agree that they will use their reasonable best efforts to obtain an order from the Bankruptcy Court pursuant to section 1146 of the Bankruptcy Code exempting, to the maximum extent possible, the Transfer of the Acquired Assets from Sellers to Purchaser from any and all Transfer Taxes. To the extent the transactions contemplated by this Agreement or any portion of the transactions contemplated by this Agreement are not exempt from Transfer Taxes under section 1146 of the Bankruptcy Code, Purchaser shall be responsible for and shall pay all Transfer Taxes in accordance with Section 7.1. Purchaser and Sellers shall cooperate in providing each other with any appropriate certification and other similar documentation relating to exemption from Transfer Taxes (including any appropriate resale exemption certifications), as provided under applicable Law.

(c) Purchaser and Sellers agree to furnish, or cause their Affiliates to furnish, to each other, upon request, as promptly as practicable, such information and assistance relating to the Acquired Assets or the Business (including access to books and records) as is reasonably necessary for the filing of all Tax Returns, and making of any election related to Taxes, the preparation for any audit by any taxing authority, and the prosecution or defense of any claim, suit or proceeding relating to any Tax Return. Purchaser and Sellers shall cooperate, and cause their Affiliates to cooperate, with each other in the conduct of any audit or other proceeding related to Taxes and each shall execute and deliver such powers of attorney and other documents as are reasonably necessary to carry out the intent of this Section 7.1(c). Purchaser and Sellers shall provide, or cause their Affiliates to provide, timely notice to each other in writing of any pending or threatened tax audits, assessments or litigation with respect to the Acquired Assets or the Business for any taxable period for which the other party may have liability under this Agreement. Purchaser and Sellers shall furnish, or cause their respective Affiliates to furnish, to each other copies of all correspondence received from any taxing authority in connection with any tax audit or information request with respect to any taxable period for which the other party or its Affiliates may have liability under this Agreement.

(d) Real and personal property Taxes and assessments, and all rents, utilities and other charges, on the Acquired Assets for any taxable period commencing on or prior to the Closing Date and ending after the Closing Date (the "Straddle Period Property Tax") shall be prorated on a per diem basis between Purchaser and Sellers as of the Closing Date; provided, however, that Sellers shall not be responsible for, or benefit from, any increased or decreased

assessments on real or personal property resulting from the transactions contemplated hereby. All such prorations of Straddle Period Property Taxes shall be allocated so that items relating to time periods ending on or prior to the Closing Date shall be allocated to Sellers and items relating to time periods beginning after the Closing Date shall be allocated to Purchaser. The amount of all such prorations shall be settled and paid on the Closing Date. If any of the rates for the Straddle Period Property Taxes for any taxable period commencing on or prior to the Closing Date and ending after the Closing Date are not established by the Closing Date, the prorations shall be made on the basis of such rates in effect for the preceding taxable period. The apportioned obligations under this Section 7.1(d) shall be shall be timely paid and all applicable filings made in the same manner as set forth for the apportioned Transfer Taxes in Section 7.1(a) and 7.1(b).

7.2 Waiver of Bulk Sales Laws. To the greatest extent permitted by applicable Law, Purchaser and Sellers hereby waive compliance by Purchaser and Sellers with the terms of any bulk sales or similar Laws in any applicable jurisdiction in respect of the transactions contemplated by this Agreement. Purchaser shall indemnify Sellers from and hold Sellers harmless from and against any Liabilities, damages, costs and expenses (including reasonable attorneys' fees) resulting from or arising out of (i) the parties' failure to comply with any such bulk sales Laws in respect of the transactions contemplated by this Agreement or (ii) any action brought or levy made as a result thereof. The Sale Order shall exempt Sellers and Purchaser from compliance with any such Laws.

ARTICLE 8
BANKRUPTCY COURT MATTERS

8.1 Sale Motion. Sellers shall file with the Bankruptcy Court on the Petition Date, a motion or motions (the "Sale Motion") seeking the Bankruptcy Court's approval of the Bidding Procedures Order (which shall include a provision permitting payment of the Breakup Fee and the Expense Reimbursement in accordance with this Agreement) and the Sale Order. Sellers shall affix or submit to the Court a true, correct and complete copy of this Agreement to the Sale Motion filed with the Bankruptcy Court. The Sale Motion shall request, among other things, (i) the scheduling of the date for the Auction to be commenced no later than March 25, 2013, and the date for the Sale Hearing to be not more than two (2) Business Days after the Auction, (ii) the entry of the Bidding Procedures Order attached as Exhibit C and (iii) the entry of the Sale Order attached as Exhibit B.

8.2 Sale Order. Sellers shall use reasonable best efforts to obtain entry of the Sale Order approving the transactions contemplated by this Agreement and such Sale Order shall be in form and substance satisfactory to Purchaser in its sole discretion granting, among other things, that (i) such sale shall be, to the fullest extent permitted by the Bankruptcy Code, pursuant to Sections 105, 363(b) and 363(f) of the Bankruptcy Code, free and clear of all Claims, Liens and Liabilities, other than Permitted Liens and Assumed Liabilities; (ii) all Contracts required to be assumed by Sellers and assigned to Purchaser are so assumed and assigned free and clear of all Claims, Liens and Liabilities, other than Permitted Liens and Assumed Liabilities, to the fullest extent permitted by Section 365 of the Bankruptcy Code; (iii) Purchaser is deemed to have purchased the Acquired Assets in good faith pursuant to Section 363(m) of the Bankruptcy Code; and (iv) Sellers are authorized and directed to execute, upon request by

Purchaser, one or more assignments in form, substance, and number reasonably acceptable to Purchaser, evidencing the conveyance of the Acquired Assets to Purchaser and/or its Designees.

8.3 Procedure. Subject to its obligations as a debtor-in-possession, Sellers shall promptly make any filings, take all actions and use reasonable best efforts to obtain any and all relief from the Bankruptcy Court that is necessary or appropriate to consummate the transactions contemplated by this Agreement and the Ancillary Agreements. Sellers shall provide Purchaser with drafts of any and all pleadings and proposed orders to be filed or submitted in connection with this Agreement for Purchaser's prior review and comment and shall cooperate with Purchaser to make reasonable changes. Sellers agree to diligently prosecute the entry of the Bidding Procedures Order and the Sale Order. In the event the entry of the Bidding Procedures Order or the Sale Order shall be appealed, Sellers shall use their reasonable best efforts to defend such appeal. Notwithstanding the foregoing, any resulting changes to this Agreement or any Ancillary Agreement or any resulting changes to the Orders shall be subject to Purchaser's approval in its sole discretion.

8.4 Purchaser Protections. Sellers shall pay to Purchaser the Breakup Fee, if any, and the Expense Reimbursement pursuant to the terms and conditions set forth in Section 11.3.

ARTICLE 9
CONDITIONS PRECEDENT TO PERFORMANCE BY THE PARTIES

9.1 Conditions Precedent to Performance by Sellers. The obligation of Sellers to consummate the transactions contemplated by this Agreement is subject to the fulfillment, at or before the Closing, of the following conditions, any one or more of which (other than the conditions contained in Section 9.1(c) and Section 9.1(d)) may be waived by Sellers, in their sole discretion:

(a) Representations and Warranties of Purchaser. The representations and warranties of Purchaser made in this Agreement that are qualified by a materiality standard, in each case, shall be true and correct in all respects on and as of the Closing Date (except for any such representation or warranty of Purchaser made as of a specific date, which shall be true and correct in all respects as of such specific date), and the representations and warranties of Purchaser made in this Agreement that are not qualified by a materiality standard, in each case, shall be true and correct in all material respects on and as of the Closing Date (except for any such representation or warranty of Purchaser made as of a specific date, which shall be true and correct in all material respects as of such specific date).

(b) Performance of the Obligations of Purchaser. Purchaser shall have performed in all material respects all obligations required under this Agreement or any Ancillary Agreement to which it is party that are to be performed by it at or before the Closing (except with respect to (i) the obligation to pay the Purchase Price in accordance with the terms of this Agreement (which shall be paid at the Closing) and (ii) any obligations qualified by a materiality standard, which obligations shall be performed in all respects as required under this Agreement).

(c) Bankruptcy Court Approval. The Sale Order shall have been entered by the Bankruptcy Court, shall not have been modified, amended, rescinded or vacated in any respect and shall not be subject to a stay.

(d) No Violation of Orders. No preliminary or permanent injunction or other order of any Governmental Authority or Law that prevents the consummation of the transactions contemplated hereby shall be in effect.

(e) Bidding Procedures Order. The Bidding Procedures Order shall have been entered by the Bankruptcy Court, shall not have been modified, amended, rescinded or vacated in any respect and shall not be subject to a stay.

(f) Assumption and Assignment of Contracts. Subject to Section 2.5, the Assigned Contracts designated hereunder as Assigned Contracts shall be so assumed and assigned to Purchaser by order of the Bankruptcy Court.

(g) HSR. To the extent applicable, all waiting periods under the HSR Act applicable to this Agreement shall have expired or been terminated.

(h) Deliveries. Purchaser shall have made the deliveries referenced in Section 10.3.

9.2 Conditions Precedent to the Performance by Purchaser. The obligations of Purchaser to consummate the transactions contemplated by this Agreement are subject to the fulfillment, at or before the Closing, of the following conditions, any one or more of which (other than the conditions contained in Section 9.2(c), Section 9.2(d) and Section 9.2(e), except as expressly provided therein) may be waived by Purchaser, in its sole discretion:

(a) Representations and Warranties of Sellers. The representations and warranties of Sellers made in this Agreement that are qualified by a materiality standard, in each case, shall be true and correct in all respects on and as of the Closing Date (except for any such representation or warranty of Purchaser made as of a specific date, which shall be true and correct in all respects as of such specific date), and the representations and warranties of Sellers made in this Agreement that are not qualified by a materiality standard, in each case, shall be true and correct in all material respects on and as of the Closing Date (except for any such representation or warranty of Purchaser made as of a specific date, which shall be true and correct in all material respects as of such specific date).

(b) Performance of the Obligations of Sellers. Sellers shall have performed in all material respects all obligations required under this Agreement or any Ancillary Agreement to which each of them is party that are to be performed by them at or before the Closing (except with respect to any obligations qualified by a materiality standard, which obligations shall be performed in all respects as required under this Agreement).

(c) DIP Orders. The DIP Orders shall be in full force and effect, shall not be the subject of a pending appeal and shall not have been stayed, vacated, modified or supplemented without the prior written consent of Purchaser.

(d) Bankruptcy Court Approval. The Sale Order shall have been entered in form and substance reasonably acceptable to Purchaser by the Bankruptcy Court, shall not have been modified, amended, rescinded or vacated in any respect and shall not be subject to a stay.

(e) No Violation of Orders. No preliminary or permanent injunction or other order of any Governmental Authority or Law that prevents the consummation of the transactions contemplated hereby shall be in effect.

(f) Bidding Procedures Order. The Bidding Procedures Order shall have been entered by the Bankruptcy Court, shall not have been modified, amended, rescinded or vacated in any respect and shall not be subject to a stay.

(g) Material Adverse Effect. There shall not have occurred a Material Adverse Effect.

(h) Assumption and Assignment of Contracts. Subject to Section 2.5, the Assigned Contracts designated hereunder as Assigned Contracts shall be so assumed and assigned to Purchaser by order of the Bankruptcy Court reasonably satisfactory to Purchaser.

(i) HSR. To the extent applicable, all waiting periods under the HSR Act applicable to this Agreement shall have expired or been terminated.

(j) Consents and Approvals. All consents and approvals listed on Schedule 9.2(j) or waivers thereof shall have been obtained.

(k) Deliveries. Sellers shall have made the deliveries referenced in Section 10.2.

ARTICLE 10
CLOSING AND DELIVERIES

10.1 Closing. The consummation and effectuation of the transactions contemplated hereby pursuant to the terms and conditions of this Agreement (the "Closing") shall be held two (2) Business Days after the date that all conditions to the parties' obligations to consummate the transactions contemplated herein have been satisfied (the "Closing Date") (except for closing conditions that by their terms can only be satisfied on the Closing Date) or, if applicable, waived by the appropriate party or parties, at 10:00 a.m., local time, at the offices of Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10036, or on such other date or at such other place and time as may be mutually agreed to in writing by the parties. All proceedings to be taken and all documents to be executed and delivered by all parties at the Closing shall be deemed to have been taken and executed simultaneously and no proceedings shall be deemed to have been taken nor documents executed or delivered until all have been taken, executed and delivered.

10.2 Sellers' Deliveries. At the Closing:

(a) the sale, transfer, assignment, conveyance and delivery by Sellers of the Acquired Assets to Purchaser shall be effected by the execution and delivery by Sellers of (i) the

Bill of Sale, (ii) the Assignment and Assumption Agreement and (iii) such other Ancillary Agreements (including additional bills of sale, endorsements, assignments and other instruments of transfer and conveyance) as requested by Purchaser in form and substance reasonably satisfactory to Purchaser;

(b) Sellers shall deliver an officer's certificate, duly executed by an officer of Sellers, certifying the matters set forth in Section 9.2(a) and Section 9.2(b), in form and substance reasonably satisfactory to Purchaser;

(c) Each Seller shall deliver a non-foreign affidavit dated as of the Closing Date in form and substance required under Treasury Regulations issued pursuant to Section 1445 of the Code so that Purchaser is exempt from withholding any portion of the Purchase Price;

(d) Sellers shall deliver a certified copy of the Sale Order; and

(e) duly executed special warranty deeds (or local equivalent) in customary form and substance reasonably satisfactory to Sellers and Purchaser conveying to Purchaser good and marketable fee title to the Owned Real Property free and clear of all Encumbrances other than Permitted Liens.

10.3 Purchaser's Deliveries. At the Closing,

(a) Purchaser shall pay the Purchase Price;

(b) Purchaser shall deliver an officer's certificate, duly executed by an officer of Purchaser, certifying the matters set forth in Section 9.1(a) and Section 9.1(b), in form and substance reasonably satisfactory to Sellers;

(c) Purchaser shall deliver a release whereby Purchaser and its Affiliates will release Sellers, its Affiliates and all present and former directors, officers, employees, agents and advisors (including legal counsel and financial advisors) of Sellers against any and all Claims, Liabilities, or other obligations arising prior to the Closing Date, in form and substance reasonably satisfactory to Sellers; and

(d) Purchaser shall execute and deliver to Sellers the Assignment and Assumption Agreement.

ARTICLE 11
TERMINATION

11.1 Conditions of Termination. This Agreement may be terminated only in accordance with this Section 11.1. This Agreement may be terminated at any time before the Closing as follows:

(a) by mutual written consent of SS and Purchaser;

(b) automatically and without any action or notice by either SS to Purchaser, or Purchaser to SS, immediately upon:

(i) the issuance of a final and nonappealable order, decree or ruling by a Governmental Authority to restrain, enjoin or otherwise prohibit the transfer of the Acquired Assets contemplated hereby;

(ii) the acceptance by Sellers of an Alternate Transaction if, and only if, Purchaser is not designated as the backup bidder at the completion of the Auction; or

(iii) the consummation of an Alternate Transaction.

(c) by Purchaser:

(i) if the Bankruptcy Court has not entered (a) an interim order with respect to the DIP Credit Agreement within three (3) business days of the Petition Date and (b) a final order with respect to the DIP Credit Agreement within thirty (30) days of the Petition Date, in each case, (x) which date Purchaser may waive or extend in its sole discretion and (y) in form and substance acceptable to Purchaser in its sole discretion;

(ii) if the Bidding Procedures Order shall not have been entered by February 8, 2013 (or such later date as Purchaser may have designated in writing to SS);

(iii) if the Auction has not commenced by March 25, 2013 (or such later date as Purchaser may have designated in writing to SS);

(iv) if the Bankruptcy Court has not entered the Sale Order by March 27, 2013 (or such later date as Purchaser may have designated in writing to SS);

(v) if there has been a material violation or breach by any Seller of any representation, warranty or covenant contained in this Agreement which (x) has rendered the satisfaction of any condition to the obligations of Purchaser impossible or is not curable or, if curable, has not been cured within ten (10) business days following receipt by Sellers of written notice of such breach from Purchaser, and (y) has not been waived by Purchaser; provided that Purchaser shall not have the right to terminate this Agreement under this Section 11.1(c)(v) if Purchaser is then in material breach of this Agreement;

(vi) if the Closing shall not have occurred by the fifteenth (15^{th}) day after the entry of the Sale Order and such failure to close is not caused by or the result of Purchaser's breach of this Agreement;

(vii) if, prior to the Closing Date, Sellers' Bankruptcy Cases shall be converted into a case under Chapter 7 of the Bankruptcy Code or dismissed, or if a trustee is appointed in the Bankruptcy Cases;

(viii) if any Event of Default (as defined in the DIP Credit Agreement) shall have occurred, subject to any applicable cure period, or Purchaser's obligations under the DIP Credit Agreement are terminated;

(ix) if any consent or approval listed on Schedule 9.2(j) has not been obtained (or the receipt thereof has not been waived by Purchaser);

(x) if there shall be excluded from the Acquired Assets any Assigned Contract that is not assignable or transferable pursuant to the Bankruptcy Code or otherwise without the consent of any Person other than Sellers, to the extent that such consent shall not have been given prior to the Closing and the exclusion of such Assigned Contract would reasonably be expected to have a Material Adverse Effect; or

(xi) within five (5) Business Days after delivery thereof, if Purchaser is not satisfied, in its sole discretion, with any disclosure in the Schedules after delivery of the Schedules by Sellers in accordance with Section 6.1(d)(i).

(xii) if Sellers disclose, or Purchaser otherwise discovers, the existence of a Material Adverse Effect.

(d) by SS, if there has been a material violation or breach by Purchaser of any agreement or any representation or warranty contained in this Agreement which (A) has rendered the satisfaction of any condition to the obligations of Sellers impossible or is not curable or, if curable, has not been cured within ten (10) business days following receipt by Purchaser of written notice of such breach from Sellers, and (B) has not been waived by Sellers; provided that SS shall not have the right to terminate this Agreement under this Section 11.1(d) if Sellers are then in material breach of this Agreement.

11.2 Effect of Termination. In the event of termination pursuant to Section 11.1, this Agreement shall become null and void and have no effect and neither party shall have any Liability to the other (other than those provisions of Article 11 and Article 12 that expressly survive termination or obligations to be performed on or after the Closing), except that Purchaser or Sellers shall be liable to the other party for any damages suffered by such party on account of any prior material or willful breach hereof by Purchaser or Sellers, as applicable.

11.3 Breakup Fees; Expense Reimbursement.

(a) If this Agreement is terminated pursuant to Section 11.1(b)(ii) or Section 11.1(b)(iii), then Purchaser shall be deemed to have earned the Breakup Fee. Additionally, if this Agreement is terminated pursuant to Section 11.1(c)(v) due to a material violation or breach of any representation, warranty or covenant contained in this Agreement that is within the control of Sellers and within nine (9) months after such termination, Sellers consummate an Alternate Transaction, then Purchaser shall be deemed to have earned the Breakup Fee. The Breakup Fee shall be paid in cash, without further order of the Bankruptcy Court, immediately following the consummation of the Alternate Transaction.

(b) If this Agreement is terminated pursuant to any provision of Section 11.1 other than Section 11.1(d), then Purchaser shall be deemed to have earned the Expense Reimbursement. The Expense Reimbursement shall be paid in cash, without further order of the Bankruptcy Court, promptly following such termination.

(c) The parties acknowledge that the agreements contained in this Section 11.3 are an integral part of the transactions contemplated by this Agreement and that without these agreements neither Sellers nor Purchaser would enter into this Agreement.

(d) Payments pursuant to this Section 11.3 shall be an administrative expense priority obligation under Section 364(c)(1) of the Bankruptcy Code with priority over all expenses of the kind specified in Sections 503(b) and 507 of the Bankruptcy Code, subject to any super-priority claims of Sellers' post-petition lenders, and in all circumstances subject to the rights of the lenders under the ABL Credit Agreements, the Pre-Petition Credit Agreement and the DIP Credit Agreement.

ARTICLE 12
MISCELLANEOUS

12.1 Survival. Except for the provisions of Article 12, no representations, warranties, covenants and agreements of Sellers and Purchaser made in this Agreement shall survive the Closing Date except where, and only to the extent that, the terms of any such covenant or agreement expressly provide for obligations extending after the Closing. Sellers hereby acknowledge that the obligation to pay the Breakup Fee and the Expense Reimbursement (each, to the extent due hereunder) shall survive the termination of this Agreement, and shall have administrative status against Sellers and their respective estates.

12.2 Further Assurances. At the request and the sole expense of the requesting party, Purchaser or Sellers, as applicable, shall execute and deliver, or cause to be executed and delivered, such documents as Purchaser or Sellers, as applicable, or their respective counsel may reasonably request to effectuate the purposes of this Agreement and the Ancillary Agreements. Each party shall use reasonable best efforts to take, or cause to be taken, all other actions and to do, or cause to be done, all other things reasonably necessary, proper or advisable to consummate and make effective as promptly as practicable the transactions contemplated hereby.

12.3 Successors and Assigns.

(a) In accordance with Section 3.3, Purchaser shall have the right prior to Closing to assign its rights to receive all or any part of the Acquired Assets and its obligations to assume all or any part of the Assumed Liabilities, in each case, to one or more Designees, provided that no such assignment shall relieve Purchaser of any of its obligations hereunder.

(b) Sellers shall not assign this Agreement or any of their rights or obligations hereunder and any such assignment shall be void and of no effect. This Agreement shall inure to the benefit of and shall be binding upon the successors and permitted assigns of the parties hereto, including any trustee appointed in any of the Bankruptcy Cases or subsequent Chapter 7 cases and Sellers, if the Bankruptcy Cases are dismissed.

12.4 Governing Law; Jurisdiction. This Agreement shall be construed, performed and enforced in accordance with, and governed by, the Laws of the State of New York (without giving effect to the principles of conflicts of Law thereof), except to the extent that the Laws of such state are superseded by the Bankruptcy Code or other applicable federal Law. For so long as Sellers are subject to the jurisdiction of the Bankruptcy Court, the parties irrevocably elect, as

the sole judicial forum for the adjudication of any matters arising under or in connection with the Agreement, and consent to the exclusive jurisdiction of, the Bankruptcy Court. After Sellers are no longer subject to the jurisdiction of the Bankruptcy Court, the parties irrevocably elect, as the sole judicial forum for the adjudication of any matters arising under or in connection with this Agreement, and consent to the jurisdiction of, any state or federal court having competent jurisdiction in New York.

12.5 Expenses. Except as otherwise provided in this Agreement, each of the parties shall pay their own expenses in connection with this Agreement and the transactions contemplated hereby, including any legal and accounting fees and commissions or finder's fees, whether or not the transactions contemplated hereby are consummated. Purchaser shall pay the cost of all surveys, title insurance policies and title reports ordered by Purchaser.

12.6 Severability. In the event that any part of this Agreement is declared by any Governmental Authority to be null, void or unenforceable, a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision, said provision shall survive to the extent it is not so declared, and all of the other provisions of this Agreement shall remain in full force and effect only if, after excluding the portion deemed to be unenforceable and the application of any provision so substituted, the remaining terms shall provide for the consummation of the transactions contemplated hereby in substantially the same manner as originally set forth at the later of (a) the Execution Date and (b) the date this Agreement was last amended.

12.7 Notices.

(a) All notices, requests, demands, consents and other communications under this Agreement shall be in writing and shall be deemed to have been duly given (i) on the date of service, if served personally on the party to whom notice is to be given; (ii) on the day after delivery to Federal Express or similar overnight courier or the Express Mail service maintained by the United States Postal Service addressed to the party to whom notice is to be given, if served via Federal Express or similar overnight courier or Express Mail service; (iii) on the date sent by facsimile, with confirmation of transmission, if sent during normal business hours of the recipient, if not, then on the next Business Day; or (iv) on the third day after mailing, if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid and properly addressed, to the party as follows:

If to Sellers: School Specialty, Inc.
W6316 Design Drive
Greenville, WI 54942
Attn: Michael P. Lavelle, CEO
Fax: (920) 882-5863

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

Paul, Weiss, Rifkind, Wharton & Garrison LLP
1285 Avenue of the Americas

New York, NY 10019-6064
Attn: Jeffrey Saferstein and Tarun Stewart
Fax: (212) 492-0347

If to Purchaser: c/o Bayside Finance, LLC
500 Boylston Street
13th Floor
Boston, MA 02116
Attn: Jackson Craig
Fax: (617) 262-1505

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

Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10036
Attn: Michael S. Stamer and Stephen B. Kuhn
Fax: (212) 872-1002

(b) Any party may change its address or facsimile number for the purpose of this Section 12.7 by giving the other parties written notice of its new address in the manner set forth above.

12.8 Amendments; Waivers. This Agreement may be amended or modified, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by Purchaser and Sellers, or in the case of a waiver, by the party waiving compliance. Any waiver by any party of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall not be deemed to be or construed as a furthering or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

12.9 Entire Agreement. This Agreement and the Ancillary Agreements, including all schedules and exhibits hereto and thereto, contain the entire understanding between the parties with respect to the transactions contemplated hereby and supersede and replace all prior and contemporaneous agreements and understandings, oral or written, with regard to such transactions.

12.10 Sellers Disclosures. After notice to and consultation with Purchaser, Sellers shall be entitled to disclose, if required by applicable Law or by order of the Bankruptcy Court, this Agreement and all information provided by Purchaser in connection herewith to the Bankruptcy Court, the United States Trustee, parties in interest in the Bankruptcy Cases and other Persons bidding on assets of Sellers. Other than statements made in the Bankruptcy Court (or in pleadings filed therein), Sellers shall not issue (prior to, on or after the Closing) any press release or make any public statement or public communication with respect to this Agreement or the transactions contemplated hereby without the prior written consent of Purchaser, which consent shall not be unreasonably withheld, delayed or conditioned. The foregoing shall not prevent

Sellers from publishing the existence or terms of this Agreement (or the Agreement itself) as necessary in the Sale Motion or otherwise in connection with the Bankruptcy Cases.

12.11 Headings. The article and section headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

12.12 Electronic Delivery; Counterparts. This Agreement and any signed agreement or instrument entered into in connection with this Agreement, and any amendments hereto or thereto, may be executed in one or more counterparts, all of which shall constitute one and the same instrument. Any such counterpart, to the extent delivered by means of a facsimile machine or by .pdf, .tif, .gif, .jpg or similar attachment to electronic mail (any such delivery, an "Electronic Delivery") shall be treated in all manner and respects as an original executed counterpart and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto, each other party hereto shall re-execute the original form of this Agreement and deliver such form to all other parties. No party hereto shall raise the use of Electronic Delivery to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of Electronic Delivery as a defense to the formation of a contract, and each such party forever waives any such defense, except to the extent such defense relates to lack of authenticity.

12.13 Waiver of Jury Trial.

(a) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY LITIGATION, ACTION, PROCEEDING, CROSS-CLAIM, OR COUNTERCLAIM IN ANY COURT (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF, RELATING TO OR IN CONNECTION WITH (i) THIS AGREEMENT OR THE VALIDITY, PERFORMANCE, INTERPRETATION, COLLECTION OR ENFORCEMENT HEREOF OR (ii) THE ACTIONS OF SUCH PARTY IN THE NEGOTIATION, AUTHORIZATION, EXECUTION, DELIVERY, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH LEGAL COUNSEL OF ITS OWN CHOOSING, OR HAS HAD AN OPPORTUNITY TO DO SO, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS, HAVING HAD THE OPPORTUNITY TO CONSULT WITH LEGAL COUNSEL.

(b) THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING, AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS, OR MODIFICATIONS TO THIS AGREEMENT. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT WITHOUT A JURY.

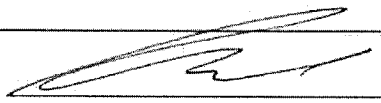
12.14 Third Party Beneficiaries. No provision of this Agreement (including Section 6.5) is intended to confer upon any Person other than the parties hereto any rights or remedies hereunder.

12.15 Specific Performance. Sellers and Purchaser agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. Accordingly, Sellers and Purchaser shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, in addition to any other remedy to which they are entitled at Law or in equity.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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

PURCHASER:

By: 

Name: **Richard Siegel**
Title: **Authorized Signatory**

SELLERS:

SCHOOL SPECIALTY, INC.

By: _____
Name: David N. Vander Ploeg
Title: CFO and Treasurer

CLASSROOMDIRECT.COM, LLC

By: _____
Name: David N. Vander Ploeg
Title: Vice President and Treasurer

DELTA EDUCATION, LLC

By: _____
Name: David N. Vander Ploeg
Title: Vice President and Treasurer

SPORTIME, LLC

By: _____
Name: David N. Vander Ploeg
Title: Vice President and Treasurer

CHILDCRAFT EDUCATION CORP.

By: _____
Name: David N. Vander Ploeg
Title: Vice President and Treasurer

SELLERS:

BIRD-IN-HAND WOODWORKS, INC.

By: _____
Name: David N. Vander Ploeg
Title: Vice President and Treasurer

CALIFONE INTERNATIONAL, INC.

By: _____
Name: David N. Vander Ploeg
Title: Vice President and Treasurer

PREMIER AGENDAS, INC.

By: _____
Name: David N. Vander Ploeg
Title: Vice President and Treasurer

FREY SCIENTIFIC, INC.

By: _____
Name: David N. Vander Ploeg
Title: Vice President and Treasurer

SAX ARTS & CRAFTS, INC.

By: _____
Name: David N. Vander Ploeg
Title: Vice President and Treasurer

EXHIBIT A

FORM OF

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (this "Assignment and Assumption Agreement"), dated as of [ ] [ ], 2013, is made and entered into by and among School Specialty, Inc., a Wisconsin corporation, and each of its Subsidiaries listed on the signature pages of this Assignment and Assumption Agreement (each, an "Assignor" and collectively, "Assignors"), and Bayside School Specialty, LLC, a Delaware limited liability company ("Purchaser") and each of the Designees listed on the signature pages of this Assignment and Assumption Agreement (Purchaser and such Designees, each, an "Assignee" and collectively, "Assignees").

RECITALS

WHEREAS, Assignors and Purchaser are parties to that certain Asset Purchase Agreement, dated as of January ___, 2013 (the "Purchase Agreement"), pursuant to which Assignors have agreed to sell, and Purchaser has agreed to purchase the Acquired Assets; and

WHEREAS, pursuant to the Sale Order and to the extent permitted by applicable Law, on the terms and subject to the conditions set forth in the Purchase Agreement, Assignors have agreed to assign to the Assignees all of Assignors' right, title and interest in, to and under the Acquired Assets and each Assignee has agreed to assume and timely perform, pay and discharge in accordance with their respective terms, the Assumed Liabilities.

NOW, THEREFORE, in consideration of the foregoing and of the consideration set forth in the Purchase Agreement, the parties hereto agree as follows:

1. Capitalized terms used herein and not defined shall have the meanings assigned to them in the Purchase Agreement.

2. This Assignment and Assumption Agreement is executed, delivered and accepted pursuant to, and is subject to, the Purchase Agreement. The Purchase Agreement shall at all times govern the rights and duties of the parties with respect to the Acquired Assets and Assumed Liabilities. If there is any conflict between the terms and provisions of this Assignment and Assumption Agreement and those of the Purchase Agreement, the terms of the Purchase Agreement shall control.

3. On the terms and subject to the conditions set forth in the Purchase Agreement, effective on and as of the Closing Date, each Assignor hereby sells, transfers, assigns, conveys and delivers to each Assignee, and each Assignee hereby purchases, acquires and accepts from each Assignor, all of Assignors' right, title and interest in, to and under the Acquired Assets allocable to such Assignee as specified in Exhibit A. Nothing herein contained shall be deemed to sell, transfer, assign, convey or deliver the Excluded Assets to any Assignee, and Assignors shall retain all right title and interest to, in and under the Excluded Assets.

4. Pursuant to the Sale Order and to the extent permitted by applicable Law, on the terms and subject to the conditions set forth in the Purchase Agreement, effective on and as of the Closing Date, (a) each Designee hereby assumes and agrees to timely perform, pay and discharge in accordance with their respective terms, the Assumed Liabilities allocable to such Designee as specified in Exhibit A and (b) Purchaser hereby assumes the Assumed Liabilities not allocable to any other Assignee.

5. Upon the terms and subject to the conditions contained herein, Assignors and the Assignees agree (i) to use commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable to effect, consummate, make effective, confirm or evidence the transactions contemplated by this Assignment and Assumption Agreement, and (ii) to execute any documents, instruments or conveyances of any kind which may be reasonably necessary or advisable to carry out any of the transactions contemplated by this Assignment and Assumption Agreement.

6. This Assignment and Assumption Agreement will be binding from and after its execution upon Assignors and the Assignees and their respective successors and assigns.

7. This Assignment and Assumption Agreement may not be amended or waived except in a writing executed by the party against which such amendment or waiver is sought to be enforced. No course of dealing between or among any persons having any interest in this Assignment and Assumption Agreement will be deemed effective to modify or amend any part of this Assignment and Assumption Agreement or any rights or obligations of any person under or by reason of this Assignment and Assumption Agreement.

8. This Assignment and Assumption Agreement may be executed in one or more counterparts, all of which shall constitute one and the same instrument. Any such counterpart, to the extent delivered by means of an Electronic Delivery shall be treated in all manner and respects as an original executed counterpart and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

9. This Assignment and Assumption Agreement shall be construed, performed and enforced in accordance with, and governed by, the Laws of the State of New York (without giving effect to the principles of conflicts of Laws thereof).

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment and Assumption Agreement effective as of the date first above written.

ASSIGNORS:

SCHOOL SPECIALTY, INC.

By: _____
Name:
Title:

CLASSROOMDIRECT.COM, LLC

By: _____
Name:
Title:

DELTA EDUCATION, LLC

By: _____
Name:
Title:

SPORTIME, LLC

By: _____
Name:
Title:

CHILDCRAFT EDUCATION CORP.

By: _____
Name:
Title:

ASSIGNORS:

BIRD-IN-HAND WOODWORKS, INC.

By: _____
Name:
Title:

CALIFONE INTERNATIONAL, INC.

By: _____
Name:
Title:

PREMIER AGENDAS, INC.

By: _____
Name:
Title:

FREY SCIENTIFIC, INC.

By: _____
Name:
Title:

SAX ARTS & CRAFTS, INC.

By: _____
Name:
Title:

PURCHASER:

BAYSIDE SCHOOL SPECIALTY, LLC

By:_____
Name:
Its:

DESIGNEES:

[ ]

By:_____
Name:
Its:

[Signature Page to Assignment and Assumption Agreement]

EXHIBIT B

EXHIBIT C

EXHIBIT D

EXHIBIT D

FORM OF

BILL OF SALE

This Bill of Sale (this "Bill of Sale"), dated as of [ ] [ ], 2013, is made and entered into by and among School Specialty, Inc., a Wisconsin corporation, and each of its subsidiaries listed on the signatures page of this Bill of Sale (collectively, "Sellers"), and Bayside School Specialty, LLC, a Delaware limited liability company ("Purchaser") and each of the Designees listed on the signature pages of this Bill of Sale (Purchaser and such Designees, each, an "Assignee" and collectively, "Assignees").

RECITALS

WHEREAS, Purchaser and Sellers are parties to that certain Asset Purchase Agreement, dated as of January ___, 2013 (the "Purchase Agreement"), pursuant to which Sellers have agreed to sell, and Assignees have agreed to purchase, the Acquired Assets; and

WHEREAS, pursuant to the terms of the Purchase Agreement and by this Bill of Sale, Sellers are selling, assigning, transferring and conveying all of Sellers' rights, titles and interests in, to and under the Acquired Assets.

NOW, THEREFORE, in consideration of the foregoing and of the consideration set forth in the Purchase Agreement, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Capitalized terms used herein and not defined shall have the meanings assigned to them in the Purchase Agreement.

2. The transactions contemplated by the Purchase Agreement have been approved by an order of the Bankruptcy Court as set forth in the Sale Order.

3. In consideration of the Purchase Price, Sellers hereby sell, convey, transfer, assign and deliver to each Assignee, and each Assignee hereby purchases and acquires from Sellers, all of Sellers' rights, titles and interests in the Acquired Assets allocable to such Assignee as specified in Exhibit A. Sellers, for themselves, their successors and assigns, irrevocably constitute and appoint each Assignee, its successors and assigns, and each of them, the true and lawful attorney of Sellers, their successors and assigns, with full power of substitution and gives and grants unto each Assignee, its successors and assigns, and each of them, full power and authority in the names of Sellers, their successors and assigns, at any time and from time to time, to demand, sue for, recover and receive any and all rights, demands, claims and causes of action of every kind and description whatsoever incident or relating to the Acquired Assets, for the purpose of fully vesting in each Assignee, its successors and assigns, all and singular, all the right, title and interest in and to the Acquired Assets allocable to such Assignee as specified in Exhibit A. Sellers are not selling, conveying, transferring or assigning the Excluded Assets.

4. This Bill of Sale and all of the provisions hereof will be binding from and after its execution upon Sellers and the Assignees and their respective successors and assigns, except that no such assignment shall relieve any Assignee of its obligations hereunder.

5. To the extent any term, condition or provision of this Bill of Sale is in any way inconsistent with or in conflict with any term, condition or provision of the Purchase Agreement, the Purchase Agreement shall govern and control.

6. This Bill of Sale may not be amended or waived except in a writing executed by the party against which such amendment or waiver is sought to be enforced. No course of dealing between or among any persons having any interest in this Bill of Sale will be deemed effective to modify or amend any part of this Bill of Sale or any rights or obligations of any person under or by reason of this Bill of Sale.

7. This Bill of Sale may be executed in one or more counterparts, all of which shall constitute one and the same instrument. Any such counterpart, to the extent delivered by means of an Electronic Delivery shall be treated in all manner and respects as an original executed counterpart and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

8. This Bill of Sale shall be construed, performed and enforced in accordance with, and governed by, the Laws of the State of New York (without giving effect to the principles of conflicts of Laws thereof).

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have executed this Bill of Sale effective as of the date first above written.

SELLERS:

SCHOOL SPECIALTY, INC.

By: _____
Name:
Title:

CLASSROOMDIRECT.COM, LLC

By: _____
Name:
Title:

DELTA EDUCATION, LLC

By: _____
Name:
Title:

SPORTIME, LLC

By: _____
Name:
Title:

CHILDCRAFT EDUCATION CORP.

By: _____
Name:
Title:

SELLERS:

BIRD-IN-HAND WOODWORKS, INC.

By: _____
Name:
Title:

CALIFONE INTERNATIONAL, INC.

By: _____
Name:
Title:

PREMIER AGENDAS, INC.

By: _____
Name:
Title:

FREY SCIENTIFIC, INC.

By: _____
Name:
Title:

SAX ARTS & CRAFTS, INC.

By: _____
Name:
Title:

PURCHASER:

BAYSIDE SCHOOL SPECIALTY, LLC

By:_____
Name:
Its:

DESIGNEES:

[ ]

By:_____
Name:
Its:

EXHIBIT D

Sale Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SCHOOL SPECIALTY, INC., *et al.*,	Case No. 13-_____ (___)
Debtors.[1]	Joint Administration Requested

NOTICE OF AUCTION AND SALE HEARING

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On January 28, 2013, School Specialty, Inc., and its affiliated debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors"), filed their motion (the "Motion")[2] for entry of an order (the "Bidding Procedures Order"), among other things, (a) scheduling a hearing (the "Sale Hearing") on approval of its asset sale, assumption and assignment of executory contracts, to Bayside School Specialty, LLC (or its assignee) (the "Proposed Purchaser") and assumption of certain liabilities; and (b) approving proposed bidding and sale procedures (the "Bidding Procedures"), and the Breakup Fee and the Expense Reimbursement, and the form and manner of notice thereof. The Motion additionally requests entry of an order (the "Sale Order"), (a) approving an asset purchase agreement (the "Asset Purchase Agreement") for the sale of all or substantially all of the assets of the Debtors to the Proposed Purchaser or to the Prevailing Bidder to be identified at the Auction; (b) authorizing the sale of all or substantially all of the assets of the Debtors free and clear of all Liens, Claims, Interests or Encumbrances (other than Permitted Liens); (c) authorizing the assumption and assignment of certain executory contracts and unexpired leases (the "Assigned Contracts") to the Proposed Purchaser or the Prevailing Bidder; and (d) granting related relief.

2. On [_____], 2013, the United States Bankruptcy Court for the District of Delaware entered the Bidding Procedures Order [Docket No. ___]. Pursuant to the Bidding Procedures Order, the Auction for the Acquired Assets shall take place on **March 25, 2013 at 10:00 a.m. (prevailing Eastern Time)** at the offices of counsel to the Debtors, Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019. Only parties that have submitted a Qualified Bid in accordance with the Bidding Procedures, attached to the Bidding Procedures Order as **Exhibit 1**, by no later than **March 19,**

---

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number and state of incorporation, are: School Specialty, Inc. (Wisc.; 1239), Bird-In-Hand Woodworks, Inc. (N.J.; 8811), Califone International, Inc. (Del.; 3578), Childcraft Education Corp. (N.Y.; 9818), ClassroomDirect.com, LLC (Del.; 2425), Delta Education, LLC (Del.; 8764), Frey Scientific, Inc. (Del.; 3771), Premier Agendas, Inc. (Wash.; 1380), Sax Arts & Crafts, Inc. (Del.; 6436), and Sportime, LLC (Del.; 6939). The address of the Debtors' corporate headquarters is W6316 Design Drive, Greenville, Wisconsin 54942.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

2013 (the "Bid Deadline") may participate at the Auction. Any party that wishes to take part in this process and submit a bid for the Acquired Assets must submit a competing bid prior to the Bid Deadline and in accordance with the Bidding Procedures. Parties interested in receiving information regarding the sale of the Acquired Assets should contact the Debtors' financial advisors, Perella Weinberg Partners: Derron Slonecker (dslonecker@pwpartners.com, 212-287-3361), 767 Fifth Avenue New York, NY 10153.

3. The Sale Hearing to consider approval of the sale of the Acquired Assets to the Proposed Purchaser or any of the Debtors' assets to a Prevailing Bidder (as defined in the Bidding Procedures) free and clear of all liens, claims and encumbrances will be held before the Honorable [_____], United States Bankruptcy Judge, 824 North Market Street, [___ Floor, Courtroom No. ___] Wilmington, Delaware 19801 on **March 27, 2013, at [TIME] (prevailing Eastern Time)** or at such earlier date as counsel may be heard. The Sale Hearing may be continued from time to time without further notice to creditors or parties in interest other than by announcement of the continuance in open court on the date scheduled for the Sale Hearing (or in agenda).

4. **Objections, if any, to the sale of the Acquired Assets contemplated by the Asset Purchase Agreement, or the relief requested in the Motion must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Bankruptcy Rules; (c) be filed with the clerk of the Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, DE 19801 (or filed electronically via CM/ECF), on or before 4:00 p.m. (prevailing Eastern Time) on [_____], or such earlier date and time as the Debtors may agree and (d) be served, so as to be received no later than 4:00 p.m. (prevailing Eastern Time) on the same day, upon: (1) the Debtors; (2) counsel for the Debtors; (3) co-counsel for the Debtors; (4) counsel to the Proposed Purchaser; (5) counsel to the agent under the Bayside DIP Facility; (6) counsel to the agent under the ABL DIP Facility; and (7) the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, Delaware 19801, Attn: _____.**

5. **PLEASE TAKE NOTICE THAT THE FAILURE TO ABIDE BY THE PROCEDURES AND DEADLINES SET FORTH IN THE BIDDING PROCEDURES ORDER AND THE BIDDING PROCEDURES MAY RESULT IN THE FAILURE OF THE BANKRUPTCY COURT TO CONSIDER A COMPETING BID OR AN OBJECTION TO THE PROPOSED SALE TRANSACTION.**

6. This Notice and the Sale Hearing are subject to the fuller terms and conditions of the Motion, the Bidding Procedures Order and the Bidding Procedures, which shall control in the event of any conflict and the Debtors encourage parties in interest to review such documents in their entirety. If you would like to obtain a copy of the Motion, the Asset Purchase Agreement, the Bidding Procedures, the Bidding Procedures Order or any other pleadings filed in these chapter 11 cases, you should contact [KCC] (the "Claims Agent") by: (a) calling the Debtors' restructuring hotline at [NUMBER]; (b) visiting the Debtors' restructuring website at: [SITE] (c) e-mailing the Debtors at [EMAIL] and/or (d) writing to School Specialty, Inc., c/o [KCC], [ADDRESS]. You may also obtain copies of any pleadings filed in these chapter 11 cases for a fee at the Court's website at http://www.nysb.uscourts.gov for registered users of the Public Access to Court Electronic Records (PACER) System.

Dated: Wilmington, Delaware
_____, 2013

Pauline K. Morgan
YOUNG CONAWAY STARGATT & TAYLOR, LLP
The Brandywine Building
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Facsimile: (212) 492-0158

Proposed Attorneys for the Debtors and the Debtors in Possession

EXHIBIT E

Assumption, Assignment and Cure Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SCHOOL SPECIALTY, INC., *et al.*,	Case No. 13-_____ (___)
Debtors.[9]	Joint Administration Requested

NOTICE REGARDING (A) EXECUTORY CONTRACTS AND UNEXPIRED LEASES TO BE ASSUMED; (B) CURE AMOUNTS, IF ANY; AND (C) RELATED PROCEDURES IN CONNECTION THEREWITH

TO: ALL COUNTERPARTIES TO THE DEBTORS' EXECUTORY CONTRACTS AND UNEXPIRED LEASES THAT ARE TO BE ASSUMED, PLEASE TAKE NOTICE OF THE FOLLOWING:

PLEASE TAKE NOTICE THAT upon the Debtors' motion (the "Sale Motion"),[10] the United States Bankruptcy Court for the District of Delaware (the "Court") entered an order (the "Bidding Procedures Order") on [_____] approving certain procedures (the "Assumption and Assignment Procedures") for the assumption and assignment of certain of the Debtors' executory contracts and unexpired leases (collectively, the "Agreements") in connection with the sale of substantially all of the Debtors' assets (the "Asset Sale"). The determination to assume the Agreements identified on the Assumption Schedule (as defined below) was made as of [DATE] and is subject to revision. Additionally, the cure amounts reflected herein and on the Assumption Schedule were calculated as of [DATE] and may be subject to upward or downward adjustment.

PLEASE TAKE FURTHER NOTICE THAT the Debtors filed the [*Schedule of Designated and Assumed Executory Contracts and Unexpired Leases*] (the "Assumption Schedule") with the Court on [_____] as contemplated under the Assumption and Assignment Procedures.

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[9] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number and state of incorporation, are: School Specialty, Inc. (Wisc.; 1239), Bird-In-Hand Woodworks, Inc. (N.J.; 8811), Califone International, Inc. (Del.; 3578), Childcraft Education Corp. (N.Y.; 9818), ClassroomDirect.com, LLC (Del.; 2425), Delta Education, LLC (Del.; 8764), Frey Scientific, Inc. (Del.; 3771), Premier Agendas, Inc. (Wash.; 1380), Sax Arts & Crafts, Inc. (Del.; 6436), and Sportime, LLC (Del.; 6939). The address of the Debtors' corporate headquarters is W6316 Design Drive, Greenville, Wisconsin 54942.

[10] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Sale Motion or the Asset Purchase Agreement, attached as Exhibit C to the Sale Motion, as applicable.

PLEASE TAKE FURTHER NOTICE that the Debtors are proposing to assume the Agreement(s) listed below to which you are counterparty:[11]

Counterparty Name	Description of Contract	Amount Required to Cure All Defaults Thereunder, if any
		$_____

PLEASE TAKE FURTHER NOTICE THAT you are receiving this notice because the Debtors' records reflect that you are counterparty to an Agreement with one or more Debtors that has not been assumed or rejected as of [_____]. Pursuant to section 2.5 of the Asset Purchase Agreement and the Assumption and Assignment Procedures, the Debtors may elect to assume or reject your Agreement(s) at any time prior to the Designation Deadline. **Accordingly, if you are counterparty to an Agreement with the Debtors, your contract or lease may be assumed by the Debtors.**

PLEASE TAKE FURTHER NOTICE that you are advised to review carefully the information contained in this notice and the related provisions of the Assumption and Assignment Procedures, including the Assumption Schedule. If you would like to obtain a copy of the Assumption Schedule, as well as the Sale Motion, the Bidding Procedures Order, the Asset Purchase Agreement or any other pleadings filed in these chapter 11 cases, you should contact [KCC] (the "Claims Agent") by: (a) calling the Debtors' restructuring hotline at [NUMBER]; (b) visiting the Debtors' restructuring website at: [SITE] (c) e-mailing the Debtors at [EMAIL] and/or (d) writing to School Specialty, Inc., c/o [KCC], [ADDRESS]. You may also obtain copies of any pleadings filed in these chapter 11 cases for a fee at the Court's website at http://www.nysb.uscourts.gov for registered users of the Public Access to Court Electronic Records (PACER) System.

PLEASE TAKE FURTHER NOTICE THAT Bankruptcy Code section 365(b)(1) requires a chapter 11 debtor to cure, or provide adequate assurance that it will promptly cure, any defaults under executory contracts and unexpired leases at the time of assumption. Accordingly, the Debtors have conducted a thorough review of their books and records and have determined the amounts required to cure defaults, if any, under the Agreement(s), which amounts are listed in the table above. Please note that if no amount is stated for a particular Agreement, the Debtors believe that there is no cure amount outstanding for such Agreement.

PLEASE TAKE FURTHER NOTICE THAT absent any pending dispute, the monetary amounts required to cure any existing defaults arising under the Agreement(s) identified above will be satisfied, pursuant to Bankruptcy Code section 365(b)(1), by the Debtors in cash upon Closing of the Asset Sale or as otherwise agreed by the Debtors and the

[11] Neither the exclusion nor inclusion of any Agreement on the Assumption Schedule shall constitute an admission by the Debtors that any such contract or lease is in fact an executory contract or unexpired lease capable of assumption or that such Agreement is necessarily a binding and enforceable agreement. Further, the Debtors expressly reserve the right to (i) remove any Agreement from the Assumption Schedule and reject such Agreement as permitted under the Bankruptcy Code and (ii) contest any claim (or claim amount) asserted in connection with assumption of any Agreement.

counterparty to any such Agreement. In the event of a dispute and the Debtors prevail with respect to the cure amount set forth above, payment of that amount shall be made no later than ten (10) business days following the entry of a final order resolving the dispute and approving the assumption. If an objection to the proposed assumption or related cure amount is sustained by the Court, however, the Debtors, with the consent of the Proposed Purchaser, may elect to reject such Agreement in lieu of assuming it.

PLEASE TAKE FURTHER NOTICE THAT the hearing at which the Court will consider approval of the Asset Sale (the "Sale Hearing") will commence at **[TIME] (prevailing Eastern Time) on March 27, 2013**, before the Honorable [JUDGE], in the United States Bankruptcy Court for the District of Delaware, located at [ADDRESS] and may be continued from time to time without further notice. Any objection to the assumption of the Agreement(s) identified above and/or any proposed cure amounts related thereto must be **actually received on or before [DATE], 2013 at 4:00 p.m. (ET)** (the "Cure Objection Deadline"). Any Cure Objection must: (a) be in writing; (b) conform to the Bankruptcy Rules and the Local Bankruptcy Rules; (c) state the name and address of the objecting party and the amount and nature of the claim of such entity; (d) state with specificity the nature of the objection and, if the objection pertains to the proposed cure amount, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof; and (e) be filed, contemporaneously with a proof of service, with the Court and served so that it is actually received no later than the Cure Objection Deadline by the following parties:

<table>
<tr><td colspan="2">PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
Attn: Lauren Shumejda
1285 Avenue of the Americas
New York, New York 10019
Counsel to the Debtors and Debtors in Possession</td></tr>
<tr><td>[COUNSEL]
[Address]

Counsel to the Official Committee of Unsecured Creditors</td><td>AKIN GUMP STRAUSS HAUER & FELD LLP
Attn: Michael Stamer,
Stephen Kuhn & Meredith Lahaie
One Bryant Park
New York, New York 10036

Counsel to the Proposed Purchaser</td></tr>
<tr><td colspan="2">THE OFFICE OF THE UNITED STATES TRUSTEE FOR THE DISTRICT OF DELAWARE
Attn: NAME
[Address]</td></tr>
</table>

PLEASE TAKE FURTHER NOTICE THAT any objections to the assumption and assignment of the Agreement(s) identified above and/or related cure or adequate assurances proposed that remain unresolved as of the Sale Hearing will be heard at the Sale Hearing (or such other date as fixed by the Court).

PLEASE TAKE FURTHER NOTICE THAT any counterparty to an Agreement that fails to object timely to the proposed assumption or cure amount will be deemed to have assented to such assumption and cure amount.

PLEASE TAKE FURTHER NOTICE THAT ASSUMPTION OF ANY AGREEMENT SHALL RESULT IN THE FULL RELEASE AND SATISFACTION OF ANY CLAIMS OR DEFAULTS, WHETHER MONETARY OR NONMONETARY, INCLUDING DEFAULTS OF PROVISIONS RESTRICTING THE CHANGE IN CONTROL OR OWNERSHIP INTEREST COMPOSITION OR OTHER BANKRUPTCY-RELATED DEFAULTS, ARISING UNDER ANY ASSUMED AGREEMENT AT ANY TIME BEFORE THE DATE OF THE DEBTORS ASSUME SUCH AGREEMENT. ANY PROOFS OF CLAIM FILED WITH RESPECT TO AN AGREEMENT THAT HAS BEEN ASSUMED SHALL BE DEEMED DISALLOWED AND EXPUNGED, WITHOUT FURTHER NOTICE TO OR ACTION, ORDER OR APPROVAL OF THE BANKRUPTCY COURT.

Dated: Wilmington, Delaware
_____, 2013

Pauline K. Morgan
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Proposed Attorneys for the Debtors and the Debtors in Possession