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**PROPOSED ATTORNEYS FOR DEBTOR**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re: § Chapter 11  
§  
TPP ACQUISITION, INC. d/b/a The § Case No. 16-33437-hdh-11  
Picture People, §  
§  
Debtor. §

**DEBTOR’S EXPEDITED MOTION, PURSUANT TO BANKRUPTCY CODE  
SECTIONS 105(a), 363, AND 365, AND BANKRUPTCY RULES 2002, 6004, AND 6006,  
FOR ENTRY OF AN ORDER (A) APPROVING SALE AND BIDDING PROCEDURES  
AND BID PROTECTIONS IN CONNECTION WITH SALE OF ASSETS OF THE  
DEBTOR, (B) AUTHORIZING THE SALE OF ASSETS FREE AND CLEAR OF ALL  
LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, AND (C)  
GRANTING RELATED RELIEF**

TPP Acquisition, Inc. d/b/a The Picture People (the “Debtor”) file this *Debtor’s Expedited Motion, pursuant to Bankruptcy Code Sections 105(a), 363, and 365, and Bankruptcy Rules 2002, 6004, and 6006, for Entry of an Order (A) Approving Sale and Bidding Procedures and Bid Protections in Connection with Sale of Assets of the Debtor, (B) Authorizing the Sale of Assets Free and Clear of all Liens, Claims, Encumbrances and Other Interests, and (C) Granting Related Relief* (the “Motion”).



Through the Motion, the Debtor requests entry of an order, substantially in the form of

**Exhibit A**, (the “Bidding Procedures Order”):

- (i) authorizing and approving certain procedures for the sale of substantially all of the Debtor’s assets (collectively, the “Assets”) as set forth on **Exhibit 1** to the Bidding Procedures Order (the “Bidding Procedures”);
- (ii) approving and authorizing the Debtor to pay the Bid Protections (as defined herein) in the event such Bid Protections become payable under the terms of the Stalking Horse APA (as defined herein);
- (iii) in the event the Debtor receives one or more Qualified Bids (as defined in the Bidding Procedures), scheduling an auction (the “Auction”) in connection with the proposed sale of the Assets (the “Sale”);
- (iv) scheduling a hearing to approve the Sale of the Assets (the “Sale Hearing”) to the Successful Bidder per the terms of the Successful Bid (or, if applicable, to the Backup Successful Bidder per the terms of the Backup Successful Bid (as such terms are defined in the Bidding Procedures));
- (v) approving the form and manner of notice of the Bidding Procedures, the Auction, and the Sale Hearing (the “Auction and Sale Notice”) attached as **Exhibit 2** to the Bidding Procedures Order;
- (vi) establishing procedures as set forth herein relating to determining the Cure Amounts (as defined herein) for the assumption and/or assignment of executory contracts (“Contracts”) and unexpired leases (“Leases”), including the form and manner of service of the notice (the “Assumption and Assignment Notice”) attached as **Exhibit 3** to the Bidding Procedures Order; and
- (vii) granting certain related relief.

The Debtor further requests entry of an order (the “Sale Order”):

- (i) authorizing and approving the sale of the Debtor’s Assets (excluding the Excluded Assets (as defined in the Stalking Horse APA)) free and clear of all liens, claims, encumbrances, and other interests, whether known or unknown, fixed or contingent, or arising prior to or subsequent to the commencement of the Chapter 11 Case (defined herein), to the maximum extent permitted by law (other than with regard to Permitted Encumbrances), including, without limitation, any successor liability, pursuant to the asset purchase agreement substantially in the form of **Exhibit B** (the “Stalking Horse APA”) or such other form of asset purchase agreement between the Debtor and the Successful Bidder (or, if applicable, the Backup Successful Bidder) at the Auction;

- (ii) authorizing and approving the assumption and assignment of certain executory contracts and unexpired leases; and
- (iii) granting certain related relief.

In support of the Motion, the Debtor relies on, and incorporates herein as if set forth in full, the *Statement of Background Information and Declaration of Stuart Noyes, Chief Restructuring Officer of TPP Acquisition, Inc. d/b/a The Picture People in Support of Debtor's Chapter 11 Petition and First-Day Motions* (the "First Day Declaration") which the Debtor is filing concurrently herewith.

In further support of the Motion, the Debtor respectfully represents as follows:

**I.**

**PRELIMINARY STATEMENT**

1. By this Motion, the Debtor seeks approval of its entry into the Stalking Horse APA with TPP Holdings, LLC, or such alternative higher and/or better offeror as may appear as the "Successful Bidder" at the conclusion of the Debtor's auction to be held on October 26, 2016. After an extensive marketing process, competitive bidding, and arm's length negotiation with representatives of TPP Holdings, LLC, the Debtor has concluded that the Stalking Horse APA and the transactions contemplated thereunder constitute or provide the highest or otherwise best offer and provide fair and reasonable consideration to the Debtor for the sale of all Purchased Assets and the assumption of all Assumed Liabilities (each as defined in the Stalking Horse APA), that will provide a greater recovery for the Debtor's estate than would be possible by any other available alternative. Consequently, approval of the Motion is in the best interests of the Debtor, its creditors, the estate and other parties in interest.

2. The need for approval of the Stalking Horse APA is urgent and immediate. If approved, the sale process will result in a sale of substantially all of the Debtor's assets within approximately sixty days of the commencement of this Chapter 11 Case.

3. The expedited timetable described herein is critical to a successful resolution of this case and is absolutely necessary to maximize recovery to the Debtor's creditors. The need for urgency is created by, among other things, (i) the Debtor's inability to satisfy certain covenants and obligations under the Debtor's pre-petition debt instruments; (ii) a lack of short and long-term liquidity; (iii) the risk of termination of the Debtor's retail leases and other critical contractual relationships based on the Debtor's pre-petition inability to remit certain amounts due to certain landlords and other contract counter-parties; (iv) the precarious nature of the Debtor's relationships with landlords and vendors, which have become considerably strained during the Debtor's financial distress in the months leading up to the commencement of this case, to the point that few vendors are willing to continue providing service to the Debtor; and (v) the desperate need for funding for ongoing operations, which funding is not readily available absent a comprehensive rationalization of the Debtor's operations and a resolution of the Debtor's financial situation. The inability to fund future rental obligations alone justifies the expedited nature of the sale process, as the Debtor's failure to maintain retail operations places the Debtor's continued viability at extreme risk, particularly as customers face the uncertainty created by the Debtor's bankruptcy filing. If the Debtor is unable to complete the sales process and consummate a transaction within the timeframe described herein, its prospects to sell its business as a going concern will be jeopardized, and recovery to creditors will be substantially diminished.

4. In addition to the foregoing, the terms of the Stalking Horse APA require that the Sale Hearing take place within sixty (60) days after the Petition Date and the entry of the Sale Order within sixty-five (65) days after the Petition Date. Similarly, the Debtor will default under its proposed DIP Financing (as defined below) if the Sale Order is not entered within sixty-five (65) days after the Petition Date.

5. The Debtor believes that there is substantial risk of deterioration of the value of the Purchased Assets if the transaction is not consummated quickly. There is an increased likelihood that the Debtor's business will not be able to survive if this Chapter 11 Case is prolonged, as the strain of administrative expenses and the difficulty of operating a competitive business in bankruptcy will only increase. It is crucial for the Debtor to complete its restructuring in the near future and the Stalking Horse APA presents the Debtor with the best option to do so in a value-maximizing and efficient way.

6. For these reasons and those set forth below, this Court should enter the Bidding Procedures Order and the Sale Order authorizing the Debtor to enter into the Stalking Horse APA with TPP Holdings, LLC (or a superior agreement with another entity that submits a higher and better bid at auction) and consummate the transactions contemplated thereunder.

## **II.**

### **JURISDICTION AND VENUE**

7. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

8. The statutory predicates for the relief sought herein are Sections 105(a), 363(b), (f), and (m), and 365 of the title 11 of the United States Code (the “Bankruptcy Code”) and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

### III.

#### **BACKGROUND**

##### **A. The Debtor’s Bankruptcy Case**

9. To preserve the value of its assets and restructure its financial affairs, on September 2, 2016 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code commencing the above captioned case (the “Chapter 11 Case”). The Debtor continues to manage and operate its business as a debtor-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.

10. To date, no official committee (a “Committee”) of unsecured creditors, equity interest holders, or other parties in interest has been appointed in the Case.

11. A detailed description of the Debtor and its business, and the facts and circumstances supporting the Motion and the Debtor’s Chapter 11 Case are set forth in greater detail in the First Day Declaration.

##### **B. Debtor’s Pre-Petition Financing Arrangements**

12. Monroe Capital Management Advisors, LLC, as Administrative Agent and Lead Arranger (the “Prepetition Agent”), and Monroe Capital Partners Fund, LP and Monroe Capital Corporation as lenders (together, the “Prepetition Lenders”) and the Debtor as borrower are parties to the Credit Agreement dated as of December 17, 2012 (as amended, restated, modified and supplemented from time to time prior to the commencement of this Chapter 11 Case, the “Prepetition Credit Agreement”). Pursuant to that Guaranty and Collateral Agreement dated as of December 17, 2012, (as amended, restated, modified and supplemented from time to time, the

“Guaranty Agreement”), TPP Acquisition Holdings, LLC, guaranteed the Debtor’s obligations under the Credit Agreement and the Debtor pledged substantially of its assets to secure its obligations under the Prepetition Credit Agreement. The Prepetition Credit Agreement, the Guaranty Agreement, and all other agreements, documents, notes, certificates, and instruments executed and/or delivered with, to, or in favor of Prepetition Agent and/or Prepetition Lenders, including, without limitation, control agreements, mortgages, security agreements, guaranties, and UCC financing statements and all other related agreements, documents, notes, certificates, and instruments executed and/or delivered in connection therewith or related thereto therewith are referred herein collectively as the “Prepetition Financing Documents”.

13. As of the Petition Date, the Debtor was liable to the Prepetition Lenders under the Prepetition Financing Documents, on account of “Revolving Loans” and “Term Loans” in the approximate aggregate principal amount of \$41.2 million, plus interest accrued and accruing at the default rate, costs, expenses, fees (including attorneys’ fees and legal expenses), other charges and other obligations, including, without limitation, on account of cash management, credit card, depository, investment, leasing, hedging and other banking or financial services secured by the Prepetition Financing Documents (collectively the “Prepetition Debt”).

14. Pursuant to a letter agreement dated December 19, 2015 (the “Letter Agreement”), the Borrower and Holdings each acknowledged that various defaults and Events of Default had occurred and were continuing under the Pre-Petition Credit Agreement and other Pre-Petition Loan Documents, which Events of Default had not been waived as of the date thereof. As a result of the aforementioned Events of Default, in the Letter Agreement the Administrative Agent requested, and Holdings, and other affiliates agreed that Holdings would transfer all of the Capital Securities of Borrower to TPP Holdings, LLC (“TPP Holdings”), an

affiliate of the Pre-Petition Lenders and the designee specified by the Administrative Agent. Consistent with the terms of the Letter Agreement, Holdings and TPP Holdings entered into a certain Stock Transfer Agreement, dated as of December 19, 2015 (the “Stock Transfer Agreement”), pursuant to which Holdings transferred all of the issued and outstanding shares of common stock in Borrower to TPP Holdings, following which transfer TPP Holdings became, and remains today, the sole shareholder of the Borrower.

15. Various additional defaults and events of default had occurred and are continuing under the Prepetition Credit Agreement, which events of default have not been waived.

**C. Debtor’s Post-Petition Financing Arrangements**

16. Prior to the Petition Date, the Debtor and the Administrative Agent and Prepetition Lenders negotiated the terms of debtor in possession financing (“DIP Financing”) as described in more detail in Debtor’s Emergency Motion for Entry of Interim and Final Orders Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, and 507 and Fed. R. Bankr. P. 2002, 4001 and 9014 (I) Authorizing Debtor and Debtor in Possession to Obtain Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Super-Priority Claims, (IV) Granting Adequate Protection to Prepetition Lenders, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief (the “DIP Motion”) filed contemporaneously herewith. The DIP Financing will provide the Debtor with sufficient liquidity to fund operations and satisfy the administrative expenses contemplated in connection with the sale process.

17. As described more fully in the First Day Declaration and below, the proposed DIP Financing includes certain sale-related milestones that require the Debtor to implement a comprehensive sale process under the auspices of this Court and Chapter 11.

IV.

**RELIEF REQUESTED**

18. Based on the marketing process and diligence completed to date, the Debtor, in consultation with its professionals, has concluded that: (a) a prompt and open sale process involving the Assets, in which process all interested buyers are encouraged to participate, is the best way to maximize value for the estate under the circumstances, and (b) the proposed Bidding Procedures described herein are the most effective method of obtaining the highest and best offer for the Assets.

19. By this Motion, therefore, the Debtor seeks entry of the Bidding Procedures Order, pursuant to Bankruptcy Code sections 363, 365, 503, and 507, inter alia:<sup>1</sup>

a. authorizing and approving the proposed Bidding Procedures for the marketing and Sale of the Debtor's Assets;

b. approving and authorizing the Debtor to pay to the Stalking Horse Bidder the Bid Protections in the event such Bid Protections become payable under the terms of the Stalking Horse APA;

c. establishing **October 24, 2016 at 12:00 noon prevailing Central Time** (the "Bid Deadline") as the deadline for submitting a Qualified Bid (as such term is defined in the Bidding Procedures);

d. scheduling the Auction, if necessary, on **October 26, 2016** beginning at **10:00 a.m.** prevailing Central Time at the offices of Haynes and Boone 2323 Victory Ave, Suite 700, Dallas, TX 75219 scheduling the Sale Hearing before this Court to consider entry of the Sale Order approving and authorizing the Sale of the Assets on **October 28, 2016 at 9:30 a.m., prevailing Central Time**, scheduling a deadline to object to the Sale of **October 21, 2016 at 5:00 p.m., prevailing Central Time** (the "Sale Objection Deadline"), and approving the Auction and Sale Notice to be provided in connection therewith; and

e. establishing procedures as set forth herein relating to determining the Cure Amounts for the assumption and/or assignment of executory contracts and unexpired leases, including the form of the Assumption and Assignment Notice and the manner of service of the Assumption and Assignment Notice.

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<sup>1</sup> The proposed form of Bidding Procedures Order contains dates proposed by the Debtor. These dates are subject to the availability and approval of the Court and may change.

20. While the Debtor believes that the Stalking Horse APA is reasonable and reflects the best value for the Assets as of the date of this Motion, the Debtor nevertheless recognizes the prudence of placing the Stalking Horse APA to the test of the broader public marketplace in this bankruptcy such that better offers might be generated for the Sale of the Debtor's Assets. The Debtor believes that the Bidding Procedures provide an appropriate framework for selling the Assets and will enable the Debtor to review, analyze, and compare all bids received to determine which bid is in the best interests of the Debtor's estate and creditors. Accordingly, the Debtor requests that the Court approve the Bidding Procedures for purposes of soliciting offers to acquire the Assets, which acquisition would be consummated through a sale under Bankruptcy Code § 363.

21. In addition to the entry of the Bidding Procedures Order, the Debtor requests entry of the Sale Order:

a. authorizing and approving the sale of the Assets subject to the Stalking Horse APA or such other form of asset purchase agreement between the Debtor and the Successful Bidder at the Auction free and clear of all liens, claims, encumbrances, and other interests; and

b. authorizing and approving the assumption and assignment of certain executory contracts and unexpired leases.

**D. The Debtor's Prior Marketing Activities**

22. As part of efforts to cut costs, increase revenues, and obtain additional capital, the Debtor's board and management previously considered the possibility of selling the Debtor's business as a potential solution to its liquidity problems. In February 2014, the Debtor's board began analyzing a potential sale of the Debtor's business and continued related discussions throughout that year. Subsequently, in early 2015 the Debtor engaged Metronome Partners LLC ("Metronome") as its investment banker to market the company to potential buyers. The Debtor

and its management hoped that through a sale process they could find a buyer able to re-capitalize the business and thereby alleviate some of the liquidity pressures inherent in a seasonal business.

23. In connection with its marketing process, Metronome established a data room, prepared marketing materials, and contacted approximately 100 financial and strategic buyers about the prospect of acquiring the Debtor's business. Of those 100 prospects, Metronome distributed marketing materials to approximately 41 parties. Approximately 18 potential buyers executed non-disclosure agreements and conducted further due diligence to consider a potential transaction. Ultimately, the process did not result in a proposal acceptable to the Debtor.

24. More recently, in light of the continued financial and operational struggles of the Debtor described herein and in the First Day Declaration, the Debtor's leadership determined to launch a new sales process, supported by the protections available to a buyer under section 363 of the Bankruptcy Code, the bidding floor provided by the Stalking Horse APA, and the Debtor's new strategic partnerships described in the First Day Declaration. The Debtor believes that these features, combined with the timing of the upcoming busy holiday season, will lead to a productive process for the sale of the Debtor's assets.

## V.

### **DEBTOR'S MARKETING AND SALE PROCESS**

25. By this Motion, the Debtor seeks authority to sell its Assets to TPP Holdings, LLC (the "Stalking Horse Bidder"), in exchange for the following consideration (in each case pursuant to the terms and provisions contained in the Stalking Horse APA attached hereto as **Exhibit B**):

- (i) the assumption of Assumed Liabilities and

- (ii) a credit bid pursuant to section 363(k) of the Bankruptcy Code (a “*Credit Bid*”) in the amount of \$41,163,637.85 of the obligations under the Pre-Petition Credit Agreement plus the aggregate dollar amount of the DIP Financing Obligations outstanding as of the Closing Date.

26. The transactions provided for in the Stalking Horse APA are expressly subject to the Debtor’s ability to solicit and receive higher and/or better bids in accordance with the timeline and pursuant to the procedures set forth herein in the Stalking Horse APA and the proposed Bidding Procedures described hereinbelow. The Debtor believes that the Bidding Procedures proposed herein with respect to the sale of the Assets are the best way to maximize the value of these assets for the Debtor’s estate for creditors and stakeholders under the circumstances.

**A. The Marketing Process**

27. To facilitate the Debtor’s proposed marketing process and sale on an expedited basis, the Debtor, subject to Court approval, has engaged SSG Advisors, LLC (“SSG”) as its investment banker during the weeks leading up to the Petition Date. SSG has considerable experience aiding in the sale and marketing of financially distressed businesses through bankruptcy sale processes. In the days leading up to the Petition Date, SSG began developing marketing materials, establishing a data room, and reaching out to potential buyers. SSG is aggressively marketing the Debtor’s assets to identify potential buyers consistent with the schedule and the milestones described herein

**B. The Stalking Horse APA**

28. The Debtor and Stalking Horse Bidder have negotiated the terms of a Stalking Horse APA through which the Stalking Horse Bidder has agreed to acquire substantially all of the assets of the Debtor, subject to Court approval. The Stalking Horse APA contemplates that

the Stalking Horse Bidder's offer will be exposed, through a marketing and auction process, to potentially higher and/or better bids.

29. The following chart summarizes the terms and conditions of the Stalking Horse APA:<sup>2</sup>

<b>Term</b>	<b>Description</b>
Seller	TPP Acquisition, Inc.  <i>(see introductory paragraph of APA (pg. 1))</i>
Buyer	TPP Holdings, LLC  <i>(see introductory paragraph of APA (pg. 1))</i>
Purchase Price	The Purchase Price is comprised of the assumption of Assumed Liabilities and a Credit Bid in the amount of \$41,163,637.85 of the obligations under the Pre-Petition Credit Agreement plus the aggregate dollar amount of the DIP Financing Obligations outstanding as of the Closing Date.  <i>(see § 2.1 of APA)</i>
Purchased Assets	All of the Debtor's properties, rights, claims and assets of every kind and description, wherever situated or located, real, personal or mixed, tangible or intangible, contingent, owned, leased, or licensed, for use in or relating to the; provided, however, that, notwithstanding the foregoing or anything contained in the Stalking Horse APA to the contrary, the Purchased Assets shall not include any Excluded Assets.  <i>(see § 1.1 of APA)</i>
Assumed Liabilities	(a) all liabilities of Debtor arising from the ownership of the Purchased Assets, arising after the Closing Date; (b) all Liabilities and obligations of Seller under the Purchased Assets and under the Assigned Contracts; (c) all open purchase orders set forth on Schedule 1.3(c) arising out of the conduct of the Business and Liabilities arising under drafts or checks outstanding at the Closing incurred in the Ordinary Course of Business; (d) the obligations to provide benefits or payments under the Assumed Plans; and (e) certain Taxes.  <i>(see § 1.3 of APA)</i>
Excluded Assets	Certain electronic data; all agreements and contracts of

<sup>2</sup> This summary is qualified in its entirety by the Stalking Horse APA. All capitalized terms that are used in this summary but not otherwise defined herein shall have the meaning ascribed such term in the Stalking Horse APA. To the extent there are any conflicts or inconsistencies between this summary and the Stalking Horse APA, the terms of the Stalking Horse APA shall govern in all respects.

	<p>Seller other than the Assigned Contracts; certain personnel and corporate documents; various equity interests of the Debtor; any avoidance claims or causes of action under the Bankruptcy Code or applicable Law, and all other claims or causes of action solely relating to Excluded Assets or Excluded Liabilities; all Claims that Debtor may have against any Person solely with respect to any Excluded Assets or any Excluded Liabilities; Debtor’s rights under the Stalking Horse Agreement and related documents; all current and prior director and officer insurance policies of the Debtor and all rights of any nature with respect thereto; all deposits or pre-paid amounts funded by the Debtor for the purpose of the Bankruptcy Case; and all Benefit Plans except for the Assumed Plans; and certain Taxes.</p> <p><i>(see § 1.2 of APA)</i></p>
<p>Permitted Encumbrances</p>	<p>Encumbrances for utilities and current Taxes not yet due and payable or being contested in good faith; (ii) easements, rights of way, restrictive covenants, encroachments and similar non-monetary encumbrances or non-monetary impediments against any of the Purchased Assets which do not, individually or in the aggregate, adversely affect the operation of the Business and Leased Real Property, which do not, individually or in the aggregate, adversely affect the use or occupancy of such Leased Real Property as it relates to the operation of the Business or materially detract from the value of the Leased Real Property, (iii) applicable zoning Laws, building codes, land use restrictions and other similar restrictions imposed by Law, (iv) materialmans’, mechanics’, artisans’, shippers’, warehousemans’ or other similar common law or statutory liens incurred in the Ordinary Course of Business, (v) licenses granted on a non-exclusive basis , (vi) Encumbrances arising from the transfer of Intellectual Property pursuant to this Agreement relating to the past acts or prior commitments of Seller and all previous owners of such Intellectual Property and (vii) such other Encumbrances or title exceptions as Purchaser may approve in writing in its sole discretion or which do not, individually or in the aggregate, materially and adversely affect the operation of the Business.</p> <p><i>(see § 10.1(zzzz) of APA)</i></p>

30. In addition to the foregoing, the Stalking Horse APA includes certain protections for the Stalking Horse Bidder. In particular, upon Court approval of the Bidding Procedures

Order, if the Stalking Horse Bidder is not selected as the Successful Bidder, the Debtor will be required to reimburse the Stalking Horse Bidder for its expenses up to \$75,000 (the “Expense Reimbursement”) and to pay to the Stalking Horse Bidder a fee in the amount of one percent (1%) of the Acquisition Consideration contained in the Stalking Horse APA (the “Break-Up Fee” and, together with the Expense Reimbursement, the “Bid Protections”), (a) partially to reimburse the Stalking Horse Bidder for its reasonable, actual out-of-pocket expenses incurred in connection with the negotiation, preparation, execution, delivery, and attempted performance under the Stalking Horse APA, (b) partially to compensate the Stalking Horse Bidder for permitting the Debtor to shop its bid to other potential bidders, and (c) partially to compensate the Stalking Horse Bidder for the lost opportunity in the event the Stalking Horse APA is not the Successful Bid.<sup>3</sup>

**C. The Bidding Procedures**

31. The Debtor proposes to conduct the Sale of its Assets through the sale and bidding process described below (the “Proposed Sale Process”) to ensure that the estate realizes the maximum value for the Assets. The Assets shall be sold in the aggregate to one or more purchasers (each, a “Purchaser”), as may be determined by the Debtor in its business judgment.

32. To optimally and expeditiously solicit, receive, and evaluate bids in a fair and accessible manner, the Debtor has developed and proposed the Bidding Procedures to govern the sale process, which are annexed as **Exhibit 1** to the Bidding Procedures Order attached hereto as

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<sup>3</sup> In compliance with the *Guidelines for Early Disposition of Assets in Chapter 11 Cases, the Sale of Substantially All Assets Under Section 363, and Overbid and Topping Fees*, the Debtor notes that the Stalking Horse Bidder is requiring the Bid Protections as part of the Stalking Horse APA, and no other offers were recently received for the Debtor’s assets. In addition, as set forth in section 6.1 of the Stalking Horse APA, the Stalking Horse Bidder contemplates hiring substantially all of the Debtor’s employees. The Debtor carefully considered the proposed amount of the Bid Protections and submits that the amount is relatively modest compared to other sale processes approved in this District.

**Exhibit A.** The Bidding Procedures are designed to encourage all entities to put their best bids forward and to maximize the value that can be realized for the Assets.

33. The material terms of the Bidding Procedures as summarized as follows:<sup>4</sup>

**Provisions Governing Qualifications of Bidders and Bids**

- Parties who may be interested in purchasing the Assets should contact Debtor's investment banker, SSG Capital Advisors, LLC Attn: J. Scott Victor and Teresa Kohl, Five Tower Bridge, Suite 420, 300 Barr Harbor Drive, West Conshohocken, PA 19428, [jsvictor@ssgca.com](mailto:jsvictor@ssgca.com) [tkohl@ssgca.com](mailto:tkohl@ssgca.com) and request a confidentiality agreement (a "Confidentiality Agreement"). Upon execution of a Confidentiality Agreement, parties will be given access to the Debtor's on-line data room (the "Due Diligence Data Room") and may begin conducting due diligence.
- Qualified Bids. In order to constitute a Qualified Bid (as defined below), any proposal, solicitation or offer for the Assets (each, a "Bid") submitted by a bidder (each, a "Bidder") must (i) be submitted in writing prior to the Bid Deadline, October 24, 2016 at 12 noon. (Central Time) and (ii) satisfy the following requirements, as determined by the Debtor in its reasonable business judgment (collectively, the "Bid Requirements"):
  - i. Contain a signed definitive purchase and sale agreement (together with a copy of the signed agreement that is marked to show changes from the Stalking Horse APA) (a "Qualified APA") and shall: (i) identify the Assets the Bidder seeks to purchase, (ii) contain the form of and total consideration to be paid by such Bidder, including the amount of proposed cash consideration and the liabilities to be assumed, (iii) include cash consideration of more than \$150,000 more than the sum of the Acquisition Consideration plus the Bid Protections and shall contemplate assumption of the Assumed Obligations and generally contain terms no less favorable (in the Debtor's reasonable business judgment) than the Stalking Horse APA, including after consideration of the Bid Protections, and (vi) not be subject to any: (a) financing contingency, (b) contingency relating to due diligence after the Bid Deadline, (c) contingency relating to the approval of the Bidder's board of directors or other internal approvals or non-governmental third-party consents or approvals, or (d) any conditions precedent to the Bidder's obligation to purchase the Assets other than those included in the Stalking Horse APA.

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<sup>4</sup> This summary is qualified in its entirety by the Bidding Procedures. All capitalized terms that are used in this summary but not otherwise defined herein shall have the meaning ascribed such term in the Bidding Procedures. To the extent there are any conflicts or inconsistencies between this summary and the Bidding Procedures, the terms of the Bidding Procedures shall govern in all respects.

- ii. Be accompanied by the provision of a certified or bank check or wire transfer in the amount of at least 5% of the purchase price proposed in the Qualified APA as a good faith deposit (the “Good Faith Deposit”). The Good Faith Deposit shall be held and credited to the closing payment if the Bidder is ultimately determined to be the Successful Bidder (as defined below), if any closing payment is due, or to be returned to the Bidder in whole or in part as applicable if the Bidder is not the Successful Bidder or the Backup Successful Bidder (as defined in the Bidding Procedures). In the event that a Bidder is selected as the Backup Successful Bidder, the Good Faith Deposit shall be returned to the Backup Successful Bidder within three (3) business days following the closing of a Sale to the Successful Bidder.
- iii. Contain a written statement that the Bidder agrees to be bound by the terms of the Bidding Procedures and the Bidding Procedures Order and include a commitment that the Bidder shall consummate the purchase of the relevant Assets by November 4, 2016 following entry of the Sale Order.
- iv. Identify, with particularity, each and every executory contract and unexpired lease it intends to assume; provided, however, that such list of contracts may be later modified to the extent permitted under the Qualified APA.
- v. Be accompanied by evidence satisfactory to the Debtor that the Bidder is willing, authorized (including by such Bidder’s board of directors or comparable governing body), capable and qualified financially, operationally, legally and otherwise, of unconditionally performing all obligations under the Qualified APA, including, without limitation, (1) all Assumed Obligations with respect to the relevant Assets and (2) the ability to provide adequate assurance of future performance under contracts and leases to be assumed pursuant to Section 365 of the Bankruptcy Code.
- vi. Provide (i) that the Bidder agrees to serve as the Backup Successful Bid (as defined in the Bidding Procedures) if it is selected as the next highest and best bid for any particular Assets after the Successful Bid is determined in accordance with the Bidding Procedures and (ii) that the Bidder’s Bid shall remain open and irrevocable until at least thirty (30) days after the entry of an order by the Court approving a definitive agreement providing for the Sale of those Assets.
- vii. Fully disclose the identity of each entity that will be bidding in any Auction scheduled by the Debtor.
- viii. Be submitted to (i) counsel to the Debtor, Robert D. Albergotti and Ian T. Peck, Haynes and Boone LLP, 2323 Victory Ave, Suite 700, Dallas, TX 75219, [robert.albergotti@haynesboone.com](mailto:robert.albergotti@haynesboone.com) and

[ian.peck@haynesboone.com](mailto:ian.peck@haynesboone.com); (ii) the Debtor's investment banker, SSG Capital Advisors, LLC Attn: J. Scott Victor and Teresa Kohl, Five Tower Bridge, Suite 420, 300 Barr Harbor Drive, West Conshohocken, PA 19428, [jsvictor@ssgca.com](mailto:jsvictor@ssgca.com) [tkohl@ssgca.com](mailto:tkohl@ssgca.com); and (iii) counsel for the Stalking Horse Bidder, Riemer & Braunstein LLP (Attn: Donald Rothman, Esq. and Steven E. Fox, Esq.), Times Square Tower, Seven Times Square, Suite 2506, New York, NY 10036 (Email: [drothman@riemerlaw.com](mailto:drothman@riemerlaw.com); [sfox@riemerlaw.com](mailto:sfox@riemerlaw.com)) and Vinson & Elkins L.L.P., Trammell Crow Center, 2001 Ross Avenue, Suite 3700, Dallas, Texas 75201-2975 (Attn: Josiah M. Daniel, III) (Email: [jdaniel@velaw.com](mailto:jdaniel@velaw.com)); so as to be received not later than the Bid Deadline, October 24, 2016 at 5:00 p.m. (Central Time).

- **Notice of Qualified Bidders.** A Bid that satisfies each of the Bid Requirements, as determined in the Debtor's reasonable business judgment shall constitute a "Qualified Bid," and such Bidder shall be a "Qualified Bidder." The Debtor shall notify each Qualified Bidder that such party is a Qualified Bidder before the Auction. The Stalking Horse APA shall be deemed a Qualified Bid and Stalking Horse Bidder shall be deemed a Qualified Bidder.
- **Evaluation of Competing Bids.** The Bidding Procedures set forth various factors that will be considered by the Debtor in evaluating each Qualified Bid. The Debtor will evaluate competing bids in a manner that will maximize the aggregate value to its estate rather than maximize value from individual Assets.
- **Auction.** In the event the Debtor receives any Qualified Bids other than the Stalking Horse APA, the Debtor may determine, in the exercise of sound business judgment, to schedule an Auction to request additional competitive bids from Qualified Bidders. The Debtor shall determine which Qualified Bid shall constitute the Baseline Bid (as defined in the Bidding Procedures) for purposes of the Auction. The Debtor shall notify each Qualified Bidder of the contents of the Baseline Bid. The Baseline Bid shall be subject to higher and better Bids at the Auction, as described further below.
- **No Qualified Bids.** If the Debtor does not receive any Qualified Bids with respect to any or all of the Assets, other than the Stalking Horse APA, the Debtor shall report the same to the Court, and shall promptly proceed to seek entry of the appropriate orders approving the Sale pursuant to the Stalking Horse APA.

### **Notice Procedures**

- **Notice of Auction and Sale Hearing.** After entry of the Bidding Procedures Order, the Debtor will cause the Auction and Sale Notice, substantially in the form attached to the Bidding Procedures Order as **Exhibit 2**, to be served by first-class mail, postage prepaid, facsimile, electronic transmission, or overnight mail upon: (i) all entities known by the Debtor to have expressed an interest in a transaction with respect to the Assets; (ii) all state and local taxing authorities or recording

offices which have a reasonably known interest in the relief requested; (iii) all insurers; (iv) all non-debtor parties to relevant contracts or leases (executory or otherwise); (v) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or other interest in the Assets; and (vi) upon all parties set forth in the Debtor's Master Service List maintained in these cases (to the extent any party to receive notice thereby would not receive notice pursuant to sections (i) through (v) above).

- Assumption and Assignment Notice. As soon as is practicable after entry of the Bidding Procedures Order, the Debtor will file with the Bankruptcy Court and serve the Assumption and Assignment Notice, substantially in the form attached to the Bidding Procedures Order as **Exhibit 3**, by first class mail, facsimile, electronic transmission, or overnight mail on (a) each counterparty under each potential Assumed and Assigned Contract (as defined below) (a "Contract Counterparty") and (b) its attorney, if known, in each case, at the last known address available to the Debtor. The Assumption and Assignment Notice shall set forth the following information: (i) the Contract(s) and/or Lease(s) that may be assumed by the Debtor and assigned to the Successful Bidder(s); (ii) the name and address of the Contract Counterparty thereto; (iii) the amount, if any, determined by the Debtor to be necessary to be paid to cure any existing default in accordance with Sections 365(b) and 365(f)(2) of the Bankruptcy Code (the "Cure Amount"); and (iv) the deadlines by which any such Contract Counterparty must file an objection to the proposed assumption and assignment of any Assumed and Assigned Contract, provided, however, that the presence of any Contract or Lease on the Assumption and Assignment Notice does not constitute an admission that such Contract or Lease is an executory contract or unexpired lease.

### Auction

- Auction. In the event that the Debtor determines to conduct an Auction, the Auction will commence on October 26, 2016 at 10:00 a.m. (Central Time) at the offices of Haynes and Boone LLP, 2323 Victory Ave, Suite 700, Dallas, TX 75219. To participate in the Auction, each prospective purchaser must be a Qualified Bidder. Each Qualified Bidder must have at least one (1) individual representative with authority to bind the Qualified Bidder attend the Auction in person. Only Qualified Bidders and their legal and financial advisors shall be entitled to attend and/or bid at the Auction. By attending the Auction, each party present at the Auction agrees to keep the Auction, the Bids at the Auction, and all details concerning the Auction confidential. The Auction shall be conducted in the presence of a certified court reporter who shall transcribe the Auction.
  - i. A Qualified Bidder wishing to submit a bid at the Auction must submit a bid containing aggregate consideration of at least \$25,000 more than the total consideration contained in the Baseline Bid (the "Minimum Overbid").

- ii. Subject to the Minimum Overbid, Qualified Bidders shall submit successive bids in increments to be determined by the Debtor at the Auction (the “Incremental Bid Amount”) for the purchase of the Assets for which it is bidding until there is only one offer that the Debtor determines, subject to Court approval, is the highest and/or best offer for such assets (a “Successful Bid” and such Bidder, the “Successful Bidder”). The second highest bid, to the extent determined to be acceptable to the Debtor shall be deemed to be the backup bid (the “Backup Successful Bid” and such Bidder, the “Backup Successful Bidder”), provided, however, that the Stalking Horse Bidder shall not be required to serve as the Backup Successful Bidder in connection with a credit bid. In the event that the Stalking Horse Bidder makes a determination not to serve as the Backup Successful Bidder (whether before or after submitting any credit bid or other bid), the Stalking Horse Bidder shall provide notice to the Debtor no later than one (1) business day after the Auction, and the third highest bidder, to the extent determined to be acceptable to the Debtor shall be deemed to be the Backup Successful Bidder.
  - iii. All Bids made at the Auction shall remain open until the earlier of (i) if the Bidder submits the Successful Bid or is deemed to be the Backup Successful Bidder, thirty (30) days after the entry of an order by the Court approving a definitive agreement providing for the Sale of those Assets to which it relates, and (ii) if the Qualified Bidder is not selected as a Successful Bidder or the Backup Successful Bidder, three (3) days after the end of the Auction with respect to the relevant Assets it has bid on.
  - iv. The Debtor shall have the right to choose the order in which the Assets are put up for Auction.
- Highest and/or Best Bid. At all times during the Proposed Sale Process, the Debtor shall retain the right to determine which Bid or Bids constitutes the highest or otherwise best offer for the purchase of the Assets (whether in an aggregate sale to a single buyer or on an asset by asset basis), and which Bid or Bids should be selected as the Successful Bid(s), if any, all subject to final approval by the Court pursuant to the provisions of Section 363(b) of the Bankruptcy Code. The Debtor may adopt rules for the Auction that, in its judgment, will better promote the goals of the Auction and that are not inconsistent in any material respect with any of the other material provisions hereof or of any Court order.
  - Proceeds. All valid and properly perfected liens against the Assets shall attach to the proceeds of the Sale of such Assets.

### Sale Hearing

- Sale Hearing. As soon as is practicable following the conclusion of the Auction, the Debtor will present the Successful Bid(s) for approval by the Court pursuant

to the provisions of Sections 105, 363(b), 363(f), 363(m), 363(n), and 365 of the Bankruptcy Code at the Sale Hearing to be scheduled by the Court and requested to be held on or before October 28, 2016. The Debtor shall be deemed to have accepted a Bid only when the Bid has been approved by the Court at the Sale Hearing. Upon the failure to consummate a Sale of the Assets after the Sale Hearing because of the occurrence of a breach or default by the proposed purchaser under the terms of the Successful Bid, the Backup Successful Bid shall be deemed the Successful Bid without further order of the Court, and the parties shall be authorized to consummate the transactions contemplated by the Backup Successful Bid.

- Sale Implementation. Following the approval of the Successful Bid(s) at the Sale Hearing, the Debtor will be authorized to take any and all actions necessary and appropriate to facilitate the closing of the Sale (the “Closing”) and implement the transactions contemplated by the Successful Bid(s).

#### **D. Assumption and Assignment of Leases and Contracts**

34. In addition, to facilitate the sale, assumption, and assignment of the Leases and Contracts to be assumed and assigned to the Successful Bidder(s) (the “Assumed and Assigned Contracts”), the Debtor proposes to serve and file with the Court the Assumption and Assignment Notice as soon as practicable after the entry of the Bidding Procedures Order and request that the Court approve the following procedures for fixing any cure amounts owed on the Leases and Contracts (the “Assumption and Assignment Procedures”). The Assumption and Assignment Notice shall set forth the following information: (i) the Contract(s) and/or Lease(s) that may be assumed by the Debtor and assigned to the Successful Bidder(s); (ii) the name and address of the Contract Counterparty thereto; (iii) the Cure Amount, if any, determined by the Debtor necessary to be paid to cure any existing default in accordance with Sections 365(b) and 365(f)(2) of the Bankruptcy Code; and (iv) the deadlines by which any such Contract Counterparty must file an objection to the proposed assumption and assignment of any Assumed and Assigned Contract.

35. All objections to any assumption and assignment of any Lease or Contract, including without limitation any objection to the Debtor’s proposed Cure Amount or the

provision of adequate assurance of future performance under any Lease or Contract pursuant to Section 365 of the Bankruptcy Code (“Adequate Assurance”), must: (a) comply with the General Objection Procedures (as defined below); (b) identify the Lease or Contract to which the objector is party; (c) describe with particularity any cure the claimant contends is required under Section 365 of the Bankruptcy Code (the “Cure Claim”) and identify the basis(es) of the alleged Cure Claim under the Contract or Lease; (d) attach all documents supporting or evidencing the Cure Claim; and (e) if the response contains an objection to Adequate Assurance, state with specificity what the objecting party believes is required to provide Adequate Assurance (collectively with the General Objection Procedures, the “Assigned Contract Objection Procedures”).

36. If no objection is timely and properly filed and served in accordance with the Assigned Contract Objection Procedures, (a) the Cure Amount set forth in the Assumption and Assignment Notice shall be controlling notwithstanding anything to the contrary in any Contract or Lease or other document and the non-debtor party to the Contract or Lease shall be forever barred from asserting any other claim arising prior to the assignment against the Debtor or Purchaser as to such Contract or Lease if it is an Assumed and Assigned Contract, and (b) the Purchaser’s promise to perform under the Contract or Lease shall be deemed Adequate Assurance under the Contract or Lease. To the extent the Debtor dispute any Cure Claim, such dispute shall be presented to the Court at the Sale Hearing, or such earlier or later date and time as the Debtor and the objector may agree or the Court may order, but such dispute shall not affect in any way the effectiveness of any assumption and assignment of a Contract or Lease. All Cure Amounts shall be paid by the Purchaser.

37. While the Debtor has made a good faith effort to identify all Contracts and Leases to be assumed and assigned in connection with the Sale, working with the Stalking Horse Bidder

it may discover additional Contracts and/or Leases that the Debtor and the Purchaser desire to assume and assign in connection therewith. Accordingly, if at any time after the entry of the Bidding Procedures Order the Debtor identify additional prepetition executory Contracts and/or Leases to be assumed and assigned to the Purchaser as Assumed and Assigned Contracts (whether before or after closing of any Sale(s) of relevant Assets), the Debtor shall serve a supplemental Assumption and Assignment Notice by first class mail, facsimile, electronic transmission, or overnight mail on the Contract Counterparty (and its attorney, if known) to each supplemental Assumed and Assigned Contract at the last known address available to the Debtor by no later than ten (10) days before the proposed effective date of the assignment. Each supplemental Assumption and Assignment Notice shall set forth the following information: (i) the name and address of the Contract Counterparty, (ii) notice of the proposed effective date of the assignment (subject to the right of the Debtor and Purchaser to withdraw such request for assumption and assignment of the Assumed and Assigned Contract prior to the Closing), (iii) identification of the Assumed and Assigned Contract, and (iv) the Cure Amount, if any.

38. Unless the Contract Counterparty or any other entity properly files an objection to the supplemental Assumption and Assignment Notice in accordance with the General Objection Procedures (as defined below) within ten (10) days of the date of the Assumption and Assignment Notice, the Debtor may assume and assign the Assumed and Assigned Contract, subject to the occurrence of the Closing, without further order or notice of hearing. If an objection is filed and served in accordance with the General Objection Procedures within ten (10) days of the date of the supplemental Assumption and Assignment Notice, and the objection cannot be resolved consensually, then the Debtor will request that the Court schedule a hearing to consider the objection.

**E. Notice**

39. The Debtor proposes to give notice, immediately after the entry of the Bidding Procedures Order, of the Bidding Procedures, the Stalking Horse APA, the Assumption and Assignment Notice, the time and place of the Auction, the Sale Hearing, and the Sale Objection Deadline to all entities known by the Debtor to have expressed an interest in a transaction with respect to the Assets, including all Qualified Bidders, and upon all parties set forth in the Debtor's Master Service List maintained in these cases. After entry of the Bidding Procedures Order, the Debtor will cause the Auction and Sale Notice and the Assumption and Assignment Notice substantially in the forms attached to the Bidding Procedures Order as Exhibits 2 and 3 respectively to be served by first-class mail, postage prepaid, facsimile, electronic transmission, or overnight mail upon: (i) all entities known by the Debtor to have expressed an interest in a transaction with respect to the Assets, including all Qualified Bidders; (ii) all state and local taxing authorities or recording offices which have a reasonably known interest in the relief requested; (iii) all insurers; (iv) all non-debtor parties to relevant contracts or leases (executory or otherwise); (v) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or other interest in the Assets; and (vi) upon all parties set forth in the Debtor's Master Service List maintained in these cases (to the extent any party to receive notice thereby would not receive notice pursuant to sections (i) through (v) above).

**F. Objections**

40. All objections to the Sale of the Assets, the assumption and assignment of the Assumed and Assigned Contracts, or any relief requested in the Motion other than the relief granted by this Court in the Bidding Procedures Order must be: (a) in writing; (b) signed by counsel or attested to by the objecting party; (c) in conformity with the Bankruptcy Rules and

applicable local rules; (d) filed with the Bankruptcy Court, by no later than 5:00 p.m. (Central Time) on October 21, 2016, prevailing Central Time, 2016 (the “General Objection Deadline”); and (e) served in accordance with applicable local rules so as to be received on or before the relevant objection deadline by the following (collectively, the “Objection Notice Parties”): (i) counsel for the Debtor, Robert D. Albergotti and Ian T. Peck, Haynes and Boone LLP, 2323 Victory Ave, Suite 700, Dallas, TX 75219, robert.albergotti@haynesboone.com, ian.peck@haynesboone.com; (ii) co-counsel for the Stalking Horse Bidder, Riemer & Braunstein LLP, Times Square Tower, Seven Times Square, New York, New York 10036 (attn.: Donald E. Rothman, Esq. and Steven E. Fox, Esq.) Email: drothman@riemerlaw.com; sfox@riemerlaw.com; and Vinson & Elkins L.L.P., 3700 Trammell Crow Center, 2001 Ross Avenue, Suite 3700, Dallas, TX 75201-2975 (attn.: Josiah M. Daniel, III), Email: jdaniel@velaw.com; (iii) Office of the United States Trustee for the Northern District of Texas, 1100 Commerce St # 976, Dallas, TX 75242. These procedures are collectively referred to as the “General Objection Procedures”. Each objection shall state the legal and factual basis of such objection.

## V.

### Additional Information Regarding Proposed Sale

41. The Debtor has provided much of the information referenced in Section B of the Northern District of Texas *Guidelines for Early Disposition of Assets in Chapter 11 Cases, the Sale of Substantially All Assets Under Section 363, and Overbid and Topping Fees* (the “*Guidelines*”) in the text of this Motion and exhibits hereto and the First Day Declaration. The Debtor notes the following additional information not otherwise disclosed elsewhere:

- No creditors’ committee existed prior to the Petition Date.<sup>5</sup>

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<sup>5</sup> See Guidelines §§ B.1.a., B.1.b.

- The Stalking Horse APA contains no contingencies except the conditions to closing contained in Article IX thereof.<sup>6</sup>
- The administrative expenses (including insider compensation) that the Debtor will incur in the sale process are set forth in the DIP Motion and budget submitted therewith.<sup>7</sup>
- The Debtor accepted the Stalking Horse Bidder's offer on September 1, 2016.<sup>8</sup>

## **VI.**

### **Basis for Relief Requested**

42. By this Motion, the Debtor requests the entry of two orders concerning sales of the Assets. First, to provide for the orderly sale of the Assets, the Debtor seeks the expedited entry of the Bidding Procedures Order approving the Bidding Procedures summarized above. This relief requested by the Debtor is intended to provide for a competitive bidding and auction procedure for the Assets to maximize value for its estate, creditors and other stakeholders as expeditiously as possible.

43. Following the entry of the Bidding Procedures Order, the Debtor will solicit Bids according to the Bidding Procedures in hopes of receiving acceptable offers for the Assets. In the event that more than one Qualified Bid is received prior to the Bid Deadline, the Debtor will hold an Auction at which they will choose the Successful Bidder(s) with the highest and/or best Bid(s) for the Assets.

44. Following the Bid Deadline and after the Auction, if any, the Debtor will request the entry of the Sale Order, subject to any comments by the Successful Bidder and submitted to the Court prior to the Sale Hearing, approving the Sale or Sales of the Assets free and clear of (i) all liens relating to, accruing, or arising any time prior to the Closing Date, including, without

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<sup>6</sup> *Id.* § B.1.c.

<sup>7</sup> *Id.* §§ B.1.e., B.1.o.

<sup>8</sup> *Id.* § B.1.k.

limitation, any such liens (x) that purport to give to any party a right of setoff or recoupment against, or a right or option to effect any forfeiture, modification, profit sharing interest, right of first refusal, purchase, or repurchase right or option, or termination of, the Debtor's interests in the Assets (as such terms are defined in the Sale Order), or any similar rights, or (y) in respect of taxes, restrictions, rights of first refusal, charges of interests of any kind or nature, if any, including, without limitation, any restriction of use, voting, transfer, receipt of income, or other exercise of any attributes of ownership) (with such liens attaching to the proceeds of the sale or sales) (the "Liens") and (ii) all debts arising under, relating to, or in connection with any act of the Debtor or claims (as that term is defined in Section 101(5) of the Bankruptcy Code), liabilities, obligations, demands, guaranties, options, rights, contractual commitments, restrictions, interests, and matters of any kind and nature, whether arising prior to or subsequent to the commencement of this case, and whether imposed by agreement, understanding, law, equity or otherwise relating to, accruing or arising any time prior to the Closing Date (collectively in this clause (ii), the "Claims" and together with Liens, the "Claims and Interests"), with the exception of any Assumed Obligations, as defined in the Stalking Horse APA, to the Successful Bidder(s) and (b) authorizing the Debtor to assume and assign the Assumed and Assigned Contracts.

**G. The Bidding Procedures Are Appropriate Under the Circumstances**

45. A debtor may sell, after notice and a hearing, its assets outside the ordinary course of business. 11 U.S.C. § 363. Generally, to obtain approval of a proposed sale of assets, a debtor must demonstrate that the "proffered purchase price is the highest and best offer" under the circumstances of the case. *See, e.g., Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 564-65 (8th Cir. 1997) (holding that in bankruptcy sales, "a primary objective of the Code [is] to enhance the value of the estate at hand"); *In re Integrated*

*Res.*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (“It is a well-established principle of bankruptcy law that the . . . Debtor’s duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.”) (quoting *Cello Bay Co. v. Champion Int’l Corn. (In re Atlanta Packaging Prods., Inc.)*, 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988)).

46. The implementation of competitive bidding procedures to facilitate the sale of a debtor’s assets outside of the ordinary course of a debtor’s business is routinely approved by bankruptcy courts as a means of ensuring that such sale will generate the highest and best return for a debtor’s estate. The Debtor submits that the foregoing Bidding Procedures and the opportunity for competitive bidding embodied therein are reasonable and designed to maximize the value of the Assets and should, therefore, be approved by this Court.

47. Given the Debtor’s current liquidity constraints and its extremely precarious position in relation to its landlords, customers, and vendors, the Debtor believes that an expeditious sale process is the best way to maximize the value of the Assets for the benefit of the Debtor’s estate, creditors and other stakeholders. The Debtor is well positioned to conduct an auction of its Assets on the timetable set forth herein to avoid any further decline in the value of its Assets. Because the Debtor operates a retail business and has limited resources available to maintain customer loyalty going forward, any delay in the sale process will continue to reduce the potential value that the Debtor can obtain for its Assets. The Debtor believes that the value of the Assets and, therefore, the consummation of the Sale or any alternative transaction, will be seriously jeopardized unless it can begin the sale process contemplated herein as expeditiously as possible.

48. Accordingly, in the exercise of reasonable business judgment, the Debtor has concluded that: (a) a prompt sale of the Assets is the best way to maximize value for its estate,

and (b) the proposed Bidding Procedures described herein are the most effective method of obtaining the highest and best offer for the Assets.

**H. Sale of the Assets is An Exercise of the Debtor's Reasonable Business Judgment**

49. Bankruptcy Code § 363(b)(1) provides: “[t]he Trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” Bankruptcy Code § 105(a) provides in relevant part: “The Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”

50. Courts have held that approval of a proposed sale of substantially all of the assets of a debtor under Bankruptcy Code § 363 outside the ordinary course of business and prior to the confirmation of a plan of reorganization is appropriate if a court finds that the transaction represents a reasonable business judgment on the part of the trustee or debtor-in-possession. *See In re Abbotts Dairies of Pa.*, 788 F.2d 143 (3d Cir. 1986); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991) (holding that the following non-exclusive list of factors may be considered by a court in determining whether there is a sound business purpose for an asset sale: “the proportionate value of the asset to the estate as a whole; the amount of elapsed time since the filing; the effect of the proposed disposition of [sic] the future plan of reorganization; the amount of proceeds to be obtained from the sale versus appraised values of the property; and whether the asset is decreasing or increasing in value.”); *In re Stroud Ford, Inc.*, 164 B.R. 730, 732 (Bankr. M.D. Pa 1993); *Titusville Country Club v. Pennbank (In re Titusville Country Club)*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); *In re Industrial Valley Refrigeration & Air Conditioning Supplies Inc.*, 77 B.R. 15, 21 (Bankr. E.D. Pa. 1987); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983); *Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 391 (6th Cir. 1986); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that the elements necessary for approval of a

Section 363 sale in a chapter 11 case are “that the proposed sale is fair and equitable, that there is a good business reason for completing the sale and the transaction is in good faith”). Early stage asset sales are fairly common in the Northern District of Texas, and the District has developed the Guidelines to permit the early stage sale of assets in appropriate circumstances.

51. The “sound business reason” test requires a trustee or debtor-in-possession to establish four elements: (1) that a sound business purpose justifies the sale of assets outside the ordinary course of business; (2) that accurate and reasonable notice has been provided to interested persons; (3) that the trustee has obtained a fair and reasonable price; and (4) good faith. *In re Titusville Country Club*, 128 B.R. at 399; *In re Sovereign Estates, Ltd.*, 104 B.R. 702, 704 (Bankr. E.D. Pa. 1989); *Phoenix Steel Corp.*, 82 B.R. at 335-36; *see also Stephens Indus.*, 789 F.2d at 390; *In re Lionel Corp.*, 722 F.2d at 1071.

52. Additionally, prior to and after enactment of the Bankruptcy Code, courts have permitted a proposed sale of all or substantially all assets of a debtor outside the ordinary course of business if such a sale is necessary to preserve the value of assets for the estate, its creditors or interest holders. *See In re Abbotts Dairies of Pa., Inc.*, 788 F.2d at 143; *In re Lionel Corp.*, 722 F.2d at 1063 (passim); *In re Equity Funding Corp. of America*, 492 F.2d 793, 794 (9th Cir. 1974) (“Other circuits have recognized the power of the bankruptcy court under Chapter X to authorize a sale of the Debtor’s property under less than emergency conditions where such sale is necessary to avoid deterioration in the value of the assets”).

53. The proposed procedures for Sale of the Debtor’s Assets meet the “sound business reason” test. First, sound business purposes justify the sale. The Debtor believes that the prompt Sale of the Assets by auction presents the best opportunity to realize the maximum value of the estate’s assets for distribution to creditors and is required under the terms of the

Debtor's proposed DIP Facility. The Debtor further believes that the net benefit to its creditors may be adversely affected absent an immediate Sale, as a result of the Debtor's continued inability to service its customers and satisfy obligations to landlords. Furthermore, the Debtor continues to incur costs that, if a Sale is not consummated promptly, will erode the value of the Debtor's estate, including such costs as maintenance, utility charges, and overhead expenses. *See In re Lionel Corp.*, 722 F.2d at 1071 (of factors for court to evaluate on motion under Section 363(b), "most important perhaps, [is] whether the asset is increasing or decreasing in value").

54. The proposed procedures for Sale(s) of the Assets also meet the other factors of the "sound business reason" test. As part of this Motion, the Debtor has sought to establish procedures for notice to creditors, other prospective bidders, and other parties in interest. Under the circumstances of these cases, the Debtor submits that the notice period proposed satisfies the requirements of the Bankruptcy Rules, including Bankruptcy Rule 2002, and provides sufficient time for parties in interest to submit objections to the proposed sale and for bidders to formulate and submit competing proposals.

55. Finally, the Debtor submits that the results of the Auction will be the product of good faith, arm's length negotiations with respect to the price and other terms of the Sales of the Assets between the Debtor and highest and best Bidder at the conclusion of the Auction.

56. As set forth above, the Debtor has determined, in the exercise of sound business judgment, that the Sale of the Assets to the highest and best Bidder at the Auction is appropriate and in the best interests of the Debtor's estate and creditors. The sale of the Assets at the Auction will afford the Debtor's estate an opportunity to maximize the recoveries to creditors. Accordingly, the Debtor requests that the Court approve the proposed procedures for Sales of the

Assets to the highest or otherwise best bidder at the Auction and approve the Sale presented to the Court at the Sale Hearing.

**I. The Successful Bidder Should Be Granted the Protections of Bankruptcy Code § 363(m)**

57. As will be set forth in further detail at the Sale Hearing, the Debtor also maintains that the Successful Bidder should be entitled to the protections afforded by Bankruptcy Code § 363(m).

58. Specifically, Bankruptcy Code § 363(m) provides that:

[t]he 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,” “[t]he requirement that a purchaser act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser’s good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.” *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 147 (3d Cir. 1986) (citations omitted); *see generally Marin v. Coated Sales, Inc.*, (*In re Coated Sales, Inc.*), Case No. 89-3704 (KMW), 1990 WL 212899 (S.D.N.Y. Dec. 13, 1990) (holding that a party, to show lack of good faith, must demonstrate “fraud, collusion, or an attempt to take grossly unfair advantage of other bidders”); *see also In re Sasson Jeans, Inc.*, 90 B.R. 608, 610 (S.D.N.Y. 1988) (quoting *In re Bel Air Assocs., Ltd.*, 706 F.2d 301, 305 (10th Cir. 1983)); *In re Pisces Leasing Corp.*, 66 B.R. 671, 673 (E.D.N.Y. 1986) (examining facts of each

case, concentrating on “integrity of [an actor’s] conduct during the sale proceedings” (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)).

60. As the Debtor will demonstrate at the Sale Hearing, any Successful Bidder shall have negotiated and dealt with the Debtor at arm’s length. Under these circumstances, this Court should find in the order approving the sale of the Assets that Successful Bidder is entitled to all of the protections of Bankruptcy Code § 363(m).

**J. The Purchase and Sale Agreement is Not the Result of Collusive Bidding Under Section 363(n) of the Bankruptcy Code**

61. As set forth above, the Debtor will select the Successful Bidder for the Sale of the Assets at arm’s length and in good faith. Moreover, the Debtor does not believe that any such Sale will be the result of collusion or other bad faith between Bidders or that the sale price under a definitive purchase and sale agreement of a Successful Bidder will be controlled by an agreement between potential or actual bidders within the meaning of Bankruptcy Code Section 363(n).

62. As the Debtor will demonstrate at the Sale Hearing, the Stalking Horse APA or a definitive purchase and sale agreement of a Successful Bidder will be negotiated, proposed, and entered into by the Debtor and the Stalking Horse Bidder or such Successful Bidder, as applicable, without collusion, in good faith, and from arm’s-length bargaining positions. Neither the Debtor nor the Stalking Horse Bidder or a Successful Bidder will have engaged in any conduct that would cause or permit the Stalking Horse APA or a definitive purchase and sale agreement of a Successful Bidder, as applicable, to be avoided under Bankruptcy Code Section 363(n).

**K. Sale of the Assets Should Be Free and Clear of Claims and Interests**

63. Pursuant to Bankruptcy Code § 363(f), the Debtor seeks authority to sell and transfer the Assets to all Purchasers free and clear of all Claims and Interests, with such Claims and Interests to attach to the proceeds of the Sale of the Assets, subject to any rights and defenses of the Debtor and other parties in interest with respect thereto. Bankruptcy Code § 363(f) provides, in pertinent part:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if –

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) 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). *See also In re Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988) (holding that because Bankruptcy Code § 363(f) is written in the disjunctive, a court may approve a sale “free and clear” if at least one of the requirements is met).

64. A sale free and clear of all Claims and Interests is necessary to maximize the value of the Assets. A sale subject to Claims and Interests would result in a lower purchase price and be of substantially less benefit to the Debtor’s estate. A sale free and clear of liens is particularly appropriate under the circumstances because any lien in, to or against the Assets that exists immediately prior to the closing of any sales will attach to the sale proceeds with the same validity, priority, force and effect as it had at such time, subject to the rights and defenses of the

Debtor or any party in interest. The Debtor submits that holders of Liens will be adequately protected by the availability of the proceeds of the Sale to satisfy their Liens. Thus, the proposed sales satisfy Bankruptcy Code § 363(f). Moreover, any holder of a Claim or Interest that receives notice of the Sales and which fails to object to the Sales of the Assets free and clear of Claims and Interests should be deemed to consent to the Sales, thereby complying with Bankruptcy Code § 363(f)(2).

**L. The Sale Does Not Require the Appointment of a Consumer Privacy Ombudsman**

65. Section 363(b)(1) of the Bankruptcy Code provides that a debtor may not sell or release personally identifiable information about individuals unless such sale or lease is consistent with its policies or upon appointment of a consumer privacy ombudsman pursuant to section 332 of the Bankruptcy Code. 11 U.S.C. § 363(b)(1).

66. Any purchaser shall be subject to the provisions of the Debtor's longstanding privacy policy.<sup>9</sup> Therefore, appointment of a consumer privacy ombudsman is not appropriate. *See, e.g., In re Crucible Materials Corp.*, 2009 Bankr. LEXIS 4893, at \*16 (Bankr. D. Del. Aug. 31, 2009) (no appointment of consumer privacy ombudsman required where sale of assets complied with debtors' privacy policy); *In re Penn Traffic Co.*, 2010 Bankr. LEXIS 5399, at \*14 (Bankr. D. Del. Jan. 8, 2010) (same).

**M. Notice of the Proposed Sale is Reasonable Under the Circumstances**

67. In order to receive the highest and best price in return for the Assets under the circumstances, the Debtor has filed this Motion seeking to conduct the Auction and hold the Sale Hearing within sixty days from the Petition Date. The Debtor continues to incur costs associated with preserving the value of the Assets. In order to yield the greatest possible return for the benefit of creditors and to minimize potential administrative expenses, the Debtor believes that

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<sup>9</sup> The Debtor's privacy policy is posted at [www.picturepeople.com/privacy-policy](http://www.picturepeople.com/privacy-policy).

the proposed timing of the Auction and Proposed Sale Process is not only reasonable, but is warranted and necessary in light of the terms of the Debtor's proposed DIP Facility and proposed use of cash collateral.

68. Accordingly, the Debtor submits that the notice to be provided is reasonable and appropriate and will be adequate to ensure that all interested parties have the opportunity to bid for the Assets and/or to object to the proposed Sale of the Assets.

**N. The Assumption and Assignment of Executory Contracts Should Be Authorized**

69. Under Bankruptcy Code § 365(a), a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). Bankruptcy Code § 365(b)(1), in turn, codifies the requirements for assuming an executory contract of a debtor. This subsection provides:

(b)(1) 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) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1). Bankruptcy Code § 365(f)(2) provides, in pertinent part, that:

The trustee may assign an executory contract or unexpired lease of the debtor only if --

(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2). Moreover, an executory contract or unexpired lease may be assigned “notwithstanding a provision in an executory contract or unexpired lease . . . or applicable law, that prohibits, restricts, or conditions the assignment of such contracts or lease. . . .” 11 U.S.C. § 365(f)(1)

70. 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 S. Corp. v. McLaren/Hart Env'tl. Eng'g Corp. (In re Sanshoe Worldwide Corp.)*, 139 B.R. 585, 593 (S.D.N.Y. 1992).

71. 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) (finding adequate assurance of future performance present when prospective assignee of lease from debtor has financial resources and has expressed willingness to devote sufficient funding to the business to give it a strong likelihood of succeeding).

72. To the extent any defaults exist under any Assumed and Assigned Contracts, any such default will be promptly cured or adequate assurance that such default will be cured will be provided prior to the assumption and assignment as set forth in this Motion. If necessary, the Debtor will submit facts prior to or at the Sale Hearing to show the financial capability of the Purchaser and willingness and ability to perform under the Assumed and Assigned Contracts. The Sale Hearing will therefore provide the Court and other interested parties the opportunity to evaluate and, if necessary, challenge the ability of the Purchaser to provide adequate assurance of

future performance under the Assumed and Assigned Contracts, as required under Bankruptcy Code § 365(b)(1)(C).

73. In addition, the Debtor submits that it is an exercise of sound business judgment to assume and assign the Assumed and Assigned Contracts to the Purchaser in connection with the consummation of the Sale, and the assumption, assignment, and sale of Assumed and Assigned Contracts is in the best interests of the Debtor, its estate, its creditors, and all parties in interest. The Assumed and Assigned Contracts being assigned to the Purchaser are an integral part of the Assets being purchased by Purchaser, and accordingly, such assumption, assignment, and sale of Assumed and Assigned Contracts are reasonable and enhance the value of the Debtor's estate. The Court should therefore authorize the Debtor to assume and assign the Assumed and Assigned Contracts as set forth herein.

**O. The Bid Protections Should be Approved**

74. Break-up fees and other forms of bidding protections are a normal and, in many cases, necessary component of significant sales conducted under section 363 of the Bankruptcy Code: “Break-up fees are important tools to encourage bidding and to maximize the value of the debtor's assets . . . . In fact, because the . . . corporation has a duty to encourage bidding, break-up fees can be necessary to discharge [such] duties to maximize value.” *In re Integrated Res., Inc.*, 147 B.R. 650, 659–60 (S.D.N.Y. 1992). Specifically, bid protections “may be legitimately necessary to convince a ‘white knight’ bidder to enter the bidding by providing some form of compensation for the risks it is undertaking.” *In re 995 Fifth Ave. Assoc., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989); *see Integrated Res.*, 147 B.R. at 660–61 (bid protections can prompt bidders to commence negotiations and “ensure that a bidder does not retract its bid”); *In re Hupp Int'l Indus., Inc.*, 140 B.R. 191, 194 (Bankr. N.D. Ohio 1992) (“[W]ithout such fees, bidders

would be reluctant to make an initial bid for fear that their first bid will be shopped around for a higher bid from another bidder who would capitalize on the initial bidder's . . . due diligence.”).

75. In considering whether to approve bid protections under the business judgment rule, courts have considered, among other things, the following questions: “(1) is the relationship of the parties who negotiated the break-up fee tainted by self-dealing or manipulation; (2) does the fee hamper, rather than encourage, bidding; (3) is the amount of the fee unreasonable relative to the proposed purchase price?” *Integrated Res., Inc.*, 147 B.R. at 657. *See also In re Wintz Cos.*, 230 B.R. 840, 846 (B.A.P. 8th Cir. 1999), *aff’d*, 219 F.3d 807 (8th Cir. 2000) (noting that courts permit break-up fees “provided the fees create an incentive for increased bidding in sales from bankruptcy assets”). As stated by Judge Barta in *In re President Casinos, Inc.*, 314 B.R. 786, 789 (E.D. Mo. 2004):

A break-up fee that is greater than the actual cost and expenses of the prospective purchaser should constitute a fair and reasonable percentage of the proposed purchase price, and should be reasonably related to the risk, effort, and expenses of the prospective purchaser. *In re Integrated Resources, Inc.*, 147 B.R. 650, 662 (S.D.N.Y.1992), *appeal dismissed in Official Committee of Subordinated Bondholders v. Integrated Resources, Inc. (In re Integrated Resources, Inc.)*, 3 F.3d 49 (2nd Cir.1993).

As a result, courts routinely approve such bidding protections in connection with proposed bankruptcy sales where a proposed fee or reimbursement provides a benefit to the estate. *See In re O’Brien Envtl. Energy, Inc.*, 181 F.3d 527 (3d Cir. 1999).<sup>10</sup> The Bid Protections

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<sup>10</sup> *See, e.g., In re Finlay Enters., Inc., et al.*, Case No. 09-14873 (JMP) (Bankr. S.D.N.Y. Aug. 20, 2009) (approving break-up fee); *In re Lehman Bros. Holdings Inc., et al.*, Case No. 08-13555 (JMP) (Bankr. S.D.N.Y. Oct. 22, 2008) (approving break-up fee and expense reimbursement); *In re Steve & Barry's Manhattan LLC, et al.*, Case No. 08-12579 (ALG) (Bankr. S.D.N.Y. Aug. 5, 2008) (approving break-up fee and expense reimbursement); *In re Fortunoff Fine Jewelry and Silverware, LLC*, Case No. 08-10353 (JMP) (Bankr. S.D.N.Y. Feb. 22, 2008) (approving break-up fee); *In re Bally Total Fitness of Greater New York, Inc.*, Case No. 07-12395(BRL) (Bankr. S.D.N.Y. Aug. 21, 2007) (approving break-up fee and expense reimbursement); *In re G+G Retail, Inc.*, Case No. 06-10152 (RDD)(Bankr. S.D.N.Y. Jan. 30, 2006); *In re Footstar, Inc.*, Case No. 04-22350 (ASH) (Bankr. S.D.N.Y. Apr. 6, 2004) (authorizing the debtors to enter into purchase agreements with break-up fees); *Integrated Res.*, 147 B.R. 650 (S.D.N.Y. 1992), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993) (approving break-up fee and expense reimbursement); *In re Twinlab Corp., et al.*, Case No. 03-15564 (CB) (Bankr. S.D.N.Y. 2003) (approving break-up

were a necessary incentive to elicit the Stalking Horse APA and are well within the range of similar protections granted in other cases and should be approved.

**P. Waiver of Automatic Fourteen-Day Stay Under Bankruptcy Rules 6004(h) and 6006(d)**

76. Pursuant to Bankruptcy Rule 6004(h), unless the Court orders otherwise, all orders authorizing the sale of property pursuant to Section 363 of the Bankruptcy Code are automatically stayed for fourteen (14) days after entry of the order. Similarly, under Bankruptcy Rule 6006(d), unless the Court orders otherwise, all orders authorizing the assignment of contracts or unexpired leases are automatically stayed for fourteen (14) days after entry of the order. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to request a stay pending appeal before the order can be implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h); Advisory Committee Notes to Fed. R. Bankr. P. 6006(d).

77. Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the 14-day stay period, commentators agree that the 14-day stay period should be eliminated to allow a sale or other transaction to close immediately where there has been no objection to the procedure. *See generally* 10 Collier on Bankruptcy ¶ 6004.09 (15th ed. 1999). Furthermore, if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time necessary to file such appeal. *Id.*

78. Because of the potentially diminishing value of the Assets and consistent with the Debtor’s proposed DIP Facility, the Debtor must close this sale promptly after all closing

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fee and expense reimbursement); *In re Adelpia Business Solutions, Inc., et al.*, Case No. 02-11389 (REG) (Bankr. S.D.N.Y. 2002) (approving break-up fee and expense reimbursement).

conditions have been met or waived. Thus, waiver of any applicable stays is appropriate in this circumstance.

WHEREFORE, the Debtor respectfully requests that this Court (i) enter an order substantially in the form of the Bidding Procedures Order attached hereto as **Exhibit A**: (a) authorizing and approving the Bidding Procedures attached to the Bidding Procedures Order as **Exhibit 1**; (b) approving the form and manner of the Auction and Sale Notice; (c) scheduling the Auction and Sale Hearing; (d) approving the Assumption and Assignment Procedures and the Assumption and Assignment Notice; and (e) granting such other and further relief as it deems just and proper; and (ii) at the conclusion of the Sale Hearing, enter an order (or orders): (a) approving the Sale(s) of all or substantially all of the Assets free and clear of all liens, encumbrances, claims and other interests pursuant to one or more Qualified APAs; (b) authorizing the assumption and assignment of any Assumed and Assigned Contracts; and (c) granting such other and further relief as it deems just and proper.

RESPECTFULLY SUBMITTED this 2nd day of September, 2016.

**HAYNES AND BOONE, LLP**

By: /s/ Robert D. Albergotti

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**PROPOSED ATTORNEYS FOR DEBTOR**

**EXHIBIT A**

**Bidding Procedures Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

IN RE: § CHAPTER 11  
§  
TPP ACQUISITION, INC. D/B/A THE § CASE NO. 16-33437-HDH-11  
PICTURE PEOPLE, §  
§  
DEBTOR. §

**ORDER APPROVING SALE AND BIDDING PROCEDURES AND BID PROTECTIONS  
IN CONNECTION WITH SALE OF ASSETS OF THE DEBTOR AND GRANTING  
RELATED RELIEF**

On \_\_\_\_\_, 2016, the Court<sup>1</sup> conducted a hearing to consider the *Debtor's Expedited Motion, pursuant to Bankruptcy Code Sections 105(a), 363, and 365, and Bankruptcy Rules 2002, 6004, and 6006, for Entry of an Order Approving Sale and Bidding Procedures and Bid Protections in Connection with Sale of Assets of the Debtor, (B) Authorizing the Sale of Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, and (C)*

<sup>1</sup> Capitalized terms not defined herein shall have the meanings set forth in the Motion.

*Granting Related Relief* (the “**Motion**”) filed by the above-captioned debtor (the “**Debtor**”). The Court finds that: (i) it has jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; (ii) this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); (iii) the relief requested in the Motion is in the best interests of the Debtor, its estate, and its creditors; (iv) proper and adequate notice of the Motion has been given and no other or further notice is necessary; and (v) upon the record herein after due deliberation thereon, good and sufficient cause exists for the granting of the relief as set forth herein.

Therefore,

IT IS HEREBY ORDERED THAT:

1. This Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory bases for the relief requested in the Motion are: (i) Sections 105, 363, and 365 of the Bankruptcy Code and (ii) Rules 2002(a)(2), 6004, and 6006 of the Federal Rules of Bankruptcy Procedure.

3. Notice of the Motion, having been given to all parties set forth in the Debtor’s Master Service List maintained in these cases, is sufficient in light of the circumstances and the nature of the relief requested in the Motion.

4. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings

of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

5. The Debtor has articulated good and sufficient reasons for this Court to: (i) approve the Bidding Procedures; (ii) approve the scheduling of an Auction and set the Sale Hearing and approve the manner of notice of the Auction and Sale Hearing; (iii) approve the procedures for the assumption and assignment of the Assumed and Assigned Contracts, including notice of proposed Cure Amounts; and (iv) approve the Bid Protections (defined herein).

6. Notice of Sale. This Order and the Auction and Sale Notice substantially in the form attached as Exhibit 2 to this Order, are reasonably calculated and sufficient to provide interested parties with timely and proper notice of the proposed Sale, including, without limitation: (i) the date, time, and place of the Auction (if one is held); (ii) the Bidding Procedures; (iii) the deadline for filing objections to the Sale and entry of the Sale Order, and the date, time, and place of the Sale Hearing; (iv) reasonably specific identification of the Assets to be sold; (v) a description of the Sale as being free and clear of liens, claims, encumbrances and other interests, with all such liens, claims, encumbrances and other interests attaching with the same validity and priority to the Sale proceeds; and (vi) notice of the proposed Assumption and Assignment Procedures, and no other or further notice of the Sale shall be required.

7. Assumption and Assignment Procedures. This Order, the Assumption and Assignment Procedures set forth herein, and the Assumption and Assignment Notice substantially in the form attached as Exhibit 3 to this Order, are reasonably calculated to provide Contract Counterparties to any Contracts and/or Leases to be assumed by the Debtor and assigned to the Successful Bidder(s) with proper notice of the intended assumption and

assignment of their Contracts and/or Leases, the procedures in connection therewith, and any Cure Amounts relating thereto.

8. Bid Protections. The Break-Up Fee in the amount of one percent (1%) of the Acquisition Consideration contained in the Stalking Horse APA (the "Break-Up Fee") and the reimbursement of the Stalking Horse Bidder's expenses up to \$75,000 (the "Expense Reimbursement") and together with the Break-Up Fee, the "Bid Protections") are: (i) actual and necessary costs and expenses of preserving the Debtor's estate, within the meaning of § 503(b) of the Bankruptcy Code; (ii) commensurate with the real and substantial benefits conferred upon the Debtor's estate by the Stalking Horse Bidder; (iii) reasonable and appropriate in light of the size and nature of the proposed Sale and comparable transactions; and (iv) necessary to induce the Stalking Horse Bidder to continue to pursue the Sale.

9. Moreover, the Bid Protections are an essential inducement and condition relating to the Stalking Horse Bidder's entry into, and continuing obligations under, the Stalking Horse APA. The Bid Protections induced the Stalking Horse Bidder to submit a bid that will serve as a minimum or floor bid on which the Debtor, its creditors, and other bidders can rely. The Stalking Horse Bidder has provided a material benefit to the Debtor and its creditors by increasing the likelihood that the best possible price for the Assets will be received. Accordingly, the Bid Protections are reasonable and appropriate and represents the best method for maximizing value for the benefit of the Debtor's estate.

10. Based upon the foregoing findings and conclusions, the Motion and the record before the Court with respect to the Motion, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as provided herein. All capitalized terms used herein but otherwise not defined shall have the meanings set forth in the Motion or the Bidding Procedures, as applicable.

2. All objections to the relief requested in the Motion that have not been withdrawn, waived, or settled as announced to the Court at the hearing on the Motion, are overruled.

**Q. Important Dates and Deadlines**

3. Sale Hearing. The Sale Hearing shall commence on [October 28], 2016, at \_\_:\_\_ [a.m./p.m.] (Central Time) before the Honorable Harlin D. Hale United States Bankruptcy Court, Northern District of Texas – Dallas Division, Earle Cabell Federal Building 1100 Commerce St., 14<sup>th</sup> Floor Courtroom No. 3, Dallas, TX 75242-1496, or before any other judge who may be sitting in his place and stead. The Debtor may adjourn the Sale Hearing without further notice other than by announcement in open Court or on the Court’s calendar.

4. General Objection Deadline. Objections, if any, to the Sale of the Assets, the assumption and assignment of the Assumed and Assigned Contracts, or any relief requested in the Motion other than the relief granted by this Court in the Bidding Procedures Order must be: (a) in writing; (b) signed by counsel or attested to by the objecting party; (c) in conformity with the Bankruptcy Rules and applicable local rules; (d) filed with the Clerk of the Bankruptcy Court for the Northern District of Texas, United States Bankruptcy Court, Northern District of Texas – Dallas Division, Earle Cabell Federal Building 1100 Commerce St., Rm. 1254, Dallas, TX 75242-1496, by no later than 5:00 p.m. (Central time) on October 21, 2016 (the “General Objection Deadline”), and (e) served in accordance with applicable local rules so as to be received on or before the relevant objection deadline by the following (collectively, the “Objection Notice Parties”): (i) counsel for the Debtor, Robert D. Albergotti and Ian T. Peck, Haynes and Boone LLP, 2323 Victory Ave, Suite 700, Dallas, TX

75219, [robert.albergotti@haynesboone.com](mailto:robert.albergotti@haynesboone.com) [ian.peck@haynesboone.com](mailto:ian.peck@haynesboone.com); (ii) counsel for the Stalking Horse Bidder, Riemer & Braunstein LLP, Times Square Tower, Seven Times Square, New York, New York 10036 (attn.: Donald E. Rothman, Esq. and Steven E. Fox, Esq.) Email: drothman@riemerlaw.com; sfox@riemerlaw.com; and Vinson & Elkins L.L.P., 3700 Trammell Crow Center, 2001 Ross Avenue, Suite 3700, Dallas, TX 75201-2975 (attn.: Josiah M. Daniel, III), Email: jdaniel@velaw.com; and (iii) Office of the United States Trustee for the Northern District of Texas, 1100 Commerce St # 976, Dallas, TX 75242, (these procedures are collectively referred to as the “General Objection Procedures”). Each objection shall state the legal and factual basis of such objection.

5. Only those objections made in compliance with the General Objection Procedures will be considered by the Court at the Sale Hearing. The failure of any objecting person or entity to file its objections by the Objection Deadline and in accordance with the General Objection Procedures will be a bar to the assertion, at the Sale Hearing or thereafter, of any objection (including to the Sale of Assets and assumption and assignment of Leases and Contracts free and clear of liens) and shall be deemed to constitute any such party’s consent to the entry of the Sale Order and consummation of the Sale and all transactions related thereto, including, without limitation, such assumption and assignment.

6. Bid Deadline. All bids by any third party that is interested in acquiring some or all of the Assets must be actually received by the parties specified in the Bidding Procedures on or prior to October 24, 2016 at 12 noon (Central Time) (the “Bid Deadline”).

7. Auction. If necessary, an Auction with respect to the Assets will be held at the offices of Haynes & Boone 2323 Victory Ave, Suite 700, Dallas, TX 75219 on October 26, 2016

at 10:00 a.m. (Central Time). As set forth more fully in the Bidding Procedures, only Qualified Bidders and their legal and financial advisors shall be entitled to attend and/or bid at the Auction.

**R. Auction, Bidding Procedures, and Related Relief**

8. The Bidding Procedures, attached hereto as **Exhibit 1**, are hereby authorized, approved and made part of this Order as if fully set forth herein. The Bidding Procedures shall govern the submission, receipt, and analysis of all Bids relating to the proposed Sale of the Assets. Any party desiring to bid on the Assets shall comply with the Bidding Procedures and this Order. The Debtor is authorized to take any and all actions necessary to implement the Bidding Procedures.

9. A Qualified Bidder shall confirm that it has not engaged in any collusion with respect to the bidding or the Sale.

10. In the event that the Debtor timely receives more than one Qualified Bid, the Debtor may determine, in the exercise of its sound business judgment, to schedule an Auction to request additional competitive Bids from Qualified Bidders with respect to the Assets in accordance with the Bidding Procedures.

11. If the Debtor does not receive any Qualified Bids with respect to any or all of the Assets other than the Stalking Horse APA, the Debtor shall report the same to the Court. In such circumstances, the Debtor shall promptly proceed to seek entry of the appropriate orders approving the Sale to the Staking Horse Bidder.

12. Subject to the final determination of this Court, the Debtor is authorized to determine, in its business judgment and pursuant to the Bidding Procedures, the highest or otherwise best Bid(s) and the Successful Bidder(s) or Backup Successful Bidder(s).

13. The Debtor is authorized to pay, without further order of the Court, to the Stalking Horse Bidder the Bid Protections in the event that such Bid Protections are payable under the terms of the Stalking Horse APA and the Bidding Procedures.

**S. Assumption and Assignment Procedures**

14. The following procedures regarding the assumption and assignment of the Contracts and Leases in connection with the Sale are hereby approved to the extent set forth herein, and shall govern the assumption and assignment of all Contracts and/or Leases proposed to be assumed by the Debtor pursuant to Section 365(b) of the Bankruptcy Code and assigned to the Successful Bidder(s) following a Sale or Sales pursuant to Section 365(f) of the Bankruptcy Code (as defined in the Motion, the “Assumed and Assigned Contracts”).

15. As soon as practicable, the Debtor shall serve on all Contract Counterparties an Assumption and Assignment Notice substantially in the form attached hereto as Exhibit 3, that identifies, to the extent applicable, (i) the Contract(s) and/or Lease(s) that may be assumed by the Debtor and assigned to the Successful Bidder(s); (ii) the name and address of the Contract Counterparty thereto; (iii) notice of the proposed effective date of the assignment (subject to the right of the Debtor and Purchaser to withdraw such request for assumption and assignment of the Assumed and Assigned Contract(s) prior to the Closing); (iv) the amount, if any, determined by the Debtor to be necessary to be paid to cure any existing default in accordance with Sections 365(b) and 365(f)(2) of the Bankruptcy Code (the “Cure Amount”); and (v) the deadlines by which any such Contract Counterparty must file an objection to the proposed assumption and assignment of any Assumed and Assigned Contract; provided, however, that the presence of any Contract or Lease on an Assumption and Assignment Notice does not constitute an admission that such Contract or Lease is an executory contract or unexpired lease.

16. As soon as practicable after the conclusion of the Auction, the Debtor shall file with the Court and serve by facsimile, electronic transmission, overnight, or first class mail on the Contract Counterparty (and its attorney, if known) to each Assumed and Assigned Contract a notice: (a) identifying the Successful Bidder(s); (b) stating which Contract(s) and/or Lease(s) will be assumed and assigned thereto; and (c) containing a statement as to the Successful Bidder(s)' ability to perform the Debtor's obligations under the applicable Assumed and Assigned Contracts.

17. All objections to the assumption and assignment of any Assumed and Assigned Contract, including, without limitation, any objection to the Debtor's proposed Cure Amount or the provision of adequate assurance of future performance under any Assumed and Assigned Contract pursuant to Section 365 of the Bankruptcy Code ("Adequate Assurance") must: (a) comply with the General Objection Procedures; (b) identify the Contract(s) or Lease(s) to which the objector is party; (c) describe with particularity any cure the claimant contends is required under Section 365 of the Bankruptcy Code (the "Cure Claim") and identify the basis(es) of the alleged Cure Claim under the Contract or Lease; (d) attach all documents supporting or evidencing the Cure Claim; and (e) if the response contains an objection to Adequate Assurance, state with specificity what the objecting party believes is required to provide Adequate Assurance (collectively with the General Objection Procedures, the "Assigned Contract Objection Procedures").

18. If no objection is timely and properly filed and served in accordance with the Assigned Contract Objection Procedures, (a) the Cure Amount set forth in the Assumption and Assignment Notice shall be controlling notwithstanding anything to the contrary in any Assumed and Assigned Contract or other document and the Contract Counterparty thereto shall be forever

barred from asserting any other claim against the Debtor or Purchaser with respect to such Assumed and Assigned Contract arising prior to the assignment thereof and (b) the Purchaser's promise to perform under the Assumed and Assigned Contract shall be deemed Adequate Assurance thereunder. To the extent the Debtor disputes any Cure Claim, such dispute shall be presented to the Court at the Sale Hearing, or such later date and time as the Debtor and the objector may agree or the Court may order, but such dispute shall not affect in any way the effectiveness of any assumption and assignment of any Assumed and Assigned Contract.

19. If at any time after the entry of the Bidding Procedures Order the Debtor identifies additional prepetition executory contracts and/or unexpired leases to be assumed and assigned to the Purchaser as Assumed and Assigned Contracts (whether before or after closing of any Sale(s) of relevant Assets), the Debtor shall serve a supplemental Assumption and Assignment Notice by first-class mail, facsimile, electronic transmission, or overnight mail on the Contract Counterparty (and its attorney, if known) to each supplemental Assumed and Assigned Contract at the last known address available to the Debtor by no later than ten (10) calendar days before the proposed effective date of the assignment. A Contract Counterparty receiving any such supplemental Assumption and Assignment Notice shall have until the later of (a) the General Objection Deadline or (b) ten (10) days from service of the supplemental Assumption and Assignment Notice to file an objection to the assumption and assignment of its Contract(s) and/or Lease(s) in accordance with the Assigned Contract Objection Procedures set forth herein.

**T. Auction and Sale Notice**

20. The Auction and Sale Notice is hereby approved. On or within three (3) business days following the entry of this Order, the Debtor shall cause the Auction and Sale Notice to be served on: (i) all entities known by the Debtor to have expressed an interest in a transaction with respect to the Assets, including all Qualified Bidders; (ii) all state and local taxing authorities or

recording offices which have a reasonably known interest in the relief requested; (iii) all insurers; (iv) all non-debtor parties to relevant contracts or leases (executory or otherwise); (v) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or other interest in the Assets; and (vi) upon all parties set forth in the Debtor's Master Service List maintained in these cases.

**U. Miscellaneous**

21. The Debtor is authorized to take all actions necessary and appropriate to implement and effectuate the relief granted pursuant to this Order in accordance with the Motion and to expend such sums of money and do other things as may be necessary and appropriate to comply with the requirements established by the Bidding Procedures and this Order.

22. The Debtor is authorized to conduct the Sale without the necessity of complying with any state or local bulk transfer laws or requirements.

23. The Debtor shall submit to the Court the proposed Sale Order approving the Sale prior to the Sale Hearing.

24. In the event of any conflict between this Order and any applicable Qualified APA(s), the terms of this Order shall control.

25. Any stay of this Order, whether arising from Rules 6004 and/or 6006 of the Federal Rules of Bankruptcy Procedure or otherwise, is hereby expressly waived and the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.

26. This Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

### END OF ORDER ###

**Exhibit 1**  
**Bidding Procedures**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:	§	Chapter 11
	§	
TPP ACQUISITION, INC. d/b/a The	§	Case No. 16-33437-hdh-11
Picture People,	§	
	§	
Debtor.	§	

**BIDDING PROCEDURES**

On \_\_\_\_\_, 2016, the United States Bankruptcy Court for the Northern District of Texas (the “Court”) entered the *Order Approving Sale and Bidding Procedures and Bid Protections in Connection with Sale of Assets of the Debtor and Granting Related Relief* (Docket No. \_\_\_) (the “Bidding Procedures Order”), in which the Court approved the following procedures (the “Bidding Procedures”) setting forth the process by which TPP Acquisition, Inc., d/b/a The Picture People (the “Debtor”) is authorized to conduct a sale or sales (the “Sale”) of substantially all of its assets (collectively, the “Assets”).

**1. Property to be Sold**

The Assets consist of substantially all of the Debtor’s property. The Assets will be sold free and clear of all liens, claims, encumbrances and other interests (except as otherwise set forth in the applicable purchase and sale agreement).

The Debtor may consider bids for all or substantially all of the Assets in a single bid from a single bidder or multiple bids from multiple bidders for the Assets. Bids to purchase the Assets must consist of cash plus assumption of any specified liabilities.

**2. Due Diligence**

Subject to execution of a confidentiality agreement on terms reasonably acceptable to the Debtor (a “Confidentiality Agreement”), any party willing to submit any proposal, solicitation or offer (each, a “Bid”) for the Assets (such party, a “Potential Bidder”) may be granted access to public and non-public information relating to the Assets to facilitate its consideration of making its Bid, including access to the Debtor’s on-line data room (the “Due Diligence Data Room”). For the avoidance of doubt, the Debtor shall provide the Administrative Agent, the Prepetition Lenders, the DIP Lender, the Stalking Horse Bidder, and any Committee, together with their respective legal and financial professionals and representatives (collectively, the “Consultation Parties”) with access to the Due Diligence Data Room. Any confidentiality agreement previously entered into between the Debtor and a Potential Bidder in effect on the date of the entry of the Bid Procedures Order shall be deemed to be a Confidentiality Agreement for the purposes of these Bidding Procedures.

The Debtor shall provide to each Potential Bidder reasonable due diligence information as necessary to enable such Potential Bidder to evaluate the Assets. Potential Bidders interested in conducting due diligence should contact the Debtor's investment banker, SSG Capital Advisors, LLC Attn: J. Scott Victor and Teresa Kohl, Five Tower Bridge, Suite 420, 300 Barr Harbor Drive, West Conshohocken, PA 19428, [jsvictor@ssgca.com](mailto:jsvictor@ssgca.com) [tkohl@ssgca.com](mailto:tkohl@ssgca.com). The Debtor shall have no obligation to furnish any due diligence information after the Bid Deadline and shall have no obligation to furnish due diligence information requested by one Potential Bidder to the other Potential Bidders.

In connection with the provision of due diligence information to Potential Bidders, the Debtor shall not furnish any confidential information relating to the Assets, liabilities of the Debtor, or the Sale to any person except a Potential Bidder or such Potential Bidder's duly-authorized representatives to the extent covered by the applicable Confidentiality Agreement.

The Debtor and its advisors shall coordinate all reasonable requests for additional information and due diligence access from Potential Bidders; provided, however, that the Debtor may decline to provide such information to any Potential Bidder who, in the Debtor's reasonable business judgment, has not established that such Potential Bidder intends in good faith to, or has the capacity to, consummate a transaction. No conditions relating to the completion of due diligence shall be permitted to exist after the Bid Deadline.

### **3. "As is, Where is"**

Other than as specifically provided in a Qualified APA(s) (as defined below), as applicable, any Sale of the Assets shall be without representation or warranties of any kind, nature or description by the Debtor, its agents or its estate. All of the Assets shall be transferred "as is," "where is" and "with all faults." THE DEBTOR EXPRESSLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND MAKE NO WARRANTY, EXPRESS OR IMPLIED, AS TO THE NATURE, QUALITY, VALUE OR CONDITION OF ANY ASSET. Except as otherwise provided in the Stalking Horse APA or applicable Qualified APA, all of the Debtor's right, title, and interest in and to the respective Assets will be transferred free and clear of all liens, claims, encumbrances and other interests in accordance with Section 363(f) of the Bankruptcy Code.

Each Potential Bidder for any of the Assets will be deemed to acknowledge and represent that it: (a) has had an opportunity to conduct due diligence regarding the Assets prior to making its Bid; (b) has relied solely upon its own independent review, investigation, and inspection of any document including, without limitation, executory contracts and unexpired leases, in making its Bid; and (c) did not rely upon or receive any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, with respect to the Assets, or the completeness of any information provided in connection with the Sale or the Auction.

#### 4. Qualified Bids

In order to constitute a Qualified Bid (as defined below), a Bid submitted by a bidder (each, a "Bidder") must: (i) be submitted in writing prior to October 24, 2016 12 noon (Central Time) (the "Bid Deadline") and (ii) satisfy the following requirements, as determined by the Debtor in its reasonable business judgment, following consultation with the Consultation Parties (collectively, the "Bid Requirements"):

- a. Contain a signed definitive purchase and sale agreement (together with a copy of the signed agreement that is marked to show changes from the Stalking Horse APA) (a "Qualified APA") and shall: (i) identify the Assets the Bidder seeks to purchase, (ii) contain the form of and total consideration to be paid by such Bidder, including the amount of proposed cash consideration and liabilities to be assumed, with such consideration allocated on an asset by asset basis, (iii) include cash consideration of more than \$150,000 more than the sum of the Purchase Price plus the Bid Protections and shall contemplate assumption of the Assumed Obligations and generally contain terms no less favorable (in the Debtor's reasonable business judgment) than the Stalking Horse APA, including after consideration of the Bid Protections, and (vi) not be subject to any: (a) financing contingency, (b) contingency relating to due diligence after the Bid Deadline, (c) contingency relating to the approval of the Bidder's board of directors or other internal approvals or non-governmental third-party consents or approvals, or (d) any conditions precedent to the Bidder's obligation to purchase the Assets other than those included in the Stalking Horse APA.
- b. Be accompanied by the provision of a certified or bank check or wire transfer in the amount of at least 5% of the purchase price proposed in the Qualified APA as a good faith deposit (the "Good Faith Deposit"). The Good Faith Deposit shall be held in escrow and credited to the closing payment if the Bidder is ultimately determined to be the Successful Bidder (as defined below), if any closing payment is due, or to be returned to the Bidder in whole or in part as applicable if the Bidder is not the Successful Bidder or the Backup Successful Bidder. In the event that a Bidder is selected as the Backup Successful Bidder, the Good Faith Deposit shall be returned to the Backup Successful Bidder within three (3) business days following the closing of a Sale to the Successful Bidder.
- c. Contain a written statement that the Bidder agrees to be bound by the terms of the Bidding Procedures and the Bidding Procedures Order and include a commitment that the Bidder shall consummate the purchase of the relevant Assets by November 4, 2016.
- d. Identify, with particularity, each and every executory contract and unexpired lease it intends to assume; provided, however, that such list of contracts may be later modified to the extent permitted under the Qualified APA.
- e. Be accompanied by evidence satisfactory to the Debtor that the Bidder is willing, authorized (including by such Bidder's board of directors or comparable

governing body), capable and qualified financially, operationally, legally and otherwise, of unconditionally performing all obligations under the Qualified APA, including, without limitation, (1) all Assumed Obligations with respect to the relevant Assets and (2) the ability to provide adequate assurance of future performance under contracts and leases to be assumed pursuant to Section 365 of the Bankruptcy Code.

- f. Provide (i) that the Bidder agrees to serve as the Backup Successful Bid (as defined herein) if it is selected as the next highest and best bid for any particular Assets after the Successful Bid is determined in accordance with the Bidding Procedures and (ii) that the Bidder's Bid shall remain open and irrevocable until at least thirty (30) days after the entry of an order by the Court approving a definitive agreement providing for the Sale of those Assets.
- g. Fully disclose the identity of each entity that will be bidding in any Auction scheduled by the Debtor.
- h. Be submitted to (i) counsel for the Debtor, Robert D. Albergotti and Ian T. Peck, Haynes and Boone LLP, 2323 Victory Ave, Suite 700, Dallas, TX 75219, [robert.albergotti@haynesboone.com](mailto:robert.albergotti@haynesboone.com) [ian.peck@haynesboone.com](mailto:ian.peck@haynesboone.com); (ii) the Debtor's investment banker, SSG Capital Advisors, LLC Attn: J. Scott Victor and Teresa Kohl, Five Tower Bridge, Suite 420, 300 Barr Harbor Drive, West Conshohocken, PA 19428, [jsvictor@ssgca.com](mailto:jsvictor@ssgca.com) [tkohl@ssgca.com](mailto:tkohl@ssgca.com); and (iii) co-counsel for the Stalking Horse Bidder, Riemer & Braunstein LLP, Times Square Tower, Seven Times Square, New York, New York 10036 (attn.: Donald E. Rothman, Esq. and Steven E. Fox, Esq.) Email: [drothman@riemerlaw.com](mailto:drothman@riemerlaw.com); [sfox@riemerlaw.com](mailto:sfox@riemerlaw.com); and Vinson & Elkins L.L.P., 3700 Trammell Crow Center, 2001 Ross Avenue, Suite 3700, Dallas, TX 75201-2975 (attn.: Josiah M. Daniel, III), Email: [jdaniel@velaw.com](mailto:jdaniel@velaw.com) so as to be received not later than the Bid Deadline, October 24, 2016 at 12 noon. (Central Time). Promptly following the receipt of a Qualified Bid(s), but in no event later than one calendar day after the applicable Bid Deadline, the Debtor shall provide copies of each Qualified Bid to the following parties: the Stalking Horse Bidder, the Administrative Agent, the DIP Agent, and any Committee. Following consultation with the Consultation Parties, the Debtor may extend the Bid Deadline until the commencement of any Auction for one or more bidders without further notice, but shall not be obligated to do so.

## **5. Qualified Bidders**

A Bid that satisfies each of the Bid Requirements, as determined in the Debtor's reasonable business judgment shall constitute a "Qualified Bid," and such Potential Bidder shall be a "Qualified Bidder." The Debtor shall notify each Qualified Bidder that such party is a Qualified Bidder prior to the Auction. The Stalking Horse APA shall be deemed a Qualified Bid and Stalking Horse Bidder shall be deemed a Qualified Bidder.

If any Bid is determined by the Debtor not to be a Qualified Bid, the Debtor shall cause such Bidder to be refunded its Good Faith Deposit and all accumulated interest thereon on or within three (3) business days after the Bid Deadline.

Between the date that the Debtor notifies a Potential Bidder that it is a Qualified Bidder and the Auction, the Debtor may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Except as otherwise set forth in a Qualified APA, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid without the written consent of the Debtor (which consent may only be provided following consultation with the Consultation Parties), except for proposed amendments to increase the consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified herein; provided, that any Qualified Bid may be improved at the Auction as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids herein.

## **6. Right to Credit Bid**

The Stalking Horse Bidder, or its designee, shall be entitled to credit bid all or a portion of the outstanding undisputed obligations under the (a) Credit Agreement, dated as of December 17, 2012 (as amended, supplemented or otherwise modified prior to the commencement of this Chapter 11 Case, the “Prepetition Credit Agreement”) between and among Monroe Capital Management Advisors, LLC, as Administrative Agent and Lead Arranger (“Administrative Agent”), and Monroe Capital Partners Fund, LP and Monroe Capital Corporation as lenders (together, the “Prepetition Lenders”), and the Debtor, as borrower, and (b) the DIP Facility, in accordance with Section 363(k) of the Bankruptcy Code, and it shall be deemed to be a “Qualified Bidder” for all purposes herein and any such bid shall be deemed to be a “Qualified Bid” for all purposes herein.

## **7. Notice Procedures**

### **a. Notice of Auction and Sale Hearing**

After entry of the Bidding Procedures Order, the Debtor will cause the Notice of Auction and Sale Hearing, substantially in the form attached as Exhibit 2 to the Bidding Procedures Order (the “Auction and Sale Notice”), to be served by first-class mail, postage prepaid, facsimile, electronic transmission, or overnight mail upon: (i) all entities known by the Debtor to have expressed an interest in a transaction with respect to the Assets; (ii) all state and local taxing authorities or recording offices which have a reasonably known interest in the relief requested; (iii) all insurers; (iv) all non-debtor parties to relevant contracts or leases (executory or otherwise); (v) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or other interest in the Assets; and (vi) upon all parties set forth in the Debtor’s Master Service List maintained in these cases (to the extent any party to receive notice thereby would not receive notice pursuant to sections (i) through (v) above).

b. Notice of Assumption and Assignment of Contracts

The Debtor will serve the Assumption and Assignment Notice, substantially in the form attached as Exhibit 3 to the Bidding Procedures Order (the “Assumption and Assignment Notice”), by first-class mail, facsimile, electronic transmission, or overnight mail on (a) each counterparty under each potential Assumed and Assigned Contract (as defined below) (a “Contract Counterparty”) and its attorney, if known, in each case, at the last known address available to the Debtor.

The Assumption and Assignment Notice shall set forth the following information: (i) the Contract(s) and/or Lease(s) that may be assumed by the Debtor and assigned to the Successful Bidder(s); (ii) the name and address of the Contract Counterparty thereto; (iii) the amount, if any, determined by the Debtor to be necessary to be paid to cure any existing default in accordance with Sections 365(b) and 365(f)(2) of the Bankruptcy Code (the “Cure Amount”); and (iv) the deadlines by which any such Contract Counterparty must file an objection to the proposed assumption and assignment of any Assumed and Assigned Contract, provided, however, that the presence of any Contract or Lease on an Assumption and Assignment Notice does not constitute an admission that such Contract or Lease is an executory contract or unexpired lease or that it will be assumed and assigned to the Successful Bidder.

As soon as practicable after the conclusion of the Auction, the Debtor shall file with the Court and serve by facsimile, electronic transmission, overnight, or first-contract mail on the Contract Counterparty (and its attorney, if known) to each Assumed and Assigned Contract a notice: (a) identifying the Successful Bidder(s); (b) stating which Contract(s) and/or Lease(s) will be assumed and assigned thereto; and (c) containing a statement as to the Successful Bidder(s)’ ability to perform the Debtor’s obligations under the applicable Assumed and Assigned Contracts.

**8. No Qualified Bids**

If the Debtor does not receive any Qualified Bids with respect to any or all of the Assets, other than the Stalking Horse Bid, the Debtor shall report the same to the Court, and shall promptly proceed to seek entry of the appropriate orders approving the Sale pursuant to the Stalking Horse APA.

**9. Auction**

In the event the Debtor receives more than one Qualified Bid, the Debtor may determine, in the exercise of sound business judgment to schedule an Auction to request additional competitive Bids from Qualified Bidders.

Following consultation with the Consultation Parties, the Debtor shall determine which Qualified Bid shall constitute the “Baseline Bid” for purposes of the Auction. The Debtor shall notify each Qualified Bidder of the contents of the Baseline Bid. The Baseline Bid shall be subject to higher and better Bids at the Auction.

In making the determination of which Qualified Bid(s) constitutes the Successful Bid(s), the Debtor may, following consultation with the Consultation Parties, take into account any factors the Debtor reasonably deems relevant to the value of the Qualified Bid(s) to the Debtor's estate, including, among other things: (a) the number, type, and nature of any changes to the Stalking Horse APA requested by the Qualified Bidder, including the type and amount of Assets sought and the liabilities of the Debtor to be assumed in the Bid; (b) the amount and nature of the total consideration; (c) the likelihood of the Bidder's ability to close a transaction and the timing thereof; and (d) the tax consequences of such Qualified Bid (collectively, the "Bid Assessment Criteria").<sup>1</sup> The Debtor will evaluate competing Bids in a manner that will maximize the aggregate value to the estate.

In the event the Debtor determines to conduct an Auction, the Auction shall take place at October 26, 2016 at 10:00 a.m. (Central Time) at the offices of Haynes and Boone LLP, 2323 Victory Ave, Suite 700, Dallas, TX 75219, or such later date and time as selected by the Debtor. The Auction shall be conducted in a timely fashion according to the following procedures:

a. The Debtor Shall Conduct the Auction.

The Debtor and its professionals shall direct and preside over the Auction. At the start of the Auction, the Debtor shall describe the terms of the Baseline Bid. All incremental Bids made thereafter shall be Overbids (as defined herein) and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders. The Debtor shall maintain a written transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Successful Bid(s).

In order to participate in the Auction, each prospective purchaser must be a Qualified Bidder. Each Qualified Bidder must have at least one individual representative with authority to bind the Qualified Bidder attend the Auction in person. Only the Administrative Agent, DIP Agent, Qualified Bidders, any Committee (including its individual members) and their respective legal and financial advisors shall be entitled to attend and/or bid at the Auction. By attending the Auction, each party present at the Auction agrees to keep the Auction, the Bids at the Auction and all details concerning the Auction confidential. The Auction shall be conducted in the presence of a certified court reporter who shall transcribe the Auction.

b. Auction Procedures.

A Qualified Bidder wishing to submit a Bid at the Auction must submit a Bid containing aggregate consideration of at least \$25,000 more than the total consideration contained in the Baseline Bid (the "Minimum Overbid").

Subject to the Minimum Overbid, Qualified Bidders shall submit successive Overbids in increments to be determined by the Debtor at the Auction, following consultation with the Consultation Parties (the "Incremental Bid Amount"), for the purchase of the Assets for which it is bidding (each an "Overbid").

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<sup>1</sup> For avoidance of doubt, the Bid Assessment Criteria listed herein are not exhaustive and are provided for illustrative purposes only, and the Debtor, in its sole discretion, may consider any additional criteria that they consider reasonably relevant to the value of any Qualified Bid.

During the course of the Auction, the Debtor shall, after the submission of each Overbid, promptly inform each Qualified Bidder which Overbid reflects, in the Debtor's view, following consultation with the Consultation Parties, the highest or otherwise best Bid for some or all of the Assets.

The Stalking Horse Bidder may include in its bid(s) the amount of the Break-up Fee in each round of bidding.

c. Consideration of Overbids.

The Debtor reserves the right, in its reasonable business judgment (determined following consultation with the Consultation Parties), to adjourn the Auction to, among other things: facilitate discussions between the Debtor and Qualified Bidders; allow Qualified Bidders to consider how they wish to proceed; and provide Qualified Bidders the opportunity to provide the Debtor with such additional evidence as the Debtor, in its reasonable business judgment (determined following consultation with the Consultation Parties), that the Qualified Bidder has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed transaction at the prevailing Overbid amount.

d. Closing the Auction.

- (i) The Auction shall continue until there is only one offer that the Debtor determines, following consultation with the Consultation Parties, and subject to Court approval, is the highest and/or best offer for the purchase of the Assets (whether in an aggregate sale to a single buyer or on an asset by asset basis (each a "Successful Bid" and such Bidder, the "Successful Bidder"), at which point, the Auction will be closed. Such acceptance by the Debtor of the Successful Bid(s) is conditioned upon approval by the Court of the Successful Bid(s). The second highest bid, to the extent determined to be acceptable to the Debtor shall be deemed to be the backup bid (the "Backup Successful Bid" and such Bidder, the "Backup Successful Bidder"); provided, however, that the Stalking Horse Bidder shall not be required to serve as the Backup Successful Bidder. In the event that the Stalking Horse Bidder makes a determination not to serve as the Backup Successful Bidder (whether before or after submitting any credit bid or other bid), the Stalking Horse Bidder shall provide notice to the Debtor no later than one (1) business day after the Auction, and the third highest Bidder, to the extent determined to be acceptable to the Debtor shall be deemed to be the Backup Successful Bidder.

- (ii) The identity of the Backup Successful Bidder(s) and the amount and material terms of the Backup Successful Bid(s) shall be announced by the Debtor at the conclusion of the Auction at the same time the Debtor announce the identity of the Successful Bidder(s). The Backup Bidder(s) shall be required to keep its or their Qualified Bid(s) (or if the Backup Bidder(s) submitted one or more Overbids at the Auction, its final Overbid(s)) open and irrevocable until the closing of the transaction with the Successful Bidder(s).
  - (iii) For the avoidance of doubt, nothing in these Bidding Procedures shall prevent the Debtor from exercising its fiduciary duties under applicable law.
  - (iv) Absent the prior written consent of each Consultation Party, the Debtor shall not consider any Bids or Overbids submitted after the conclusion of the Auction and any and all such Bids and Overbids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.
  - (v) As soon as reasonably practicable after closing the Auction, the Debtor shall cause the definitive asset purchase agreement for the Successful Bid(s) to be filed with the Court.
- e. No Collusion; Good Faith Bona Fide Offer.

Each Qualified Bidder participating at the Auction will be required to confirm on the record that: (i) it has not engaged in any collusion with respect to the bidding; and (ii) its Qualified Bid is a good faith bona fide offer and it intends to consummate the proposed transaction if selected as the Successful Bidder.

#### **10. Backup Successful Bidder**

If a Successful Bidder fails to consummate an approved transaction contemplated by its Successful Bid, following consultation with the Consultation Parties the Debtor may select the applicable Backup Successful Bidder as the Successful Bidder, and such Backup Successful Bidder shall be deemed a Successful Bidder for all purposes. The Debtor will be authorized, but not required, to consummate all transactions contemplated by the Bid of such Backup Successful Bidder without further order of the Court or notice to any party. In such case, the defaulting Successful Bidder's Good Faith Deposit shall be forfeited to the Debtor, and the Debtor specifically reserves the right to seek all available remedies against the defaulting Successful Bidder (or Backup Successful Bidder, if such party shall also breach or fail to perform), as applicable, including with respect to specific performance. In the event that the Backup Successful Bidder fails to consummate an approved Sale, the Assets may be sold pursuant to one or more subsequent sales.

#### **11. Highest or Otherwise Best Bid**

At all times during the Proposed Sale Process, the Debtor shall retain the right to determine, following consultation with the Consultation Parties, which Bid or Bids constitutes the highest or otherwise best offer for the purchase of the Assets (whether in an aggregate sale to

a single buyer or on an asset by asset basis), and which Bid or Bids should be selected as the Successful Bid(s), if any, all subject to final approval by the Court pursuant to the provisions of Section 363(b) of the Bankruptcy Code. Following consultation with the Consultation Parties, the Debtor may adopt rules for the Auction that, in its judgment, will better promote the goals of the Auction and that are not inconsistent in any material respect with any of the other material provisions hereof or of any Court order.

## **12. Proceeds**

All valid and properly perfected liens against the Debtor's Assets shall attach to the proceeds of the Sale of such Assets.

## **13. Consent to Jurisdiction**

All Qualified Bidders at the Auction shall be deemed to have consented to the jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction, the construction and enforcement of these Bidding Procedures, and/or the Confidentiality Agreements, as applicable.

## **14. Sale Hearing**

A hearing to consider approval of the Sale of all or substantially all of the Assets to the Successful Bidder(s) (or, as applicable, to approve the Stalking Horse APA if no Auction is held) (the "Sale Hearing") is presently scheduled to take place on [October 28], 2016 at \_\_:\_\_ [a.m./p.m.] (Central Time), or as soon thereafter as counsel may be heard, before Honorable Harlin D. Hale, United States Bankruptcy Court, United States Bankruptcy Court, Northern District of Texas – Dallas Division, Earle Cabell Federal Building, 1100 Commerce St., 14<sup>th</sup> Floor Courtroom No. 3, Dallas, TX 75242-1496, or before any other judge who may be sitting in his place and stead.

The Sale Hearing may be continued to a later date by the Debtor by sending notice prior to, or making an announcement at, the Sale Hearing. No further notice of any such continuance will be required to be provided to any party.

At the Sale Hearing, the Debtor shall present the Successful Bid(s) to the Court for approval. Following the approval of the Successful Bid(s) at the Sale Hearing, the Debtor will be authorized to take any and all actions necessary and appropriate to complete and implement the Sale(s) contemplated by the Successful Bid(s), including, without limitation, seeking entry of one or more orders approving such Sale(s).

## **15. Return of Good Faith Deposits**

The Good Faith Deposit of the Successful Bidder(s) shall be applied to the purchase price of such transaction at Closing. The Good Faith Deposits for each Qualified Bidder shall be held in one or more interest-bearing escrow accounts on terms acceptable to the Debtor in its sole discretion and shall be returned (other than with respect to the Stalking Horse Bidder(s), the

Successful Bidder(s) and the Backup Successful Bidder(s)) on or within three (3) business days after the Auction. Upon the return of the Good Faith Deposits, their respective owners shall receive any and all interest that will have accrued thereon.

If a Successful Bidder fails to consummate a proposed transaction because of a breach by such Successful Bidder, the Debtor will not have any obligation to return the Good Faith Deposit deposited by such Successful Bidder, which may be retained by the Debtor as liquidated damages, in addition to any and all rights, remedies, and/or causes of action that may be available to the Debtor, and the Debtor shall be free to consummate the proposed transaction with the applicable Backup Successful Bidder without the need for an additional hearing or order of the Court.

#### **16. Reservation of Rights**

Notwithstanding any of the foregoing, the Debtor and its estates, in consultation with the Consultation Parties, reserve the right to modify these Bid Procedures at or prior to the Auction, including, without limitation, to extend the deadlines set forth herein, modify bidding increments, waive terms and conditions set forth herein with respect to any or all Potential Bidders (including, without limitation, the Qualified Bid requirements), impose additional terms and conditions with respect to any or all potential bidders, and subject to the prior consent of Administrative Agent, DIP Agent, and Stalking Horse Bidder, adjourn or cancel the Auction at or prior to the Auction and/or adjourn the Sale Hearing.

The Debtor shall consult with the Consultation Parties as explicitly provided for in these Bid Procedures; provided, however, that the Debtor shall not be required to consult with any Consultation Party (or its advisors) that submits a Bid or has a Bid submitted on its behalf for so long as such Bid remains open, including any credit bid, if the Debtor determines, in its reasonable business judgment, that consulting with such Consultation Party regarding any issue, selection, or determination is (a) likely to have a chilling effect on the potential bidding or (b) otherwise contrary to the goal of maximizing value from the sale process for the Debtor's estate, its creditors, and all other parties in interest.

**Exhibit 2**

**Auction and Sale Notice**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:	§	Chapter 11
	§	
TPP ACQUISITION, INC. d/b/a The	§	Case No. 16-33437-hdh-11
Picture People,	§	
	§	
Debtor.	§	

**NOTICE OF (I) SOLICITATION OF INITIAL BIDS; (II) BIDDING PROCEDURES;  
(III) AUCTION; (IV) SALE HEARING AND (V) RELATED RELIEF AND DATES**

TO ALL CREDITORS AND OTHER PARTIES IN INTEREST:

PLEASE TAKE NOTICE that the Debtor is soliciting offers for the purchase of substantially all of the Assets and assumption of substantially all of the liabilities of the Debtor with respect thereto consistent with the bidding procedures (the “Bidding Procedures”) approved by the Bankruptcy Court by entry of an order dated \_\_\_\_\_, 2016 (Docket No. \_\_\_) (the “Bidding Procedures Order”). Potential Bidders interested in bidding on Assets should contact the Debtor’s investment banker, SSG Capital Advisors, LLC Attn: J. Scott Victor and Teresa Kohl, Five Tower Bridge, Suite 420, 300 Barr Harbor Drive, West Conshohocken, PA 19428, [jsvictor@ssgca.com](mailto:jsvictor@ssgca.com) [tkohl@ssgca.com](mailto:tkohl@ssgca.com) to request a confidentiality agreement. All interested bidders should carefully read the Bidding Procedures and Bidding Procedures Order. To the extent that there are any inconsistencies between this notice and the Bidding Procedures or Bidding Procedures Order, the Bidding Procedures or Bidding Procedures Order, as applicable, shall govern in all respects.

PLEASE TAKE FURTHER NOTICE that, if the Debtor receives more than one qualified bid within the requirements and time frame specified by the Bidding Procedures, the Debtor may determine, in the exercise of its business judgment, to schedule an auction (the “Auction”) to request additional competitive bids from qualified bidders with respect to the Sale of the Assets on October 26, 2016 at 10:00 a.m. (Central Time), at the offices of Haynes and Boone LLP, 2323 Victory Ave, Suite 700, Dallas, TX 75219, or such later date and time as selected by the Debtor. The Auction shall be conducted in a timely fashion according to the Bidding Procedures.

PLEASE TAKE FURTHER NOTICE that a hearing to consider approval of the Sale of all or substantially all of the Assets to one or more Successful Bidder(s) (the “Sale Hearing”) is presently scheduled to take place on [October 28], 2016 at \_\_:\_\_ [a.m./p.m.] (Central Time), or as soon thereafter as counsel may be heard, before the Honorable Harlin D. Hale, United States Bankruptcy Court, Northern District of Texas – Dallas Division, Earle Cabell Federal Building, 1100 Commerce St., 14<sup>th</sup> Floor Courtroom No. 3, Dallas, TX 75242-1496 or before any other judge who may be sitting in his place and stead.

PLEASE TAKE FURTHER NOTICE that, except as otherwise set forth in the Bidding Procedures Order, objections, if any, to the Sale of the Assets, the assumption and assignment of the Contracts, or any relief requested in the Motion other than the relief granted by this Court in the Bidding Procedures Order must be: (a) in writing; (b) signed by counsel or attested to by the objecting party; (c) in conformity with the Bankruptcy Rules and applicable local rules; (d) filed with the Clerk of the Bankruptcy Court for the Northern District of Texas, by no later than 5:00 p.m. (Central Time) on October 21, 2016 (the “General Objection Deadline”); and (e) served in accordance with applicable local rules so as to be received on or before the relevant objection deadline by the following (collectively, the “Objection Notice Parties”): (i) counsel for the Debtor, Robert D. Albergotti and Ian T. Peck, Haynes and Boone LLP, 2323 Victory Ave, Suite 700, Dallas, TX 75219, [robert.albergotti@haynesboone.com](mailto:robert.albergotti@haynesboone.com) [ian.peck@haynesboone.com](mailto:ian.peck@haynesboone.com); (ii) co-counsel for the Stalking Horse Bidder, Riemer & Braunstein LLP, Times Square Tower, Seven Times Square, New York, New York 10036 (attn.: Donald E. Rothman, Esq. and Steven E. Fox, Esq.) Email: [drothman@riemerlaw.com](mailto:drothman@riemerlaw.com); [sfox@riemerlaw.com](mailto:sfox@riemerlaw.com); and Vinson & Elkins L.L.P., 3700 Trammell Crow Center, 2001 Ross Avenue, Suite 3700, Dallas, TX 75201-2975 (attn.: Josiah M. Daniel, III), Email: [jdaniel@velaw.com](mailto:jdaniel@velaw.com); and (iii) Office of the United States Trustee for the Northern District of Texas, Office of the United States Trustee for the Northern District of Texas, 1100 Commerce St # 976, Dallas, TX 75242 (these procedures are collectively referred to as the “General Objection Procedures”). Each objection shall state the legal and factual basis of such objection.

### **CONSEQUENCES OF FAILING TO TIMELY MAKE AN OBJECTION**

ANY PARTY OR ENTITY WHO FAILS TO TIMELY MAKE AN OBJECTION TO THE SALE ON OR BEFORE THE GENERAL OBJECTION DEADLINE IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, EXCEPT AS SET FORTH IN THE APPLICABLE PURCHASE AND SALE AGREEMENT RELATED THERETO. IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT CERTAIN OF THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

PLEASE TAKE FURTHER NOTICE that copies of the Motion, and any exhibits thereto, including the Bidding Procedures Order, Bidding Procedures, and the Stalking Horse APA, are available upon request to counsel for the Debtor, Robert D. Albergotti and Ian T. Peck, Haynes and Boone LLP, 2323 Victory Ave, Suite 700, Dallas, TX 75219, [robert.albergotti@haynesboone.com](mailto:robert.albergotti@haynesboone.com); [ian.peck@haynesboone.com](mailto:ian.peck@haynesboone.com)

Dated: \_\_\_\_\_, 2016

/s/ draft

**Exhibit 3**

**Assumption and Assignment Notice**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION**

In re:	§	Chapter 11
	§	
TPP ACQUISITION, INC. d/b/a The	§	Case No. 16-33437-hdh-11
Picture People,	§	
	§	
Debtor.	§	

**NOTICE OF (I) DEBTOR’S REQUEST FOR AUTHORITY TO ASSUME AND ASSIGN  
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES,  
AND (II) DEBTOR’S PROPOSED CURE AMOUNTS**

TO ALL COUNTERPARTIES TO EXECUTORY CONTRACTS AND UNEXPIRED LEASES  
PLEASE TAKE NOTICE THAT:

PLEASE TAKE NOTICE that on September 2, 2016, TPP Acquisition, Inc. d/b/a The Picture People, debtor-in-possession in the above-referenced chapter 11 cases (the “Debtor”), filed a voluntary petition for relief under Chapter 11 of Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Texas (the “Court”).

PLEASE TAKE FURTHER NOTICE that on September 2, 2016, the Debtor filed *Debtor’s Expedited Motion, pursuant to Bankruptcy Code Sections 105(a), 363, and 365, and Bankruptcy Rules 2002, 6004, and 6006, for Entry of an Order (A) Approving Sale and Bidding Procedures and Bid Protections in Connection with Sale of Assets of the Debtor, (B) Authorizing the Sale of Assets Free and Clear of all Liens, claims, Encumbrances and Other Interests, and (C) Granting Related Relief* (the “Motion”) (Docket No. \_\_\_) with the Clerk of the Bankruptcy Court seeking, among other things, entry of an order (the “Sale Order”) authorizing and approving: (a) the sale of substantially all of its assets (collectively, the “Assets”) free and clear of liens, claims, encumbrances and other interests, with all such liens, claims, encumbrances and other interests attaching with the same validity and priority to the sale proceeds, to one or more purchasers submitting the highest or otherwise best offers therefor (the “Sale”); and (b) procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, the “Contracts”). Please note that all capitalized terms used but not defined herein shall have the meanings set forth in the Motion.

PLEASE TAKE FURTHER NOTICE THAT on \_\_\_\_\_, 2016, the Court entered an order (Docket No. \_\_\_) (the “Bidding Procedures Order”) granting certain of the relief sought in the Motion, including, among other things, approving: (a) the bidding procedures for the Sale of the Assets (the “Bidding Procedures”); and (b) procedures for the assumption and assignment of Contracts (the “Assumption and Assignment Procedures”). Copies of the Bidding Procedures

Order (which incorporates the Assumption and Assignment Procedures and the Bidding Procedures) are enclosed herein.

PLEASE TAKE FURTHER NOTICE that the Debtor will seek approval of the Sale at a hearing presently scheduled to take place on [October 28], 2016 at \_\_:\_\_ [a.m./p.m.] (Central Time), or as soon thereafter as counsel may be heard, before the Honorable Harlin D. Hale, United States Bankruptcy Court, Northern District of Texas – Dallas Division, Earle Cabell Federal Building 1100 Commerce St., 14<sup>th</sup> Floor Courtroom No. 3, Dallas, TX 75242-1496 or before any other judge who may be sitting in his place and stead (the “Sale Hearing”).

PLEASE TAKE FURTHER NOTICE THAT at the Sale Hearing, the Debtor may seek to assume and assign to one or more Successful Bidder(s) for the Assets at the Auction (as defined in the Bidding Procedures Order) (each an “Assignee”) some or all of the Contracts and any modifications thereto set forth on **Exhibit A** hereto (collectively, the “Assumed and Assigned Contracts”). In addition, the Debtor’s calculation of the cure amounts, if any, necessary for the assumption and assignment of the Assumed and Assigned Contracts (the “Cure Amounts”) are set forth on **Exhibit A**.

PLEASE TAKE FURTHER NOTICE THAT as soon as practicable after the conclusion of the Auction, the Debtor shall file with the Court and serve by first-class mail, facsimile, electronic transmission, or overnight mail on the Contract Counterparty (and its attorney, if known) to each Assumed and Assigned Contract a notice: (a) identifying the Successful Bidder(s); (b) stating which Contract(s) will be assumed and assigned thereto; and (c) containing a statement as to the Successful Bidder(s)’ ability to perform the Debtor’s obligations under the applicable Assumed and Assigned Contracts.

PARTIES LISTED ON **EXHIBIT A** HERETO ARE RECEIVING THIS NOTICE BECAUSE THE DEBTOR, OR OTHER POTENTIAL BIDDER(S), HAS IDENTIFIED THEM AS A POTENTIAL COUNTERPARTY TO AN ASSUMED AND ASSIGNED CONTRACT. Under the terms of the Assumption and Assignment Procedures, if at any time after the entry of the Bidding Procedures Order the Debtor identify additional prepetition executory Contracts and/or Leases to be assumed and assigned to the Purchaser as Assumed and Assigned Contracts (whether before or after closing of any Sale(s) of relevant Assets), the Debtor shall serve a supplemental Assumption and Assignment Notice by first-class mail, facsimile, electronic transmission, or overnight mail on the Contract Counterparty (and its attorney, if known) to each supplemental Assumed and Assigned Contract at the last known address available to the Debtor by no later than ten (10) days before the proposed effective date of the assignment. Such Contract Counterparty shall have a period of ten (10) days from receipt of the supplemental Assumption and Assignment Notice to file with the Court any objection to the proposed cure amount or the assumption and assignment of such Contract(s), as applicable, as will be set forth in the supplemental Assumption and Assignment Notice.

#### **Obtaining Additional Information**

Additional copies of the Motion, the Bidding Procedures Order, the Bidding Procedures and any other related documents are available upon request to counsel for the Debtor Robert D.

Albergotti and Ian T. Peck, Haynes and Boone LLP, 2323 Victory Ave, Suite 700, Dallas, TX 75219, [robert.albergotti@haynesboone.com](mailto:robert.albergotti@haynesboone.com) [ian.peck@haynesboone.com](mailto:ian.peck@haynesboone.com)

### **Assumed and Assigned Contract Objection Procedures**

Pursuant to the Assumption and Assignment Procedures, all objections to the assumption and assignment of any Lease or Contract, including without limitation any objection to the Debtor's proposed Cure Amount or the provision of adequate assurance of future performance under any Lease or Contract pursuant to Section 365 of the Bankruptcy Code ("Adequate Assurance") (other than objections filed in response to any supplemental Assumption and Assignment Notice, as set forth above) must: (a) be in writing; (b) be signed by counsel or attested to by the objecting party; (c) be in conformity with the Bankruptcy Rules and applicable local rules; (d) be filed with the Clerk of the Bankruptcy Court for the Northern District of Texas, Clerk of the Bankruptcy Court for the Northern District of Texas, United States Bankruptcy Court, Northern District of Texas – Dallas Division, Earle Cabell Federal Building, 1100 Commerce St., Rm. 1254 Dallas, TX 75242-1496, by no later than 5:00 p.m. (Central Time) on October 21, 2016, by no later than 5:00 p.m. (Central Time) or other applicable deadline as indicated in the Motion; (e) be served in accordance with applicable local rules so as to be received on or before the relevant objection deadline by the following: (i) counsel for the Debtor, Robert D. Albergotti and Ian T. Peck, Haynes and Boone LLP, 2323 Victory Ave, Suite 700, Dallas, TX 75219, [robert.albergotti@haynesboone.com](mailto:robert.albergotti@haynesboone.com) [ian.peck@haynesboone.com](mailto:ian.peck@haynesboone.com); (ii) co-counsel for the Stalking Horse Bidder, Riemer & Braunstein LLP, Times Square Tower, Seven Times Square, New York, New York 10036 (attn.: Donald E. Rothman, Esq. and Steven E. Fox, Esq.) Email: [drothman@riemerlaw.com](mailto:drothman@riemerlaw.com); [sfox@riemerlaw.com](mailto:sfox@riemerlaw.com); and Vinson & Elkins L.L.P., 3700 Trammell Crow Center, 2001 Ross Avenue, Suite 3700, Dallas, TX 75201-2975 (attn.: Josiah M. Daniel, III), Email: [jdaniel@velaw.com](mailto:jdaniel@velaw.com); and (iii) Office of the United States Trustee for the Northern District of Texas, Office of the United States Trustee for the Northern District of Texas, 1100 Commerce St # 976, Dallas, TX 75242; (f) identify the Lease or Contract to which the objector is party; (g) describe with particularity any cure the claimant contends is required under Section 365 of the Bankruptcy Code (the "Cure Claim") and identify the basis(es) of the alleged Cure Claim under the Contract or Lease; (h) attach all documents supporting or evidencing the Cure Claim; and (i) if the response contains an objection to Adequate Assurance, state with specificity what the objecting party believes is required to provide Adequate Assurance.

### **CONSEQUENCES OF FAILING TO TIMELY FILE AND SERVE AN OBJECTION**

ANY COUNTERPARTY TO AN ASSUMED AND ASSIGNED CONTRACT WHO FAILS TO TIMELY FILE AND SERVE AN OBJECTION TO THE PROPOSED ASSUMPTION AND ASSIGNMENT OF AN ASSUMED AND ASSIGNED CONTRACT AND/OR THE CURE AMOUNT SET FORTH ON EXHIBIT A IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER AND THE ASSUMPTION AND ASSIGNMENT PROCEDURES SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE ASSUMPTION AND ASSIGNMENT OF THE ASSUMED AND ASSIGNED CONTRACT AND/OR THE CURE AMOUNT SET FORTH ON EXHIBIT A, INCLUDING ASSERTING ADDITIONAL CURE AMOUNTS WITH RESPECT TO THE ASSUMED AND

ASSIGNED CONTRACT RELATING TO ANY PERIOD PRIOR TO THE TIME OF ASSUMPTION AND ASSIGNMENT.

Dated: \_\_\_\_\_, 2016

/s/ draft\_\_\_\_\_

**EXHIBIT A**

**Cure Amount Schedule**

<b>Contract Counterparty</b>	<b>Description of Contract or Lease</b>	<b>Proposed Cure Amount</b>

**EXHIBIT B**

**Stalking Horse Asset Purchase Agreement**

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**ASSET PURCHASE AGREEMENT**

**By and Among**

**TPP HOLDINGS, LLC**

**as Purchaser,**

**and**

**TPP ACQUISITION, INC.,**

**as Seller**

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**Dated as of September 2, 2016**

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## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “*Agreement*”), dated as of September 2, 2016 (the “*Agreement Date*”), by and among **TPP HOLDINGS, LLC**, a Delaware limited liability company (“*Purchaser*”) and one or more other persons designated by the Purchaser (collectively, the “*Purchaser Designees*”), and **TPP ACQUISITION, INC.**, a Delaware corporation (the “*Company*” or “*Seller*”). Purchaser and the Seller are collectively referred to herein as the “*Parties*” and individually as a “*Party*”. For the purposes of this Agreement, capitalized terms used herein shall have the meanings set forth herein or in Article X.

### RECITALS:

WHEREAS, the Seller has advised Purchaser that it intends to file a voluntary petition (the “*Chapter 11 Petition*”) for relief under Chapter 11 of the United States Bankruptcy Code (the “*Bankruptcy Code*”) in the United States Bankruptcy Court for the Northern District of Texas (Dallas Division) (the “*Bankruptcy Court*”) commencing a chapter 11 case (the “*Bankruptcy Case*”) on or about September 2, 2016.

WHEREAS, subject to the approval of the Bankruptcy Court, the Seller intends to continue to manage its properties and operate its business as a “debtor-in-possession” under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code;

WHEREAS, the Seller wishes to sell the Business;

WHEREAS, Purchaser desires to purchase the Purchased Assets and assume the Assumed Liabilities from the Seller, and the Seller desires to sell, convey, assign and transfer to Purchaser the Purchased Assets together with the Assumed Liabilities, all in the manner and subject to the terms and conditions set forth in this Agreement and in accordance with Sections 105, 363 and 365 and other applicable provisions of the Bankruptcy Code;

WHEREAS, the Purchased Assets and Assumed Liabilities shall be purchased and assumed by Purchaser pursuant to the Sale Order approving such sale, free and clear of all Claims and Encumbrances (other than Permitted Encumbrances), pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (collectively with the local rules for the Bankruptcy Court, the “*Bankruptcy Rules*”), which Sale Order will include the authorization for the assumption by Seller and assignment to Purchaser of the Assigned Contracts and the liabilities thereunder in accordance with Section 365 of the Bankruptcy Code and Bankruptcy Rule 6006, all in the manner and subject to the terms and conditions set forth in this Agreement and the Sale Order, and in accordance with other applicable provisions of the Bankruptcy Code and the Bankruptcy Rules; and

WHEREAS, the Seller’s board of directors (or similar governing body) has determined that it is advisable and in the best interests of Seller and its constituencies to enter into this Agreement and to consummate the transactions provided for herein, subject to entry of the Sale Order, and each has approved the same.

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

the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Purchaser and Seller hereby agree as follows:

## ARTICLE I.

### PURCHASE AND SALE OF THE PURCHASED ASSETS; ASSUMPTION OF ASSUMED LIABILITIES

1.1. Purchase and Sale of the Purchased Assets. Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code and the Bankruptcy Rules, and on the terms and subject to the conditions set forth herein and the Sale Order, at the Closing Seller shall sell, transfer, assign, convey and deliver to Purchaser (or any Purchaser Designee, as may be determined by Purchaser), and Purchaser shall purchase, acquire and accept from Seller all of Seller's right, title and interest in, to and under the Business relating to the Seller's retail store locations and store-in-store and/or concession locations (collectively, the "**Stores**") listed on Schedule 1.1 (hereinafter, the "**Business**"), including the following, but excluding the Excluded Assets (the "**Purchased Assets**"), as of the Closing:

(a) all of Seller's properties, rights, claims and assets (other than the Excluded Assets) of every kind and description, wherever situated or located, real, personal or mixed, tangible or intangible, contingent, owned, leased, or licensed, for use in or relating to the Business, whether or not reflected on the books and records of Seller, as the same shall exist on the Closing Date;

(b) subject to Sections 1.6 and 1.7 hereof, to the extent assignable pursuant to Section 365 of the Bankruptcy Code and Bankruptcy Rule 6006, all rights under Contracts, agreements and purchase and sale orders that are not Excluded Contracts (as defined in Section 1.6(a)), including all rights under any lease for Assumed Leased Real Property and any customer contracts and any contract renewal rights, but excluding obligations under the DIP Financing (the "**Assigned Contracts**"), each as listed on Schedule 1.1(b) and Schedule 4.7;

(c) to the extent related to the Business, except as set forth on Schedule 1.1(c), all trade and non-trade accounts receivable, notes receivable and negotiable instruments of Seller (the "**Accounts Receivable**");

(d) other than as set forth on Schedule 1.1(d), all of Seller's Cash and Cash Equivalents;

(e) all Documents relating to the Purchased Assets or Assumed Liabilities, including, without limitation, customer lists; provided, however, that Seller has the right to retain copies at Seller's expense;

(f) all tangible assets of Seller relating to the Business, including, without limitation, the tangible assets of Seller located at any Assumed Leased Real Property or at the Locations listed on Schedule 1.1(b);

(g) all personnel files for Transferred Employees except as required under Law; provided, however, that Seller has the right to retain copies at Seller's expense to the extent required by Law;

(h) any chattel paper owned or held by Seller relating to the Business or the Purchased Assets other than the Excluded Assets;

(i) any lock boxes to which account debtors of the Seller remit payment relating to the Business or the Purchased Assets other than the Excluded Assets;

(j) all other or additional assets, properties, privileges, rights (including prepaid expenses) and interests of Seller relating to the Business or the Purchased Assets, other than the Excluded Assets, of every kind and description and wherever located, whether known or unknown, fixed or unfixd, accrued, absolute, contingent or otherwise, and whether or not specifically referred to in this Agreement;

(k) all Permits and all pending applications therefor;

(l) all express or implied guarantees, warranties, representations, covenants, indemnities, rights, claims, counterclaims, defenses, credits, causes of action or rights of set off against third parties relating to the Purchased Assets (including, for the avoidance of doubt, those arising under, or otherwise relating to the Assigned Contracts) or Assumed Liabilities, including rights under vendors' and manufacturers' warranties, indemnities, guaranties and avoidance claims and causes of action under the Bankruptcy Code or applicable Law that are possessed by the Seller;

(m) the Purchased Intellectual Property, including all claims (including all rights to bring claims for past, present or future infringement of the Purchased Intellectual Property owned by Seller) and causes of action of Seller as of the Closing against any Persons (regardless of whether or not such claims and causes of action have been asserted by Seller) related thereto, except to the extent such claims or causes of action constitute an Excluded Asset;

(n) all goodwill, payment intangibles and general intangible assets and rights of Seller to the extent associated with the Business or the Purchased Assets, other than the Excluded Assets;

(o) all Inventory, including raw materials, work in process, parts, subassemblies and finished goods, wherever located and whether or not obsolete or carried on the Seller's books of account, in each case with any transferable warranty and service rights of the applicable Seller with respect to such Purchased Assets to the extent owned by Seller;

(p) to the extent permitted by Law, the Seller's Documents, and without limiting the foregoing, each of the following: financial accounting and other books and records, correspondence, and all customer sales, marketing, advertising, packaging and promotional materials, files, data, software (whether written, recorded or stored on disk, film, tape or other media, and including all computerized data), drawings, engineering and manufacturing data and other technical information and data, and all other business and other records, in each case arising under or relating to the Purchased Assets, the Assumed Liabilities or the Business; provided, however, that Seller has the right to retain copies of all of the foregoing at Seller's expense;

(q) to the extent transferable, all rights and obligations under or arising out of all insurance policies relating to the Business or any of the Purchased Assets or Assumed Liabilities (including returns and refunds of any premiums paid, or other amounts due back to Seller, with respect to cancelled policies);

(r) all Tax assets net of any liability (including all state and federal Tax refunds (or the right to such state and federal refunds of Taxes, whether claimed or unclaimed) for all taxable periods (or portions thereof), whether ending on, prior to, or after the Closing Date (the “**Tax Refunds**”));

(s) except to the extent set forth on Schedule 1.1(s), all rights and obligations under non-disclosure or confidentiality, key employee retention plans and similar arrangements with (or for the benefit of) employees and agents of Seller or with third parties (including any non-disclosure or confidentiality agreements or any key employee retention plans or similar arrangements entered into in connection with or in contemplation of the filing of the Bankruptcy Case and the Auction contemplated by the Bidding Procedures Order);

(t) all Assumed Plans (including all assets, trusts, insurance policies and administration service contracts related thereto) listed on Schedule 1.1(t);

(u) to the extent owned by Seller, all fixed assets and other personal property and interests related to the Business or Purchased Assets, wherever located, including all vehicles, tools, parts and supplies, fuel, machinery, equipment, furniture, furnishing, appliances, fixtures, office equipment and supplies, owned and licensed computer hardware and related documentation, stored data, communication equipment, trade fixtures and leasehold improvements, in each case with any freely transferable warranty and service rights of the applicable Seller with respect to such Purchased Assets;

(v) telephone, fax numbers and email addresses;

(w) all of Seller’s rights to receive refunds, payments or overpayments, clawbacks or other amounts (whether from a workers’ compensation administrator or otherwise) in respect of any and all workers’ compensation matters, claims, potential claims, purported claims and similar related items with respect to any Transferred Employee;

(x) all avoidance claims or causes of action under the Bankruptcy Code or applicable Law (including, without limitation, any preference or fraudulent conveyance), and all other claims or causes of action under any other provision of the Bankruptcy Code or applicable laws solely relating to the Purchased Assets and/or Assumed Liabilities, including all actions relating to vendors and service providers used in the Business that are counterparties to Assigned Contracts or relating to Assumed Liabilities (the “**Avoidance Actions**”);

(y) any and all claims, deposits, prepayments, refunds, rebates, causes of action, rights of recovery, rights of set-off and rights of recoupment relating to or in respect of an Excluded Asset;

(z) without duplication of the above, all other current assets of Seller as of the Closing Date; and

(aa) all other assets that are related to or used in connection with the Purchased Assets or the Business (but excluding all of the Excluded Assets).

1.2. Excluded Assets. Notwithstanding anything to the contrary in this Agreement, in no event shall Seller be deemed to sell, transfer, assign or convey, and Seller shall retain all right, title

and interest to, in and under only the following assets, properties, interests and rights of Seller (collectively, the “*Excluded Assets*”):

(a) any asset of Seller that otherwise would constitute a Purchased Asset but for the fact that it is sold or otherwise disposed of in the Ordinary Course of Business of Seller(s) and in conformity with the terms and conditions of this Agreement, during the time from the Agreement Date until the Closing Date, or Purchaser otherwise agrees to such disposition;

(b) copies of any and all information not relating to the Business that is stored on Seller’s computer systems, data networks or servers;

(c) all agreements and contracts of Seller other than the Assigned Contracts;

(d) all Documents and all personnel records of Seller’s employees that Seller is required by Law to retain and is prohibited by Law from providing a copy thereof to Purchaser;

(e) the Seller’s Organizational Documents, corporate charter, minute and stock record books, Tax Returns, corporate seal, checkbooks and canceled checks;

(f) all shares of capital stock or other equity interests issued by Seller or securities convertible into, exchangeable or exercisable for any such shares of capital stock or other equity interests;

(g) any avoidance claims or causes of action under the Bankruptcy Code or applicable Law (including, without limitation, any preference or fraudulent conveyance), and all other claims or causes of action under any other provision of the Bankruptcy Code or applicable laws, solely relating to Excluded Assets or Excluded Liabilities;

(h) all Claims that any of the Seller may have against any Person solely with respect to any Excluded Assets or any Excluded Liabilities;

(i) Seller’s rights under this Agreement, the Purchase Price hereunder, any agreement, certificate, instrument or other document executed and delivered by Purchaser to Seller in connection with the transactions contemplated hereby, or any side agreement between Seller and Purchaser entered into on or after the Agreement Date;

(j) all current and prior director and officer insurance policies of the Seller and all rights of any nature with respect thereto, including all insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries;

(k) all deposits or pre-paid amounts funded by the Seller for the purpose of the Bankruptcy Case set forth on Schedule 1.2(k); and

(l) all Benefit Plans (including all assets, trusts, insurance policies and administration service contracts related thereto) except for the Assumed Plans;

1.3. Assumption of Liabilities. On the terms and subject to the conditions set forth in this Agreement and the Sale Order, effective as of the Closing, Purchaser shall assume from the Seller (and pay, perform, discharge or otherwise satisfy in accordance with their respective terms), and the

Seller shall irrevocably convey, transfer and assign to Purchaser, the following Liabilities (and only the following Liabilities) (collectively, the “*Assumed Liabilities*”):

- (a) all Liabilities of Seller arising from the ownership of the Purchased Assets, arising after the Closing Date;
- (b) all Liabilities and obligations of Seller under the Purchased Assets and under the Assigned Contracts, including, without limitation, (i) all pre-petition Cure Amounts required to be paid pursuant to Section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Assigned Contracts (such pre-petition Cure Amounts are, collectively, the “*Cure Amounts*”) and (ii) any post-Closing liabilities;
- (c) all open purchase orders set forth on Schedule 1.3(c) arising out of the conduct of the Business and Liabilities arising under drafts or checks outstanding at the Closing incurred in the Ordinary Course of Business;
- (d) the obligations to provide benefits or payments under the Assumed Plans; and
- (e) Subject to Section 11.1(a), Taxes owed by Seller and arising in connection with the consummation of the transactions contemplated by this Agreement.

The assumption by Purchaser of the Assumed Liabilities shall not, in any way, enlarge the rights of any third parties relating thereto.

1.4. Excluded Liabilities. Notwithstanding any provision in this Agreement to the contrary, Purchaser is assuming only the Assumed Liabilities and is not assuming, and shall not be deemed to have assumed, any other Liabilities of Seller of whatever nature (whether arising prior to, at the time of, or subsequent to Closing), whether absolute, accrued, contingent or otherwise, whether due or to become due and whether or not assets, and whether or not known or unknown or currently existing or hereafter arising or matured or unmatured, direct or indirect, and the Seller shall be solely and exclusively liable for any and all such Liabilities, including those relating to, arising out of or in connection with the operation of the Business or the Purchased Assets (including the use and ownership thereof) at any time prior to the Closing Date, and including, without limitation, those Liabilities set forth below (collectively, the “*Excluded Liabilities*”):

- (a) all Liabilities of the Seller relating to or otherwise arising, whether before, on or after the Closing, out of, or in connection with, any of the Excluded Assets;
- (b) any and all Liabilities for Indebtedness with respect to borrowed money;
- (c) all guarantees of third party obligations and reimbursement obligations to guarantors of Seller’s obligations or under letters of credit;
- (d) any and all Liabilities of the Seller in respect of Contracts that are not Assigned Contracts;
- (e) except for any employment Contract that is an Assigned Contract, all Liabilities with respect to compensation, severance or benefits of any nature owed to any current or former employee, officer, director, member, partner or independent contractor of Seller or any

ERISA Affiliate (or any beneficiary or dependent of any such individual), whether or not employed by Purchaser or any of its Affiliates after the Closing, that (A) arises out of or relates to the employment, service provider or other relationship between Seller or ERISA Affiliate and any such individual, including the termination of such relationship, (B) arises out of or relates to any Benefit Plan or (C) arises out of or relates to events or conditions occurring on or before the Closing Date;

(f) drafts or checks outstanding at the Closing (except to the extent an Assumed Liability or relating to an Assigned Contract);

(g) all Liabilities under any futures contracts, options on futures, swap agreements or forward sale agreements;

(h) all Liabilities for fees, costs and expenses that have been incurred or that are incurred or owed by Seller in connection with this Agreement or the administration of the Bankruptcy Case (including all fees and expenses of professionals engaged by Seller and any statutory committee appointed in the Bankruptcy Case) and administrative expenses and priority claims accrued through the Closing Date and specified post-closing administrative wind-down expenses of the bankrupt estates pursuant to the Bankruptcy Code and all costs and expenses incurred in connection with (i) the negotiation, execution and consummation of the transactions contemplated under this Agreement and each of the other documents delivered in connection herewith, (ii) the preparation and submission of any filing or notice required to be made or given in connection with any of the transactions contemplated by this Agreement, and the obtaining of any consent required to be obtained in connection with any of such transactions; (iii) the negotiation, execution and consummation of the DIP Financings, and (iv) the consummation of the transactions contemplated by this Agreement, including any retention bonuses, “success” fees, change of control payments and any other payment obligations of Seller payable as a result of the consummation of the transactions contemplated by this Agreement and the documents delivered in connection herewith;

(i) all Liabilities related to the WARN Act, to the extent applicable, with respect to separation of employment of any Employees prior to or on the Closing Date, unless the WARN Act did not apply to such separation but for any act or omission of the Purchaser or any of its Affiliates after the Closing Date;

(j) all Liabilities with respect to severance, compensation or benefits of any nature owed by Seller to any current or former employee, consultant or independent contractor or any beneficiary or dependent thereof, whether or not any such individual enters into employment or other service with Purchaser after Closing that (i) arises out of or relates to the employment or service-provider relationship between the Seller or any ERISA Affiliate and any such individuals, including the termination of such relationship, on or prior to the Closing Date, (ii) arises out of or relates to any Benefit Plan or (iii) arises out of or relates to events or conditions occurring on or before the Closing Date;

(k) all Liabilities of Seller to its directors respecting director and/or other board fees and/or reimbursable expenses pursuant to Seller’s Organizational Documents or applicable Law;

(l) all Liabilities of Seller to its equity holders respecting dividends, distributions in liquidation, redemptions of interests, option payments or otherwise, and any liability of Seller pursuant to any Affiliate Agreement;

(m) all Liabilities arising out of or relating to any business or property formerly owned or operated by Seller, any Affiliate or predecessor thereof, but not presently owned and operated by the Seller;

(n) all Liabilities relating to claims, actions, suits, arbitrations, litigation matters, proceedings or investigations (in each case whether involving private parties, Authorities, or otherwise) involving, against, or affecting any Purchased Asset, the Business, Seller, or any assets or properties of Seller, whether commenced, filed, initiated, or threatened before or after the Closing provided that such claim, action, suit, arbitration, litigation matter, proceeding or investigation relates to facts, events, or circumstances arising or occurring before the Closing;

(o) all obligations of the Seller arising and to be performed prior to the Closing Date arising from or related to the Business or the Purchased Assets;

(p) all Environmental Liabilities and Obligations;

(q) all Liabilities of Seller or their predecessors arising out of any contract, agreement, Permit, franchise or claim that is not transferred to Purchaser as part of the Purchased Assets or, is not transferred to Purchaser because of any failure to obtain any third-party or governmental consent required for such transfer; and

(r) any and all (i) except to the extent provided otherwise under Section 11.1 hereof, Liabilities of the Seller for any Taxes (including any Taxes owed by Seller and arising in connection with the consummation of the transactions contemplated by this Agreement), and (ii) Taxes attributable to the Purchased Assets or the operation of the Business for any Pre-Closing Tax Period.

1.5. Post-Closing Liabilities. Purchaser acknowledges that Purchaser shall be responsible for all Liabilities and obligations relating to Purchaser's ownership or use of, or right to use, the Purchased Assets and the Assumed Liabilities after the Closing Date, including, without limitation, all Taxes arising out of or related to the Purchased Assets or the operation of conduct of the Business acquired pursuant to this Agreement for all Tax periods beginning on or after the Closing Date.

1.6. Assumption/Rejection of Certain Contracts.

(a) The Sale Order shall provide for the assumption by Seller, and the assignment to the extent legally capable of being assigned by Seller to Purchaser, of the Assigned Contracts on the terms and conditions set forth in the remainder of this Section 1.6, and shall provide for the Designation Deadline as defined herein. At Purchaser's request, Seller shall reasonably cooperate from the date hereof forward with Purchaser as reasonably requested by Purchaser: (i) to allow Purchaser to enter into an amendment of any Lease upon assumption of such Lease by Purchaser (and Seller shall reasonably cooperate with Purchaser to the extent reasonably requested with Purchaser in negotiations with the landlords thereof), or (ii) to otherwise amend any Lease to the extent such amendments would not adversely affect Seller; provided, that Seller shall not be required to enter into any such amendment if such amendment would result in an assumption by Seller of such Lease, unless such Lease will be assigned to Purchaser at the time of such assumption.

(b) Purchaser shall, prior to the hearing on the Sale Motion, identify the Non-Real Property Contracts and Leases that Purchaser has decided will be Assigned Contracts to be

assumed and assigned to Purchaser on the Closing Date by providing a list thereof to Seller (as updated in accordance with this Agreement, the “**Closing Assumed Contract List**”). Up to three (3) Business Days prior to the Closing Date, Purchaser may, in its sole discretion, add or remove any Non-Real Property Contract or Lease as an Assigned Contract to be assumed and assigned to Purchaser on the Closing Date by amending the Closing Assumed Contract List, and, in connection with the Closing, the Seller shall move in the Bankruptcy Court to assign any such Non-Real Property Contract or Lease on the Closing Assumed Contract List to Purchaser, and at the Closing shall assume and assign to, and Purchaser shall accept the assignment of and assume such Non-Real Property Contract or Lease. In advance of the Closing Date, Purchaser may, in its sole discretion, designate a Non-Real Property Contract or Lease for exclusion and rejection by delivering written notice to Seller and, in connection with the Closing, the applicable Seller shall move to reject any such Non-Real Property Contract or Lease as of the Closing Date (which date shall constitute the Rejection Effective Date (defined below) with respect thereto).

(c) From and after the Closing Date until the Designation Deadline, with respect to any Non-Real Property Contract or Lease that was neither included on the Closing Assumed Contract List nor excluded and rejected as of the Closing Date, Purchaser may, in its sole discretion, (i) designate such Non-Real Property Contract or Lease as an Assigned Contract by providing written notice to Seller, specifying the Non-Real Property Contracts or Leases to be assumed by Seller and assigned to Purchaser or (ii) designate such Non-Real Property Contract or Lease for exclusion and rejection for purposes of this Agreement and, if executory, to be rejected by providing written notice to Seller, specifying the Non-Real Property Contracts or Leases to be excluded and rejected by the applicable Seller and the date that such rejection shall be effective, which rejection shall be effective upon the delivery of such notice to Seller (each, a “**Rejection Effective Date**”). Upon delivery of a notification by Purchaser with respect to any Non-Real Property Contract or Lease under Section 1.6(c)(i), the applicable Seller shall move in the Bankruptcy Court within five (5) days of receipt of such notice to assign such Non-Real Property Contract or Lease to Purchaser and shall assume and assign to, and Purchaser shall accept the assignment of and assume such Non-Real Property Contract or Lease. Upon delivery of a notification by Purchaser with respect to any Non-Real Property Contract or Lease under Section 1.6(c)(ii), the applicable Seller shall move in the Bankruptcy Court within five (5) days of receipt of such notice to reject such Non-Real Property Contract or Lease as of the applicable Rejection Effective Date. In the event that Purchaser has not provided a written designation to assume and assign or reject any Non-Real Property Contract or Lease pursuant to this Section 1.6(c) by the Designation Deadline, then such Non-Real Property Contract or Lease shall be deemed to be excluded and Seller may move in the Bankruptcy Court to reject such Non-Real Property Contract or Lease as of the Designation Deadline (which Designation Deadline shall constitute the Rejection Effective Date with respect thereto), and no Seller shall have any obligation to assign any such Non-Real Property Contract or Lease to Purchaser hereunder. Any Non-Real Property Contract or Lease that is designated (or deemed to be designated) for exclusion and rejection pursuant to this Section 1.6(c) shall constitute an “**Excluded Contract**” as of the Closing Date or, if thereafter, as of the Rejection Effective Date. To the extent that a Non-Real Property Contract or Lease has not at Closing been designated as an Excluded Contract or an Assigned Contract, then, until the Rejection Effective Date, Purchaser shall be obligated to perform or cause to be performed all of Seller’s obligations under such Non-Real Property Contract or Lease, and Purchaser shall be entitled to all benefits of Seller thereunder; provided, that no Cure Amount shall be due with respect to such Non-Real Property Contract or Lease until the permanent assumption thereof at Assumption Approval in accordance with Section 1.6(h).

(d) After the Closing and prior to the Designation Deadline, Seller shall not terminate, amend, supplement, modify, waive any rights under, or create any Lien with respect to any Non-Real Property Contract or any Lease, or take any affirmative action not required by the terms thereof, without the prior written consent of Purchaser (not to be unreasonably withheld or delayed), unless Purchaser has provided notice to Seller in writing designating such Non-Real Property Contract or Lease for rejection pursuant to Section 1.6(c).

(e) Within three (3) Business Days of Purchaser's delivery of any notice of removal or designation of any Non-Real Property Contract or Lease as an Assigned Contract by Purchaser pursuant to Section 1.6(c), or such lesser time as is approved by the Bankruptcy Court, Seller shall give notice of the removal or designation of such Non-Real Property Contract or Lease as an Assigned Contract to the other parties thereto.

(f) As part of the Sale Motion (or as necessary in one or more separate motions), Seller shall request that, by virtue of Seller providing ten (10) days' prior notice of its intent to assume and assign any Contract, the Bankruptcy Court deem any non-debtor party to such Contract that does not file an objection with the Bankruptcy Court during such notice period to have given any required Consent to the assumption of the Contract by the relevant Seller and assignment to Purchaser.

(g) In connection with the assumption and assignment to Purchaser of any Assigned Contract that is executory pursuant to this Section 1.6, the Cure Amounts, as determined by the Bankruptcy Court, if any, necessary to cure all defaults, if any, and to pay all actual or pecuniary losses that have resulted from such defaults under the Assigned Contracts, including any amounts payable to any landlord under any Lease that is an Assigned Contract that relates to the period prior to the Assumption Approval, shall be paid by Purchaser, on or before the Assumption Approval, and not by Seller and Seller shall have no liability therefor, and neither the Cure Amounts paid by nor the expense of any other obligation set forth in this Section 1.6(g) shall reduce, directly or indirectly, any consideration received by Seller hereunder; provided, that any applicable Cure Amounts with regard to Assigned Contracts listed in the Closing Assumed Contract List shall be paid by Purchaser at the Closing.

(h) Seller shall use its commercially reasonable efforts to obtain an order of the Bankruptcy Court to assign the Assigned Contracts to Purchaser (the "***Assumption Approval***") on the terms set forth in this Section 1.6. In the event Seller is unable to assign any such Assigned Contract to Purchaser pursuant to an order of the Bankruptcy Court, then the Parties shall use their commercially reasonable efforts until the Designation Deadline to obtain, and to cooperate in obtaining, all Consents from Governmental Entities and third parties necessary to assume and assign such Assigned Contracts to Purchaser, including, in the case of Purchaser, paying any applicable Cure Amounts.

(i) To the extent that any Consent that is required to assign to Purchaser any Assigned Contract is not obtained by the Designation Deadline, Seller shall, with respect to each such Assigned Contract, from and after the Closing and until the earliest to occur of (x) the date on which such applicable Consent is obtained (which Consents the Parties shall use their reasonable best efforts, and cooperate with each other, to obtain promptly; provided, however, that none of the Parties or any of their respective Affiliates shall be required to pay any consideration therefor other than filing, recordation or similar fees, which shall be borne by Purchaser), and (y) the date on which such Contract is rejected following the written request of Purchaser, use commercially reasonable

efforts during the term of such Assigned Contract to (i) provide to Purchaser the benefits under such Assigned Contract, (ii) cooperate in any reasonable and lawful arrangement (including holding such Contract in trust for Purchaser pending receipt of the required Consent) designed to provide such benefits to Purchaser and (iii) use its commercially reasonable efforts to enforce for the account of Purchaser any rights of Seller under such Assigned Contract (including the right to elect to terminate such Assigned Contract in accordance with the terms thereof upon the written direction of Purchaser). Purchaser shall reasonably cooperate with Seller in order to enable Seller to provide to Purchaser the benefits contemplated by this Section 1.6(i).

(j) Notwithstanding the foregoing, a Contract shall not be an Assigned Contract hereunder and shall not be assigned to, or assumed by, Purchaser to the extent that such Contract (i) is rejected by Seller or terminated by Seller in accordance with the terms hereof or by the other party thereto, or terminates or expires by its terms, on or prior to the Designation Deadline and is not continued or otherwise extended upon assumption, or (ii) requires a Consent of any Governmental Entity or other third party (other than, and in addition to, that of the Bankruptcy Court) in order to permit the sale or transfer to Purchaser of Seller's rights under such Contract, and no such Consent has been obtained prior to the Designation Deadline. In addition, a Permit shall not be assigned to, or assumed by, Purchaser to the extent that such Permit requires a Consent of any Governmental Entity or other third party (other than, and in addition to, that of the Bankruptcy Court) in order to permit the sale or transfer to Purchaser of Seller's rights under such Permit, and no such Consent has been obtained prior to the Closing.

1.7. Non-Continuing Stores, Designated Stores and Continuing Stores.

(a) As of the Closing, (i) any of Seller's store locations with respect to which the associated Leases have been designated by Purchaser as Assigned Contracts in accordance with Section 1.6(c) shall be deemed to have been classified as "**Continuing Stores**", (ii) any of Seller's store locations with respect to which the associated Leases have been classified as Excluded Contracts in accordance with Section 1.6(c) shall be deemed to have been classified as "**Non-Continuing Stores**", and (iii) any of Seller's store locations with respect to which the associated Leases have not yet been designated by Purchaser as Assigned Contracts or Excluded Contracts shall be deemed to have been classified as "**Undesignated Stores**". From time to time after the Closing Date, in accordance with Section 1.6(c), Purchaser may reclassify any Undesignated Store: (x) as a Continuing Store by designating the Lease associated with such store as an Assigned Contract in accordance with Section 1.6(c), or (y) as a Non-Continuing Store by designating the Lease associated with such store as an Excluded Contract in accordance with Section 1.6(c).

(b) At any time prior to the Designation Deadline, Purchaser may reclassify a Non-Continuing Store as a Continuing Store by designating the Lease associated with such store as an Assigned Contract in accordance with Section 1.6(c) (except to the extent such Lease has already been moved for exclusion and rejection pursuant to the terms of Section 1.6(c) or this Section 1.7). Upon such designation, such Non-Continuing Store shall be deemed to be a Continuing Store.

(c) Operation of Undesignated Stores.

(i) From and after the Closing until any Undesignated Store becomes a Continuing Store or a Non-Continuing Store in accordance with Section 1.6(c) and this Section 1.7, Seller hereby appoints Purchaser, and Purchaser shall serve, in accordance with the terms of this Section 1.7(c), as Seller's exclusive agent for the purpose of running the Business at such Designated Stores. During such period, (x) Purchaser shall have sole and complete authority, in its sole discretion, to oversee, manage, direct the operation of, control the day-to-day activities of, and make and implement all business decisions with respect to, any such Undesignated Stores, (y) Purchaser shall receive all proceeds generated by operation of any such Undesignated Stores (the "**Undesignated Store Proceeds**"), including to the extent arising from the sale of Products (exclusive of sales Tax), and (z) Purchaser shall pay, and shall be solely responsible for, any and all Operational Expenses of Seller that are directly related to the operation of such Undesignated Stores; provided, that all Operational Expenses constituting employee Liabilities shall be treated as set forth in Section 6.1. For the avoidance of doubt and subject to Section 6.1, the Operational Expenses owed by Seller described above shall include those Operational Expenses that are obligations of Seller that accrue at any point during the period from the Closing until either (A) the Lease associated with such Designated Store is assumed and assigned to Purchaser or (B) the Rejection Effective Date of the Lease associated with such store has occurred; provided, that Purchaser has exited the store premises and turned possession of the store premises over to the Seller and/or the applicable landlord, as applicable, with the condition of such store premises upon such turnover to be in accordance with the terms of the Sale Order. In addition, Purchaser shall perform, or shall cause to be performed, any and all obligations of Seller arising following the Closing under any Non-Real Property Contract or Lease related to the operation of any Undesignated Store (other than any such Non-Real Property Contract that has previously been designated for rejection and exclusion pursuant to Section 1.6(c)) from and after the Closing until either (1) the Lease associated with such Undesignated Store is assumed and assigned to Purchaser or (2) the Rejection Effective Date of the Lease associated with such Undesignated Store has occurred.

(ii) To the extent deemed necessary by Purchaser:

(A) Purchaser may establish new accounts (the "**Purchaser Accounts**") for the deposit of the Undesignated Store Proceeds and the disbursement of amounts payable to Seller in respect of Operational Expenses under this Section 1.7(c), and Seller shall promptly upon Purchaser's reasonable request execute and deliver all necessary documents to open and maintain such accounts; provided, however, that Purchaser may elect to continue to use the Undesignated Deposit Accounts as the Purchaser Accounts. The Purchaser Accounts shall be dedicated solely to the deposit of the Undesignated Store Proceeds and the disbursement of amounts payable under this Section 1.7(c), and Purchaser shall exercise sole signatory authority and control with respect to the Purchaser Accounts. Seller shall not be responsible for, and Purchaser shall pay as an Operational Expense hereunder, all bank fees and charges, including wire transfer charges, related to the Purchaser Accounts. Upon Purchaser's designation of the Purchaser Accounts, all Undesignated Store Proceeds (including credit card proceeds) shall be deposited into the Purchaser Accounts. During the period between the Closing and the date Purchaser establishes the Purchaser Accounts, if any, all Undesignated Store Proceeds (including credit

card proceeds), shall be collected by Purchaser and deposited on a daily basis into depository accounts (as determined by Purchaser) for the Undesignated Stores, which accounts shall be designated solely for the deposit of Undesignated Store Proceeds (including credit card proceeds), and the disbursement of amounts payable by Purchaser under this Section 1.7(c) (the “*Undesignated Deposit Accounts*”). Notwithstanding anything to the contrary contained herein, Seller shall have no ownership interest in, and shall not be entitled to withdraw any, Undesignated Store Proceeds from either the Purchaser Accounts or the Designated Deposit Accounts.

(B) Purchaser shall have the right to use Seller’s credit card facilities (including credit card terminals and processors, credit card processor coding, the merchant identification numbers and existing bank accounts) for any Undesignated Store Proceeds derived from credit card purchases (including Seller’s proprietary credit card). In the event that Purchaser elects to use Seller’s credit card facilities, Seller shall process credit card transactions on behalf of Purchaser and for Purchaser’s account, applying customary practices and procedures. Without limiting the foregoing, Seller shall cooperate with Purchaser to download data from all credit card terminals in the Undesignated Stores each day and to effect settlement with Seller’s credit card processors, and shall take such other actions as are necessary to process credit card transactions on behalf of Purchaser under Seller’s merchant identification numbers. At Purchaser’s request, Seller shall cooperate with Purchaser to establish Seller’s merchant identification numbers under Purchaser’s name to enable Purchaser to process all Undesignated Store Proceeds derived from credit card purchases for Purchaser’s account.

(iii) For the avoidance of doubt, nothing contained in this Section 1.7(c) shall require Purchaser to become, or to be considered or deemed, the employer of any person, and Purchaser shall not become, or be considered or deemed to be, the employer of any person, unless and until Purchaser, in its discretion, chooses to employ such a person, it being understood that all agreements with respect to such matters are set forth exclusively in Section 6.1.

(iv) Notwithstanding anything herein to the contrary, without the prior written consent of Seller, Purchaser may assign any or all of its rights and obligations under this Section 1.7(c) to any Person; provided, that Purchaser remains liable for performance under this Section 1.7(c).

(d) Purchaser shall indemnify and hold Seller and its Representatives harmless from and against all claims, demands, penalties, losses, liability or damage to the extent arising from or relating to the operation of any of the Designated Stores, Non-Continuing Stores or the Continuing Stores by Purchaser after the Closing Date, including, without limitation, reasonable attorneys’ fees and expenses, resulting from, or related to: (i) Purchaser’s breach of or failure to comply with any of its agreements, covenants, representations or warranties contained in this Agreement and the Related Agreements or applicable Law; (ii) any harassment or any other unlawful, tortious or otherwise actionable treatment of any customers or Representatives of Seller by Purchaser or any of its Representatives; (iii) any claims by any party engaged by Purchaser as an employee or independent contractor arising out of such employment or engagement; (iv) the gross negligence (including omissions) or willful misconduct of Purchaser, its officers, directors, employees, agents or

representatives; and (v) violations of Law by Purchaser, its officers, directors, employees, agents or representatives.

## ARTICLE II.

### CONSIDERATION

#### 2.1. Consideration.

(a) The aggregate consideration (collectively, the “*Purchase Price*”) to be paid for the purchase of the Purchased Assets, and subject to adjustment in accordance with Section 2.2 below, shall be:

(i) the assumption of Assumed Liabilities,

(ii) a credit bid pursuant to section 363(k) of the Bankruptcy Code (a “*Credit Bid*”) in the amount of \$41,163,637.85 of the Pre-Petition Financing Obligations, plus the aggregate dollar amount of the DIP Financing Obligations outstanding as of the Closing Date.

(b) On the Closing Date, any payment required to be made pursuant to any provision hereof in cash shall be made by the Purchaser by wire transfer of immediately available funds to such bank account as shall be designated in writing by the Seller not later than two (2) Business Days prior to the Closing Date.

## ARTICLE III.

### CLOSING AND TERMINATION

3.1. Closing. Subject to the satisfaction or waiver by the appropriate Party of the conditions set forth in Article IX, the closing of the purchase and sale of the Purchased Assets, the payment of the Purchase Price, the assumption of the Assumed Liabilities and the consummation of the other transactions contemplated by this Agreement (the “*Closing*”) shall occur as soon as practicable following the satisfaction or waiver of all conditions set forth in this Agreement (other than those conditions that by their terms are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions). The Closing shall take place at the offices of Riemer & Braunstein LLP, Times Square Tower, Seven Times Square, 25<sup>th</sup> Floor, New York, NY 10036, or at such other place as the Parties may agree. Unless otherwise agreed by the Parties in writing, the Closing shall be deemed effective and all right, title and interest of each of the Seller in the Purchased Assets to be acquired by Purchaser hereunder shall be deemed to have passed to Purchaser and the assumption of all of the Assumed Liabilities shall be deemed to have occurred as of 12:01 a.m. Eastern Time on the Closing Date.

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

(a) bill of sale substantially in the form of Exhibit A (the “*Bill of Sale*”) duly executed by the Seller;

(b) one or more assignment and assumption agreements substantially in the form of Exhibit B (the “*Assignment and Assumption Agreement*”) duly executed by the Seller;

(c) a file-stamped copy of the Sale Order;

(d) copies of all instruments, certificates, documents and other filings (if applicable) necessary to release the Purchased Assets from all Encumbrances, including any applicable UCC termination statements and releases of Mortgages, all in a form reasonably satisfactory to Purchaser;

(e) copies of the waivers, consents and approvals for those executory contracts on Schedule 1.1(b), where such waivers, consents and approvals are required to operate the Business in the ordinary course;

(f) an officer’s certificate, dated as of the Closing Date, executed by a duly authorized officer of each of the Seller certifying that the conditions set forth in Section 9.3 have been satisfied;

(g) a copy of the resolutions adopted by the Board of Directors of the Seller evidencing the authorization of the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, certified by an authorized officer of Seller;

(h) instrument of assumption and assignment of the Assigned Leases substantially in the form of Exhibit C (the “*Assumption and Assignment of Leases*”), duly executed by the Seller, in form for recordation with the appropriate public land records, if necessary;

(i) an Intellectual Property Assignment and Assumption Agreement substantially in the form of Exhibit D (the “*IP Assignment and Assumption Agreement*”), executed accordingly by the Seller;

(j) possession of the Purchased Assets and the Business;

(k) certificates executed by Seller, in the form prescribed under Treasury Regulation Section 1.1445-2(b), that Seller is not a foreign person within the meaning of Section 1445(0(3) of the Code;

(l) such other bills of sale, deeds, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form reasonably satisfactory to Purchaser, as Purchaser may reasonably request to vest in Purchaser all of Seller’s right, title and interest of Seller in, to or under any or all the Purchased Assets;

(m) such other documents as Purchaser may reasonably request that are not inconsistent with the terms of this Agreement and customary for a transaction of this nature and necessary to evidence or consummate the transactions contemplated by this Agreement.

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

(a) the Assignment and Assumption Agreement duly executed by Purchaser;

- (b) the Intellectual Property Assignment and Assumption Agreement, executed by Purchaser;
- (c) satisfactory evidence of payment of the Cure Amounts;
- (d) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of Purchaser certifying that the conditions set forth in Sections 9.2(a) and 9.2(b) have been satisfied;
- (e) other agreements required by the terms of the Agreement; and
- (f) all other certificates, agreements and other documents required by this Agreement (or as the Seller may reasonably request that are customary for a transaction of this nature and necessary to evidence or consummate the transactions contemplated by this Agreement) to be delivered by Purchaser at or prior to the Closing in connection with the transactions contemplated by this Agreement.

3.4. Termination of Agreement. This Agreement may be terminated only in accordance with this Section 3.4. This Agreement may be terminated at any time prior to the Closing, as follows:

- (a) by the mutual written consent of the Seller and Purchaser;
- (b) by written notice of either the Seller or Purchaser to such other Party, if the Closing shall not have been consummated prior to November 4, 2016 (the "***Outside Date***"); provided, however, that the Outside Date may be extended by the mutual written consent of Seller and Purchaser, for a period up to fifteen (15) days to the extent that all conditions to Closing set forth in this Agreement are capable of being satisfied as of such time; provided, further, however, that a Party shall not be permitted to terminate this Agreement pursuant to this Section 3.4(b) if such Party is in material breach of this Agreement; provided, further, however, that if the Closing has not occurred by the Outside Date, but on such date all of the conditions set forth in Article 9 have been satisfied or waived (to the extent such conditions may be waived) other than the condition set forth in Section 9.1(c), then the Outside Date shall automatically be extended until sixty (60) days after such initial Outside Date (and such extended date shall be deemed to be the "Outside Date" for all purposes hereunder) unless two (2) Business Days prior to the end of the second month following the original Outside Date, Purchaser provides written notice to Seller that it is no longer extending the Outside Date pursuant to this Section 3.4(b);
- (c) by written notice from Purchaser to the Seller, if (i) Seller seeks to have the Bankruptcy Court enter an Order dismissing, or converting the Bankruptcy Case into a case under chapter 7 of the Bankruptcy Code, or appointing a trustee in the Bankruptcy Case or appointing a responsible officer or an examiner with enlarged power relating to the operation of the Business (beyond those set forth in Section 1106(a)(3) or (4) of the Bankruptcy Code) under Bankruptcy Code Section 1106(b), or (ii) an order of dismissal, conversion or trustee appointment is entered for any reason and is not reversed or vacated within fourteen (14) days after entry thereof;
- (d) by written notice from Purchaser, if (i) the Bidding Procedures Order shall not have been approved by the Bankruptcy Court by the close of business on the date that is twenty-one (21) days after the Petition Date, (ii) the Bankruptcy Court issues an order granting leave to any Person to commence an appeal of the Bidding Procedures Order, or (iii) following its entry, the

Bidding Procedures Order shall fail to be in full force and effect or shall have been stayed, reversed, modified or amended in any respect without the prior written consent of Purchaser;

(e) by written notice from Purchaser if (i) the Sale Hearing has not taken place on or prior to the date that is sixty (60) days after the Petition Date, (ii) the Bankruptcy Court has not entered the Sale Order on or prior to the date that is sixty-five (65) days following the Petition Date, or (iii) the Sale Order shall have been stayed (and such stay results in the Closing not being consummated prior to the Outside Date), vacated, modified or supplemented without Purchaser's prior written consent;

(f) by written notice from Purchaser, if (i) the Sale Order has not become a Final Order within fourteen (14) days after the entry thereof, or (ii) following its entry, the Sale Order shall fail to be in full force and effect or shall have been stayed (and such stay results in the Closing not being consummated prior to the Outside Date), reversed, modified or amended in any respect without the prior written consent of Purchaser;

(g) by written notice of either the Seller or Purchaser, if Seller has entered into an Alternative Transaction;

(h) automatically upon the consummation of an Alternative Transaction;

(i) by written notice from the Seller to Purchaser, if Purchaser breaches or fails to perform in any respect any of its representations, warranties or covenants contained in this Agreement and such breach or failure to perform: (i) would give rise to the failure of a condition set forth in Article IX, (ii) cannot be or has not been cured within ten (10) days following delivery of notice to Purchaser of such breach or failure to perform and (iii) has not been waived by the Seller; or

(j) by written notice from Purchaser to the Seller, if Seller breaches or fails to perform in any respect any of its representations, warranties or covenants contained in this Agreement and such breach or failure to perform: (i) would give rise to the failure of a condition set forth in Article IX, (ii) cannot be or has not been cured within ten (10) days following delivery of notice to the Seller of such breach or failure to perform and (iii) has not been waived by Purchaser.

Each condition set forth in this Section 3.4, pursuant to which this Agreement may be terminated shall be considered separate and distinct from each other such condition. If more than one of the termination conditions set forth in this Section 3.4 is applicable, the applicable Party shall have the right to choose the termination condition pursuant to which this Agreement is to be terminated. The Parties acknowledge and agree that no notice of termination or extension of the Outside Date provided pursuant to this Section 3.4 shall become effective until two (2) Business Days after the delivery of such notice to the other Parties, and only if such notice shall not have been withdrawn during such two (2) Business Day period.

3.5. Procedures Upon Termination. In the event of termination and abandonment by Purchaser or Seller, or both such Parties, pursuant to Section 3.4 hereof, written notice thereof shall forthwith be given to the other Party or Parties, and this Agreement shall terminate, and the purchase of the Purchased Assets and the assumption of the Assumed Liabilities hereunder shall be abandoned, without further action by Purchaser or Seller. If this Agreement is terminated as provided herein, each Party shall return all documents, work papers and other material of any other Party relating to the transactions contemplated hereby, whether so obtained before or after the execution

hereof, to the Party furnishing the same. If this Agreement is terminated pursuant to Section 3.4(h), Seller shall pay to Purchaser the Expense Reimbursement plus the Break-Up Fee, and the Parties shall have no further obligations to one another except for any obligations that, by their terms, survive the termination of this Agreement, as described in Section 3.6.

3.6. Effect of Termination. In the event of termination of this Agreement pursuant to Section 3.4, this Agreement shall forthwith become null and void and there shall be no liability on the part of any Party or any of its partners, officers, directors or shareholders; provided, however, that (a) this Section 3.6, Section 2.4, the Seller's obligation to pay the Bid Protections pursuant to Section 7.1, Article XII (Miscellaneous), and the Bidding Procedures Order (if entered) shall survive any such termination. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by Law. Each Party acknowledges that the agreements contained in this Section 3.6 and in Section 3.5 are an integral part of the transactions contemplated by this Agreement, that without these agreements such Party would not have entered into this Agreement, and that any amounts payable pursuant to this Section 3.6 and Section 3.5 do not constitute a penalty.

#### **ARTICLE IV.**

#### **REPRESENTATIONS AND WARRANTIES OF THE SELLER**

Subject to the exceptions noted in the schedules delivered by the Seller concurrently herewith, the Seller represents and warrants to Purchaser as follows as of the date hereof and as of the Closing Date:

4.1. Organization and Qualification. Seller is duly incorporated or organized, validly existing and in good standing under the Laws of the jurisdiction of its formation. Seller has all requisite power and authority to own, lease and operate its properties and to carry on its business (including the Business) as it is now being conducted, subject to the provisions of the Bankruptcy Code. Seller has previously delivered to Purchaser complete and correct copies of its Organizational Documents, as amended and in effect on the Agreement Date. Seller is duly qualified or licensed to do business and is in good standing in each jurisdiction where the character of the Business or the nature of its properties makes such qualification or licensing necessary, except for such failures to be so qualified or licensed or in good standing as would not, individually or in the aggregate, have a Material Adverse Effect.

4.2. Authorization of Agreement. Subject to the entry of the Sale Order, Seller has all requisite power and authority to execute and deliver this Agreement and each of the Ancillary Documents to which it is a party, to perform its obligations hereunder and thereunder, and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and each of the Ancillary Documents to which it is a party, the performance by Seller of its obligations hereunder and thereunder and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by all necessary action on the part of Seller. This Agreement has been, and at or prior to the Closing, each of the Ancillary Documents to which it is a party will be, duly and validly executed and delivered by Seller and (assuming the due authorization, execution and delivery by the other Parties, and the entry of the Sale Order) this Agreement constitutes, and each Ancillary Document to which it is a party when so executed and delivered (assuming the due authorization, execution and delivery by the other parties thereto) will constitute, legal, valid and binding obligations of Seller, enforceable against Seller in accordance with its terms. Subject to entry of the Sale Order, except (a) as required to comply with the HSR Act,

(b) for entry of the Sale Order, (c) for notices, filings and consents required in connection with the Bankruptcy Case and (d) for the notices, filings and consents set forth on Schedule 4.2, Seller is not required to give any notice to, make any registration, declaration or filing with or obtain any consent, waiver or approval from, any Person (including any Governmental Body) in connection with the execution and delivery of this Agreement and each of the Ancillary Documents or the consummation or performance of any of the transactions contemplated hereby and thereby, other than such notices, registrations, declarations, filings, consents, waivers, or approvals, the failure of which to make or obtain would not have a Material Adverse Effect.

4.3. Conflicts; Consents; Compliance with Law.

(a) Except as set forth on Schedule 4.3(a), the execution, delivery and performance by Seller of this Agreement or any Ancillary Document to which it is a party, the compliance by Seller with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby and the taking by Seller of any other action contemplated hereby or thereby, do not and will not contravene, violate or conflict with any term or provision of its respective Organizational Documents.

(b) Except (i) for the entry of the Sale Order, (ii) for filings as may be required under the HSR Act, and (iii) as set forth on Schedule 4.3(b), no filing with, notice to or consent from any Person is required in connection with the execution, delivery and performance by Seller of this Agreement or the Ancillary Documents to which it is a party, the compliance by Seller with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby, or the taking by Seller of any other action contemplated hereby or thereby, other than such filings, notices or consents, the failure of which to make or obtain would not have a Material Adverse Effect.

(c) Seller is in compliance, in all material respects with all applicable Laws. Except as set forth on Schedule 4.3(c), neither Seller nor any Subsidiary has received any outstanding written notice from any Governmental Body regarding any actual or possible material violation of, or failure to comply in any material respect with, any Law. Seller is not in default in any material respect of any order, writ, injunction, judgment or decree applicable to the Business or the Purchased Assets.

4.4. Brokers and Finders. Except as set forth on Schedule 4.4, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for Seller in connection with the transactions contemplated by this Agreement and Purchaser is not or will not become obligated to pay any fee or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the transactions contemplated by this Agreement based upon any arrangement made by or on behalf of Seller.

4.5. Title to Purchased Assets. Other than the Leased Real Property and the personal property subject to the Personal Property Leases and except for Permitted Encumbrances, Seller has good title to the Purchased Assets and, at the Closing, Purchaser, pursuant to the Sale Order, shall acquire good and marketable title in, and under all of such Purchased Assets, in each case free and clear of all Liens and other claims and interests to the fullest extent permissible under Section 363(f) of the Bankruptcy Code. The Purchased Assets include all of the properties and assets required to operate, in all material respects, the Business in the Ordinary Course of Business. For the sake of clarity, the right to use any assets included in the Purchased Assets in which Seller has leasehold or

non-ownership rights to use shall be assigned to Purchaser only through the assumption and assignment of the Assigned Contracts in accordance with and subject to this Agreement.

4.6. Real Property.

(a) Schedule 4.6(a) contains a list and brief description of all Leased Real Property held or used for, or necessary to the operation of the Business. Seller has made available true and complete copies of all leases with respect to such Leased Real Property (individually, a “*Lease*” and collectively, the “*Leases*”) to Purchaser. Schedule 4.6(a) also identifies each ground lease between Seller and the owner of the fee title to the demised premises (each, a “*Ground Lease*”). To Seller’s Knowledge, other than as noted on Schedule 4.6(a), none of the Leased Real Property is subject to any sublease or grant to any Person of any right to the use, occupancy or enjoyment of the Leased Real Property or any portion thereof that would materially impair the use of the Leased Real Property in the operation of the Business. To Seller’s Knowledge, the Leased Real Property is not subject to any Encumbrances (other than Permitted Encumbrances) that were placed on the Leased Real Property through the action or inaction of Seller and materially impact the Business use of the Leased Real Property. To Seller’s Knowledge, the Leased Real Property is not subject to any use restrictions, exceptions, reservations or limitations which in any material respect interfere with or impair the present and continued use thereof in the Ordinary Course of Business. To Seller’s Knowledge, there are no pending or threatened condemnation proceedings related to the Leased Real Property. No rent under any Lease has been paid more than one month in advance.

(b) To the Seller’s Knowledge, no Leased Real Property serves any adjoining property for any purpose inconsistent with the use of the Leased Real Property and, to Seller’s Knowledge, no Leased Real Property is located within a flood plain or subject to any similar type of construction for which Permits necessary to the use thereof have not been obtained. To the Seller’s Knowledge, neither the current use of the Leased Real Property nor the operation of the Business violates any instrument of record or agreement or any applicable legal requirements, building code or zoning ordinance. To the Seller’s Knowledge, neither the whole nor any material portion of any Leased Real Property has been damaged or destroyed by fire or casualty.

(c) Seller is not a “foreign person,” foreign trust” or “foreign corporation” within the meaning of the Code.

4.7. Tangible Personal Property. Schedule 4.7 sets forth all leases of personal property (“*Personal Property Leases*”) relating to personal property used by Seller or to which Seller is a party or by which the properties or assets of Seller is bound, in each case relating to the Business. Seller has a valid and enforceable leasehold interest under each Personal Property Lease under which it is a lessee.

4.8. Intellectual Property. Schedule 4.8 sets forth an accurate and complete list of all Intellectual Property necessary to the Business as currently conducted (the “*Purchased Intellectual Property*”). The Seller owns all right, title and interest to the Purchased Intellectual Property, such rights, title and interest are valid and enforceable, and the Seller can convey the Purchased Intellectual Property free and clear of Liens and other claims and interests pursuant to the Sale Order. To the Knowledge of Seller, (i) no Person is engaging in any activity that infringes any Purchased Intellectual Property and (ii) no claim has been asserted to Seller that the use of any Purchased Intellectual Property or the operation of the Business infringes or violates the Intellectual Property of any third party. The Purchased Intellectual Property and the rights under the Assigned Contracts

necessarily include the rights to use all Intellectual Property required to operate the Business as currently conducted.

4.9. Litigation. Except as set forth on Schedule 4.9 and other than in connection with the Bankruptcy Case, there is no suit, action, litigation, arbitration proceeding or governmental proceeding or audit, including appeals and applications for review, in progress or pending against or relating to Seller or any judgment, decree, injunction, deficiency, rule or order of any court, governmental department, commission, agency, instrumentality or arbitrator which, in any case, might adversely affect the ability of Seller to enter into this Agreement or to consummate the transactions contemplated hereby and Seller has no Knowledge of any existing ground on which any such action, suit or proceeding may be commenced with any reasonable likelihood of success.

4.10. Permits. Seller is in compliance with the material terms of all material Permits used by Seller in the Business, and all such Permits are valid and in full force and effect, and no proceeding is pending or, to the Knowledge of Seller, threatened, the object of which is to revoke, limit or otherwise affect any such Permit.

4.11. Inventory.

(a) All Inventory of Seller consists of items of a good and merchantable quality useable or saleable in the Ordinary Course of Business, for the purposes for which they are intended, subject to normal, customary, or non-material allowances for damage and obsolescence. To Seller's Knowledge, no Inventory is materially damaged in any significant way, including but not limited to damage caused by water, except for any such damage which would not have a Material Adverse Effect on the Inventory taken as a whole;

(b) To Seller's Knowledge, the Inventory is not part of a current or past recall;

(c) The Inventory is in working condition except for such failure to be in working condition which would not have a Material Adverse Effect on the Inventory taken as a whole.

(d) Except as set forth on Schedule 4.11(d), Seller does not hold any Inventory on consignment.

4.12. Contracts. The Assigned Contracts include all Contracts material to the ownership and/or operation of the Business. Except as set forth on Schedule 4.9, Seller has not, and, to Seller's Knowledge, no other party to any Assigned Contract has, commenced any action against any of the parties to any Assigned Contract or given or received any written notice of any default or violation under any Assigned Contract that has not been withdrawn or dismissed except to the extent such default or violation will be cured as a result of the payment of the applicable Cure Amounts. Assuming payment of the Cure Amounts, each Assigned Contract is, or will be upon the Closing, valid, binding and in full force and effect in accordance with its terms.

4.13. Tax Returns: Taxes.

(a) All Tax Returns required to have been filed by the Seller have been duly and timely filed and are true, correct and complete in all material respects, and no material fact has been omitted therefrom. Except as set forth on Schedule 4.13(a), Seller is not currently the beneficiary of

any extension of time within which to file any Tax Return. True, correct and complete copies of such Tax Returns have been delivered to Purchaser (or its representatives) prior to the Agreement Date.

(b) All Taxes due and payable by the Seller have been paid in full. All Taxes of the Seller attributable to Tax periods (or portions thereof) commencing after the date hereof have arisen in the ordinary course of business.

(c) Seller has not waived any statute of limitations affecting any Liability for Taxes or agreed to any extension of time during which a Tax assessment or deficiency assessment may be made or extending the time within which to file any Tax Return.

(d) No amount of income (or deduction) will be required to be included in (or excluded from) taxable income by any Person for any Post-Closing Tax Period with respect to the Purchased Assets or the Business as a result of any prepaid amount received during a Pre-Closing Tax Period, or for any other reason.

(e) Except as set forth on Schedule 4.13(e), no material Tax Proceeding is being asserted in writing with respect to the Seller, nor to the Knowledge of the Seller has any claim with respect to Taxes been threatened or asserted. All deficiencies for Taxes asserted or assessed against Seller have been fully and timely paid or settled.

(f) Except as set forth on Schedule 4.13(f), Seller is not party to any Tax sharing, indemnity or similar agreement (written or otherwise), and Seller has no Liability for the Taxes of any other Person as a transferee or successor, or by Contract or otherwise. To Seller's Knowledge, Seller has not received any Tax Refund to which it is not entitled, either pursuant to applicable Law or any Contract.

(g) No Encumbrances or other liens with respect to Taxes have been filed on or with respect to the Purchased Assets or the Business.

(h) The Seller has properly and timely imposed, collected and paid all sales, use and similar Taxes as required by Law with respect to the sale, rental or lease of any product or service in connection with the Purchased Assets and the Business.

(i) No transaction contemplated by this Agreement is subject to withholding under any Law (including Section 1445 of the Code), and the Purchaser's acquisition of the Purchased Assets will not otherwise result in any Tax liability to the Purchaser (or any direct or indirect owner thereof).

(j) Seller has never been subject to Tax in a jurisdiction in which it does not currently file Tax Returns or pay Taxes, and no claim has been made by any Governmental Body in a jurisdiction where Seller does not file Tax Returns that it is or may be subject to Tax by that jurisdiction. Seller has no permanent establishment in any country other than the United States.

For purposes of this Section 4.13, any reference to Seller shall be deemed to include any Person that merged, or was merged, with or was liquidated into Seller.

4.14. Employees; Seller Benefit Plans.

(a) Seller has provided Purchaser with a true, complete and correct list of the Employees as of the Agreement Date, specifying their position, annual salary and date of hire. The Seller is in compliance in all material respects with all Laws relating to the employment or termination of employment of the Employees.

(b) Except as set forth on Schedule 4.14(b), there are no material Actions pending or, to the Knowledge of Seller, threatened, against Seller by any Employee.

(c) Set forth on Schedule 4.14(c) is a true and complete list of each Benefit Plan. As applicable with respect to each Benefit Plan, the Seller has delivered to Purchaser true and complete copies of (i) each Benefit Plan, including all amendments thereto, and in the case of an unwritten Benefit Plan, a written description thereof, (ii) all current trust documents, investment management contracts, custodial agreements and insurance contracts relating thereto, (iii) the current summary plan description and each summary of material modifications thereto, (iv) the annual report (Form 5500 and all schedules thereto) for the past two years, (v) the most recent Internal Revenue Service (“**IRS**”) determination or opinion letter and (vi) the annual report, actuarial report, financial statement and trustee report for the past two years.

(d) Each Benefit Plan has been maintained, operated and administered in compliance in all material respects with its terms and any related documents or agreements and the applicable provisions of ERISA, the Code and all other Laws. All contributions or other amounts payable by the Seller with respect to each Benefit Plan in respect of current or prior plan years have been paid or accrued on the Financial Statements (other than with respect to amounts not yet due).

(e) The Benefit Plans which are “employee pension benefit plans” within the meaning of Section 3(2) of ERISA and which are intended to meet the qualification requirements of Section 401(a) of the Code (each, a “**Pension Plan**”) have received determination letters from the IRS to the effect that such plans are qualified and exempt from federal income taxes under Sections 401(a) and 501(a) of the Code, respectively, and nothing has occurred that would reasonably be expected to adversely affect the qualification of such Benefit Plan.

(f) No Benefit Plan is subject to Part 3, Subtitle B of Title I of ERISA or Title IV of ERISA. Neither the Seller nor any ERISA Affiliate has ever contributed to, or been required to contribute to, any “multiemployer plan” (within the meaning of Section 3(37) of ERISA) and neither the Seller nor any ERISA Affiliate has any liability (contingent or otherwise) relating to the withdrawal or partial withdrawal from such a multiemployer plan.

(g) There are no pending audits or investigations by any governmental agency involving any Benefit Plan, and no pending or threatened claims (except for individual claims for benefits payable in the normal operation of the Benefit Plans), suits or proceedings involving any Benefit Plan, any trust or other funding medium thereof, fiduciary thereof or service provider thereto, nor to the Knowledge of the Seller is there any reasonable basis for any such claim, suit or proceeding. There has not been any nonexempt prohibited transaction, within the meaning of Section 406 of ERISA or Section 4975 of the Code, with respect to any Benefit Plan.

(h) No Benefit Plan provides benefits, including, without limitation, death or medical benefits, beyond termination of service or retirement other than (A) coverage mandated by

law or (B) death or retirement benefits under a Benefit Plan qualified under Section 401(a) of the Code and neither the Seller nor any ERISA Affiliate has made a written or oral representation promising the same.

(i) The Seller's execution of, and performance of the transactions contemplated by this Agreement will not either alone or in connection with any other event(s) (I) result in any payment or benefit, or increase in payments or benefits or acceleration in the timing of payments or benefits becoming due to any current or former employee, director, officer, or independent contractor of Seller, (II) limit the right to merge, amend or terminate any Benefit Plan or (III) result in the payment or provision of an "excess parachute payment" under Section 280G of the Code, whether under a Benefit Plan or otherwise.

(j) Each Benefit Plan that constitutes a "non-qualified deferred compensation plan" within the meaning of Section 409A of the Code, complies in both form and operation with the requirements of Section 409A of the Code so that no amounts paid pursuant to any such Benefit Plan is subject to Tax under Section 409A of the Code.

(k) The Seller has performed all obligations required to be performed by them and are not in any respect in default under or in violation of any Benefit Plan, nor does the Seller have any Knowledge of any such default or violation by any other party to any Benefit Plan.

4.15. Labor Matters.

(a) Other than as set forth on Schedule 4.15(a), (i) Seller is not a party to any labor or collective bargaining agreement with respect to its Employees, (ii) no Employee of Seller is represented by any labor organization, (iii) no labor organization or group of Employees of Seller has made a pending demand for recognition or request for certification, (iv) and there are no representation or certification proceedings or petitions seeking a representation election presently pending or, to the Knowledge of Seller, threatened, to be brought or filed with the National Labor Relations Board or other labor relations tribunal involving Seller.

(b) There are no strikes, lockouts, work stoppages or slowdowns pending or, to the Knowledge of Seller, threatened against or involving Seller.

(c) There are no unfair labor practice charges, arbitrations, grievances or complaints pending or, to the Knowledge of Seller, threatened in writing against Seller relating to the employment or termination of employment of any individual by Seller except those which, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

(d) There are no complaints, charges, administrative proceedings or claims against Seller pending or, to the Knowledge of Seller, threatened in writing to be brought or filed with any Governmental Body based on or arising out of the employment by Seller of any Employee except those which, individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect.

(e) Seller has not incurred any liability or obligation under the WARN Act or similar state Laws, which remains unpaid or unsatisfied.

(f) Except as set forth on Schedule 4.15(f), the employment of each Employee of Seller is at-will. Schedule 4.15(f) lists all written (and includes a summary of all legally binding oral) employment and consulting agreements to which Seller is a party or by which it is bound in connection with the Business. Complete and correct copies of the agreements or arrangements listed and summarized on Schedule 4.15(f) have been provided or made available to Purchaser.

4.16. Bank Accounts. Schedule 4.16 sets forth a complete list of all bank accounts (including any deposit accounts, securities accounts and any sub-accounts) of Seller.

4.17. Financial Statements.

(a) Seller has delivered to Purchaser the consolidated balance sheets of the Seller and the Seller Subsidiaries as of, and consolidated statements of operations, stockholder's equity (deficit) and cash flows for, the fiscal years ended December 31, 2015, (collectively, the "***Audited Financial Statements***"). The Audited Financial Statements have been prepared in accordance GAAP consistently applied in accordance with the Seller's past practice throughout the periods indicated. Seller has also delivered to Purchaser unaudited condensed consolidated balance sheets for the Seller and the Seller Subsidiaries as of June 30, 2016, and the condensed consolidated statements of operations, stockholder's equity (deficit) and cash flows for the period then ending June 30, 2016 (collectively, the "***Unaudited Financial Statements***"). The Unaudited Financial Statements have been prepared in accordance with GAAP consistently applied in accordance with Seller's past practice except for the absence of footnotes and customary year-end adjustments (none of which will be material). The Audited Financial Statements and the Unaudited Financial Statements (together the "***Financial Statements***") (i) are true, correct and complete in all material respects, (ii) are in accordance in all material respects with the books and records of Seller, and (iii) fairly present in all material respects the financial position of Seller at the dates specified and the results of their operations for the period covered. The copies of the Financial Statements delivered to Purchaser are true, correct and complete copies.

(b) No Seller or any of their respective consolidated Subsidiaries has, as of the date of this Agreement, any material Liabilities or material obligations, in each case of a nature required by GAAP to be reflected in a consolidated balance sheet or the notes thereto, except for Liabilities or obligations (i) reflected or adequately reserved against in the Audited Financial Statements, (ii) contemplated by or under this Agreement or incurred in connection herewith in compliance with the terms of this Agreement or (iii) incurred in the Ordinary Course of Business.

4.18. Internal Controls. Since January 1, 2016, to the Knowledge of Seller, neither the Seller nor any Seller Subsidiary has received any complaint, allegation, assertion or claim regarding the accounting or auditing practices, procedures, methodologies or methods of the Seller or any of its Seller Subsidiaries or their respective internal accounting controls relating to periods after January 1, 2016, except for any complaints, allegations, assertions or claims that have not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

4.19. WARN Act. Seller has not, within the ninety (90) days immediately prior to the Closing Date, in whole or in part taken any action or actions which would, independently of the transaction contemplated hereby or any act or omission of Purchaser or any of its Affiliates after the Closing Date, result in a plant closing or mass layoff, temporary or otherwise, within the meaning of the WARN Act, or any similar Legal Requirement.

4.20. Environmental Matters. Except as set forth on Schedule 4.20 and except for facts, circumstances or conditions that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (a) with respect to the Purchased Assets, there is no Order with any Governmental Body nor has Seller received any verbal or written notice, complaint or inquiry from a Governmental Body respecting Environmental Laws, (b) there is no investigation, action or proceeding pending, or, to the Knowledge of Seller, threatened that could reasonably be expected to result in Seller or Purchaser incurring any Environmental Liabilities or Obligations, (c) Seller is not aware of and has not caused or allowed the Release of Hazardous Materials at, on or under the Assumed Leased Real Property, or the Stores, and (d) Seller maintains, has obtained and has complied with all Permits, and all Permits remain effective which are required under or pursuant to Environmental Laws for the operation of the Purchased Assets. Seller has delivered or made available to Purchaser copies of all Permits, Permit applications, reports, assessments or tests with respect to compliance of the Purchased Assets with any Environmental Laws or the presence of Hazardous Material which are in the Seller's possession, custody or control, including the following records: (i) reports concerning the removal of underground storage tanks from the Assumed Leased Real Property and Remedial Actions; (ii) correspondence from Government Bodies informing Seller that no further action is required to address Releases which have been the subject of Remedial Action conducted by or on behalf of Seller; (iii) the most recent final Phase I Environmental Site Assessment reports for any Assumed Leased Real Property, or Stores; (v) Permits, Permit applications, and Permit disapprovals; and (iv) inventories of asbestos and asbestos-containing materials, if any, for the Purchased Assets.

4.21. Accounts Receivable. The Accounts Receivable, including any Accounts Receivable arising after the date hereof, (i) have arisen from bona fide transactions entered into by Seller involving the sale of goods or the rendering of services in the Ordinary Course of Business; and (ii) constitute only valid, undisputed claims of Seller 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. The Accounts Receivable and the Accounts Receivable arising after the date hereof, in each case 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 accounting records of the Business have been determined in accordance with GAAP, subject to normal year-end adjustments and the absence of disclosures normally made in footnotes.

4.22. Absence of Certain Changes.

(a) Since July 1, 2016, there has not been a Material Adverse Effect.

(b) Except as set forth on Schedule 4.22(b) or as contemplated by this Agreement, from July 1, 2016 to the Agreement Date, Seller has not:

(i) except for executory contracts and unexpired leases rejected by Seller pursuant to the Sale Order with the prior written consent of Purchaser and other unexpired leases, terminated, modified or amended any material Assigned Contract or taken any action which materially violates, materially conflicts with or resulted in a material breach of any provision of, or constitutes a default under, or give rise to the right of any counterparty to accelerate the obligations under or modify the terms of, any Assigned Contract;

(ii) purchased or otherwise acquired any material properties or assets (tangible or intangible) or sold, leased, transferred or otherwise disposed of any Purchased

Assets, except for purchases of materials and sales of Inventory in the Ordinary Course of Business, permitted, allowed or suffered any of the Purchased Assets to be subjected to any Encumbrance (other than Permitted Encumbrances);

(iii) waived or released any claim or rights included in or related to the Purchased Assets or the Business with a value individually or in the aggregate in excess of \$50,000 or revalued any of the Purchased Assets, except for adjustments to the value of Inventory in the Ordinary Course of Business;

(iv) entered into any material contractual relationship with any third party related to the Purchased Assets or the Business, other than in the Ordinary Course of Business and certain contracts with Sears, Wal-Mart and Buy Buy Baby;

(v) made any material commitments for capital expenditures other than in accordance with the DIP Budget;

(vi) other than in the Ordinary Course of Business, increased the benefits of or compensation (whether in the form of salary, bonus or otherwise) payable to any employee, contractor or consultant of Seller, or granted any bonus, benefit, payment (contingent or otherwise) or other direct or indirect compensation to any employee, contractor or consultant of Seller;

(vii) except as required by Law, adopted, amended or terminated Seller Plan;

(viii) except for consequences relating to the filing of the Bankruptcy Case and entry into contracts and negotiations with Sears, Wal-Mart and Buy Buy Baby, introduced any material change with respect to the operations of the Business;

(ix) suffered any damage or destruction to or loss of any assets or properties relating to the Purchased Assets or the Business except for any such damage as would not have a Material Adverse Effect on the Business taken as a whole whether or not covered by insurance;

(x) changed in any way Seller's accounting methods, principles or practices other than required by changes in GAAP;

(xi) incurred any Indebtedness or paid, discharged or satisfied any claims, liabilities or obligations, other than the incurrence of Indebtedness under the DIP Financing and the payment, discharge or satisfaction in the Ordinary Course of Business of Liabilities incurred in the Ordinary Course of Business;

(xii) allowed any Permit held by Seller to terminate, expire or lapse relating to the Purchased Assets or the Business except for any such damage as would not have a Material Adverse Effect on the Business taken as a whole; or

(xiii) agreed or committed to do any of the foregoing.

4.23. No Other Representations or Warranties. Except for the representations, warranties and covenants of Seller expressly contained herein, neither Seller nor their representatives, nor any other Person, makes any other express or implied warranty (including, without limitation, any implied warranty of merchantability or fitness for a particular purpose) on behalf of Seller, including, without limitation, (a) the probable success or profitability of ownership, use or operation of the Purchased Assets by Purchaser after the Closing, (b) the probable success or results in connection with the Bankruptcy Court and the Sale Order, (c) the value, use or condition of the Purchased Assets, which are being conveyed hereby on an “AS IS”, “WHERE IS” condition at the Closing Date, without any warranty whatsoever (including, without limitation, any implied warranty of merchantability or fitness for a particular purpose).

## ARTICLE V.

### REPRESENTATIONS AND WARRANTIES OF PURCHASER

Subject to the exceptions noted in the schedules delivered by Purchaser concurrently herewith, Purchaser represents and warrants to the Seller as follows as of the date hereof and as of the Closing Date:

5.1. Organization and Qualification. Purchaser is duly organized, validly existing and in good standing under the Laws of its jurisdiction of organization. Purchaser has all requisite power and authority to own, lease and operate its properties and to carry on its business (including the Business) as it is now being conducted, except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Purchaser’s ability to consummate the transactions contemplated hereby.

5.2. Authority. Purchaser has the requisite power and authority to execute and deliver this Agreement and each of the Ancillary Documents to which it is a party, to perform its obligations hereunder and thereunder, to consummate the transactions contemplated hereby and thereby and to assume and perform the Assumed Liabilities. The execution and delivery of this Agreement by Purchaser and each of the Ancillary Documents to which it is a party, the performance by Purchaser of its obligations hereunder and thereunder, the consummation of the transactions contemplated hereby and thereby and the assumption and performance of the Assumed Liabilities have been duly and validly authorized by all necessary actions on the part of Purchaser. This Agreement has been, and at or prior to the Closing, each of the Ancillary Documents to which it is a party will be, duly and validly executed and delivered by Purchaser. Assuming the due authorization, execution and delivery of this Agreement and the Ancillary Documents by the Seller and subject to the effectiveness of the Sale Order, this Agreement constitutes, and each Ancillary Document to which Purchaser is a party when so executed and delivered will constitute, legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with its terms.

5.3. No Inconsistent Obligations. Neither the execution and delivery of this Agreement or any other documents contemplated hereby, nor the consummation of the transactions contemplated herein or therein in accordance with the Sale Order, will, to Purchaser’s knowledge, result in a violation or breach of, or constitute a default under, (a) the certificate of incorporation, as amended, the bylaws, or other organizational instruments of Purchaser, (b) any applicable ruling or order of any Governmental Authority, (c) any term or provision of any contract or agreement, (d) any writ, order, judgment, decree, law, rule, regulation or ordinance, (e) any other commitment or restriction to which Purchaser is a party, nor will such actions result in the creation of a Lien.

5.4. Conflicts: Consents.

(a) The execution, delivery and performance by Purchaser of this Agreement or any Ancillary Document to which it is a party, the compliance by Purchaser with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby and the taking by Purchaser of any other action contemplated hereby or thereby, do not and will not contravene, violate or conflict with any term or provision of its Organizational Documents.

(b) Except as set forth on Schedule 5.4(b), no consent, waiver, approval, order or authorization of, or registration, qualification, designation or filing with any Person or Governmental Body is required in connection with the execution, delivery and performance by Purchaser of this Agreement or the Ancillary Documents to which it is a party, the compliance by Purchaser with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby, the assumption and performance of the Assumed Liabilities or the taking by Purchaser of any other action contemplated hereby or thereby, other than such filings, notices or consents, the failure of which to make or obtain would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Purchaser's ability to perform its obligations under this Agreement and the Ancillary Documents to which it is a party, to assume and perform the Assumed Liabilities or to consummate on a timely basis the transactions contemplated hereby or thereby.

5.5. Brokers. No Person has acted, directly or indirectly, as a broker, finder or financial advisor for Purchaser in connection with the transactions contemplated by this Agreement and Seller is not or will not become obligated to pay any fee or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the transactions contemplated by this Agreement based upon any arrangement made by or on behalf of Purchaser.

5.6. Adequate Assurances Regarding Assigned Contracts. As of the Closing, Purchaser will be capable of satisfying the conditions contained in Sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Assigned Contracts.

5.7. No Litigation. To Purchaser's knowledge, there are no material actions, suits, claims, investigations, hearings, or proceedings of any type pending (or, to the knowledge of Purchaser, threatened) instituted against Purchaser challenging the legality of the transactions contemplated in this Agreement (other than with respect to any objection which may be filed in connection with the Bankruptcy Case).

**ARTICLE VI.**

**EMPLOYEES**

6.1. Employee Matters.

(a) The Purchaser intends to extend offers of employment (which may be for employment with Purchaser or any of its Affiliates) to all of the Seller's employees related to the Purchased Assets as of the date hereof who have not been terminated or otherwise left the employ of the Seller prior to the Closing Date. Seller has made available to Purchaser a correct and complete list of all the Employees. The Seller shall provide Purchaser access to its personnel records and personnel files, and shall provide such other information regarding the Employees as Purchaser may reasonably request. All such Employees who accept such offers of employment with Purchaser or its

Affiliates are hereinafter referred to as the “*Transferred Employees*” and such acceptance of offers shall be effective immediately after the Closing. The Transferred Employees’ acceptance of offers from Purchaser shall terminate the employment of the Transferred Employees with Seller. Except as provided in Section 6.1(b), each Transferred Employee shall be eligible to participate in all of Purchaser’s employee benefit plans in accordance with the terms of those plans, to the same extent and in the same manner as new employees of Purchaser or, at Purchaser’s sole discretion, Purchaser may permit or require the Transferred Employees to continue to participate in the Assumed Plans.

(b) Subject to Purchaser’s right to terminate any Transferred Employees, for a period of one year from and after the Closing Date, Purchaser shall provide each Transferred Employee with (i) base compensation/wage rate that is no lower than that provided to such Transferred Employees as of the date of this Agreement; (ii) bonus opportunity that is no less favorable than that would have existed if Transferred Employee were still employed by Seller; (iii) other employee benefits that are no less favorable in the aggregate than those provided by Seller, including, but not limited to, vacation days and other paid-time-off; and (iv) any base compensation/wage rate increases that Seller has committed to providing to any Transferred Employees, but which increases have not been enacted as of the Closing Date, as set forth in Schedule 6.1(b). For purposes of eligibility, vesting, participation and benefit accrual under any Purchaser plans and programs providing employee benefits to Transferred Employees after the Closing Date (the “*Post-Closing Plans*”), each Transferred Employee shall be credited with his or her years of service with Seller before the Closing Date to the same extent as such Transferred Employee was entitled, before the Closing Date, to credit for such service under substantially similar Seller Employee Benefit Plans in which such Transferred Employees participated before the Closing Date, except to the extent such credit would result in a duplication of benefits.

(c) For purposes of each Post-Closing Plan providing medical, dental, hospital, pharmaceutical or vision benefits to any Transferred Employee, Purchaser shall use reasonable efforts to cause to be waived all pre-existing condition exclusions and actively-at-work requirements of such Post-Closing Plan for such Transferred Employee and his or her covered dependents (unless such exclusions or requirements were applicable under comparable Benefit Plans). In addition, Purchaser shall use reasonable efforts to cause any co-payments, deductible and other eligible expenses incurred by such Transferred Employee and/or his or her covered dependents under any Benefit Plan providing, medical, dental, hospital, pharmaceutical or vision benefits during the plan year ending on the Closing Date to be credited for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such Transferred Employee and his or her covered dependents for the applicable plan year of each comparable Post-Closing Plan in which he or she participates.

(d) Purchaser shall assume and honor all vacation days and other paid-time-off accrued or earned during the one (1) year period ending on the Closing Date, but not yet taken, by each Transferred Employee as of the Closing Date, which shall be delivered by Seller to Purchaser no later than five (5) Business Days after the Closing Date.

(e) The Seller shall be responsible for the payment of any severance payment or benefits that become due to any current or former employee, officer, director, member, partner or independent contractor as a result of the termination of such individual by Seller or ERISA Affiliate thereof. The Seller shall cease to maintain any group health plan as a result of the transactions contemplated by this Agreement, and Purchaser acknowledges and agrees that to the extent required by Section 4980B of the Code (and any regulations issued thereunder), Purchaser

shall be responsible for complying with the health care continuation required of COBRA with respect to any individuals who are deemed to be “M&A Qualified Beneficiaries” (as such term is defined by COBRA and any regulations issued thereunder) in connection with the transactions contemplated by this Agreement whether the qualifying event resulting in such coverage occurred before, on or after the Closing Date. The Purchaser or its Affiliates shall be responsible for any severance benefits for any Transferred Employee who terminates employment with the Purchaser or such Affiliate after the Closing Date.

(f) At least two (2) days prior to the Closing, Purchaser will provide the Seller a list of the Benefit Plans that it will assume, if any (the “*Assumed Plans*”). Purchaser, on the one hand, and the Seller, on the other, shall take such actions as are necessary and reasonably requested by the other Party to cause Purchaser to assume sponsorship of the Assumed Plans as of the Closing and to effect the transfer of all assets and benefit liabilities of the Assumed Plans together with all related trust, insurance policies and administrative services agreements, effective as soon as practicable following the Closing; provided, however, that Purchaser shall not be assuming or be responsible for any liabilities or obligations arising with respect to or in connection with such Assumed Plans to the extent such liabilities or obligations arose prior to Closing or with respect to any employee or former employee of the Seller who does not become a Transferred Employee (except to cause payment for any claim appropriately covered by a transferred insurance policy).

(g) On and following the Agreement Date, Seller and Purchaser shall reasonably cooperate in all matters reasonably necessary to effect the transactions contemplated by this Section 6.1, including exchanging information and data relating to workers’ compensation, employee benefits and employee benefit plan coverage, and in obtaining any governmental approvals required hereunder, except as would result in the violation of any applicable Legal Requirement, including without limitation, any Legal Requirement relating to the safeguarding of data privacy.

(h) The provisions of this Section 6.1 are for the sole benefit of the parties to this Agreement only and shall not be construed to grant any rights, as a third party beneficiary or otherwise, to any person who is not a party to this Agreement, nor shall any provision of this Agreement be deemed to be the adoption of, or an amendment to, any employee benefit plan, as that term is defined in Section 3(3) of ERISA, or otherwise to limit the right of Purchaser or the Seller to amend, modify or terminate any such employee benefit plan. In addition, nothing contained herein shall be construed to (i) prohibit any amendments to or termination of any employee benefit plans or (ii) prohibit the termination or, except as otherwise provided in Section 6.1(b), change in terms of employment of any employee (including any Transferred Employee) as permitted under applicable law. Nothing herein, expressed or implied, shall confer upon any employee (including any Transferred Employee) any rights or remedies (including, without limitation, any right to employment or continued employment for any specified period) of any nature or kind whatsoever, under or by reason of any provision of this Agreement.

## ARTICLE VII.

### BANKRUPTCY COURT MATTERS

7.1. Approval of Break-Up Fee and Overbid Protection. Subject to the entry of the Bidding Procedures Order, in consideration for Purchaser having expended considerable time and expense in connection with this Agreement and the negotiation hereof and the identification and quantification of assets of Seller, Seller shall pay to Purchaser promptly upon the effective date of

termination of this Agreement in accordance with, and only to the extent provided in, the provisions of Section 3.5, the Expense Reimbursement and the payment of a break-up fee of one percent (1.0%) of the Purchase Price (calculated solely by reference to Section 2.1) (the “Break-Up Fee”, together with the Expense Reimbursement, the “Bid Protections”). In addition, the Bidding Procedures Order shall provide for an initial overbid protection in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00) over and above the aggregate of the Purchase Price and the Bid Protections, and minimum bid increments thereafter of Twenty-Five Thousand Dollars (\$25,000.00) (the “Overbid Protection”). The obligations of Seller to pay the Bid Protections (i) shall be entitled to administrative expense claim status under Sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code, (ii) shall not be subordinate to any other administrative expense claim against the Seller, and (iii) shall survive the termination of this Agreement in accordance with Section 3.6. The Bidding Procedures Order shall approve the Bid Protections as set forth in this paragraph.

7.2. Competing Bid and Other Matters.

(a) Within two (2) Business Days following the Petition Date, Seller shall file with the Bankruptcy Court an application or motion seeking approval of (i) the Bidding Procedures Order and (ii) this Agreement (a true and complete copy of which shall be attached to such application or motion without schedules) and the Seller’s authority to enter into this Agreement (the “*Sale and Bidding Procedures Motion*”); provided, that such application or motion and all exhibits thereto shall be in form and substance acceptable to Purchaser, in its sole discretion.

(b) This Agreement and the transactions contemplated hereby are subject to Seller’s right and ability to consider higher or better competing bids with respect to the Business and a material portion of the Purchased Assets pursuant to the Bidding Procedures Order (each a “*Competing Bid*”). Following completion of the Auction, if Purchaser is the Prevailing Bidder, Seller shall not initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person in connection with any sale or other disposition of the Purchased Assets. In addition, unless otherwise directed by the Bankruptcy Court, if Purchaser is the Prevailing Bidder, Seller shall not after completion of the Auction respond to or pursue any proposed Alternative Transaction or perform any other acts related thereto.

(c) If an Auction is conducted, and Purchaser is not the prevailing party at the conclusion of such Auction (such prevailing party, the “*Prevailing Bidder*”), Purchaser shall, if its bid is determined to be the next highest bid, have the option, in its sole discretion, to serve as a back-up bidder (the “*Back-up Bidder*”) and keep Purchaser’s bid to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be improved upon in the Auction) open and irrevocable until the earlier of (i) 5:00 p.m. (prevailing Eastern time) on the date which is fifteen (15) days after the date of the Sale Hearing (the “*Outside Back-up Date*”); provided, however, that notwithstanding the foregoing, in no event shall the Outside Back-up Date be later than November 15, 2016, or (ii) the date of closing of an Alternative Transaction with the Prevailing Bidder. Following the Sale Hearing and prior to the Outside Back-up Date, if the Prevailing Bidder fails to consummate the applicable Alternative Transaction as a result of a breach or failure to perform on the part of such Prevailing Bidder, the Back-up Bidder will be deemed to have the new prevailing bid, and Seller will be authorized, without further order of the Bankruptcy Court, to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be improved upon in the Auction) with the Back-up Bidder.

(d) The Seller shall promptly serve true and correct copies of the Sale and Bidding Procedures Motion and all related pleadings in accordance with the Bidding Procedures Order, the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules for the Bankruptcy Court and any other applicable order of the Bankruptcy Court.

7.3. Sale Order. The Sale Order shall be entered by the Bankruptcy Court. The Sale Order shall, among other things, (i) approve, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, (A) the execution, delivery and performance by Seller of this Agreement, (B) the sale of the Purchased Assets to Purchaser on the terms set forth herein and free and clear of all Claims, Liabilities and Encumbrances (other than Liabilities and Encumbrances included in the Assumed Liabilities and Permitted Encumbrances), and (C) the performance by Seller of its obligations under this Agreement; (ii) authorize and empower Seller to assume and assign to Purchaser the Assigned Contracts; and (iii) find that Purchaser is a “good faith” Purchaser within the meaning of Section 363(m) of the Bankruptcy Code, not a successor to Seller and grant Purchaser the protections of Section 363(m) of the Bankruptcy Code. Purchaser agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining Bankruptcy Court approval of the Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of (a) demonstrating that Purchaser is a “good faith” purchaser under Section 363(m) of the Bankruptcy Code, and (b) establishing adequate assurance of future performance within the meaning of Section 365 of the Bankruptcy Code.

7.4. Contracts. Seller shall serve on all non-Seller counterparties to all of their Contracts a notice specifically stating that Seller is or may be seeking the assumption and assignment of such Contracts and shall notify such non-Seller counterparties of the deadline for objecting to the Cure Amounts, if any, which deadline shall not be less than three (3) Business Days prior to the Sale Hearing.

7.5. Bankruptcy Filings. From and after the Agreement Date and until the Closing Date, Seller shall deliver to Purchaser drafts of any and all material pleadings, motions, notices, statements, schedules, applications, reports and other papers to be filed or submitted in connection with this Agreement for Purchaser’s prior review and comment, including any Tax motions, and such filings shall be acceptable to Purchaser in its sole discretion to the extent they relate to the Purchased Assets, any Assumed Liabilities or any of Purchaser’s obligations hereunder. Seller agrees 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, Seller shall use its best efforts to defend such appeal. Seller shall comply with all notice requirements (i) of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, or (ii) imposed by the Sale Order, in each case, in connection with any pleading, notice or motion to be filed in connection herewith.

7.6. Sale Free and Clear. Seller acknowledges and agrees, and the Sale Order shall provide that, on the Closing Date and concurrently with the Closing, all then existing or thereafter arising obligations, Liabilities and Encumbrances of, against or created by Seller or its bankruptcy estate, to the fullest extent permitted by Section 363 of the Bankruptcy Code, shall be fully released from and with respect to the Purchased Assets. On the Closing Date, the Purchased Assets shall be transferred to Purchaser free and clear of all obligations, Liabilities and Encumbrances, other than Permitted Encumbrances and the Assumed Liabilities to the fullest extent permitted by Section 363 of the Bankruptcy Code.

## ARTICLE VIII.

### COVENANTS AND AGREEMENTS

8.1. Conduct of Business of Seller. During the Pre-Closing Period, Seller shall use commercially reasonable efforts, except as otherwise required, authorized or restricted pursuant to the Bankruptcy Code or an Order of the Bankruptcy Court, to operate the Business in the Ordinary Course of Business (among other things, Seller will not incur unreasonable liabilities, including, without limitation, inappropriate increases in Inventory or factoring of accounts receivable). Seller shall use commercially reasonable efforts to (A) preserve intact their respective business organizations, (B) maintain the Business and the Purchased Assets (normal wear and tear excepted), (C) keep available the services of its officers and Employees, (D) maintain satisfactory relationships with licensors, licensees, suppliers, contractors, distributors, consultants, customers, vendors and others having business relationships with Seller in connection with the operation of the Business (other than payment of pre-petition claims), (E) subject to the terms and any restrictions arising under or in connection with any Bankruptcy Court approved debtor-in-possession financing facility, pay all of its post-petition obligations in the Ordinary Course of Business, and (F) continue to operate the Business and Purchased Assets in all material respects in compliance with all Laws applicable to the Business and Seller. Without limiting the generality of the foregoing, and except (i) as otherwise expressly provided in or contemplated by this Agreement, or (ii) required, authorized or restricted pursuant to the Bankruptcy Code or an Order of the Bankruptcy Court, on or prior to the Closing Date, Seller may not, without the prior written consent of Purchaser, take any of the following actions with respect to the Business or the Purchased Assets:

(a) other than as set forth in Schedule 8.1(a), (i) modify in any manner the compensation of any of the Employees or officers, or accelerate the payment of any such compensation (other than such that the liability associated with such modification is excluded from the Assumed Liabilities), (ii) grant any (a) bonuses, whether monetary or otherwise, (b) increase wages or salary or (c) increase other compensation or material benefits, in any case, in respect of any current or former employee, independent contractor, director or officer of the Seller;

(b) engage any new Employee other than in the Ordinary Course of Business, provided, however, that Seller shall not engage any new Employee whose aggregate annual salary exceeds \$100,000;

(c) except as set forth in Schedule 8.1(c), and except with respect to assets located at (1) Stores that Seller has discontinued operations from prior to the Petition Date and that are the subject of a lease rejection motion filed by the Seller on or about the Petition Date, and/or (2) Stores as to which Buyer has consented to the closure thereof and the rejection of the associated Lease therefor after the Petition Date, remove or permit to be removed from any building, facility, or real property any asset or any Inventory (other than in connection with the sale of Inventory in the Ordinary Course of Business and the sale of fixtures, equipment and related assets in connection with the closing of stores in an amount not to exceed \$50,000);

(d) sell, lease or otherwise dispose of mortgage, hypothecate or otherwise encumber any asset (other than sales of Inventory in the Ordinary Course of Business and other than any liens provided for in the DIP Order);

(e) amend, terminate or renew any Contract other than (i) in the Ordinary Course of Business or (ii) outside of the Ordinary Course of Business, which results in an increase in the term of any such Contract by more than one (1) year or results in an obligation of Seller in excess of \$25,000;

(f) fail to use commercially reasonable efforts to maintain the validity of Seller's rights in, to or under any Intellectual Property;

(g) fail to use commercially reasonable efforts to maintain all material Permits of Seller, used in the operation of the Business or the Purchased Assets;

(h) make any unusual or extraordinary efforts to collect any outstanding Accounts Receivable or intercompany obligation, liability or Indebtedness, give any discounts or concessions for early payment of such accounts receivable or intercompany obligation, liability or Indebtedness, other than the usual discounts given by the Business in the Ordinary Course of Business and make any sales of, or, other than liens provided for in the DIP Order, convey any interest in, any accounts receivable or intercompany obligation, liability or Indebtedness to any third party;

(i) other than transactions pursuant to agreements or arrangements in effect on the Petition Date as set forth on Schedule 8.1(i), engage in any transaction with any Affiliate, subsidiary, shareholder, officer or director of Seller (other than in the Ordinary Course of Business), incur or assume any long term or short term debt with or on behalf of any such Person or guarantee, endorse or otherwise be liable or responsible (whether directly, indirectly, contingently or otherwise) for the obligations of any such Person;

(j) make any change in their method of accounting, except in accordance with GAAP;

(k) fail to maintain any insurance policy in effect on the date hereof or amend any such policy other than extensions in the Ordinary Course of Business;

(l) accelerate the payment of any obligation, Liability or Indebtedness of Seller;

(m) file any Tax Return (other than consistent with past practice and applicable Law) or make, change or rescind any Tax election or file any amended Tax Return or change its fiscal year or financial or Tax accounting methods, policies or practices or settle any Tax Liability, except in each case as would not reasonably be expected to result in any Liability to, or have any adverse effect on, the Purchaser or the Business.;

(n) enter into, termination of, adoption of or amendment to Plan (other than amendments required by law or to maintain the tax qualified status of any Benefit Plan under Section 401(a) of the Code), any change in control or severance agreement or any other Benefit Plan or collective bargaining agreement;

(o) loan to, or entry into any other transaction (other than in the Ordinary Course of Business) with, any employee, officer, director or independent contractor;

(p) settle or agree to settle any pending or threatened litigation, except to the extent that such settlement is either (i) pursuant to an insured claim; (ii) less than \$50,000 or (iii) approved by the Bankruptcy Court;

(q) other than transactions pursuant to agreements or arrangements in effect as set forth in Schedule 8.1(q), enter into new agreements to construct or remodel any of Seller's Stores;

(r) engage in substantive discussion with any Governmental Body related to any alleged or actual non-compliance with Environmental Laws without at least three days advance notice to Purchaser or enter into any settlement thereof including fines or payments in excess of \$50,000 or otherwise providing for injunctive relief of any kind;

(s) agree with the applicable landlord to a modification of terms of the existing Lease for any Assumed Leased Real Property; and

(t) agree, whether in writing or otherwise, to do any of the foregoing.

8.2. Access to Information. Seller agree that, between the Agreement Date and the earlier of the Closing Date and the date on which this Agreement is terminated in accordance with Section 3.4, Purchaser shall be entitled, through its officers, employees, legal counsel, accountants and other authorized representatives, agents and contractors ("**Representatives**"), to have such reasonable access to and make such reasonable investigation and examination of the books and records, properties, businesses, assets, Employees, accountants, auditors, counsel and operations of Seller as Purchaser's Representatives may reasonably request. Any such investigations and examinations shall be conducted during regular business hours upon reasonable advance notice and under reasonable circumstances. Seller shall use commercially reasonable efforts to cause its Representatives to reasonably cooperate with Purchaser and Purchaser's Representatives in connection with such investigations and examinations, and Purchaser shall, and use its commercially reasonable efforts to cause its Representatives to, reasonably cooperate with the Seller and its Representatives, and shall use its commercially reasonable efforts to minimize any disruption to the Business.

8.3. Assignability of Certain Contracts. To the extent that the assignment to Purchaser of any Assigned Contract pursuant to this Agreement is not permitted without the consent of a third party and such restriction cannot be effectively overridden or canceled by the Sale Order or other related order of the Bankruptcy Court, then this Agreement will not be deemed to constitute an assignment of or an undertaking or attempt to assign such Contract or any right or interest therein unless and until such consent is obtained; provided, however, that the Parties will use their commercially reasonable efforts, before the Closing, to obtain all such consents; provided, further, that if any such consents are not obtained prior to the Closing Date, Seller and Purchaser will reasonably cooperate with each other in any lawful and feasible arrangement designed to provide Purchaser with the benefits and obligations of any such Contract and Purchaser shall be responsible for performing all obligations under such Contract required to be performed by Seller on or after the Closing Date to the extent set forth in this Agreement.

8.4. Rejected Contracts. Seller shall not reject any Assigned Contract in any bankruptcy proceeding following the Agreement Date without the prior written consent of Purchaser, which Purchaser may withhold, condition or delay, in its sole discretion.

8.5. Reasonable Efforts; Cooperation.

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

(b) In the event that any of the Parties to this Agreement discovers a Contract related to the Business, the Purchased Assets or the Assumed Liabilities during the period from and after the Agreement Date, and such Contract (i) was unknown as of the Agreement Date, (ii) is a Contract that Purchaser wishes to assume the rights and obligations of and (iii) such Contract would not be deemed an Excluded Contract by Seller, Purchaser and Seller shall execute, acknowledge and deliver such other instruments and take such further actions as are reasonably practicable for Purchaser to assume the rights and obligations under such Contract.

(c) The obligations of Seller pursuant to this Section 8.5 shall be subject to any orders entered, or approvals or authorizations granted or required, by or under the Bankruptcy Court or the Bankruptcy Code (including in connection with the Bankruptcy Case), and Seller's obligations as a debtor-in-possession to comply with any order of the Bankruptcy Court (including the Bidding Procedures Order and the Sale Order) and Seller's duty to seek and obtain the highest or otherwise best price for the Business as required by the Bankruptcy Code.

(d) Seller, on the one hand, and Purchaser, on the other hand, will provide each other with such cooperation and information as either of them may reasonably request of the other in connection with filing any Tax Return, amended Tax Return or claim for refund, determining a liability for Taxes or a right to a refund of Taxes, or participating in or conducting any audit or other proceeding in respect of Taxes (such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with intercompany schedules, related work papers and documents relating to rulings and other determinations by Tax authorities). In addition, Purchaser shall make available to Seller, without charge to Seller, such office space and employee support reasonably necessary to assist Seller to wind up Seller's operations following the Closing, resolve the Bankruptcy Case, dissolve any or all of the Seller and prepare and file the Tax Returns. Any information obtained under this Section 8.5(d) shall be kept confidential except as may be otherwise necessary in connection with the filing of Tax Returns or claims for refund or in conducting any audit or other proceeding.

(e) Seller, on the one hand, and Purchaser, on the other hand, (i) shall promptly inform each other of any communication from any Governmental Body concerning this Agreement, the transactions contemplated hereby, and any filing, notification or request for approval and (ii) shall permit the other to review in advance any proposed written or material oral communication or information submitted to any such Governmental Body in response thereto. In addition, none of Parties shall agree to participate in any meeting with any Governmental Body in respect of any filings, investigation or other inquiry with respect to this Agreement or the transactions contemplated hereby, unless such Party consults with the other Parties in advance and, to the extent permitted by any such Governmental Body, gives the other Parties the opportunity to attend and participate thereat, in each case to the maximum extent practicable. Subject to restrictions under any Law, each

of Purchaser, on the one hand, and Seller, on the other hand, shall furnish the other with copies of all correspondence, filings and communications (and memoranda setting forth the substance thereof) between it and its Affiliates and their respective Representatives on the one hand, and the Governmental Body or members of its staff on the other hand, with respect to this Agreement, the transactions contemplated hereby (excluding documents and communications which are subject to preexisting confidentiality agreements or to the attorney-client privilege or work product doctrine or which refer to valuation of the Business) or any such filing, notification or request for approval. Each Party shall also furnish the other Party with such necessary information and assistance as such other Party and its Affiliates may reasonably request in connection with their preparation of necessary filings, registration or submissions of information to the Governmental Body in connection with this Agreement, the transactions contemplated hereby and any such filing, notification or request for approval.

8.6. Further Assurances. Each Party shall execute and cause to be delivered to each other Party such instruments and other documents, and shall take such other actions, as such other Party may reasonably request (prior to, at or after the Closing) for the purpose of carrying out or evidencing any of the transactions contemplated by this Agreement. After the Closing, Seller shall promptly transfer or deliver to Purchaser cash, checks (which shall be properly endorsed) or other property that Seller may receive in respect of any deposit, prepaid expense, receivable or other item that constitutes part of the Purchased Assets or relates to the Assumed Liabilities.

8.7. Notification of Certain Matters. Seller shall give prompt notice to Purchaser, and Purchaser shall give prompt notice to Seller, of (i) any notice or other communication from any Person alleging that the consent of such Person which is or may be required in connection with the transactions contemplated by this Agreement or the Ancillary Documents is not likely to be obtained prior to Closing, (ii) any written objection or proceeding that challenges the transactions contemplated hereby or the entry of the approval of the Bankruptcy Court and (iii) the status of matters relating to the completion of the transactions contemplated hereby, including promptly furnishing the other with copies of notices or other communications received by Seller or Purchaser or by any of their respective Affiliates (as the case may be), from any third party and/or any Governmental Body with respect to the transactions contemplated by this Agreement.

8.8. Confidentiality.

(a) Purchaser acknowledges that the confidential information provided to it in connection with this Agreement, including under Section 8.2, and the consummation of the transactions contemplated hereby, is subject to the Purchaser's covenant and agreement to maintain the confidentiality thereof.

(b) Following the completion of the Auction, Seller agrees to maintain, unless disclosure is required by applicable Law, the confidentiality of any confidential information regarding the Business which is in Seller's possession or of which Seller is aware. Seller hereby further agrees, unless disclosure is required by applicable Law, to take all appropriate steps, consistent with Seller's past practice, to safeguard such confidential information and to protect it against disclosure, misuse, loss and theft. In furtherance and not in limitation of the foregoing, Seller shall not, unless required by applicable Law, disclose to any Person (a) any confidential information regarding the Business, provided, that confidential information shall not include information that becomes generally available to the public other than as a result of the breach of this Section 8.8(b) or information not otherwise known by the Seller that becomes available to Seller from a Person other

than Purchaser, or (b) any of the discussions or negotiations conducted with Purchaser in connection with this Agreement, provided, that Seller shall be entitled to disclose (i) any information required to be disclosed by Seller to the Bankruptcy Court, the United States Trustee, parties in interest in the Bankruptcy Case, other Persons bidding on assets of Seller, (ii) any information required to be disclosed by Seller pursuant to any applicable Law (including, without limitation, the Bankruptcy Code), legal proceeding or Governmental Authority, or (iii) any information to Seller's counsel and financial advisor; provided, that in each case, such disclosure shall be limited to the information that is so required to be disclosed and the Person(s) to whom such disclosure is required. Notwithstanding anything in this Section 8.8 to the contrary, unless disclosure is required by applicable Law, the confidentiality of any trade secrets of the Business shall be maintained for so long as such trade secrets continue to be entitled to protection as trade secrets of the Business.

8.9. Preservation of Records. Seller (or any subsequently appointed bankruptcy estate representative, including, but not limited to, a trustee, a creditor trustee or a plan administrator) and Purchaser agree that each of them shall preserve and keep the books and records held by it relating to the pre-Closing Business for a period of three (3) months from the Closing Date and shall make such books and records available to the other Parties (and permit such other Party to make extracts and copies of such books and records at its own expense) as may be reasonably required by such Party in connection with, among other things, any insurance claims by, legal proceedings or Tax audits against or governmental investigations of Seller or Purchaser or in order to enable Seller or Purchaser to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby or thereby. In the event Seller, on the one hand, or Purchaser, on the other hand, wish to destroy such records during such three (3) month period, such Party shall first give twenty (20) days' prior written notice to the other and such other Party shall have the right at its option and expense, upon prior written notice given to such Party within that twenty (20) day period, to take possession of the records within thirty (30) days after the date of such notice.

8.10. Publicity. Neither Seller nor Purchaser shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other party hereto, which approval will not be unreasonably withheld or delayed, unless, in the sole judgment of Purchaser or Seller, disclosure is otherwise required by applicable Law or by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement; provided, that the party intending to make such release shall use its best efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other party with respect to the text thereof.

8.11. Material Adverse Effect. Seller shall promptly inform Purchaser in writing of the occurrence of any event that has had, or is reasonably expected to have, a Material Adverse Effect.

8.12. Casualty Loss. Notwithstanding any provision of this Agreement to the contrary, if, before the Closing, all or any portion of the Purchased Assets is (a) condemned or taken by eminent domain, or (b) is damaged or destroyed by fire, flood or other casualty, Seller shall notify Purchaser promptly in writing of such fact, (i) in the case of condemnation or taking, Seller shall assign or pay, as the case may be, any proceeds thereof to Purchaser at the Closing, and (ii) in the case of fire, flood or other casualty, Seller shall assign the insurance proceeds therefrom to Purchaser at Closing. Notwithstanding the foregoing, the provisions of this Section 8.12 shall not in any way modify 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.

8.13. No Successor Liability. The Parties intend that, except where expressly prohibited under applicable Law, upon the Closing, Purchaser shall not be deemed to: (i) be the successor of Seller, (ii) have, de facto, or otherwise, merged with or into Seller, (iii) be a mere continuation or substantial continuation of Seller or the enterprise(s) of Seller, or (iv) be liable for any acts or omissions of Seller in the conduct of the Business or arising under or related to the Purchased Assets other than as set forth in this Agreement. Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, the Parties intend that Purchaser shall not be liable for any Encumbrance (other than Assumed Liabilities and Permitted Encumbrances) against Seller or any of Seller's predecessors or Affiliates, and Purchaser shall have no successor or vicarious liability of any kind or character whether known or unknown as of the Closing Date, whether now existing or hereafter arising, or whether fixed or contingent, with respect to the Business, the Purchased Assets or any Liabilities of Seller arising prior to the Closing Date. The Parties agree that the provisions substantially in the form of this Section 8.13 shall be reflected in the Sale Order.

8.14. Change of Name. Promptly following the Closing, Seller shall, and shall cause its direct and indirect Subsidiaries to, discontinue the use of its current name (and any other trade names or "d/b/a" names currently utilized by Seller or its direct or indirect Subsidiaries) and shall not subsequently change its name to or otherwise use or employ any name which includes the words "Picture People", or any derivation thereof, without the prior written consent of Purchaser, and Seller shall cause the names of Seller in the caption of the Bankruptcy Case to be changed to new name of Seller.

8.15. Receivables. From and after the Closing, if Seller receives or collects any funds relating to Accounts Receivable, in respect of the Purchased Assets, Seller shall remit such funds to Purchaser within Five Business Days after its receipt thereof.

## **ARTICLE IX.**

### **CONDITIONS TO CLOSING**

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

(a) there shall not be in effect any order, writ, injunction, judgment or decree entered by a Governmental Body of competent jurisdiction, or any Law preventing, enjoining, restraining, making illegal or otherwise prohibiting the consummation of the transactions contemplated by this Agreement or the Ancillary Documents; and

(b) the Bankruptcy Court shall have entered the Bidding Procedures Order and the Sale Order (as provided in Article VII) and each of such orders shall be a Final Order and in form and substance reasonably satisfactory to Seller and Purchaser, which orders shall not have been reversed, modified, amended or stayed.

9.2. Conditions Precedent to the Obligations of Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions, any of which may be waived in writing by Seller in their sole discretion:

(a) the representations and warranties made by Purchaser in this Agreement or in any Ancillary Document shall be true and correct in all material respects (without giving effect to any materiality or similar qualification contained therein), in each case as of the Agreement Date and as of the Closing Date, with the same force and effect as though all such representations and warranties had been made as of the Closing Date (other than representations and warranties that by their terms address matters only as of another specified date, which shall be so true and correct only as of such other specified date), except where the failure of such representations or warranties to be so true and correct has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Purchaser's ability to consummate the transactions contemplated hereby;

(b) Purchaser shall have performed and complied in all material respects with all obligations and agreements required by this Agreement to be performed or complied with by Purchaser on or prior to the Closing Date; and

(c) Purchaser shall have delivered, or caused to be delivered, to Seller all of the items set forth in Section 3.3.

9.3. Conditions Precedent to the Obligations of Purchaser. The obligations of Purchaser to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions, any of which may be waived in writing by Purchaser in its sole discretion:

(a) Seller shall have delivered to Purchaser (i) a file-stamped copy of the Sale Order (which shall contain the terms described in Section 7.3) and (ii) copies of all affidavits of service of the Sale Motion or notice of such motion filed by or on behalf of Seller (which service shall comply with Section 7.2(d));

(b) the representations and warranties made by Seller in this Agreement or in any Ancillary Document shall be true and correct in all material respects (provided that any such representation or warranty that is subject to any materiality, Material Adverse Effect or similar qualification shall be true and correct in all respects after giving effect to any such qualification), in each case as of the Agreement Date and as of the Closing Date, with the same force and effect as though all such representations and warranties had been made as of the Closing Date (other than representations and warranties that by their terms address matters only as of another specified date, which shall be so true and correct only as of such other specified date);

(c) Seller shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by them on or prior to the Closing Date;

(d) Seller shall have delivered, or caused to be delivered, to Purchaser, all of the items set forth in Section 3.2; and

(e) Seller shall have complied with the sale process deadlines set forth in the Bidding Procedures Order.

## ARTICLE X.

### ADDITIONAL DEFINITIONS

10.1. Definitions. As used herein:

(a) “*Accounts Receivable*” shall have the meaning set forth in Section 1.1(c).

(b) “*Action*” means any action, claim, complaint, grievance, summons, suit, litigation, arbitration, mediation, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), prosecution, contest, hearing, inquiry, inquest, audit, examination or investigation by or before any Governmental Body.

(c) “*Affiliate*” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term “control” (including the terms “controlled by” and “under common control with”) means (i) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by Contract or otherwise or (ii) an officer, director, or any Person that has the power, directly or indirectly, to vote 5% or more of the securities having ordinary voting power for the election of directors (or persons performing similar functions) of such Person.

(d) “*Affiliate Agreement*” means any agreement or contract between any director, officer, employee or greater than five percent (5%) stockholder of Seller or Affiliate of any such Person, on one hand, and Seller, on the other hand, related to the Business, including any contract providing for the employment of, furnishing of services by, rental of real or personal property from or otherwise requiring payments to any such Person or firm, other than employment-at-will arrangements in the ordinary course of business.

(e) “*Agreement*” shall have the meaning set forth in the preamble.

(f) “*Agreement Date*” shall have the meaning set forth in the preamble.

(g) “*Allocation*” shall have the meaning set forth in Section 11.2.

(h) “*Alternative Transaction*” means (i) the approval by the Bankruptcy Court of a sale or sales of a material portion of the Purchased Assets to a Person other than Purchaser, or (ii) the confirmation of a plan of reorganization that does not contemplate the sale of the Purchased Assets to Purchaser in accordance with the terms hereof.

(i) “*Ancillary Documents*” means any certificate, agreement, document or other instrument (other than this Agreement) to be executed and delivered by a Party in connection with the consummation of the transactions contemplated this Agreement.

(j) “*Antitrust Condition*” has the meaning set forth in Section 8.16(c).

- (k) “*Antitrust Division*” has the meaning set forth in Section 8.16(a).
- (l) “*Antitrust Laws*” has the meaning set forth in Section 8.16(b).
- (m) “*Antitrust Order*” has the meaning set forth in Section 8.16(b).
- (n) “*Arbitrating Accountant*” means (a) a nationally recognized certified public accounting firm jointly selected by Purchaser and the Seller that is not then engaged to perform accounting, tax or auditing services for the Seller or Purchaser or (b) if the Seller and Purchaser are unable to agree on an accountant, then a nationally recognized certified public accounting firm jointly selected by the Seller’s accounting firm and Purchaser’s accounting firm.
- (o) “*Assigned Contracts*” shall have the meaning set forth in Section 1.1(b).
- (p) “*Assignment and Assumption Agreement*” shall have the meaning set forth in Section 3.2(b).
- (q) “*Assumed Leased Real Property*” means those of Seller’s Business locations that are subject to Assigned Contracts and that are identified in Schedule 1.1(b), as same may be modified from time to time in accordance with the terms hereof.
- (r) “*Assumed Liabilities*” shall have the meaning set forth in Section 1.3.
- (s) “*Assumed Plans*” shall have the meaning set forth in Section 6.1(f).
- (t) “*Assumption and Assignment of Leases*” shall have the meaning set forth in Section 3.2(h).
- (u) “*Assumption Approval*” has the meaning set forth in Section 1.6(h).
- (v) “*Auction*” has that meaning ascribed to such term by the Bidding Procedures Order.
- (w) “*Audited Financial Statements*” shall have the meaning set forth in Section 4.17(a).
- (x) “*Avoidance Actions*” shall have the meaning set forth in Section 1.1(x).
- (y) “*Back-up Bidder*” shall have the meaning set forth in Section 7.2(c).
- (z) “*Bankruptcy Case*” shall have the meaning set forth in the Recitals.
- (aa) “*Bankruptcy Code*” shall have the meaning set forth in the Recitals.
- (bb) “*Bankruptcy Court*” shall have the meaning set forth in the Recitals.
- (cc) “*Bankruptcy Rules*” shall have the meaning set forth in the Recitals.

(dd) “**Benefit Plan**” means (i) all “**employee benefit plans**” (including, without limitation, as defined in Section 3(3) of ERISA), including all employee benefit plans which are “**pension plans**” (including, without limitation, as defined in Section 3(2) of ERISA) and any other employee benefit arrangements or payroll practices (including severance pay, vacation pay, Seller awards, salary continuation for disability, sick leave, death benefit, hospitalization, welfare benefit, group or individual health, dental, medical, life, insurance, fringe benefit, deferred compensation, profit sharing, retirement, retiree medical, supplemental retirement, bonus or other incentive compensation, stock purchase, equity-based, stock option, stock appreciation rights, restricted stock and phantom stock arrangements or policies) and (ii) all other employment, termination, bonus, severance, change in control, collective bargaining or other similar plans, programs, contracts, or arrangements (whether written or unwritten), in each case, maintained, contributed to, or required to be contributed to by Seller or any ERISA Affiliate for the benefit of any current or former employee, director, officer or independent contractor of Seller or under which Seller or any ERISA Affiliate has any liability.

(ee) “**Bid Protections**” shall have the meaning set forth in Section 7.1.

(ff) “**Bidding Procedures Order**” means an order substantially in the form attached hereto as Exhibit E and otherwise in form and substance reasonably satisfactory to Seller and Purchaser.

(gg) “**Bill of Sale**” shall have the meaning set forth in Section 3.2(a).

(hh) “**Break-Up Fee**” shall have the meaning set forth in Section 7.1.

(ii) “**Business**” shall have the meaning set forth in the Section 1.1.

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

(kk) “**Cash and Cash Equivalents**” means all of Seller’s cash (including petty cash and checks received prior to the close of business on the Closing Date), checking account balances, marketable securities, certificates of deposits, time deposits, bankers’ acceptances, commercial paper, security entitlements, securities accounts, commodity Contracts, commodity accounts, government securities and any other cash equivalents, whether on hand, in transit, in banks or other financial institutions, or otherwise held (but specifically excluding any cash payable by Purchaser to Seller pursuant to this Agreement).

(ll) “**Chapter 11 Petition**” shall have the meaning set forth in the Recitals.

(mm) “**Claim**” has the meaning given that term in Section 101(5) of the Bankruptcy Code and includes, inter alia, all rights, claims, causes of action, defenses, debts, demands, damages, offset rights, setoff rights, recoupment right, 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.

(nn) “**Closing**” shall have the meaning set forth in Section 3.1.

(oo) “**Closing Assumed Contract List**” has the meaning set forth in Section 1.6(b).

(pp) “**Closing Date**” means the date on which the Closing occurs.

(qq) “**Code**” means the United States Internal Revenue Code of 1986, as the same may be amended from time to time.

(rr) “**Competing Bid**” shall have the meaning set forth in Section 7.2(b).

(ss) “**Consent**” means any approval, consent, ratification, permission, clearance, designation, qualification, waiver or authorization, or an order of the Bankruptcy Court that deems or renders unnecessary the same.

(tt) “**Continuing Store**” means any of Seller’s store locations with respect to which the associated Leases have been designated by Purchaser as Assumed Contracts, as such store locations may be changed in accordance with Section 1.7(a).

(uu) “**Contract**” means any written or oral contract, purchase order, service order, sales order, indenture, note, bond, lease, sublease, license, understanding, instrument or other agreement, arrangement or commitment that is binding upon a Person or its property, whether express or implied.

(vv) “**Credit Bid**” has the meaning set forth in Section 2.1(a).

(ww) “**Cure Amounts**” has the meaning set forth in Section 1.3(b).

(xx) “**Current Assets**” shall have the meaning set forth in Section 2.2(a).

(yy) “**Current Liabilities**” shall have the meaning set forth in Section 2.2(a).

(zz) “**Designation Deadline**” means December 31, 2016 provided, however, that Purchaser may extend such date until March 30, 2017 if Purchaser funds all costs to be incurred by the Seller during the period following December 31, 2016 until the last day of the applicable extension period, including professional fees and expenses in connection with the Bankruptcy Case.

(aaa) “**DIP Budget**” means the pro forma budget delivered to the Purchaser prior to the date hereof specifying the Seller’s operating budget as debtor-in-possession.

(bbb) “**DIP Financing**” means that certain Senior Secured Super-Priority Debtor-In-Possession Credit Agreement, dated as of September 2, 2016, entered into among (i) Seller, as borrower, (ii) any Person from time to time joined thereto as a borrower party in accordance with the terms thereof, (iii) the financial institutions that are or may from time to time become parties thereto as lenders thereunder, and (iv) Monroe Capital Management Advisors LLC, as administrative agent for the lenders thereunder, as the same may be amended,

modified, restated, or supplemented and in effect from time to time, and as approved by the Bankruptcy Court.

(ccc) “*DIP Financing Obligations*” means the “Obligations” as defined under the DIP Financing.

(ddd) “*DIP Order*” means an order or orders entered by the Bankruptcy Court which approves the DIP Financing on an interim, and thereafter final, basis.

(eee) “*Documents*” means all of Seller’s written files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, plans, operating records, safety and environmental plans and reports, data, Permits and Permit applications, studies and documents, Tax Returns, ledgers, journals, title policies, customer lists, regulatory filings, operating data and plans, research material, technical documentation (design specifications, engineering information, test results, maintenance schedules, functional requirements, operating instructions, logic manuals, processes, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, web pages, etc.), and other similar materials, in each case whether or not in electronic form relating to the Business.

(fff) “*Employee*” means an individual who, as of the applicable date, is employed by Seller in connection with the Business.

(ggg) “*Employer*” shall mean Seller.

(hhh) “*Encumbrance*” means any lien (as defined in Section 101(37) of the Bankruptcy Code), encumbrance, claim (as defined in Section 101(5) of the Bankruptcy Code), right, demand, charge, mortgage, deed of trust, option, pledge, security interest or similar interests, title defects, hypothecations, easements, rights of way, restrictive covenants, encroachments, rights of first refusal, preemptive rights, judgments, conditional sale or other title retention agreements and other impositions, imperfections or defects of title or restrictions on transfer or use of any nature whatsoever.

(iii) “*Engagement Date*” shall have the meaning set forth in Section 2.3(b).

(jjj) “*Environmental Law*” means any foreign, federal, state or local statute, regulation, ordinance rule of common law or agency guidance or policies relating to the protection of human health, safety, the environment, natural resources or consumer products.

(kkk) “*Environmental Liabilities and Obligations*” means all Liabilities arising from any actual or threatened impairment, impact or damage to the environment, health or safety, or any actual or threatened failure to comply with Environmental Law in connection with the prior or ongoing ownership or operation of the Business, the Purchased Assets, or the Assumed Leased Real Property where the Business is currently located, including Liabilities related to: (i) the transportation, storage, use, arrangement for disposal or disposal of Hazardous Materials; (ii) the Release of Hazardous Materials, including migration onto or from the real property where the Business is located; (iii) any other pollution or contamination of the surface, substrata, soil, air, ground water, surface water or marine environments; (iv) any other obligations imposed under

Environmental Law including all applicable Permits; (v) Orders, notices to comply, notices of violation, alleged non-compliance and inspection reports; and (vi) all obligations with respect to personal injury, property damage, wrongful death and other damages and losses arising under applicable Law as a result of any of the matters identified in clauses (i)-(v) of this definition.

(lll) “*ERISA*” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

(mmm) “*ERISA Affiliate*” means any entity which is a member of (A) a controlled group of corporations (as defined in Section 414(b) of the Code), (B) a group of trades or businesses under common control (as defined in Section 414(c) of the Code), (C) an affiliated service group (as defined under Section 414(m) of the Code) or (D) any group specified in Treasury Regulations promulgated under Section 414(o) of the Code, any of which includes or included Seller.

(nnn) “*Exchange Act*” means the Securities Exchange Act of 1934, as amended.

(ooo) “*Excluded Assets*” shall have the meaning set forth in Section 1.2.

(ppp) “*Excluded Contract*” has the meaning set forth in Section 1.6(c).

(qqq) “*Excluded Liabilities*” shall have the meaning set forth in Section 1.4.

(rrr) “*Expense Reimbursement*” shall mean the reasonable documented out-of-pocket fees, costs and expenses of the Purchaser incurred in connection with the due diligence, negotiation and execution of this Agreement and ancillary documents thereto, subject to a cap of \$75,000.00.

(sss) “*Final Order*” means an order or judgment of the Bankruptcy Court or any other court of competent jurisdiction entered by the Clerk of the Bankruptcy Court or such other court on the docket in Seller’s Bankruptcy Case or the docket of such other court, which has not been modified, amended, reversed, vacated or stayed and as to which (a) the time to appeal, petition for certiorari, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for certiorari or motion for new trial, reargument or rehearing shall then be pending or (b) if an appeal, writ of certiorari new trial, reargument or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court or other court of competent jurisdiction shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, reargument or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or move for a new trial, reargument or rehearing shall have expired, as a result of which such order shall have become final in accordance with Rule 8002 of the Federal Rules of Bankruptcy Procedure; provided, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order, shall not cause such order not to be a Final Order.

(ttt) “*FIRPTA Certificate*” shall have the meaning set forth in Section 11.4.

(uuu) “*FTC*” has the meaning set forth in Section 8.16(a).

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

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

(xxx) “**Ground Lease**” shall have the meaning set forth in Section 4.6(a).

(yyy) “**Hazardous Material**” means any substance, material or waste which is regulated by any Governmental Body, including petroleum and its by-products, asbestos, and any material or substance which is defined or identified as a “hazardous waste,” “hazardous substance,” “hazardous material,” “restricted hazardous waste,” “industrial waste,” “solid waste,” “contaminant,” “pollutant,” “toxic waste” or “toxic substance” or otherwise regulated under or the subject of any provision of Environmental Law.

(zzz) “**Indebtedness**” of any Person means, without duplication, (i) the interest in respect of, principal of and premium (if any) in respect of (x) indebtedness of such Person for money borrowed and (y) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable; (ii) all obligations of such Person with respect to any Contracts relating to the deferred and unpaid purchase price of property or services, including any interest accrued thereon and prepayment or similar penalties and expenses; (iii) all obligations of such Person under leases required to be capitalized in accordance with GAAP; (iv) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker’s acceptance or similar credit transaction; (v) all obligations of the type referred to in clauses (i) through (iv) of any Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations; and (vi) all obligations of the type referred to in clauses (i) through (v) of other Persons secured by any Encumbrance (other than Permitted Encumbrances), on any property or asset of such Person (whether or not such obligation is assumed by such Person).

(aaaa) “**Intellectual Property**” means all intellectual property and proprietary rights of any kind, including the following: (i) trademarks, service marks, trade names, slogans, logos, designs, symbols, trade dress, internet domain names, uniform resource identifiers, rights in design, brand names, any fictitious names, d/b/a’s or similar filings related thereto, or any variant of any of them, and other similar designations of source or origin, together with all goodwill, registrations and applications related to the foregoing; (ii) copyrights and copyrightable subject matter (including any registration and applications for any of the foregoing); (iii) trade secrets and other confidential or proprietary business information (including manufacturing and production processes and techniques, research and development information, technology, intangibles, drawings, specifications, designs, plans, proposals, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans, customer and supplier lists and information), know how, proprietary processes, formulae, algorithms, models, industrial property rights, and methodologies; (iv) computer software, computer programs, and databases (whether in source code, object code or other form); and (v) all rights to sue for past, present and future infringement, misappropriation, dilution or other violation of any of the foregoing and all remedies at law or equity associated therewith.

(bbbb) “**Inventory**” means all inventory (including finished goods, supplies, raw materials, work in progress, spare, replacement and component parts) related to the Business maintained or held by, stored by or on behalf of, or in transit to, any of the Seller.

(cccc) “**IP Assignment and Assumption Agreement**” shall have the meaning set forth in Section 3.2(i).

(dddd) “**IRS**” shall have the meaning set forth in Section 4.14(c).

(eeee) “**Knowledge**” or (“**Knowledge of Seller**” or “**Seller Knowledge**”) means the actual knowledge of a natural person, or, with respect to a Person that is not a natural person, the actual knowledge of the officers or management of any person, in each case, including facts of which any such individual should be aware in the reasonably prudent exercise of his or her duties.

(ffff) “**Law**” means any federal, state, local, municipal, foreign or international, multinational or other law, statute, constitution, principle of common law, resolution, ordinance, code, edict, decree, rule, regulation, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body, including but not limited to Environmental Laws..

(gggg) “**Lease**” shall have the meaning set forth in Section 4.6(a).

(hhhh) “**Leased Real Property**” means all of the real property leased, subleased, used or occupied by any of the Seller, together with all buildings, structures, fixtures and improvements erected thereon, and any and all rights privileges, easements, licenses, hereditaments and other appurtenances relating thereto, and used, or held for use, in connection with the operation of the Business.

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

(jjjj) “**Material Adverse Effect**” means any event, change, occurrence or state of facts that has had, or is reasonably likely to have, individually or in the aggregate, a material adverse effect on the (i) assets, Liabilities, Business, properties, financial condition or results of operations of the Seller, taken as a whole; provided, however, that in no event shall any of the following, alone or in combination, be deemed to constitute, or be taken into account, in determining whether there has been, or would be, a Material Adverse Effect: (a) changes in the U.S. economy or capital markets in general but that do not have a disproportionate effect on the Seller relative to other participants in the industry in which the Seller conducts the Business, (b) changes that affect generally the industry in which the Seller operates but that do not have a disproportionate effect on the Seller relative to other participants in the industry in which the Seller conducts the Business, (c) changes after the Agreement Date in any applicable Law or GAAP, (d) the commencement of the Bankruptcy Case and Seller’s inability to pay certain obligations as a result of the filing of the

Bankruptcy Case, (e) any actions taken or proposed to be taken by Purchaser or any of its Affiliates, or (f) any effect resulting the public announcement of this Agreement, compliance with terms of this Agreement or the consummation of the transactions contemplated by this Agreement.

(kkkk) “**Non-Continuing Store**” means any of Seller’s store locations with respect to which the associated Leases have been designated by Purchaser as Excluded Contracts, as such store locations may be changed in accordance with Section 1.7(a).

(llll) “**Non-Real Property Contracts**” means the Contracts to which Seller is a party other than the Leases.

(mmmm) “**Operational Expenses**” means all expenses of the Business, including, but not limited to, employee and occupancy expenses, all costs and expenses associated with any Lease or Non-Real Property Contract, including rent, ground lease rent, common area maintenance, utilities, real estate Taxes, insurance, security, other actual out-of-pocket costs.

(nnnn) “**Order**” means any award, writ, injunction, judgment, order, ruling, decision, subpoena, mandate, precept, command, directive, consent, approval, award, decree or similar determination or finding entered, issued, made or rendered by any Governmental Body.

(oooo) “**Ordinary Course of Business**” means the ordinary and usual course of normal day to day operations of the Business consistent with past practice.

(pppp) “**Organizational Documents**” means, with respect to a particular entity Person, (i) if a corporation, the articles or certificate of incorporation and bylaws, (ii) if a general partnership, the partnership agreement and any statement of partnership, (iii) if a limited partnership, the limited partnership agreement and certificate of limited partnership, (iv) if a limited liability Seller, the articles or certificate of organization or formation and any limited liability Seller or operating agreement, (v) if another type of Person, all other charter and similar documents adopted or filed in connection with the creation, formation or organization of the Person, and (vi) all amendments or supplements to any of the foregoing.

(qqqq) “**Outside Back-up Date**” shall have the meaning set forth in Section 7.2(c).

(rrrr) “**Outside Date**” shall have the meaning set forth in Section 3.4(b).

(ssss) “**Overbid Protection**” shall have the meaning set forth in Section 7.1.

(tttt) “**Party**” shall have the meaning set forth in the preamble.

(uuuu) “**Pension Plan**” shall have the meaning set forth in Section 4.14(e).

(vvvv) “**Permits**” means to the fullest extent permitted under applicable law, all notifications, licenses, permits (including environmental, construction and operation permits), franchises, certificates, approvals, consents, waivers, clearances, exemptions, classifications, registrations, variances, orders, tariffs, rate schedules and other similar documents and authorizations issued by any Governmental Body to any of the Seller and used, or held for use, in connection with

the operation of the Business or applicable to ownership of the Purchased Assets or assumption of the Assumed Liabilities.

(www) **“Permitted Encumbrances”** means (i) Encumbrances for utilities and current Taxes not yet due and payable or being contested in good faith; (ii) easements, rights of way, restrictive covenants, encroachments and similar non-monetary encumbrances or non-monetary impediments against any of the Purchased Assets which do not, individually or in the aggregate, adversely affect the operation of the Business and Leased Real Property, which do not, individually or in the aggregate, adversely affect the use or occupancy of such Leased Real Property as it relates to the operation of the Business or materially detract from the value of the Leased Real Property, (iii) applicable zoning Laws, building codes, land use restrictions and other similar restrictions imposed by Law, (iv) materialmans’, mechanics’, artisans’, shippers’, warehousemans’ or other similar common law or statutory liens incurred in the Ordinary Course of Business, (v) licenses granted on a non-exclusive basis , (vi) Encumbrances arising from the transfer of Intellectual Property pursuant to this Agreement relating to the past acts or prior commitments of Seller and all previous owners of such Intellectual Property and (vii) such other Encumbrances or title exceptions as Purchaser may approve in writing in its sole discretion or which do not, individually or in the aggregate, materially and adversely affect the operation of the Business.

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

(yyyy) **“Personal Property Leases”** shall have the meaning set forth in Section 4.7.

(zzzz) **“Petition Date”** means the date on which the Seller commenced the Bankruptcy Case.

(aaaa) **“Post-Closing Plans”** shall have the meaning set forth in Section 6.1(b).

(bbbb) **“Post-Closing Tax Period”** means any taxable period (or portion thereof) beginning after the Closing Date.

(cccc) **“Pre-Closing Period”** means the period commencing on the Agreement Date and ending on the earlier of the date upon which this Agreement is terminated pursuant to Section 3.4 or the Closing Date.

(dddd) **“Pre-Closing Tax Period”** means any taxable period (or portion thereof) ending on or before the Closing Date.

(eeee) **“Pre-Petition Credit Agreement”** means that certain Credit Agreement dated as of December 17, 2012 (this “Agreement”) is entered into among (i) TPP Acquisition, Inc., (ii) any Person from time to time joined thereto as a “Borrower” party in accordance with the terms thereof, (iii) the financial institutions that are parties thereto, and (iv) Monroe Capital Management Advisors LLC, as administrative agent for the Lenders

(fffff) “*Pre-Petition Financing Obligations*” means the “Obligations” as defined under the Pre-Petition Credit Agreement.

(ggggg) “*Prevailing Bidder*” shall have the meaning set forth in Section 7.2(c).

(hhhhh) “*Products*” means, collectively, all photos, photographic materials and accessories developed, produced, distributed, marketed and/or sold in connection with the Business.

(iiiiii) “*Purchase Price*” shall have the meaning set forth in Section 2.1(a).

(jjjjj) “*Purchased Assets*” shall have the meaning set forth in Section 1.1.

(kkkkk) “*Purchased Intellectual Property*” shall have the meaning set forth in Section 4.8.

(lllll) “*Purchaser*” shall have the meaning set forth in the preamble.

(mmmmm) “*Purchaser Accounts*” has the meaning set forth in Section 1.7(c)(ii)(A).

(nnnnn) “*Purchaser Designee*” shall have the meaning set forth in the preamble.

(ooooo) “*Regulatory Approvals*” means any consents, waivers, approvals, orders Permits or authorizations of any Governmental Body required in connection with the execution, delivery and performance of this Agreement of any Ancillary Document and the consummation of the transactions contemplated hereby and thereby.

(ppppp) “*Rejection Effective Date*” has the meaning set forth in Section 1.6(c).

(qqqqq) “*Release*” means any actual or threatened release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal or leaching into the indoor or outdoor environment, or including migration to or from a property, including, but not limited to, any Leased Real Property.

(rrrrr) “*Remedial Action*” means all actions to (i) investigate, clean up, remove, treat or in any other way address any Hazardous Material; (ii) prevent the Release of any Hazardous Material; (iii) perform pre-remedial studies and investigations or post-remedial monitoring and care; or (iv) to correct a condition of noncompliance with Environmental Laws.

(sssss) “*Related Agreements*” means the Bill of Sale, the Assignment and Assumption Agreement, the Assumption and Assignment of Leases, and the IP Assignment and Assumption Agreement.

(ttttt) “**Representative**” of a Person means such Person’s Subsidiaries and the officers, directors, managers, employees, advisors, representatives (including its legal counsel and its accountants) and agents of such Person or its Subsidiaries.

(uuuuu) “**Sale and Bidding Procedures Motion**” shall have the meaning set forth in Section 7.2(a).

(vvvvv) “**Sale Hearing**” means the hearing to approve this Agreement and seeking entry of the Sale Order.

(wwwww) “**Sale Motion**” means the motion or motions of Seller, in form and substance reasonably acceptable to Seller and Purchaser, seeking approval and entry of the Bidding Procedures Order and Sale Order.

(xxxxx) “**Sale Order**” means an order substantially in the form attached hereto as Exhibit F and otherwise in form and substance reasonably satisfactory to Seller and Purchaser.

(yyyyy) “**Seller**” shall have the meaning set forth in the preamble.

(zzzzz) “**Specified Prepaid Expenses**” shall have the meaning set forth in Section 2.2(a).

(aaaaa) “**Stores**” has the meaning set forth in Section 1.1.

(bbbbb) “**Straddle Period**” shall have the meaning set forth in Section 11.1(b).

(ccccc) “**Subsidiary**” or “**Subsidiaries**” means, with respect to any Person, any corporation, limited liability Seller, joint venture or partnership of which such Person (a) beneficially owns, either directly or indirectly, more than fifty percent (50%) of (i) the total combined voting power of all classes of voting securities of such entity, (ii) the total combined equity interests, or (iii) the capital or profit interests, in the case of a partnership; or (b) otherwise has the power to vote or to direct the voting of sufficient securities to elect a majority of the board of directors or similar governing body.

(dddddd) “**Tax**” and “**Taxes**” mean (a) any and all taxes, including any federal, state, provincial, local, foreign or other income, gross receipts, sales, value added, use, production, ad valorem, transfer, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, capital, production, recapture, net worth, surplus, customs, duties, levies, surtaxes or other taxes, fees, assessments, reassessments or charges of any kind whatsoever, together with any interest, additions, installments or penalties with respect thereto and any interest in respect of such additions or penalties, (b) any Liability for the payment of any items described in clause (a) above as a result of being (or ceasing to be) a member of an affiliated, consolidated, combined, unitary or aggregate group (or being included (or being required to be included)) in any Tax Return related to such group (including any Liability pursuant to Section 1.1502-6 of the Treasury Regulations, or any similar provision of state, local or non-U.S. law), and (c) any Liability for the payment of any amounts as a result of any express or implied obligation to indemnify any other Person, or any successor or

transferee liability, by contract or otherwise in respect of any items described in clause (a) or (b) above.

(eeeeee) “**Tax Proceeding**” means any action, suit, investigation, audit, Claim, investigation, or other action or proceeding with respect to Taxes.

(ffffff) “**Tax Refunds**” shall have the meaning set forth in Section 1.1(r).

(gggggg) “**Tax Return**” means any return, report, information return, declaration, claim for refund or other document (including any schedule or related or supporting information) supplied or required to be supplied to any Governmental Body with respect to Taxes, including amendments thereto.

(hhhhhh) “**Transferred Employee**” shall have the meaning set forth in Section 6.1(a).

(iiiiii) “**Treasury Regulations**” means the regulations promulgated under the Code by the United States Department of the Treasury (whether in final, proposed or temporary form), as the same may be amended from time to time.

(jjjjjj) “**Unaudited Financial Statements**” shall have the meaning set forth in Section 4.17(a).

(kkkkkk) “**Undesignated Deposit Accounts**” has the meaning set forth in Section 1.7(c)(ii)(A).

(llllll) “**Undesignated Store**” means any of Seller’s store locations with respect to which the associated Leases have not yet been designated by Purchaser as Assumed Contracts or Excluded Contracts, as such store locations may be changed in accordance with Section 1.7(a).

(mmmmm) “**Undesignated Store Proceeds**” has the meaning set forth in Section 1.7(c)(i).

(nnnnn) “**WARN Act**” means the United States Worker Adjustment and Retraining Notification Act, and the rules and regulations promulgated thereunder.

## ARTICLE XI.

### TAXES

11.1. Certain Taxes. Any sales, use, purchase, transfer, franchise, deed, fixed asset, stamp, documentary stamp, use or other Taxes and recording charges which may be payable by reason of the sale of the Purchased Assets or the assumption of the Assumed Liabilities under this Agreement or the transactions contemplated hereby, and that are not exempt under Section 1146(a) of the Bankruptcy Code, shall be borne and timely paid by the Purchaser. The Purchaser shall, at its own expense, timely file any Tax Return or other document required to be filed with respect to such

Taxes, and Seller shall join in the execution of any such Tax Return if required by Law.

11.2. Allocation of Purchase Price. As soon as reasonably practicable after the Closing Date, the Purchaser shall determine the allocation of (a) the Purchase Price, plus (b) the Assumed Liabilities, plus (c) all other items required to be treated as consideration for federal income Tax purposes, among the Purchased Assets and the agreements provided for herein, for all purposes (including financial, accounting and Tax) (the “*Allocation*”). The Purchaser and the Seller shall each report the federal, state and local income and other Tax consequences of the transactions contemplated hereby in a manner consistent with the Allocation, including, if applicable, the preparation and filing of Forms 8594 under Section 1060 of the Code (or any successor form or successor provision of any future Tax Law) with their respective federal income Tax Returns for the taxable year which includes the Closing Date, and neither will take any position inconsistent with the Allocation unless otherwise required under applicable Law. The Seller shall provide the Purchaser and the Purchaser shall provide Seller with a copy of any information required to be furnished to the Secretary of the Treasury under Code Section 1060.

11.3. Cooperation on Tax Matters. The Purchaser and the Seller agree to provide each other with such information and assistance as is reasonably necessary, including access to records, Tax Returns and personnel, for the preparation of any Tax Returns or for the defense of any Tax claim or assessment, whether in connection with a Tax Proceeding or otherwise.

11.4. FIRPTA Certificate. The Seller shall deliver to the Purchaser on the date hereof a properly executed affidavit of non-foreign status, reasonably satisfactory to Purchaser, that complies with Section 1445 of the Code and Section 1.1445-2(b)(2) of the Treasury Regulations (the “*FIRPTA Certificate*”). If the Purchaser does not so receive a properly executed FIRPTA Certificate from the Seller, then the Purchaser shall be permitted to withhold from any payment to be made (or deemed to be made) pursuant to this Agreement to the Seller any required withholding Tax under Section 1445 of the Code as determined by the Purchaser. Any amounts withheld shall be treated for all purposes of this Agreement as having been paid to the Seller in respect of which such withholding was made.

11.5. Tax Refunds. The Seller agree to cooperate with the Purchaser in all respects, and take or cause to be taken any steps necessary, in order to apply for and obtain any Tax Refunds with respect to Seller for any taxable year, provided that the Purchaser pays all reasonable expenses incurred in connection therewith.

## ARTICLE XII.

### MISCELLANEOUS

12.1. Payment of Expenses. Except as otherwise provided in this Agreement (including, but not limited to Section 3.5 and Section 7.1) and whether or not the transactions contemplated hereby are consummated, Seller and the Purchaser shall bear their own expenses incurred or to be incurred in connection with the negotiation and execution of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby.

12.2. Survival of Representations and Warranties; Survival of Confidentiality. The Parties agree that the representations and warranties contained in this Agreement shall expire upon the Closing Date. The Parties agree that the covenants contained in this Agreement to be performed at or

after the Closing shall survive in accordance with the terms of the particular covenant or until fully performed.

12.3. Entire Agreement; Amendments and Waivers. This Agreement, together with the Confidentiality Agreement and the Ancillary Documents, represents the entire understanding and agreement between the Parties with respect to the subject matter hereof. This Agreement may be amended, supplemented or changed, and any provision hereof may be waived, only by written instrument making specific reference to this Agreement signed by the Party against whom enforcement of any such amendment, supplement, modification or waiver is sought; provided, that the Schedules hereto may be amended in accordance with Section 1.6. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, condition, covenant or agreement contained herein. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by applicable Law.

12.4. Execution of Agreement; Counterparts; Electronic Signatures.

(a) This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same instrument, and shall become effective when counterparts have been signed by each of the Parties and delivered to the other Parties; it being understood that all Parties need not sign the same counterparts.

(b) The exchange of copies of this Agreement and of signature pages by facsimile transmission (whether directly from one facsimile device to another by means of a dial-up connection or whether mediated by the worldwide web), by electronic mail in “portable document format” (“*.pdf*”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, or by combination of such means, shall constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

12.5. Governing Law. THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH FEDERAL BANKRUPTCY LAW, TO THE EXTENT APPLICABLE, AND WHERE STATE LAW IS IMPLICATED, THE LAWS OF THE STATE OF ILLINOIS SHALL GOVERN, WITHOUT GIVING EFFECT TO THE CHOICE OF LAW PRINCIPLES THEREOF (EXCEPT FOR ANY LAWS OF THAT STATE WHICH WOULD RENDER SUCH CHOICE OF LAWS INEFFECTIVE), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE.

12.6. Jurisdiction, Waiver of Jury Trial.

(a) THE BANKRUPTCY COURT WILL HAVE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER AT LAW OR IN EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY AGREEMENT

CONTEMPLATED HEREBY; PROVIDED, HOWEVER, THAT IF THE BANKRUPTCY COURT IS UNWILLING OR UNABLE TO HEAR ANY SUCH DISPUTE, THE COURTS OF THE STATE OF ILLINOIS AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN COOK COUNTY, ILLINOIS WILL HAVE SOLE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER AT LAW OR IN EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED HEREBY.

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

12.7. Notices. Unless otherwise set forth herein, any notices, consents, waivers and other communications required or permitted by this Agreement shall be in writing and shall be deemed given to a Party when (a) delivered to the appropriate address by hand or by nationally recognized overnight courier service (costs prepaid), or (b) sent by facsimile or e-mail, in each case, if sent during the normal business hours of the recipient, with confirmation of transmission by the transmitting equipment confirmed with a copy delivered as provided in clause (a), in the case of each of clauses (a) and (b), to the following addresses, facsimile numbers or e-mail addresses and marked to the attention of the person (by name or title) designated below (or to such other address, facsimile number, e-mail address or person as a Party may designate by notice to the other Parties):

If to Seller, to:

TPP Acquisition, Inc.  
1155 Kas Drive, Suite 180  
Richardson, TX 75081  
Attn: Ian R. Gomar, Chief Executive Officer  
Email: igomar@picturepeople.com

With a copy (which shall not constitute effective notice) to:

Haynes and Boone, LLP  
2323 Victory Avenue  
Suite 700  
Dallas, TX 75219-7672  
Attn: Robert D. Albergotti  
Tel: 214.651.5613  
Fax: 214.200.0350  
Email: robert.albergotti@haynesboone.com

If to Purchaser, to:

TPP Holdings LLC  
c/o Monroe Capital LLC  
311 South Wacker Drive, Suite 6400  
Chicago, Illinois 60606  
Attn: Nathan Harrell  
Fax: (312)258-8350  
Email: nharrell@monroecap.com

With a copy (which shall not constitute effective notice) to:

Riemer and Braunstein LLP  
Seven Times Square, Suite 2506  
New York, New York 10036  
Attn: Donald E. Rothman, Esq.  
Steven Fox, Esq.  
Tel: 212-789-3100  
Fax: 212-719-0140  
Email: drothman@riemerlaw.com  
sfox@riemerlaw.com

12.8. Binding Effect; Assignment. This Agreement shall be binding upon Purchaser and, subject to entry of the Bidding Procedures Order (with respect to the matters covered thereby) and the Sale Order, Seller, and inure to the benefit of the Parties and their respective successors and permitted assigns, including any trustee or estate representative appointed in the Bankruptcy Case or any successor Chapter 7 case. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any Person or entity not a party to this Agreement except as provided below. No assignment of this Agreement or of any rights or obligations hereunder may be made by Seller or Purchaser (by operation of law or otherwise) without the prior written consent of the other Parties and any attempted assignment without such required consents shall be void.

12.9. Severability. Whenever possible, each provision or portion of any provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision or portion of any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect under any applicable Law in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or portion of any provision in such jurisdiction and in lieu of such invalid, illegal or unenforceable provision or portion of any provision, there will be added automatically as a part of this Agreement a valid legal and enforceable provision as similar in terms to such invalid, illegal or unenforceable provision as may be possible.

12.10. Bulk Sales Laws. Each Party hereby waives compliance by the Parties with the “bulk sales,” “bulk transfers” or similar Laws and all other similar Laws in all applicable jurisdictions in respect of the transactions contemplated by this Agreement or any Ancillary Document.

12.11. Access and Right to Use. Purchaser shall, upon reasonable advance notice, afford to Seller’s officers, independent public accountants, attorneys, consultants and other representatives,

reasonable access during normal business hours to the Purchased Assets and all records pertaining to the Purchased Assets on a royalty-free basis solely for the purpose of enabling the Seller to conduct an orderly wind-down of the Seller's operations until such time as the wind-down is completed on or before the one-year anniversary of this Agreement. Seller expressly acknowledge that nothing in this Section is intended to give rise to any contingency to Seller's obligations to proceed with the transactions contemplated herein.

**[Remainder of page intentionally left blank]**

**[Signatures Follow Next Page]**

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

**SELLER:**

**TPP ACQUISITION, INC.,**  
As Debtor and Debtor in Possession

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**PURCHASER:**

**TPP HOLDINGS, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

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