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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re	:	
	:	**Chapter 11**
AGENT PROVOCATEUR, INC., ***et al.,*** [1]	:	**Case No. 17-10987 (MEW)**
	:	**Jointly Administered**
	:	
Debtors.	:	

MOTION FOR ORDER (I) APPROVING THE SALE OF THE DEBTORS' ASSETS; (II) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (III) GRANTING RELATED RELIEF

Now come Agent Provocateur, Inc. and Agent Provocateur, LLC (the "Debtors"), debtors and debtors in possession in the within jointly administered chapter 11 cases, to hereby request (the "Sale Motion") that the Court enter an order pursuant to sections 105, 363 and 365 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 6004-1 and 6006-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York as well as the Court's *Amended Guidelines for the Conduct of Asset Sales* (the "Local Bankruptcy Rules"), in substantially the form as that attached hereto as Exhibit A (the

[1] The Debtors in these two chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are Agent Provocateur, Inc. (9441) and Agent Provocateur, LLC (0862).

"Sale Order"): (i) authorizing the private sale of substantially all of the Debtors' assets to Agent Provocateur International (US) LLC (the "Buyer") free and clear of liens, claims and encumbrances of any kind or nature whatsoever (other than Assumed Liabilities); (ii) authorizing the proposed assumption and assignment of certain of the Debtors' executory contracts and unexpired leases and approving proposed cure costs related thereto; and (iii) granting related relief. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the proposed Asset Purchase Agreement (the "APA"). In support of this Sale Motion, the Debtors incorporate the declaration of Amanda Brooks (the "Brooks Declaration") filed on April 11, 2017 and respectfully state the following.

JURISDICTION, VENUE AND STATUTORY BASIS FOR RELIEF

1. The Court has jurisdiction over this Sale Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper under 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court has constitutional authority to enter a final judgment in this proceeding. Bankruptcy Code sections 105(a), 363, and 365, Bankruptcy Rules 2002, 6004, 6006, and 9014, and LBR 6004-1 and 6006-1 provide the statutory bases for the relief sought herein.

BACKGROUND

Procedural

2. On April 11, 2017 (the "Petition Date"), the Debtors commenced the above-captioned cases under the Bankruptcy Code. Pursuant to Bankruptcy Code sections 1107(a) and 1108, the Debtors are operating their businesses and managing their affairs as debtors in possession. The Debtors operate retail shops in New York and other areas of the country selling women's lingerie. The facts and circumstances giving rise to the filing of these cases are set

forth in the Brooks Declaration. An official committee of unsecured creditors (the "Committee") was appointed in these cases on May 3, 2017.

3. On May 15, 2017, the Debtors filed their Motion for Order (I) Approving Procedures for Assumption and Assignment of Executory Contracts and Unexpired Leases; and (II) Directing Appointment of Consumer Privacy Ombudsman (D.E. # 75), as amended by their Amended Motion for Order (I) Approving Procedures for Assumption and Assignment of Executory Contracts and Unexpired Leases; and (II) Directing Appointment of Consumer Privacy Ombudsman (D.E. # 92; collectively, the "Assumption, Assignment, and Cure Procedures Motion").

United Kingdom Insolvency Proceedings, Marketing Efforts and Sale of Assets of the Debtors' Parent, Pearl Group Limited f/k/a Agent Provocateur, Limited

4. Debtor Agent Provocateur, Inc. was incorporated in 2000 as a California corporation with stores located in New York, California, and other parts of the country. Debtor Agent Provocateur LLC was formed in 2004 as a Delaware limited liability company with stores in Nevada. The Debtors were formed for the purpose of operating U.S. retail outlets for merchandise supplied by their then parent in the United Kingdom, Agent Provocateur Limited n/k/a Pearl Group Limited (the "Parent"). All merchandise sold by the Debtors in their stores in the United States was supplied to them by the Parent pursuant to inventory supply arrangements under which title to the merchandise remained with the Parent until the point of sale.

5. Due to the discovery of certain accounting irregularities in August 2016, it became apparent that the Parent required significant additional capital to fund its operations and those of its international subsidiaries, including the Debtors. In an effort to restructure, Rothschild & Co. was retained on December 15, 2016 to identify prospective buyers and/or investors in respect of the Parent and its subsidiaries. The marketing process continued over a

period of months and covered all of the Parent's assets as well as those of its subsidiaries, including the Debtors.

6. The process culminated on February 16, 2017 with the submission of a number of offers from prospective purchasers. Each of these offers was an offer to purchase assets, as opposed to equity interests in the Parent, and none of them provided sufficient consideration to satisfy all liabilities in full. As a result, the Parent and Barclays concluded that the only way to consummate a sale would be through a pre-packaged administration under the applicable insolvency laws of the United Kingdom.

7. Accordingly, on March 1, 2017, the Parent entered administration and selected AlixPartners as administrator (the "UK Administrator"). Immediately following its appointment on March 2, 2017, the UK Administrator completed a sale of certain business and assets of the Parent to a newly formed company created by the Four Marketing Group (the "UK Buyer") which had submitted the highest offer for the Parent's assets. Such sale included, among other things, all right, title and interest the Parent had in inventory (wherever located) and intellectual property (including the Agent Provocateur brand) relating to the Parent's business. The sale to the UK Buyer did not, however, include equity interests in, or assets of, any of the Parent's subsidiaries, including the Debtors located in the United States.

8. Following the sale, the Parent remains under the control of the UK Administrator, and the UK Buyer has continued to operate the Parent's former UK business.

The Debtors' Operations Following the Sale of their Former Parent and Preservation of their Assets for a 363 Sale

9. Meanwhile, the Debtors continued to operate their U.S. stores. However, without a continued supply of merchandise from the UK Buyer to replenish their inventory, the Debtors' survival as operating entities was doomed, and their business rapidly deteriorated. Cash flow

was severely impacted, resulting in the Debtors' inability to meet ongoing operating expenses, including, among other things, payment of rent due under real estate leases.

10. In the days and weeks leading up to the Petition Date, several landlords filed and/or threatened to file actions to evict the Debtors from their U.S. locations. The Debtors were on the verge of shutting down their businesses and filing chapter 7 cases in this Court—that is, until the UK Buyer emerged to express an interest in purchasing certain of the Debtors' U.S. operations, along with continuing to operate a number of stores, thus saving jobs and generating value for the Debtors' creditors.

11. The UK Buyer has proposed to purchase such operations through the APA with its newly formed subsidiary, Agent Provocateur International (US) LLC, as the Buyer.

12. The Debtors considered all options before bringing this Sale Motion. The Debtors and the Buyer initially proposed to enter into a DIP lending arrangement, with financing available to cover operating expenses in excess of available cash flow, while a competitive bidding process would be commenced to sell the business pursuant to customary bidding and auction procedures.

13. It quickly became obvious, though, that a competitive bidding process would be pointless and ineffectual, resulting in no benefit in this situation. Just as significantly, not only would the process be futile, but it would also be time-consuming and costly and deplete limited estate resources. It has become more apparent than ever that the Buyer is the only party with the means and motivation to purchase the business. A bidding process would have amounted to nothing more than merely "going through the motions"—costly motions at that.

14. Thus, having considered all available options under the circumstances, the Debtors have determined that a private sale to the Buyer will result in the greatest recovery. For

all of the foregoing reasons, the relief requested in this Sale Motion is a product of sound business judgment and is in the best interests of the Debtors, their remaining employees and landlords, and their estates.

15. A sale to the Buyer, as proposed herein, is the only viable path toward maximizing the value of the estates. The Debtors view this alternative as being far more beneficial than, and preferable to, a chapter 7 liquidation—which is the only other remaining option—in that the prospect of a successful sale promises to preserve employment for a number of store managers and employees, and will also result in the satisfaction of a number of claims in these cases, particularly with respect to those landlords at stores for which the Buyer elects to have the leases in question assumed and assigned by the Debtors. This alternative may also allow for some limited distribution to the Debtors' unsecured creditors.

Summary of Terms of Sale

16. The APA contains the material terms of the Buyer's proposed purchase and should be consulted as to all of the terms of the proposed sale. A copy of the APA (minus schedules) is attached hereto as Exhibit B. Certain material terms of the APA can be summarized as follows:[2]

i. **Purchased Assets:** All assets of the Debtors other than the Excluded Assets (collectively, the "Assets") as described in Section 2.1 of the APA. The principal assets are the unexpired leases and goodwill.

ii. **Assumed and Assigned Contracts and Leases:** All executory contracts and all unexpired leases, subject to the addition or removal by the Buyer pursuant to the terms of the APA, shall be assigned to the Buyer.

[2] The summary of the terms of the APA set forth herein is intended solely to provide a brief overview of certain material terms thereof. This summary is qualified entirely by reference to the APA, and in the event of any conflict or inconsistency between the provisions of this Motion and the APA, the APA shall control. Capitalized terms, unless otherwise defined herein, shall have the meanings ascribed in the APA.

iii. **Sale Free and Clear:** The transfer of the Assets to the Buyer shall be free and clear of all liens, claims, encumbrances and interests, other than Permitted Liens as defined in the APA.

iv. **Purchase Price**: the payment of an amount in cash (the "Cash Payment") equal to (i) $1,100,000, less (ii) the Deposit, less (iii) the amount of any unpaid DIP Financing Obligations as of the Closing, less (iv) accrued amounts owing to Buyer's UK Affiliate as of the Closing from post-petition sales of inventory owned by the Buyer's UK Affiliate that was delivered to Sellers subsequent to April 11, 2017 (the "Inventory Account Payable"), less (v) accrued amounts owing to Buyer's UK Affiliate for corporate service charges assessed in the amount of $10,000 per week beginning the week of April 10, 2017 through the week of June 30, 2017 (the "Corporate Service Charges"), less [(vi) accrued Assumed Liabilities as of the Closing (other than Cure Amounts) *subject to further discussion*] plus (vii) the Closing Cash, plus (viii) any amount retained by American Express for security as of the Closing (an "AMEX Security Retention Amount"), plus (ix) prepaid expenses as of the Closing; provided, however, that if the amount by which actual cash receipts from store sales, including concessions, during the period from May 8, 2017 through June 30, 2017 is less than $1,985,604 (the "Cash Deficit"), the Inventory Account Payable and/or the Corporate Service Charges shall be reduced, in the aggregate, dollar for dollar up to the amount of the Cash Deficit; provided further, however, and for the sake of clarity, that if the Cash Deficit shall exceed the Inventory Account Payable and/or the Corporate Service Charges against which such reduction shall be applied, no further adjustment to the Purchase Price shall occur; and

(b) the assumption by Buyer of the Assumed Liabilities, [including accrued Assumed Liabilities as of the Closing. *Subject to further discussion*.]

v. **Deposit:** The Buyer will deliver to a selected escrow agent a deposit of $100,000 (the "Deposit") within five (5) business days of the date of the filing of the Sale Motion. The Deposit (and any interest accrued thereon) shall be credited as a partial payment of the Purchase Price payable at the Closing.

vi. **Cure Costs:** The Buyer shall pay cure costs and any other amounts required to be paid under sections 365(b)(1)(A), (B) or (C) of the Bankruptcy Code in order to effectuate the assumption of the Assigned Contracts and Leases.

vii. **<u>Assumption of Liabilities</u>:** The Buyer agrees to assume certain employee obligations owed to those who accept employment with the Buyer.

viii. **<u>Conditions to Closing</u>:** Includes entry of the Sale Order and all required approvals and permits. If the Sale Order is not entered by June 15, 2017, the Buyer shall have the right to terminate the APA.

<u>RELIEF REQUESTED</u>

17. Pursuant to this Sale Motion, the Debtors are requesting entry of the Sale Order authorizing them to consummate a sale of the Assets free and clear of all liens, claims and interests. The Debtors also seek approval to assume and assign certain executory contracts and unexpired leases (the "Assigned Contracts and Leases") to the Buyer under the APA.[3] The Debtors have determined in their business judgment that a sale of the Assets pursuant to the APA would result in the best recovery for the estates. The Debtors believe the APA provides the Debtors with the best—indeed, the only—opportunity to preserve and maximize the value of their business. As such, and for the reasons set forth below, the Debtors submit that approval of this Sale Motion is appropriate under applicable law and should be granted.

<u>BASIS FOR REQUESTED RELIEF</u>

A. Proposed Sale is Appropriate under Bankruptcy Code Section 363(b).

18. Section 363(b)(1) of the Bankruptcy Code provides that after notice and a hearing, a debtor "may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Although section 363 does not set forth a standard for determining when it is appropriate for a court to authorize the sale or disposition of a debtor's assets, in applying this section, courts have required that a decision to sell be based upon the sound business judgment of the debtor. *See In re Chateaugay Corp.*, 973 F.2d 141 (2d Cir. 1992) (court considering a section 363(b) motion must find a good business reason to in support

[3] All capitalized terms not defined herein shall have the meanings ascribed to them in the APA.

of such request); *In re Lionel Corp*., 722 F.2d 1063, 1071 (2d Cir. 1983) (same); *Stephens Indus. v. McClung*, 789 F.2d 386, 390 (6th Cir. 1986) ("bankruptcy court can authorize a sale of all of a chapter 11 debtor's assets under § 363(b)(1) when a sound business purpose dictates such action"); *In re Delaware & Hudson Ry. Co*., 124 B.R. 169 (D. Del. 1991); *In re Phoenix Steel Corp*., 82 B.R. 334, 335 36 (Bankr. D. Del. 1987) (judicial approval of 363 sale requires showing that proposed sale is fair and equitable, a good business reason exists for completing the sale, and the transaction is in good faith).

19. The power to approve a sale under section 363(b) is "within the sound discretion" of the court. *In re Coastal Cable T.V., Inc*., 24 B.R. 609, 611 (1st Cir. B.A.P. 1982) (vacated on other grounds). A debtor may sell all its assets pursuant to section 363(b) prior to confirmation of a chapter 11 plan, when there is a good business reason to do so. *In re General Motors Corp*., 407 B.R. 463, 491 (Bankr. S.D.N.Y. 2009). *See also In re AMR Corp*., 490 B.R. 158, 164 (Bankr. S.D.N.Y. 2013); *In re Lionel Corp.*, 722 F.2d at 1071 (rejecting notion that only an emergency situation permits use of section 363(b) and setting forth the "sound business purpose" test in context of a sale of substantially all assets); *ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO, LLC)*, 650 F.3d 593, 601 (5th Cir. 2011); and *Stephens Indus.*, 789 F.2d at 390.

20. As discussed further below, the sale of the Assets is a sound exercise of the Debtors' business judgment because it provides the Debtors with the best opportunity to preserve and maximize the value of the business for the benefit of the estates.

B. Sound Business Justifications Support a Private Sale.

21. Bankruptcy Rule 6004(f)(1) permits private sales by a debtor. Fed. R. Bankr. P. 6004(f)(1) ("All sales not in the ordinary course of business may be by private sale or by public auction."). Although most section 363 sales are conducted subject to competitive bidding

procedures and pursuant to processes that contemplate the possibility of an auction, private sales are appropriate and permissible under Section 363. *In re Bakalis*, 220 B.R. 525, 531 (Bankr. E.D.N.Y. 1998) (debtors have ample discretion to conduct public or private sales of estate property); *Penn Mutual Life Ins. Co. v. Woodscape Ltd. P'ship (In re Woodscape Ltd. P'ship)*, 134 B.R. 165, 174 (Bankr. D. Md. 1991) (363 contains no prohibition against private sale and it contains no requirement sale be by public auction).

22. Courts (including in this district) allow chapter 11 debtors to sell assets outside the ordinary course of business by private sale when the debtor demonstrates that the sale is permissible under Bankruptcy Code section 363(b). *See,* among others*, In re Christian Bros. Inst.*, Case No. 11-22820 (Bankr. S.D.N.Y. Nov. 7, 2012); *In re Waterscape Resort LLC*, Case No. 10-11593 (Bankr. S.D.N.Y. May 31, 2011); *In re Lehman Brothers Holdings Inc.*, Case No. 08-13555 (Bankr. S.D.N.Y. Feb. 24, 2009); *Palermo v. Pritam Realty, Inc. (In re Pritam Realty, Inc.)*, 233 B.R. 619 (D.P.R. 1999); *In re Condere Corp.*, 228 B.R. 615 (Bankr. S.D. Miss. 1998); and *In re Wieboldt Stores, Inc.*, 92 B.R. 309 (N.D. Ill. 1988) (affirming right of chapter 11 debtor to transfer assets by private sale).

23. The APA provides a greater net recovery for the Debtor's estate than could be achieved by any other practically available alternative. Put very simply, without the Agent Provocateur inventory and intellectual property—for both of which the sole source is the Buyer—the Debtors have next to nothing[4] and they cannot survive. Absent another buyer that saw such value in the leases in the twelve remaining retain locations to justify a purchase price in excess of the Purchase Price, there is no possibility of a more beneficial sale. And the possibility that such a buyer exists is so remote as to be virtually inconceivable.

[4] The Debtors have certain furnishings and fixtures in their stores that are of minimal value. In fact, in most cases it would be more costly to attempt to dispose of these items than it would to simply leave them where they are.

24. Accordingly, the Debtors believe a public sale process with an auction feature has nearly a zero chance of yielding a better outcome than that afforded by the APA. To the contrary, such a process would involve a pre-determined outcome and it would merely extend the length of these cases, with added administrative expenses and no corresponding benefit. In these somewhat unique circumstances, a marketing and sale process would be a waste of time and money, yielding no benefit to the estates.

25. The Debtors' decision to enter into the APA and to sell the Assets to the Buyer in a private sale transaction is a valid and sound exercise of their business judgment. Having considered all available options under the circumstances, the Debtors have determined that a private sale to the Buyer will result in the greatest recovery. For all of the foregoing reasons, the relief requested in this Sale Motion is a product of sound business judgment and is in the best interests of the Debtors, their remaining employees and landlords, and their estates.

C. Sale Free and Clear of Liens, Claims, and Interests Is Appropriate.

26. The Debtors request authorization to sell the Assets free and clear of liens, claims, encumbrances, and other interests subject to the provisions contained herein. Section 363(f) of the Bankruptcy Code provides as follows:

> The trustee may sell property under [§ 363(b)] 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).

27. Because the language of section 363(f) is in the disjunctive, a sale may be approved so long as any one of the five conditions is satisfied. *BAC Home Loans Servicing LP v. Grassi*, 2011 WL 6096509 at *5 (1st Cir. BAP Nov. 21, 2011). Although the Debtors only need to satisfy one of the requirements of section 363(f), the Debtors satisfy each and every condition in this case simply because there is no known pre-petition secured creditor with a lien on their Assets. It is similarly appropriate to sell the Purchased Assets free and clear of successor liability claims. Accordingly, the requirements of Section 363(f) of the Bankruptcy Code are satisfied, and the sale of the Purchased Assets free and clear of all liens, claims, and interests (other than Assumed Liabilities) is appropriate.

D. Assumption and Assignment of Executory Contracts and Unexpired Leases is Appropriate.

i. Assumption and Assignment under Section 365(a)

28. In connection with the APA, the Buyer has requested that the Debtors assume and assign the Assigned Contracts and Leases.

29. Section 365(a) of the Bankruptcy Code allows a debtor to assume or reject any executory contract or unexpired lease. 11 U.S.C. § 365(a). Courts evaluate a decision to assume or reject an executory contract or unexpired lease under the "business judgment" standard. *See Chateaugay Corp*, 973 F.2d at 141; *see also In re Gardinier, Inc.*, 831 F.2d 974, 976 n.2 (11th Cir. 1987); and *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984). This standard is satisfied if the debtor determines in its business judgment that the assumption or rejection of the contract or lease would benefit the estate. *Sharon Steel Corp. v. National Fuel Gas Distr. Corp.*, 872 F.2d 36, 39-40 (3d Cir. 1989); *In re Bicoastal Corp.*, 125 B.R. 658, 667 (Bankr. M.D. Fla. 1991). Under the business judgment standard, a court will approve the debtor's business decision unless the judgment is the product of bad faith, whim or caprice. *Lubrizol Enter. v.*

Richmond Metal Finishers, Inc., 756 F.2d 1043, 1047 (4th Cir. 1985); *In re Prime Motor Inns*, 124 B.R. 378, 383 (S.D. Fla. 1991).

30. A debtor is authorized to assume an executory contract and unexpired lease provided that, at the time of assumption, the debtor: (1) cures, or provides adequate assurance that the debtor will promptly cure, any default; (2) compensates, or provides adequate assurance that the debtor will promptly compensate, the counterparty for any actual pecuniary loss resulting from any default; and (3) provides adequate assurance of future performance under the executory contract or unexpired lease. *See* 11 U.S.C. § 365(a), (b)(1). A default based upon the filing of the bankruptcy case or the insolvency or financial condition of the debtor need not be cured. *See* 11 U.S.C. § 365(b)(2). In the case of an assumption and assignment, it is the purchaser that provides adequate assurance of future performance. *See* 11 U.S.C. § 365(f)(2).

ii. Assumption, Assignment, and Cure Procedures.

31. As set forth in the Assumption, Assignment, and Cure Procedures Motion, the Debtors have requested that the court fix the amount of cure costs due under the Assigned Contracts and Leases. Pursuant to the Assumption, Assignment, and Cure Procedures Motion, the Debtors propose to implement and adhere to the procedures set forth therein prior to the hearing on this Sale Motion (the "Sale Hearing") for parties to register objections to assumption and assignment, and establishment of cure amounts, if any, that are owed under the Assigned Contracts and Leases, as further provided on Exhibit A to the Assumption, Assignment, and Cure Procedures Motion (the "Assumption and Assignment Procedures"). The Debtors request approval at the Sale Hearing of the determinations made pursuant to the Assumption and Assignment Procedures, including the resolution of any objections received under the procedures at the Sale Hearing.

32. The Assumption and Assignment Procedures provide, among other things, that any objection with respect to proposed cure amounts be heard at the Sale Hearing or that any hearing on such objection be adjourned on the condition that the difference between the amount asserted by the Counter-Party and the Debtors, or such lower amount as the Court shall fix, shall be deposited in escrow, pending further order of the Court or mutual agreement of the parties. Such an objection should not be deemed to be an objection to the assumption, assignment and sale of any Assigned Contracts and Leases, but only a reservation of the Counter-Party's rights to request a subsequent determination as to the correct cure amount.

33. Adequate assurance of future performance depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1989); *In re DBSI, Inc.*, 405 B.R. 698, 708 (Bankr. D. Del. 2009). Adequate assurance is "something less than an absolute guarantee." *Id.* at 708. The proposed assignee must demonstrate an ability to provide adequate assurance of future performance in connection with any executory contract or unexpired lease to be assigned, or will have obtained any necessary consents of the Counter-Parties to such contract or lease. The Debtors request that, in connection with the Sale Hearing, the Court determine that the Buyer has provided adequate assurance of future performance to each Counter-Party.

34. Payment of the cure amounts as determined through the Assumption and Assignment Procedures shall be in full satisfaction of any defaults under the Assigned Contracts and Leases, whether monetary or non-monetary. The Debtors request that the Sale Order provide that each Counter-Party to an Assigned Contract and Lease shall be forever barred and estopped from asserting against the Debtors or the Buyer, their respective successors or assigns,

or the property of any of them, any default existing as of the date of the Sale Hearing if such default was not timely raised or asserted prior to or at the Sale Hearing or another point in time pursuant to these procedures.

35. Lastly, the Debtors request that the Court find that upon assignment of the Assigned Contracts and Leases to the Buyer, no default shall exist under any of the Assigned Contracts and Leases, and no counterparty thereto shall be permitted to declare a default by the Debtors or the Buyer, or otherwise take action against the Buyer or the Debtors, as a result of the Debtors' financial condition, bankruptcy, or failure to perform any of its obligations under the relevant Assigned Contract or Lease.

36. The Debtors submit that the Assumption and Assignment Procedures are appropriate and give allow all Counter-Parties all necessary due process protections, including the fair and full right to dispute the relevant cure amount as well as to oppose the proposed assumption and assignment.

E. Section 363(m) Protections are Appropriate.

37. Bankruptcy Code section 363(m) provides that "the reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith . . . ." 11 U.S.C. § 363(m).

38. The transaction reflected in the APA was negotiated by the parties at arm's length and in good faith. As explained, the Buyer is the only party capable of—and willing to—salvage the Debtors' remaining business operations on the terms set forth in the APA. The Buyer has no relationship to the Debtors that has not already been fully disclosed to the Court and all interested parties. Accordingly, the Debtors request that the Buyer be determined to have acted

in good faith and be entitled to the protections of a good faith purchaser under section 363(m). *See, e.g., In re United Press Int'l, Inc.*, No. 91 B 13955 (FGC), 1992 U.S. Bankr. LEXIS 842, at *3 (Bankr. S.D.N.Y. May 18, 1992); *see also Miami Ctr. L.P. v. Bank of N.Y.*, 838 F.2d 1547, 1554 (11th Cir. Fla. 1988) (a "good faith purchaser" is one who buys in good faith, free of any fraud or misconduct, for value and without knowledge of an adverse claim).

39. The APA is the product of good faith negotiations between the Debtors and the Buyer. The Buyer's offer includes the Purchase Price as well as the assumption of certain pre and post-petition liabilities. The Debtors submit that the proposed sale of the Assets to the Buyer is entirely consistent with the guidelines set forth in applicable case law. The Debtors also believe a prompt sale is in the best interests of the Debtors' estates, and will maximize the amount that the Debtors, their creditors, and their estates may realize from the sale of the Assets.

F. Extraordinary Provisions.

40. Pursuant to the Court's *Guidelines for the Conduct of Asset Sales*, this Sale Motion seeks approval of the provisions that follow.

PROVISION	Location	JUSTIFICATION
Private Sale/No Competitive Bidding	N/A	As set forth herein, this is a private sale transaction between the Debtors and the Buyer. The Debtors' assets were marketed for months in connection with the Parent's insolvency proceeding. The APA does not foreclose bids from third parties.
Tax Exemption	Proposed Sale Order at ¶ 13	The Debtors are seeking to have the sale declared exempt from taxes under section 1146(a) of the Bankruptcy Code, including any recording tax, stamp tax, use tax and capital gains tax. To the extent not exempt under section 1146 of the Bankruptcy Code, then pursuant to Section 6.6 of the APA, the Buyer shall pay any stamp, documentary, registration, transfer, added value or similar

		tax imposed under any applicable law in connection with the Sale. The assets are located in the following states: (i) California, (ii) Florida, (iii) Texas, (iv) Nevada, and (v) New York.
Record Retention	APA § 6.3	Debtors will retain, or have reasonable access to, their books and records to enable the Debtors to administer their bankruptcy cases.
Sale of Avoidance Actions	APA § 6.9	Debtors are seeking to sell avoidance actions against landlords, vendors or other counterparties who are party to any Assumed Contract and against any Participating Vendor. The Buyer negotiated for the purchase of the Acquired Avoidance Actions to permit the Buyer to operate the acquired business without disruption.
Request for findings on successor liability	Proposed Sale Order at ¶¶ I, 15	As set forth herein, this is a non-insider, arms' length transaction, and not a merger of operations.
Request for relief of the 14 day stay under Bankruptcy Rule 6004(h)	Proposed Sale Order at ¶¶ X, 24	There is no just reason for delay. The Debtors have limited cash resources to fund on-going operations.

G. Proposed Form and Manner of Notice Is Appropriate.

41. In accordance with Bankruptcy Rules 2002, 6004 and 6006, a copy of this Sale Motion, together with a notice of the Sale Hearing, has been or will promptly be given to the following parties (or their counsel, if known): (i) the United States Trustee for the Southern District of New York; (ii) the Committee; (iii) all parties registered to receive notice via the Court's ECF system and all parties who have requested notice of pleadings and filings in these cases; (iv) the holders of the thirty largest unsecured claims against the Debtors (on a consolidated basis); (v) all entities (including governmental authorities) known to the Debtors

that may have the right to file a claim, fine, penalty or lien against the Assets or the Debtors; (vi) the Attorneys General for each state in which Assets proposed to be sold are located; (vii) the Internal Revenue Service; (viii) counsel for the Buyer; (ix) all Counter-Parties to each executory contract and unexpired lease on the Contract & Cure Schedule (as defined in the Assumption and Assignment Procedures Motion); (x) all parties, if any, known to the Debtors to have asserted any liens, claims and encumbrances or other interests against the Assets or that may have a right to file such liens, claims or encumbrances the Assets; and (xi) the Office of the U.S. Attorney's Office for the Southern District of New York.

42. Additionally, a copy of this Sale Motion (excluding Exhibit B),[5] together with a notice of the Sale Hearing, has been or will promptly be mailed to all other creditors and parties listed on the Debtors' consolidated creditors matrix filed in these cases.

43. The Debtors submit, and they request that the Sale Order provide, that in light of the nature of the relief requested, such notice is sufficient and no other or further notice need be given.

H. Waiver of Stay and Immediate Relief Is Justified.

44. To implement the foregoing successfully, the Debtors request that the Sale Order provide that the Debtors have established sufficient cause to exclude the requested relief from the fourteen-day stays imposed by Bankruptcy Rule 6004(h) and 6006(d).

CONCLUSION

45. Under the particular circumstances of these bankruptcy cases and the events leading to the bankruptcy, the Debtors submit that the proposed private sale of the Assets to the Buyer represents the only realistic means of salvaging what remains of the Debtors' business as

[5] A copy of Exhibit B will be made available upon written request to the undersigned counsel.

an ongoing enterprise, preserving employment for a number of employees, satisfying lease and contractual obligations, and providing some distribution for unsecured creditors. Based upon these considerations, the Debtors submit that approval of the Sale Motion is appropriate, and they request that the Sale Order be approved by the Court.

WHEREFORE, the Debtors respectfully request that the Court enter an order, in substantially the form as that attached hereto as Exhibit A: (i) authorizing the private sale of substantially of the Assets to the Buyer free and clear of liens, claims and encumbrances (other than Assumed Liabilities) pursuant to the APA attached hereto as Exhibit B; (ii) approving the assumption and assignment of the Assigned Contracts and Leases and the cure amounts related thereto pursuant to the Assumption and Assignment Procedures; and (iii) granting such other relief as may be just and appropriate.

Dated: May 19, 2017

Respectfully submitted,

THOMPSON HINE LLP

By: /s/ Andrew Turscak, Jr.

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ASSET PURCHASE AGREEMENT

by and among

AGENT PROVOCATEUR, INC.

and

AGENT PROVOCATEUR, LLC

AND

AGENT PROVOCATEUR INTERNATIONAL (US) LLC

May __, 2017

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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement") is entered into as of June __, 2017, by and among Agent Provocateur, Inc., a Delaware corporation ("AP Inc."), and Agent Provocateur, LLC, a Delaware limited liability company ("AP LLC"; AP LLC, together with AP Inc., collectively, "Sellers," and individually, a "Seller"), and Agent Provocateur International (US) LLC, a Delaware limited liability company (together with its permitted successors, designees and assigns, "Buyer"). Sellers and Buyer are referred to individually herein as a "Party"), and collectively herein as the "Parties." Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in Article I.

WHEREAS, Sellers are debtors and debtors-in-possession under title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code") in jointly administered bankruptcy cases under Chapter 11 of the Bankruptcy Code captioned *In re Agent Provocateur, Inc., a Delaware corporation et al.* (Case Number 17-10987) (the "Chapter 11 Cases") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court");

WHEREAS, Sellers engage in the business of the retail sale of, including developing, producing, distributing, marketing and selling, women's lingerie (the "Business");

WHEREAS, (i) Sellers wish to sell, transfer and assign to Buyer, and Buyer wishes to purchase, acquire and assume from Sellers, the Acquired Assets as of the Closing, and (ii) Buyer wishes to assume from Sellers the Assumed Liabilities as of the Closing, all on the terms and subject to the conditions set forth herein and in accordance with sections 105, 363 and 365 and other applicable provisions of title 11 of the Bankruptcy Code; and

WHEREAS, Sellers have agreed to file the Sale Motion (as defined below) with the Bankruptcy Court to implement the transactions contemplated by this Agreement and the Related Agreements (the "Transactions") upon the terms and subject to the conditions set forth herein;

NOW, THEREFORE, in consideration of the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Parties, the Parties agree as follows:

ARTICLE I
DEFINITIONS

"Accounts Receivable" means (a) all trade accounts receivable and other rights to payment from customers of Sellers, (b) all other accounts receivable, notes receivable, negotiable instruments, chattel paper (including completed work which has not yet been billed) and other receivables of Sellers, whether current or non-current (including in respect of goods shipped, Products sold, licenses granted, services rendered or otherwise associated with the Business and all amounts that may be returned or returnable with respect to letters of credit drawn down prior to the Closing), and (c) any Lien, claim, remedy or other right related to any of the foregoing, in each case, arising out of the operation of the Business prior to the Closing.

"Acquired Assets" means all of Sellers' right, title and interest in and to all of Sellers' properties, assets and rights of every nature, kind and description, tangible and intangible, whether real, personal or mixed, whether accrued, contingent or otherwise, wherever situated or located, existing as of the Closing, including all rights to bring claims for past, present or future infringement of the Intellectual Property owned by Sellers; provided, however, that, notwithstanding the foregoing or anything contained in this Agreement to the contrary, the Acquired Assets shall not include any Excluded Assets.

"Acquired Avoidance Actions" means all causes of action, lawsuits, claims, rights of recovery and other similar rights of Sellers, including avoidance claims or causes of action under Chapter 5 of the Bankruptcy Code, (i) against landlords, vendors or other counterparties who are party to any Assumed Contract, (ii) against any Participating Vendor, and/or (iii) relating in any way to any party who was a beneficiary of a letter of credit or holding proceeds of a letter of credit on or before the Closing Date.

"Acquisition Proposal" shall mean any inquiry, proposal or offer relating to a Competing Transaction.

"Administrative Claim" means a Claim arising under section 503(b), 507(a)(2), 507(b), or 1114(e)(2) of the Bankruptcy Code.

"Affiliate" when used with reference to another Person means any Person, directly or indirectly, through one or more intermediaries, Controlling, Controlled by, or under common Control with, such other Person.

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

"AMEX Security Retention Amount" has the meaning set forth in Section 2.5 (a).

"AP Inc." has the meaning set forth in the preamble.

"AP LLC" has the meaning set forth in the preamble.

"AP Trademarks" means the AGENT PROVOCATEUR mark, the L'AGENT mark, and the other trademarks related to operation of the Business, all of which are owned by an affiliate of Buyer.

"Assignment and Assumption Agreement" has the meaning set forth in Section 2.6(ii).

"Assumed Contracts" means those Leases and other Contracts that have been assigned to and assumed by Buyer pursuant to Section 2.6 and section 365 of the Bankruptcy Code. For the avoidance of doubt, "Assumed Contracts" shall not include any Lease or Non-Real Property Contract that is excluded and rejected pursuant to Section 2.6.

"Assumed Liabilities" means those liabilities and obligations enumerated on Schedule 2.3 attached hereto.

"Assumed Permits" means all Permits relating to the Business that are transferable in accordance with their terms, but excluding all Permits to the extent related to any Excluded Asset (including any Lease that is not an Assumed Contract).

"Audited Financial Statements" has the meaning set forth in Section 3.4(a).

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

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

"Bankruptcy Events" means, the commencement of the Chapter 11 Cases and any events that lead up to, and typically result from, the commencement of a case under Chapter 11 of the Bankruptcy Code.

"Business Day" means any day other than a Saturday, a Sunday or a day on which banks located in New York, New York shall be authorized or required by Law to close.

"Business" has the meaning set forth in the recitals.

"Buyer" has the meaning set forth in the preamble.

"Cash Budget" means the "Approved Budget" as defined in and under the DIP Financing, a copy of which Approved Budget is attached hereto as Appendix A.

"Cash Deficit" has the meaning set forth in Section 2.5 (a).

"Cash Payment" has the meaning set forth in Section 2.5 (a).

"Chapter 11 Cases" has the meaning set forth in the recitals.

"Claim" means a "claim" as defined in section 101(5) of the Bankruptcy Code, whether arising before or after the Petition Date.

"Closing" has the meaning set forth in Section 2.7.

"Closing Cash" has the meaning set forth in Section 2.1 (a).

"Closing Assumed Contract List" has the meaning set forth in Section 2.6 (b).

"Closing Date" has the meaning set forth in Section 2.7.

"COBRA" means Part 6 of Subtitle B of Title I of ERISA, Section 4980B of the IRC, and any similar state Law.

"Committee" means the official committee of unsecured creditors appointed in the Chapter 11 Cases.

"Competing Transaction" shall mean any or all of the following, other than an Excluded Transaction: (i) a sale, transfer or other disposition of assets of either Seller (other than sales of

inventory in the Ordinary Course of Business) in a single transaction or a series of related transactions; (ii) a sale, transfer or assignment of capital stock or other equity interests of either Seller (including by means of a merger); (iii) any Chapter 11 plan of reorganization, any conversion of any of Sellers' Chapter 11 Cases to a Chapter 7 bankruptcy case, or any other liquidation or equivalent event with respect to any or all Sellers; (iv) a transaction that, directly or indirectly, competes with, or otherwise would prohibit or frustrate, the Transactions; or (v) a public announcement of a proposal, plan, intention or agreement to do any of the foregoing.

"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.

"Consumer Liabilities" means Sellers' obligations to (a) provide merchandise refunds and exchanges, (b) honor store or customer credits, customer prepayments and customer loyalty programs and (c) provide customer refunds, in each case, to customers of the Business in a manner consistent with the customer policies of the Business.

"Continuing Store" means any of Sellers' store locations with respect to which the associated Leases have been designated by Buyer as Assumed Contracts, as such store locations may be changed in accordance with Section 2.6 (b).

"Contract" means any written or oral agreement, contract, lease, sublease, indenture, mortgage, instrument, guaranty, loan or credit agreement, note, bond, customer order, purchase order, sales order, sales agent agreement, supply agreement, development agreement, joint venture agreement, promotion agreement, license agreement, contribution agreement, partnership agreement or other arrangement, understanding, permission or commitment that, in each case, is legally binding.

"Contract Objection" has the meaning set forth in Section 2.6(g).

"Control" means, when used with reference to any Person, the power to direct the management or policies of such Person, directly or indirectly, by or through stock or other equity ownership, agency or otherwise, or pursuant to or in connection with any Contract; and the terms "Controlling" and "Controlled" shall have meanings correlative to the foregoing.

"Corporate Service Charges" has the meaning set forth in Section 2.5 (a).

"Credit Card Receivables" means all Accounts Receivable and other amounts owed to either Seller (whether current or non-current) in connection with any customer purchases from either Seller or stores operated thereby that are made with credit cards or any other amounts owing (including deposits or holdbacks to secure chargebacks, offsets or otherwise) from credit card processors to Sellers, in each case which are not subject to offset, chargeback or other reduction.

"Cure Amounts" has the meaning set forth in Section 2.6 (e).

"Cure Dispute" has the meaning set forth in Section 2.6(g).

"Cure Notice" has the meaning set forth in Section 5.3(c).

"Current Employees" means all employees of Sellers employed as of the day before the Closing Date, whether active or not (including those on short-term disability, leave of absence, paid or unpaid, or long-term disability).

"Data Room" means that certain virtual data room previously made available to Buyer and its Representatives, which was closed as of April __, 2017.

"Decree" means any judgment, decree, ruling, decision, opinion, injunction, assessment, attachment, undertaking, award, charge, writ, executive order, judicial order, administrative order or other order of any Governmental Entity.

"Deposit" has the meaning set forth in Section 2.11.

"DIP Financing" means that certain Senior Secured, Super-Priority Debtor-in-Possession Credit Agreement, dated as of May __, 2017, in the amount of up to $200,000, among Buyer, as lender, and each Seller, as borrowers and debtors in possession, as the same may have been or be amended, modified, restated, or supplemented and in effect from time to time, and as approved by the Bankruptcy Court.

"DIP Financing Obligations" means the "Obligations" as defined under the DIP Financing.

"Disclosure Schedule" has the meaning set forth in Article III.

"Employee Benefit Plan" means any "employee benefit plan" (as such term is defined in Section 3(3) of ERISA) and any other benefit or compensation plan, program, agreement or arrangement of any kind, in each case, maintained or contributed to by either Seller or in which either Seller participates or participated and that provides benefits to any Current Employee or Former Employee.

"End Date" means June 15, 2017.

"Enforcing Parties" has the meaning set forth in Section 9.10(a).

"Environmental, Health and Safety Requirements" means, as enacted and in effect on or prior to the Closing Date, all applicable Laws concerning worker health and safety, pollution or the protection of the environment.

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

"Escrow Account" has the meaning set forth in Section 2.11.

"Escrow Agent" has the meaning set forth in Section 2.11.

"Excluded Assets" means, collectively, the following assets of Sellers: (a) all of Sellers' and their respective Affiliates' certificates of incorporation and other organizational documents, taxpayer and other identification numbers, seals, minute books, stock transfer books, stock certificates and other documents relating to the organization, maintenance and existence of either Seller or any of its Affiliates as a corporation, limited liability company or other entity; (b) all equity securities of either Seller and all net operating losses of either Seller (it being understood, however, that any such net operating losses shall, to the extent possible, be applied so as to reduce any Taxes that are Assumed Liabilities hereunder); (c) all Leases (and related Leased Real Property) and Contracts, in each case, other than the Assumed Contracts; (d) the Excluded Claims; (e) any loans or notes payable to either Seller or any of its Affiliates from any employee of either Seller or any of its Affiliates (other than Ordinary Course of Business employee advances and other than loans or notes from any Transferred Employees); (f) any (1) confidential personnel and medical Records pertaining to any Current Employees or Former Employees to the extent that the disclosure of such information is prohibited by applicable Law, (2) other Records that Sellers are required by Law to retain, and (3) any Records or other documents relating to the Chapter 11 Cases that are protected by the attorney-client privilege; provided that Buyer shall have the right to make copies of any portions of such retained Records, other than those that are protected by the attorney-client privilege, to the extent that such portions relate to the Business or any Acquired Asset; (g) all assets maintained pursuant to or in connection with any Employee Benefit Plan (other than Assumed Contracts with respect thereto); (h) the rights of Sellers under this Agreement and all cash and non-cash consideration payable or deliverable to Sellers under this Agreement and (i) all cash other than Closing Cash.

"Excluded Contract" has the meaning set forth in Section 2.6 (b).

"Excluded Claims" means all (a) Litigation, claims, demands, grievances, and causes of action against any current or former officer and/or director of either Seller (but not any Person who is a Transferred Employee); (b) avoidance claims or causes of action arising under Chapter 5 of the Bankruptcy Code (other than the Acquired Avoidance Actions); and (c) rights (including rights of set-off and rights of recoupment), refunds, claims, counterclaims, demands, causes of action and rights to collect damages of Sellers against third parties to the extent related to any Excluded Asset or Excluded Liability.

"Excluded Employee" has the meaning set forth in Section 6.4(b).

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

"Excluded Transaction" means the Transactions or any other transaction with Buyer.

"Expense Reimbursement" has the meaning set forth in Section 5.3 (c).

"Final Order" means an order, judgment, or other decree of the Bankruptcy Court that has not been vacated, reversed, modified, amended, or stayed, and for which the time to further appeal or seek review or rehearing has expired with no appeal, review or rehearing having been filed or sought.

"Former Employees" means all individuals who have been employed by either Seller (or any of such Seller's predecessors) who are not Current Employees.

"Furnishings and Equipment" means all tangible personal property (other than Inventory and Intellectual Property), which is used or held for use in the operation of the Business.

"GAAP" means generally accepted accounting principles in the United States as set forth in accounting rules and standards promulgated by the Financial Accounting Standards Board or any organization succeeding to any of its principal functions.

"Governmental Entity" means any United States federal, state or local or non-United States governmental or regulatory authority, agency, commission, court, body or other governmental entity.

"Hazardous Substance" means any substance that is listed, defined, designated or classified as hazardous, toxic or otherwise harmful under applicable Laws or is otherwise regulated by a Governmental Entity, including petroleum products and byproducts, asbestos-containing material, polychlorinated biphenyls, lead-containing products and mold.

"Historical Financial Statements" has the meaning set forth in Section 3.4(a).

"Indebtedness" of any Person means, without duplication, (a) the principal of and premium (if any) in respect of (i) indebtedness of such Person for money borrowed and (ii) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable, (b) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable for goods and services and other accrued current liabilities arising in the Ordinary Course of Business), (c) all obligations of such Person under leases required to be capitalized in accordance with GAAP, (d) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction, (e) the liquidation value of all redeemable preferred stock of such Person, (f) all obligations of the type referred to in clauses (a) through (e) 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 (g) all obligations of the type referred to in clauses (a) through (f) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person).

"Insurance Policy" means each primary, excess and umbrella insurance policy, bond and other form of insurance owned or held by or on behalf of, or providing insurance coverage to, the Business, Sellers, and their operations, properties and assets, including, without limitation, all stop-loss insurance policies with respect to Sellers' self-insured medical and/or dental insurance programs.

"Intellectual Property" means any and all rights, title and interest in or relating to intellectual property of any type, which may exist or be created under the Laws of any jurisdiction throughout the world, including: (a) patents and patent applications, together with all reissues, continuations, continuations-in-part, divisionals, extensions and reexaminations in connection therewith; (b) trademarks, service marks, trade dress, logos, slogans, trade names, service names, brand names (including the names "AGENCE PROVOCATEUR" AND

"L'AGENCE"), Internet domain names and all other source or business identifiers and general intangibles of a like nature, along with all applications, registrations and renewals in connection therewith, and all goodwill associated with any of the foregoing; (c) rights associated with works of authorship, including exclusive exploitation rights, mask work rights, copyrights, database and design rights, whether or not registered or published, all registrations and recordations thereof and applications in connection therewith, along with all extensions and renewals thereof; (d) trade secrets; and (e) all other intellectual property rights arising from or relating to Technology.

"Intellectual Property Assignments" has the meaning set forth in Section 2.6(iii).

"Interim Financial Statements" has the meaning set forth in Section 3.4(a).

"Inventory" means inventories of raw materials and supplies, manufactured, spare and purchased parts, goods in process and finished goods, in each case, that are used or held for use in the operation of the Business, whether or not prepaid and whether in transit to or from Sellers and whether in Sellers' warehouses, distributions facilities, stores, outlets, held by third parties or otherwise.

"Inventory Account Payable" has the meaning set forth in Section 2.5 (a).

"IRC" means the United States Internal Revenue Code of 1986, as amended.

"IRS" means the United States Internal Revenue Service.

"Law" means any federal, state, provincial, local, municipal, foreign or other law, statute, legislation, constitution, principle of common law, resolution, ordinance (including with respect to zoning or other land use matters), code, treaty, convention, rule, regulation, requirement, edict, directive, pronouncement, determination, proclamation or Decree of any Governmental Entity.

"Leased Real Property" means all leasehold or subleasehold estates and other rights to use or occupy any land, buildings, structures, improvements, fixtures or other interest in real property of Sellers or any of their Affiliates which are used in the Business.

"Leases" means all leases, subleases, licenses, concessions and other Contracts, including all amendments, extensions, renewals, guaranties and other agreements with respect thereto, in each case pursuant to which either Seller holds any Leased Real Property.

"Liability" means any liability, Indebtedness, guaranty, claim, loss, damage, deficiency, assessment, responsibility or obligation of whatever kind or nature (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether due or to become due, whether determined or determinable, whether choate or inchoate, whether secured or unsecured, whether matured or not yet matured).

"Lien" means any lien, mortgage, deed of trust, hypothecation, contractual restriction, pledge, encumbrance, interest, charge, security interest, put, call, other option, right of first refusal, right of first offer, servitude, right of way, easement, conditional sale or installment

contract, finance lease involving substantially the same effect, security agreement or other encumbrance or restriction on the use, transfer or ownership of any property of any type (including real property, tangible property and intangible property, and including any "Lien" as defined in the Bankruptcy Code).

"Litigation" means any Proceeding, investigation, mediation, arbitration, audit, or hearing, whether civil, criminal, administrative or arbitral, whether at law or in equity, and whether before any Governmental Entity or arbitrator.

"Material Adverse Effect" means any change, event, effect, development, condition, circumstance or occurrence (when taken together with all other changes, events, effects, developments, conditions, circumstances or occurrences), that (a) is materially adverse to the financial condition or results of operations of the Business (taken as a whole); provided, however, that no change, event, effect, development, condition, circumstance or occurrence related to any of the following shall be deemed to constitute, and none of the following shall be taken into account in determining whether there has been, a Material Adverse Effect: (i) national or international business, economic, political or social conditions, including the engagement by the United States of America in hostilities, affecting (directly or indirectly) the industry in which the Business operates, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack upon the United States of America or any of its territories, possessions or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States of America, except to the extent that such change has a materially disproportionate adverse effect on the Business relative to the adverse effect that such changes have on other companies in the industry in which the Business operates; (ii) the financial, banking or securities markets (including any disruption thereof or any decline in the price of securities generally or any market or index), except to the extent that such change has a materially disproportionate adverse effect on the Business relative to the adverse effect that such changes have on other companies in the industry in which the Business operates; (iii) any change in GAAP or Law; (iv) compliance with this Agreement or any Related Agreement, including the taking of any action required to be taken hereby or thereby or the failure to take any action that is not permitted hereby or thereby; (v) any changes directly attributable to the announcement of this Agreement or any Related Agreement; (vi) defaults under commercial leases relating to Buyer's stores and efforts by landlords to terminate such leases; (vii) termination of one or more of the leases for the stores listed on Appendix B , so long as the condition to closing set forth in Section 7.1 (h) hereof is satisfied; (viii) resulting from any act of God or other force majeure event (including natural disasters); (ix) in the case of Sellers or the Business, (A) the failure to meet or exceed any projection or forecast, or (B) changes in the business or operations of Sellers or any of their respective Affiliates (including changes in credit terms offered by suppliers or financing sources) resulting from the announcement or the filing of the Chapter 11 Cases or Sellers' and their respective Affiliates' financial condition or Sellers' and certain of their respective Affiliates' status as debtors under Chapter 11 of the Bankruptcy Code; or (x) seasonal changes in the results of operations (provided that such seasonal changes are consistent with the historical experience of the Business); or (b) would reasonably be expected to prevent, materially delay or materially impair the ability of either Seller to consummate the Transactions or the Related Agreements on the terms set forth herein and therein.

"Non-Real Property Contract" means any Contract to which either Seller is a party other than the Leases.

"Offeree" has the meaning set forth in Section 6.4(a).

"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.

"Ordinary Course of Business" means the ordinary course of business consistent with past custom and practice, as the Business has been conducted since March 2, 2017. Buyer acknowledges that the Ordinary Course of Business since March 2, 2017 has included non-payments of rent to landlords and other delinquencies.

"Participating Vendor" means a vendor that executes a Participating Vendor Agreement with Buyer.

"Participating Vendor Agreement" means an agreement with Buyer, in form and substance acceptable to Buyer, to continue to participate in and extend trade credit going forward in connection with the operation of the Business by Buyer.

"Party" has the meaning set forth in the preamble.

"Permit" means any franchise, approval, authorization, permit, license, order, registration, certificate, variance, Consent, exemption or similar right issued, granted, given or otherwise obtained from or by any Governmental Entity, under the authority thereof or pursuant to any applicable Law.

"Permitted Liens" means (a) Liens for Taxes not yet delinquent or which are being contested in good faith by appropriate proceedings; (b) with respect to leased or licensed personal property, the terms and conditions of the lease or license applicable thereto to the extent constituting an Assumed Contract; (c) mechanics liens and similar liens for labor, materials or supplies provided with respect to real property incurred in the Ordinary Course of Business for amounts which are not delinquent and which are not material or which are being contested in good faith by appropriate proceedings; (d) with respect to real property, zoning, building codes and other land use Laws regulating the use or occupancy of such real property or the activities conducted thereon which are imposed by any Governmental Entity having jurisdiction over such real property which are not violated by the current use or occupancy of such real property or the operation of the Business, except where any such violation would not, individually or in the aggregate, materially impair the use, operation or transfer of the affected property or the conduct of the Business thereon as it is currently being conducted; (e) easements, covenants, conditions, restrictions and other similar matters affecting title to real property and other encroachments and title and survey defects that do not or would not materially impair value or the use or occupancy of such real property or materially interfere with the operation of the Business at such real property; and (f) matters that would be disclosed on an accurate survey or inspection of the real property but which do not interfere in any material respect with the right or ability to use the property as currently used or operated or to convey fee simple title.

"Person" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization or any other entity, including any Governmental Entity or any group or syndicate of any of the foregoing.

"Petition Date" means April 11, 2017.

"Plan" means a plan of liquidation or reorganization proposed by Sellers and/or the Committee.

"Priority Claim" means a Claim entitled to priority pursuant to section 507(a) of the Bankruptcy Code.

"Proceeding" means any action, suit or proceeding.

"Products" means, collectively, all lingerie, clothing, apparel, accessories, and any other products developed, produced, distributed, marketed and/or sold in connection with the Business.

"Professional Services" has the meaning set forth in Section 2.4(b).

"Purchase Price" has the meaning set forth in the introductory language to Section 2.5.

"Records" means the books, records, information, ledgers, files, invoices, documents, work papers, correspondence, lists (including customer lists, supplier lists and mailing lists), plans (whether written, electronic or in any other medium), drawings, designs, specifications, creative materials, advertising and promotional materials, marketing plans, studies, reports, data and similar materials related to the Business.

"Registered" means issued by, registered with, renewed by or the subject of a pending application before any Governmental Entity or domain name registrar.

"Related Agreements" means the Bill of Sale, the Assignment and Assumption Agreement, the Intellectual Property Assignments, and the Letter Agreement.

"Related Party" means, with respect to either Seller, each of such Seller's direct and indirect Subsidiaries, each of their respective officers, directors, managers and equity holders, and each member of the immediate family of the foregoing Persons.

"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.

"Sale Motion" has the meaning set forth in Section 5.3(a).

"Sale Order" means an order of the Bankruptcy Court entered in the Chapter 11 Cases in substantially the form of Exhibit A attached hereto (or otherwise agreed to in writing by Buyer and Sellers).

"Selected Employee" has the meaning set forth in Section 6.4(d).

"Seller" or "Sellers" has the meaning set forth in the preamble.

"Sellers' Knowledge" (or words of similar import) means the actual knowledge of Mandy Brooks or Wilson Cheng.

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership, association or other business entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof (or other Persons performing similar functions with respect to such corporation) is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (b) if a limited liability company, partnership, association or other business entity (other than a corporation), a majority of partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof and for this purpose, a Person or Persons owns a majority ownership interest in such a business entity (other than a corporation) if such Person or Persons shall be allocated a majority of such business entity's gains or losses or shall be or control any managing director, managing member, or general partner of such business entity (other than a corporation). The term "Subsidiary" shall include all Subsidiaries of such Subsidiary.

"Tax" or "Taxes" means any United States federal, state or local or non-United States income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Section 59A of the IRC), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, real property, personal property, ad valorem, escheat, sales, use, transfer, value added, alternative or add-on minimum, estimated or other tax of any kind whatsoever, whether computed on a separate or consolidated, unitary or combined basis or in any other manner, including any interest, penalty or addition thereto, whether or not disputed.

"Tax Return" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereto.

"Technology" means, collectively, all algorithms, APIs, designs, net lists, data, databases, data collections, diagrams, inventions (whether or not patentable), know-how, methods, processes, proprietary information, protocols, schematics, specifications, tools, systems, servers, hardware, computers, point of sale equipment, inventory management equipment, software, software code (in any form, including source code and executable or object code), subroutines, techniques, user interfaces, URLs, web sites, works of authorship and other similar materials, including all documentation related to any of the foregoing, including instruction manuals, laboratory notebooks, prototypes, samples, studies and summaries, whether or not embodied in any tangible form and whether or not specifically listed herein, and all related technology, that are used in, incorporated in, embodied in, displayed by or relate to, or are used in connection with the foregoing.

"Transactions" has the meaning set forth in the recitals.

"Transfer Tax" has the meaning set forth in Section 6.6.

"Transferred Employee" has the meaning set forth in Section 6.4(a).

"Trustee" means the trustee or post-confirmation officer appointed in connection with the Plan.

"UK Affiliate" means Agent Provocateur Limited, a United Kingdom company.

"WARN Act" means the United States Worker Adjustment and Retraining Notification Act, or any similar applicable federal, state, provincial, local, municipal, foreign or other Law.

ARTICLE II
PURCHASE AND SALE

Section 2.1 Purchase and Sale of Acquired Assets. Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, on the terms and subject to the conditions set forth in this Agreement, at the Closing, Buyer shall purchase, acquire and accept from Sellers, and Sellers shall sell, transfer, assign, convey and deliver to Buyer, all of the Acquired Assets, free and clear of all Liens (other than Permitted Liens), for the consideration specified in Section 2.5. Without limiting the generality of the foregoing, the Acquired Assets shall include the following (except to the extent included as an Excluded Asset):

(a) all (i) cash located at any Continuing Store as of the Closing, and (ii) cash deposits of Sellers held by any Person and relating to Acquired Assets or securing chargebacks, credit card processing claims or similar claims (the cash and cash deposits described in the foregoing clauses (i) and (ii), collectively, the "Closing Cash");

(b) all Accounts Receivable of Sellers as of the Closing, and all receivables and other amounts payable by either Seller to the other Seller;

(c) all Inventory, supplies and materials of Sellers as of the Closing, including all rights of Sellers to receive such Inventory, supplies and materials which are on order as of the Closing, in each case, wherever such inventory, supplies and materials is located, including all inventory, supplies and materials located in warehouses, stores and concession locations; provided that with respect to any Inventory, supplies, or materials located at stores not acquired by Buyer at the Closing, Buyer is solely responsible for removal and disposition of such Inventory, supplies, or materials and the cost of such removal and disposition

(d) without duplication of the above, all royalties (except for any royalties under any Excluded Asset), advances, prepaid assets and deferred items (including all prepaid Taxes, prepaid rentals, unbilled charges, fees and deposits, prepaid insurance premiums), and other prepayments of Sellers as of the Closing relating to the Business;

(e) all Assumed Contracts that have been assumed by and assigned to Buyer pursuant to Section 2.6;

(f) all Intellectual Property owned by Sellers;

(g) all open purchase orders with suppliers related to the Business;

(h) all items of machinery, equipment, supplies, furniture, fixtures, leasehold improvements (to the extent of Sellers' rights to any leasehold improvements under the Leases that are Assumed Contracts) owned by Sellers and all other Furnishings and Equipment as of the Closing; provided that with respect to any machinery, equipment, supplies, furniture, etc. located at stores not acquired by Buyer at the Closing, Buyer is solely responsible for removal and disposition of such machinery, equipment, supplies, furniture, etc. and the cost of such removal and disposition;

(i) all Records, including Records related to Taxes paid or payable by either Seller; provided, however, that Sellers shall be entitled to retain copies of all Records; provided further , however, that Buyer shall afford Sellers all reasonable access to the Records following the Closing for a period of time sufficient to fully administer Sellers' bankruptcy estates;

(j) except for the Excluded Claims, all claims (including all rights to bring claims for past, present or future infringement of the Intellectual Property owned by Sellers) and causes of action of Sellers as of the Closing against any Persons (regardless of whether or not such claims and causes of action have been asserted by Sellers) and all guaranties, rights of indemnity, warranty rights, rights of contribution, rights to refunds, rights of reimbursement and other rights of recovery, including rights to insurance proceeds, possessed by Sellers as of the Closing (regardless of whether such rights are currently exercisable);

(k) all goodwill associated with the Business or the Acquired Assets, including all goodwill associated with the Intellectual Property owned by Sellers and all rights under any confidentiality agreements executed by any third party for the benefit of Sellers to the extent relating to the Acquired Assets and/or the Assumed Liabilities (or any portion thereof);

(l) all rights of Sellers under non-disclosure or confidentiality, noncompete, or nonsolicitation agreements with current or former employees, directors, consultants, independent contractors and agents of Sellers or any of their Affiliates or with third parties to the extent relating to the Acquired Assets and/or the Assumed Liabilities (or any portion thereof);

(m) subject to Section 2.6 (h), all of the Assumed Permits, or, to the extent provided in Section 2.6 (h), all of the rights and benefits accruing under any Permits relating to the Business;

(n) the amount of, and all rights to any, insurance proceeds received by Sellers after the date hereof in respect of (i) the loss, destruction or condemnation of any Acquired Assets of a type set forth in Section 2.1(c), Section 2.1(f) or Section 2.1(h), occurring prior to, at, or after the Closing, and (ii) any Assumed Liabilities;

(o) all other rights, demands, claims, credits, allowances, rebates or other refunds (including any vendor or supplier rebates), rights in respect of promotional allowances or rights of setoff and rights of recoupment of every kind and nature (whether or not known or unknown or contingent or non-contingent), other than against Sellers, arising out of or relating to the Business as of the Closing, including all deposits (including customer deposits and security deposits (whether maintained in escrow or otherwise) for rent, electricity, telephone or otherwise), advances and prepayments;

(p) to the extent transferable, all Insurance Policies that, on or prior to the Closing, Buyer designates in writing to Sellers as Acquired Assets hereunder, and all rights and benefits of Sellers of any nature (except for any rights to insurance recoveries thereunder required to be paid to other Persons under any order of the Bankruptcy Court or relating to the DIP Financing) with respect thereto, including, without limitation of Section 2.1(n), all insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries;

(q) except for the Excluded Claims, all causes of action, lawsuits, judgments, claims, refunds, rights of recovery, rights of set-off, counterclaims, defenses, demands, warranty claims, rights to indemnification, contribution, advancement of expenses or reimbursement, or similar rights of Sellers (at any time or in any manner arising or existing, whether choate or inchoate, known or unknown, now existing or hereafter acquired, contingent or noncontingent), including, without limitation, the Acquired Avoidance Actions;

(r) all rights under or pursuant to all warranties, representations and guarantees made by suppliers, manufacturers, contractors and any other Person to the extent relating to Products sold, or services provided, to Sellers or to the extent affecting any Acquired Assets and/or Assumed Liabilities;

(s) the right to receive and retain mail, Accounts Receivable payments and other communications of Sellers and the right to bill and receive payment for Products shipped or delivered and services performed but unbilled or unpaid as of the Closing;

(t) all telephone numbers, fax numbers, e-mail addresses, websites, URLs and internet domain names;

(u) without duplication of the above, all other current assets of Sellers as of the Closing;

(v) all prepayments of liabilities related to the Acquired Assets, including, without limitation, advance utility payments, and prepaid property taxes; and

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

Section 2.2 **Excluded Assets**. Nothing contained herein shall be deemed to sell, transfer, assign or convey any of the Excluded Assets to Buyer, and each Seller shall retain all of its right, title and interest to, in and under, and all obligations with respect to the Excluded Assets.

Section 2.3 **Assumption of Assumed Liabilities**. On the terms and subject to the conditions of this Agreement, at the Closing (or, with respect to Assumed Liabilities under Assumed Contracts or Assumed Permits that are assumed by Buyer after the Closing, such later date of assumption as provided in Sections 2.6), Buyer shall assume and become responsible for the Assumed Liabilities and no other Liabilities of Sellers or any of their Affiliates, and from and after the Closing agrees to timely pay, honor and discharge, or cause to be timely paid, honored and discharged, all Assumed Liabilities in accordance with the terms thereof.

Section 2.4 **Excluded Liabilities**. Notwithstanding anything herein to the contrary, the Parties expressly acknowledge and agree that Buyer shall not assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for any Liabilities of Sellers, whether existing on the Closing Date or arising thereafter, other than the Assumed Liabilities (all such Liabilities that Buyer is not assuming being referred to collectively as the "Excluded Liabilities"). Without limiting the foregoing, Buyer shall not be obligated to assume, does not assume, and hereby disclaims all the Excluded Liabilities, including the following Liabilities of either Seller, any predecessor of either Seller, or any other Person, whether incurred or accrued before or after the Petition Date or the Closing:

(a) all Taxes of Sellers, including Taxes imposed on Sellers under Treasury Regulations Section 1.1502-6 and similar provisions of state, local or foreign Tax Law;

(b) all Liabilities of Sellers relating to legal services, accounting services, financial advisory services, investment banking services or any other professional services ("Professional Services") performed in connection with this Agreement and any of the Transactions, and any claims for such Professional Services, whether arising before or after the Petition Date;

(c) all Liabilities of Sellers relating to or arising from any collective bargaining agreement (including any related multiemployer pension plan);

(d) except to the extent enumerated in Schedule 2.3, all Liabilities relating to (i) payroll (including salary, wages and commissions), vacation, sick leave, parental leave, long service leave, workers' compensation claims (provided that, and for the avoidance of doubt, any letter(s) of credit issued on behalf of either Seller in support of such workers' compensation claims are an Excluded Asset) and unemployment benefits of any Current Employee and/or Former Employee, and (ii) all severance, retention and termination agreements with Current Employees and/or Former Employees;

(e) all Liabilities arising out of, relating to, or with respect to any notice pay or benefits (including under COBRA unless otherwise required by applicable Law) and claims under the WARN Act with respect to any Current Employees and/or Former Employees;

(f) except to the extent enumerated in item 9 on Schedule 2.3, all Liabilities arising out of, relating to, or with respect to any Employee Benefit Plan (including any Liabilities related to any Employee Benefit Plan which is an "employee pension benefit plan" (as defined in Section 3(2) of ERISA) that is subject to Section 302 or Title IV of ERISA or IRC Section 412);

(g) all Liabilities of Sellers in respect of Indebtedness (except to the extent of any Cure Amounts under any Assumed Contracts);

(h) all Liabilities arising in connection with any violation of any applicable Law relating to the period prior to the Closing, including any Environmental, Health and Safety Requirements;

(i) any and all Liabilities and obligations (i) that are the subject of any claim, demand, grievance, dispute, Litigation, Decree or Proceeding as of the Closing Date, (ii) with respect to periods prior to the Closing Date and are or could be asserted as a claim in Litigation after the Closing Date, (iii) relating to any bodily injury, or damage to property, incurred by any Person prior to the Closing, or (iv) arising as a result of actions or omissions with respect to services provided to customers prior to the Closing; provided that nothing herein shall prevent, prohibit or otherwise impair either Seller's right to make any claim for any insurance recovery after the Closing under any applicable Insurance Policy, as provided under Section 6.10(b);

(j) any Liabilities or obligations which Buyer may or could become liable for as a result of or in connection with any "*de facto merger*" or "successor-in-interest" theories of liability (other than the Assumed Liabilities);

(k) all Liabilities of Sellers under this Agreement and the Related Agreements and the Transactions (excluding all of the Assumed Liabilities);

(l) all Liabilities and other amounts payable by either Seller to any other Seller and/or its Affiliates; and

(m) all other Liabilities of Sellers that are not expressly included in the Assumed Liabilities.

Section 2.5 Consideration. In consideration of the sale of the Business and the Acquired Assets to Buyer, and in reliance upon the representations, warranties, covenants and agreements of Sellers set forth herein, and upon the terms and subject to the conditions set forth herein, the aggregate consideration for the sale and transfer of the Acquired Assets (the "Purchase Price") shall be composed of the following:

(a) the payment of an amount in cash (the "Cash Payment") equal to (i) $1,100,000, less (ii) the Deposit, less (iii) the amount of any unpaid DIP Financing Obligations as of the Closing, less (iv) accrued amounts owing to Buyer's UK Affiliate as of the Closing from post-petition sales of inventory owned by the Buyer's UK Affiliate that was delivered to Sellers subsequent to April 11, 2017 (the "Inventory Account Payable"), less (v) accrued amounts owing to Buyer's UK Affiliate for corporate service charges assessed in the amount of $10,000 per week beginning the week of April 10, 2017 through the week of June 30, 2017 (the "Corporate Service Charges"), less [(vi) accrued Assumed Liabilities as of the Closing (other than Cure Amounts) *subject to further discussion*] plus (vii) the Closing Cash, plus (viii) any amount retained by American Express for security as of the Closing (an "AMEX Security Retention Amount"), plus (ix) prepaid expenses as of the Closing; provided, however, that if the amount by which actual cash receipts from store sales, including concessions, during the period from May 8, 2017 through June 30, 2017 is less than $1,985,604 (the "Cash Deficit"), the Inventory Account Payable and/or the Corporate Service Charges shall be reduced, in the aggregate, dollar for dollar up to the amount of the Cash Deficit; provided further, however, and for the sake of clarity, that if the Cash Deficit shall exceed the Inventory Account Payable and/or the Corporate Service Charges against which such reduction shall be applied, no further adjustment to the Purchase Price shall occur; and

(b) the assumption by Buyer of the Assumed Liabilities, [*including accrued Assumed Liabilities as of the Closing. Subject to further discussion*.]

Section 2.6 Assumption and Assignment of Contracts.

(a) The Sale Order shall provide for the assumption by Sellers, and the assignment to the extent legally capable of being assigned by Sellers to Buyer, of the Assumed Contracts on the terms and conditions set forth in the remainder of this Section 2.6. At Buyer's request, Sellers shall reasonably cooperate from the date hereof forward with Buyer as reasonably requested by Buyer (i) to allow Buyer to enter into an amendment of any Lease upon assumption of such Lease by Buyer (and Sellers shall reasonably cooperate with Buyer to the extent reasonably requested with Buyer in negotiations with the landlords thereof), or (ii) to otherwise amend any Lease to the extent that such amendments would not adversely affect either Seller; provided that Sellers shall not be required to enter into any such amendment if such amendment would result in an assumption by either Seller of such Lease, unless such Lease will be assigned to Buyer at the time of such assumption.

(b) Buyer shall identify the Leases and Non-Real Property Contracts that Buyer has decided will be Assumed Contracts to be assumed and assigned to Buyer on the Closing Date by providing a list thereof to Sellers (as updated in accordance with this Agreement, the "Closing Assumed Contract List"). Up to two (2) Business Days prior to the Closing Date, Buyer may, in its sole discretion, designate a Lease or Non-Real Property Contract for exclusion and rejection by delivering written notice to Sellers, which notice may be provided by electronic mail. Any Lease or Non-Real Property Contract that is designated (or deemed to be designated) for exclusion and rejection pursuant to this Section 2.6(b) shall constitute an "Excluded Contract"

as of the Closing Date, except as otherwise may be provided in the Sale Order. In determining the total number of Leases assumed and assigned to Buyer, in addition to Leases actually assumed and assigned to Buyer, store locations that were previously closed by Sellers but reopened by Buyer shall also be included (provided that Buyer pays the Cure Amounts due with respect to the Lease for such store). Within ten (10) days following full execution and delivery by the Parties of this Agreement, Buyer shall inform Seller, in writing, of the Leases that Buyer definitely will not acquire and the Sellers shall be authorized to close those stores immediately. For the avoidance of doubt, Buyer acknowledges that the stores listed on Schedule 2.6(b) have previously been closed and Sellers have filed a motion seeking authorization to reject the Leases associated with those stores, and it is anticipated that the Bankruptcy Court will enter an order authorizing the rejection of such Leases.

(c) Within two (2) Business Days of Buyer's delivery of any notice of removal or designation of any Lease or Non-Real Property Contract as an Assumed Contract by Buyer pursuant to Section 2.6(b), Sellers shall give notice of the removal or designation of such Lease or Non-Real Property Contract as an Assumed Contract to the other parties thereto.

(d) As part of the Sale Motion (or as necessary in one or more separate motions), Sellers shall request that, by virtue of either Seller providing fourteen (14) Business 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 Buyer.

(e) In connection with the assumption and assignment to Buyer of any Assumed Contract that is executory pursuant to this Section 2.6, the cure amounts, as determined by the Bankruptcy Court, if any (such amounts, the "Cure Amounts"), necessary to cure all defaults, if any, and to pay all actual or pecuniary losses that have resulted from such defaults under the Assumed Contracts, including any amounts payable to any landlord under any Lease that is an Assumed Contract that relate to the period prior to the Closing, shall be paid by Buyer, on or before the Closing, and not by Sellers, and Sellers shall have no liability therefor, and neither the Cure Amounts paid by Buyer, nor the expense of any other obligation set forth in this Section 2.6(e) shall reduce, directly or indirectly, any consideration received by Sellers hereunder; provided, however, that any applicable Cure Amounts with regard to Assumed Contracts listed in the Closing Assumed Contract List shall be paid by Buyer at the Closing.

(f) Sellers shall use commercially reasonable efforts to obtain an order of the Bankruptcy Court to assign the Assumed Contracts to Buyer on the terms set forth in this Section 2.6. If Sellers are unable to assign any such Assumed Contract to Buyer pursuant to an order of the Bankruptcy Court, then the Parties shall use their commercially reasonable efforts [**until _______________**] to obtain, and to cooperate in obtaining, all Consents from Governmental Entities and third parties necessary to

assume and assign such Assumed Contracts to Buyer, including, in the case of Buyer, paying any applicable Cure Amounts. To the extent that any Consent that is required to assign to Buyer any Assumed Contract is not obtained by the Closing Date, each Seller shall, with respect to each such Assumed Contract, from and after the Closing and until the earlier 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 their Affiliates shall be required to pay any consideration therefor other than filing, recordation or similar fees, which shall be borne by Buyer), and (y) [____________________], use commercially reasonable efforts during the term of such Assumed Contract to (i) provide to Buyer the benefits under such Assumed Contract, (ii) cooperate in any reasonable and lawful arrangement (including holding such Contract in trust for Buyer pending receipt of the required Consent) designed to provide such benefits to Buyer, and (iii) use its commercially reasonable efforts to enforce for the account of Buyer any rights of such Seller under such Assumed Contract (including the right to elect to terminate such Assumed Contract in accordance with the terms thereof upon the written direction of Buyer); provided, however, Sellers shall not be required to incur out of pocket expense in fulfilling their obligations under the foregoing clause (y)(iii) of this Section 2.6(f). Buyer shall reasonably cooperate with Sellers in order to enable Sellers to provide to Buyer the benefits contemplated by this Section 2.6(f).

(g) If a counterparty to an Assumed Contract has filed an Objection to the Sale Motion (the "Contract Objection"), including with respect to the Cure Amount (any such dispute, a "Cure Dispute"), then, notwithstanding Section 2.6(b): (i) the Buyer may, in its sole discretion, remove the Contract from the Closing Assumed Contract List and such Contract will not be assumed by the respective Seller and/or assigned to the Buyer, including at any time prior to or within one (1) Business Day after the Bankruptcy Court's determination of such Cure Dispute, and/or (ii) such Contract Objection will be adjudicated at the Sale Hearing or at such other date and time as may be mutually agreed to by the objecting counterparty, the Sellers, and the Buyer or scheduled by the Bankruptcy Court; provided, that, if a Cure Dispute remains unresolved as of the Closing, and Buyer has not removed the subject Contract from the Closing Assumed Contract List, then Buyer shall assume, and hold Seller harmless for, all of Sellers' performance obligations and liabilities under such Contract arising from and after the Closing until either (i) one (1) Business Day after the date that Buyer provides notice that it is not seeking to assume such Contract, at which point Sellers may reject such Contract, or (ii) the date such Assumed Contract is assumed by Buyer; provided, further that if the Contract Objection relates solely to the Cure Amount, such Assumed Contract may be assumed by the Sellers and assigned to the Buyer (if the Buyer so chooses in its sole discretion), if the Cure Amount that the counterparty to such Assumed Contract asserts is required to be paid is deposited in a segregated account by the Buyer, pending the Bankruptcy Court's adjudication of the Cure Dispute or the parties' consensual resolution of the Cure Dispute.

(h) Notwithstanding the foregoing, a Contract shall not be an Assumed Contract hereunder and shall not be assigned to, or assumed by, Buyer to the extent that such Contract (i) is rejected by a Seller or terminated by a 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 Closing Date, 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 Buyer of Sellers' rights under such Contract, and no such Consent has been obtained prior to the Closing Date. In addition, a Permit shall not be assigned to, or assumed by, Buyer 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 Buyer of Sellers' rights under such Permit, and no such Consent has been obtained prior to the Closing.

Section 2.7 Closing. The closing of the Transactions (the "Closing") shall take place remotely by electronic exchange of counterpart signature pages commencing at 11:00 a.m. local time on the date (the "Closing Date") that is the third Business Day after the date on which all conditions to the obligations of Sellers and Buyer to consummate the Transactions set forth in Article VII (other than conditions with respect to actions that Sellers and/or Buyer will take at the Closing itself, but subject to the satisfaction or waiver of those conditions) have been satisfied or waived, or at such other time or on such other date as shall be mutually agreed upon by Sellers and Buyer prior thereto. The Closing shall be deemed to have occurred at 11:59 p.m. (Eastern time) on the Business Day prior to the Closing Date.

Section 2.8 Deliveries at Closing.

(a) At the Closing, Sellers shall deliver to Buyer the following documents and other items, duly executed by Sellers, as applicable:

(i) one or more Bills of Sale substantially in the form of Exhibit B attached hereto ("Bill of Sale");

(ii) one or more Assignment and Assumption Agreements substantially in the form of Exhibit C attached hereto ("Assignment and Assumption Agreement");

(iii) instruments of assignment substantially in the forms of Exhibit D, Exhibit E and Exhibit F attached hereto for each registered trademark, registered copyright, and domain name, respectively, transferred or assigned hereby and for each pending application therefor (collectively, the "Intellectual Property Assignments");

(iv) a copy of the Sale Order;

(v) a certificate signed by an authorized officer of AP Inc. to the effect that each of the conditions specified in Section 7.1(a), Section 7.1(b) and Section 7.1(f) is satisfied in accordance with the terms thereof; and

(vi) to the extent applicable, a non-foreign affidavit from each Seller dated as of the Closing Date, sworn under penalty of perjury and in form and substance required under the Treasury Regulations issued pursuant to Section 1445 of the IRC stating that such Seller is not a "foreign person" as defined in Section 1445 of the IRC.

(b) At the Closing, Buyer shall deliver to Sellers the following documents, cash amounts and other items, duly executed by Buyer, as applicable:

(i) the Assignment and Assumption Agreement(s);

(ii) a certificate to the effect that each of the conditions specified in Section 7.2(a) and Section 7.2(b) is satisfied in accordance with the terms thereof;

(iii) the Cash Payment by wire transfer of immediately available funds to one or more bank accounts designated by Sellers; and

(iv) a letter evidencing that all of the outstanding DIP Financing Obligations have been satisfied in full and/or assumed by Buyer, that the DIP Financing has been terminated and that all Liens thereunder against Sellers and the Excluded Assets have been fully discharged and released.

Section 2.9 Allocation. Within thirty (30) calendar days after the Closing Date, Buyer shall in good faith prepare an allocation of the Purchase Price (and all capitalized costs and other relevant items) among the Acquired Assets in accordance with Section 1060 of the IRC and the Treasury Regulations thereunder (and any similar provision of United States state or local or non-United States Law, as appropriate), which allocation shall be binding upon Sellers and Buyer. Buyer and Sellers shall report, act and file Tax Returns (including IRS Form 8594) in all respects and for all purposes consistent with such allocation. Neither Buyer nor Sellers shall take any position (whether in audits, Tax Returns or otherwise) which is inconsistent with such allocation unless required to do so by applicable Law.

Section 2.10 Continuing Stores.

(a) As of the Closing, any of Sellers' store locations with respect to which the associated Leases have been designated by Buyer as Assumed Contracts in accordance with Section 2.6(b) shall be deemed to have been classified as Continuing Stores.

(b) Buyer shall indemnify and hold each 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 Continuing Stores by Buyer after the Closing Date, including, without limitation, reasonable attorneys' fees and expenses, resulting from, or related to: (i) Buyer'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 either Seller by Buyer or any of its Representatives; (iii) any

claims by any party engaged by Buyer as an employee or independent contractor arising out of such employment; (iv) the gross negligence (including omissions) or willful misconduct of Buyer, its officers, directors, employees, agents or representatives; and (v) violations of Law by Buyer or any of its Representatives.

Section 2.11 Deposit. On or prior to the date hereof, Buyer has made a cash deposit in the amount of $100,000 (the "Deposit") by wire transfer of immediately available funds which is being held by the Escrow Agent as described below. Union Bank (the "Escrow Agent") shall hold the Deposit in escrow (the "Escrow Account"). In the event that the Closing occurs, the Deposit will be applied to satisfy an equal portion of the Closing Payment, and Buyer shall direct the Escrow Agent to release the Deposit to Sellers at the Closing. In any other event, the Deposit shall be released by the Escrow Agent to the Party entitled thereto in accordance with Section 8.4, and the Parties shall promptly direct the Escrow Agent to release the Deposit accordingly. The Deposit shall only constitute property of Sellers' bankruptcy estates in the event that the Deposit is required to be released to Sellers by the Escrow Agent in accordance with the terms of this Agreement.

Section 2.12 Use of Inventory and Trademarks. Buyer shall cause its UK Affiliate to consent to (i) the use by Sellers, retroactive to March 2, 2017, of the AP Trademarks, (ii) the sale by Sellers of Inventory in the Ordinary Course of Business, provided, however, that the Sellers shall be liable for the Inventory Account Payable which shall be deducted from the Cash Payment in accordance with Section 2.5(a) of this Agreement, and (iii) the utilization of the proceeds of the sale of Inventory to conduct Sellers' business and operations.

ARTICLE III
SELLERS' REPRESENTATIONS AND WARRANTIES.

Each Seller jointly and severally together with the other Seller represents and warrants to Buyer that except as set forth in the disclosure schedule accompanying this Agreement (the "Disclosure Schedule"):

Section 3.1 Organization of Sellers; Good Standing.

(a) Each Seller is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware.

(b) Each Seller has all requisite corporate or similar power and authority to own, lease and operate its assets and to carry on the Business as currently conducted.

(c) Each Seller is duly authorized to do business and is in good standing as a foreign corporation in each jurisdiction where the ownership or operation of the Acquired Assets or the conduct of the Business requires such qualification, except for failures to be so authorized or be in such good standing, as would not, individually or in the aggregate, have a Material Adverse Effect.

(d) Neither Seller has any Subsidiaries.

Section 3.2 **Authorization of Transaction**. Subject to the Sale Order having been entered and still being in effect and not subject to any stay pending appeal at the time of the Closing:

(a) each Seller has all requisite corporate power and authority to execute and deliver this Agreement and all Related Agreements to which it is a party and to perform its obligations hereunder and thereunder; the execution, delivery and performance of this Agreement and all Related Agreements to which a Seller is a party have been duly authorized by such Seller and no other corporate action on the part of either Seller is necessary to authorize the execution, delivery and performance by such Seller of this Agreement or the Related Agreements to which it is a party or to consummate the Transactions; and

(b) this Agreement has been duly and validly executed and delivered by each Seller, and, upon their execution and delivery in accordance with the terms of this Agreement, each of the Related Agreements to which such Seller is a party will have been duly and validly executed and delivered by such Seller, as applicable. Assuming that this Agreement constitutes a valid and legally binding obligation of Buyer, this Agreement constitutes the valid and legally binding obligations of Sellers, enforceable against Sellers in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity. Assuming, to the extent that it is a party thereto, that each Related Agreement constitutes a valid and legally binding obligation of Buyer, each Related Agreement to which either Seller is a party, when executed and delivered by such Seller, constituted or will constitute the valid and legally binding obligations of such Seller, as applicable, enforceable against such Seller, as applicable, in accordance with their respective terms and conditions, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 3.3 **Noncontravention; Consents and Approvals**.

(a) Neither the execution and delivery of this Agreement, nor the consummation of the Transactions (including the assignments and assumptions referred to in Article II), will, subject to the Sale Order having been entered and still being in effect and not subject to any stay pending appeal at the time of Closing, (i) conflict with or result in a breach of the certificate of incorporation, by-laws or other organizational documents of either Seller, (ii) violate any Law to which either Seller is, or its respective assets or properties are, subject, or (iii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any Person the right to accelerate, terminate, modify or cancel or require any notice under any Contract to which either Seller is a party or by which it is bound or to which any of the Acquired Assets is subject, after giving effect to the Sale Order and any applicable order of the Bankruptcy Court authorizing the assignment and assumption of any such Contract that is an Assumed Contract hereunder, and, in the case of clause (ii) or (iii), for such conflicts, breaches, defaults, accelerations, rights or

failures to give notice as would not, individually or in the aggregate, have a Material Adverse Effect.

(b) Subject to the Sale Order having been entered and still being in effect (and not subject to any stay pending appeal at the time of Closing), no Consent, notice or filing is required to be obtained by either Seller from, or to be given by either Seller to, or made by either Seller with, any Governmental Entity in connection with the execution, delivery and performance by either Seller of this Agreement or any Related Agreement. After giving effect to the Sale Order and any applicable order of the Bankruptcy Court authorizing the assignment and assumption of any Contract that is an Assumed Contract hereunder, no Consent, notice or filing is required to be obtained by either Seller from, or to be given by either Seller to, or made by either Seller with, any Person that is not a Governmental Entity in connection with the execution, delivery and performance by either Seller of this Agreement or any Related Agreement, except where the failure to give notice, file or obtain such authorization, consent or approval would not, individually or in the aggregate, be material to the Business as a whole.

Section 3.4 **Financial Statements; No Undisclosed Liabilities**.

(a) The Data Room contains true, correct and complete copies of the consolidated, audited financial statements of Sellers for the fiscal years ended December 31, 2015 and December 31, 2016 (collectively, the "Audited Financial Statements") as well as the unaudited, consolidated balance sheets, statements of income, changes in stockholders' equity and cash flows of Sellers for the fiscal year period ended February 28, 2017 (such statements, the "Interim Financial Statements" and, collectively, with the Audited Financial Statements, the "Historical Financial Statements"). The Historical Financial Statements have been prepared in accordance with GAAP applied on a consistent basis during the periods involved, and fairly present, in all material respects, the financial condition and results of operations and cash flows of the Business as of the dates thereof or the periods then ended, except, in each case, as expressly indicated in such Historical Financial Statements, and subject, in the case of the Interim Financial Statements, to normal year-end adjustments that will not be material in amount or effect and the absence of footnotes.

(b) Except as set forth in Section 3.4(b) of the Disclosure Schedule, Sellers do not have any material Indebtedness or other Liabilities of a nature (whether accrued, absolute, contingent or otherwise) that would be required by GAAP to be reflected on a consolidated balance sheet of the Business (or in the notes thereto) that were not disclosed or reserved against in the Historical Financial Statements, except for Indebtedness or other Liabilities that (i) were incurred on or after December 31, 2016 in the Ordinary Course of Business, (ii) arise under this Agreement or the Related Agreements, or (iii) will be or are Liabilities of Sellers as debtors in the Chapter 11 Cases and that will not result in any Lien (other than Liens expressly contemplated by the Sale Order) on the Acquired Assets following the entry of the Sale Order.

Section 3.5 Compliance with Laws. Sellers are in compliance with all material Laws applicable to the Business or the Acquired Assets, except in any such case where the failure to be in compliance would not have a Material Adverse Effect, and neither Seller has received any written notice within the past twelve months relating to violations or alleged violations or material defaults under any Decree or any Permit, in each case, with respect to the Business.

Section 3.6 Title to Acquired Assets. Sellers, as of the Closing, have good and valid title to, or, in the case of leased assets, have good and valid leasehold interests in, the Acquired Assets, free and clear of all Liens (except for Permitted Liens). At the Closing or such time as title is conveyed under Section 2.1, Sellers will convey, subject to the Sale Order having been entered and still being in effect and not subject to any stay pending appeal at the time of Closing, good and valid title to, or valid leasehold interests in, all of the Acquired Assets, free and clear of all Liens (except for Permitted Liens), to the fullest extent permissible under section 363(f) of the Bankruptcy Code and subject to the rights of licensees under section 365(n) of the Bankruptcy Code.

Section 3.7 Contracts.

(a) Section 3.7 of the Disclosure Schedule and Sellers' schedules of assets and liabilities filed with the Bankruptcy Court by Sellers in the Chapter 11 Cases, taken together, include an accurate and complete list of the following Contracts to which either Seller is a party with respect to the Business as of the date hereof (and Sellers have made available, or within five (5) days following the date hereof shall make available, to Buyer true and complete copies of all such Contracts):

(i) any Contracts for the lease of personal property to or from any Person providing for lease payments in excess of $50,000 per annum;

(ii) any Contracts for the purchase or sale of equipment, supplies, products or other personal property, the performance of which will extend over a period of more than six months after the Closing Date, or which involve consideration in excess of $50,000 per annum;

(iii) any Contracts for services involving consideration in excess of $50,000 per annum;

(iv) any Contracts that is a collective bargaining agreement;

(v) any material licenses of Intellectual Property to or from any Person (other than licenses for commercially available, off-the-shelf or click-wrap software);

(vi) any employment Contracts as to which an employee is entitled to receive an annual salary in excess of $75,000, and all material severance Contracts;

(vii) any material Contracts prohibiting the Company from freely engaging in any material business (other than pursuant to any radius restriction

contained in any lease, reciprocal easement or development, construction, operating or similar agreement);

(viii) any Contracts relating to Indebtedness;

(ix) any Contracts that involve the lease of real property or that obligate the Company to purchase real property;

(x) any Contracts that create or govern a partnership, joint venture, strategic alliance or similar arrangement;

(xi) any Contracts (other than purchase orders accepted or confirmed in the Ordinary Course of Business) with the ten (10) largest customers of the Business, based on revenues during the twelve (12) month period ended February 28, 2016 and February 28, 2017;

(xii) any Contracts (other than purchase or equipment orders entered into in the Ordinary Course of Business) with the ten (10) largest suppliers of the Business, based on expenditures during the twelve (12) month period ended February 28, 2016 and February 28, 2017;

(xiii) any Contracts with any Related Party; and

(xiv) Contracts relating to employment or severance with any Current Employees (as determined as of the date of this Agreement).

(b) With respect to each Contract listed on the schedules of assets and liabilities filed with the Bankruptcy Court by Sellers in the Chapter 11 Cases or on Section 3.7 of the Disclosure Schedule and except as set forth in Section 3.7 of the Disclosure Schedules: (i) to Sellers' Knowledge, such Contract is in full force and effect and constitutes the valid and legally binding obligation of a Seller and, to Sellers' Knowledge, the counterparty thereto, enforceable against such Seller and, to Sellers' Knowledge, the counterparty thereto in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity; and (ii) except for breaches or defaults caused by or resulting from the Bankruptcy Events, neither the Seller party thereto nor, to Sellers' Knowledge, the counterparty thereto is in material breach or default thereof that presently would permit or give rise to a right of termination, modification or acceleration thereunder, except, in the case of either clause (i) or (ii), for such failure to be in full force and effect, breaches or defaults which would not, individually or in the aggregate, have a Material Adverse Effect on the Business.

Section 3.8 Intellectual Property.

(a) Section 3.8 of the Disclosure Schedule sets forth a true and complete list of (i) all Registered Intellectual Property that is owned by either Seller and used in or related to the Business, (ii) all material Contracts pursuant to which either Seller obtains the right to use any Intellectual Property, and (iii) all material Contracts pursuant to

which either Seller grants to any other Person the right to use any Intellectual Property. Sellers own all such Registered Intellectual Property free and clear of all Liens (except for Permitted Liens), and all such Registered Intellectual Property is valid, subsisting and, to Sellers' Knowledge, enforceable, and is not subject to any outstanding Decree adversely affecting Sellers' use thereof or rights thereto. Immediately after the Closing, Buyer will own or have the right to, subject to the Sale Order having been entered and still being in effect and not subject to any stay pending appeal at the time of Closing, use all of the Intellectual Property included in the Acquired Assets on the same terms and conditions as in effect for Sellers immediately prior to the Closing, to the fullest extent permissible under section 363(f) of the Bankruptcy Code and subject to the rights of licensees under section 365(n) of the Bankruptcy Code.

(b) To Sellers' Knowledge and except as set forth on Section 3.8 of the Disclosure Schedule, none of the use of the Intellectual Property included in the Acquired Assets, the conduct of the Business as currently conducted, or any of the Products sold or services provided by Sellers or any of their Affiliates in connection therewith, infringes upon or otherwise violates the Intellectual Property of any other Person. To Sellers' Knowledge, no third party is infringing any Intellectual Property owned by either Seller and included in the Acquired Assets, except as would not reasonably be expected to have a Material Adverse Effect.

(c) Except as set forth in the statements of financial affairs filed with the Bankruptcy Court by Sellers in the Chapter 11 Cases, as of the date hereof, no Litigation is currently pending or, to Sellers' Knowledge, threatened against either Seller that challenges the validity, ownership, registrability, enforceability, infringement or use of any material Intellectual Property owned by either Seller.

(d) All Technology that is material to the Business operates and performs in all material respects in accordance with its documentation and functional specifications and otherwise as required in connection with the Business, and has not malfunctioned or failed within the past twelve (12) months in any manner that (i) resulted in a material disruption to the conduct of the Business, or (ii) has had or could reasonably be expected to have a Material Adverse Effect. To Sellers' Knowledge, such Technology does not contain any "time bombs," "Trojan horses," "back doors," "trap doors," "worms," viruses, bugs, faults or other devices or effects that (A) enable or assist any Person to access without authorization such Technology, or (B) otherwise significantly adversely affect the functionality of such Technology. To Sellers' Knowledge, in the past twelve (12) months, no Person has gained unauthorized access to the Technology that is material to the Business. Sellers have implemented commercially reasonable security measures and backup and disaster recovery plans with respect to the Technology that is material to the Business. Sellers are in material compliance with any privacy policies publicly posted by Sellers and any Laws relating to personal data.

Section 3.9 Litigation. The statements of financial affairs filed with the Bankruptcy Court by Sellers in the Chapter 11 Cases set forth all Litigation brought by or against either Seller, and to Sellers' Knowledge, there is no other Litigation threatened in writing before any Governmental Entity against either Seller.

Section 3.10 Environmental, Health and Safety Matters.

(a) Sellers are in compliance with all applicable Environmental, Health and Safety Requirements with respect to the Leased Real Property, except in any such case where the failure to be in compliance would not have a Material Adverse Effect, and there are no Liabilities under any Environmental, Health and Safety Requirements with respect to the Business which would have a Material Adverse Effect.

(b) To Sellers' Knowledge, neither Seller has received any written notice or report regarding any violation of Environmental, Health and Safety Requirements or any Liabilities relating to the Business or any Leased Real Property arising under Environmental, Health and Safety Requirements which violation has not been appropriately addressed and/or cured in accordance with such Environmental, Health and Safety Requirements. There is no Decree outstanding, or any Litigation pending or, to Sellers' Knowledge, threatened, relating to compliance with or Liability under any Environmental, Health and Safety Requirements affecting the Business or any Leased Real Property.

(c) Sellers have made available to Buyer such environmental reports, documents, studies, analyses, investigations, audits and reviews in the Sellers' possession as necessary to reasonably disclose to Buyer any environmental, health or safety Liability known to Sellers with respect to the Leased Real Property which would have a Material Adverse Effect.

(d) To Sellers' Knowledge, there has been no release, threatened release, contamination or disposal of Hazardous Substances at any Leased Real Property, or waste generated by either Seller or any legally responsible predecessor corporation thereof, that has given or could reasonably be expected to give rise to any Liability under any Environmental, Health and Safety Requirement which would have a Material Adverse Effect. There are no underground storage tanks, asbestos-containing materials, lead-based products or polychlorinated biphenyls on any of the Leased Real Property which could be reasonably expected to have a Material Adverse Effect. To Sellers' Knowledge, no property currently or formerly owned or operated in connection with the Business has been contaminated with any Hazardous Substance that could reasonably be expected to require any investigation or remediation under Environmental, Health and Safety Requirements.

(e) To Sellers' Knowledge, neither Seller has entered into any indemnification or other agreements with any third party relating to any Liability or potential Liability under any Environmental, Health and Safety Requirements.

Section 3.11 Employees and Employment Matters. Neither Seller is a party to or bound by any collective bargaining agreement covering the Current Employees (as determined as of the date of this Agreement), nor is there any ongoing strike, walkout, work stoppage, or other material collective bargaining dispute affecting either Seller with respect to the Business. To Sellers' Knowledge, there is no organizational effort being made or threatened by or on behalf of any labor union with respect to the Current Employees (as determined as of the date of this

Agreement). Except for potential violations that are the subject of ongoing Litigation as set forth in the statements of financial affairs filed with the Bankruptcy Court by Sellers in the Chapter 11 Cases, within the ninety (90) day period ending on the date hereof, neither Seller has implemented any plant closing or layoff of the Current Employees (as determined as of the date of this Agreement) in violation of the WARN Act. Within five (5) days of the date hereof, Sellers shall make available to Buyer a list of all Current Employees.

Section 3.12 Employee Benefit Plans.

(a) Section 3.12 of the Disclosure Schedule lists each material Employee Benefit Plan that Sellers maintain or to which Sellers contribute. With respect to each such Employee Benefit Plan:

(i) such Employee Benefit Plan, if intended to meet the requirements of a "qualified plan" under Section 401(a) of the IRC, has received a favorable determination letter from the IRS or may rely on a favorable opinion letter issued by the IRS; and

(ii) Sellers have made available to Buyer an accurate summary of such Employee Benefit Plan.

(b) Each Employee Benefit Plan has been established, funded, maintained and administered, in each case, in all material respects, in accordance with its terms and all applicable Laws. As of the date hereof, there is no material pending or, to Sellers' Knowledge, threatened, Litigation relating to the Employee Benefit Plans.

Section 3.13 Real Property.

(a) Sellers do not own any real property.

(b) Section 3.13(b) of the Disclosure Schedule sets forth the address of each Leased Real Property, and a true and complete list of all Leases for such Leased Real Property. Sellers have made available, or within seven (7) days of the date hereof shall make available, to Buyer true and complete copies of such Leases and all other material Contracts entered into or delivered in connection therewith, as amended through the date hereof. With respect to each of the Leases:

(i) except as set forth in Section 3.13 (b) of the Disclosure Schedule, such Lease is legal, valid, binding, enforceable, and, to Sellers' Knowledge, in full force and effect against a Seller subject to proper authorization and execution of such Lease by the other party thereto and the application of any bankruptcy or other creditor's rights Laws; and

(ii) the current and intended use of the Leased Real Property complies with all applicable Laws.

Section 3.14 Permits. Section 3.14 of the Disclosure Schedule contains a list of all material Permits that Sellers hold as of the date hereof in connection with the operations of the

Business. As of the date hereof, other than as may be set forth on Schedule 3.14 hereto (i) there is no Litigation pending or, to Sellers' Knowledge, threatened that seeks the revocation, cancellation, suspension, failure to renew or adverse modification of any material Assumed Permits, except where a failure of this representation and warranty to be so true and correct could not reasonably be expected to have a Material Adverse Effect, and (ii) to Sellers' Knowledge, all required filings with respect to the material Assumed Permits have been made and all required applications for renewal thereof have been filed, except where a failure of this representation and warranty to be so true and correct could not reasonably be expected to have a Material Adverse Effect.

Section 3.15 Insurance. Section 3.15 of the Disclosure Schedule contains a list, as of the date hereof, of all material Insurance Policies. The term "Insurance Policies" does not include policies of insurance that fund or relate to any Employee Benefit Plan. The material Insurance Policies (including the amounts and deductibles thereunder) are, in the good faith judgment of Sellers, commercially reasonable for the Business. To Sellers' Knowledge, and other than as may be set forth on Schedule 3.15 hereto (i) all of the material Insurance Policies are in full force, and effect and no written notice of cancellation or termination has been received by Sellers with respect to any of such Insurance Policies, and (ii) all premiums due and payable by Sellers or their Affiliates under the material Insurance Policies prior to the date hereof have been duly paid. Except as disclosed on Section 3.15 of the Disclosure Schedule, there is no material claim pending under any of the material Insurance Policies.

Section 3.16 Brokers' Fees. Neither Seller has entered into any Contract to pay any fees or commissions to any broker, finder or agent with respect to the Transactions for which Buyer could become liable or obligated to pay.

Section 3.17 No Other Representations or Warranties. Except for the representations and warranties contained in this Article III (as qualified, amended, supplemented and modified by the Disclosure Schedule), neither a Seller nor any other Person makes (and Buyer is not relying upon) any other express or implied representation or warranty with respect to Sellers, the Business, the Acquired Assets (including the value, condition or use of any Acquired Asset), the Assumed Liabilities or the Transactions, and Sellers disclaim any other representations or warranties, whether made by Sellers, any Affiliate of Sellers or any of their respective officers, directors, employees, agents or Representatives. Except for the representations and warranties contained in this Article III (as qualified, amended, supplemented and modified by the Disclosure Schedule), each Seller (i) expressly disclaims and negates any representation or warranty, express or implied, at common law, by statute or otherwise, relating to the condition of the Acquired Assets (including any implied or expressed warranty of title, merchantability or fitness for a particular purpose, or of the probable success or profitability of the ownership, use or operation of the Business or the Acquired Assets by Buyer after the Closing), and (ii) disclaims all liability and responsibility for any representation, warranty, projection, forecast, statement or information made, communicated or furnished (orally or in writing) to Buyer or its Affiliates or Representatives (including any opinion, information, projection or advice that may have been or may be provided to Buyer by any director, officer, employee, agent, consultant or Representative of either Seller or any of their Affiliates). The disclosure of any matter or item in the Disclosure Schedule shall not be deemed to constitute an acknowledgment that any such

matter is required to be disclosed or is material or that such matter would result in a Material Adverse Effect.

ARTICLE IV
BUYER'S REPRESENTATIONS AND WARRANTIES

Buyer represents and warrants to Sellers as follows:

Section 4.1 Organization of Buyer. Buyer is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware and has all requisite limited liability company power and authority to own, lease and operate its assets and to carry on its business as now being conducted.

Section 4.2 Authorization of Transaction.

(a) Buyer has full limited liability company power and authority to execute and deliver this Agreement and all Related Agreements to which it is a party and to perform its obligations hereunder and thereunder.

(b) The execution, delivery and performance of this Agreement and all other Related Agreements to which Buyer is a party have been duly authorized by Buyer, and no other limited liability company action on the part of Buyer is necessary to authorize the execution, delivery and performance by Buyer of this Agreement or the Related Agreements to which it is a party or to consummate the Transactions.

(c) This Agreement has been duly and validly executed and delivered by Buyer, and, upon their execution and delivery in accordance with the terms of this Agreement, each of the Related Agreements to which Buyer is a party will have been duly and validly executed and delivered by Buyer. Assuming that this Agreement constitutes a valid and legally-binding obligation of Sellers, this Agreement constitutes a valid and legally binding obligation of Buyer, enforceable against Buyer in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity. Assuming, to the extent that they are a party thereto, that each Related Agreement constitutes a valid and legally binding obligation of Sellers, each Related Agreement to which Buyer is a party, when executed and delivered constituted, or will constitute, the valid and legally binding obligation of Buyer, enforceable against Buyer in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium or other similar Laws relating to creditors' rights and general principles of equity.

Section 4.3 Noncontravention. Neither the execution and delivery of this Agreement, nor the consummation of the Transactions (including the assignments and assumptions referred to in Article II) will (i) conflict with or result in a breach of the certificate of incorporation or bylaws, or other organizational documents, of Buyer, (ii) subject to any consents required to be obtained from any Governmental Entity, violate any Law to which Buyer is, or its assets or properties are subject, or (iii) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any Person the right to accelerate, terminate,

modify or cancel, or require any notice under any Contract to which Buyer is a party or by which it is bound, except, in the case of either clause (ii) or (iii), for such conflicts, breaches, defaults, accelerations, rights or failures to give notice as would not, individually or in the aggregate, reasonably be expected to prevent, materially delay or materially impair the ability of Buyer to consummate the Transactions. Buyer is not required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any Governmental Entity in order for the Parties to consummate the Transactions, except where the failure to give notice, or file or obtain such authorization, consent or approval would not, individually or in the aggregate, reasonably be expected to prevent, materially delay or materially impair the ability of Buyer to consummate the Transactions.

Section 4.4 Financial Capacity. As of the Closing, Buyer (i) will have the resources (including sufficient funds available to pay the Purchase Price and any other expenses and payments incurred by Buyer in connection with the Transactions) and capabilities (financial or otherwise) to perform its obligations hereunder, and (ii) will not have incurred any commitment, restriction or Liability of any kind, that would impair or adversely affect such resources and capabilities.

Section 4.5 Adequate Assurances Regarding Executory Contracts. As of the Closing, Buyer 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 Assumed Contracts.

Section 4.6 Good Faith Purchaser. Buyer is a "good faith" purchaser, as such term is used in the Bankruptcy Code and the court decisions thereunder. Buyer is entitled to the protections of section 363(m) of the Bankruptcy Code with respect to all of the Acquired Assets. Buyer has negotiated and entered into this Agreement in good faith and without collusion or fraud of any kind.

Section 4.7 Brokers' Fees. Neither Buyer nor any of its Affiliates has entered into any Contract to pay any fees or commissions to any broker, finder or agent with respect to the Transactions for which either Seller could become liable or obligated to pay.

ARTICLE V
PRE-CLOSING COVENANTS

The Parties agree as follows with respect to the period between the execution of this Agreement and the Closing (except as otherwise expressly stated to apply to a different period):

Section 5.1 Certain Efforts; Cooperation.

(a) Each of the Parties shall use its commercially reasonable efforts in the Ordinary Course of Business, and subject to the orders of the Bankruptcy Court, to make effective the Transactions on or prior to the End Date (including satisfaction, but not waiver, of the conditions to the obligations of the Parties to consummate the Transactions set forth in Article VII), except as otherwise provided in Section 5.2. Without limiting the generality of the foregoing, each of the Parties shall use its commercially reasonable efforts in the Ordinary Course of Business not to take any action, or permit any of its Subsidiaries to take any action, to materially diminish the

ability of any other Party to consummate, or materially delay any other Party's ability to consummate, the Transactions, including taking any action that is intended or would reasonably be expected to result in any of the conditions to any other Party's obligations to consummate the Transactions set forth in Article VII not being satisfied.

(b) On and after the Closing, Sellers and Buyer shall use their commercially reasonable efforts in the Ordinary Course of Business to take, or cause to be taken by themselves or any of their respective Affiliates, all appropriate action, to do or cause to be done by Sellers and Buyer or any of their respective Affiliates all things necessary, proper or advisable under applicable Law, and to execute and deliver such documents, ancillary agreements and other papers as may be required to carry out the provisions of this Agreement and consummate and make effective the Transactions, including in order to more effectively vest in Buyer all of Sellers' right, title and interest to the Acquired Assets, free and clear of all Liens (other than Permitted Liens).

(c) From and after the Closing Date, Sellers agree to reasonably cooperate, and shall not interfere, with Buyer or its Representatives with respect to the operation of the Continuing Stores.

Section 5.2 Notices and Consents.

(a) To the extent required by the Bankruptcy Code or the Bankruptcy Court, Sellers shall give any notices to third parties, and each Seller shall use its reasonable best efforts to obtain any third party Consents or sublicenses.

(b) Sellers and Buyer shall cooperate with one another (a) in promptly determining whether any filings are required to be or should be made or Consents or Permits are required to be or should be obtained under any applicable Law in connection with this Agreement and the Transactions, and (b) in promptly making any such filings, furnishing information required in connection therewith and seeking to obtain timely any such Consents or Permits.

(c) Subject to the terms and conditions set forth in this Agreement and applicable Law, Buyer and Sellers shall (A) promptly notify the other Party of any communication to that Party from any Governmental Entity in respect of any filing, investigation or inquiry concerning this Agreement or the Transactions, (B) if practicable, permit the other Party the opportunity to review in advance all of the information relating to Sellers or Buyer and its Affiliates, as the case may be, that appears in any filing made with, or written materials submitted to, any third party and/or any Governmental Entity in connection with this Agreement and the Transactions and incorporate the other Party's reasonable comments, (C) not participate in any substantive meeting or discussion with any Governmental Entity in respect of any filing, investigation, or inquiry concerning this Agreement and the Transactions unless it consults with the other Party in advance, and, to the extent permitted by such Governmental Entity, gives the other Party the opportunity to

attend, and (D) furnish the other Party with copies of all correspondence, filings, and written communications between them and their Subsidiaries and Representatives, on the one hand, and any Governmental Entity or its respective staff, on the other hand, with respect to this Agreement and the Transactions, provided, however, that any materials or information provided pursuant to any provision of this Section 5.2(c) may be redacted before being provided to the other Party (i) to remove references concerning the valuation of Buyer or Sellers, (ii) financing arrangements, (iii) as necessary to comply with contractual arrangements, and (iv) as necessary to address reasonable privilege or confidentiality issues. Sellers and Buyer may, as each deems advisable and necessary, reasonably designate any competitively sensitive material provided to the other under this Section 5.2(c) as "outside counsel only." Such materials and the information contained therein shall be given only to the outside legal counsel and any retained consultants or experts of the recipient and shall not be disclosed by such outside counsel to employees, officers or directors of the recipient, unless express written permission is obtained in advance from the source of the materials (Sellers or Buyer, as the case may be). Each of Sellers and Buyer shall promptly notify the other Party if such Party becomes aware that any third party has any objection to this Agreement on antitrust or anti-competitive grounds.

Section 5.3 Bankruptcy Actions.

(a) On or before May 19, 2017, Sellers shall serve and file a motion (the "Sale Motion") in the Chapter 11 Cases requesting that the Bankruptcy Court enter the Sale Order at a hearing on the Sale Motion. Thereafter, Buyer and Sellers shall take all actions as may be reasonably necessary to cause the Sale Order to be issued, entered and become a Final Order. Each of Sellers and Buyer agree to take any action reasonably necessary or appropriate to obtain the issuance and entry of the Sale Order, including furnishing affidavits, declarations or other documents or information for filing with the Bankruptcy Court.

(b) Sellers shall provide appropriate notice of the hearings on the Sale Motion, as is required by the Bankruptcy Code and the Bankruptcy Rules to all Persons entitled to notice, including, but not limited to, all Persons that have asserted Liens in the Acquired Assets, all parties to the Assumed Contracts and all Taxing authorities in jurisdictions applicable to Sellers. Sellers shall be responsible for making all appropriate filings relating thereto with the Bankruptcy Court, which filings shall be submitted, to the extent practicable, to Buyer prior to their filing with the Bankruptcy Court for Buyer's prior review.

(c) On or before ____ __, 2017, Sellers shall serve a cure notice (the "Cure Notice") by first class mail on all non-debtor counterparties to all Non-Real Property Contracts and Leases and provide a copy of the same to Buyer. The Cure Notice shall inform each recipient that its Non-Real Property Contract or Lease may be designated by Buyer as either assumed or rejected, and the timing and procedures relating to such designation, and, to the extent applicable (i) the title of the Non-Real Property Contract or Lease, (ii) the name of the counterparty to the Non-Real Property Contract or Lease, (iii) Sellers' good faith estimates of the Cure Amounts

required in connection with such Non-Real Property Contract or Lease, (iv) the identity of Buyer and (v) the deadline by which any such Non-Real Property Contract or Lease counterparty may file an objection to the proposed assumption and assignment and/or cure, and the procedures relating thereto.

(d) To the extent consistent with their fiduciary duties, the Parties (in consultation with the Committee) shall consult with each other regarding pleadings that any of them intends to file with the Bankruptcy Court in connection with, or which might reasonably affect the Bankruptcy Court's approval of the Sale Order. Each Seller shall promptly provide Buyer and its counsel with copies of all notices, filings and orders of the Bankruptcy Court that such Seller has in its possession (or receives) pertaining to the motion for approval of the Sale Order, or any other order related to the Transactions, but only to the extent that such papers are not publicly available on the docket of the Bankruptcy Court or otherwise made available to Buyer and its counsel. Neither Seller shall seek any modification to the Sale Order by the Bankruptcy Court or any other Governmental Entity of competent jurisdiction to which a decision relating to the Chapter 11 Cases has been appealed, in each case, without prior written notice to Buyer.

(e) If the Sale Order, or any other orders of the Bankruptcy Court relating to this Agreement or the Transactions shall be appealed by any Person, or if any petition for certiorari or motion for reconsideration, amendment, clarification, modification, vacation, stay, rehearing or reargument shall be filed with respect to the Sale Order, or other such order, subject to rights otherwise arising from this Agreement, Sellers shall use their reasonable best efforts to prosecute such appeal, petition or motion and obtain an expedited resolution of any such appeal, petition or motion.

(f) Notwithstanding anything expressed or implied herein to the contrary, to the extent consistent with their fiduciary duties, Sellers shall not consent or agree to the allowance or re-classification of any Claim as an Administrative Claim or a Priority Claim without prior written notice to Buyer.

Section 5.4 **Conduct of Business**. Except as may be required by the Bankruptcy Court or as agreed to in writing by Buyer, from the date hereof until the Closing, Sellers shall use their commercially reasonable efforts to: (i) operate the Business in the Ordinary Course of Business, including ordering and purchasing Inventory, and making capital, sales and marketing expenditures, (ii) preserve in all material respects the Acquired Assets (excluding sales of Inventory in the Ordinary Course of Business), and (iii) preserve its current relationships with the suppliers, vendors, customers, clients, contractors and other Persons having business dealings with the Business. For the avoidance of doubt, the Parties acknowledge that the foregoing shall not require Sellers to breach any of the covenants set forth in this Agreement which obligate Sellers to operate the Business in the Ordinary Course of Business. Without limiting the generality of the foregoing, except as expressly required or contemplated by this Agreement, from the date hereof until the Closing, without the prior written consent of Buyer (which consent shall not be unreasonably withheld or delayed), Sellers shall not:

(a) sell, lease (as lessor), transfer or otherwise dispose of (or permit to become subject to any additional Lien, other than Liens expressly contemplated by the Sale Order, Liens arising under any Bankruptcy Court orders relating to the use of cash collateral (as defined in the Bankruptcy Code), Liens arising in connection with the DIP Financing, and Liens that will not be enforceable against any Acquired Asset following the Closing in accordance with the Sale Order, any material Acquired Assets, other than (A) the sale of Inventory in the Ordinary Course of Business, (B) the collection of receivables, (C) the use of prepaid assets and Records in the conduct of the Business in the Ordinary Course of Business, and (D) in connection with store closings listed on Section 5.4 of the Disclosure Schedule or otherwise consented to by Buyer;

(b) conduct any store closings or "going out of business," liquidation or similar sales;

(c) declare, set aside, make or pay any dividend or other distribution of any assets (including cash) to any Affiliate or other Person holding direct or indirect equity interests in either Seller;

(d) (i) grant or provide any severance or termination payments or benefits to any Current Employee of Sellers or any of their Affiliates, (ii) increase the compensation, bonus or pension, welfare, severance or other benefits of, pay any bonus to, or make any new equity awards to any Current Employee of Sellers or any of their Affiliates, except for increases in base salary in the Ordinary Course of Business consistent with past practice for employees who are not officers, (iii) establish, adopt, amend or terminate any Employee Benefit Plan or amend the terms of any outstanding equity-based awards, (iv) take any action intended to accelerate the vesting or payment, or fund or in any other way secure the payment, of compensation or benefits under any Employee Benefit Plan, to the extent not already provided in any such Employee Benefit Plan, (v) enter into any employment, severance, change in control, termination, deferred compensation or other similar agreement with any Current Employee of Sellers or their Affiliates, (vi) change any actuarial or other assumptions used to calculate funding obligations with respect to any Employee Benefit Plan or to change the manner in which contributions to such plans are made or the basis on which such contributions are determined, except as may be required by GAAP, (vii) forgive any portion of any loans to Current Employees of Sellers or any of their Affiliates, or (viii) relocate any Current Employees;

(e) solely with respect to any action which could have an adverse effect on Buyer or any of its Affiliates following the Closing, make or rescind any material election relating to Taxes, settle or compromise any material claim, demand, cause of action, Litigation or controversy relating to Taxes, or except as may be required by applicable Law or GAAP, make any material change to any of its methods of Tax accounting, methods of reporting income or deductions for Tax, or Tax accounting practice or policy from those employed in the preparation of its most recent Tax Returns;

(f) acquire, dispose of, or allow to lapse any material assets or properties (other than Excluded Assets) or make any other material investment in any such event outside the Ordinary Course of Business;

(g) enter into or agree to enter into any merger or consolidation with any corporation or other entity;

(h) except in the Ordinary Course of Business, cancel or compromise any material Indebtedness or claim or waive or release any material right, in each case, that is Indebtedness or a claim or right that is an Acquired Asset or Assumed Liability;

(i) introduce any material change with respect to the operation of the Business, including any material change in the type, nature, composition or quality of Products or services sold in the Business, other than, in each case, in the Ordinary Course of Business;

(j) enter into any material new Contract or modify, terminate, amend, restate, supplement, renew or waive any rights under or with respect to any existing material Contract or the DIP Financing;

(k) terminate, amend, restate, supplement, renew or waive any rights under or with respect to, any Lease, or, other than in the Ordinary Course of Business, any material Contract or Permit, or increase any payments required to be paid thereunder (whether or not in connection with obtaining any Consents) by Buyer after the Closing, or increase, or take any affirmative action not required by the terms thereof that would result in any increase in, any operating expenses of any Leases without Buyer's written consent, not to be unreasonably withheld, conditioned or delayed, provided, that such consent of Buyer may be conditioned on a reasonable valuation adjustment based on the increased costs in an amount to be determined in good faith;

(l) deviate from past practice in the Ordinary Course of Business with respect to ordering or maintenance of Inventory, or treat Inventory in any manner, whether in dealings with third parties or otherwise, in a manner inconsistent with the fact that the Inventory is owned by Buyer;

(m) file any motion to pay any pre-Petition claims of any Person without the express written consent of Buyer, unless such payments are consistent with the terms and conditions of the DIP Financing and the Cash Budget; or

(n) prepay any expenses unless expressly set forth in the Cash Budget.

Section 5.5 **Notice of Developments**. From the date hereof until the Closing Date, Sellers shall promptly disclose to Buyer, on the one hand, and Buyer shall promptly disclose to Sellers, on the other hand, in writing (in the form of an updated Disclosure Schedule, if applicable) after attaining knowledge (as applicable to each of Sellers and Buyer) of any material failure of any of Sellers or Buyer to comply with or satisfy any of their respective covenants,

conditions or agreements to be complied with or satisfied by them under this Agreement in any material respect; provided, however, that the delivery of any notice pursuant to this Section 5.5 shall not limit or otherwise affect the remedies available to the party receiving such notice under this Agreement.

Section 5.6 **Access**. Upon reasonable advance written request by Buyer, Sellers shall permit Buyer and its Representatives to have reasonable access during normal business hours, and in a manner so as not to interfere unreasonably with the normal business operations of Sellers, to all premises, properties, personnel, Records and Contracts related to the Business, in each case, for the sole purpose of evaluating the Business; provided, however, that, for avoidance of doubt, the foregoing shall not require any Party to waive, or take any action with the effect of waiving, its attorney-client privilege or any confidentiality obligation to which it is bound with respect thereto or take any action in violation of applicable Law.

Section 5.7 **Press Releases and Public Announcements**. Prior to the Closing and for a period of ninety (90) days following the Closing Date, no Party shall issue any press release or make any public announcement relating to the subject matter of this Agreement without the prior written approval of each of Buyer and AP Inc.; provided, however, that any Party may make (and permit the making of) any public disclosure that it believes in good faith is required by applicable Law, including as may be necessary or appropriate in the Bankruptcy Court (in which case the disclosing Party shall use its reasonable best efforts to advise the other Parties, as applicable, prior to making the disclosure).

Section 5.8 **Bulk Transfer Laws**. Buyer acknowledges that Sellers will not comply with the provisions of any bulk transfer Laws of any jurisdiction in connection with the Transactions, and hereby waives all claims related to the non-compliance therewith. The Parties intend that pursuant to section 363(f) of the Bankruptcy Code, the transfer of the Acquired Assets shall be free and clear of any Liens on the Acquired Assets, including any Liens arising out of the bulk transfer Laws, and the Parties shall take such steps as may be necessary or appropriate to so provide in the Sale Order.

Section 5.9 **Suppliers**. Sellers shall, following the request thereof by Buyer, seek and use commercially reasonable efforts to arrange meetings and telephone conferences with material suppliers of Sellers as may be reasonably requested by Buyer and necessary and appropriate for Buyer to coordinate transition of such suppliers following the Closing. For the avoidance of doubt, Buyer shall be permitted to contact any customers, suppliers or licensors of the Business in connection with or pertaining to any matter; provided, however, that during the period from the date hereof until the Closing, (i) Buyer shall give prior notice to Sellers, and (ii) Sellers shall be permitted, but shall not be obligated, to attend and participate in any meeting or telephone conference with such customers, suppliers or licensors to the extent reasonably requested.

Section 5.10 **Inventory**. [Hold all of the Inventory in trust for the benefit of Buyer, and not sell any material portion of the Inventory at more than ten percent (10%) below the generally prevailing discount level for Inventory as of the date hereof. *Subject to further discussion*]

Section 5.11 **Delivery of Disclosure Schedule**. No later than ____ __, 2017, Sellers shall deliver to Buyer the "Disclosure Schedule", which shall be in form and substance reasonably acceptable to Buyer (it being understood that if any disclosure set forth thereon is materially inconsistent with, or would cause the representations and warranties of Sellers in this Agreement to be materially inconsistent with, the information contained in the Data Room prior to the date hereof or the schedules filed by Sellers in the Bankruptcy Court in connection with the Chapter 11 Cases prior to the date hereof, then a Material Adverse Effect shall be deemed to have occurred and Buyer shall be entitled to terminate this Agreement pursuant to Section 8.1(b)(ii)).

ARTICLE VI
OTHER COVENANTS.

The Parties agree as follows with respect to the period from and after the Closing:

Section 6.1 **Cooperation**. Each of the Parties shall cooperate with each other, and shall use their commercially reasonable efforts to cause their respective Representatives to cooperate with each other, to provide an orderly transition of the Acquired Assets and Assumed Liabilities from Sellers to Buyer and to minimize the disruption to the Business resulting from the Transactions.

Section 6.2 **Further Assurances**. In case at any time from and after the Closing any further action is necessary or reasonably required to carry out the purposes of this Agreement, subject to the terms and conditions of this Agreement and the terms and conditions of the Sale Order, at any Party's request and sole cost and expense, each Party shall take such further action (including the execution and delivery to any other Party of such other reasonable instruments of sale, transfer, conveyance, assignment, assumption and confirmation and providing materials and information) as another Party may reasonably request as shall be necessary to transfer, convey and assign to Buyer all of the Acquired Assets, to confirm Buyer's assumption of the Assumed Liabilities and to confirm Sellers' retention of the Excluded Assets and Excluded Liabilities. Without limiting the generality of this Section 6.2, to the extent that either Buyer or Sellers discovers any additional assets or properties which should have been transferred or assigned to Buyer as Acquired Assets but were not so transferred or assigned, Buyer and Sellers shall cooperate and execute and deliver any instruments of transfer or assignment necessary to transfer and assign such asset or property to Buyer.

Section 6.3 **Availability of Business Records**. From and after the Closing, Buyer shall promptly provide to Sellers and their respective Representatives and the Trustee (after reasonable notice and during normal business hours and without charge to Sellers) access to all Records included in the Acquired Assets for periods prior to the Closing and reasonable access to Transferred Employees to the extent that such access is necessary in order for Sellers or the Trustee (as applicable) to comply with applicable Law or any Contract to which it is a party, for liquidation, winding up, Tax reporting or other proper purposes and so long as such access is subject to an obligation of confidentiality, and shall preserve such Records until the latest of (i) seven years after the Closing Date, (ii) the required retention period for all government contact information, records or documents, (iii) the conclusion of all bankruptcy proceedings relating to the Chapter 11 Cases or (iv) in the case of Records related to Taxes, the expiration of the statute

of limitation applicable to such Taxes. Such access shall include access to any information in electronic form to the extent reasonably available. Buyer acknowledges that Sellers have the right to retain originals or copies of all of Records included in the Acquired Assets for periods prior to the Closing. Prior to destroying any Records included in the Acquired Assets for periods prior to the Closing, Buyer shall notify Sellers thirty (30) days in advance of any such proposed destruction of its intent to destroy such Records, and Buyer shall permit Sellers to retain such Records, at Sellers' cost and expense. With respect to any Litigation and claims that are Excluded Liabilities, Buyer shall render all reasonable assistance that Sellers and the Trustee may request in defending or prosecuting such Litigation or claim and shall make available to Sellers and the Trustee such personnel as are most knowledgeable about the matter in question, all without charge.

Section 6.4 Employee Matters.

(a) With the exception of the Selected Employees, each Seller shall, effective as of the day prior to the Closing Date, discharge all Current Employees. Prior to the Closing, Buyer shall offer (or cause a designee of Buyer to offer) to employ those Current Employees to operate the Continuing Stores (once so designated) (provided that such Current Employees will be advised that such offer may be rescinded if the Lease for such Continuing Store is rejected), with employment commencing as of the date that such Lease is assumed. For purposes of this Agreement, each Current Employee who receives such an offer of employment shall be referred to as an "Offeree." Prior to the Closing Date, Buyer shall provide Sellers with a schedule setting forth a list of the names of all Offerees. Each Offeree who accepts such offer prior to the Closing shall be referred to herein as a "Transferred Employee." Except to the extent that Sellers fail to comply in any material respects with Section 6.4(c)(i) and Section 6.4(c)(iii), Buyer hereby agrees that the offer to an Offeree shall include a level of base salary, wages and benefits that are substantially comparable in the aggregate to the base salary, wages and benefits provided to such Offeree by Sellers as of the Closing Date and shall also include Buyer's agreement to assume Seller's liability for any unpaid bonuses, vacation pay and benefits.

(b) Each Current Employee of Sellers who is not a Transferred Employee shall be referred to herein as an "Excluded Employee."

(c) Following the date of this Agreement,

(i) Sellers shall allow Buyer or any of its Representatives reasonable access upon reasonable advance notice to meet with and interview the Current Employees during normal business hours; *provided*, *however*, that such access shall not unduly interfere with the operation of the Business prior to the Closing;

(ii) Sellers shall not, nor shall Sellers authorize or direct or give express permission to any Affiliate, officer, director or employee of either Seller or any Affiliate, to (A) interfere with Buyer's or its Representatives' rights under Section 6.4(a) to make offers of employment to any Offeree, or (B) solicit or encourage any Offeree not to accept, or to reject, any such offer of employment; and

(iii) Sellers shall provide reasonable cooperation and information to Buyer or the relevant Representative as reasonably requested by Buyer or such Representative with respect to its determination of appropriate terms and conditions of employment for any Offeree.

(d) Notwithstanding anything in this Agreement to the contrary, Sellers shall process the payroll for and pay, or cause to be paid, the base wages, base salary and benefits that are due and payable on or prior to the Closing Date with respect to all employees of Sellers;

(e) Buyer shall process the payroll for and shall pay, or cause to be paid, base wages, base salary and benefits that accrue after the Closing Date with respect to all Transferred Employees. Buyer shall withhold and remit all applicable payroll taxes as required by Law after the Closing Date with respect to Transferred Employees. In addition, Buyer shall (or shall cause its designee to) process all employee and Tax reporting covering the periods prior to the Closing in connection with the Excluded Employees and the Transferred Employees that will be required to be prepared and delivered after the Closing.

For the avoidance of doubt, and without limiting the effect of any other term of this Agreement, if prior to the Closing Date Buyer has designated a Lease for a store for rejection by providing written notice to Sellers in accordance with Section 2.6, Buyer shall not be liable for any employee/employment related Liabilities with respect to the employees of such store, with the exception of Buyer's payment obligations to Seller as expressly set forth in this Section 6.4.

(f) Nothing contained herein shall be construed as requiring Buyer, and neither Sellers nor any of their Affiliates shall take any affirmative action that would have the effect of requiring Buyer, to continue any specific Employee Benefit Plan or to continue the employment of any specific Person. Nothing in this Agreement is intended to establish, create or amend, nor shall anything in this Agreement be construed as establishing, creating or amending, any employee benefit plan, practice or program of Buyer, any of its Affiliates or any of Sellers' Employee Benefit Plans, nor shall anything in this Agreement create or be construed as creating any Contract of employment or as conferring upon any Transferred Employee or upon any other Person, other than the Parties in accordance with the terms of this Agreement, any rights to enforce any provisions of this Agreement under ERISA or otherwise.

(g) At Closing, Buyer will offer employment to the employees listed on Schedule 6.4 (g) hereto on the terms outlined in such schedule.

Section 6.5 **Recording of Intellectual Property Assignments**. All of the Intellectual Property Assignments shall be recorded and filed by Buyer with the appropriate Governmental Entities as promptly as practicable following the Closing.

Section 6.6 **Transfer Taxes**. To the extent not exempt under section 1146 of the Bankruptcy Code, then Buyer shall pay any stamp, documentary, registration, transfer,

added-value or similar Tax (each, a "Transfer Tax") imposed under any applicable Law in connection with the Transactions. Sellers and Buyer shall cooperate to prepare and timely file any Tax Returns required to be filed in connection with Transfer Taxes described in the immediately preceding sentence.

Section 6.7 Wage Reporting. Buyer and Sellers agree to utilize, or cause their respective Affiliates to utilize, the standard procedure set forth in IRS Procedure 2004-53 with respect to wage reporting.

Section 6.8 Acknowledgements. Buyer acknowledges that it has received from Sellers certain projections, forecasts and prospective or third party information relating to Sellers, the Business, the Acquired Assets, the Assumed Liabilities, or any related topics. Buyer acknowledges that (i) there are uncertainties inherent in attempting to make such projections and forecasts and in such information, (ii) Buyer is familiar with such uncertainties and takes full responsibility for making its own evaluation of the adequacy and accuracy of all projections, forecasts and information so furnished, and (iii) neither Buyer nor any other Person shall have any claim against either Seller, its Affiliates, or their respective Representatives, with respect thereto. Accordingly, without limiting the generality of Section 3.4, Sellers make no representations or warranties with respect to such projections, forecasts or information.

Section 6.9 Certain Avoidance Actions. The Parties acknowledge and agree that: (a) upon execution of a Participating Vendor Agreement (in form and substance acceptable to Buyer) with Buyer no later than ninety (90) days following the Closing Date, the applicable Participating Vendor shall be entitled to a waiver and release of any and all claims and causes of action against such Participating Vendor arising under section 547 of the Bankruptcy Code; and (b) Sellers shall not pursue any Litigation, claims, demands, and/or causes of action (including causes of action under Chapter 5 of the Bankruptcy Code) against any Participating Vendor (or any vendor who could be a Participating Vendor, unless and until it is determined that such vendor is not a Participating Vendor, in which case, Sellers may only pursue a claim or cause of action against such vendor to the extent such claim or cause of action is an Excluded Asset hereunder).

Section 6.10 Insurance Policies.

(a) To the extent that any current or prior Insurance Policy is not transferable to Buyer at the Closing in accordance with the terms thereof, each Seller, as applicable, shall hold such Insurance Policy for the benefit of Buyer, shall reasonably cooperate with Buyer (at Buyer's cost and expense) in pursuing any claims thereunder, and shall pay over to Buyer promptly any insurance proceeds paid or recovered thereunder with respect to the Acquired Assets or the Assumed Liabilities. If Buyer determines to purchase replacement coverage with respect to any such Insurance Policy, Sellers shall reasonably cooperate with Buyer to terminate such Insurance Policy to the extent only applicable to the Acquired Assets, and Sellers shall, at the option of Buyer, promptly pay over to Buyer any refunded or returned insurance premiums received by either Seller in connection therewith (or, if applicable, Buyer's pro rata portion thereof) or cause such premiums to be applied by the applicable carrier to the replacement coverage arranged by Buyer.

(b) To the extent that any current or prior Insurance Policy of either Seller relates to the Acquired Assets or Assumed Liabilities and the Excluded Assets or the Excluded Liabilities, and such Insurance Policy is transferred to Buyer at the Closing, Buyer shall hold such Insurance Policy with respect to the Excluded Assets or Excluded Liabilities, as applicable, for the benefit of Sellers, shall reasonably cooperate with Sellers in pursuing any claims thereunder, and shall pay over to Sellers promptly any insurance proceeds paid or recovered thereunder with respect to the Excluded Assets or the Excluded Liabilities.

Section 6.11 Collection of Accounts Receivable.

(a) As of the Closing Date, each Seller hereby (i) authorizes Buyer to open any and all mail addressed to either Seller relating to the Business or the Acquired Assets and delivered to the offices of the Business or otherwise to Buyer if received on or after the Closing Date, and (ii) appoints Buyer or its attorney-in-fact to endorse, cash and deposit any monies, checks or negotiable instruments received by Buyer after the Closing Date with respect to Accounts Receivable that are Acquired Assets or accounts receivable relating to work performed by Buyer after the Closing, as the case may be, made payable or endorsed to either Seller or Seller's order, for Buyer's own account.

(b) As of the Closing Date, each Seller agrees that any monies, checks or negotiable instruments received by either Seller after the Closing Date with respect to Accounts Receivable (including, without limitation, Credit Card Receivables) that are Acquired Assets or accounts receivable relating to work performed by Buyer after the Closing, as the case may be, shall be held in trust by such Seller for Buyer's benefit and account, and promptly upon receipt by a Seller of any such payment (but in any event within five (5) Business Days following such receipt), such Seller shall pay over to Buyer or its designee the amount of such payments. In addition, Buyer agrees that, after the Closing, it shall hold and shall promptly transfer and deliver to Sellers, from time to time as and when received by Buyer or its Affiliates, any cash, checks with appropriate endorsements, or other property that Buyer or its Affiliates may receive on or after the Closing which properly belongs to Sellers hereunder, including any Excluded Assets.

(c) As of the Closing Date, Buyer shall have the sole authority to bill and collect Accounts Receivable that are Acquired Assets and accounts receivable relating to work performed by Buyer after the Closing.

Section 6.12 Name Changes. Neither Seller nor any of their Affiliates shall use, license or permit any third party to use, any name, slogan, logo or trademark which is similar or deceptively similar to any of the names, trademarks or service marks that comprise Intellectual Property included in the Acquired Assets, and within twenty-one (21) days following the Closing Date, each Seller (a) shall change its corporate name to a name which (i) does not use the name "Agent Provocateur", "L'Agence", or any other name that references or reflects any of the foregoing in any manner whatsoever, (ii) is otherwise substantially dissimilar to its present name and (iii) is approved in writing by Buyer, and (b) shall withdraw from, or file appropriate

documents with, each jurisdiction in which such Seller is qualified to do business, such that such Seller ceases to be registered in such jurisdiction in a name that includes "Agent Provocateur", "L'Agence", or any other name that references or reflects any of the foregoing in any manner whatsoever.

Section 6.13 Treatment of Certain Claims. Notwithstanding anything expressed or implied herein to the contrary, (i) neither Sellers nor Trustee shall consent or agree to the allowance or re-classification of any Claim as an Administrative Claim or a Priority Claim without the prior written consent of Buyer or Order of the Bankruptcy Court, and (ii) no Administrative Claims or Priority Claims can be classified or re-classified as a general unsecured claim without the consent of Sellers or the Trustee, as applicable, or an order of the Bankruptcy Court.

ARTICLE VII
CONDITIONS TO CLOSING

Section 7.1 Conditions to Buyer's Obligations. Subject to Section 7.3, Buyer's obligation to consummate the Transactions in connection with the Closing is subject to satisfaction or waiver of the following conditions:

(a) as of the date hereof and as of the Closing (in each case, except for any representation or warranty that is expressly made as of a specified date, in which case as of such specified date), (i) each representation or warranty contained in Section 3.1, Section 3.2 or Section 3.3 shall be true and correct in all respects, and (ii) each other representation or warranty set forth in Article III shall be true and correct in all respects, except where the failure of such representations and warranties referred to in this clause (ii) to be true and correct, individually or in the aggregate with other such failures, has not had, and would not reasonably be expected to have, a Material Adverse Effect; provided, however, that for purposes of determining the accuracy of representations and warranties referred to in clause (ii) for purposes of this condition, all qualifications as to "materiality" and "Material Adverse Effect" contained in such representations and warranties shall be disregarded;

(b) Sellers shall have performed and complied with their covenants and agreements hereunder to the extent required to be performed prior to the Closing in all material respects, and Sellers shall have caused the documents and instruments required by Section 2.8(a) to be delivered to Buyer (or tendered subject only to Closing);

(c) Sellers shall have performed and complied with all of their obligations under the Employee Benefit Plans through the Closing in all material respects;

(d) no Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Decree that is in effect and that has the effect of making the Closing illegal or otherwise prohibiting the consummation of the Transactions;

(e) the Sale Order entered by the Bankruptcy Court shall have become a Final Order and shall not be materially different than the form of Sale Order set forth on Exhibit A attached hereto;

(f) from the date of this Agreement until the Closing Date, there shall not have occurred and be continuing any Material Adverse Effect;

(g) no default, Default or Event of Default (as defined in the DIP Financing) shall have occurred;

(h) not less than nine (9) of the store locations set forth on Appendix B shall be Continuing Stores; and

(i) Sellers shall have delivered a certificate from an authorized officer of Sellers to the effect that each of the conditions specified in Section 7.1(a), Section 7.1(b) and Section 7.1(f) has been satisfied.

Section 7.2 Conditions to Sellers' Obligations. Subject to Section 7.3, Sellers' obligation to consummate the Transactions are subject to satisfaction or waiver of the following conditions:

(a) as of the date hereof and as of the Closing (in each case, except for any representation or warranty that is expressly made as of a specified date, in which case as of such specified date), (i) each representation or warranty contained in Section 4.1, Section 4.2 or Section 4.3 shall be true and correct in all respects, and (ii) each other representation or warranty set forth in Article IV shall be true and correct in all respects, except where the failure of such representations and warranties referred to in this clause (ii) to be true and correct, individually or in the aggregate with other such failures, would not reasonably be expected to materially prevent, restrict or delay the consummation of the Transactions; provided, however, that for purposes of determining the accuracy of representations and warranties referred to in clause (ii) in this condition, all qualifications as to "materiality" and "Material Adverse Effect" contained in such representations and warranties shall be disregarded;

(b) Buyer shall have performed and complied with its covenants and agreements hereunder to the extent required to be performed prior to the Closing in all material respects, and Buyer shall have caused the documents, instruments and payments required by Section 2.8(b) to be delivered to Sellers (or tendered subject only to Closing);

(c) no Governmental Entity of competent jurisdiction shall have enacted, issued, promulgated, enforced or entered any Decree that is in effect and that has the effect of making the Closing illegal or otherwise prohibiting the consummation of the Closing;

(d) the Sale Order entered by the Bankruptcy Court shall have become a Final Order and shall not be materially different than the form of Sale Order set forth

on Exhibit A attached hereto except to the extent that Buyer has waived any deviation from the Sale Order attached as Exhibit A; and

(e) Buyer shall have delivered a certificate from an authorized officer of Buyer to the effect that each of the conditions specified in Section 7.2(a) and Section 7.2(b) has been satisfied.

Section 7.3 No Frustration of Closing Conditions. Neither Buyer nor Sellers may rely on the failure of any condition to its obligation to consummate the Transactions set forth in Section 7.1 or Section 7.2, as the case may be, to be satisfied if such failure was caused by such Party's failure to use its reasonable best efforts or commercially reasonable efforts, as applicable, with respect to those matters contemplated by the applicable Sections of this Agreement to satisfy the conditions to the consummation of the Transactions or other breach of a representation, warranty or covenant hereunder.

ARTICLE VIII TERMINATION.

Section 8.1 Termination of Agreement. This Agreement may be terminated and the Transactions abandoned at any time prior to the Closing:

(a) by the mutual written consent of Buyer, on the one hand, and Sellers, on the other hand;

(b) by Buyer by giving written notice to Sellers at any time prior to Closing (i) if Sellers have breached any material covenant contained in this Agreement in any material respect, Buyer has notified Sellers of the breach, and the breach has continued without cure for a period of ten (10) Business Days after notice of the breach has been given, or (ii) if any condition set forth in Section 7.1 shall become incapable of being satisfied by the Closing, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants hereof to be performed or complied with by it prior to the Closing, and such condition is not waived by Buyer;

(c) by Sellers by giving written notice to Buyer at any time prior to Closing (i) if Buyer has breached any material covenant contained in this Agreement in any material respect, Sellers have notified Buyer of the breach, and the breach has continued without cure for a period of ten (10) Business Days after notice of the breach has been given, or (ii) if any condition set forth in Section 7.2 shall become incapable of being satisfied by the Closing, unless such failure shall be due to the failure of Sellers to perform or comply with any of the covenants hereof to be performed or complied with by them prior to the Closing, and such condition is not waived by Sellers;

(d) by Buyer, on the one hand, or Sellers, on the other hand, on any date that is after June 30, 2017 if the Closing shall not have occurred by June 30, 2017; provided, however, that (i) Buyer shall not have the right to terminate this Agreement under this Section 8.1(d) or Section 8.1(b) if, at the time of such termination, Sellers

would then be entitled to terminate this agreement pursuant to Section 8.1(c) (subject only to delivery of notice and the opportunity to cure, if curable, required by Section 8.1(c)), and (ii) Sellers shall not have the right to terminate this Agreement under this Section 8.1(d) or Section 8.1(c) if, at the time of such termination, Buyer would then be entitled to terminate this agreement pursuant to Section 8.1(b) (subject only to delivery of notice and the opportunity to cure, if curable, required by Section 8.1(b)); or

(e) by Buyer if (i) the Sale Order shall not have been entered by the Bankruptcy Court by the End Date, or (ii) the Sale Order shall not have become a Final Order by the 15th day following entry of the Sale Order on the Bankruptcy Court docket.

Section 8.2 Procedure Upon Termination. In the event of termination and abandonment by Buyer, on the one hand, or Sellers, on the other hand, or both, pursuant to Section 8.1, written notice thereof shall forthwith be given to the other Party or Parties, and this Agreement shall terminate and the Transactions shall be abandoned, without further action by Buyer or Sellers.

Section 8.3 Effect of Termination.

(a) If any Party terminates this Agreement pursuant to Section 8.1, then all rights and obligations of the Parties hereunder shall terminate upon such termination and shall become null and void (except that Article I (Definitions), Article IX (Miscellaneous), and this Article VIII (Termination) shall survive any such termination), and no Party shall have any Liability to any other Party, as applicable, hereunder except as otherwise expressly set forth in this Agreement.

(b) Except as otherwise expressly set forth in this Agreement, nothing herein shall relieve any Party from Liability for any breach of covenant occurring prior to any termination of this Agreement.

Section 8.4 Deposit.

(a) If this Agreement is terminated pursuant to any provision of Section 8.1, other than Section 8.1(c)(i), then the Deposit shall be returned to Buyer within two Business Days following such termination.

(b) If this Agreement is terminated pursuant to Section 8.1(c)(i) and Buyer is in material breach of this Agreement at the time of termination, then the Deposit shall be disbursed to Sellers within two Business Days of such termination (it being understood and agreed that disbursement of the Deposit to Sellers shall be liquidated damages and Sellers shall not have any other rights or remedies at law or in equity).

(c) Buyer and Sellers hereby acknowledge that the obligation to deliver the Deposit (to the extent due hereunder) shall survive the termination of this Agreement and shall be paid pursuant to the terms hereof.

ARTICLE IX
MISCELLANEOUS.

Section 9.1 **Expenses**. Except as otherwise provided in this Agreement or a Related Agreement, Sellers and Buyer shall bear their own expenses, including attorneys' fees and expenses, incurred in connection with the negotiation and execution of this Agreement, the Related Agreements and each other agreement, document and instrument contemplated by this Agreement and the consummation of the Transactions. Notwithstanding the foregoing, in the event of any Proceeding to interpret or enforce this Agreement, the prevailing Party in such Proceeding (i.e., the Party who, in light of the issues contested or determined in the Proceeding, was more successful) shall be entitled to have and recover from the non-prevailing Party such costs and expenses (including, but not limited to, all court costs and reasonable attorneys' fees and expenses) as the prevailing Party may incur in the pursuit or defense thereof.

Section 9.2 **Entire Agreement**. This Agreement constitutes the entire agreement among the Parties and supersedes any prior understandings, agreements or representations (whether written or oral) by or among the Parties, written or oral, with respect to the subject matter hereof, except for the Related Agreements.

Section 9.3 **Incorporation of Schedules, Exhibits and Disclosure Schedule**. The schedules, appendices and exhibits to this Agreement, and the documents and other information made available in the Disclosure Schedule are incorporated herein by reference and made a part hereof.

Section 9.4 **Amendments and Waivers**. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by each Party except as expressly provided herein. No waiver of any breach of this Agreement shall be construed as an implied amendment or agreement to amend or modify any provision of this Agreement. No waiver by any Party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver, nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent default, misrepresentation or breach of warranty or covenant. No conditions, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement the terms or conditions of this Agreement shall be binding unless this Agreement is amended or modified in writing pursuant to the first sentence of this Section 9.4 except as expressly provided herein. Except where a specific period for action or inaction is provided herein, no delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

Section 9.5 **Succession and Assignment**. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. None of the Parties may assign either this Agreement or any of its rights, interests or obligations hereunder without the prior written approval of all Parties; provided, however, that Buyer shall be permitted to assign any of its rights hereunder to one or more of its Affiliates, as designated by Buyer in writing to Sellers; provided, however, Buyer shall remain liable for all of its obligations under this Agreement after any such assignment.

Section 9.6 **Notices**. All notices, requests, demands, claims and other communications hereunder shall be in writing except as expressly provided herein. Any notice, request, demand, claim or other communication hereunder shall be deemed duly given (i) when delivered personally to the recipient; (ii) one Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid); (iii) when sent by email (with written confirmation of transmission); or (iv) three Business Days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

If to either Seller, then to:

Agent Provocateur, Inc.
c/o Amanda Brooks
Email: mandybrooks@btinternet.com

with a copy (which shall not constitute notice) to:

Thompson Hine LLP
3900 Key Center
127 Public Square
Cleveland, Ohio 44114-1291
Attention: Alan R. Lepene
Andrew L. Turscak, Jr.
James Henderson
Email: Alan.Lepene@thompsonhine.com
Andrew.Turscak@thompsonhine.com
James.Henderson@thompsonhine.com

If to Buyer, then to:

Agent Provocateur International (US) LLC
c/o Fourmarketing
20 Garrett Street
London EC1Y OTW
Attention: Charles Perez, CEO
Email: charles@fourmarketing.com

with a copy (which shall not constitute notice) to:

Greenberg Traurig, LLP
1840 Century Park East
Los Angeles, California 90067
Attention: Mark J. Kelson, Esq.
Howard J. Steinberg, Esq.
Jack McBride, Esq.
Email: kelsonm@gtlaw.com
steinbergh@gtlaw.com
mcbridej@gtlaw.com

Any Party may change the mailing address or email address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other Party notice in the manner set forth in this Section 9.6.

Section 9.7 Governing Law; Jurisdiction. This Agreement shall in all aspects be governed by and construed in accordance with the internal Laws of the State of New York without giving effect to any choice or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of New York, and the obligations, rights and remedies of the Parties shall be determined in accordance with such Laws. The Parties agree that any Litigation one Party commences against any other Party pursuant to this Agreement shall be brought exclusively in the Bankruptcy Court; provided that if the Bankruptcy Court is unwilling or unable to hear any such Litigation, then the courts of the State of New York, sitting in New York County, New York, and the federal courts of the United States of America sitting in New York County, New York, shall have exclusive jurisdiction over such Litigation.

Section 9.8 Consent to Service of Process. Each of the Parties hereby consents to process being served by any other Party in any Proceeding by delivery of a copy thereof in accordance with the provisions of Section 9.6.

Section 9.9 WAIVERS OF JURY TRIAL. EACH OF THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE RELATED AGREEMENTS OR THE TRANSACTIONS.

Section 9.10 Specific Performance.

(a) Each of the Parties acknowledges and agrees that the other Parties (collectively, the "Enforcing Parties") would be damaged irreparably if any provision of this Agreement is not performed in accordance with its specific terms or otherwise breached, so that, in addition to any other remedy that each of the Parties may have under Law or equity, each of the Parties shall be entitled to injunctive relief to prevent breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof (except as otherwise expressly set forth herein).

(b) Each of the Parties agrees that it shall not oppose the granting of specific performance or an injunction sought in accordance with this Section 9.10 on the basis that the Enforcing Parties have an adequate remedy at law or that any award of specific performance is, for any reason, not an appropriate remedy (except as otherwise expressly set forth herein). The Enforcing Parties shall not be required to provide any bond or other security in connection with any such injunction or other equitable remedy. The End Date shall be tolled from the date any of the Enforcing Parties files a petition seeking specific performance or an injunction under this Section 9.10 until a final, non-appealable, decision regarding this matter is obtained from a court of competent jurisdiction.

Section 9.11 Severability. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement. If any provision of this Agreement, or the application thereof to any Person or circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision, and (b) the remainder of this Agreement and the application of such provision to any Person or circumstance shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability in any one jurisdiction affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

Section 9.12 No Third Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any Person other than the Parties and their respective successors and permitted assigns.

Section 9.13 No Survival of Representations, Warranties and Agreements. None of the Parties' representations, warranties, covenants and other agreements in this Agreement, including any rights of any other Party or any third party arising out of any breach of such representations, warranties, covenants and other agreements, shall survive the Closing, except for (i) those covenants and agreements contained herein that by their terms apply or are to be performed in whole or in part after the Closing, (ii) this Article IX, and (iii) all defined terms set forth in Article I that are referenced in the foregoing provisions referred to in clauses (i) and (ii) above.

Section 9.14 Construction. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of names and pronouns shall include the plural and vice versa. The word "including" and "include" and other words of similar import shall be deemed to be followed by the phrase "without limitation." The words "herein," "hereto" and "hereby," and other words of similar import refer to this Agreement as a whole and not to any particular Article, Section or other subdivision of this Agreement. Unless expressly stated in connection therewith or the context otherwise requires, the phrase "relating to the Business" and other words of similar import shall be deemed to mean "relating to the operation of the Business as conducted as of the date hereof." Except as otherwise provided herein, references to Articles, Sections, clauses, subclauses, subparagraphs, Schedules, Exhibits, Appendices and the Disclosure Schedule herein are references to Articles, Sections, clauses, subclauses, subparagraphs, Schedules, Appendices, Exhibits and the Disclosure Schedule of this Agreement. Any reference herein to any Law (or any provision thereof) shall include such Law (or any provision thereof) and any rule or regulation promulgated thereunder, in each case, including any successor thereto, as it may be amended, modified or supplemented from time to time. Any reference herein to "dollars" or "$" means United States dollars.

Section 9.15 Computation of Time. In computing any period of time prescribed by or allowed with respect to any provision of this Agreement that relates to Sellers or the Chapter 11 Cases, the provisions of rule 9006(a) of the Federal Rules of Bankruptcy Procedure shall apply.

Section 9.16 Mutual Drafting. Each of the Parties has participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

Section 9.17 Disclosure Schedule. All capitalized terms not defined in the Disclosure Schedule shall have the meanings ascribed to them in this Agreement. The representations and warranties of Sellers in this Agreement are made and given, and the covenants are agreed to, subject to the disclosures and exceptions set forth in the Disclosure Schedule. The disclosure of any matter in any section of the Disclosure Schedule shall be deemed to be a disclosure with respect to any other sections of the Disclosure Schedule to which such disclosed matter reasonably relates, but only to the extent that such relationship is reasonably apparent on the face of the disclosure contained in the Disclosure Schedule. The listing of any matter shall expressly not be deemed to constitute an admission by Sellers, or to otherwise imply, that any such matter is material, is required to be disclosed under this Agreement or falls within relevant minimum thresholds or materiality standards set forth in this Agreement. No disclosure in the Disclosure Schedule relating to any possible breach or violation of any Contract or Law shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. In no event shall the disclosure of any matter in the Disclosure Schedule be deemed or interpreted to expand the scope of Sellers' representations, warranties and/or covenants set forth in this Agreement.

Section 9.18 Headings; Table of Contents. The section headings and the table of contents contained in this Agreement and the Disclosure Schedule are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 9.19 Counterparts; Facsimile and Email Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This Agreement or any counterpart may be executed and delivered by facsimile or email with scan attachment copies, each of which shall be deemed an original.

Section 9.20 Time of Essence. Time is of the essence of this Agreement.

Section 9.21 General Releases.

(a) Effective upon the Closing, Sellers, on behalf of themselves and their respective past, present and future subsidiaries, divisions, Affiliates, agents, representatives, insurers, attorneys, successors and assigns (collectively, the "Seller Releasing Parties"), hereby release, remise, acquit and forever discharge Buyer and its past, present and future subsidiaries, parents, divisions, Affiliates, agents, representatives, insurers, attorneys, successors and assigns, and each of its and their respective directors, managers, officers, employees, shareholders, members, agents, representatives, attorneys, contractors, subcontractors, independent contractors, owners, insurance companies and partners (collectively, the "Buyer Released Parties"), from any and all claims, contracts, demands, causes of action, disputes, controversies, suits, cross-claims, torts, losses,

attorneys' fees and expenses, obligations, agreements, covenants, damages, Liabilities, costs and expenses, whether known or unknown, whether anticipated or unanticipated, whether claimed or suspected, whether fixed or contingent, whether yet accrued or not, whether damage has resulted or not, whether at law or in equity, whether arising out of agreement or imposed by Law of any kind, nature, or description, including, without limitation as to any of the foregoing, any claim by way of indemnity or contribution, which any Seller Releasing Party has, may have had or may hereafter assert against any Buyer Released Party arising from or related in any way, either directly or indirectly, to any action or inaction of any Buyer Released Party relating in any way to Sellers and/or the Business, including without limitation, any action or inaction of any Buyer Released Party relating to the Chapter 11 Cases; provided, however, that the foregoing release shall not apply to Sellers' rights or Buyer's obligations under this Agreement (including Section 6.10 hereof), any Related Agreements, and/or any other agreements entered into in connection with the Transactions.

(b) Effective upon the Closing, Buyer, on behalf of itself and its past, present and future subsidiaries, divisions, successors and assigns (collectively, the "Buyer Releasing Parties"), hereby releases, remises, acquits and forever discharges each Seller and its past and present subsidiaries, parents, divisions, agents, representatives, attorneys, successors and assigns, and each of its and their respective directors, managers, officers, employees, shareholders, members, agents, representatives, attorneys, owners and partners (collectively, the "Seller Released Parties"), from any and all claims, Contracts, demands, causes of action, disputes, controversies, suits, cross-claims, torts, losses, attorneys' fees and expenses, obligations, agreements, covenants, damages, Liabilities, costs and expenses, whether known or unknown, whether anticipated or unanticipated, whether claimed or suspected, whether fixed or contingent, whether yet accrued or not, whether damage has resulted or not, whether at law or in equity, whether arising out of agreement or imposed by Law of any kind, nature, or description (including, without limitation as to any of the foregoing, any claim by way of indemnity or contribution), in each case, which any Buyer Releasing Party has, may have had or may hereafter assert against any Seller Released Party to the extent arising from or related in any way, either directly or indirectly, to any action or inaction of any Seller Released Party with respect to the operation of the Business prior to the Closing Date, including without limitation, any action or inaction of any Seller Released Party relating to the Chapter 11 Cases prior to the Closing Date; provided, however, that the foregoing release shall not apply to (i) Buyer's rights or Sellers' obligations under or with respect to this Agreement (including Section 6.10 hereof), any Related Agreements, the DIP Financing, and/or any other agreements entered into in connection with the Transactions, (ii) the rights of Buyer Releasing Parties under any Insurance Policy, and/or (iii) any matter to the extent not related to the Business.

SIGNATURES TO
ASSET PURCHASE AGREEMENT

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

SELLERS:

AGENT PROVOCATEUR, INC.

By:____
Name:
Title:

AGENT PROVOCATEUR, LLC

By:____
Name:
Title:

BUYER:

AGENT PROVOCATEUR INTERNATIONAL (US) LLC

By:____
Name:
Title:

EXHIBIT A

Form of Sale Order

See attached.

EXHIBIT B

Form of Bill of Sale

To be in form and substance reasonably satisfactory to the Parties.

EXHIBIT C

Form of Assignment and Assumption Agreement

To be in form and substance reasonably satisfactory to the Parties.

EXHIBIT D

Form of Trademark Assignment Agreement

To be in form and substance reasonably satisfactory to the Parties.

EXHIBIT E

Form of Copyright Assignment Agreement

To be in form and substance reasonably satisfactory to the Parties.

EXHIBIT F

Form of Domain Name Assignment Agreement

To be in form and substance reasonably satisfactory to the Parties.

APPENDIX A

Cash Budget

See attached.

APPENDIX B

STORES

1. Los Angeles, 7961 Melrose Avenue
2. New York Mercer Street
3. Las Vegas Forum
4. San Francisco Geary Street
5. Miami Bal Harbour
6. New York Madison Avenue
7. Los Angeles Rodeo Drive
8. Dallas North Park
9. Woodbury Common
10. Cabazon Desert Hills
11. Miami Brickell Avenue

SCHEDULE 2.3

Assumed Liabilities

1. Liabilities under the Assumed Contracts and the Assumed Permits to the extent arising from and after the Closing, and all Cure Amounts with respect to the Assumed Contracts;

2. All accrued payroll, accrued and unused vacation, and accrued payroll Taxes with respect to Transferred Employees, in each case, as of the Closing (and not paid by Sellers prior thereto), solely to the extent arising during and related to the period following the Petition Date, provided that Sellers pay all liabilities and obligations described in this item 2 as and when due through the Closing consistent with Sellers' past practices;

3. All Liabilities related to Transferred Employees that are Priority Claims (and not paid by Sellers prior to the Closing), to the extent such Liabilities are Priority Claims; and

4. Liabilities consisting of amounts that Buyer has expressly agreed to pay hereunder.