

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
AMERICAN APPAREL, LLC, <i>et al.</i> , ¹	:	Case No. 16-12551 (BLS)
Debtors.	:	(Joint Administration Requested)

**MOTION OF THE DEBTORS FOR ENTRY OF ORDERS
(I)(A) APPROVING BIDDING PROCEDURES
FOR THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS'
ASSETS, (B) AUTHORIZING THE DEBTORS TO ENTER INTO THE
STALKING HORSE PURCHASE AGREEMENT, (C) APPROVING
BID PROTECTIONS, (D) SCHEDULING AN AUCTION, (E) APPROVING THE FORM
AND MANNER OF NOTICE THEREOF, (F) APPROVING ASSUMPTION AND
ASSIGNMENT PROCEDURES; AND (G) SCHEDULING A SALE HEARING AND
APPROVING THE FORM AND MANNER OF NOTICE THEREOF;
(II)(A) APPROVING THE SALE OF SUBSTANTIALLY
ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS,
INTERESTS AND ENCUMBRANCES AND (B) APPROVING THE
ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS
AND UNEXPIRED LEASES; AND (III) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the "Debtors" and together with their foreign affiliates, the "Company") move the Court pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007, 9008 and 9014, and Local Bankruptcy Rules 2002-1, 6004-1 and 9006-1, for entry of and order substantially in the form attached hereto as Exhibit A (the "Bidding Procedures Order"):

- (i) approving the proposed procedures attached as Exhibit 1 to the Bidding Procedures Order (the "Bidding Procedures") to be used in connection with the sale (the "Sale") of substantially all of the Debtors' assets (the "Assets");

¹ The Debtors are the following six entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): American Apparel, LLC (0601); American Apparel (USA), LLC (8940); American Apparel Retail, Inc. (7829); American Apparel Dyeing & Finishing, Inc. (0324); KCL Knitting, LLC (9518); and Fresh Air Freight, Inc. (3870). The address of each of the Debtors is 747 Warehouse Street, Los Angeles, California 90021.

- (ii) approving and authorizing the Debtors to perform certain pre-closing obligations under the stalking-horse asset purchase agreement substantially in the form attached hereto as Exhibit B (the "Stalking Horse APA") by and between certain of the Debtors as sellers and Gildan Activewear SRL, as buyer (together with its permitted designees, successors and assigns in accordance with the Stalking Horse APA, the "Stalking Horse"), subject to higher and better offers submitted in accordance with the Bidding Procedures;
- (iii) authorizing the Debtors to pay the termination fee (the "Termination Fee") and expense reimbursement (the "Expense Reimbursement") set forth in and pursuant to the terms of the Stalking Horse APA (the "Bid Protections");
- (iv) scheduling an auction for the Assets (the "Auction"), the hearing with respect to the approval of the sale (the "Sale Hearing") and approval of the form and manner of notice thereof;
- (v) authorizing certain procedures related to the Debtors' assumption and assignment of executory contracts and unexpired leases (the "Assignment Procedures") in connection with any Sale; and
- (vi) granting related relief.

The Debtors also move the Court, pursuant to sections 105, 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006 and Local Rule 6004-1 for entry of one or more orders in substantially the form attached hereto as Exhibit C (the "Sale Order");

- (i) authorizing the sale of the Assets to one or more successful bidder at the Auction (each such sale, a "Sale Transaction") free and clear of all liens, claims, interests and encumbrances;²
- (ii) authorizing the assumption and assignment of certain executory contracts and unexpired leases in connection therewith; and
- (iii) granting related relief.

In support of this motion, the Debtors submit the *Declaration of Mark Weinsten in Support of First Day Pleadings* (the "First Day Declaration") filed contemporaneously herewith and the

² Because the Debtors entered into the Stalking Horse APA prior to the Petition Date, the Debtors, in consultation with the Stalking Horse, reserve the right to seek to assume the Stalking Horse APA pursuant to section 365 of the Bankruptcy Code at any Sale Hearing seeking approval of the Stalking Horse APA.

Declaration of Saul E. Burian in Support of Debtors' Sale and Bidding Procedures Motion

attached hereto as Exhibit D (the "Burian Declaration") and respectfully represent as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

A. General Background

2. On the date hereof (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors are continuing in possession of their properties and are managing their businesses, as debtors in possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No official committee of unsecured creditors has been appointed in these cases.

3. The Debtors are one of the largest apparel manufacturers in North America, employing approximately 4,700 employees across three active manufacturing facilities, one distribution facility and approximately 110 retail stores in the United States. The Debtors filed for chapter 11 in October 2015, confirmed a fully consensual plan of reorganization in January 2016, and substantially consummated that plan of reorganization on February 5, 2016. Unfortunately, the business turnaround plan upon which the Debtors' plan of reorganization was premised failed.

4. As described more fully below and in the Burian Declaration, it became clear during the Summer of 2016 that the Debtors could not continue as they were, and they hired an investment banker and began a robust sales process, seeking a buyer for substantially all of their assets. The prepetition component of that sales process is now complete. The Debtors have

selected Gildan Activewear SRL as the stalking horse bidder for their intellectual property and certain of their wholesale assets, and have commenced these chapter 11 cases (the "Cases") with the hope of selling the entirety of their business as a going concern in a competitive auction to be held before year end. The Debtors intend to continue operating as usual in these Cases during the period leading up to the auction so as to preserve the value of their businesses, thereby encouraging a going concern sale that would save jobs and maximize returns to creditors. Additional information regarding the Debtors and these Cases, including the Debtors' businesses, corporate structure, financial condition and the reasons for and objectives of these cases, is set forth in the First Day Declaration.

B. The Prepetition Sale Process

5. In July 2016, facing liquidity constraints and sustained poor sales performance, the Debtors retained Houlihan Lokey, Inc. ("Houlihan"), and in August, Houlihan began to explore and solicit interest in a sale of all or a portion of the Debtors' businesses. *See* Burian Decl. ¶ 6. In September 2016, the Debtors engaged Houlihan to act as their investment banker in connection with the commencement of potential chapter 11 cases.

6. Houlihan conducted a robust three-month marketing process, canvassing the market and contacting 53 potential strategic and financial buyers that, based on Houlihan's experience and involvement in the retail apparel market, might be interested in some or all of the Debtors' businesses. *See id.* at ¶ 7. This list of potential buyers was developed in concert with the Debtors' management and Board of Directors (the "Board"), who supplemented the initial list supplied by Houlihan with additional potential purchasers that had expressed interest in the Debtors' businesses in prior sale processes, including the process that the Debtors ran prior to, and during, their previous chapter 11 cases. *See id.* As the sale efforts progressed, Houlihan further expanded the scope of potential purchasers to include liquidators and buyers interested in

acquiring the Debtors' assets outside of a going concern sale. *See id.* Additionally, as news of the Debtors' sale process became public, the Debtors and Houlihan received inquiries from other interested parties and, where appropriate, Houlihan provided diligence and engaged in negotiations with those parties as well. *See id.*

7. Of the 53 potential strategic and financial buyers Houlihan contacted, 30 parties signed non-disclosure agreements and were provided with access to extensive diligence materials, including Board presentations, inventory tracking reports, regularly updated financial data, sales reports and information about the Debtors' intellectual property—each specifically targeted to provide buyers with the information most relevant to the assets they were interested in acquiring. *See* Burian Decl. ¶ 8.

8. Of the 30 parties who received diligence materials, seven submitted Indications of Interest and three of those parties moved forward with the sale process and submitted Letters of Intent. After engaging in extensive negotiations with all parties, the Debtors determined that the bid submitted by the Stalking Horse, who submitted a bid for the Debtors' intellectual property, wholesale inventory and, at the Stalking Horse's option, the Debtors' manufacturing and distribution facilities in Garden Grove, La Mirada and South Gate, California and the Debtors' corporate headquarters in Los Angeles, California (collectively, the "Stalking Horse Assets"), was the highest, best and only viable bid under the circumstances. *See* Burian Decl. ¶ 9. Thereafter, the Debtors' advisors worked with the Stalking Horse to finalize the Stalking Horse APA, which was executed just prior to commencing the Cases. *See id.*

C. The Stalking Horse APA and Proposed Sale Order

The Stalking Horse APA was extensively negotiated between the parties at arm's length and in good faith and confers several substantial benefits on the Debtors' estates. The Stalking Horse APA allows the Debtors to continue pursuing a sale of substantially all of their assets

while at the same time locking in a purchase price of \$66 million for the Stalking Horse Assets. Perhaps more importantly, however, the Stalking Horse APA includes a commitment from the Stalking Horse to purchase the Debtors' wholesale inventory remaining at the conclusion of the sale process and—critically—provides immediate support for the Debtors' manufacturing operations by committing the Stalking Horse to issue purchase orders throughout the course of the Cases for certain of the Debtors' wholesale goods. This commitment will allow the Debtors to keep their supply chain active and produce sufficient inventory to support a sale to either the Stalking Horse or a third party. In addition to maintaining the supply chain, the Stalking Horse's bid effectively allows the Debtors to amortize overhead costs incurred maintaining its manufacturing facilities and corporate headquarters, which provides significant value for the exclusive benefit of the estates by preserving the value of assets not subject to the Stalking Horse APA, such as the Debtors' retail inventory and below-market leases, if any, that the Debtors may be able to sell. Additionally, because the Stalking Horse APA provides the Stalking Horse with the option to acquire certain of the Debtors' manufacturing and distribution facilities, the Stalking Horse bid has the potential to preserve jobs and minimize unsecured claims through the assumption of leases. *See* Burian Decl. ¶ 12.

9. In accordance with Rule 6004-1 of the Local Rules of Bankruptcy Procedure for the Bankruptcy Court for the District of Delaware (the "Local Rules"), the material terms of the Stalking Horse APA and proposed Sale Order are set forth in the following table:³

Sellers	American Apparel, LLC; American Apparel (USA), LLC; KCL Knitting, LLC; American Apparel Retail, Inc.; Fresh Air Freight, Inc.; American Apparel Mexico, S. de R.L. de C.V.
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³ The following summary is qualified in its entirety by reference to the provisions of the Stalking Horse APA. In the event of any inconsistencies between the provisions of the Stalking Horse APA and the terms set forth herein, the terms of the Stalking Horse APA will govern. Capitalized terms used in this summary and not otherwise defined herein have the meanings given to them in the Stalking Horse APA.

Purchaser	Gildan Activewear SRL or its Designee (as used in this chart, the " <u>Purchaser</u> ")
Purchased Assets	Debtors' intellectual property, wholesale inventory and, at the Purchaser's option, the Debtors' manufacturing and distribution facilities in Garden Grove, La Mirada and South Gate, California and the Debtors' corporate headquarters in Los Angeles, California. Stalking Horse APA § 2.1
Wholesale Inventory	Purchaser is obligated to purchase wholesale inventory at certain agreed upon percentages of the Debtors' standard cost for each unit (the " <u>Wholesale Purchase Price</u> "). At closing, the Debtors are obligated to deliver such wholesale inventory at the Debtors' standard cost for each unit (the " <u>Purchase Order Purchase Price</u> "). Stalking Horse APA § 2.6
Purchase Price	\$66 million, plus the Wholesale Purchase Price and the Purchase Order Purchase Price. Stalking Horse APA § 3.1
Termination Fee and Expense Reimbursement	<p><u>Expense Reimbursement</u>: \$1 million for all reasonable out-of-pocket and documented fees and expenses (including reasonable attorneys' fees and expenses) incurred by Purchaser in connection with or related to Purchaser's evaluation, consideration, analysis, negotiation, and documentation of the Stalking Horse APA. Stalking Horse APA § 4.7.</p> <p><u>Termination Fee</u>: \$1.98 million (3% of the Purchase Price) incurred in the event that the Debtors pursue or consummate an alternative transaction or for certain other breaches of the Stalking Horse APA by the Debtors. Stalking Horse APA § 4.7.</p>
Termination and Milestones <i>Del. Bankr. L.R. 6004-1(b)(iv)(E)</i>	The Stalking Horse APA may be terminated (i) if the closing has not occurred by February 15, 2017; (ii) by the mutual written consent of the parties; (iii) upon material breach of any representation or warranty; (iv) if there is a final non-appealable order of a government body restraining or otherwise restricting consummation of the transactions; (v) upon Bankruptcy Court approval of a competing transaction; (vi) upon conversion or dismissal of these Cases or upon order lifting the automatic stay with respect to the Purchased Assets; (vii) in the event that the Bidding Procedures Order or the Sale Order are no longer in full force and effect; (viii) if the Bidding Procedures Order is not entered on or before December 5, 2016; (ix) if the Sale Order is not entered on or before January 15, 2017; (x) in the event that the Auction is necessary and is not held on or before January 5, 2017 or the Sale Hearing is not held on or before the date that is 10 days after the selection of a Successful Bidder (as defined below); (xi) by the Purchaser, if the Purchaser is not the Successful Bidder; (xii) by the Purchaser, in the event that the Purchaser has elected to act as a Backup Bidder but the Debtors fail to consummate a transaction by February 15, 2017; and (xiii) upon consummation of a competing transaction. Stalking Horse APA § 4.4 (a) – (n).

Conditions to Closing	In addition to customary closing conditions, the following conditions apply: (i) fulfillment of the representations and warranties made under the Stalking Horse APA; (ii) material performance and compliance with all obligations under the Stalking Horse APA; (iii) entry of the Bidding Procedures Order; (iv) the Bankruptcy Court shall not have appointed a trustee or examiner and have dismissed or converted these Cases; (v) entry of the Sale Order; (vi) compliance with the Wholesale Purchaser Order; and (vii) delivery of certain transaction documents. Stalking Horse APA § 9.1.
Good Faith Deposits <i>Del. Bankr. L.R. 6004-1(b)(iv)(F)</i>	Within three days of the execution of the Stalking Horse APA, the Purchaser will have deposited \$6.6 million to be held in escrow. Stalking Horse APA § 3.2.
Interim Arrangements <i>Del. Bankr. L.R. 6004-1(b)(iv)(G)</i>	<u>Limited License to Purchase Intellectual Property:</u> In the event that the Auction is scheduled for a date that is later than January 15, 2017, the Debtors shall grant Purchaser—from January 15, 2017 through Closing or termination of the Stalking Horse APA by its terms—a worldwide, royalty-free, fully transferable and fully sublicensable license to use the Debtors' trademarks solely in connection with the manufacture of finished goods, in a mutually agreed upon manner and amount not to exceed 1 million units (the " <u>Licensed Merchandise</u> "). If the Debtors consummate a competing transaction, the winning bidder has the right, in its sole discretion, to purchase the Licensed Merchandise from the Purchaser at inventory cost. If the winning bidder elects not to purchase the Licensed Merchandise, Purchaser shall be permitted to sell the Licensed Merchandise to any other person. Stalking Horse APA § 8.7.
Use of Proceeds <i>Del. Bankr. L.R. 6004-1(b)(iv)(H)</i>	The Debtors will use the proceeds of the Purchase Price upon Closing to pay non-Debtor affiliate American Apparel Mexico, S. de R.L. de C.V., as seller under the Stalking Horse APA, \$10,000 in exchange for the sale of its intellectual property. Stalking Horse APA § 3.3. Pursuant to the terms of the DIP Credit Agreement, the Debtors are required to repay their obligations thereunder in full upon the closing of a sale. DIP Credit Agreement § 2.05.
Successor Liability <i>Del. Bankr. L.R. 6004-1(b)(iv)(L)</i>	The Purchaser shall incur no successor liability with respect to the Stalking Horse Assets. Sale Order ¶ DD.
Sales Free and Clear of Unexpired Leases <i>Del. Bankr. L.R. 6004-1(b)(iv)(M)</i>	The Purchaser shall acquire the Stalking Horse Assets free and clear of all liens pursuant to section 363(f) of the Bankruptcy Code. Sale Order ¶ P.
Credit Bidding <i>Del. Bankr. L.R. 6004-1(b)(iv)(N)</i>	Pursuant to the Bidding Procedures, a person or entity holding a perfected security interest in the Debtors' assets may seek to credit bid some or all of their claims that are not subject to a bona fide dispute for their respective collateral, subject to certain limitations agreed to by the Prepetition Secured Lenders (defined below). Bidding Procedures ¶ IV.A.5.
Relief from Stay <i>Del. Bankr. L.R. 6004-1(b)(iv)(O)</i>	The Purchaser will be granted relief from the automatic stay to the extent necessary to allow the Purchaser to take any and all actions permitted under the Stalking Horse APA. Sale Order ¶ 40.

10. The proposed Sale Order and the Stalking Horse APA do not include provisions of the type described in Local Rule 6004-1(b)(iv)(A)-(D) and (I)-(K). To the extent that any Alternative Transaction Agreement (defined below) includes such provisions, the Debtors will highlight those provisions to the Court at the Sale Hearing.

11. The Debtors filed these Cases to complete an open and competitive sale process begun several months ago in order to sell substantially all of their assets and business lines. The Debtors believe that holding an Auction for the Assets with the Stalking Horse APA as the initial bid represents the best means to generate value for their estates and maximize creditor returns.

D. The Need for a Timely Process

12. The Debtors propose to conduct the Sale process and Auction on the following timeline:

December 2, 2016	Hearing to Consider Entry of the Bidding Procedures Order
December 15, 2016 at 5:00 p.m. (prevailing Eastern Time)	Deadline to file Cure Objections
December 19, 2016 at 5:00 p.m. (prevailing Eastern Time)	Bid Deadline
December 20, 2016 at 12:00 p.m. (prevailing Eastern Time)	Deadline for Debtors to notify bidders of their status as Qualified Bidders
December 21, 2016 at 10:00 a.m. (prevailing Eastern Time)	Auction, to be held at the offices of Jones Day, 250 Vesey Street, New York, New York 10281
December 22, 2016 at 5:00 p.m. (prevailing Eastern Time)	Deadline to file objections to Sale Transaction(s)
December 27, 2016 at 5:00 p.m. (prevailing Eastern Time)	Deadline to file Adequate Assurance Objections
December 30, 2016	Proposed hearing to approve proposed Sale Transaction(s)

13. The Debtors believe that conducting the Sale process within the time periods set forth above and in the Bidding Procedures is reasonable and will provide parties with sufficient

time and information necessary to formulate a bid to purchase the Assets. In formulating the procedures and time periods, the Debtors balanced the need to provide adequate and appropriate notice to parties in interest and to potential purchasers with the need to quickly and efficiently sell its operations while they still have realizable value and can be maintained as a going concern. Furthermore, potential bidders will have access to (and in most, if not all, instances have had access to for several months) comprehensive information prepared by the Debtors and their advisors and a substantial body of data, inclusive of Board presentations, inventory tracking reports, sales reports and financial projections. *See* Burian Decl. ¶ 7.

14. Completion of the Sale process in a timely manner will also maximize the value of the Assets. The failure to adhere to the time periods in the Bidding Procedures could jeopardize the Debtors ability to maintain their operations during the pendency of the Sale process, which would result in a substantial loss of value for creditors and foreclose any possibility of going concern value being extracted at the Auction. Both the Stalking Horse APA and the Debtors' postpetition debtor-in-possession financing (the "DIP Credit Facility") require the Debtors' to adhere to certain milestones related to the sale process. Failure to adhere to these milestones can result in termination of the Stalking Horse APA, and in certain circumstances, trigger the payment of the Bid Protections and, with respect to the DIP Credit Facility, result in a loss of financing necessitating an immediate shut down of operations.

15. In addition to the milestones, the Debtors have significant business and financial imperatives to move quickly to protect and preserve value. Even with the DIP Credit Facility, there are limited funds available to the Debtors and they continue to incur expenses every day that a sale transaction is not consummated. The Debtors have balanced the benefits of running an extended auction with their liquidity needs and their ability to maintain going concern

operations and are proposing a sale timeline that is designed to maximize value while at the same time limit needless expenditures and the incurrence of administrative expenses, that may risk a liquidity shortfall that could have a disastrous impact on their businesses. The Debtors have determined, in their business judgment, that a shorter marketing period, which will allow the Debtors to devote funds to maintaining the business as a going concern, offers the estates the best chance of maintaining value, saving jobs and maximizing returns to creditors. *See* Burian Decl. ¶ 18.

16. Finally, the Debtors expect to experience higher-than-average levels of employee attrition upon the filing of these Cases and that those levels will increase as the Cases progress. Therefore, it would be difficult to maintain going concern value during an extended sale process. Accordingly, the Debtors have determined that pursuing the Sale process and Auction in the manner and with the procedures proposed is in the best interest of the Debtors' estates and appropriately balances the need to move quickly with the need to provide all interested parties with a sufficient opportunity to participate.

RELIEF REQUESTED

17. By this Motion, pursuant to sections 105(a), 363 and 365 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006, 9007, 9008 and 9014 of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules") and Local Rules 2002-1, 6004-1 and 9006-1, the Debtors request that the Court:

- (a) enter the Bidding Procedures Order:
 - (i) approving the Bidding Procedures substantially in the form attached as Exhibit 1 to the Bidding Procedures Order;
 - (ii) authorizing the Debtors to perform certain pre-closing obligations under the Stalking Horse APA and provide Bid Protections to the Stalking Horse thereunder;

- (iii) scheduling the Auction for December 21, 2016;
 - (iv) scheduling the Sale Hearing for December 30, 2016;
 - (v) authorizing and approving the (A) notice to each non-Debtor counterparty (each, a "Counterparty") to an executory contract or unexpired lease (collectively, the "Contracts") of the Debtors' proposed cure amounts (the "Cure Costs"), substantially in the form attached to the Bidding Procedures Order as Exhibit 2 (the "Assumption and Assignment Notice") and (B) the procedures for the assumption and assignment of Contracts and the determination of Cure Costs with respect thereto (collectively, the "Assumption and Assignment Procedures");
 - (vi) authorizing and approving the notice of the Auction and Sale Hearing, substantially in the form attached to the Bidding Procedures Order as Exhibit 3 (the "Sale Notice"); and
 - (vii) authorizing the Debtors to publish critical content contained in the Sale Notice in the *Wall Street Journal* or *USA Today* (the "Publication Notice"); and
- (b) enter one or more Sale Orders:
- (i) authorizing the sale of the Assets (or a portion thereof, including the Stalking Horse Assets) free and clear of all liens, claims, interests, and encumbrances, with liens to attach to the proceeds of such Sale Transaction(s);
 - (ii) authorizing the assumption and assignment of the Proposed Assumed Contracts (as defined below); and
 - (iii) granting related relief.

BIDDING PROCEDURES

A. Overview⁴

18. The Bidding Procedures are intended to provide for a fair, timely and competitive sale process consistent with the timeline of these Cases. The Bidding Procedures, if approved, will enable the Debtors to identify bids from potential buyers that would constitute the best and highest offer for the Assets. Because the Bidding Procedures are attached to the proposed

⁴ All capitalized terms not defined in this section have the meanings given to such terms in the Bidding Procedures.

Bidding Procedures Order as Exhibit 1, they are not stated herein in their entirety. However, pursuant to Local Rule 6004-1, certain key terms of the Bidding Procedures are highlighted below:

Bid Deadline	Any person or entity that desires to participate in the Auction (each, a " <u>Prospective Bidder</u> ") must submit its bid (and such bid must constitute a Qualified Bid (as defined below)) on or before December 19, 2016 at 5:00 p.m. (prevailing Eastern Time) (the " <u>Bid Deadline</u> ") in writing to the Bid Notice Parties set forth in the Bidding Procedures.
Diligence	To be eligible to participate in the Auction, a Prospective Bidder must first deliver (i) an executed confidentiality agreement, in form and substance satisfactory to the Debtors and consistent with the terms of the confidentiality agreements that the Debtors required potential bidders to sign prior to the filing of these Cases, (ii) a statement or other factual support demonstrating to the Debtors' satisfaction in the exercise of their reasonable business judgment that the Prospective Bidder has a bona fide interest in purchasing the Assets, and (iii) preliminary proof of the Prospective Bidder's financial capacity to close the proposed sale transaction. Upon execution of a valid confidentiality agreement, any Prospective Bidder identified by the Debtors as reasonably likely to be a Qualified Bidder that wishes to conduct due diligence on the Assets may be granted access to all material information regarding the Assets; <u>provided that</u> , if any Prospective Bidder is (or is affiliated with) a competitor of the Debtors, the Debtors will not be required to disclose to such Prospective Bidder any trade secrets or proprietary information, as determined in their sole discretion, unless the confidentiality agreement executed by such Prospective Bidder contains appropriate provisions to ensure that such trade secrets or proprietary information will not be used for an improper purpose or to gain an unfair competitive advantage. If the Debtors determine that a Prospective Bidder does not qualify as a Qualified Bidder, such Prospective Bidder shall not be entitled to receive due diligence access or additional non-public information.
Qualified Bid Requirements	<p>In order to qualify as a "<u>Qualified Bid</u>," the bid must be in writing and the Debtors must determine that the bid satisfies the following requirements (and any Prospective Bidder that submits a Qualified Bid satisfying the following requirements shall be a "<u>Qualified Bidder</u>"):</p> <ul style="list-style-type: none"> • <u>Purchased Assets</u>: A Qualified Bid must identify the following: (A) the Assets (or the portion thereof) to be purchased, including any Contracts of the Debtors that would be assumed and assigned in connection with the relevant Sale Transaction (all such executory contracts and unexpired leases, the "<u>Proposed Assumed Contracts</u>"); (B) the liabilities, if any, to be assumed, including any debt to be assumed; (C) the cash purchase price of, and any other consideration offered in connection with, the bid; (D) the proposed form of adequate assurance of future performance with respect to any Proposed Assumed Contracts; and (E) whether the Prospective Bidder intends to operate all or a portion of the Debtors' business as a going concern (as applicable), or to liquidate the business. • <u>Identification of Bidder</u>: A Qualified Bid must fully disclose the legal identity of each person or entity bidding for the applicable Assets or otherwise sponsoring, financing (including through the issuance of debt in connection with such bid), participating in (including through license or similar arrangement with respect to the assets to be acquired in connection with such bid) such bid or the Auction in connection with such bid, and the complete terms of any such participation, and must also disclose any past or present connections or agreements with the Debtors, the Stalking Horse, any other known Prospective Bidder or Qualified Bidder, and/or any officer or director of the foregoing (including any current or

former officer or director of the Debtors).

- Asset Purchase Agreement for Stalking Horse Assets Only: A Qualified Bid solely for the Stalking Horse Assets must include a duly authorized and executed copy of the Stalking Horse APA modified to reflect such Qualified Bidder's proposed Sale Transaction (the "Alternative IP/Inventory Transaction Agreement") (including all exhibits and schedules thereto), together with copies marked to show any amendments and modifications to (A) the Stalking Horse APA and (B) the proposed Sale Order.
- Asset Purchase Agreement for Non-Stalking Horse Assets: A Qualified Bid that includes any Assets other than the Stalking Horse Assets must include a duly authorized and executed copy of the form asset purchase agreement provided by the Debtors (the "Form APA") modified to reflect such Qualified Bidder's proposed Sale Transaction (the "Alternative Transaction Agreement") (including all exhibits and schedules thereto), together with copies marked to show any amendments and modifications to (A) the Form APA and (B) the proposed Sale Order.
- Credit Bidding: In connection with the Sale of all or any portion of the Assets, a person or entity holding a perfected security interest in such Assets may seek to credit bid some or all of their claims that are not subject to a bona fide dispute for their respective collateral (each such bid, a "Credit Bid") pursuant to section 363(k) of the Bankruptcy Code. A Credit Bid may be applied only to reduce the cash consideration with respect to the Assets in which the party submitting the Credit Bid holds a security interest. Each person or entity holding a valid, perfected security interest in Assets for which it submits a bid shall be deemed a Qualified Bidder with respect to its right to acquire such Assets by Credit Bid; provided, however, that the Debtors' prepetition lenders (the "Prepetition Secured Lenders") under that certain Credit Agreement dated February 5, 2016, by and among certain of the Debtors as Borrowers, the lenders party thereto and Wilmington Trust, National Association as Administrative Agent (the "Prepetition Credit Facility"), will not credit bid if the result of such credit bid would be to overbid an otherwise Successful Bid by the Stalking Horse for the Stalking Horse Assets.⁵
- Financial Information: A Qualified Bid must include the following: (A) a statement that the Prospective Bidder is financially capable of consummating the Sale Transaction(s) contemplated by the Stalking Horse APA or Alternative Transaction Agreement (as applicable); (B) if the bid includes a Credit Bid, a statement that any remaining balance of the bid after reducing the applicable purchase price of the Assets by the amount of the proposed Credit Bid is based on an all-cash offer; and (C) satisfactory evidence of committed financing or other financial ability to consummate the proposed Sale Transaction(s) in a timely manner.
- Good Faith Deposit. Each Qualified Bid (other than one that includes a Credit Bid) must be accompanied by a good faith deposit (the "Good Faith Deposit") in the form of cash (or other form acceptable to the Debtors in their sole and absolute discretion) in an amount equal to 10% of the purchase price offered to purchase the Assets (or portion thereof). All Good Faith Deposits shall be held in escrow in a non-interest bearing account identified by the Debtors until no later than five business days after the conclusion of the Auction unless such bidder is selected as the Successful Bidder or as a Backup Bidder (as hereinafter defined),

⁵ The Prepetition Secured Lenders holding approximately 90% of the outstanding obligations owed by the Debtors under Prepetition Credit Facility have consented to this provision.

and thereafter returned to the respective Qualified Bidders in accordance with the Bidding Procedures or in the case of the Stalking Horse, return of its Good Faith Deposit shall be governed by the Stalking Horse APA. The Debtors reserve the right to increase the Good Faith Deposit for one or more Qualified Bidders (as defined below) (other than the Stalking Horse's Good Faith Deposit) in their sole discretion after consulting with the Consultation Parties.⁶

- Adequate Assurance. A Qualified Bid must include evidence of the Prospective Bidder's ability to comply with section 365 of the Bankruptcy Code (to the extent applicable), including providing adequate assurance of such Prospective Bidder's ability to perform future obligations arising under the contracts and leases proposed in its bid to be assumed by the Debtors and assigned to the Prospective Bidder, in a form that will permit the immediate dissemination of such evidence to the Counterparties to such contracts and leases.
- Representations and Warranties: A Qualified Bid must include the following representations and warranties: (A) expressly state that the Prospective Bidder has had an opportunity to conduct any and all due diligence regarding the Debtors' businesses and the Assets prior to submitting its bid; and (B) a statement that the Prospective Bidder has relied solely upon its own independent review, investigation and/or inspection of any relevant documents and the Assets in making its bid and did not rely on any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the Debtors' businesses or the Assets or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in the Alternative IP/Inventory Transaction Agreement or Alternative Transaction Agreement (as applicable) signed by the Prospective Bidder and ultimately accepted and executed by the Debtors.
- Authorization: A Qualified Bid must include evidence of authorization and approval from the Prospective Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of a bid, participation in the Auction and closing of the proposed Sale Transaction(s) in accordance with the terms of the bid and these Bidding Procedures.
- Other Requirements: A Qualified Bid shall: (A) expressly state that the bid is formal, binding, not subject to or conditioned on any further due diligence, and irrevocable until the selection of the Successful Bid (as defined below) in accordance with these Bidding Procedures; provided that if such Prospective Bidder is selected as the Successful Bidder or Backup Bidder, its bid must remain irrevocable until the Debtors' consummation of a sale with the Successful Bidder; (B) if the bid is for the Stalking Horse Assets, state that the bid is not subject to conditions more burdensome than those in the Stalking Horse APA; (C) expressly state that the Prospective Bidder is committed to closing the proposed Sale Transaction(s) contemplated by the bid as soon as practicable; (D) except for the Bid Protections (as defined in the Bidding Procedures Order) for the Stalking Horse approved in the Bidding Procedures Order, expressly state and acknowledge that no Prospective Bidder shall be entitled to a break-up fee, termination fee, expense reimbursement, or similar type of "bid protection" in connection with the submission of a bid; (E) expressly waive any claim or right to

⁶ The "Consultation Parties" are (a) Milbank, Tweed, Hadley & McCloy LLP and Fox Rothschild LLP, as counsel to certain of the Debtors' Prepetition Secured Lenders, (b) Covington & Burling LLP, as counsel to Wilmington Trust, National Association, as administrative agent to the Debtors' prepetition secured lenders, (c) Riemer & Braunstein LLP and Ashby & Geddes, P.A., as counsel to the DIP Lenders and (d) counsel for any official committee of unsecured creditors appointed in these Cases.

	<p>assert any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code in connection with bidding for the Assets and/or participating in the Auction; (F) not contain any financing contingencies of any kind; (G) not contain any condition to closing of the proposed Sale Transaction(s) on the receipt of any third party approvals (excluding Bankruptcy Court approval and any applicable required governmental and/or regulatory approval); (H) state that all necessary filings under applicable regulatory, antitrust, and other laws will be made (pursuant to the terms of the Alternative IP/ Inventory Transaction Agreement or Alternative Transaction Agreement (as applicable)) and that payment of the fees associated therewith shall be made by the Prospective Bidder; (I) expressly state that the Prospective Bidder agrees to serve as a backup bidder (a "<u>Backup Bidder</u>") if such bidder's Qualified Bid is selected as the next highest or next best bid after the Successful Bid with respect to the applicable Assets; (J) include contact information for the specific person(s) the Debtors should contact in the event they have any questions about the Prospective Bidder's bid; and (K) be received by the Bid Notice Parties by the Bid Deadline.</p>
Disqualification of Bids:	<p>The Debtors, in their business judgment, and in consultation with the Consultation Parties, reserve the right to reject any bid (other than the Stalking Horse bid) if such bid, among other things: (A) is on terms that are more burdensome or conditional than the terms of the Stalking Horse APA; (B) requires any indemnification of the Prospective Bidder; (C) is not received by the Bid Deadline; (D) is subject to any contingencies (including representations, warranties, covenants and timing requirements) of any kind or any other conditions precedent to such party's obligation to acquire the relevant Assets; or (E) does not, in the Debtors' determination (after consultation with the Consultation Parties), include a fair and adequate price or the acceptance of which would not be in the best interests of the Debtors estates or the Auction.</p>
Selecting Qualified Bidders	<p>The Debtors shall make a determination regarding which bids qualify as Qualified Bids and as Baseline Bids (as defined below) and shall notify bidders whether they have been selected as Qualified Bidders by no later than December 20, 2016 at 12:00 p.m. (prevailing Eastern Time).</p>
Bid Protections	<p>Other than the Bid Protections provided to the Stalking Horse, no party submitting a bid, whether or not such bid is determined by the Debtors to qualify as a Qualified Bid, shall be entitled to a break-up fee or expense reimbursement, or any other bid protection, unless such break-up fee, expense reimbursement, or other bid protection is approved by the Bankruptcy Court</p>
Auction	<p>If the Debtors receive more than one Qualified Bid for the same Assets with acceptable purchase prices by the Bid Deadline, the Debtors shall conduct the Auction. The Auction, if required, will be conducted at the offices of Jones Day, 250 Vesey Street, New York, New York 10281 on December 21, 2016 at 10:00 a.m. (prevailing Eastern Time) (the "<u>Auction Date</u>"), or at such other time and location as designated by the Debtors, after consulting with the Consultation Parties. The Debtors shall have the right to conduct any number of Auctions on the Auction Date to accommodate multiple bids that comprise a single Qualified Bid, if the Debtors determine, in their reasonable business judgment that conducting such auctions would be in the best interests of the Debtors' estates. If the Debtors receive no more than one Qualified Bid (including the Stalking Horse bid), the Debtors will not hold the Auction and instead shall request at the Sale Hearing that the Bankruptcy Court approve the Stalking Horse APA with the Stalking Horse.</p> <p><u>Transcription.</u> The bidding at the Auction shall be transcribed and the Debtors shall maintain a transcript of all bids made and announced at the Auction.</p> <p><u>Participants and Attendees:</u> Only Qualified Bidders that have submitted Qualified Bids by the Bid Deadline are eligible to participate in the Auction, subject to other limitations as</p>

	<p>may be reasonably imposed by the Debtors in accordance with the Bidding Procedures. Qualified Bidders participating in the Auction must appear in person at the Auction, or through a duly authorized representative. Subject to the Auction Procedures set forth in Section III.B of the Bidding Procedures, the Auction will be conducted openly and all undisputed creditors may be permitted to attend; <u>provided</u> that the Debtors may, in their sole and exclusive discretion, establish a reasonable limit on the number of representatives and/or professional advisors that may appear on behalf of or accompany each Qualified Bidder at the Auction. Each of the Consultation Parties shall be entitled to have a reasonable number of representatives and/or professional advisors attend the Auction</p> <p>Each Qualified Bidder participating in the Auction will be required to confirm in writing and on the record at the Auction that (A) it has not engaged in any collusion with respect to the submission of any bid or the Auction, and (B) its Qualified Bid represents a binding, good faith, and bona fide offer to purchase the Assets identified in such bid if selected as the Successful Bidder.</p>
Baseline Bids	<p>Bidding shall commence at the amount of the Qualified Bid or combination of Qualified Bids that the Debtors, in consultation with the Consultation Parties, determine in their business judgment to be the highest and/or best Qualified Bid (the "<u>Baseline Bid</u>"). The Stalking Horse bid shall constitute the portion of the Baseline Bid attributable to the Stalking Horse Assets.</p>
Minimum Overbid	<p>Qualified Bidders may submit successive bids higher than the previous bid, based on and increased from the Baseline Bid for the relevant Assets; <u>provided, however</u>, that to the extent that there is more than one Qualified Bid for the Stalking Horse Assets, the bidding for Stalking Horse Assets will start at an amount equal to \$66 million, <u>plus</u> the aggregate amount of the Termination Fee and the Expense Reimbursement (solely for purposes of conducting the Auction, the amount of the Expense Reimbursement shall be deemed to be \$1 million). The minimum required increments for successive Qualified Bids (each such bid, a "<u>Minimum Overbid</u>") will be announced at the outset of the Auction. The Debtors may, in their reasonable business judgment, and after consulting with the Consultation Parties, announce increases or reductions to Minimum Overbids at any time during the Auction.</p> <p>Except as specifically set forth herein, for the purpose of evaluating the value of the consideration provided by any bid subsequent to a Baseline Bid, the Debtors will, at each round of bidding, give effect to the Bid Protections payable to the Stalking Horse under the Stalking Horse APA, as well as any additional liabilities to be assumed by a Qualified Bidder and any additional costs that may be imposed on the Debtors. To the extent that a Minimum Overbid has been accepted entirely or in part because of the addition, deletion, or modification of a provision or provisions in the applicable Stalking Horse APA, Alternative IP/Inventory Transaction Agreement or Alternative Transaction Agreement (as applicable), the Debtors will identify such added, deleted or modified provision or provisions and the value thereof</p>
Leading Bid	<p>After the first round of bidding and between each subsequent round of bidding, the Debtors shall announce the bid that they believe to be the highest or otherwise best offer for the relevant Assets (the "<u>Leading Bid</u>"). Each round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a subsequent bid with full knowledge of the Leading Bid.</p> <p>The Auction may include open bidding in the presence of all other Qualified Bidders. All Qualified Bidders shall have the right to submit additional bids and make modifications to the Stalking Horse APA or their Alternative Transaction Agreement at the Auction to improve their bids. The Debtors may, in their reasonable business judgment, negotiate with any and all Qualified Bidders participating in the Auction.</p> <p>The Debtors shall have the right, after consulting with the Consultation Parties, to determine, in their reasonable business judgment, which bid is the highest or otherwise best bid with respect to the applicable Asset(s) and reject at any time, without liability, any</p>

	<p>bid that the Debtors deem to be inadequate or insufficient, not in conformity with the requirements of the Bankruptcy Code, Bankruptcy Rules, or the Local Rules, these Bidding Procedures, any order of the Bankruptcy Court or the best interests of the Debtors and their estates.</p> <p>Any Leading Bid made from time to time by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless (i) the Debtors accept a higher or otherwise better bid submitted by another Qualified Bidder during the Auction as a Leading Bid and (ii) such Leading Bid is not selected as the Backup Bid.</p> <p>To the extent not previously provided (which will be determined by the Debtors), a Qualified Bidder (other than the Stalking Horse) submitting a subsequent bid must submit at the Debtors' request, as part of its subsequent bid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors) demonstrating such Qualified Bidder's ability to close the transaction at the purchase price contemplated by such subsequent bid.</p>
Successful Bids	<p>Immediately prior to the conclusion of the Auction, the Debtors shall, in consultation with the Consultation Parties, (A) determine, consistent with the Bidding Procedures, which bid constitutes the highest or otherwise best bid(s) for the applicable Asset(s) (each such bid, a "<u>Successful Bid</u>"); and (B) notify all Qualified Bidders at the Auction for the applicable Asset(s) of the identity of the bidder that submitted the Successful Bid (each such bidder, the "<u>Successful Bidder</u>") for such Asset(s) and the amount of the purchase price and other material terms of the Successful Bid.</p>
Backup Bids	<p>Immediately prior to the conclusion of the Auction, the Debtors shall, in consultation with the Consultation Parties, (a) determine, consistent with these Bidding Procedures, which Qualified Bid is the next highest or otherwise best Qualified Bid for the relevant Assets after the Successful Bid (each such Qualified Bid, a "<u>Backup Bid</u>"); and (b) notify all Qualified Bidders at the Auction for the applicable Asset of the identity of the Backup Bidder and the amount of the purchase price and other material terms of the Backup Bid. Notwithstanding the foregoing, the Stalking Horse will be deemed to be the Backup Bidder only in accordance with the terms of the Stalking Horse APA and with the prior written consent of the Stalking Horse, exercisable in its sole and absolute discretion. In the event the Debtors select the Stalking Horse APA as the Backup Bid and the Stalking Horse does not consent to be the Backup Bidder, the Debtors may select the next highest and otherwise best bid submitted by a Qualified Bidder during the Auction, as determined by the Debtors pursuant to these Bidding Procedures, as the Backup Bid, and the Qualified Bidder that submitted such Qualified Bid will be deemed to be the Backup Bidder.</p> <p>Subject to the Stalking Horse APA, if the Stalking Horse consents in its sole discretion to be the Backup Bidder, Backup Bids must remain open until the Debtors' consummation of a sale with the Successful Bidder. If the Successful Bidder for the applicable Assets fails to consummate a Sale Transaction, the Backup Bidder shall be deemed the new Successful Bidder, and the Debtors will be authorized, but not required, to consummate a Sale Transaction for the applicable Assets with the Backup Bidder.</p>
Auction Results	<p>On or before December 22, 2016 at 5:00 p.m. (prevailing Eastern Time), the Debtors shall file with the Bankruptcy Court, serve on the Sale Notice Parties, and cause to be published on the website maintained by the Debtors' claim and noticing agent, Prime Clerk, LLC, located at http://cases.primeclerk.com/americanapparel (the "<u>Prime Clerk Website</u>") the results of the Auction, which shall include (i) a copy of the Successful Bid(s) and Backup Bid(s); (ii) the identities of the Successful Bidder(s) and Backup Bidder(s);</p> <p>On or before December 23, 2016 at 5:00 p.m. (prevailing Eastern Time), the Debtors shall file with the Bankruptcy Court, serve on the Sale Notice Parties, and cause to be published on the Prime Clerk Website, (i) the Notice of the Proposed Assumed Contracts; and (ii) each Successful Bidder's and Backup Bidder's proposed form of adequate</p>

	assurance of future performance with respect to the relevant Proposed Assumed Contracts.
Modification of Procedures	The Debtors may, after consulting with the Consultation Parties, modify the rules, procedures and deadlines set forth herein (including, without limitation, extending the Bid Deadline, modifying the Qualified Bid Requirements, modifying the procedures for conducting the Auction, rescheduling the Auction or adjourning the Sale Hearing), or adopt new rules, procedures and deadlines or otherwise modify these Bidding Procedures in order to, in their reasonable discretion, better promote the goals of such procedures, namely, to maximize value for the estates; <u>provided</u> that all modifications and additional rules, procedures and deadlines may in no event permit the submission of bids after the close of the Auction or extend any deadline beyond the applicable outside date or milestone set forth in the Stalking Horse APA. All such modifications and additional rules will be communicated to each of the Notice Parties, Prospective Bidders and Qualified Bidders.

B. Notice Procedures

19. The Debtors request approval of the Sale Notice substantially in the form attached to the Bidding Procedures Order as Exhibit 3. Within two days of entry of the Bidding Procedures Order, the Debtors will serve the Sale Notice by first class mail or email on: (a) the Consultation Parties (as applicable); (b) Sullivan & Cromwell LLP, as counsel to the Stalking Horse; (c) all persons and entities known by the Debtors to have expressed an interest to the Debtors in a Sale Transaction involving any of the Assets during the past twelve (12) months, including any person or entity that has submitted a bid for any of the Assets, as applicable; (d) all persons and entities known by the Debtors to have asserted any lien, claim, interest, or encumbrance in the Assets (for whom identifying information and addresses are available to the Debtors); (e) all non-Debtor parties to any Contracts that are proposed to be assumed or rejected in connection with a Sale Transaction; (f) any governmental authority known to have a claim against the Debtors in these chapter 11 cases; (g) the United States Attorney General; (h) the Antitrust Division of the United States Department of Justice; (i) the United States Attorney for the District of Delaware; (j) the Office of the Attorney General in each state in which the Debtors operate; (k) the Federal Trade Commission; (l) the office of the United States Trustee for the District of Delaware; (m) the Internal Revenue Service; (n) the United States Securities and

Exchange Commission; (o) all of the Debtors' known creditors (for whom identifying information and addresses are known to the Debtors); (p) all parties who have filed a notice of appearance and request for service of papers in these chapter 11 cases pursuant to Bankruptcy Rule 2002; and (q) all other persons and entities as directed by the Court.

20. Prior to the filing of these Cases, the Debtors sold and issued gift cards at their retail stores and online that could be redeemed for merchandise at a later date. Contemporaneously with the commencement of these Cases, the Debtors suspended the sale and issuance of gift cards. However, the Debtors intend to honor outstanding gift cards at their retail stores and online through December 31, 2016, which date may be extended (the "Gift Card Termination Date"). In order to alert customers to the need to use their gift cards prior to the Gift Card Termination Date, no later than five business days following the date hereof, the Debtors intend to post notices at registers in each of their retail locations, on the Prime Clerk Website and on their social media channels informing customers that their gift cards will be honored for a limited period of time and alerting them to the Gift Card Termination Date. Additionally, the Debtors have set up a link on their website (www.americanapparel.net) where customers can check the balance of their gift cards. Any customer that checks the balance of a gift card will also see information regarding the Gift Card Termination Date along with his or her gift card balance (the notice procedures set forth in this paragraph, the "Gift Card Notice Procedures").

21. In addition, the Debtors will also post the Sale Notice and the Bidding Procedures Order on the Prime Clerk Website and no later than five days after entry of the Bidding Procedures Order, the Debtors will cause the information contained in the Sale Notice to be published once in the *Wall Street Journal* or *USA Today*.

22. The Debtors submit that the procedures described above (the "Notice Procedures"), coupled with the Assumption and Assignment Procedures further described below, constitute adequate and reasonable notice of the key dates and deadlines for the Sale, including, among other things, the deadline to object to the Sale of the Assets, assumption and assignment of the Contracts, the treatment of gift cards, the Auction, the Bid Deadline and the Sale Hearing.

ASSUMPTION AND ASSIGNMENT PROCEDURES

23. In connection with any Sale Transaction, the Debtors propose to assume and assign to the Successful Bidder(s) the Proposed Assumed Contracts (defined below). The Assumption and Assignment Procedures will, among other things, notice the Counterparties of the potential assumption and assignment of their Contracts and the Debtors' calculation of Cure Costs with respect thereto. Specifically, the Assumption and Assignment Procedures provide that:

- (a) Assumption and Assignment Notice: Within two days after the entry of the Bidding Procedures Order, the Debtors shall file with the Bankruptcy Court, serve on the Sale Notice Parties, including each Counterparty to a Contract that may be assumed in connection with any Sale Transaction, and cause to be published on the Prime Clerk Website, the Assumption and Assignment Notice, which shall (i) identify the Contracts; (ii) list the Debtors' good faith calculation of Cure Costs with respect to each Contract; (iii) expressly state that assumption or assignment of a Contract is not guaranteed and is subject to Court approval; and (iv) prominently display the deadline to file objections to the assumption, assignment or sale of the Debtors' Proposed Assumed Contracts. In the event that the Debtors identify Counterparties that were not served with the Assumption and Assignment Notice, the Debtors may subsequently serve such Counterparty with an Assumption and Assignment Notice, and the following procedures will nevertheless apply to such Counterparty; provided, however, that the deadline to file a Cure Objection and/or Adequate Assurance Objection with respect to such Counterparty shall be 5:00 p.m. (prevailing Eastern Time) on the date that is 14 days following service of the Assumption and Assignment Notice.
- (b) Proposed Assumed Contracts Notice: No later than four business days after the conclusion of the Bid Deadline, the Debtors shall file with the Bankruptcy Court, serve on the Sale Notice Parties, including each

applicable Counterparty and cause to be published on the Prime Clerk Website a list of the Proposed Assumed Contracts that the Debtors will seek to assume and assign pursuant to the Stalking Horse APA or one or more Alternative Transaction Agreement (as applicable) (the "Proposed Assumed Contracts Notice").

- (c) Objection Recipients: Any Counterparty that wishes to object to the assumption or assumption and assignment of a Contract to a Successful Bidder must file with the Bankruptcy Court and serve its objection on the Objection Recipients.
- (d) Cure Costs Objections.
 - (i) Deadline: Any Counterparty to a Proposed Assumed Contract that wishes to object to the proposed assumption, assignment and sale of the Proposed Assumed Contract, the subject of which objection is the Debtors' proposed Cure Costs to cure any outstanding monetary defaults then existing under such contract (each, a "Cure Objection") shall file with the Bankruptcy Court and serve on the Objection Recipients its Cure Objection, which must state, with specificity, the legal and factual bases thereof, including any appropriate documentation in support thereof, by no later than **December 15, 2016 at 5:00 p.m. (prevailing Eastern Time)**.
 - (ii) Resolution: The Debtors and a Counterparty that has filed a Cure Objection shall first confer in good faith to attempt to resolve the Cure Objection without Court intervention. If the parties are unable to consensually resolve the Cure Objection prior to the commencement of the Sale Hearing, the amount to be paid or reserved with respect to such Cure Objection shall be determined by the Bankruptcy Court at the Sale Hearing. The Bankruptcy Court shall make all necessary determinations relating to the applicable Cure Costs and Cure Objections at a hearing scheduled pursuant to the following paragraph. All other objections to the proposed assumption and assignment of the Debtors' right, title, and interest in, to, and under a Contract, if it is ultimately designated a Proposed Assumed Contract, will be heard at the Sale Hearing.
 - (iii) Adjournment: If a timely filed Cure Objection cannot otherwise be resolved by the parties, such objection shall be heard at the Sale Hearing; provided that, a Cure Objection may, at the Debtors' discretion, after consulting with the Consultation Parties and the applicable Successful Bidder, be adjourned (an "Adjourned Cure Objection") to a subsequent hearing. An Adjourned Cure Objection may be resolved after the closing date of the applicable Sale Transaction(s); provided that, the Debtors maintain a cash

reserve equal to the cure amount the objecting Counterparty believes is required to cure the asserted monetary default under the applicable Proposed Assumed Contract. Upon resolution of an Adjourned Cure Objection and the payment of the applicable cure amount, if any, the applicable Proposed Assumed Contract that was the subject of such Adjourned Cure Objection shall be deemed assumed and assigned to the applicable Successful Bidder, as of the closing date of the applicable Sale Transaction(s).

- (iv) Failure to Timely Object: If a Counterparty fails to timely file with the Bankruptcy Court and serve on the Objection Recipients a Cure Objection, the Counterparty shall be deemed to have consented to the assumption, assignment and sale of the Proposed Assumed Contract (unless such Counterparty has timely filed an Adequate Assurance Objection (as defined below) with respect to the Proposed Assumed Contract) to the applicable Successful Bidder and forever shall be barred from asserting any objection with regard to such assumption, assignment and sale. The Cure Costs set forth in the Assumption and Assignment Notice shall be controlling and will be the only amount necessary to cure outstanding defaults under the Proposed Assumed Contract under Bankruptcy Code section 365(b), notwithstanding anything to the contrary in any Proposed Assumed Contract, or any other document, and the Counterparty to the Proposed Assumed Contract shall be deemed to have consented to the Cure Costs and forever shall be barred from asserting any other claims related to such Proposed Assumed Contract against the Debtors or any Successful Bidder(s) or their property.

(e) Adequate Assurance Objections.

- (i) Deadline: Any Counterparty to a Proposed Assumed Contract that wishes to object to the proposed assumption, assignment and sale of the Proposed Assumed Contract, the subject of which objection is a Successful Bidder's proposed form of adequate assurance of future performance with respect to such contract (each, an "Adequate Assurance Objection") shall file with the Bankruptcy Court and serve on the Objection Recipients an Adequate Assurance Objection, which must state, with specificity, the legal and factual bases thereof, including any appropriate documentation in support thereof, by no later than **December 27, 2016, at 5:00 p.m. (prevailing Eastern Time)**; provided that, if the Sale Hearing is adjourned to a later date, the Adequate Assurance Objection Deadline shall be at 5:00 p.m. (prevailing Eastern Time) two (2) days prior to the Sale Hearing.

- (ii) Resolution of Objections: The Debtors and a Counterparty that has filed an Adequate Assurance Objection shall first confer in good faith to attempt to resolve the Adequate Assurance Objection without Court intervention. If the parties are unable to consensually resolve the Adequate Assurance Objection prior to the commencement of the Sale Hearing, such objection and all issues of adequate assurance of future performance of the applicable Successful Bidder shall be determined by the Bankruptcy Court at the Sale Hearing.
- (iii) Failure to Timely Object: If a Counterparty fails to timely file with the Bankruptcy Court and serve on the Objection Recipients an Adequate Assurance Objection, the Counterparty shall be deemed to have consented to the assumption, assignment and sale of the Proposed Assumed Contract (unless the Counterparty has filed a timely Cure Objection with respect to the Proposed Assumed Contract) to the applicable Successful Bidder and forever shall be barred from asserting any objection with regard to such assumption, assignment, and sale. The applicable Successful Bidder shall be deemed to have provided adequate assurance of future performance with respect to the applicable Proposed Assumed Contract in accordance with section 365(f)(2)(B) of the Bankruptcy Code, notwithstanding anything to the contrary in the Proposed Assumed Contract, or any other document.

BASIS FOR RELIEF

A. The Bidding Procedures Are Appropriate and Are in the Best Interests of the Debtors and their Estates

24. Bankruptcy Rule 6004(f)(1) provides that "[a]ll sales not in the ordinary course of business may be by private sale or by public auction." The paramount goal of any proposed sale of property of the debtor's estate is to maximize the value of the sale proceeds received by the estate. *See Official Committee of Unsecured Creditors of Cybergenics Corp. v. Chinery*, 330 F.3d 548, 573 (3d Cir. 2003) (the debtor has the "fiduciary duty to maximize the value of the bankruptcy estate."); *Burtch et al. v. Ganz, et al. (In re Mushroom Co.)*, 382 F.3d 325, 339 (3d Cir. 2004) (finding that debtor "had a fiduciary duty to protect and maximize the estate's assets."); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 564- 65 (8th Cir. 1997) ("a primary objective of the Code [in asset sales is] to enhance the value of the estate at hand.") (citing

Metropolitan Airports Comm'n v. Northwest Airlines, Inc. (In re Midway Airlines, Inc.), 6 F.3d 492, 494 (7th Cir. 1993) ("Section 365 . . . advances one of the Code's central purposes, the maximization of the value of the bankruptcy estate for the benefit of creditors."). Courts uniformly recognize that procedures established for the purpose of enhancing competitive bidding are consistent with the fundamental goal of maximizing value of a debtor's estate. *See Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.)*, 181 F.3d 527, 537 (3d Cir. 1999) (noting that bidding procedures that promote competitive bidding provide a benefit to a debtor's estate); *In re Fin'l News Network, Inc.*, 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1992) ("court-imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison of offers, and [should] provide for fair and efficient resolution of bankrupt estates.").

25. The proposed Bidding Procedures are designed to facilitate a sale process in compliance with the Bankruptcy Rules and relevant case law by providing a method by which the Debtors will be able to maximize the value of the Assets. The Debtors, with the assistance of their advisors, have structured the Bidding Procedures to attract competitive and active bidding from those parties with the financial capability to do so. The Stalking Horse bid enables the Debtors to set a floor for the value of their Stalking Horse Assets, while also increasing the likelihood that they will receive the greatest possible consideration for these and other Assets at the Auction. Moreover, the Bidding Procedures will allow the Debtors to conduct the Auction in a fair, controlled and transparent manner that will encourage participation by financially capable bidders that demonstrate the financial wherewithal to close a transaction. The Debtors submit that courts in this District routinely approve procedures substantially similar to the proposed Bidding Procedures. *See, e.g., In re Sports Authority, Inc.*, No. 16-10257 (MFW) (Docket

No. 1186) (Bankr. D. Del. Apr. 14, 2016); *In re Hancock Fabrics, Inc.*, No. 16-10296 (BLS) (Docket No. 235) (Bankr. D. Del. Feb. 24, 2016); *In re Haggen Holdings, LLC*, No. 15-11874 (KG) (Docket No. 911) (Bankr. D. Del. Dec. 4, 2015); *In re City Sports, Inc.*, No. 15-12054 (KG) (Docket No. 14) (Bankr. D. Del. Sept. 3, 2015). Accordingly, the Bidding Procedures should be approved as reasonable, appropriate, and in the best interests of the Debtors, their estates and all parties in interest.

B. The Bid Protections Requested are Reasonable and Justified

26. If the Stalking Horse is not the Successful Bidder, the Debtors propose to provide the Stalking Horse with the following Bid Protections: (a) a Termination Fee in the amount of \$1,980,000 and (b) an Expense Reimbursement of reasonable out-of-pocket and documented fees and expenses not to exceed \$1,000,000. Additionally, the Bidding Procedures provide that the Debtors may take into account the value of the Bid Protections when considering potential overbids at the Auction. The Bid Protections were negotiated by the Stalking Horse and the Debtors and their respective advisors at arm's-length and in good faith. The Bid Protections, collectively and individually, are fair and reasonable, will not chill bidding, and will enable the Debtors to maximize value through a sales process.

27. The Bid Protections were a material inducement for the Stalking Horse to enter into the Stalking Horse APA, and the Stalking Horse has the ability to terminate the Stalking Horse APA if the Bid Procedures are not approved on the terms set forth therein. *See Burian Decl.* ¶ 14. Further, based on discussions with the Stalking Horse, the Debtors believe that the Stalking Horse would not enter into the Stalking Horse APA without the Bid Protections. *See Id.*

28. The Debtors have determined that conducting a Sale process and Auction with a stalking horse bid for at least some of the Assets is critical to preserving the value of their estates and submit that providing the Bid Protections to the Stalking Horse is an actual, necessary cost

of going forward with the Auction. Therefore, the Debtors respectfully request that the Court approve the Bid Protections.

29. In the Third Circuit, bid protections, including traditional break-up fees and expense reimbursement provisions, will be approved where they are necessary for the preservation of the debtor's estate. See *Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.)*, 181 F.3d 527, 535 (3d Cir. 1999) (holding that "allowability of break-up fees . . . depends upon the requesting party's ability to show that the fees were actually necessary to preserve the value of the estate."). In *O'Brien*, the Third Circuit articulated two instances in which break-up fees would provide a benefit to the estate, where: (a) "assurance of a break-up fee promoted more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited" and (b) the break-up fee induced the bidder to conduct research into the debtor which "promoted competitive bidding by serving as a minimum or floor bid." *Id.* at 537.

30. The Bid Protections should be approved and accorded administrative expense status under sections 503(b)(1)(A) and 507 of the Bankruptcy Code, because they provide a clear benefit to the Debtors' estates and the Stalking Horse expressly conditioned its willingness to enter into the Stalking Horse APA upon the Debtors' agreement to, and Court approval of, the Bid Protections. The Bid Protections will enable the Debtors to secure an adequate floor for the Stalking Horse Assets, and thus ensure that competing bids will be materially higher or better than that contained in the Stalking Horse APA. Accordingly, the Debtors' ability to offer the Bid Protections enables them to ensure the sale of the Stalking Horse Assets to a contractually-committed bidder at a price they believe to be fair while, at the same time, providing them with the potential for even greater benefit to their estates.

31. The Debtors submit that the Termination Fee and Expense Reimbursement, up to the total amount of \$2,980,000 are reasonable in light of the efforts and expenses that the Stalking Horse has undertaken in its due diligence review and negotiating the terms of the Stalking Horse APA. Moreover, the Bid Protections, which were negotiated at arm's-length and in good faith, are: (a) commensurate to the real and substantial benefits conferred upon the Debtors' estates by the Stalking Horse and (b) fair, reasonable, and appropriate in light of the size and nature of the proposed sales and the efforts that have been and will be expended by the Stalking Horse, and should be approved. *See* Burian Decl. ¶ 14.

32. In addition, payment of the Bid Protections will not diminish the Debtors' estates. The Debtors do not intend to terminate the Stalking Horse APA if to do so would incur an obligation to pay the Bid Protections, unless they are accepting an alternative bid, which bid must exceed the consideration offered by the Stalking Horse by an amount sufficient to pay the Bid Protections.

33. The Court has approved protections similar to the Bid Protections as reasonable and consistent with the type and range of bidding protection typically approved. *See, e.g., IMX Acquisition Corp.*, No. 16-12238 (BLS) (Docket No. 124) (Bankr. D. Del. Oct. 31, 2016) (approving bidding procedures permitting the stalking horse to credit bid bid protections); *In re Delivery Agent, Inc.*, No. 16-12051 (LSS) (Docket No. 202) (Bankr. D. Del. Oct. 14, 2016); *In re Vertellus Specialties Inc.*, No. 16-11290 (CSS) (Docket No. 169) (Bankr. D. Del. Jun. 28, 2016) (approving expense reimbursement and 3% termination fee subject to certain conditions in connection with \$453 million asset sale); *In re Cal Drive Int'l Inc.*, No. 15-10458 (CSS) (Docket No. 572) (Bankr. D. Del. Jul. 7, 2015) (approving expense reimbursement of \$100,000 in connection with \$12 million sale of assets and \$82,000 in connection with \$4.1 million sale of

assets); *In re Old FOH Inc. (f/k/a Frederick's of Hollywood, Inc.)*, No. 15-10836 (KG) (Docket No. 120) (Bankr. D. Del. May 6, 2015) (approving termination fee of \$775,000 and expense reimbursement of \$300,000 in connection with \$22.5 million sale of assets); *In re Hipcricket, Inc.*, No. 15-10104 (LSS) (Docket No. 120) (Bankr. D. Del. Feb. 11, 2015) (approving break-up fee and expense reimbursement of 4.3% in connection with approximately \$5 million sale of assets); *In re Old FENM, Inc.*, No. 13-12569 (KJC) (Docket No. 379) (Bankr. D. Del. Nov. 22, 2013) (approving bidding and auction procedures allowing a debtor to taking to account the amount of bid protections provided to a stalking horse in determining the highest and best bid); *In re Vertis Holdings, Inc.*, No. 12-12821 (CSS) (Docket No. 206) (Bankr. D. Del. Nov. 2, 2012) (approving break-up fee of 3.0% in connection with a \$258 million sale of assets and a \$2.5 million expense reimbursement); *In re Solyndra LLC*, Case No. 11-12799 (MFW) (Docket No. 1113) (Bankr. D. Del. Sept. 29, 2012) (approving break-up fee of 2.6% in connection with \$90 million sale of assets); *In re Northstar Aerospace (USA) Inc.*, Case No. 12-11817 (MFW) (Docket No. 119) (Bankr. D. Del. June 27, 2012) (approving break-up fee of 3.5% in connection with \$70 million sale of assets).

34. Accordingly, the Bid Protections provide an actual and necessary benefit to the Debtors' estates, are reasonable and appropriate in light of the range of such protections typically approved and are in the best interests of the Debtors, their estates and all parties in interest.

C. Entry into and Performance of Certain Pre-Closing Obligations Under the Stalking Horse APA and any Sale Transaction is a Sound Exercise of the Debtors' Business Judgment

35. Section 363 of the Bankruptcy Code provides that the debtor may, "after a notice and a hearing . . . use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363. In turn, section 105(a) of the Bankruptcy Code provides that the court

"may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

36. While the Bankruptcy Code does not specify the appropriate standard for approving the sale of property under section 363, courts uniformly agree that a business judgment standard applies. *See, e.g., Meyers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *In re Schipper*, 933 F.2d 513 (7th Cir. 1991)); *In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992); *Stephen Indus., Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983). Courts typically apply four factors in determining whether a section 363 sale is appropriate, whether: (a) a sound business justification exists for the sale; (b) adequate and reasonable notice of the sale was provided to interested parties; (c) the sale will produce a fair and reasonable price for the property; and (d) the parties have acted in good faith. *Id.* at 1070 (setting forth the "sound business" purpose standard for the sale of the debtor's assets under section 363 of the Bankruptcy Code); *In re Decora Indus., Inc.*, Case No. 00-4459, 2002 WL 32332749, at *2 (D. Del. May 20, 2002) (adopting *Lionel* factors) (citing *Guilford Transportation Industries, Inc. v. Delaware & Hudson Ry. Co. (In re Delaware & Hudson Ry. Co.)*, 124 B.R. 169, 176 (D. Del. 1991) (listing non-exclusive factors that may be considered by a court in determining whether there is a sound business purpose for an asset sale)). As such, it follows that when a debtor demonstrates a valid business justification for a decision, the presumption is that the business decision was made "on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company." *Official Comm. of Subordinated Bondholders v. Integrated Res. Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1990) (quoting *Smith v. Van Gorkcom*, 488 A.2d 858, 872 (Del. 1985)).

1. The Debtors Have Demonstrated a Sound Business Justification for the Sale of the Assets

37. A sound business justification exists where a sale of the debtor's assets are necessary to preserve the value of the Debtors' estates. *See, e.g., In re Delaware & Hudson Ry. Co.*, 124 B.R. at 179 (approving the sale of the debtor as a going concern upon a showing of "a valid business purpose . . ."); *In re Lionel Corp.*, 722 F.2d at 1071 (adopting a rule "requiring that a judge determining a § 363(b) application expressly find from the evidence presented before him . . . a good business reason to grant" the sale).

38. As set forth above, in the First Day Declaration and in the Burian Declaration, the Debtors have demonstrated a sound business justification for entry into and performance of certain pre-closing obligations under the Stalking Horse APA and any Sale Transaction that may result from the Auction. The Debtors are no longer able to operate their businesses as currently constituted without near-constant infusions of cash. A sale is necessary to reconstitute the business in order to maximize the value of the Assets, consistent with the Debtors' fiduciary duties to their economic stakeholders.

39. Further, there is a sound business purpose for entering into the Stalking Horse APA because it will provide a "floor" price for the Stalking Horse Assets, thereby increasing the likelihood that the ultimate price obtained for the Stalking Horse Assets, and other Assets will represent their true worth.

40. Filing these Cases with a purchaser for their intellectual property and wholesale inventory together with the Stalking Horse's option to acquire certain of the Debtors' manufacturing and distribution facilities allows the Debtors the greatest chance of preserving any going concern value for their estates and foreign affiliates. Further, the substantial benefits incurred on the estate by the Stalking Horse's commitment to purchase wholesale inventory

during the pendency of the sale process will keep the Debtors' supply chain active, thereby preserving the value of the Debtors' intellectual property. Finally, the Stalking Horse bid permits the Debtors to maintain current operations resulting in continued employment for a significant portion of the Debtors' workforce through at least the conclusion of the sale process, and potentially beyond. Therefore, entry into and performance of obligations under the Stalking Horse APA is a valid exercise of Debtors' business judgment.

2. The Notice Procedures Are Appropriate and Comply with Bankruptcy Rule 2002

41. Bankruptcy Rule 2002 (a) and (c) require the Debtors to notify creditors of the Sale, including a disclosure of the time and place of any auction, the terms and conditions of the sale and the deadline for filing any objections.

42. The Debtors submit that the Notice Procedures comply with Bankruptcy Rule 2002 and are reasonably calculated to provide all creditors and known parties in interest with adequate and timely notice of a Sale Transaction, the Bidding Procedures, the Auction and the Sale Hearing. Moreover, the Debtors are publishing the Publication Notice in the *Wall Street Journal* or *USA Today*. Accordingly, the Debtors request that the Court approve the Notice Procedures as set forth herein, including the form and manner of the Sale Notice and that no other further notice of the Bidding Procedures, the Auction and the Sale Hearing is necessary or required.

3. The Proposed Sale Will Yield a Fair and Reasonable Purchase Price

43. As set forth above, the Debtors believe that the proposed Sale will yield a fair and reasonable price for the Assets. The Bidding Procedures were carefully designed to ensure that the Auction, if necessary, will yield the maximum value for the Debtors' economic stakeholders. The Debtors have constructed the Bidding Procedures to encourage competitive bidding, while

giving the Debtors the opportunity to review and analyze all competitive bids, only from Qualified Bidders, who will have been vetted prior to the Auction. These carefully constructed measures will prevent any bid that does not constitute a fair and adequate purchase price for the Assets or any combination thereof.

44. Further, parties in interest will have the opportunity to conduct in-depth diligence as set forth in the Bidding Procedures. These parties will also have the opportunity to bid on a combination of, substantially all or a portion of the Debtors' Assets, including the Stalking Horse Assets. Finally, in the event that no parties express interest in substantially all of the Assets, the Debtors' have the comfort of the bid submitted by the Stalking Horse, who has already agreed to purchase the Stalking Horse Assets at a price that was the subject of extensive negotiations prepetition and the proceeds of that Sale Transaction will enable the Debtors to pursue an orderly liquidation of their remaining Assets and make distributions to creditors.

4. The Bidding Procedures Ensure a Good Faith Process and the Ultimate Purchaser of the Assets Is Entitled to the Protections of Section 363(m) of the Bankruptcy Code.

45. Section 363(m) of the Bankruptcy Code is designed to protect the sale of a debtor's assets to a good faith purchaser. Specifically, 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, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale . . . were stayed pending appeal.

11 U.S.C. § 363(m).

46. While the Bankruptcy Code does not define good faith, the Third Circuit has held that indices of bad faith typically include "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders."

Cumberland Farms Dairy, Inc. v. Abbotts Dairies of Penn., Inc. (In re Abbotts Diaries of Penn., Inc.), 788 F.2d 143, 147 (3d Cir. 1986) (quoting *Hoese Corp. v. Vetter Corp. (In re Vetter Corp.)*, 724 F.2d 52, 55 (7th Cir. 1983) (other citations omitted); *see also Kabro Assoc. of West Islip, L.L.C. v. Colony Hill Assocs. (In re Colony Hill Assocs.)*, 111 F.3d 269, 276 (2d Cir. 1997) (noting that the type of "misconduct that would destroy a [purchaser]'s good faith status at a judicial sale involves fraud, collusion between the [purchaser] and other bidders or the trustee or an attempt to take grossly unfair advantage of other bidders.").

47. The Bidding Procedures were designed with the goal of producing a fair and transparent bidding process to allow the Debtors to generate the best offer for the Assets. The Successful Bidder(s) and the Debtors will have negotiated at arm's-length and in good faith for the purchase of the Assets, backed by the Court-approved Auction. As such, the Debtors request that the ultimate purchaser of the Assets be entitled to the protections of section 363(m) of the Bankruptcy Code.

D. The Sale of the Assets Free and Clear of Liens, Claims, Interests and Encumbrances Is Appropriate under Section 363(f) of the Bankruptcy Code

48. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of all liens, claims, interests and encumbrances provided that one of the following conditions are met:

- a. applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- b. such entity consents;
- c. such interest is a lien at the price at which such property is to be sold is greater than the value of all liens on such property;
- d. such interest is in bona fide dispute; or
- e. such entity could be compelled, in legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1) – (5).

49. The Debtors represent that, whichever Sale Transaction they pursue, whether that be with the Stalking Horse or another Successful Bidder at the Auction, or any combination thereof, such Sale Transaction(s) will satisfy one of the five requirements set forth under section 363(f) of the Bankruptcy Code. As such, the Debtors may sell the Assets free and clear of any and all liens, claims and encumbrances. Any lien holder will be adequately protected by attachment of its lien to the net proceeds of the Sale Transaction, subject to any claims and defenses that the Debtors may have with respect thereto. Accordingly, the Debtors request that the Court authorize the Debtors to sell the Assets free and clear of any liens, claims, interests and encumbrance in accordance with section 363(f) of the Bankruptcy Code.

E. Assumption and Assignment of Executory Contracts

50. Section 365(a) of the Bankruptcy Code provides that a debtor "subject to the court's approval, may assume or reject any executory contract . . ." 11 U.S.C. § 365(a).

51. Courts employ a business judgment standard in determining whether to approve a debtor's decision to assume or reject an executory contract. *See, e.g., In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (finding that debtor's decision to assume or reject executory contract is governed by business judgment standard and can only be overturned if decision was product of bad faith, whim or caprice); *In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992) (finding that assumption or rejection of lease "will be a matter of business judgment by the bankruptcy court. . ."). The business judgment test "requires only that the trustee [or debtor in possession] demonstrate that [assumption] or rejection of the contract will benefit the estate." *Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co.*, (*In re Wheeling-Pittsburgh Steel Corp.*), 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987).

52. At the Auction, the Debtors propose to assume and assign the Contracts to the Successful Bidder(s) as part of the Sale Transaction(s). Assumption of the Proposed Assumed Contracts is a sound exercise of the Debtors' business judgment. Assuming and assigning the Proposed Assumed Contracts will enable the Debtors to garner the highest or otherwise best offer for the Assets, by enabling the Debtors to offer parties in interest with a combination of Contracts that are in some instances an integral part of the Assets that the Debtors seek to sell.

53. Section 365(f) of the Bankruptcy Code requires, in part, that the assignee of any executory contract provide "adequate assurance of future performance . . . whether or not there has been a default in such contract." 11 U.S.C. § 365(f)(2). Section 365(b), which codifies the requirements for assuming an executory contract, provides, in pertinent part that the debtor may only assume an executory contract if it:

(A) cures, or provides adequate assurance that the [debtor] will promptly cure[s] [any defaults existing under the executory contract];

(B) compensates, or provides adequate assurance that the [debtor] will promptly compensation, a party other than the debtor to such contract . . . for any actual pecuniary loss to such party resulting from such default; and

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

11 U.S.C. § 365(b).

54. While undefined by the Bankruptcy Code, adequate assurance is guided by "a practical, pragmatic construction based upon the facts and circumstances of each case." *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988) (quoting *In re Bon Ton Restaurant & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1995)); see also *In re Alipat, Inc.*, 36 B.R. 274, 276-77 (Bankr. E.D. Mo. 1984) (recognizing that the term adequate assurance "borrowed its critical language . . . from Section 2-609 of the

Uniform Commercial Code" which "suggest[s] that adequate assurance is to be defined by commercial rather than legal standards . . . [and] factual considerations."). While no single standard governs every case, adequate assurance "will fall considerably short of an absolute guarantee of performance." *In re Carlisle Homes, Inc.*, 103 B.R. at 538. Adequate assurance may be provided by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. *See, e.g., In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (finding that industrial expertise, past success in running a similar business and financial wherewithal satisfied the adequate assurance requirement of section 365 of the Bankruptcy Code).

55. The Bidding Procedures specifically require any Qualified Bidders to provide financial and other information that would provide the Counterparties with adequate assurance of future performance of the applicable obligations under any Proposed Assumed Contracts included as part of a Qualified Bid. Moreover, the Debtors will provide adequate assurance information to all Counterparties to the Proposed Assumed Contracts, and upon request by such Counterparty, furnish additional adequate assurance information if reasonable and appropriate under the circumstances. Finally, Counterparties unsatisfied with the proposed adequate assurance of future performance provided to them will be able to lodge objections with respect thereto.

56. Accordingly, the Debtors have satisfied the requirements of section 365 of the Bankruptcy Code with respect to the assumption and assignment of the Proposed Assumed Contracts.

57. In order to facilitate the assumption and assignment of the Proposed Assumed Contracts, the Debtors respectfully request that the Court find that all anti-assignment provisions

included in the Proposed Assumed Contracts, including those Proposed Assumed Contracts that have the effect of restricting or limiting assignment, to be unenforceable and prohibited pursuant to section 365(f) of the Bankruptcy Code.⁷

F. The Sale of the Assets Does Not Require the Appointment of a Consumer Privacy Ombudsman

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

59. The Stalking Horse Assets include customer lists and consumer data that may include personally identifiable information about individuals. Pursuant to the Stalking Horse APA, the Stalking Horse has agreed to abide by the Debtors' existing privacy policy with respect to consumer data it is acquiring from the Debtors. *See* Stalking Horse APA ¶ 8.6(b). In the event that the Stalking Horse is not the ultimate purchaser of any Assets that contain personally identifiable information about individuals, the Debtors will endeavor to ensure that any such purchase agreement contains a similar provision or that such purchaser abides by a similar privacy policy.

60. Additionally, the Debtors submit that, under the circumstances, the transfer of personally identifiable information is permitted by the terms of its existing privacy policy, which has been publicly available on the Debtors' website at

⁷ Section 365(f)(1) provides in pertinent part that, "notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease. . ." 11 U.S.C. § 365(f)(1). Further, section 365(f)(3) provides that "[n]otwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such contract or lease or a right or obligation under such contract or lease on account of an assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated or modified under such provision because of the assumption or assignment of such contract or lease by the trustee." 11 U.S.C. § 365(f)(3).

<http://store.americanapparel.net/en/aboutus/privacypolicy.jsp>, for several years and provides, in pertinent part, as follows:

We also reserve the right to transfer Personal Information we have about you in the event we sell or transfer all or a portion of our business or assets. Should such a sale or transfer occur, we will use reasonable efforts to direct the transferee to use Personal Information you have provided to us in a manner that is consistent with our Privacy Notice.

61. Accordingly, because the transfer of this information is consistent with the Debtors' long-standing privacy policy, the Debtors submit that there is no need for the appointment of a consumer privacy ombudsman.

REQUESTS FOR IMMEDIATE RELIEF AND WAIVER OF STAY

62. Pursuant to Bankruptcy Rules 6004(h) and 6006(d), the Debtors seek (a) immediate entry of an order granting the relief sought herein and (b) a waiver of any stay of the effectiveness of such an order. Bankruptcy Rule 6004(h) provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Bankruptcy Rule 6006(d) provides that "[a]n order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after entry of the order, unless the court order otherwise."

63. As set forth above, the relief requested herein is necessary and appropriate to maximize the value of the Debtors' estates for the benefit of their economic stakeholders. Accordingly, the Debtors submit that ample cause exists to justify (a) the immediate entry of an order granting the relief sought herein and (b) a waiver of the 14 day stay imposed by Bankruptcy Rules 6004(h) and 6006(d), to the extent that each Rule applies.

NOTICE

64. Notice of this motion shall be given to (a) the Office of the United States Trustee for the District of Delaware; (b) those creditors holding the 30 largest unsecured claims against the Debtors' estates; (c) Milbank, Tweed, Hadley & McCloy LLP and Fox Rothschild LLP, as counsel to the Committee of Lead Lenders; (d) Covington & Burling LLP, as counsel to Wilmington Trust, National Association, as administrative agent to the Debtors' Prepetition Secured Lenders; (e) Riemer & Braunstein LLP and Ashby & Geddes, P.A., as counsel to the DIP Lenders; (f) Kilpatrick Townsend & Stockton LLP, as counsel to the Litigation Trustee; (g) Debevoise & Plimpton LLP, as counsel to Standard General, L.P.; (h) Sullivan & Cromwell LLP, as counsel to the Stalking Horse; (i) all persons and entities known by the Debtors to have expressed an interest to the Debtors in a Sale Transaction involving any of the Assets during the past twelve (12) months, including any person or entity that has submitted a bid for any of the Assets, as applicable; (j) all persons and entities known by the Debtors to have asserted any lien, claim, interest, or encumbrance in the Assets (for whom identifying information and addresses are available to the Debtors); and (k) the Internal Revenue Service, the Securities and Exchange Commission and any other federal, state or local governmental agency to the extent required by the Bankruptcy Code, the Bankruptcy Rules, the Local Rules or order of the Court. The Debtors submit that no other or further notice need be provided.

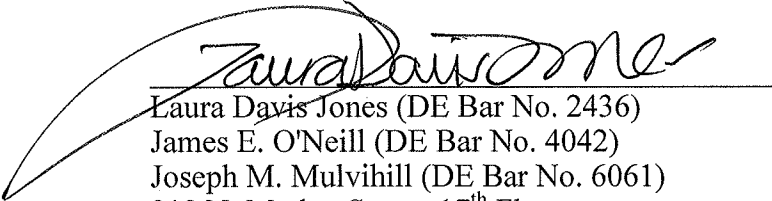
NO PRIOR REQUEST

65. No prior request for the relief sought herein has been made to this Court or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the Bidding Procedures Order and the Sale Order and such other and further relief as may be appropriate.

Dated: November 14, 2016
Wilmington, Delaware

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Proposed Co-Counsel for the Debtors
and Debtors in Possession

Exhibit A

(Bidding Procedures Order)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: AMERICAN APPAREL, LLC, <i>et al.</i> , ¹ Debtors.	: : : : : : : : : : :	Chapter 11 Case No. 16-12551 (BLS) (Joint Administration Requested)
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**ORDER (I) APPROVING BIDDING PROCEDURES FOR THE SALE OF
SUBSTANTIALLY ALL OF DEBTORS' ASSETS, (II) AUTHORIZING THE DEBTORS
TO ENTER INTO THE STALKING HORSE PURCHASE AGREEMENT,
(III) APPROVING BID PROTECTIONS, (IV) SCHEDULING AN AUCTION,
(V) APPROVING THE FORM AND MANNER OF NOTICE THEREOF,
(VI) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES,
(VII) SCHEDULING A SALE HEARING AND APPROVING THE FORM AND
MANNER OF NOTICE THEREOF AND (VIII) GRANTING RELATED RELIEF**

This Court having considered the *Motion of the Debtors for Entry of Orders*

(I)(A) Approving Bidding Procedures for the Sale of Substantially all of the Debtors' Assets,

(B) Authorizing the Debtors to Enter into the Stalking Horse Purchase Agreement,

(C) Approving Bid Protections, (D) Scheduling an Auction, (E) Approving the Form and Manner of Notice thereof, (F) Scheduling a Sale Hearing and Approving the Form and Manner of Notice thereof, and (G) Approving Assumption and Assignment Procedures; (II)(A) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of Liens, Claims, Interests and Encumbrances and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief (the "Motion"),² filed by the above-captioned debtors and debtors in possession (the "Debtors"), the Declaration of Mark

¹ The Debtors are the following six entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): American Apparel, LLC (0601); American Apparel (USA), LLC (8940); American Apparel Retail, Inc. (7829); American Apparel Dyeing & Finishing, Inc. (0324); KCL Knitting, LLC (9518); and Fresh Air Freight, Inc. (3870). The address of each of the Debtors is 747 Warehouse Street, Los Angeles, California 90021.

² Capitalized terms not specifically defined herein have the meaning assigned to them in the Motion.

Weinsten in Support of First Day Pleadings (the "First Day Declaration"), the *Declaration of Saul E. Burian in Support of the Sale and Bidding Procedures Motion* (the "Burian Declaration") and the statements of counsel and the evidence adduced with respect to the Motion at a hearing before this Court (the "Bidding Procedures Hearing") to consider a portion of the relief requested in the Motion; and after due deliberation, this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates and their creditors, and the Debtors having demonstrated good, sufficient and sound business justification for the relief approved herein and that such relief is necessary to prevent immediate and irreparable harm to the Debtors, their estates and their creditors; and good and sufficient cause having been shown;

IT IS HEREBY FOUND AND DETERMINED THAT:³

- A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
- B. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
- C. The statutory predicates for the relief requested in the Motion are (i) sections 105, 107(b)(1), 363, 365 and 503 of the title 11 of the United States Code (the "Bankruptcy Code"), (ii) Rules 2002, 6004, 6006, 9014 and 9018 of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules"); and (iii) Rules 6004-1 and 9018-1 of the Local Rules and Procedures for the Bankruptcy Court for the District of Delaware (the "Local Rules").
- D. Notice of the Motion and the Bidding Procedures Hearing was sufficient under the circumstances and that no other or further notice need be provided.

³ The findings of fact and the conclusions of law stated herein shall constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law shall be determined to be a finding of fact, it shall be so deemed.

E. There is good cause to waive the 14 day stay imposed by Bankruptcy Rules 6004(h) and 6006(d) to the extent it is applicable.

F. The Bidding Procedures attached hereto as Exhibit 1 (the "Bidding Procedures") are fair, reasonable and appropriate, and are designed to maximize the value of the proceeds of a sale (the "Sale") of substantially all of the Debtors' assets (the "Assets") to one or more purchasers (each, a "Sale Transaction") following an auction (the "Auction").

G. The Bidding Procedures comply with the requirements of Local Rule 6004-1(c).

H. The Assumption and Assignment Procedures set forth in ¶ 23 of the Motion (the "Assumption and Assignment Procedures") are fair, reasonable and appropriate and comply with the provisions of section 365 of the Bankruptcy Code.

I. The Debtors have articulated good and sufficient business reasons for this Court to approve (i) the Bidding Procedures, (ii) the Sale Notice attached hereto as Exhibit 3 (the "Sale Notice"), (iii) the Assumption and Assignment Notice and the (iv) Assumption and Assignment Procedures.

J. The Bidding Procedures were negotiated in good faith and at arm's-length, and are reasonably designed to promote participation and active bidding and to ensure that the highest or otherwise best value is generated for the Assets.

K. Good and sufficient notice of the relief sought in the Motion has been provided under the circumstances, and no other or further notice is required except as set forth in the Bidding Procedures and Assumption and Assignment Procedures. A reasonable opportunity to object and be heard regarding the relief requested in the Motion has been afforded to parties in interest.

L. The Sale Notice, Publication Notice (as defined below), Gift Card Notice Procedures, Assumption and Assignment Notice and Proposed Assumed Contracts Notice (as defined below) are all appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, Sale Hearing, Bidding Procedures, Assumption and Assignment Procedures, the Debtors' proposed good faith calculation of cure amounts (the "Cure Costs") due under any executory contract or unexpired lease (the "Contracts") to be assumed and assigned in connection with a Sale Transaction, Proposed Assumed Contracts (as defined below) and all relevant important dates and deadlines with respect to the foregoing, and no other or further notice of the Sale, the Debtors' treatment of gift cards, the Auction or the assumption and assignment of Contracts in connection therewith shall be required.

M. The Debtors have demonstrated compelling and sound business justifications for authorizing the entry into the asset purchase agreement for the sale (subject to competitive bidding at the Auction) of the Debtors' intellectual property, wholesale inventory and at the Stalking Horse's option, the Debtors' manufacturing and distribution facilities in Garden Grove, La Mirada and South Gate, California and the Debtors' corporate headquarters in Los Angeles, California (the "Stalking Horse Assets") attached hereto as Exhibit 4 (the "Stalking Horse APA") by and between the Debtors and Gildan Activewear SRL (the "Stalking Horse") and the payment of the Bid Protections (as defined below) under the circumstances, and in the time frame and in accordance with the procedures set forth herein, in the Motion and in the Stalking Horse APA.

N. The Debtors and the Stalking Horse each negotiated the Bidding Procedures and the Stalking Horse APA in good faith and at arm's-length. The process for the Stalking Horse's selection was fair and appropriate under the circumstances and is in the best interests of the Debtors' estates.

O. The Debtors' performance of certain pre-closing obligations contained in the Stalking Horse APA is in the best interests of the Debtors' estates, their creditors and all other parties in interest, and represents a reasonable exercise of the Debtors' sound business judgment.

P. The Debtors have demonstrated a compelling and sound justification for authorizing the payment of the Bid Protections in the event that the Stalking Horse is not the Successful Bidder including, without limitation, that:

1. the Bid Protections are the product of negotiations between the Debtors and the Stalking Horse conducted in good faith and at arm's-length, and the Stalking Horse APA is the culmination of a process undertaken by the Debtors and their professionals to ensure a transaction with a bidder who is prepared to pay the highest or otherwise best purchase price for the Assets (subject to higher or otherwise better bids) in order to maximize the value of the Debtors' estates;
2. the Bid Protections are actual and necessary costs and expenses of preserving the Debtors' estates within the meaning of sections 503(b) of the Bankruptcy Code;
3. the Bid Protections are fair, reasonable, and appropriate in light of, among other things, the size and nature of the proposed Sale under the Stalking Horse APA, the substantial efforts that have been and will be expended by the Stalking Horse, notwithstanding that the proposed Sale is subject to higher or better offers, and the substantial benefits the Stalking Horse has provided to the Debtors, their estates, their creditors and all parties in interest, including, among other things, by increasing the likelihood that the best possible price for the Stalking Horse Assets will be received;
4. the protections afforded to the Stalking Horse by way of the Bid Protections were material inducements for, and express conditions of, the Stalking Horse's willingness to enter into the Stalking Horse APA, and was necessary to ensure that the Stalking Horse would continue to pursue the proposed acquisition on terms acceptable to the Debtors in their sound business judgment, subject to competitive bidding; and
5. the offer of the Bid Protections is intended to promote more competitive bidding by inducing the Stalking Horse's bid, which (a) will serve as a minimum floor bid on which all other bidders can rely with respect to the Stalking Horse Assets, (b) may prove to be the highest or otherwise best available offer for the Stalking Horse Assets and (c) increases the likelihood that the final purchase price will reflect the true value of the Stalking Horse Assets.

Q. Entry of this Order is in the best interests of the Debtors' estates, their creditors and all other interested parties.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED as set forth herein.
2. Except as expressly provided herein, nothing herein shall be construed as a determination of the rights of any party in interest in these chapter 11 cases (these "Cases").
3. All objections to the relief granted in this Bidding Procedures Order that have not been withdrawn, waived, or settled, and all reservations of rights included therein, hereby are overruled and denied on the merits with prejudice.

A. The Bidding Procedures

4. The Bidding Procedures attached hereto as Exhibit 1 are hereby APPROVED and fully incorporated into this Bidding Procedures Order. The Debtors are authorized to take all actions necessary or appropriate to implement the Bidding Procedures. The failure to specifically include a reference to any particular provision of the Bidding Procedures in this Bidding Procedures Order shall not diminish or impair the effectiveness of such provision.

5. The Stalking Horse shall be deemed a Qualified Bidder pursuant to the Bidding Procedures for all purposes.

6. The Bidding Procedures shall apply to the Qualified Bidders and the conduct of the sale of the Assets and the Auction.

7. The following dates and deadlines regarding competitive bidding are hereby established (subject to modification in accordance with the Bidding Procedures):

- a. **Bid Deadline: December 19, 2016 at 5:00 p.m. (Prevailing Eastern Time)** is the deadline by which all Qualified Bids must be actually received by the parties specified in the Bidding Procedures (the "Bid Deadline");

- b. **Notification of Status as Qualified Bidder: December 20, 2016 at 12:00 p.m. (Prevailing Eastern Time)** is the deadline by which the Debtors must notify bidders of their status as Qualified Bidders; and
- c. **Auction: December 21, 2016 at 10:00 a.m. (Prevailing Eastern Time)** is the date and time the Auction, if one is needed, will be held at the offices of Jones Day, 250 Vesey Street, New York, New York 10281.

8. Only a Qualified Bidder that has submitted a Qualified Bid will be eligible to participate at the Auction. As described in the Bidding Procedures, if the Debtors do not receive any Qualified Bids other than from the Stalking Horse, the Debtors will not hold the Auction, the Stalking Horse will be named the Successful Bidder and the Debtors will seek final approval at the Sale Hearing of the sale of the Stalking Horse Assets to the Stalking Horse, in accordance with the terms of the Stalking Horse APA.

9. The Stalking Horse is a Qualified Bidder, the Stalking Horse APA is a Qualified Bid and the Stalking Horse is authorized to submit any Minimum Overbids during the Auction at any time, in each case, pursuant to the Bidding Procedures for all purposes.

10. If the Auction is conducted, (i) each Qualified Bidder participating in the Auction shall be required to confirm that it has not engaged in any collusion with respect to the bidding process or the sale and (ii) the Auction shall be conducted openly and shall be transcribed or videotaped.

11. If the Auction is conducted, absent irregularities in the conduct of the auction, or reasonable and material confusion during the bidding, this Court will not consider bids made after the Auction has closed.

B. The Stalking Horse APA

12. The Debtors are authorized to perform all of their respective pre-closing obligations under the Stalking Horse APA, attached to the Motion as Exhibit C; provided that, for the avoidance of doubt, consummation of the transactions contemplated by the Stalking

Horse APA shall be subject to entry of an order approving the sale of the Assets and the satisfaction or waiver of the other conditions to closing on the terms set forth in the Stalking Horse APA. For the avoidance of doubt, the following Articles and Sections of the Stalking Horse APA are valid, binding and enforceable against the Debtors: Section 4.4 (Termination of Agreement); Section 4.5 (Procedure Upon Termination); Section 4.6 (Effect of Termination); Section 4.7 (Termination Fee; Expense Reimbursement); Section 7.1 (Competing Transactions); Section 7.2 (Bankruptcy Court Filings); Section 8.1 (Access to Information); Section 8.2 (Actions Pending the Closing); and Section 8.7(a) (Limited License to Purchased Intellectual Property).

C. The Bid Protections

13. To the extent due under the Stalking Horse APA, the Debtors are authorized and required to pay the Stalking Horse (a) a fee of \$1.98 million (the "Termination Fee") and (b) an expense reimbursement of no more than \$1 million for the Stalking Horse's reasonable, documented, out-of-pocket fees, costs and expenses (including, without limitation, consultants' and attorneys' fees, costs and expenses) incurred in connection with the transactions contemplated by the Stalking Horse APA (the "Expense Reimbursement" and together with the Termination Fee, the "Bid Protections").

14. The Debtors' obligations arising under or in connection with the Stalking Horse APA, including with respect to the Bid Protections, shall (i) survive termination of the Stalking Horse APA, (ii) constitute an administrative expense claim under sections 503(b) of the Bankruptcy Code and (iii) be payable under the terms and conditions of the Stalking Horse APA and this Order without any further order of this Court. Notwithstanding anything to the contrary in any order approving the Debtors' postpetition financing facility (the "DIP Order"), any amounts due and owing to the prepetition secured lenders in respect of the Prepetition

Obligations (as defined in the DIP Order) shall be subordinated to any amounts due and payable to the Stalking Horse with respect to the Bid Protections, as and when such amounts are due under the terms and conditions of the Stalking Horse APA and this Order.

15. Each Debtor's obligations relating to the Bid Protections arising under or in connection with the Stalking Horse APA shall be binding and enforceable against each such Debtor and its respective estate, and, as applicable, subject to section 363(f) of the Bankruptcy Code, (i) any of its successors or assigns, (ii) any trustee, examiner, or other representative of the Debtors' estates, (iii) the reorganized Debtors and (iv) any other entity vested or re-vested with any right, title or interest in or to a material portion of the assets directly or indirectly owned by the Debtors or any other person claiming any rights in or control over a material portion of such assets (each, a "Debtor Successor") as if such Debtor Successor was the Debtors.

D. Sale Notice

16. The form of Sale Notice attached hereto as Exhibit 3 is approved and fully incorporated into this Bidding Procedures Order. The failure to specifically include a reference to any particular provision of the Bidding Procedures in this Bidding Procedures Order shall not diminish or impair the effectiveness of such provision.

17. Within two (2) days after entry of this Bidding Procedures Order, the Debtors shall serve the Sale Notice on (a) the Consultation Parties (as applicable);⁴ (b) all persons and entities known by the Debtors to have expressed an interest to the Debtors in a Sale Transaction involving any of the Assets during the past 12 months, including any person or entity that has submitted a bid for any of the Assets, as applicable; (c) all persons and entities known by the

⁴ The "Consultation Parties" are (a) Milbank, Tweed, Hadley & McCloy LLP and Fox Rothschild LLP, as counsel to certain of the Debtors' prepetition secured lenders, (b) Covington & Burling LLP, as counsel to Wilmington Trust, National Association, as administrative agent to the Debtors' prepetition secured lenders, (c) Riemer & Braunstein LLP and Ashby & Geddes, P.A., as counsel to the DIP Lenders and (d) counsel for any official committee of unsecured creditors appointed in these Cases.

Debtors to have asserted any lien, claim, interest, or encumbrance on or against any of the Assets (for whom identifying information and addresses are available to the Debtors); (d) all Counterparties to the Contracts that may be assumed and assigned in connection with a Sale Transaction; (e) any governmental authority known to have a claim against the Debtors in these Cases; (f) the United States Attorney General; (g) the Antitrust Division of the United States Department of Justice; (h) the United States Attorney for the District of Delaware; (i) the Office of the Attorney General in each state in which the Debtors operate; (j) the Federal Trade Commission; (k) all of the Debtors' known creditors (for whom identifying information and addresses are known to the Debtors); (l) counsel to the Stalking Horse; (m) the office of the United States Trustee for the District of Delaware; (n) the Internal Revenue Service; (o) the United States Securities and Exchange Commission; (p) all parties who have filed a notice of appearance and request for service of papers in these chapter 11 cases pursuant to Bankruptcy Rule 2002; and (q) all other persons and entities as directed by the Bankruptcy Court (collectively, the "Notice Parties").

18. As soon as reasonably practicable, but in no event later than two days after the entry of this Bidding Procedures Order, the Debtors will also post the Sale Notice and this Bidding Procedures Order on the website maintained by the Debtors' claim and noticing agent, Prime Clerk, LLC, located at [http://cases.primeclerk.com/ americanapparel](http://cases.primeclerk.com/americanapparel) (the "Prime Clerk Website").

19. Not later than five days after entry of this Bidding Procedures Order, the Debtors shall cause the information contained in the Sale Notice to be published once in the *Wall Street Journal* or *USA Today* (the "Publication Notice").

20. Objections to any Sale Transaction (each, a "Sale Objection"), including any objection to the sale of any Assets free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code and entry of any Sale Order must (a) be in writing and specify the nature of such objection; (b) comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules and all orders of the Bankruptcy Court; and (c) be filed with the Bankruptcy Court and served on: (i) the Debtors, American Apparel, LLC, 747 Warehouse Street, Los Angeles, California 90021 (Attn: Chelsea Grayson, Bennett Nussbaum, and Lance Miller); (ii) counsel for the Debtors, (1) Jones Day, 250 Vesey Street, New York, NY 100281 (Attn: Scott J. Greenberg) and 901 Lakeside Avenue, Cleveland, OH 44114 (Attn: Carl E. Black, Esq.) and (2) Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Attn: Laura Davis Jones, Esq., James E. O'Neill, Esq., and Joseph M. Mulvihill); (iii) counsel for any official committee of unsecured creditors appointed in these chapter 11 cases; (iv) counsel for the Debtors' prepetition secured lenders, Milbank, Tweed, Hadley & McCloy LLP, 28 Liberty Street, New York, NY 10005 (Attn: Gerard Uzzi, Esq.); (v) counsel to the DIP Lenders, (1) Riemer & Braunstein LLP, Seven Times Square, Suite 2506, New York, New York 10036 (Attn: Steven Fox, Esq.) and (2) Ashby & Geddes, P.A., 500 Delaware Avenue, P.O. Box 1150 Wilmington, DE 19899 (Attn: Gregory Taylor); (vi) counsel (if applicable) of any applicable Successful Bidder(s); (vii) counsel (if applicable) of any applicable Backup Bidder(s); (x) counsel to the Stalking Horse, Sullivan & Cromwell LLP, 125 Broad Street, New York, NY 10004 (Attn: Michael H. Torkin, Esq. and Mimi Wu, Esq.); and (xi) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Jane M. Leamy, Esq.) (collectively, the "Objection

Recipients") by December 22, 2016 at 5:00 p.m. (prevailing Eastern Time) (the "Sale Objection Deadline").

21. Any replies to Sale Objections shall be submitted no later than one day before the Sale Hearing.

22. The failure of any party to timely file with the Court and serve on the Objection Recipients a Sale Objection shall be barred from asserting, at the applicable Sale Hearing or thereafter, any objection to the relief requested in the Motion, or to the consummation and performance of the applicable Sale Transaction(s), including the transfer of the Assets to the applicable Successful Bidder(s), free and clear of all liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code, and shall be deemed to be a "consent" for purposes of section 363(f) of the Bankruptcy Code.

23. Notwithstanding the foregoing or anything herein to the contrary, and as set forth below, the deadline to file a Cure Objection or an Adequate Assurance Objection (each as defined below) in connection with a proposed Sale Transaction shall be as set forth below.

E. Assumption and Assignment Procedures

24. The Assumption and Assignment Notice attached hereto as Exhibit 2 is approved and fully incorporated into this Bidding Procedures Order. The failure to specifically include a reference to any particular provision of the Bidding Procedures in this Bidding Procedures Order shall not diminish or impair the effectiveness of such provision.

25. Within two days after the entry of this Bidding Procedures Order, the Debtors shall file with this Court, serve on the Notice Parties, including each Counterparty to a Contract that may be assumed, and cause to be published on the Prime Clerk Website, the Assumption and Assignment Notice, which shall (i) identify the Contracts; (ii) list the Debtors' good faith calculation of Cure Costs with respect to each Contract; (iii) expressly state that assumption or

assignment of a Contract is not guaranteed and is subject to Court approval; and (iv) prominently display the deadline to file objections to the assumption, assignment or sale of the Debtors' Proposed Assumed Contracts (as defined below).

26. In the event that the Debtors identify any non-Debtor counterparties (each, a "Counterparty") that were not served with the Assumption and Assignment Notice, the Debtors may subsequently serve such Counterparty with an Assumption and Assignment Notice, and the following procedures will nevertheless apply to such Counterparty; provided, however, that the deadline to file a Cure Objection (as defined below) with respect to such Counterparty shall be **5:00 p.m. (prevailing Eastern Time)** on the date that is 14 days following service of the Assumption and Assignment Notice.

27. No later than four business days after the Bid Deadline (as defined in the Bidding Procedures), the Debtors shall file with this Court, serve on the Notice Parties (including each applicable Counterparty) and cause to be published on the Prime Clerk Website a list of the Contracts that the Debtors will seek to assume and assign pursuant to the Stalking Horse APA or one or more Alternative Transaction Agreements (as applicable) (the "Proposed Assumed Contracts Notice" and each Contract used therein, a "Proposed Assumed Contract").

28. Any Counterparty that wishes to object to the proposed assumption, assignment and sale of the Contract, the subject of which objection is the Debtors' proposed Cure Costs to cure any outstanding monetary defaults then existing under such contract (each, a "Cure Objection") shall file with this Court and serve on the Objection Recipients its Cure Objection, which must state, with specificity, the legal and factual bases thereof, including any appropriate documentation in support thereof, by no later than **December 15, 2016 at 5:00 p.m. (prevailing Eastern Time)**.

29. The Debtors and a Counterparty that has filed a Cure Objection shall first confer in good faith to attempt to resolve the Cure Objection without Court intervention. If the parties are unable to consensually resolve the Cure Objection prior to the commencement of the Sale Hearing, the amount to be paid or reserved with respect to such Cure Objection shall be determined by this Court at the Sale Hearing. This Court shall make all necessary determinations relating to the applicable Cure Costs and Cure Objections at a hearing scheduled pursuant to the following paragraph. All other objections to the proposed assumption and assignment of the Debtors' right, title, and interest in, to, and under a Contract, if it is ultimately designated a Proposed Assumed Contract, will be heard at the Sale Hearing.

30. If a timely Cure Objection cannot otherwise be resolved by the parties, such objection shall be heard at the Sale Hearing; provided that, a Cure Objection (and only a Cure Objection) may, at the Debtors' discretion, after consulting with the Consultation Parties and the applicable Successful Bidder, be adjourned (an "Adjourned Cure Objection") to a subsequent hearing. An Adjourned Cure Objection may be resolved after the closing date of the applicable Sale Transaction; provided that, the Debtors maintain a cash reserve equal to the cure amount the objecting Counterparty believes is required to cure the asserted monetary default under the applicable Proposed Assumed Contract. Upon resolution of an Adjourned Cure Objection and the payment of the applicable cure amount, if any, the applicable Proposed Assumed Contract that was the subject of such Adjourned Cure Objection shall be deemed assumed and assigned to the applicable Successful Bidder, as of the closing date of the applicable Sale Transaction.

31. If a Counterparty fails to timely file with this Court and serve on the Objection Recipients a Cure Objection, such Counterparty shall be deemed to have consented to the assumption, assignment and sale of the Proposed Assumed Contract (unless such Counterparty

has timely filed an Adequate Assurance Objection (as defined below) with respect to the Proposed Assumed Contract) to the applicable Successful Bidder and forever shall be barred from asserting any objection with regard to such assumption, assignment and sale. The Cure Costs set forth in the Assumption and Assignment Notice shall be controlling and will be the only amount necessary to cure outstanding defaults under a Proposed Assumed Contract under section 365(b) of the Bankruptcy Code, notwithstanding anything to the contrary in any Proposed Assumed Contract, or any other document, and the Counterparty to the Proposed Assumed Contract shall be deemed to have consented to the Cure Costs and forever shall be barred from asserting any other claims related to such Proposed Assumed Contract against the Debtors or any Successful Bidder(s), or their property.

32. Upon request by a Counterparty, the Debtors shall serve, by electronic mail, the evidence of adequate assurance of future performance under the Proposed Assumed Contracts, including the legal name of the proposed assignee, the proposed use of any leased premises, the proposed assignee's financial ability to perform under the Proposed Assumed Contracts and a contact person with the proposed assignee that Counterparties may contact if they wish to obtain further information regarding the Stalking Horse or any other purchaser of the Assets. Any Counterparty to a Proposed Assumed Contract that wishes to object to the proposed assumption, assignment and sale of the Proposed Assumed Contract, the subject of which objection is a Successful Bidder's proposed form of adequate assurance of future performance with respect to such Contract (each, an "Adequate Assurance Objection") shall file with this Court and serve on the Objection Recipients an Adequate Assurance Objection, which must state, with specificity, the legal and factual bases thereof, including any appropriate documentation in support thereof, by no later than **December 27, 2016, at 5:00 p.m. (prevailing Eastern Time)**; provided that, if

the Sale Hearing is adjourned to a later date, the Adequate Assurance Objection Deadline shall be at 5:00 p.m. (prevailing Eastern Time) two days prior to the Sale Hearing.

33. If a Counterparty fails to timely file with this Court and serve on the Objection Recipients an Adequate Assurance Objection, such Counterparty shall be deemed to have consented to the assumption, assignment and sale of the Proposed Assumed Contract (unless the Counterparty has filed a timely Cure Objection with respect to the Proposed Assumed Contract) to the applicable Successful Bidder and forever shall be barred from asserting any objection with regard to such assumption, assignment and sale. The applicable Successful Bidder shall be deemed to have provided adequate assurance of future performance with respect to the applicable Proposed Assumed Contract in accordance with section 365(f)(2)(B) of the Bankruptcy Code, notwithstanding anything to the contrary in the Proposed Assumed Contract, or any other document.

F. Related Relief

34. If the Debtors receive more than one Qualified Bid for the same Assets with acceptable purchase prices by the Bid Deadline, the Debtors shall conduct the Auction. The Auction, if required, will be conducted at the offices of Jones Day, 250 Vesey Street, New York, New York 10281 on December 21, 2016 at 10:00 a.m. (prevailing Eastern Time) (the "Auction Date"), or at such other time and location as designated by the Debtors, with the prior consent of the Consultation Parties and the Stalking Horse (not to be unreasonably withheld, conditioned or delayed). The Debtors shall have the right to conduct any number of Auctions on the Auction Date, if the Debtors determine, in their reasonable business judgment that conducting such Auctions would be in the best interests of the Debtors' estates. If the Debtors receive no more than one Qualified Bid (including the Stalking Horse bid), the Debtors will not hold the Auction and instead shall request at the Sale Hearing that this Court approve the Stalking Horse APA.

35. As the Debtors are seeking to sell the assets in accordance with the terms of their existing privacy policy, a copy of which can be found on the Debtors' website at <http://store.americanapparel.net/en/aboutus/privacypolicy.jsp> and the Prime Clerk Website (the "Privacy Policy") and the Privacy Policy permits the Debtors to transfer Personal Information (as defined in the Privacy Policy), there is no requirement that the U.S. Trustee appoint a consumer privacy ombudsman pursuant to sections 363(b)(1) and 332(a) of the Bankruptcy Code.

36. The Good Faith Deposits of the Stalking Horse and any other bidder, and any other amounts deposited into escrow pursuant to the applicable purchase agreement (which, in the case of the Stalking Horse, shall be the Stalking Horse APA), shall be held in the Escrow Account by the Escrow Agent and shall not become property of the Debtors' bankruptcy estates unless the Deposit Amount or other Escrow Amount is otherwise due and payable to the Debtors in accordance with the applicable purchase agreement (which, in the case of the Stalking Horse, shall be the Stalking Horse APA). The agreement with respect to the Escrow Account set forth in the Stalking Horse APA (the "Escrow Account") shall be binding and enforceable against the Debtors and their estates in all respects and the Debtors are authorized and directed to perform its obligations thereunder. The Debtors are authorized to enter into an escrow agreement substantially in the form of the Escrow Agreement with each other bidder (if any), and when executed by the Debtors, such escrow agreements (if any) shall be binding and enforceable against the Debtors and their estates in all respects.

37. All persons and entities that participate in the bidding process or the Auction shall be deemed to have knowingly and voluntarily submitted to the exclusive jurisdiction of this

Court with respect to all matters related to the terms and conditions of the transfer of Assets, the Auction and any Sale Transaction.

38. In the event there is a conflict between this Order and the Motion or the Stalking Horse APA, this Order shall control and govern.

39. The Stalking Horse has standing to enforce the terms of this Order.

40. This Order shall be immediately effective and enforceable upon its entry. The 14 day stay imposed by Bankruptcy Rules 6004(h) and 6006(d) is hereby waived.

41. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

42. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied.

43. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

44. The Debtors are authorized to take all steps necessary or appropriate to carry out this Bidding Procedures Order.

45. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: _____, 2016
Wilmington, Delaware

BRENDAN L. SHANNON
CHIEF UNITED STATES BANKRUPTCY JUDGE

Exhibit 1
(Bidding Procedures)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
	:	
AMERICAN APPAREL, LLC, <i>et al.</i> , ¹	:	Case No. 16-12551 (BLS)
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	

BIDDING PROCEDURES

On November 14, 2016, the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") a motion (Docket No. __) (the "Motion") seeking entry of (a) an order (i) authorizing and approving bidding procedures (the "Bidding Procedures"), to be used in connection with the sale (the "Sale" or "Sale Transaction") of substantially all of the Debtors' assets (the "Assets"); (ii) approving and authorizing the Debtors to enter into the stalking horse asset purchase agreement substantially in the form (the "Stalking Horse APA") attached as Exhibit 1, by and between certain of the Debtors as sellers and Gildan Activewear SRL as buyer (the "Stalking Horse"), subject to higher and better offers submitted in accordance with these Bidding Procedures (iii) authorizing the Debtors to pay the termination fee (the "Termination Fee") and expense reimbursement (the "Expense Reimbursement") set forth in and pursuant to the terms of the Stalking Horse APA (the "Bid Protections"); (iv) scheduling an auction for the Assets (the "Auction"), the hearing with respect to the approval of the sale (the "Sale Hearing") and approval of the form and manner of notice thereof; (v) authorizing certain procedures related to the Debtors' assumption and assignment of executory contracts and unexpired leases (the "Assignment Procedures") in connection with any Sale, including notice to each non-Debtor counterparty (each, a "Counterparty") to an executory contract or unexpired lease (collectively, the "Contracts") of the Debtors' proposed cure amounts to cure all monetary defaults under the Contracts (the "Cure Costs"), if any, and notice of proposed assumption and assignment of certain Contracts (collectively, the "Proposed Assumed Contracts") in connection with a particular Sale; and (vi) granting related relief.

On [___], the Bankruptcy Court entered the *Order (I) Approving Bidding Procedures for the Sale of Substantially all of the Debtors' Assets, (II) Authorizing the Debtors to Enter into the Stalking Horse Purchase Agreement, (III) Approving Bid Protections, (IV) Scheduling an*

¹ The Debtors are the following six entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): American Apparel, LLC (0601); American Apparel (USA), LLC (8940); American Apparel Retail, Inc. (7829); American Apparel Dyeing & Finishing, Inc. (0324); KCL Knitting, LLC (9518); and Fresh Air Freight, Inc. (3870). The address of each of the Debtors is 747 Warehouse Street, Los Angeles, California 90021.

Auction, (V) Approving the Form and Manner of Notice Thereof, (VI) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof and (VII) Granting Related Relief (Docket No. __) (the "Bidding Procedures Order"). Pursuant to the Bidding Procedures Order, the Debtors are authorized to employ the Bidding Procedures in connection with the Sale and are empowered to take all actions necessary or appropriate to implement the following:

Set forth below are the Bidding Procedures that will be employed in connection with the Sale of substantially all of the Debtors' Assets, including the Debtors' intellectual property, wholesale inventory and at the Stalking Horse's option, the Debtors' manufacturing and distribution facilities in Garden Grove, La Mirada and South Gate, California and the Debtors' corporate headquarters in Los Angeles, California (collectively, the "Stalking Horse Assets").

The ability to undertake and consummate the Sale of Stalking Horse Assets pursuant to the Stalking Horse APA and the Sale(s) of any Asset other than the Stalking Horse Assets, shall be subject to competitive bidding as set forth herein and approval by the Bankruptcy Court. In addition to the Stalking Horse bid, the Debtors will consider bids for any or all of the Assets (including the Stalking Horse Assets) in a single bid from a single bidder, or in multiple bids from multiple bidders.

I. KEY DATES AND DEADLINES

December 2, 2016	Hearing to Consider Entry of the Bidding Procedures Order
December 15, 2016 at 5:00 p.m. (prevailing Eastern Time)	Deadline to file Cure Objections
December 19, 2016 at 5:00 p.m. (prevailing Eastern Time)	Bid Deadline
December 20, 2016 at 12:00 p.m. (prevailing Eastern Time)	Deadline for Debtors to notify bidders of their status as Qualified Bidders
December 21, 2016 at 10:00 a.m. (prevailing Eastern Time)	Auction, to be held at the offices of Jones Day, 250 Vesey Street, New York, New York 10281
December 22, 2016 at 5:00 p.m. (prevailing Eastern Time)	Deadline to file objections to Sale Transaction(s)
December 27, 2016 at 5:00 p.m. (prevailing Eastern Time)	Deadline to file Adequate Assurance Objections
December 30, 2016	Hearing to approve proposed Sale Transaction(s)

II. DUE DILIGENCE

To be eligible to participate in the Auction, each person or entity that desires to participate in the Auction (each, a "Prospective Bidder") must first deliver to each of the Bid Notice Parties:

- an executed confidentiality agreement, in form and substance satisfactory to the Debtors and consistent with the terms of the confidentiality agreements that the Debtors required potential bidders to sign prior to the filing of these chapter 11 cases;
- a statement and other factual support demonstrating to the Debtors' satisfaction in the exercise of their reasonable business judgment that the Prospective Bidder has a *bona fide* interest in purchasing the Assets; and
- preliminary proof by the Prospective Bidder of its financial capacity to close a proposed Sale Transaction, which may include current unaudited or verified financial statements of, or verified financial commitments obtained by, the Prospective Bidder (or, if the Prospective Bidder is an entity formed for the purpose of acquiring the property to be sold, the party that will bear liability for a breach), the adequacy of which the Debtors and its advisors will determine; provided that such proof shall not be required to the extent that the Prospective Bidder's financial capacity is reasonably known to the Debtors' investment banker.

Upon execution of a valid confidentiality agreement, any Prospective Bidder identified by the Debtors as reasonably likely to be a Qualified Bidder (as defined below) that wishes to conduct due diligence on the Assets may be granted access to all material information regarding the Assets; provided that, if any Prospective Bidder is (or is affiliated with) a competitor of the Debtors, the Debtors will not be required to disclose to such Prospective Bidder any trade secrets or proprietary information, as determined in their sole discretion, unless the confidentiality agreement executed by such Prospective Bidder has an effective term of at least 18 months and contains appropriate provisions to ensure that such trade secrets or proprietary information will not be used for an improper purpose or to gain an unfair competitive advantage. If the Debtors determine at any time that a Prospective Bidder is not reasonably likely to qualify as a Qualified Bidder, then such Prospective Bidder shall not be entitled to receive further due diligence access or non-public information and all information provided by the Debtors prior to such time will be returned to the Debtors or destroyed in accordance with the terms of the applicable confidentiality agreement.

The Debtors will work to accommodate all reasonable requests for additional information and due diligence access from Prospective Bidders. All due diligence requests shall be directed to (i) the Debtors, American Apparel, LLC, 747 Warehouse Street, Los Angeles, California 90021 (Attn: Lance Miller), (ii) the Debtors' financial advisors, Berkeley Research Group, LLC, (Attn: Joe D'Ascoli (jdascoli@thinkbrg.com)) and (iii) the Debtors' investment banker, Houlihan Lokey, Inc., 245 Park Avenue, 20th Fl., New York, NY 10167 (Attn: Devin Shanahan (dshanahan@hl.com)).

III. BID DEADLINE

Any Prospective Bidder that intends to participate in the Auction must submit its bid (and such bid must constitute a Qualified Bid (as hereinafter defined)) on or before **December 19, 2016 at 5:00 p.m. (prevailing Eastern Time)** (the "Bid Deadline") in writing to the Bid Notice

Parties (as defined in Section VIII.B). Any bid received after the Bid Deadline will not constitute a Qualified Bid. A Good Faith Deposit (as defined below) must be contemporaneously provided with any bid by wire transfer or certified check pursuant to delivery instructions to be provided by the Debtors prior to the Bid Deadline.

The Debtors shall promptly provide copies of all bids received to the Consultation Parties; provided that the Debtors shall not be required to provide to any Consultation Party any material, nonpublic information regarding bids for the Assets if such Consultation Party submits a bid to purchase all or any portion of the Assets. Further, the Debtors shall not be required to consult with any Consultation Party pursuant to the terms of these Bidding Procedures if such party is an active bidder at the applicable time.

IV. BID REQUIREMENTS

A. Qualified Bid Requirements

To qualify as a "Qualified Bid," the bid must be in writing and the Debtors must determine that the bid satisfies the following requirements:

1. Purchased Assets. A Qualified Bid must identify the following:
 - a) the Assets or the portion thereof to be purchased, including any Contracts of the Debtors that would be assumed and assigned in connection with the relevant Sale Transaction (all such Contracts, the "Proposed Assumed Contracts");
 - b) the liabilities, if any, to be assumed, including any debt to be assumed;
 - c) the cash purchase price of, and any other consideration offered in connection with, the bid; provided that, if the bid is for the Stalking Horse Assets, such purchase price must exceed the aggregate sum of (i) the Stalking Horse's Bid, (ii) the Termination Fee, (iii) the Expense Reimbursement payable to the Stalking Horse under the Stalking Horse APA (which for purposes of determining the Baseline Bid (defined below) shall be deemed to be \$1 million;
 - d) the proposed form of adequate assurance of future performance with respect to any Proposed Assumed Contracts; and
 - e) whether the Prospective Bidder intends to operate all or a portion of the Debtors' business as a going concern (as applicable), or to liquidate the business.
2. Identification of Bidder. A Qualified Bid must fully disclose the legal identity of each person or entity bidding for the applicable Assets or otherwise sponsoring, financing (including through the issuance of debt in connection with such bid), participating in (including through license or

similar arrangement with respect to the assets to be acquired in connection with such bid) such bid or the Auction in connection with such bid, and the complete terms of any such participation, and must also disclose any past or present connections or agreements with the Debtors, the Stalking Horse, any other known Prospective Bidder or Qualified Bidder, and/or any officer or director of the foregoing (including any current or former officer or director of the Debtors).

3. Asset Purchase Agreement for Stalking Horse Assets Only. A Qualified Bid solely for the Stalking Horse Assets must include a duly authorized and executed copy of the Stalking Horse APA modified to reflect such Qualified Bidder's Proposed Sale Transaction (the "Alternative IP/ Inventory Transaction Agreement") (including all exhibits and schedules thereto), together with copies marked to show any amendments and modifications to (i) the Stalking Horse APA and (ii) the proposed order approving the Sale attached to the Motion as Exhibit C (the "Proposed Sale Order").
4. Asset Purchase Agreement for Non-Stalking Horse Assets. A Qualified Bid that includes any Assets other than the Stalking Horse Assets must include a duly authorized and executed copy of the form asset purchase agreement provided by the Debtors (the "Form APA") modified to reflect such Qualified Bidder's Proposed Sale Transaction (the "Alternative Transaction Agreement") (including all exhibits and schedules thereto), together with copies marked to show any amendments and modifications to (i) the Form APA and (ii) the Proposed Sale Order.
5. Credit Bidding. In connection with the Sale of all or any portion of the Assets, a person or entity holding a perfected security interest in such Assets may seek to credit bid some or all of their claims that are not subject to a bona fide dispute for their respective collateral (each such bid, a "Credit Bid") pursuant to section 363(k) of the Bankruptcy Code. A Credit Bid may be applied only to reduce the cash consideration with respect to the Assets in which the party submitting the Credit Bid holds a security interest. Each person or entity holding a valid, perfected security interest in Assets for which it submits a bid shall be deemed a Qualified Bidder with respect to its right to acquire such Assets by Credit Bid; provided, however, that the Debtors' prepetition lenders (the "Prepetition Secured Lenders") under that certain Credit Agreement dated February 5, 2016, by and among certain of the Debtors as Borrowers, the lenders party thereto and Wilmington Trust, National Association as Administrative Agent (the "Prepetition Credit Facility"), will not credit bid if the result of such credit bid would be to overbid an otherwise Successful Bid by the Stalking Horse for the Stalking Horse Assets.
6. Financial Information. A Qualified Bid must include the following:

- a) a statement that the Prospective Bidder is financially capable of consummating the Sale Transaction(s) contemplated by the Stalking Horse APA or Alternative Transaction Agreement (as applicable);
 - b) if the bid includes a Credit Bid pursuant to section 363(k) of the Bankruptcy Code, a statement that any remaining balance of the bid after reducing the applicable purchase price of the Assets by the amount of the proposed Credit Bid is based on an all-cash offer; and
 - c) satisfactory evidence of committed financing or other financial ability to consummate the proposed Sale Transaction(s) in a timely manner.
7. Good Faith Deposit. Each Qualified Bid (other than one that includes a Credit Bid) must be accompanied by a good faith deposit (the "Good Faith Deposit") in the form of cash (or other form acceptable to the Debtors in their sole and absolute discretion) in an amount equal to 10% of the purchase price offered to purchase the Assets (or portion thereof). All Good Faith Deposits shall be held in escrow in a non-interest bearing account identified by the Debtors until no later than five business days after the conclusion of the Auction unless such bidder is selected as the Successful Bidder or as a Backup Bidder (as hereinafter defined), and thereafter returned to the respective Qualified Bidders in accordance with the Bidding Procedures or in the case of the Stalking Horse, return of its Good Faith Deposit shall be governed by the Stalking Horse APA. The Debtors reserve the right to increase the Good Faith Deposit for one or more Qualified Bidders (as defined below) (other than the Stalking Horse's Good Faith Deposit) in their sole discretion after consulting with the Consultation Parties.
8. Adequate Assurance. A Qualified Bid must include evidence of the Prospective Bidder's ability to comply with section 365 of the Bankruptcy Code (to the extent applicable), including providing adequate assurance of such Prospective Bidder's ability to perform future obligations arising under the contracts and leases proposed in its bid to be assumed by the Debtors and assigned to the Prospective Bidder, in a form that will permit the immediate dissemination of such evidence to the Counterparties to such contracts and leases.
9. Representations and Warranties. A Qualified Bid must include the following representations and warranties:
- a) expressly state that the Prospective Bidder has had an opportunity to conduct any and all due diligence regarding the Debtors' businesses and the Assets prior to submitting its bid; and

- b) a statement that the Prospective Bidder has relied solely upon its own independent review, investigation, and/or inspection of any relevant documents and the Assets in making its bid and did not rely on any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the Debtors' businesses or the Assets or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in the Alternative IP/ Inventory Transaction Agreement or Alternative Transaction Agreement (as applicable) signed by the Prospective Bidder and ultimately accepted and executed by the Debtors;
10. Authorization. A Qualified Bid must include evidence of authorization and approval from the Prospective Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of a bid, participation in the Auction, and closing of the proposed Sale Transaction(s) in accordance with the terms of the bid and these Bidding Procedures.
11. Other Requirements. A Qualified Bid shall:
- a) state that the bid is formal, binding, not subject to or conditioned on any further due diligence, and irrevocable until the selection of the Successful Bid (as defined below) in accordance with these Bidding Procedures; provided that if such Prospective Bidder is selected as the Successful Bidder or Backup Bidder, its bid must remain irrevocable until the Debtors' consummation of a sale with the Successful Bidder;
 - b) if the bid is for the Stalking Horse Assets, state that the bid is not subject to conditions more burdensome than those in the Stalking Horse APA;
 - c) expressly state that the Prospective Bidder is committed to closing the proposed Sale Transaction(s) contemplated by the bid as soon as practicable;
 - d) except for the Bid Protections (as defined in the Bidding Procedures Order) for the Stalking Horse approved in the Bidding Procedures Order, expressly state and acknowledge that no Prospective Bidder shall be entitled to a break-up fee, termination fee, expense reimbursement, or similar type of "bid protection" in connection with the submission of a bid;
 - e) expressly waive any claim or right to assert any substantial contribution administrative expense claim under section 503(b) of

the Bankruptcy Code in connection with bidding for the Assets and/or participating in the Auction;

- f) not contain any financing contingencies of any kind;
- g) not contain any condition to closing of the proposed Sale Transaction(s) on the receipt of any third party approvals (excluding Bankruptcy Court approval and any applicable required governmental and/or regulatory approval);
- h) state that all necessary filings under applicable regulatory, antitrust, and other laws will be made (pursuant to the terms of the Alternative IP/ Inventory Transaction Agreement or Alternative Transaction Agreement (as applicable)) and that payment of the fees associated therewith shall be made by the Prospective Bidder;
- i) expressly state that the Prospective Bidder agrees to serve as a backup bidder (a "Backup Bidder") if such bidder's Qualified Bid is selected as the next highest or next best bid after the Successful Bid with respect to the applicable Assets;
- j) include contact information for the specific person(s) the Debtors should contact in the event they have any questions about the Prospective Bidder's bid; and
- k) be received by the Bid Notice Parties set forth in Section VIII.B below by the Bid Deadline.

12. Disqualification of Bids. The Debtors, in their business judgment, and in consultation with the Consultation Parties, reserve the right to reject any bid (other than the Stalking Horse bid) if such bid, among other things:

- a) is on terms that are more burdensome or conditional than the terms of the Stalking Horse APA;
- b) requires any indemnification of the Prospective Bidder;
- c) is not received by the Bid Deadline;
- d) is subject to any contingencies (including representations, warranties, covenants and timing requirements) of any kind or any other conditions precedent to such party's obligation to acquire the relevant Assets; or
- e) does not, in the Debtors' determination (after consultation with the Consultation Parties), include a fair and adequate price or the acceptance of which would not be in the best interests of the Debtors estates or the Auction.

Any bid rejected pursuant to this paragraph shall not be deemed to be a Qualified Bid. In the event that any bid is so rejected, the Debtors shall cause the Good Faith Deposit of such Prospective Bidder (including all accumulated interest thereon) to be refunded to it within five (5) business days after the Bid Deadline.

B. Qualified Bidders

A bid received for all or any portion of the Assets that is determined by the Debtors to meet the requirements set forth in Section IV.A will be considered a "Qualified Bid," and any bidder that submits a Qualified Bid will be considered a "Qualified Bidder." Wilmington Trust, National Association, in its capacity as Administrative Agent under the Debtors' Prepetition Credit Facility and Encina Business Credit, LLC in its capacity as DIP Agent, and their respective designees, affiliates, and assigns automatically shall be deemed Qualified Bidders, and their respective bids automatically shall be deemed to constitute Qualified Bids, regardless of whether their respective Credit Bids meet the requirements set forth in Section IV.A. Wilmington Trust, National Association and Encina Business Credit, LLC shall not be required to submit a Good Faith Deposit in connection with any Credit Bid, provided, however, that the Prepetition Secured Lenders will not credit bid if the result of such credit bid would be to overbid an otherwise Successful Bid by the Stalking Horse for the Stalking Horse Assets. For the avoidance of doubt, (a) the Stalking Horse is a Qualified Bidder, (b) the Stalking Horse APA is a Qualified Bid, (c) the Stalking Horse is authorized to submit any Minimum Overbid during the Auction, in each instance without further qualification required of the Stalking Horse and (d) the Stalking Horse will be deemed to be the Backup Bidder only in accordance with the terms of the Stalking Horse APA and with the prior written consent of the Stalking Horse, exercisable in its sole and absolute discretion.

The Debtors will value a Qualified Bid using any and all factors that the Debtors deem reasonably pertinent, including, without limitation, (i) the amount of the purchase price and Credit Bid, as applicable, set forth in the Qualified Bid; (ii) the risks and timing associated with consummating a Sale Transaction(s) with the Qualified Bidder; and (iii) any Assets included in or excluded from the Qualified Bid, including any Proposed Assumed Contracts. In addition, the Debtors will consider bids for any or all of the Assets. The Debtors, may, after consulting with the Consultation Parties, accept as a single Qualified Bid, multiple bids for non-overlapping portions of the Assets such that, when taken together in the aggregate, such bids would otherwise meet the standards for a single Qualified Bid.

The Debtors may permit otherwise Qualified Bidders who submitted bids by the Bid Deadline for less than a substantial (but nevertheless a material) portion of the Assets but who were not identified as a component of a single Qualified Bid consisting of such multiple bids, to participate in the Auction and to submit higher or otherwise better bids that in subsequent rounds of bidding may be considered, together with other bids for non-overlapping material portions of the Assets, as part of such a single Qualified Bid for overbid purposes.

The Debtors shall make a determination regarding which bids qualify as a Qualified Bids and as Baseline Bids (as hereinafter defined) and shall notify bidders whether they have been

selected as Qualified Bidders by no later than **December 20, 2016 at 12:00 p.m. (prevailing Eastern Time)**.

C. Bid Protections

Except as set forth in the Bidding Procedures Order with respect to the Stalking Horse, no party submitting a bid, whether or not such bid is determined by the Debtors to qualify as a Qualified Bid, shall be entitled to a break-up fee or expense reimbursement, or any other bid protection, unless such break-up fee, expense reimbursement, or other bid protection is approved by the Bankruptcy Court.

V. THE AUCTION

If the Debtors receive more than one Qualified Bid for the same Assets with acceptable purchase prices by the Bid Deadline, the Debtors shall conduct the Auction. The Auction, if required, will be conducted at the offices of Jones Day, 250 Vesey Street, New York, New York 10281 on **December 21, 2016 at 10:00 a.m. (prevailing Eastern Time)**, or at such other time and location as designated by the Debtors in consultation with the Consultation Parties and the Stalking Horse Bidder; provided that the Auction shall not be rescheduled for a date that is beyond the outside date or milestone for the Auction set forth in the Stalking Horse APA. The Debtors shall have the right to conduct any number of Auctions on the date of the Auction to accommodate multiple bids that comprise a single Qualified Bid, if the Debtors determine, in their reasonable business judgment that conducting such auctions would be in the best interests of the Debtors' estates.

If the Debtors receive no more than one Qualified Bid (including the Stalking Horse bid), the Debtors will not hold the Auction and instead shall request at the Sale Hearing (defined below) that the Bankruptcy Court approve the Stalking Horse APA with the Stalking Horse.

All bidders at the Auction will be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to jury trial in connection with any disputes relating to the Auction, the Sale and the construction and enforcement of the Stalking Horse APA or Alternative Transaction Agreement (if applicable) and all other agreements entered into in connection with any proposed Sale Transaction.

A. Participants and Attendees

Only Qualified Bidders that have submitted Qualified Bids by the Bid Deadline are eligible to participate in the Auction, subject to other limitations as may be reasonably imposed by the Debtors in accordance with these Bidding Procedures. Qualified Bidders participating in the Auction must appear in person at the Auction, or through a duly authorized representative. Subject to the Auction Procedures set forth in Section V.B, the Auction will be conducted openly and all undisputed creditors may be permitted to attend; provided that the Debtors may, in their sole and exclusive discretion, establish a reasonable limit on the number of representatives and/or professional advisors that may appear on behalf of or accompany each Qualified Bidder at the Auction. Each of the Consultation Parties shall be entitled to have a reasonable number of representatives and/or professional advisors attend the Auction.

Each Qualified Bidder participating in the Auction will be required to confirm in writing and on the record at the Auction that (i) it has not engaged in any collusion with respect to the submission of any bid or the Auction, and (ii) its Qualified Bid represents a binding, good faith, and bona fide offer to purchase the Assets identified in such bid if selected as the Successful Bidder.

B. Auction Procedures

The Auction shall be governed by the following procedures, subject to the Debtors' right to modify such procedures in their reasonable business judgment:

1. Baseline Bids. Bidding shall commence at the amount of the Qualified Bid or combination of Qualified Bids that the Debtors, in consultation with the Consultation Parties, determine in their business judgment to be the highest and/or best Qualified Bid (the "Baseline Bid"). The Stalking Horse bid shall constitute the portion of the Baseline Bid attributable to the Stalking Horse Assets.
2. Minimum Overbid. Qualified Bidders may submit successive bids higher than the previous bid, based on and increased from the Baseline Bid for the relevant Assets; provided, however, that to the extent that there is more than one Qualified Bid for the Stalking Horse Assets, the bidding for Stalking Horse Assets will start at an amount equal to \$66 million, plus the aggregate amount of the Termination Fee and the Expense Reimbursement (solely for purposes of conducting the Auction, the amount of the Expense Reimbursement shall be deemed to be \$1 million). The minimum required increments for successive Qualified Bids (each such bid, a "Minimum Overbid") will be announced at the outset of the Auction. The Debtors may, in their reasonable business judgment, and after consulting with the Consultation Parties, announce increases or reductions to Minimum Overbids at any time during the Auction.

Except as specifically set forth herein, for the purpose of evaluating the value of the consideration provided by any bid subsequent to a Baseline Bid, the Debtors will, at each round of bidding, give effect to the Bid Protections payable to the Stalking Horse under the Stalking Horse APA, as well as any additional liabilities to be assumed by a Qualified Bidder and any additional costs that may be imposed on the Debtors. To the extent that a Minimum Overbid has been accepted entirely or in part because of the addition, deletion, or modification of a provision or provisions in the applicable Stalking Horse APA, Alternative IP/Inventory Transaction Agreement or Alternative Transaction Agreement (as applicable), the Debtors will identify such added, deleted or modified provision or provisions and the value thereof.

3. Highest or Best Offer. After the first round of bidding and between each subsequent round of bidding, the Debtors shall announce the bid that they

believe to be the highest or otherwise best offer for the relevant Assets (the "Leading Bid") and describe the material terms thereof. Each round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a subsequent bid with full knowledge of the Leading Bid.

The Auction may include open bidding in the presence of all other Qualified Bidders. All Qualified Bidders shall have the right to submit additional bids and make modifications to the Stalking Horse APA or their Alternative Transaction Agreement at the Auction to improve their bids. The Debtors may, in their reasonable business judgment, negotiate with any and all Qualified Bidders participating in the Auction.

The Debtors shall have the right, after consulting with the Consultation Parties, to determine, in their reasonable business judgment, which bid is the highest or otherwise best bid with respect to the applicable Asset(s) and reject at any time, without liability, any bid that the Debtors deem to be inadequate or insufficient, not in conformity with the requirements of the Bankruptcy Code, Bankruptcy Rules, or the Local Rules, these Bidding Procedures, any order of the Bankruptcy Court or the best interests of the Debtors and their estates.

Any Leading Bid made from time to time by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless (i) the Debtors accept a higher or otherwise better bid submitted by another Qualified Bidder during the Auction as a Leading Bid and (ii) such Leading Bid is not selected as the Backup Bid.

To the extent not previously provided (which will be determined by the Debtors), a Qualified Bidder (other than the Stalking Horse) submitting a subsequent bid must submit at the Debtors' request, as part of its subsequent bid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors) demonstrating such Qualified Bidder's ability to close the transaction at the purchase price contemplated by such subsequent bid.

4. Transcription. The bidding at the Auction shall be transcribed and the Debtors shall maintain a transcript of all bids made and announced at the Auction.

C. Auction Results

1. Successful Bids. Immediately prior to the conclusion of the Auction, the Debtors shall, in the exercise of their reasonable business judgment and in consultation with the Consultation Parties, (a) determine, consistent with these Bidding Procedures, which bid constitutes the highest or otherwise best bid(s) for the applicable Asset(s) (each such bid, a "Successful Bid");

and (b) notify all Qualified Bidders at the Auction for the applicable Asset(s) of the identity of the bidder that submitted the Successful Bid (each such bidder, the "Successful Bidder") for such Asset(s) and the amount of the purchase price and other material terms of the Successful Bid.

2. Backup Bids. Immediately prior to the conclusion of the Auction, the Debtors shall, in consultation with the Consultation Parties, (a) determine, consistent with these Bidding Procedures, which Qualified Bid is the next highest or otherwise best Qualified Bid for the relevant Assets after the Successful Bid (each such Qualified Bid, a "Backup Bid"); and (b) notify all Qualified Bidders at the Auction for the applicable Asset of the identity of the Backup Bidder and the amount of the purchase price and other material terms of the Backup Bid. Notwithstanding the foregoing, the Stalking Horse will be deemed to be the Backup Bidder only in accordance with the terms of the Stalking Horse APA and with the prior written consent of the Stalking Horse, exercisable in its sole and absolute discretion. In the event the Debtors select the Stalking Horse APA as the Backup Bid and the Stalking Horse does not consent to be the Backup Bidder, the Debtors may select the next highest and otherwise best bid submitted by a Qualified Bidder during the Auction, as determined by the Debtors pursuant to these Bidding Procedures, as the Backup Bid, and the Qualified Bidder that submitted such Qualified Bid will be deemed to be the Backup Bidder.

Subject to the Stalking Horse APA, if the Stalking Horse consents in its sole discretion to be the Backup Bidder, Backup Bids must remain open until the Debtors' consummation of a sale with the Successful Bidder. If the Successful Bidder for the applicable Assets fails to consummate a Sale Transaction, the Backup Bidder shall be deemed the new Successful Bidder, and the Debtors will be authorized, but not required, to consummate a Sale Transaction for the applicable Assets with the Backup Bidder.

3. No Late Bids. The Debtors shall not consider any bids submitted after the conclusion of the Auction and any and all such bids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.

On or before **December 22, 2016 at 5:00 p.m. (prevailing Eastern Time)**, the Debtors shall file with the Bankruptcy Court, serve on the Sale Notice Parties, and cause to be published on the website maintain by the Debtors' claim and noticing agent, Prime Clerk, LLC located at <http://cases.primeclerk.com/americanapparel> (the "Prime Clerk Website"), the results of the Auction, which shall include (i) a copy of the Successful Bid(s) and Backup Bid(s); and (ii) the identities of the Successful Bidder(s) and Backup Bidder(s).

On or before **December 23, 2016 at 5:00 p.m. (prevailing Eastern Time)**, the Debtors shall file with the Bankruptcy Court, serve on the Sale Notice Parties, and cause to be published

on the Prime Clerk Website, (i) the Notice of the Proposed Assumed Contracts; and (ii) each Successful Bidder's and Backup Bidder's proposed form of adequate assurance of future performance with respect to the relevant Proposed Assumed Contracts.

D. Return of Good Faith Deposit

The Good Faith Deposit of all Prospective Bidders shall be held in escrow by the Debtors in a non-interest-bearing escrow or trust account, and shall not become property of the Debtors' estates. The Good Faith Deposits of all Prospective Bidders shall be retained by the Debtors, notwithstanding Bankruptcy Court approval of Sale Transactions for the applicable Assets, until no later than five business days after the conclusion of the Auction, except for the Good Faith Deposits of Successful Bidders and Backup Bidders; provided that if the Stalking Horse Bidder is not the Successful Bidder, the Stalking Horse Bidder's Good Faith Deposit shall be returned to the Stalking Horse Bidder in accordance with the Stalking Horse APA. The Debtors shall retain the Good Faith Deposits of Backup Bidders until no later than three business days after the closing of a Sale Transaction with the Successful Bidder for the applicable Assets.

At the closing of a Sale Transaction, the Successful Bidder will be entitled to a credit for the amount of its Good Faith Deposit. If a Successful Bidder fails to consummate a Sale Transaction because of a breach that entitles the Debtors to terminate the applicable asset purchase agreement, then, the Debtors and their estates shall be entitled to retain the Good Faith Deposit of the Successful Bidder as part of the damages resulting to the Debtors and their estates for such breach or failure to perform. Notwithstanding the foregoing, retention and application by the Debtors of the Good Faith Deposit delivered by the Stalking Horse shall be governed by the Stalking Horse APA.

VI. SALE HEARING

Each Successful Bid (including any Backup Bid that is subsequently deemed a Successful Bid) will be subject to approval by the Bankruptcy Court. The hearing to approve the Sale and any Successful Bid(s) in respect of the Assets shall take place on **December 30, 2016** (the "Sale Hearing") before the Honorable Brendan L. Shannon, Chief United States Bankruptcy Judge, in the Bankruptcy Court, located at 824 N. Market St., Wilmington, DE 19801.

At the Sale Hearing, the Debtors will seek entry of order(s) (each, a "Sale Order") approving, among other things, the Sale of the relevant Assets to the Successful Bidder(s). The Sale Hearing may be adjourned or rescheduled by the Debtors. The Debtors may not consider or support any other bid to purchase Assets that are the subject of a Successful Bid pending consideration by the Bankruptcy Court of the Successful Bid for such Assets at the Sale Hearing.

Objections to a Sale Transaction, including any objection to the sale of any Assets free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code, any of the relief requested in the Motion (each, a "Sale Objection"), and entry of any Sale Order must (i) be in writing and specify the nature of such objection; (ii) comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and all orders of the Bankruptcy Court; (iii) be filed with the Bankruptcy Court and served on the Objection Recipients by **December 22, 2016, 2016 at 5:00 p.m. (prevailing Eastern Time)**.

All Sale Objections not otherwise resolved by the parties prior thereto shall be heard at the Sale Hearing. The failure of any party to timely file with the Bankruptcy Court and serve on the Objection Recipients a Sale Objection forever shall be barred from asserting, at the applicable Sale Hearing or thereafter, any objection to the relief requested in the Motion, or to the consummation and performance of the applicable Sale Transaction(s) contemplated by an applicable asset purchase agreement with a Successful Bidder, including the transfer of the Assets to the applicable Successful Bidder(s), free and clear of all liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code. Notwithstanding the foregoing or anything herein to the contrary, and as set forth below, the deadline to file an Adequate Assurance Objection in connection with a proposed Sale Transaction shall be two days prior to the applicable Sale Hearing.

The Debtors may reject at any time, before entry of an order of the Bankruptcy Court approving the Sale, any bid that, in the Debtors' judgment, upon considering any comments of the Consultation Parties, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code or the Bidding Procedures, or (iii) contrary to the best interests of the Debtors and their estates.

The Debtors' presentation to the Bankruptcy Court for approval of a selected Qualified Bid as a Successful Bid does not constitute the Debtors' acceptance of such bid. The Debtors will have accepted a Successful Bid only when such Successful Bid has been approved by the Bankruptcy Court at the Sale Hearing. Upon the Court's approval of a Successful Bid, the Debtors will be bound by the terms of that Successful Bid with no further opportunity for an auction or other process.

VII. MODIFICATION OF PROCEDURES

The Debtors may, after consulting with the Consultation Parties, modify the rules, procedures and deadlines set forth herein (including, without limitation, extending the Bid Deadline, modifying the Qualified Bid Requirements, modifying the procedures for conducting the Auction, rescheduling the Auction or adjourning the Sale Hearing), or adopt new rules, procedures and deadlines or otherwise modify these Bidding Procedures in order to, in their reasonable discretion, better promote the goals of such procedures, namely, to maximize value for the estates; provided that all modifications and additional rules, procedures and deadlines may in no event permit the submission of bids after the close of the Auction or extend any deadline beyond the applicable outside date or milestone set forth in the Stalking Horse APA. All such modifications and additional rules will be communicated to each of the Notice Parties, Prospective Bidders and Qualified Bidders.

VIII. NOTICING

A. Consultation Parties

Throughout the sale process, as necessary or appropriate, the Debtors and their professionals will evaluate bids and will consult the following parties with respect to such bids: (1) Milbank, Tweed, Hadley & McCloy LLP and Fox Rothschild LLP, as counsel to certain of the Debtors' Prepetition Secured Lenders, (2) Covington & Burling LLP, as counsel to

Wilmington Trust, National Association, as administrative agent to the Debtors' Prepetition Secured Lenders, (3) Riemer & Braunstein LLP and Ashby & Geddes, P.A., as counsel to the DIP Lenders and (4) counsel for any official committee of unsecured creditors appointed in these chapter 11 cases (collectively, the "Consultation Parties").

B. Bid Notice Parties

Qualified Bids (as hereinafter defined) must be submitted in writing to (i) the Debtors, American Apparel, LLC, 747 Warehouse Street, Los Angeles, California 90021 (Attn: Chelsea Grayson (cgrayson@americanapparel.net), Bennett Nussbaum (bennett@americanapparel.net) and Lance Miller (lancemiller@americanapparel.net); (ii) counsel for the Debtors, (a) Jones Day, 250 Vesey Street, New York, NY 10281 (Attn: Scott J. Greenberg, Esq. (sgreenberg@jonesday.com)) and 901 Lakeside Avenue, Cleveland, OH 44114 (Attn: Carl E. Black, Esq. (ceblack@jonesday.com)) and (b) Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Attn: Laura Davis Jones, Esq., (ljones@pszjlaw.com), James E. O'Neill, Esq (jo'neill@pszjlaw.com) and Joseph M. Mulvihill (jmulvihill@pszjlaw.com)); (iii) the Debtors' financial advisors, Berkeley Research Group, LLC, 75 State Street, Suite 1805, Boston, MA 01109 (Attn: Mark Weinsten (mweinsten@thinkbrg.com) and Joe D'Ascoli (jdascoli@thinkbrg.com)); and (iv) the Debtors' investment banker, Houlihan Lokey, Inc., 245 Park Avenue, 20th Fl., New York, NY 10167 (Attn: Saul Burian (SBurian@HL.com) and Devin Shanahan (DShanahan@hl.com)) (the foregoing entities in clauses (i) through (iv), the "Bid Notice Parties").

C. Sale Notice and Sale Notice Parties

1. Sale Notice Parties. The "Sale Notice Parties" shall include the following: (i) the Consultation Parties (as applicable); (ii) Sullivan & Cromwell LLP, as counsel to the Stalking Horse; (iii) all persons and entities known by the Debtors to have expressed an interest to the Debtors in a Sale Transaction involving any of the Assets during the past twelve (12) months, including any person or entity that has submitted a bid for any of the Assets, as applicable; (iv) all persons and entities known by the Debtors to have asserted any lien, claim, interest, or encumbrance in the Assets (for whom identifying information and addresses are available to the Debtors); (v) all non-Debtor parties to any executory contracts or unexpired leases of the Debtors (collectively, the "Contracts") that are proposed to be assumed or rejected in connection with a Sale Transaction; (vi) any governmental authority known to have a claim against the Debtors in these chapter 11 cases; (vii) the United States Attorney General; (viii) the Antitrust Division of the United States Department of Justice; (ix) the United States Attorney for the District of Delaware; (x) the Office of the Attorney General in each state in which the Debtors operate; (xi) the Federal Trade Commission; (xii) the office of the United States Trustee for the District of Delaware; (xiii) the Internal Revenue Service; (xiv) the United States Securities and Exchange Commission; (xv) all of the Debtors' known creditors (for whom identifying information and addresses are known to the Debtors); (xvi) all parties who have filed a notice of appearance and request for service of

papers in these chapter 11 cases pursuant to Bankruptcy Rule 2002; and (xvii) all other persons and entities as directed by the Bankruptcy Court.

2. Sale Notice. Within two (2) days after entry of the Bidding Procedures Order, the Debtors shall file with the Bankruptcy Court, serve on the Sale Notice Parties, and cause to be published on the Prime Clerk Website a notice (the "Sale Notice") setting forth (i) the date, time, and place of (a) the Auction and (b) Sale Hearing; and (ii) the deadline to object to the Sale and the relief requested in the Motion (the "Sale Objection Deadline").
3. Publication Notice. Within five (5) days after entry of the Bidding Procedures Order, the Debtors shall cause the information contained in the Sale Notice to be published once in the *Wall Street Journal* or *USA Today*.

D. Sale Objections

Sale Objections (as hereinafter defined) shall be filed in accordance with these Bidding Procedures be served on (i) the Debtors, American Apparel, LLC, 747 Warehouse Street, Los Angeles, California 90021 (Attn: Chelsea Grayson, Bennett Nussbaum, and Lance Miller); (ii) counsel for the Debtors, (a) Jones Day, 250 Vesey Street, New York, NY 10281 (Attn: Scott J. Greenberg, Esq.) and 901 Lakeside Avenue, Cleveland, OH 44114 (Attn: Carl E. Black, Esq.) and (b) Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Attn: Laura Davis Jones, Esq., James E. O'Neill, Esq., and Joseph M. Mulvihill); (iii) counsel for any official committee of unsecured creditors appointed in these chapter 11 cases; (iv) counsel for the Debtors' Prepetition Secured Lenders, Milbank, Tweed, Hadley & McCloy LLP, 28 Liberty Street, New York, NY 10005 (Attn: Gerard Uzzi, Esq.); (v) Covington & Burling LLP, as counsel to Wilmington Trust, National Association, as administrative agent to the Debtors' Prepetition Secured Lenders; (vi) Riemer & Braunstein LLP and Ashby & Geddes, P.A., as counsel to the DIP Secured Parties; (vii) counsel (if applicable) of any applicable Successful Bidder(s); (viii) counsel (if applicable) of any applicable Backup Bidder(s); (ix) counsel to the Stalking Horse, Sullivan & Cromwell LLP, 125 Broad Street, New York, New York 10004 (Attn: Michael H. Torkin, Esq. and Mimi Wu, Esq.); and (x) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Jane M. Leamy, Esq.) (the foregoing entities in clauses (i) through (x), the "Objection Recipients").

E. Assumption and Assignment

The Debtors shall provide all notices regarding the proposed assumption, assignment, and rejection of contracts in accordance with the Assumption and Assignment Procedures set forth in the Motion and Bidding Procedures Order.

IX. CONSULTATION BY THE DEBTORS

The Debtors shall consult with the Consultation Parties as explicitly provided for in these Bidding Procedures; provided, however, that the Debtors shall not be required to consult with any Consultation Party (or its advisors) that submits a bid or has a bid submitted on its behalf for so long as such bid remains open, including any credit bid, if the Debtors determine, in their

reasonable business judgment, that consulting with such Consultation Party regarding any issue, selection, or determination is (a) likely to have a chilling effect on the potential bidding or (b) otherwise contrary to the goal of maximizing value from the sale process for the Debtors' estates, their creditors, and all other parties in interest.

Dated: _____, 2016
Wilmington, Delaware

PACHULSKI STANG ZIEHL & JONES LLP

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James E. O'Neill (DE Bar No. 4042)
Joseph M. Mulvihill (DE Bar No. 6061)
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and

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Proposed Co-Counsel for the Debtors
and Debtors in Possession

Exhibit 1

(Stalking Horse APA)

Exhibit 2

(Assumption and Assignment Notice)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
	:	
AMERICAN APPAREL, LLC, <i>et al.</i> , ¹	:	Case No. 16-12551 (BLS)
	:	
Debtors.	:	(Joint Administration Requested)

**NOTICE OF POSSIBLE ASSUMPTION
AND ASSIGNMENT OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH SALE**

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On November 14, 2016, the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed with the United States Court for the District of Delaware (the "Bankruptcy Court") a motion (Docket No.) (the "Motion") for entry of (a) an order (the "Bidding Procedures Order")² (i) authorizing and approving bidding procedures, substantially in the form attached to the Bidding Procedures Order as Exhibit 1 (the "Bidding Procedures"), to be employed in connection with the sale or disposition (the "Sale" or "Sale Transaction") of substantially all of the Debtors' assets or any portion thereof; (ii) scheduling an auction (the "Auction") for the Assets; (iii) scheduling a hearing (the "Sale Hearing") to consider approval of one or more Sale Transaction(s); (iv) authorizing and approving the form and manner of notice of the Auction and Sale Hearing, notice to each non-Debtor counterparty (each, a "Counterparty") to an executory contract or unexpired lease (collectively, the "Contracts") of the Debtors' proposed cure amounts to cure all monetary defaults under the Contracts (the "Cure Costs"), if any, and notice of proposed assumption and assignment of certain Contracts (collectively, the "Proposed Assumed Contracts") in connection with a particular Sale or Transaction; (v) authorizing and approving procedures for the assumption and assignment of Contracts; (b) entry of one or more orders, as applicable, authorizing and approving (i) the Sale of the Assets free and clear of all liens, claims, interests or encumbrances, with liens to attach to the proceeds of such sale(s); and (ii) the assumption and assignment of the Proposed Assumed Contracts; and (c) granting related relief.

¹ The Debtors are the following six entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): American Apparel, LLC (0601); American Apparel (USA), LLC (8940); American Apparel Retail, Inc. (7829); American Apparel Dyeing & Finishing, Inc. (0324); KCL Knitting, LLC (9518); and Fresh Air Freight, Inc. (3870). The address of each of the Debtors is 747 Warehouse Street, Los Angeles, California 90021.

² Capitalized terms not otherwise defined herein shall have the meanings given to them in the Bidding Procedures and the Bidding Procedures Order, as applicable. Any summary of the Bidding Procedures or the Bidding Procedures Order is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any conflict between any such summary contained in this Notice and such actual terms and conditions, the actual terms and conditions in the Bidding Procedures shall control.

2. On _____, the Bankruptcy Court entered the Bidding Procedures Order (Docket No. _) approving, in part, the relief requested in the Motion.

3. **The Sale Hearing will take place on _____ at __: __ [a.m./p.m.]** before the Honorable Brendan L. Shannon, Chief United States Bankruptcy Judge, in the Bankruptcy Court, located at 824 N. Market St., Wilmington, DE 19801. The Debtors' presentation to the Bankruptcy Court for approval of one or more highest and best bid resulting from the Auction (each a "Successful Bid") does not constitute the Debtors' acceptance of such bid. The Debtors will have accepted the terms of a Successful Bid only when such bid has been approved by the Bankruptcy Court pursuant to a Sale Order.

4. In connection with the Sale, and in accordance with the Assumption and Assignment Procedures set forth in the Motion and the Bidding Procedures Order, the Debtors may seek to assume and assign to one or more Successful Bidder (as defined in the Bidding Procedures) certain Contracts of the Debtors. Each of the Debtors' Contracts is identified on Schedule 1 attached hereto. The inclusion of any Contract on Schedule 1 does not constitute an admission that a particular Contract is an executory contract or unexpired lease or require or guarantee that such Contract will be assumed or assigned, and all rights of the Debtors with respect thereto are reserved. The Cure Costs, if any, that the Debtors believe are required to be paid to the applicable Counterparty to cure any monetary defaults under each contract pursuant to Bankruptcy Code sections 365(b)(1)(A) and (B) is set forth on the Schedule 1.

5. Any Counterparty that wishes to object to the proposed assumption, assignment and sale of a Proposed Assumed Contract, the subject of which objection is the Debtors' proposed Cure Costs to cure any outstanding monetary defaults then existing under such Contract (each, a "Cure Objection") shall file with the Bankruptcy Court and serve its Cure Objection on (a) the Debtors, American Apparel, LLC, 747 Warehouse Street, Los Angeles, California 90021 (Attn: Chelsea Grayson, Bennett Nussbaum, and Lance Miller); (b) counsel for the Debtors, (i) Jones Day, 901 Lakeside Avenue, Cleveland, OH 44114 (Attn: Carl E. Black, Esq.) and 250 Vesey Street, New York, NY 10281 (Attn: Scott J. Greenberg, Esq.); and (ii) Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Attn: Laura Davis Jones, Esq., James E. O'Neill, Esq., and Joseph M. Mulvihill); (c) counsel for any official committee of unsecured creditors appointed in these chapter 11 cases; (d) counsel for the Debtors' prepetition secured lenders, Milbank, Tweed, Hadley & McCloy LLP, 28 Liberty Street, New York, NY 10005 (Attn: Gerard Uzzi, Esq.); (e) counsel to the DIP Lenders, (i) Riemer & Braunstein LLP, Seven Times Square, Suite 2506, New York, New York 10036 (Attn: Steven Fox, Esq.) and (ii) Ashby & Geddes, P.A., 500 Delaware Avenue, P.O. Box 1150 Wilmington, DE 19899 (Attn: Gregory Taylor); (f) counsel (if applicable) of any applicable Successful Bidder(s); (g) counsel (if applicable) of any applicable Backup Bidder(s) (as defined in the Bidding Procedures); (h) counsel for the Stalking Horse, Sullivan & Cromwell LLP, 125 Broad Street, New York, NY 10004 (Attn: Michael H. Torkin, Esq. and Mimi Wu, Esq.) and (i) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Jane M. Leamy, Esq.) (collectively, the "Objection Recipients") by **December 15, 2016 at 5:00 p.m. (Prevailing Eastern Time)** (the "Cure Objection Deadline"). Any Cure Objection must state, with specificity, the legal and factual bases thereof, including any appropriate documentation in support thereof.

6. The Bidding Procedures Order requires that the Debtors and a Counterparty that has filed a Cure Objection first confer in good faith to attempt to resolve the Cure Objection without Bankruptcy Court intervention. If the parties are unable to consensually resolve the Cure Objection prior to the commencement of the Sale Hearing, the amount to be paid or reserved with respect to such objection shall be determined by the Bankruptcy Court at the Sale Hearing. The Bankruptcy Court shall make all necessary determinations relating to the applicable Cure Costs and Cure Objection at a hearing scheduled pursuant to the following paragraph. All other objections to the proposed assumption and assignment of the Debtors' right, title, and interest in, to, and under a Contract, if it is ultimately designated a Proposed Assumed Contract, will be heard at the Sale Hearing.

7. If a timely Cure Objection cannot otherwise be resolved by the parties, such objection shall be heard at the Sale Hearing; provided that, a Cure Objection (and only a Cure Objection) may, at the Debtors' discretion, after consulting with the Consultation Parties³ and the applicable Successful Bidder, be adjourned (an "Adjourned Cure Objection") to a subsequent hearing. An Adjourned Cure Objection may be resolved after the closing date of the applicable Sale Transaction; provided that, the Debtors maintain a cash reserve equal to the cure amount the objecting Counterparty believes is required to cure the asserted monetary default under the applicable Proposed Assumed Contract. Upon resolution of an Adjourned Cure Objection and the payment of the applicable cure amount, if any, the applicable Proposed Assumed Contract that was the subject of such Adjourned Cure Objection shall be deemed assumed and assigned to the applicable Successful Bidder, as of the closing date of the applicable Sale Transaction.

8. If a Counterparty fails to timely file with the Court and serve on the Objection Recipients a Cure Objection, the Counterparty shall be deemed to have consented to the assumption, assignment and sale of the Proposed Assumed Contract (unless such Counterparty has timely filed an Adequate Assurance Objection (as hereinafter defined) with respect to the Proposed Assumed Contract) to the applicable Successful Bidder and forever shall be barred from asserting any objection with regard to such assumption, assignment and sale. The Cure Costs set forth in the Assumption and Assignment Notice shall be controlling and will be the only amount necessary to cure outstanding defaults under the Proposed Assumed Contract under Bankruptcy Code section 365(b), notwithstanding anything to the contrary in any Proposed Assumed Contract, or any other document, and the Counterparty to the Proposed Assumed Contract shall be deemed to have consented to the Cure Costs and forever shall be barred from asserting any other claims related to such Proposed Assumed Contract against the Debtors or any Successful Bidder(s), or the property of any of them.

9. In the event that the Debtors identify any Counterparties that were not served with the Assumption and Assignment Notice, the Debtors may subsequently serve such Counterparty with an Assumption and Assignment Notice, and the following procedures will nevertheless

³ The "Consultation Parties" are (a) Milbank, Tweed, Hadley & McCloy LLP and Fox Rothschild LLP, as counsel to certain of the Debtors' prepetition secured lenders, (b) Covington & Burling LLP, as counsel to Wilmington Trust, National Association, as administrative agent to the Debtors' prepetition secured lenders, (c) Riemer & Braunstein LLP and Ashby & Geddes, P.A., as counsel to the DIP Lenders and (d) counsel for any official committee of unsecured creditors appointed in these Cases.

apply to such Counterparty; provided, however, that the deadline to file a Cure Objection with respect to such Counterparty shall be **5:00 p.m. (prevailing Eastern Time)** on the date that is 14 days following service of the Assumption and Assignment Notice.

10. Any Counterparty to a Proposed Assumed Contract that wishes to object to the proposed assumption, assignment and sale of the Proposed Assumed Contract, the subject of which objection is a Successful Bidder's proposed form of adequate assurance of future performance with respect to such contract (each, an "Adequate Assurance Objection") shall file with the Court and serve on the Objection Recipients an Adequate Assurance Objection, which must state, with specificity, the legal and factual bases thereof, including any appropriate documentation in support thereof, by no later than **December 27, 2016, at 5:00 p.m. (prevailing Eastern Time)** (the "Adequate Assurance Objection Deadline"); provided that, if the Sale Hearing is adjourned to a later date, the Adequate Assurance Objection Deadline shall be at 5:00 p.m. (Prevailing Eastern Time) two days prior to the Sale Hearing.

11. The Bidding Procedures Order requires that the Debtors and a Counterparty that has filed an Adequate Assurance Objection first confer in good faith to attempt to resolve the Adequate Assurance Objection without Bankruptcy Court intervention. If the parties are unable to consensually resolve the Adequate Assurance Objection prior to the commencement of the Sale Hearing, such objection and all issues of adequate assurance of future performance of the applicable Successful Bidder shall be determined by the Court at the Sale Hearing.

12. **If a Counterparty fails to timely file with the Court and serve on the Objection Recipients an Adequate Assurance Objection, the Counterparty shall be deemed to have consented to the assumption, assignment, and sale of the Proposed Assumed Contract (unless the Counterparty has filed a timely Cure Objection with respect to the Proposed Assumed Contract) to the applicable Successful Bidder and forever shall be barred from asserting any objection with regard to such assumption, assignment and sale. The applicable Successful Bidder shall be deemed to have provided adequate assurance of future performance with respect to the applicable Proposed Assumed Contract in accordance with section 365(f)(2)(B) of the Bankruptcy Code, notwithstanding anything to the contrary in the Proposed Assumed Contract, or any other document.**

13. The inclusion of a Contract or other document or Cure Costs on the Contracts Schedule 1 attached hereto or on any Proposed Assumed Contracts Notice (as defined in the Motion) (collectively, the "Contract Notices") shall not constitute or be deemed a determination or admission by the Debtors, the applicable Successful Bidder(s), or any other party in interest that such Contract or other document is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code or that the stated Cure Costs are due (all rights with respect thereto being expressly reserved). The Debtors reserve all of their rights, claims, and causes of action with respect to each Contract or other document listed on the Contract Notices. **The Debtors' inclusion of any Contract on the Contract Notices shall not be a guarantee that such contract ultimately will be assumed or assumed and assigned.** The Contract Notices shall be without prejudice to each Successful Bidder's rights, if any, under the applicable asset purchase agreement, to subsequently exclude Proposed Assumed Contracts from the assumption or assignment prior to the closing of an applicable Sale Transaction(s).

14. The Debtors' assumption and/or assignment of a Contract is subject to approval by the Bankruptcy Court and consummation of one or more Sale Transactions. Absent consummation of one or more Sale Transactions and entry of a Sale Orders approving the assumption and/or assignment of the Contracts, the Contracts shall be deemed neither assumed nor assigned, and shall in all respects be subject to subsequent assumption or rejection by the Debtors.

15. Copies of the Motion, the Bidding Procedures Order and the Bidding Procedures may be obtained free of charge at the website dedicated to the Debtors' chapter 11 cases maintained by their claims and noticing agent and administrative advisor, Prime Clerk LLC (<http://cases.primeclerk.com/americanapparel>). Copies of these documents are also available for inspection during regular business hours at the Office of the Clerk of the Bankruptcy Court, located at 824 N. Market Street, 3rd Floor, Wilmington, DE 19801, and may be viewed for a fee on the internet at the Bankruptcy Court's website (<http://www.deb.uscourts.gov/>) by following the directions for accessing the ECF system on such website.

Dated: _____, 2016
Wilmington, Delaware

PACHULSKI STANG ZIEHL & JONES LLP

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James E. O'Neill (DE Bar No. 4042)
Joseph M. Mulvihill (DE Bar No. 6061)
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and

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and

Carl E. Black
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Proposed Co-Counsel for the Debtors
and Debtors in Possession

Schedule 1

Counterparty	Counterparty Address	Title/Description of Contract	Cure Cost

Exhibit 3

(Sale Notice)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
	:	
AMERICAN APPAREL, LLC, <i>et al.</i> , ¹	:	Case No. 16-12551 (BLS)
	:	
Debtors.	:	(Joint Administration Requested)

NOTICE OF (A) THE DEBTORS SALE OF SUBSTANTIALLY ALL OF THEIR ASSETS, FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES AS SET FORTH IN THE STALKING HORSE APA, (B) APPROVAL OF CERTAIN BIDDING PROCEDURES RELATED TO SUCH SALE, (C) THE TIME, PLAN AND MANNER OF CONDUCTING AN AUCTION AND (D) THE TIME AND PLACE OF CONDUCTING THE SALE HEARING, AND OBJECTION AND OTHER DEADLINES RELATED THERETO

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On November 14, 2016, the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed with the United States Court for the District of Delaware (the "Bankruptcy Court") a motion (Docket No.) (the "Motion") for entry of (a) an order (the "Bidding Procedures Order")² (i) authorizing and approving bidding procedures (the "Bidding Procedures"), substantially in the form attached to the Bidding Procedures Order as Exhibit 1, to be employed in connection with the sale or disposition (the "Sale" or "Transaction") of substantially all of the Debtors' assets (the "Assets") or any portion thereof; (ii) scheduling an auction (the "Auction") of the Assets; (iii) scheduling a hearing (the "Sale Hearing") to consider approval of the Sale Transactions; (iv) authorizing and approving the form and manner of notice of the Auction and Sale Hearing, notice to each non-Debtor counterparty (each, a "Counterparty") to an executor contract or unexpired lease (collectively, the "Contracts") of the Debtors' proposed cure amounts to cure all monetary defaults under the Contracts (the "Cure Costs"), if any, and notice of proposed assumption and assignment of certain Contracts (collectively, the "Proposed Assumed Contracts") in connection with a particular Sale or Transaction; (ii) authorizing and approving procedures for the assumption and assignment of

¹ The Debtors are the following six entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): American Apparel, LLC (0601); American Apparel (USA), LLC (8940); American Apparel Retail, Inc. (7829); American Apparel Dyeing & Finishing, Inc. (0324); KCL Knitting, LLC (9518); and Fresh Air Freight, Inc. (3870). The address of each of the Debtors is 747 Warehouse Street, Los Angeles, California 90021.

² Capitalized terms not otherwise defined herein shall have the meanings given to them in the Bidding Procedures and the Bidding Procedures Order, as applicable. Any summary of the Bidding Procedures or the Bidding Procedures Order is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any conflict between any such summary contained in this Notice and such actual terms and conditions, the actual terms and conditions in the Bidding Procedures shall control.

Contracts; (b) entry of one or more orders, as applicable, authorizing and approving (i) the Sale of the Assets free and clear of all liens, claims, interests or encumbrances, except certain permitted encumbrances as determined by the Debtors and any purchaser of the Assets, and subject to any defenses or claims of the Debtors with respect thereto, with liens to attach to the proceeds of such sale(s); and (ii) the assumption and assignment of the Proposed Assumed Contracts; and (c) granting related relief.

2. On _____, the Bankruptcy Court entered the Bidding Procedures Order (Docket No. ____).

3. Pursuant to the Bidding Procedures Order, any person or entity interested in participating in the Auction must submit a Qualified Bid (as defined in the Bidding Procedures) for the relevant Assets on or before **December 19, 2016 at 5:00 p.m. (prevailing Eastern Time)** (the "Bid Deadline") to the following parties: to (a) the Debtors, American Apparel, LLC, 747 Warehouse Street, Los Angeles, California 90021 (Attn: Chelsea Grayson (cgrayson@americanapparel.net), Bennett Nussbaum (bennettnussbaum@americanapparel.net) and Lance Miller (lancemiller@americanapparel.net); (b) counsel for the Debtors, (i) Jones Day, 901 Lakeside Avenue, Cleveland, OH 44114 (Attn: Carl E. Black, Esq. (ceblack@jonesday.com)) and 250 Vesey Street, New York, NY 10281 (Attn: Scott J. Greenberg, Esq. (sgreenberg@jonesday.com)) and (ii) Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Attn: Laura Davis Jones, Esq., (ljones@pszjlaw.com), James E. O'Neill, Esq (jo'neill@pszjlaw.com) and Joseph M. Mulvihill (jmulvihill@pszjlaw.com)); (c) the Debtors' financial advisors, Berkeley Research Group, LLC, 75 State Street, Suite 1805, Boston, MA 01109 (Attn: Mark Weinsten (mweinsten@thinkbrg.com) and Joe D'Ascoli (jdascoli@thinkbrg.com)); and (d) the Debtors' investment banker, Houlihan Lokey, Inc., 245 Park Avenue, 20th Fl., New York, NY 10167 (Attn: Saul Burian (SBurian@HL.com) and Devin Shanahan (DShanahan@hl.com)) (collectively, the "Bid Notice Parties").

4. If the Debtors receive more than one timely Qualified Bid for the same Assets with an acceptable purchase price by the Bid Deadline, the Debtors will conduct the Auction. The Auction, if required, will be conducted at the offices of Jones Day, **250 Vesey St., New York, New York 10281 on December 21, 2016 at 10:00 a.m. (Prevailing Eastern Time)**, or at such other time and location as designated by the Debtors, with the prior consent of the Consultation Parties³ and the Stalking Horse (not to be unreasonably withheld, conditioned or delayed).

5. Objections to the Sale Transaction(s) (each, a "Sale Objection"), including any objection to the sale of any Assets free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code and entry of any sale order (other than Adequate Assurance Objections (as defined below)) must (a) be in writing and specify the nature

³ The "Consultation Parties" are (i) Milbank, Tweed, Hadley & McCloy LLP, as counsel to the Debtors' prepetition secured lenders; (ii) Wilmington Trust, National Association, as administrative agent under the debtors' prepetition secured term loan credit facility; (iii) Riemer & Braunstein LLP and Ashby & Geddes, P.A., as counsel to the DIP Secured Parties; and (iv) counsel for any official committee of unsecured creditors appointed in these Cases.

of such objection; (b) comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules and all orders of the Bankruptcy Court; and (c) be filed with the Bankruptcy Court and served on: (i) the Debtors, American Apparel, LLC, 747 Warehouse Street, Los Angeles, California 90021 (Attn: Chelsea Grayson, Bennett Nussbaum, and Lance Miller); (ii) counsel for the Debtors, (1) Jones Day, 901 Lakeside Avenue, Cleveland, OH 44114 (Attn: Carl E. Black, Esq.) and 250 Vesey Street, New York, NY 10281 (Attn: Scott J. Greenberg, Esq.); and (2) Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Attn: Laura Davis Jones, Esq., James E. O'Neill, Esq., and Joseph M. Mulvihill); (iii) counsel for any official committee of unsecured creditors appointed in these chapter 11 cases; (iv) counsel for the Debtors' prepetition secured lenders, Milbank, Tweed, Hadley & McCloy LLP, 28 Liberty Street, New York, NY 10005 (Attn: Gerard Uzzi, Esq.); (v) counsel for the DIP Lender, (1) Riemer & Braunstein LLP, Seven Times Square, Suite 2506, New York, New York 10036 (Attn: Steven Fox, Esq.) and (2) Ashby & Geddes, P.A., 500 Delaware Avenue, P.O. Box 1150 Wilmington, DE 19899 (Attn: Gregory Taylor); (vi) counsel (if applicable) of any applicable Successful Bidder(s) (as defined in the Bidding Procedures); (vii) counsel (if applicable) of any applicable Backup Bidder(s); (viii) counsel to the Stalking Horse, Sullivan & Cromwell LLP, 125 Broad Street, New York, NY 10004 (Attn: Michael H. Torkin, Esq. and Mimi Wu, Esq.); and (ix) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Jane M. Leamy, Esq.) (collectively, the "Objection Recipients") by **December 22, 2016 at 5:00 p.m. (Prevailing Eastern Time)** (the "Sale Objection Deadline"). All Sale Objections not otherwise resolved by the parties prior thereto shall be heard at the Sale Hearing. **THE FAILURE OF ANY PARTY TO TIMELY FILE WITH THE BANKRUPTCY COURT AND SERVE ON THE OBJECTION RECIPIENTS A SALE OBJECTION FOREVER SHALL BE BARRED FROM ASSERTING, AT THE APPLICABLE SALE HEARING OR THEREAFTER, ANY OBJECTION TO THE RELIEF REQUESTED IN THE MOTION, OR TO THE CONSUMMATION AND PERFORMANCE OF THE APPLICABLE SALE TRANSACTION(S) CONTEMPLATED BY AN APPLICABLE ASSET PURCHASE AGREEMENT WITH A SUCCESSFUL BIDDER, INCLUDING THE TRANSFER OF THE ASSETS TO THE APPLICABLE SUCCESSFUL BIDDER(S), FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES PURSUANT TO SECTION 363(F) OF THE BANKRUPTCY CODE.** Notwithstanding the foregoing or anything herein to the contrary, and as set forth below, the deadline to file an Adequate Assurance Objection in connection with a proposed Sale Transaction shall be **two days** prior to the applicable Sale Hearing.

6. The Sale Hearing will take place on _____, 201[_] at _:_ [a.m./p.m.], before the Honorable Brendan L. Shannon, Chief United States Bankruptcy Judge, in the Bankruptcy Court, located at 824 N. Market St, Wilmington, DE 19801. The Debtors' presentation to the Bankruptcy Court for approval of a Successful Bid does not constitute the Debtors' acceptance of such bid. The Debtors will have accepted the terms of a Successful Bid only when such bid has been approved by the Bankruptcy Court pursuant to a Sale Order.

7. To the extent set forth in the Bidding Procedures, the Debtors reserve the right to, in their reasonable business judgment, and in consultation with the Consultation Parties, modify the Bidding Procedures at any time, including, without limitation, to extend deadlines and proposed dates set forth therein, including extending the Bid Deadline, modifying the date of the

Auction, and adjourning and/or rescheduling the Sale Hearing. This Notice is subject to the full terms and conditions set forth in the Bidding Procedures Order and the Bidding Procedures.

8. Parties interested in receiving additional information, including, with regard to the Sale, the Assets, the Auction or the Bidding Procedures may make requests to the Debtors' investment banker, Houlihan Lokey, Inc., 245 Park Avenue, 20th Fl., New York, NY 10167 (Attn: Saul Burian (SBurian@HL.com) and Devin Shanahan (DShanahan@hl.com).

9. Copies of the Motion, the Bidding Procedures Order and the Bidding Procedures may be obtained free of charge at the website dedicated to the Debtors' chapter 11 cases maintained by their claims and noticing agent and administrative advisor, Prime Clerk LLC (<http://cases.primeclerk.com/americanapparel>). Copies of these documents are also available for inspection during regular business hours at the Office of the Clerk of the Bankruptcy Court, located at 824 N. Market Street, 3rd Floor, Wilmington, DE 19801, and may be viewed for a fee on the internet at the Bankruptcy Court's website (<http://www.deb.uscourts.gov/>) by following the directions for accessing the ECF system on such website.

Dated: _____, 2016
Wilmington, Delaware

PACHULSKI STANG ZIEHL & JONES LLP

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Proposed Co-Counsel for the Debtors
and Debtors in Possession

Exhibit 4

(Stalking Horse APA)

Exhibit B

(Form of Stalking Horse APA)

EXECUTION VERSION

ASSET PURCHASE AGREEMENT

by and among

American Apparel, LLC,

the other Sellers party hereto

and

Gildan Activewear SRL

Dated as of November 13, 2016

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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this “Agreement”), dated November 13, 2016 (the “Effective Date”), is by and among Gildan Activewear SRL, a Barbados corporation (“Purchaser”), American Apparel, LLC, a Delaware limited liability company (the “Company”), and each of the Company’s Subsidiaries listed on the signature pages to this Agreement (together with the Company, each a “Seller” and, collectively, “Sellers”). Certain capitalized terms used in this Agreement that are not otherwise defined are defined in Article I.

A. Sellers and their Affiliates manufacture and distribute wholesale branded fashion-basic apparel (the “Business”), among other operations.

B. Sellers desire to sell to Purchaser the Purchased Assets and assign to Purchaser the Assumed Liabilities and Purchaser desires to purchase from Sellers the Purchased Assets and assume the Assumed Liabilities, in each case, upon the terms and conditions set forth in this Agreement.

C. Sellers anticipate consummation of the sale of the Purchased Assets through and as part of cases filed under title 11 (the “Bankruptcy Cases”) of the United States Code, 11 U.S.C. §§ 101, et seq. (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree:

I. DEFINITIONS

1.1 Certain Definitions. For purposes of this Agreement, each of the following terms, when used herein with initial capital letters, has the meaning specified in this Section 1.1 or in the other Sections of this Agreement identified in Section 1.2:

“747 Assets” means any and all equipment, machinery, forklifts, fixtures, furniture, furnishing, displays, leasehold improvements, IT Assets and all other tangible and intangible property owned by any Seller, in each case, that is located on or at or used primarily with respect to the operation of the 747 Facility.

“747 Facility” means the headquarters and manufacturing facility of the Business operated at 747 Warehouse Street, Los Angeles, CA 90021.

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly, controls, is controlled by, or is under common control with, such Person, and the term “control” (including the terms “controlled by” and “under common control

with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

“Bidding Procedures” means the bidding procedures approved by the Bankruptcy Court pursuant to the Bidding Procedures Order, in the form of Exhibit A attached hereto subject to (a) immaterial modifications or clarifications or (b) such other changes to which Purchaser consents (such consent not to be unreasonably withheld).

“Bidding Procedures Order” means an order of the Bankruptcy Court approving, among other things, the Bidding Procedures for conducting a sale and auction of the Purchased Assets, and authorizing Sellers’ performance of their obligations under this Agreement, in the form of Exhibit B attached hereto with (a) immaterial modifications or clarifications or (b) such other changes to which Purchaser consents (such consent not to be unreasonably withheld).

“Business Day” means any day other than a Saturday, a Sunday or any other day on which commercial banks in New York, New York or Los Angeles, California are authorized or required by Law to close.

“Challenge” has the meaning set forth in the definition of Final Order.

“Code” means the Internal Revenue Code of 1986.

“Contract” means any contract, agreement, commitment, promise or undertaking (including any indenture, note, bond or other evidence of indebtedness, lease, instrument, license, lease, purchase order or other legally binding agreement) whether written or oral.

“Cure Costs” means monetary amounts that must be paid and obligations that otherwise must be satisfied under Sections 365(b)(1)(A) and (B) of the Bankruptcy Code in connection with the assumption and/or assignment of any Purchased Contract, as agreed upon by the Parties or determined by the Bankruptcy Court pursuant to the procedures in the Bidding Procedures Order.

“Customer Information” means the customer list and database of Sellers (including all lists of current and past customers of Sellers or the Business) in the possession, custody or control of Sellers that are permitted to be transferred or assigned to third parties in accordance with applicable Laws; provided, that the Customer Information shall exclude all Customer Information relating to (a) Sellers’ customers who reside in the European Union (including the United Kingdom) and (b) the retail clothing stores operated by any Seller or its Subsidiaries outside of the United States.

“Designation Deadline” means 5:00 p.m. (prevailing Eastern Time) on the day that is 30 days after the Closing Date.

“DIP Financing” means a debtor-in-possession financing agreement or other documents evidencing a debtor-in-possession credit facility by and among Sellers and any lenders party from time to time thereto, as approved by the Bankruptcy Court.

“Documents” means (a) all books, records, Tax Returns, files, invoices, inventory records, product specifications, cost and pricing information, supplier lists, business plans, catalogs, customer literature and quality control records and manuals, (b) Marketing Materials and (c) personnel records required to be transferred to Purchaser pursuant to Section 8.4, in each case of clauses (a) and (b) relating to any Purchased Asset, including all data and other information stored in any format or media, including on hard drives (including those located on remote servers, whether operated by Sellers or by third-party providers), discs, tapes, hard copy or other media.

“Domestic IP” means all Intellectual Property owned by each of the Domestic Sellers.

“Domestic Sellers” means Sellers other than the Foreign Seller.

“Escrow Account” means the account or accounts maintained by the Escrow Agent into which the Deposit Amount is deposited in accordance with the Escrow Agreement.

“Escrow Agent” means U.S. Bank National Association.

“Escrow Agreement” means that certain Escrow Agreement, in a form to be agreed as promptly as practicable following the Effective Date, by and among Purchaser, the Company and the Escrow Agent.

“Escrow Funds” means, at any given time after Closing, the funds remaining in the Escrow Account, including remaining amounts of interest actually earned thereon.

“Excluded Matter” means the effect of (a) any change in the United States or foreign economies or financial markets in general; (b) any change that generally affects the businesses in which a Seller operates; (c) any change arising in connection with earthquakes, hostilities, acts of war, sabotage or terrorism or military actions or any escalation or material worsening of any such hostilities, acts of war, sabotage or terrorism or military actions; (d) any change in applicable Laws or accounting rules; (e) any actions taken by Purchaser or any of its Affiliates (other than those expressly permitted to be taken hereunder); (f) any effect resulting from the public announcement of this Agreement or the Bankruptcy Cases; or (g) any effect resulting from (i) the commencement or filing of the Bankruptcy Cases, (ii) any concurrent ancillary filing by a

Subsidiary of Sellers that is not a party to this Agreement (other than Foreign Seller) under a similar foreign insolvency regime or (iii) a Seller's inability to pay certain prepetition obligations as a result of the commencement of the Bankruptcy Cases; provided, however, that with respect to clauses (a), (b), (c) and (d), such effects will not be Excluded Matters to the extent the same disproportionately adversely affects the Business, taken as a whole, as compared to other similarly situated businesses.

"Excluded Wholesale Inventory" means (a) up to 5% of the Wholesale Inventory valued at the 0.70 Inventory Cost Value; (b) up to 15% of the Wholesale Inventory valued at the 0.50 Inventory Cost Value; (c) up to 25% of the Wholesale Inventory valued at the 0.30 Inventory Cost Value; and (d) up to 75% of the Wholesale Inventory valued at the 0.00 Inventory Cost Value.

"Final Order" means an Order of the Bankruptcy Court or other court of competent jurisdiction (a) as to which no appeal, notice of appeal, motion to amend or make additional findings of fact, motion to alter or amend judgment, motion for rehearing or motion for new trial, request for stay, motion or petition for reconsideration, application or request for review, or other similar motion, application, notice or request (collectively, a "Challenge") has been timely filed, or, if any of the foregoing has been timely filed, it has been disposed of in a manner that upholds and affirms the subject Order in all respects without the possibility for further Challenge thereon; (b) as to which the time for instituting or filing a Challenge shall have expired; and (c) as to which no stay is in effect.

"Foreign IP" means all Intellectual Property owned by the Foreign Seller.

"Foreign Seller" means American Apparel Mexico, S. de R.L. de C.V., a company organized under the laws of Mexico.

"GAAP" means generally accepted accounting principles in the United States.

"Garden Grove Assets" means the Garden Grove Lease and any and all equipment, machinery, forklifts, fixtures, furniture, furnishing, displays, leasehold improvements, IT Assets and all other tangible and intangible property owned by any Seller, in each case, that is located on or at or used primarily with respect to the operation of the Garden Grove Facility.

"Garden Grove Facility" means the manufacturing facility of the Business operated at 12681/12691 Pala Drive, Garden Grove, CA 92841 and 12641/12601 Industry St, Garden Grove, CA 92841 pursuant to the Garden Grove Lease.

"Garden Grove Lease" means each of (a) that certain Standard Industrial Commercial Multi-Tenant Lease – Modified Net, dated March 16, 1999, between American Apparel (USA), LLC and Kilroy Realty Finance Partnership, L.P., as first

amended on May 17, 1999, as second amended on October 17, 2003, as third amended on November 5, 2008, and as fourth amended on February 3, 2016 and (b) that certain Air Commercial Real Estate Association Standard Industrial/Commercial Single-Tenant Lease - Net, dated September 26, 2007, between USDF and Redhawk Communities, Inc.

“Governmental Body” means any government or governmental or regulatory body thereof, or political subdivision thereof, or any agency, authority, department, commission, board, bureau, official or instrumentality of such body, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), whether foreign, federal, state, or local, or any agency, instrumentality or authority thereof, or any court or arbitrator thereof (public or private) of competent jurisdiction.

“Intellectual Property” means all intellectual property rights in any jurisdiction around the world, including all rights in any of the following: (a) patents, patent applications, industrial design registrations and applications therefor, divisions, divisionals, continuations, continuations-in-part, reissues, substitutes, renewals, registrations, confirmations, re-examinations, extensions and any provisional applications, or any such patents or patent applications, and any foreign or international equivalent of any of the foregoing; (b) trademarks (whether registered, unregistered or pending), trade dress, service marks, service names, trade names, brand names, product names, logos, domain names, internet rights (including, without limitation IP Addresses and AS numbers), corporate names, fictitious names, names in social media (e.g. Twitter handles, names associated with hashtags and Facebook pages), other names, symbols (including business symbols), slogans, translations of any of the foregoing and any foreign or international equivalent of any of the foregoing and any and all other indicia of origin, applications and registrations in connection with any of the foregoing and all goodwill associated therewith and any and all advertising and marketing collateral including any of the foregoing (collectively, “Trademarks”); (c)(i) publish and unpublished works of authorship, whether copyrightable or not (including software, data, databases and other compilations of information), including copyrights therein and thereto, moral rights, designs, databases, copyright applications, copyright registrations, and any and all other rights existing under any copyright laws including rights to prepare derivative works, and (ii) work specifications, databases, artwork, designs, patterns or techpacks; (d) technical, scientific and other know-how and information (including promotional material), trade secrets, confidential information, methods, processes, practices, formulas, or assembly procedures; (e) the right to remedies against infringement of any of the foregoing; and (f) all rights to protection of interests in any of the foregoing under the Laws of all jurisdictions.

“IRS” means the Internal Revenue Service.

“Inventory Cost Value” means with respect to each item of finished goods wholesale inventory, (a) Sellers’ standard cost for such item of finished goods wholesale inventory, in Dollars (as reflected in the books and records of Sellers previously provided to Purchaser), multiplied by (b) in the case of finished goods: (i) for SKUs that are listed in the 2016 Alphabroder or TSC catalogues (the “Catalogues”), 0.70 (the “0.70 Inventory Cost Value”); (ii) for SKUs that are not listed in the Catalogues and for which the total sale volume in the six-month period immediately preceding the Effective Date was greater than or equal to the total inventory of such item as of the Effective Date (as reflected in the books and records of Sellers), 0.50 (the “0.50 Inventory Cost Value”); (iii) for SKUs that are not listed in the Catalogues and for which the total sale volume in the six-month period immediately preceding the Effective Date was less than the total inventory of such item as of the Effective Date (as reflected in the books and records of Sellers), 0.30 (the “0.30 Inventory Cost Value”); or (iv) for SKUs that are not listed in the Catalogues and have not been sold in more than *de minimis* amounts in the six-month period immediately preceding the Effective Date (as reflected in the books and records of Sellers), 0.00 (the “0.00 Inventory Cost Value”). Notwithstanding the foregoing clauses (i) through (iv), in the case of finished goods that are not “first-quality” as provided for in Sellers’ technical specifications for such finished goods (i.e., are irregular or defective), the Inventory Cost Value for each unit of such item shall equal \$0.50 to the extent that the standard cost for such item is \$10.00 or less and \$1.50 to the extent that the standard cost for such item is greater than \$10.00. Schedule 1.1(a) sets forth the top 10 selling style and color combinations (by volume in 2016) of such finished goods with the standard cost for each such style and color combinations.

“IT Assets” means rights, title and interests of Sellers in and to computers, computer software, firmware, middleware, servers, networks, workstations, routers, hubs, circuits, switches, data communications lines, and all other information technology equipment and all associated documentation.

“Knowledge of Sellers” or “Sellers’ Knowledge” means the knowledge, after reasonable inquiry, of those Persons identified on Schedule 1.1(b).

“La Mirada Assets” means the La Mirada Lease and any and all equipment, machinery, forklifts, fixtures, furniture, furnishing, displays, leasehold improvements, IT Assets and all other tangible and intangible property owned by any Seller, in each case, that is located on or at or used primarily with respect to the operation of the La Mirada Warehouse.

“La Mirada Lease” means that certain Lease, dated June 15, 2012, between the Company and PAC Finance 1 LLC.

“La Mirada Warehouse” means the distribution center of the Business operated at 16322 Trojan Way, La Mirada, California 90638, pursuant to the La Mirada Lease.

“Law” means any federal, state, local or foreign law, statute, code, ordinance, rule, regulation, Order, stipulation, award or common law requirement.

“Legal Proceeding” means any judicial, administrative or arbitral actions, suits, proceedings (public or private) or claims or any proceedings by or before a Governmental Body.

“Liability” means any debt, loss, liability, claim (including “claim” as defined in the Bankruptcy Code), commitment, undertaking, damage, expense, fine, penalty, cost, royalty, deficiency or obligation (including those arising out of any action, such as any settlement or compromise thereof or judgment or award therein), of any nature, whether known or unknown, disclosed or undisclosed, express or implied, primary or secondary, direct or indirect, matured or unmatured, fixed, absolute, contingent, accrued or unaccrued, liquidated or unliquidated, and whether due or to become due, and whether in contract, tort or otherwise.

“Lien” as applied to any Person means any lien, encumbrance, pledge, mortgage, deed of trust, security interest, claim, lease, sublease, charge, option, right of first offer or first refusal, right of use or possession, restriction, easement, servitude, restrictive covenant, encroachment or encumbrance or any other similar encumbrance or restriction in respect of an asset of such Person, whether imposed by Law, Contract or otherwise.

“Marketing Materials” means all marketing materials, marketing research data, customer and sales information, product literature, promotional materials and data, advertising and display materials (including all underlying designs, samples, charts, diagrams, photos and electronic files related to the foregoing) and all training materials, in each case in whatever form or medium (e.g., audio, visual, digital or print) held in any Seller’s name and related to any Purchased Asset as of the Closing Date.

“Order” means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of, or entered, issued, made or rendered by, a Governmental Body.

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

“Party” or “Parties” means Purchaser and each Seller, as the case may be.

“Permitted Exceptions” means (a) statutory Liens for Taxes not yet delinquent or the amount or validity of which is being contested in good faith by appropriate proceedings, (b) mechanics’, carriers’, workers’, repairers’ and similar Liens arising or 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, (c) title of a lessor under a capital or operating lease if such lease is a Purchased Contract and (d) any other imperfections in title, charges, easements,

restrictions, licenses and encumbrances that do not materially affect the value, use or transferability of the affected asset or property or materially interfere with the operation of the Business at such real property.

“Person” means any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Body or other entity.

“Purchased Intellectual Property” means the Domestic IP and the Foreign IP.

“Purchased IT Assets” means the IT Assets included in the Purchased Assets.

“Purchaser Material Adverse Effect” means any event, change, effect, condition, state of facts or occurrence (regardless of whether such event, change, effect, condition, state of facts or occurrence constitutes a breach of any representation, warranty or covenant of Purchaser hereunder) which has had or would reasonably be expected to have, individually or when considered together with any other event, change, effect, condition, state of facts or occurrence, a material and adverse effect on the ability of Purchaser to consummate the Transactions or perform its obligations under this Agreement.

“Qualified Bid Deadline” means the “Bid Deadline” as specified in the Bidding Procedures.

“Representative” means, with respect to any Person, any and all of its directors, officers, partners, managers, employees, consultants, financial advisors, counsel, accountants and other agents.

“Sale Hearing” means the hearing at which the Bankruptcy Court considers approval of the Sale Order pursuant to Sections 105, 363 and 365 of the Bankruptcy Code.

“Sale Order” means an order entered by the Bankruptcy Court or other court of competent jurisdiction in the form of Exhibit C attached hereto, subject to (a) immaterial modifications or clarifications or (b) such other changes to which Purchaser consents (such consent not to be unreasonably withheld).

“Seller Material Adverse Effect” means any event, change, effect, condition, state of facts or occurrence (regardless of whether such event, change, effect, condition, state of facts or occurrence constitutes a breach of any representation, warranty or covenant of Sellers hereunder) which has had or would reasonably be expected to have, individually or when considered together with any other events, changes, effects, conditions, states of facts or occurrences, (a) a material adverse effect on or a material adverse change in or to the Purchased Assets, considered as a whole, (b) a material and adverse effect on the

ability of Sellers to consummate the Transactions or perform their obligations under this Agreement or (c) the effect of preventing or materially delaying the consummation of the Transactions, other than, in the case of clause (a), an event, change, effect, condition or occurrence resulting from an Excluded Matter.

“Sequoia Assets” means the Sequoia Lease and any and all equipment, machinery, forklifts, fixtures, furniture, furnishing, displays, leasehold improvements, IT Assets and all other tangible and intangible property owned by any Seller, in each case, that is located on or at or used primarily with respect to the operation of the Sequoia Facility.

“Sequoia Facility” means the manufacturing facility of the Business operated at 2654 Sequoia Drive, South Gate, CA 90280 pursuant to the Sequoia Lease.

“Sequoia Lease” means that certain Lease, dated July 1, 2009, between the Company and South Gate Business & Industrial Park Developers, as first amended on June 30, 2014 and as second amended on November 26, 2014.

“Subsidiary” means each corporation or other Person in which a Person owns or Controls, directly or indirectly, capital stock or other equity interests representing more than 50% of the outstanding voting stock or other equity interests.

“Tax Authority” means any government, agency, or instrumentality thereof, charged with the administration of any Law or regulation relating to Taxes.

“Taxes” means (a) all federal, state, local, provincial, municipal, foreign or other taxes, charges or other assessments, including, without limitation, all income, alternative, minimum, add-on minimum, accumulated earnings, personal holding company, net worth, intangibles, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, intangibles, goods and services, customs duties, conveyance, mortgage, registration, documentary, recording, premium, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, unemployment insurance, severance, environmental (including taxes under Section 59A of the Code), disability, workers’ compensation, health care natural resources, excise, severance, stamp, occupancy, rent, real property, personal property, estimated or other similar taxes, duties, levies or other governmental charges or assessments or deficiencies thereof, (b) any item described in clause (a) for which a taxpayer is liable as a transferee or successor, by reason of the regulations under Section 1502 of the Code (or similar provisions of state, local, foreign or other law), or by contract, indemnity or otherwise, and (c) all interest, penalties, fines, additions to tax or additional amounts imposed by any Tax Authority in connection with any item described in clause (a) or (b).

“Tax Returns” means any return, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto and any amendment thereof.

“Termination Fee” means \$1,980,000.00.

“Third Person” means any Person other than a Seller.

“Trademarks” has the meaning set forth in the definition of Intellectual Property.

“Transactions” means the transactions contemplated by this Agreement.

“Transferred Exception” means title of a lessor under a capital or operating lease if such lease is a Purchased Contract.

“Wholesale Inventory” means all finished goods wholesale inventory owned by Sellers located at the La Mirada Warehouse other than the Excluded Wholesale Inventory.

“Wholesale Purchase Order” means that certain purchase order delivered by Purchaser and accepted by Sellers within three Business Days of the Effective Date (as amended from time to time thereafter by agreement of the Parties (acting reasonably)) which shall contain commercially reasonable terms and conditions mutually agreed upon by the Parties and provide assurances that the Wholesale Inventory is first-quality with no more than 5% irregularities as compared to Sellers’ relevant technical specifications.

“Wholesale Purchase Order Amount” means the amount, set forth in the Wholesale Purchase Order, to be paid by Purchaser to Sellers for the Wholesale Purchase Order Inventory.

“Wholesale Purchase Order Inventory” means the finished goods wholesale inventory to be delivered by Sellers to Purchaser in accordance with the terms and conditions of the Wholesale Purchase Order.

“WIP” means all works in process/progress, un-finished goods, raw materials and similar items and materials owned by Sellers (i) located at the Garden Grove Facility, the La Mirada Warehouse, the Sequoia Facility or the 747 Facility or (ii) that are primarily related to or used in the production of Sellers’ finished wholesale goods.

Terms Defined Elsewhere in this Agreement. For purposes of this Agreement, the following terms have meanings set forth in the sections indicated:

<u>Term</u>	<u>Section</u>
Agreement	Preamble
Allocation Notice of Objection	10.2(a)

<u>Term</u>	<u>Section</u>
Assignment and Assumption Agreements	4.2(b)
Assumed Liabilities	2.3
Assumption Notice	2.7(d)
Auction	7.1(a)
Bankruptcy Cases	Recitals
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
Business	Recitals
Cash Amount	3.1
Closing	4.1
Closing Date	4.1
Company	Preamble
Competing Transaction	7.1(a)
Confidentiality Agreement	8.6(a)
Cure Notice	7.2(c)
Deposit Amount	3.2
Designation Deadline	2.7(b)
Effective Date	Preamble
Excluded Assets	2.2
Excluded Liabilities	2.4
Expense Reimbursement	4.7(a)
Facility Employees	8.4
Final Allocation Statement	10.2(a)
License	8.7(a)
Licensed Merchandise	8.7(a)
Necessary Consent	2.8(a)
Petition Date	7.2(a)
Proposed Allocation Statement	10.2(a)
Purchase Price	3.1
Purchased Assets	2.1(a)
Purchased Contracts	2.1(b)(viii)
Purchaser	Preamble
Registered IP	5.6(a)
Retail Operation Assistance Assets	8.11(b)
Retail Operation Assistance Period	8.11(a)
Sale Motion	7.2(a)
Seller or Sellers	Preamble
Successor	4.7(b)
Termination Date	4.4(a)
Transfer Taxes	10.1
Wholesale Inventory Purchase Price	2.6(a)
Wholesale Inventory Schedule	2.6(a)

1.2 Other Definitional and Interpretive Matters.

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation will apply:

Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period will be excluded. If the last day for the giving of any notice or the performance of any act required or permitted under this Agreement is a day that is not a Business Day, then the time for the giving of such notice or the performance of such action will be extended to the next succeeding Business Day.

Contracts. Reference to any Contract means such Contract as amended or modified and in effect from time to time in accordance with its terms.

Dollars. Any reference in this Agreement to Dollars or \$ will mean U.S. dollars.

Exhibits/Schedules. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein will be defined as set forth in this Agreement.

GAAP. Terms used herein which are defined in GAAP are, unless specifically defined herein, used herein as defined in GAAP.

Gender and Number. Any reference in this Agreement to gender will include all genders, and words imparting the singular number only will include the plural and vice versa.

Headings. The division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and will not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any Article, Section, Recital, Exhibit or Schedule are to the corresponding Article, Section, Recital, Exhibit or Schedule of or to this Agreement unless otherwise specified.

Herein. The words such as “herein,” “hereinafter,” “hereof” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

Including. The word “including” or any variation thereof means “including, without limitation” and will not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

Law. Reference to any Law means such Law as amended, modified, codified, replaced or re-enacted, in whole or in part, and in effect from time to time, including any successor legislation thereto and any rules and regulations promulgated thereunder, and references to any section or other provision of a Law means that section or provision of such Law in effect from time to time and constituting the substantive amendment, modification, codification, replacement or re-enactment of such section or other provision.

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

II. PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

2.1 Purchase and Sale of Assets.

(a) On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser or one or more of its designees will purchase, acquire and accept from the applicable Seller, and each applicable Seller will sell, transfer, convey and deliver to Purchaser or one or more of its designees, all of such Seller’s right, title and interest in, to and under the Purchased Assets, free and clear of all Encumbrances (as defined in the Sale Order) (other than Liens created by Purchaser and Transferred Exceptions) and Excluded Liabilities.

(b) The term “Purchased Assets” means the Foreign IP and all of the following properties, assets and rights of the Domestic Sellers, in each case, existing as of the Closing and not including any Excluded Asset:

- (i) the Domestic IP;
- (ii) the Customer Information;
- (iii) the La Mirada Assets (unless otherwise designated by Purchaser as an “Excluded Asset” pursuant to Section 2.5);
- (iv) the Garden Grove Assets (unless otherwise designated by Purchaser as an “Excluded Asset” pursuant to Section 2.5);

(v) the Sequoia Assets (unless otherwise designated by Purchaser as an “Excluded Asset” pursuant to Section 2.5);

(vi) the 747 Assets (unless otherwise designated by Purchaser as an “Excluded Asset” pursuant to Section 2.5);

(vii) the Wholesale Inventory;

(viii) all Contracts that have been designated by Purchaser for assumption and assignment to Purchaser by a Seller pursuant to Section 2.7 with respect to which an order has been entered by the Bankruptcy Court (which may be the Sale Order) authorizing the assumption and assignment of the Contract (such Contracts, the “Purchased Contracts”);

(ix) the Wholesale Purchase Order Inventory;

(x) the WIP;

(xi) all goodwill associated with items in clauses (i) to (x) above;

(xii) all Documents to the extent permitted by applicable Laws; and

(xiii) all rights, claims, causes of action and credits owned by a Seller to the extent relating to any Purchased Asset or Assumed Liability, including (A) any such item arising under any guarantee, warranty, indemnity, right of recovery, right of set-off or similar right in favor of such Seller in respect of any Purchased Asset or Assumed Liability and (B) any causes of action arising under Chapter 5 of the Bankruptcy Code, relating to the Purchased Assets that are against or otherwise involving any counterparty to any Purchased Contract, other than rights of setoff and recoupment and other defenses to any claim (as defined in the Bankruptcy Code) asserted against any Seller in the Bankruptcy Cases.

2.2 Excluded Assets. Nothing herein contained will be deemed to constitute an agreement to sell, transfer, assign or convey the Excluded Assets to Purchaser, and Sellers will retain all right, title and interest to, in and under the Excluded Assets. The term “Excluded Assets” means all assets, properties and rights of any Seller other than the Purchased Assets specifically defined in Section 2.1(b) above.

2.3 Assumption of Liabilities. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser will assume or will cause one or more of its designees to assume, effective as of the Closing, and will timely perform and discharge in accordance with their respective terms, only the following Liabilities

existing as of the Closing Date and no other Liabilities of Sellers or any of their Affiliates (collectively, the “Assumed Liabilities”):

(a) all Liabilities from the ownership or operation of the Purchased Assets by Purchaser solely to the extent such Liabilities arise after the Closing;

(b) any Cure Costs that Purchaser is required to pay pursuant to Section 2.7;

(c) all Liabilities of Sellers under the Purchased Contracts that arise on or after the Closing Date; and

(d) any Transfer Taxes.

2.4 Excluded Liabilities. Notwithstanding anything to the contrary set forth herein, the Parties expressly acknowledge and agree that Purchaser will not assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for Liabilities of any Seller, whether existing on the Closing Date or arising thereafter, including on the basis of any Law imposing successor liability, other than the Assumed Liabilities and the obligations of Purchaser under this Agreement (all such Liabilities that Purchaser is not assuming being referred to collectively as the “Excluded Liabilities”).

2.5 Designations. Purchaser may from time to time, but in no event later than five Business Days prior to the Auction, in its sole and absolute discretion, designate by written notice to Sellers that any or all of the La Mirada Assets, the Garden Grove Assets, the Sequoia Assets or the 747 Assets be “Excluded Assets” and upon such designation by Purchaser, the La Mirada Assets, the Garden Grove Assets, the Sequoia Assets and/or the 747 Assets, as the case may be, shall, for all purposes of this Agreement, be considered “Excluded Assets” and not “Purchased Assets” and no Liabilities arising thereunder or relating thereto shall be assumed by Purchaser or be the obligation, liability or responsibility of Purchaser. For the avoidance of doubt, any such designation by Purchaser shall not adjust or impact the Cash Amount or the payment of the Purchase Price pursuant to Section 3.3.

2.6 Wholesale Inventory; Wholesale Purchase Order Assets.

(a) Wholesale Inventory. Seven days prior to Closing, Sellers shall deliver Schedule 2.6(a) to Purchaser, which schedule shall contain an itemized listing of the Wholesale Inventory owned by Sellers as of the Effective Date and the corresponding Inventory Cost Value of each item of Wholesale Inventory (such schedule, the “Wholesale Inventory Schedule”). The Wholesale Inventory listed on the Wholesale Inventory Schedule shall be considered “Purchased Assets” for all purposes of this Agreement. At the Closing, in accordance with Section 3.3, Purchaser shall pay to

Sellers an amount equal to the Inventory Cost Value of the Wholesale Inventory set forth on the Wholesale Inventory Schedule (the “Wholesale Inventory Purchase Price”).

(b) Wholesale Purchase Order Assets. In accordance with the terms and conditions of the Wholesale Purchase Order, at the Closing, (i) Sellers shall deliver to Purchaser the Wholesale Purchase Order Inventory and (ii) Purchaser shall pay to Sellers an amount equal to the Wholesale Purchase Order Amount.

2.7 Assumption and Assignment of Contracts.

(a) Promptly, but in any event within 20 days from the Effective Date, Sellers shall deliver to Purchaser (i) a true and complete list of all material Contracts used in the Business to which a Seller is a party, and within two Business Days of Purchaser’s request, Sellers shall make available a true and copy of any such Contract, and (ii) Schedule 2.7(a), which schedule shall contain, with respect to each Contract, Sellers’ good-faith best estimate, as certified by the Chief Executive Officer or Chief Financial Officer of Sellers, of the amount of Cure Costs with respect to each such Contract; provided, however, that, from and after the date of delivery of Schedule 2.7(a) hereunder until 30 days from the Effective Date, Sellers may provide updates or supplements to Schedule 2.7(a) to include revised Cure Costs with respect to any Contract set forth therein, which updates shall amend Schedule 2.7(a) for all purposes hereof.

(b) Notwithstanding anything in this Agreement to the contrary, Purchaser may, from time to time and in its sole and absolute discretion, amend or revise Schedule 2.7(a) in order to add or eliminate any Contract to or from such Schedule up to one Business Day prior to the Qualified Bid Deadline. Automatically upon the addition of any Contract to Schedule 2.7(a) by Purchaser in accordance with the previous sentence, but subject to Purchaser’s right to remove any such Contract pursuant to this Section 2.7(b), such Contract shall be a Purchased Contract for all purposes of this Agreement. Automatically upon the deletion of any Contract from Schedule 2.7(a) by Purchaser in accordance with the first sentence of this Section 2.7(b), such Contract shall be an Excluded Asset for all purposes of this Agreement, and no Liabilities arising thereunder or relating thereto shall be assumed by Purchaser or be the obligation, liability or responsibility of Purchaser. If any Contract is added to the list of Purchased Contracts in accordance with this Section 2.7(b), then Sellers shall take such steps as are reasonably necessary (other than payment of any Cure Costs) to cause such Contract to be assumed and assigned to Purchaser as promptly as possible at or following the Closing.

(c) The Sale Order shall provide for the assumption by Sellers, and the assignment to the extent legally capable of being assigned by Sellers to Purchaser, of the Purchased Contracts pursuant to Section 365 of the Bankruptcy Code on the terms and conditions set forth in the remainder of this Section 2.7. At Purchaser’s request, and at Purchaser’s sole cost and expense, Sellers shall reasonably cooperate from the Effective Date forward with Purchaser as reasonably requested by Purchaser (i) to allow Purchaser

to enter into an amendment of any Purchased Contract upon assumption of such Purchased Contract by Purchaser (and Sellers shall reasonably cooperate with Purchaser to the extent reasonably requested with Purchaser in negotiations with the counterparties thereof), or (ii) to otherwise amend any Purchased Contract to the extent such amendments would not adversely affect any Seller; provided that (A) in no event shall any such amendments be effective prior to the Closing and (B) Sellers shall not be required to enter into any such amendment if such amendment would result in an assumption by Seller of such Purchased Contract unless such Purchased Contract will be assigned to Purchaser at the time of such assumption.

(d) Within four Business Days following the Bid Deadline, the applicable Seller shall file with the Bankruptcy Court and serve notice (an “Assumption Notice”) by first class mail on all non-debtor counterparties to any Contract included on Schedule 2.7(a) as of one Business Day prior to the Qualified Bid Deadline, and provide a copy of such Assumption Notice to Purchaser; provided that the assumption of any Contract on Schedule 2.7(a) will only occur at the Closing. At the Closing, Sellers shall assume and assign to Purchaser the Purchased Contracts, in each case, pursuant to Section 365 of the Bankruptcy Code and the Sale Order, subject to provision by Purchaser of adequate assurance as may be required under Section 365 of the Bankruptcy Code. The Cure Costs in respect of all of the Purchased Contracts shall be borne by Purchaser and shall not be the obligation, liability or responsibility of Sellers. Prior to the Sale Hearing, Sellers shall commence appropriate proceedings before the Bankruptcy Court and otherwise take all reasonably necessary actions in order to determine Cure Costs with respect to any Purchased Contract.

(e) As part of the Sale Motion (or as necessary in one or more separate motions), Sellers shall request that, by virtue of any Seller providing notice (in accordance with the assumption and assignment procedures set forth in the Bidding Procedures Order) of its intent to assume and assign any Purchased Contract, the Bankruptcy Court deem any non-debtor party to such Purchased Contract that does not file an objection with the Bankruptcy Court during such notice period to have given any Necessary Consent to the assumption of the Purchased Contract by the relevant Seller and assignment to Purchaser.

(f) Sellers shall use their respective commercially reasonable efforts to obtain one or more orders of the Bankruptcy Court, which order(s) shall be in form and substance reasonably acceptable to Purchaser, and shall reflect the terms and conditions set forth herein, to assume and assign the Purchased Contracts to Purchaser on the terms set forth in this Section 2.7. In the event Sellers are unable to obtain such an order for assumption and assignment of any such Purchased Contract to Purchaser, then the Parties shall use commercially reasonable efforts until the Designation Deadline to obtain, and to cooperate in obtaining, all Necessary Consents from Governmental Bodies and third

parties necessary to assume and assign such Purchased Contracts to Purchaser, including, in the case of Purchaser, paying any applicable Cure Costs.

(g) Subject to Section 2.8, to the extent that any Necessary Consent that is required to assume and assign to Purchaser any Purchased Contract is not obtained by the Closing Date, each Seller shall, with respect to each such Purchased Contract, from and after the Closing and until the earliest to occur of (i) the date on which such applicable Necessary Consent is obtained (which Necessary Consents the Parties shall use their reasonable best efforts, and cooperate with each other, to obtain promptly; provided, however, that none of the Parties or any of their respective Affiliates shall be required to pay any consideration therefor other than filing, recordation or similar fees, which shall be borne by Purchaser), and (ii) the date on which Purchaser delivers a written notice of exclusion of such Purchased Contract pursuant to this Section 2.7 or the Purchased Contract is deemed rejected under Section 365 of the Bankruptcy Code, use reasonable best efforts during the term of such Purchased Contract to (A) provide to Purchaser the benefits under such Purchased Contract, (B) cooperate in any reasonable and lawful arrangement, including holding such Contract in trust for Purchaser pending receipt of the Necessary Consent, designed to provide such benefits to Purchaser and (C) use its reasonable best efforts to enforce for the account of Purchaser any rights of such Seller under such Purchased Contract, including the right to elect to terminate such Purchased Contract in accordance with the terms thereof upon the written direction of Purchaser. Purchaser shall reasonably cooperate with Sellers in order to enable Sellers to provide to Purchaser the benefits contemplated by this Section 2.7(g).

(h) Notwithstanding the foregoing, a Contract shall not be a Purchased Contract hereunder and shall not be assigned to, or assumed by, Purchaser to the extent that such Contract (i) is designated for exclusion by a Seller in accordance with the terms hereof, deemed rejected under Section 365 of the Bankruptcy Code, or terminated by the other party thereto or terminates or expires in accordance with its terms on or prior to the Designation Deadline and is not continued or otherwise extended prior to or upon assumption and assignment, or (ii) subject to Section 2.8 below, requires a Necessary Consent of any Governmental Body or other third party (other than, and in addition to, that of the Bankruptcy Court) in order to permit the assumption and assignment by Seller to Purchaser of such Contract pursuant to Section 365 of the Bankruptcy Code, and no such Necessary Consent has been obtained prior to the Designation Deadline.

2.8 Non-Assignment of Assets.

(a) Notwithstanding any other provision of this Agreement to the contrary, this Agreement will not constitute an agreement to assign or transfer and will not effect the assignment or transfer of any Purchased Asset (including any Purchased Contract) if (i) (A) prohibited by applicable Law, (B) an attempted assignment or transfer thereof would reasonably likely to subject Purchaser, its Affiliates or any of its or their respective Representatives to civil or criminal Liability or (C) an attempted assignment or

transfer thereof, without the approval, authorization or consent of, or granting or issuance of any license or permit by, any third party thereto (each such action, a “Necessary Consent”), would constitute a breach, default or violation thereof or of any Law or Order or in any way adversely affect the rights of Purchaser thereunder or (ii) the Bankruptcy Court has not entered an Order approving such assignment or transfer. In such event, such assignment or transfer is subject to such Necessary Consent being obtained and Sellers and Purchaser will use their commercially reasonable efforts to obtain the Necessary Consents with respect to any such Purchased Asset (including any Purchased Contract) or any claim or right or any benefit arising thereunder for the assignment or transfer thereof to Purchaser as Purchaser may reasonably request; provided, however, that Sellers will not be obligated to pay any consideration therefor to any third party from whom consent or approval is requested or to initiate any litigation or legal proceedings to obtain any such consent or approval. If such Necessary Consent is not obtained, or if an attempted assignment or transfer thereof would give rise to any of the circumstances described in clauses (i) or (ii) of the first sentence of this Section 2.8(a), be ineffective or would adversely affect the rights of Purchaser to such Purchased Asset following the Closing, (x) Sellers and Purchaser will, and will cause their respective Affiliates to, (1) use commercially reasonable efforts (including cooperating with one another to obtain such Necessary Consents, to the extent feasible) as may be necessary so that Purchaser would obtain the benefits and assume the obligations thereunder in accordance with this Agreement, (2) complete any such assignments or transfers as soon as reasonably practicable, and (3) upon receipt of any applicable Necessary Consents, to transfer or assign the applicable Purchased Asset to Purchaser, and (y) Sellers will, and will cause their respective Affiliates to, cooperate with Purchaser in good faith without further consideration in any arrangement reasonably acceptable to Purchaser and Sellers intended to provide Purchaser with the benefit of any such Purchased Assets.

(b) Subject to Section 2.8(a), if after the Closing (i) Purchaser or its designee holds any Excluded Assets or Excluded Liabilities or (ii) any Seller holds any Purchased Assets or Assumed Liabilities, Purchaser or the applicable Seller will promptly transfer (or cause to be transferred) such assets or assume (or cause to be assumed) such Liabilities to or from (as the case may be) the other Party. Prior to any such transfer, the Party receiving or possessing any such asset will hold it in trust for such other Party.

(c) Notwithstanding anything herein to the contrary, at any time prior to the date that is the later of (i) five days after the resolution of any dispute with a non-debtor party to a Purchased Contract relating to the Cure Costs or adequate assurance of future performance required under Section 365 of the Bankruptcy Code and (ii) the conclusion of the cure objection hearing relating to any particular Purchased Contract as to which a cure objection has been timely filed, Purchaser will be entitled, in its sole and absolute discretion, to remove any Contract from Schedule 2.7(a) by providing written notice thereof to Sellers and any Contract so removed will be deemed to be an “Excluded

Asset” for all purposes hereunder. Sellers will not reject or seek to reject any Contract that is a Purchased Contract without the consent of Purchaser.

2.9 Further Conveyances and Assumptions. From time to time following the Closing, Sellers and Purchaser will, and will cause their respective Affiliates to, execute, acknowledge and deliver all such further conveyances, notices, assumptions, assignments, releases and other instruments, and will take such further actions, as may be reasonably necessary or appropriate to assure fully to Purchaser and its successors or assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Purchaser under this Agreement and to assure fully to each Seller and its Affiliates and their respective successors and assigns, the assumption of the liabilities and obligations intended to be assumed by Purchaser under this Agreement, and to otherwise make effective the Transactions; provided that nothing in this Section 2.9 will require Purchaser or any of its Affiliates to assume any Liabilities other than the Assumed Liabilities.

2.10 Withholding. Purchaser shall be entitled to withhold from any amount otherwise payable to any Seller or any other Person under this Agreement any withholding Taxes required by applicable Law to be withheld from the amounts so payable. Any amount so withheld and paid over to the appropriate Governmental Body shall be deemed to have been paid over to the applicable Sellers or other Persons for all purposes of this Agreement. The Parties shall cooperate in determining whether any such withholding is required.

III. CONSIDERATION; ADJUSTMENT

3.1 Consideration. The aggregate consideration for the Purchased Assets (the “Purchase Price”) will be: (a) \$66,000,000.00 in cash; plus (b) the Wholesale Inventory Purchase Price; plus (c) the Wholesale Purchase Order Amount (clauses (a), (b) and (c), collectively, the “Cash Amount”); and plus (d) the assumption of the Assumed Liabilities.

3.2 Purchase Price Deposit. Promptly, but in any event within three days from the Effective Date, the Parties shall enter into the Escrow Agreement and Purchaser shall deposit with the Escrow Agent the sum of \$6,600,000.00 (the “Deposit Amount”), which will be either delivered to Purchaser or paid to the Company as follows (in addition to any other remaining Escrow Funds): (a) if the Closing occurs, the Deposit Amount and all other Escrow Funds shall be applied towards the Cash Amount payable by Purchaser pursuant to Section 3.3, (b) if this Agreement is terminated by Sellers pursuant to Section 4.4(d), then Sellers and Purchaser shall promptly submit joint written instructions to the Escrow Agent to release the Deposit Amount and all other Escrow Funds to the Company (and such Escrow Funds will be deemed fully earned by Sellers as compensation and consideration for entering into this Agreement), or (c) if this Agreement is terminated for any reason other than by Sellers pursuant to Section 4.4(d),

then Purchaser, upon notice to Sellers, shall submit written instructions to the Escrow Agent to release the Deposit Amount and all other Escrow Funds to Purchaser. Notwithstanding anything to the contrary in the foregoing, Sellers will have no rights under the Escrow Agreement until the Bankruptcy Court issues the Bidding Procedures Order or another Order confirming that the Escrow Agreement will not be rejected by the Bankruptcy Court and may be performed by Sellers in accordance with its terms. The Deposit Amount shall only constitute property of Sellers' bankruptcy estates in the event that the Deposit Amount is required to be released to the Company by the Escrow Agent in accordance with the terms of this Agreement.

3.3 Payment of Purchase Price. At the Closing, (a) Purchaser will pay to Sellers, in immediately available funds to the account or accounts designated by the Company, (i) the Cash Amount, of which \$10,000 shall be allocated to the Foreign Seller in respect of the Purchased Assets sold, transferred, conveyed and delivered by it hereunder less (ii) the Deposit Amount and all other Escrow Funds and (b) Sellers and Purchaser shall promptly submit joint written instructions to the Escrow Agent to release the Deposit Amount and all other Escrow Funds to the Company.

IV. CLOSING AND TERMINATION

4.1 Closing Date. Subject to the satisfaction of the conditions set forth in Sections 9.1, 9.2 and 9.3 (or the waiver thereof by the Party entitled to waive that condition), the closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities provided for in Article II (the "Closing") will take place at Jones Day, 250 Vesey Street, New York, New York at 10:00 a.m. (Eastern time) on the date that is three Business Days following the satisfaction or waiver of the conditions set forth in Sections 9.1, 9.2 and 9.3 (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), or at such other place and time as the Parties may designate in writing. The date on which the Closing is held is referred to in this Agreement as the "Closing Date."

4.2 Deliveries by Sellers. At the Closing, Sellers will deliver to Purchaser:

- (a) one or more duly executed bills of sale in a form to be reasonably agreed upon by the Parties;
- (b) (i) one or more duly executed assignment and assumption agreements, in a form to be agreed upon by the Parties and (ii) duly executed assignments to Purchaser of (A) the registered Trademarks and Trademark applications and registered copyrights and copyright applications included in the Purchased Intellectual Property and (B) the registered Trademarks and Trademark applications owned by the Foreign Seller, in each case, in a form suitable for recording in the U.S. Patent and Trademark Office (and equivalent offices in jurisdictions outside the United States) (the "Assignment and Assumption Agreements");

(c) the officers certificate required to be delivered pursuant to Sections 9.1(a) and 9.1(b);

(d) 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 Treasury Regulations issued pursuant to Section 1445 of the Internal Revenue Code stating that it is not a “foreign person” as defined in Section 1445 of the Internal Revenue Code;

(e) a copy of the Sale Order as entered by the Bankruptcy Court; and

(f) all other deeds, endorsements, assignments, company seals, instruments of transfer and other instruments of conveyance reasonably requested by Purchaser or required to convey and assign the Purchased Assets to Purchaser and vest title therein in Purchaser free and clear of all Encumbrances (as defined in the Sale Order) (other than those Liens created by Purchaser and Transferred Exceptions).

4.3 Deliveries by Purchaser. At the Closing, Purchaser will deliver to the Company:

(a) the consideration specified in Section 3.1, as adjusted pursuant to Section 3.3;

(b) the Assignment and Assumption Agreements, duly executed by Purchaser;

(c) the officers certificate required to be delivered pursuant to Sections 9.2(a) and 9.2(b); and

(d) all such other documents, instruments and certificates, reasonably requested by Sellers, to evidence the assumption by Purchaser of the Assumed Liabilities.

4.4 Termination of Agreement. This Agreement may be terminated prior to the Closing as follows:

(a) by Purchaser or a Seller, if the Closing has not occurred by 5:00 p.m. Eastern time on February 15, 2017 (the “Termination Date”), which date may be extended pursuant to Sections 4.4(c) and 4.4(d); provided, however, that if the Closing has not occurred on or before the Termination Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Purchaser or a Seller, then Purchaser or a Seller, respectively, may not terminate this Agreement pursuant to this Section 4.4(a);

(b) by mutual written consent of the Company and Purchaser;

(c) by Purchaser, if Sellers breach any representation or warranty or any covenant or agreement contained in this Agreement, such breach would result in a failure of a condition set forth in Sections 9.1 or 9.3 and such breach has not been cured within 10 Business Days after the giving of written notice by Purchaser to Sellers of such breach; provided that Purchaser is not then in material breach of any representation, warranty, covenant or agreement contained in this Agreement; provided, further, that in the event that Purchaser provides such written notice to Sellers within 10 Business Days of the Termination Date, then the Termination Date shall be extended until the end of the 10 Business Day cure period set forth in this Section 4.4(c).

(d) by Sellers, if Purchaser breaches any representation or warranty or any covenant or agreement contained in this Agreement, such breach would result in a failure of a condition set forth in Sections 9.2 or 9.3 and such breach has not been cured within 10 Business Days after the giving of written notice by Sellers to Purchaser of such breach; provided that no Seller is then in material breach of any representation, warranty, covenant or agreement contained in this Agreement; provided, further, that in the event that Sellers provide such written notice to Purchaser within 10 Business Days of the Termination Date, then the Termination Date shall be extended until the end of the 10 Business Day cure period set forth in this Section 4.4(d);

(e) by Sellers or Purchaser, if there is in effect a final non-appealable Order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Transactions; it being agreed that the Parties will promptly appeal any adverse determination which is not non-appealable and pursue such appeal with reasonable diligence unless and until this Agreement is terminated pursuant to this Section 4.4;

(f) by Sellers or Purchaser, if the Bankruptcy Court enters an order approving a Competing Transaction;

(g) by Purchaser, if (i) any Seller or any Affiliate of Seller seeks or otherwise takes material steps in furtherance of, or does not use commercially reasonable efforts to oppose any other Person in seeking, an order of the Bankruptcy Court dismissing the Bankruptcy Cases or converting the Bankruptcy Cases to a petition for relief under Chapter 7 of the Bankruptcy Code, (ii) any Seller or any Affiliate of Sellers seeks or otherwise takes material steps in furtherance of, or does not use commercially reasonable efforts to oppose any other Person in seeking, the entry of an order by the Bankruptcy Court appointing a trustee in the Bankruptcy Cases or an examiner with enlarged powers relating to the operation of the Business, (iii) the Bankruptcy Court orders, for any reason, an order of a type identified in clause (i) or (ii) above, or (iv) the Bankruptcy Court enters an order pursuant to Section 362 of the Bankruptcy Code lifting the automatic stay with respect to any material Purchased Assets;

(h) by Purchaser, if (i) following entry by the Bankruptcy Court of the Bidding Procedures Order, such order is (A) amended, modified or supplemented without Purchaser's prior written consent or (B) voided, reversed or vacated or is subject to a stay such that the Bidding Procedures Order is not in full force and effect as of the date set forth in Section (i) below or (ii) following entry by the Bankruptcy Court of the Sale Order, the Sale Order is (A) amended, modified or supplemented in any way without Purchaser's prior written consent or (B) voided, reversed or vacated or is subject to a stay such that the Sale Order is not in full force and effect as of the date set forth in Section 4.4(j) below;

(i) by Purchaser, if the Bankruptcy Court shall not have entered the Bidding Procedures Order on or before December 5, 2016; provided that Purchaser shall not be able to terminate this Agreement pursuant to this Section 4.4(i) if, prior to such termination, the Bankruptcy Court shall have entered the Bidding Procedures Order;

(j) by Purchaser, if the Bankruptcy Court shall not have entered the Sale Order on or before January 15, 2017 or following entry thereof such order shall have been voided, reversed, vacated or subject to a stay; provided that Purchaser shall not be able to terminate this Agreement pursuant to this Section 4.4(j) if, prior to such termination, the Bankruptcy Court shall have entered the Sale Order or the Sale Order is a Final Order, as applicable;

(k) by Purchaser, if the Bidding Procedures Order is entered by the Bankruptcy Court and (i) the Auction is not held on or before January 5, 2017, unless an Auction is not required to be held pursuant to the terms of the Bidding Procedures or (ii) the Sale Hearing is not held on or before the date that is 10 days after the selection of a Successful Bidder (as defined in the Bidding Procedures); provided that Purchaser shall not be able to terminate this Agreement pursuant to this Section 4.4(k) if, prior to such termination, the Auction or Sale Hearing shall have been held, as applicable;

(l) by Purchaser, if Purchaser is not selected as a Successful Bidder (as defined in the Bidding Procedures) at the conclusion of the Auction;

(m) to the extent that Purchaser has elected to act as a Backup Bidder (as defined in the Bidding Procedures), by Purchaser, if Sellers have failed to consummate the sale of the Purchased Assets with the winning bidder by the Termination Date; and

(n) automatically, upon the consummation of a Competing Transaction.

4.5 Procedure Upon Termination. In the event of termination pursuant to Section 4.4, the terminating Party will give written notice thereof to the other Party or Parties, and this Agreement will terminate as described in Section 4.6, and the purchase

of the Purchased Assets and assumption of the Assumed Liabilities hereunder will be abandoned, without further action by Purchaser or Sellers.

4.6 Effect of Termination. In the event that this Agreement is terminated as provided herein, then each of the Parties will be relieved of its duties and obligations arising under this Agreement after the date of such termination and there will be no liability or obligation on Purchaser, any Seller or any of their respective Representatives; provided, however, that the provisions of Section 3.2, this Section 4.6, Section 4.7, Section 8.7, and Article XI (other than Section 11.3) and, to the extent necessary to effectuate the foregoing enumerated provisions, Section 1.1 hereof, will survive any such termination and will be enforceable hereunder, provided, further, that nothing in this Section 4.6 will be deemed to release any Party from liability for any breach of this Agreement prior to termination, provided, further, that nothing in this Section 4.6 will be deemed to interfere with Sellers' rights to retain the Deposit Amount to the extent provided in Section 3.2.

4.7 Termination Fee; Expense Reimbursement.

(a) If (i) this Agreement is terminated for any reason other than by Sellers pursuant to Section 4.4(d), then, in any such case, Sellers shall, jointly and severally, without the requirement of any notice or demand from Purchaser or any application to or order of the Bankruptcy Court, promptly, but in no event later than three Business Days after the date of such termination, pay or cause to be paid to Purchaser all reasonable out-of-pocket and documented fees and expenses (including reasonable attorneys' fees and expenses) incurred by Purchaser in connection with or related to Purchaser's evaluation, consideration, analysis, negotiation, and documentation of this Agreement or the Transactions, in an amount not to exceed \$1,000,000.00 in the aggregate (the "Expense Reimbursement"), and (ii) this Agreement is terminated (A) by Purchaser pursuant to Section 4.4(c), and prior to such termination, any Seller has taken any action that results in a breach, in any material respect, of any covenant set forth in Section 7.1, (B) by Purchaser or Sellers pursuant to Section 4.4(f), (C) by Purchaser pursuant to Section 4.4(g), Section 4.4(h), Section 4.4(j), Section 4.4(k), Section 4.4(l) (to the extent Purchaser has not elected to act as the Back-Up Bidder (as defined in the Bidding Procedures Order)), or Section 4.4(m), or (D) automatically pursuant to Section 4.4(n), then, in any such case, Sellers shall, jointly and severally, without the requirement of any notice or demand from Purchaser or any application to or order of the Bankruptcy Court, pay or cause to be paid to Purchaser the Termination Fee (in addition to the Expense Reimbursement) upon Sellers consummating a Competing Transaction by wire transfer of immediately available funds to such account or accounts as may be specified in a written notice by Purchaser given to Sellers in accordance with Section 11.8. The Expense Reimbursement and the Termination Fee shall, pursuant to the Bidding Procedures Order, constitute allowed administrative expenses of Sellers' estates under Sections

503(b) of the Bankruptcy Code; provided, however, that the Termination Fee shall be payable only from the proceeds of a Competing Transaction. The Bidding Procedures Order shall provide for the payment by Sellers of the Termination Fee and Expense Reimbursement (prior to the repayment of the obligations owed on account of any prepetition secured financing) as and when such amounts are due and payable hereunder.

(b) Each of the Parties acknowledges and agrees that the agreements contained in this Section 4.7 are an integral part of the Transactions and that, without these agreements, the other Parties would not enter into this Agreement. Each of the Parties further acknowledges that the payment by Sellers of the Termination Fee and the Expense Reimbursement is not a penalty, but rather liquidated damages in a reasonable amount that will compensate Purchaser, together with any additional damages to which Purchaser may be entitled hereunder, in the circumstances in which such Termination Fee and Expense Reimbursement is payable for the efforts and resources expended and the opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the Transactions, which amount would otherwise be impossible to calculate with precision. Without limiting in any way Purchaser's rights set forth in Section 4.7(c), Purchaser's receipt in full of the Termination Fee and the Expense Reimbursement, together with interest or collection expenses, if any, due and payable as provided herein, shall be the sole and exclusive monetary remedy of Purchaser against Sellers, and Sellers shall have no further liability or obligation, under this Agreement or relating to or arising out of any such breach of this Agreement or failure to consummate the Transactions. The obligations to return the Deposit Amount and pay the Termination Fee and Expense Reimbursement in accordance with the provisions of Section 4.7 will (i) be binding upon and enforceable against each Seller immediately upon the Bankruptcy Court's entering the Bidding Procedures Order, (ii) not be terminable or dischargeable thereafter for any reason, (iii) survive any subsequent conversion, dismissal or consolidation of the Bankruptcy Cases, any plan of reorganization or liquidation in the Bankruptcy Cases, and (iv) survive the subsequent termination of this Agreement by any means. The obligations to return the Deposit Amount and pay Purchaser the Termination Fee and Expense Reimbursement, as and when required under this Agreement, are intended to be, and upon entry of the Bidding Procedures Order are, binding upon (A) each Seller, (B) any successors or assigns of any Seller, (C) any trustee, examiner or other representative of a Seller's estate, (D) the reorganized Sellers and (E) any other entity vested or revested with any right, title or interest in or to a Seller, or any other Person claiming any rights in or control (direct or indirect) over any Seller (each of (A) through (E), a "Successor") as if such Successor were a Seller hereunder. The obligations of Sellers to return the Deposit Amount and the obligations to pay Purchaser the Termination Fee and Expense Reimbursement, as and when required under this Agreement, may

not be discharged under Sections 1141 or 727 of the Bankruptcy Code or otherwise and may not be abandoned under Section 554 of the Bankruptcy Code or otherwise.

(c) For the avoidance of doubt, while Purchaser may pursue (i) a grant of specific performance prior to the termination of this Agreement to cause the Closing and performance of this Agreement as provided in Section 11.3 and (ii) concurrently pursue the payment of the Termination Fee and the Expense Reimbursement under this Section 4.7 if this Agreement is validly terminated pursuant to Section 4.4(f), under no circumstances shall Purchaser be permitted or entitled to receive both (A) the remedy of specific performance to cause the Closing and (B) the payment of the Termination Fee and/or the Expense Reimbursement.

V. REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers hereby represent and warrant to Purchaser that:

5.1 Organization and Good Standing. Each Seller is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and, subject to any limitations that may be imposed on such Seller as a result of filing a petition for relief under the Bankruptcy Code, has the requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted.

5.2 Authorization of Agreement. Subject to entry of the Bidding Procedures Order and Sale Order, as applicable, each Seller has the requisite power and authority to execute and deliver this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party and to perform its respective obligations hereunder and thereunder. The execution and delivery of this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party and the consummation of the Transactions have been duly authorized by all requisite corporate or similar action on the part of each Seller. This Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party has been duly and validly executed and delivered, and each agreement, document or instrument contemplated hereby or thereby to be delivered at or prior to Closing will be duly and validly executed and delivered, by the applicable Seller and (assuming the due authorization, execution and delivery by the other Parties and the entry of the Sale Order) this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party constitutes legal, valid and binding obligations of each applicable Seller enforceable against such Seller in accordance with its respective terms, subject to equitable principles of general applicability (whether considered in a proceeding at law or in equity).

5.3 Governmental Consents. Except as set forth on Schedule 5.3 and except to the extent not required if the Sale Order is entered, no consent, waiver, approval, Order or authorization of, or declaration or filing with, or notification to, any Person or

Governmental Body is required on the part of any Seller in connection with the execution and delivery of this Agreement or any other agreement, document or instrument contemplated hereby or thereby to which any Seller is a party, the compliance by Sellers with any of the provisions hereof or thereof, the consummation of Transactions or the taking by Sellers of any other action contemplated hereby or thereby (with or without notice or lapse of time, or both), except for (a) the entry of the Sale Order and (b) immaterial consents, waivers, approvals, Orders, authorizations, declarations, filings and notifications.

5.4 Title to Purchased Assets. Except as set forth on Schedule 5.4, subject to Section 2.8 and (a) bankruptcy, insolvency, or other similar Laws affecting the enforcement of creditors' rights generally, and (b) equitable principles of general applicability (whether considered in a proceeding at law or in equity), Sellers have good and valid title to, or in the case of leased assets, have good and valid leasehold interests in, the Purchased Assets free and clear of all Encumbrances (as defined in the Sale Order) (other than Permitted Exceptions) and, at the Closing, Purchaser will be vested with good and valid title to, or in the case of leased assets, good and valid leasehold interest in, such Purchased Assets, free and clear of all Encumbrances (as defined in the Sale Order) (other than Transferred Exceptions) and Excluded Liabilities, to the fullest extent permissible under Law, including Section 363(f) of the Bankruptcy Code.

5.5 Real Property. Sellers (a) have made available to Purchaser prior to the Effective Date, or within five days of the Effective Date shall make available to Purchaser, true and complete copies of the La Mirada Lease and the Garden Grove Lease and (b) shall make commercially reasonable efforts to make available to Purchaser, within five days of the Effective Date, true and complete copies of the Sequoia Lease and, in the case of each of clause (a) and (b), all other material Contracts or instruments entered into or delivered in connection therewith, as amended through the Effective Date.

5.6 Intellectual Property.

(a) Schedule 5.6(a) sets forth a list of all registrations and applications for registration with any Governmental Body included in the Purchased Intellectual Property (the "Registered IP"), setting forth for each such item (i) the record owner, (ii) the registration or application number (as applicable), (iii) the registration or application date (as applicable) and (iv) the jurisdiction in which such item is registered or pending. All of the Registered IP is valid, subsisting and enforceable.

(b) Sellers own or have a valid and enforceable right to use all Intellectual Property used in or necessary for the conduct of the Business as currently conducted, including all rights in the "AMERICAN APPAREL," "STANDARD AMERICAN," "CLASSIC BABY," AND "CLASSIC GIRL" Trademarks.

(c) Sellers have used commercially reasonable efforts to protect and enforce all of their rights in the Trademarks included in the Purchased Intellectual Property against unauthorized use or dilution by any Third Person.

(d) Except as set forth on Schedule 5.6(d):

(i) one or more of Sellers owns the Purchased Intellectual Property and has valid rights in and to, including all rights to use and exploit such Purchased Intellectual Property under applicable Law, in each case, free and clear of all Encumbrances (as defined in the Sale Order) (other than Permitted Exceptions);

(ii) all necessary registration, maintenance, renewal and other relevant filing fees in connection with any of the Registered IP, whether with the U.S. Patent and Trademark Office (or an equivalent office in jurisdictions outside the United States) have been timely paid, except as would not reasonably be expected to, individually or in the aggregate, be material;

(iii) as of the Effective Date, the Purchased Intellectual Property is not the subject of any ownership, validity, use, or enforceability challenge or claim received by any Seller in writing or any outstanding Order restricting the use by such Seller thereof or adversely affecting any of the rights of such Seller thereto, except as would not reasonably be expected to, individually or in the aggregate, be material;

(iv) (A) the conduct of the Business, to the Knowledge of Sellers, does not infringe, misappropriate or otherwise violate, and has not infringed, misappropriated or otherwise violated any Intellectual Property of any Third Person; and (B) to the knowledge of Sellers, no Third Person is currently infringing, misappropriating or otherwise violating or, since December 31, 2013, has infringed, misappropriated or otherwise violated any of the Purchased Intellectual Property ;

(v) as of the Effective Date, there are no claims pending (A) by a Third Person against any Seller alleging that any Seller or any of its respective products or services is infringing, misappropriating or otherwise violating the Intellectual Property of any Third Person, or (B) by any Seller against any Third Person alleging infringement, misappropriation or other violation of any Purchased Intellectual Property, except as would not reasonably be expected to, individually or in the aggregate, be material;

(vi) the Purchased IT Assets include all of the IT Assets (other than third-party software and related licenses) that are located at or used to

operate each of the La Mirada Warehouse, the Garden Grove Facility, the 747 Facility, and the Sequoia Facility as they are currently operated;

(vii) Sellers have implemented commercially reasonable (A) backup and disaster recovery technology consistent with industry practices and (B) safeguards, consistent with industry practices, to ensure that the Purchased IT Assets are secure from unauthorized access and free from any disabling codes or instructions, spyware, Trojan horses, worms, viruses or other software routines that permit or cause unauthorized access to, or disruption, impairment, disablement, or destruction of, software, data or other materials; and to the Knowledge of Sellers, no third party has gained unauthorized access to any of the Purchased IT Assets; and

(viii) the Purchased Intellectual Property includes all Intellectual Property owned by Sellers that is used or held for use in connection with the Business.

5.7 Validity of Purchased Contracts. Except as set forth on Schedule 5.7, as of the date of this Agreement, each Purchased Contract is in full force and effect and is a valid and binding obligation of the Seller party thereto and, to the Knowledge of Sellers, the other parties thereto in accordance with its terms and conditions, except as such validity and enforceability may be limited by (a) bankruptcy, insolvency, or other similar laws affecting the enforcement of creditors' rights generally, (b) equitable principles of general applicability (whether considered in a proceeding at law or in equity), and (c) the obligation to pay Cure Costs hereunder. Except as set forth on Schedule 5.7, as of the date of this Agreement, to the Knowledge of Sellers, no Seller has received any written notice of the intention of any Third Party to terminate any Purchased Contract. Except as set forth on Schedule 5.7, to the Knowledge of Sellers, as of the date of this Agreement, no event has occurred which, with the passage of time or the giving of notice, or both, would constitute a default under or a violation of any such Purchased Contract or would cause the acceleration of any obligation of any Seller or the creation of a Lien upon any Purchased Asset, except for such events that would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect. Sellers have delivered or made available to Purchaser copies of all of the Purchased Contracts, together with all amendments, modifications or supplements thereto, as of the date of this Agreement.

5.8 Litigation. Except as set forth on Schedule 5.8 and except for Legal Proceedings that would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect, as of the date of this Agreement, there are no Legal Proceedings pending or, to the Knowledge of Sellers, threatened against any Seller that involves or relates to any of the Transactions or affects any of the Purchased Assets that would reasonably be expected to adversely affect the ownership or use by Purchaser of the Purchased Assets after the Closing.

5.9 Financial Advisors. Except with respect to Houlihan Lokey, Sellers have not incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement or Transactions for which Purchaser is or will become liable, and Sellers shall indemnify and hold harmless Purchaser from any claims with respect to any such fees or commissions.

5.10 Environmental Matters. Except as set forth on Schedule 5.10, with respect to the Purchased Assets, (a) there has been no release of any waste, material or substance regulated under, or defined, characterized or otherwise classified as a "hazardous", "pollutant", "contaminant", "toxic" or words of similar meaning or effect, including petroleum and its by-products, asbestos or polychlorinated biphenyls under any applicable environmental Law into the environment as a result of the operations or activities of any Seller or any other Person that would reasonably be expected to result in any Liability under any environmental Law, and no Seller has received any written claim or notice of violation or potential Liability from any Governmental Body or other Person, (b) no such claim or notice is pending or to the Knowledge of Sellers, threatened, alleging that any Seller or the Purchased Assets are in violation of, or liable under, any environmental Law that has not been remedied as of the Effective Date, and (c) there are no other circumstances or conditions involving the Purchased Assets that could reasonably be expected to result in any claims, liability, investigations, costs or restrictions on the ownership, use, or transfer of any Purchased Asset in connection with any environmental Law.

5.11 No Other Representations or Warranties; Schedules. Except for the representations and warranties contained in this Article V (as modified by the Schedules hereto), none of Sellers nor any other Person makes any other express or implied representation or warranty with respect to Sellers, the Purchased Assets, the Assumed Liabilities or the Transactions, and each Seller disclaims any other representations or warranties, whether made by Sellers, any Affiliate of Sellers, or any of Sellers' or their Affiliates' respective Representatives. Except for the representations and warranties contained in this Article V (as modified by the Schedules hereto), each Seller (a) expressly disclaims and negates any representation or warranty, expressed or implied, at common law, by statute, or otherwise, relating to the condition of the Purchased Assets (including any implied or expressed warranty of merchantability or fitness for a particular purpose, or of conformity to models or samples of materials) and (b) disclaims all liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to Purchaser or its Affiliates or Representatives (including any opinion, information, projection, or advice that may have been or may be provided to Purchaser by any Representative of Sellers or any of its Affiliates). Sellers make no representations or warranties to Purchaser regarding the probable success or profitability of the Purchased Assets or the use thereof. The disclosure of any matter or item in any Schedule hereto

will not be deemed to constitute an acknowledgment that any such matter is required to be disclosed or is material or that such matter could result in a Seller Material Adverse Effect.

VI. REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Sellers that:

6.1 Organization and Good Standing. Purchaser is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization.

6.2 Authorization of Agreement. Purchaser has the requisite power and authority to execute and deliver this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party and to perform its obligations hereunder and thereunder. The execution and delivery of this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party and the consummation of the Transactions have been duly authorized by all requisite corporate or similar action on the part of Purchaser. This Agreement and each other agreement, document or instrument contemplated hereby or thereby to which Purchaser is a party has been duly and validly executed and delivered, and each agreement, document or instrument contemplated hereby or thereby to be delivered at or prior to closing will be duly executed and delivered by Purchaser and (assuming the due authorization, execution and delivery by the other Parties) this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which Purchaser is a party constitutes legal, valid and binding obligations of Purchaser enforceable against it in accordance with its respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

6.3 Conflicts; Consents of Third Parties. No consent, waiver, approval, Order or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of Purchaser in connection with the execution and delivery of this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which Purchaser is a party, the compliance by Purchaser with any of the provisions hereof or thereof, the consummation of Transactions, the taking by Purchaser of any other action contemplated hereby or thereby, except for (a) the entry of the Sale Order and (b) immaterial consents, waivers, approvals, Orders, authorizations, declarations, filings and notifications.

6.4 Litigation. There are no Legal Proceedings pending or, to the knowledge of Purchaser, threatened against Purchaser, or to which Purchaser is otherwise a party

before any Governmental Body, which, if adversely determined, would reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect. Purchaser is not subject to any Order except to the extent the same would not reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect.

6.5 Financial Advisors. No Person has acted, directly or indirectly, as a broker, finder or financial advisor for Purchaser in connection with the Transactions and no Person is entitled to any fee or commission or like payment in respect thereof that would or could be owed by or claimed against Sellers or any of the consideration to be paid hereunder.

6.6 Financial Capability. Purchaser has sufficient funds available to it in cash to pay or cause to be paid the Purchase Price and the fees and expenses required to be paid by Purchaser in connection with the Transactions, and to effect the Transactions. Upon the consummation of the Transactions, (a) Purchaser will not be insolvent as defined in Section 101 of the Bankruptcy Code, (b) Purchaser will not be left with unreasonably small capital, (c) Purchaser will not have incurred debts beyond its ability to pay such debts as they mature, and (d) the capital of Purchaser will not be impaired.

6.7 Condition of the Purchased Assets. Notwithstanding anything contained in this Agreement to the contrary, Purchaser acknowledges and agrees that Sellers are not making any representations or warranties whatsoever, express or implied, beyond those expressly given by Sellers in Article V (as modified by the Schedules hereto), and Purchaser acknowledges and agrees that, except for the representations and warranties contained therein, the Purchased Assets are being transferred on a “where is” and, as to condition, “as is” basis. Purchaser acknowledges that it has conducted to its satisfaction its own independent investigation of the Purchased Assets and, in making the determination to proceed with the Transactions, Purchaser has relied on the results of its own independent investigation.

6.8 Exclusivity of Representations and Warranties. Except for the representations and warranties contained in Article V, Purchaser agrees and acknowledges that none of Sellers or any Person on behalf of Sellers makes any other express or implied representation or warranty with respect to Sellers, the Purchased Assets, the Assumed Liabilities or the Business or with respect to any other information provided or made available to Purchaser in connection with the Transactions, including information conveyed at management presentations, in a virtual data room or in due diligence sessions and, without limiting the foregoing, including any estimates, projections, predictions or other forward-looking information.

VII. BANKRUPTCY COURT MATTERS

7.1 Competing Transactions.

(a) Consummation of the Transactions is subject to approval by the Bankruptcy Court and the consideration by Sellers and the Bankruptcy Court of higher or better competing bids. From and after the Effective Date until the date that the auction contemplated by the Bidding Procedures Order (the “Auction”) is declared closed by Sellers, Sellers shall be permitted to cause their respective Representatives and Affiliates to (i) initiate contact with, or solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Purchaser and its Affiliates, agents, and representatives) with respect to any transaction (or series of transactions) involving the direct or indirect sale, transfer or other disposition of all, or a material portion of, the Purchased Assets to a purchaser or purchasers other than Purchaser or effecting any other transaction (including a Chapter 11 plan) the consummation of which would be substantially inconsistent with the Transactions (a “Competing Transaction”), and (ii) respond to any inquiries or offers to purchase all or any part of the Purchased Assets (whether in combination with other assets of Sellers or their Affiliates or otherwise) and perform any and all other acts related thereto which are required or permitted under the Bankruptcy Code, the Bidding Procedures Order or other applicable Law, including supplying information relating to the Business and the assets of Sellers to prospective purchasers; provided, however, that in no event shall Sellers or their Representatives encourage, support or negotiate the terms of any transaction that would supplant this Agreement or the Transactions, including Purchaser’s position as the “stalking horse bidder,” outside of the process contemplated in the Bidding Procedures or Bidding Procedures Order.

(b) Other than to the extent expressly permitted by and in accordance with the Bidding Procedures, from and after the date the Bidding Procedures Order is entered by the Bankruptcy Court until the date that the Auction is declared closed by Sellers, Sellers will not, and will not permit their Affiliates or its and their Representatives to, (i) initiate contact with, or solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Purchaser, Affiliates and its and their Representatives) with respect to a Competing Transaction or (ii) engage in, continue or otherwise participate in any discussions or negotiations regarding, or provide any non-public information or data to any Person relating to, any Competing Transaction. For the avoidance of doubt, Sellers will not pursue or agree to any Competing Transaction other than as expressly permitted by and in accordance with the Bidding Procedures.

7.2 Bankruptcy Court Filings.

(a) Within one Business Day of the Effective Date, each Seller shall file or cause to be filed a petition for relief under Chapter 11 of the Bankruptcy Code on behalf of such Seller with the Bankruptcy Court (the date of such petition, the “Petition Date”). On the Petition Date, Sellers shall file (and, within two Business Days, serve) a motion or motions (the “Sale Motion”), in form and substance reasonably satisfactory to

Purchaser, in the Bankruptcy Cases requesting that the Bankruptcy Court (i) enter the Bidding Procedures Order and (ii) schedule a hearing on the Sale Motion for entry of the Sale Order. Thereafter, Purchaser and Sellers shall take all actions as may be reasonably necessary to cause the Bidding Procedures Order and the Sale Order to be issued, entered and become Final Orders, including furnishing affidavits, declarations or other documents or information for filing with the Bankruptcy Court. Purchaser agrees that it will promptly take such actions as are reasonably requested by Sellers to assist in obtaining entry of the Sale Order and a finding of adequate assurance of future performance by Purchaser, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Purchaser under this Agreement and demonstrating that Purchaser is a “good faith” purchaser under Section 363(m) of the Bankruptcy Code.

(b) Sellers shall provide appropriate notice of the hearings on the Sale Motion, as is required by the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, to all Persons entitled to notice, including all Persons that have expressed interest in buying the Purchased Assets, all Persons that have asserted Liens, claims or other interests in the Purchased Assets, all parties to the Purchased Contracts, all applicable state and local Tax Authorities, including the Internal Revenue Service, each Governmental Body that is an interested party with respect to the Purchased Assets and the Bidding Procedures Order and all taxing and environmental 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 Purchaser prior to their filing with the Bankruptcy Court for Purchaser’s prior review.

(c) On or before the date that is two days from the entry of the Bidding Procedures Order, Sellers shall file with the Bankruptcy Court and serve a cure notice (the “Cure Notice”) by first class mail on all non-debtor counterparties to all Contracts and provide a copy of the same to Purchaser. The Cure Notice shall inform each recipient that its respective Contract may be designated by Purchaser as either assumed, and the timing and procedures relating to such designation, and, to the extent applicable (i) the title of the Contract, (ii) the name of the counterparty to the Contract, (iii) Sellers’ good faith estimates of the Cure Costs required in connection with such Contract, (iv) the identity of Purchaser and (v) the deadline by which any such Contract counterparty may file an objection to the proposed assumption and assignment and/or cure, and the procedures relating thereto.

(d) Sellers shall use their reasonable best efforts to (i) file and have entered the Bidding Procedures Order on or before November 30, 2016, (ii) hold the Auction, unless an Auction is not required to be held pursuant to the terms of the Bidding

Procedures, on or before December 21, 2016 and (iii) file and have entered the Sale Order on or before December 30, 2016.

(e) The Parties 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 Bidding Procedures Order and the Sale Order, including, with respect to Sellers, sharing in advance any drafts thereof for Purchaser's review and comment. Each Seller shall promptly provide Purchaser 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 Sale Motion, or any other order related to any of the Transactions, but only to the extent such papers are not publicly available on the docket of the Bankruptcy Court or otherwise made available to Purchaser and its counsel. No Seller shall seek any modification to the Bidding Procedures Order and the Sale Order by the Bankruptcy Court or any other Governmental Body of competent jurisdiction to which a decision relating to the Bankruptcy Cases has been appealed, in each case, without the prior written consent of Purchaser (not to be unreasonably withheld).

(f) If the Sale Order, or any other orders of the Bankruptcy Court relating to this Agreement or the Transactions are 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 Bidding Procedures Order and the Sale Order, or other such order), subject to rights otherwise arising from this Agreement, Sellers shall use reasonable best efforts to prosecute such appeal, petition or motion and obtain an expedited resolution of any such appeal, petition or motion.

(g) Notwithstanding anything expressed or implied herein to the contrary, other than in the Ordinary Course of Business, Sellers shall not consent or agree to the allowance of any claim to the extent it would constitute an Assumed Liability without the prior written consent of Purchaser. Each Seller shall use reasonable best efforts to cause the Sale Order to provide that Purchaser will have standing in the Bankruptcy Cases to object to the amount of any claim to the extent it would constitute an Assumed Liability and that the Bankruptcy Court will retain the right to hear and determine such objections.

VIII. COVENANTS

8.1 Access to Information. From the Effective Date through the Closing Date, Purchaser will be entitled, through its Representatives, to make such investigation of the Purchased Assets and the Assumed Liabilities as it reasonably requests. Any such investigation and examination will be conducted upon reasonable advance notice and under reasonable circumstances and will be subject to restrictions under applicable Law. Sellers will direct and use their commercially reasonable efforts to cause their respective

Representatives to cooperate with Purchaser and Purchaser's Representatives in connection with such investigation and examination, and Purchaser and its Representatives will cooperate with Sellers and their Representatives, including granting Representatives of Purchaser reasonable access to Sellers' facilities and Representatives to inspect and monitor the quality of the inventory produced by Sellers pursuant to the Wholesale Purchase Order. Notwithstanding anything herein to the contrary, no such investigation or examination will be permitted to the extent that it would require Sellers to disclose information that would cause material competitive harm to a Seller or would violate attorney-client privilege. No investigation by Purchaser prior to or after the date of this Agreement will affect or be deemed to modify any of the representations, warranties, covenants or agreements of Sellers contained in this Agreement. Sellers will promptly deliver to Purchaser all pleadings, motions, notices, statements, schedules, applications, reports and other papers filed in any other judicial or administrative proceeding related to the Purchased Assets and the Transactions.

8.2 Actions Pending the Closing. Except (a) as required by applicable Law or by order of the Bankruptcy Court, which Order is consistent with this Agreement, (b) as otherwise expressly contemplated by this Agreement, or (c) with the prior written consent of Purchaser, during the period from the Effective Date to and through the Closing Date, Sellers will: (i) make commercially reasonable efforts to operate the Business in the Ordinary Course of Business in all material respects; (ii) not sell or dispose of any Purchased Assets; (iii) maintain the Purchased Assets in their current condition, ordinary wear and tear excepted (and excluding sales of inventory in the Ordinary Course of Business); (iv) not materially amend, modify, terminate, let lapse or waive any rights under, or create any Lien with respect to, any of the Purchased Contracts; (v) make commercially reasonable efforts to preserve its current relationships with the suppliers, vendors, customers, clients, contractors and other Persons having business dealings with the Business; (vi) make commercially reasonable efforts to defend and protect the Purchased Assets from infringement or deterioration; (vii) comply with applicable Laws with respect to the Purchased Assets, other than with respect to the failure of such compliance as would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect; and (viii) not enter into any agreement or commitment to take any action prohibited by this Section 8.2.

8.3 Consents. Sellers and Purchaser will use their commercially reasonable efforts to obtain at the earliest practicable date all consents and approvals contemplated by this Agreement, including the consents and approvals referred to in Section 5.3 and the Necessary Consents; provided, however, that none of Sellers or Purchaser will be obligated to pay any consideration therefor to any third party from whom consent or approval is requested or to initiate any litigation or proceedings to obtain any such consent or approval.

8.4 Further Assurances. Subject to the other provisions of this Agreement, each of Purchaser and each Seller will use its commercially reasonable efforts to (a) take all actions necessary or appropriate to consummate the Transactions, (b) provide the other Parties with reasonable cooperation and take such actions as such other Parties may be reasonably request in connection with the consummation of the Transactions, (c) following the Closing, execute and deliver such additional documents, instruments, assignments, conveyances and assurances, and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the Transactions, and (d) cause the fulfillment at the earliest practicable date of all of the conditions to their respective obligations to consummate the Transactions. Without limiting the foregoing, each of Purchaser and each Seller will use its commercially reasonable efforts to defend any Legal Proceedings which would prevent the condition to the Closing described in Section 0 from being satisfied, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Body with respect thereto vacated or reversed, and will cooperate with each other in connection with the foregoing. If requested by Purchaser prior to the Closing, Sellers will (x) provide Purchaser with reasonable access to the personnel records (including compensation data) of individuals employed by any Seller in connection with the operation of the Garden Grove Facility, the La Mirada Warehouse, the Sequoia Facility and the 747 Facility (the “Facility Employees”), (y) cooperate with Purchaser to provide reasonable access to any of the Facility Employees for purposes of extending offers of post-Closing employment with Purchaser, and (z) transfer to Purchaser the personnel records of any Facility Employees who accept an offer of post-Closing employment with Purchaser.

8.5 Publicity. With the exception of press releases issued by the Company and Purchaser on the Effective Date and the Closing Date in forms mutually agreeable to the Company and Purchaser, Purchaser and Sellers will not issue any press release or public announcement concerning this Agreement or the Transactions without obtaining the prior written approval of the other Parties, which approval may not be unreasonably withheld, except that such consent shall not be required if disclosure is otherwise required by applicable Law or by the Bankruptcy Court; provided, however, that Purchaser or Sellers, as applicable, will use its or their commercially reasonable efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other Parties with respect to the text of any such required disclosure.

8.6 Confidentiality.

(a) Purchaser acknowledges that Confidential Information (as defined in the Confidentiality Agreement) has been, and in the future will be, provided to it in connection with this Agreement, including under Section 8.1, and is subject to the terms of the confidentiality agreement dated April 28, 2016 between the Company and Purchaser (the “Confidentiality Agreement”), the terms of which are incorporated herein by reference. Purchaser acknowledges and understands that this Agreement may be

publicly filed in the Bankruptcy Court and further made available by Sellers to prospective bidders and that, except as prohibited herein, such disclosure will not be deemed to violate any confidentiality obligations owing to Purchaser, whether pursuant to this Agreement, the Confidentiality Agreement or otherwise. Sellers acknowledge that from and after the Closing, all non-public information relating to the Purchased Assets and the Assumed Liabilities, will be valuable and proprietary to Purchaser and its Affiliates. Sellers agree that, from and after the Closing, no Seller will disclose to any Person any information relating to Purchaser and its Affiliates, the Purchased Assets or the Assumed Liabilities, except as required by Law or as otherwise becomes available in the public domain other than through any action by any Seller in violation of its obligations under this Section 8.6. Sellers acknowledge and agree that the remedies at law for any breach or threatened breach of this Section 8.6 by any Seller are inadequate to protect Purchaser and its Affiliates and that the damages resulting from any such breach are not readily susceptible to being measured in monetary terms. Accordingly, without prejudice to any other rights or remedies otherwise available to Purchaser or its Affiliates, each Party acknowledges and agrees that upon any breach or threatened breach by a Seller of the terms and conditions of this Section 8.6, Purchaser and its Affiliates, as applicable will be entitled to immediate injunctive relief and to seek an order restraining any threatened or future breach from any court of competent jurisdiction without proof of actual damages or posting of any bond in connection with any such remedy. The provisions of this Section 8.6 will survive the Closing.

(b) Following the Closing, Purchaser shall treat all Customer Information that constitutes “personally identifiable information” (as such term is used in Section 363(b) of the Bankruptcy Code) of any customer of the Business in accordance with the terms and conditions of Sellers’ privacy policies relating to Customer Information in effect as of the Closing Date.

8.7 Limited License to Purchased Intellectual Property.

(a) If the Bankruptcy Court enters the Bidding Procedures Order scheduling the Auction for a date that is later than January 15, 2017, Sellers shall grant Purchaser during the period between January 15, 2017 and Closing (or the termination of this Agreement in accordance with its terms), an exclusive (except with respect to Sellers and subject to any licenses existing as of January 15, 2017) worldwide, royalty-free, non-transferable and non-sublicensable license to use all Trademarks included in the Purchased Intellectual Property (the “License”) solely in connection with the manufacture of finished goods merchandise in a manner and quantity mutually agreed upon in writing by the Parties, but in no event exceeding 1,000,000 units of finished goods merchandise (the “Licensed Merchandise”). If Sellers consummate a Competing Transaction, the winning bidder shall have the right, in its sole and absolute discretion, to purchase the Licensed Merchandise from Purchaser at the Inventory Cost Value. If the winning bidder in a Competing Transaction elects not to purchase the Licensed Merchandise, Sellers

agree, and shall ensure that the purchase agreement with the winning bidder provides that, Purchaser shall be permitted to sell the Licensed Merchandise to any other Person(s) in its sole and absolute discretion.

(b) In exercising its rights with respect to the License, Purchaser shall comply with all applicable Laws. Following the grant of the License, Purchaser shall promptly provide Sellers with copies of all communications of Purchaser, relating to the Purchased Intellectual Property or the Licensed Merchandise, with any Governmental Body. Purchaser shall indemnify, defend and hold harmless Sellers against all losses arising out of or resulting from any third party claim, suit, action or proceeding related to or arising out of the breach of the License by Purchaser.

8.8 Bulk Transfer Laws. Purchaser 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 Purchased Assets shall be free and clear of any Encumbrances (as defined in the Sale Order) in the Purchased Assets, including any Encumbrances (as defined in the Sale Order) arising out of the bulk transfer Laws.

8.9 DIP Financing. From the date Sellers obtain DIP Financing until the earlier to occur of (a) the Closing and (b) the termination of this Agreement, Sellers shall use their reasonable best efforts not to violate the terms and conditions of the DIP Financing in a manner that would reasonably be expected to prevent, materially delay or materially impair the ability of any Seller to consummate the Transactions.

8.10 Wholesale Purchase Order Reports. From the date of delivery of the Wholesale Purchase Order until the earlier of the Closing or the termination of this Agreement in accordance with its terms, Sellers shall deliver, on a weekly basis, a report to Purchaser providing in reasonable detail the progress made towards fulfillment of the Wholesale Purchase Order, with the form of such report to be reasonably agreed by Purchaser and Sellers promptly following the Effective Date.

8.11 Additional Agreements.

(a) From the Closing Date to 100 days thereafter (the “Retail Operation Assistance Period”), Purchaser shall grant Sellers an exclusive, worldwide, royalty-free, fully transferable and fully sublicensable license to use the Purchased Intellectual Property solely in connection with in-store sales of Sellers’ retail inventory (as existing as of the Closing Date) at Sellers’ retail locations (as existing as of the Closing Date); provided, that, except for the Excluded Wholesale Inventory, in no event shall Sellers be permitted to sell any Wholesale Inventory, print wear (wholesale) to customers, or more than *de minimis* amounts of such retail inventory to wholesalers.

(b) During the Retail Operation Assistance Period, Purchaser shall provide Sellers access to and use of the La Mirada Assets (to the extent such assets are Purchased Assets), the IT Assets, the Purchased Assets, and other assets related thereto that are useful or necessary for Sellers to exercise their rights under Section 8.11(a) (the “Retail Operation Assistance Assets”). Sellers shall reimburse Purchaser for the costs and expenses attributable to Sellers’ access to and use of the Retail Operation Assistance Assets, the amount of such costs and expenses to be mutually determined by the Parties in good faith. Prior to Sellers’ access to or use of the Retail Operation Assistance Assets, Sellers shall execute a customary confidentiality agreement in a form reasonably acceptable to Purchaser.

(c) From the Closing Date until the expiration or termination of the lease relating to the 747 Facility, Seller shall provide Purchaser access to and use of the 747 Facility as useful or necessary for Purchaser to exercise its rights under this Agreement, access the Purchased Assets and as otherwise reasonably requested by Purchaser to effect the transition of the Business. Further, as requested by Purchaser upon reasonable notice, Sellers shall use their commercially reasonable efforts to extend the lease relating to the 747 Facility to effect the transition of the Business or as useful or necessary for Purchaser. Purchaser shall reimburse Sellers for the costs and expenses attributable to Purchasers’ access to and use of the 747 Facility (including the rent, cost and expenses for any extension by Sellers of the lease relating to the 747 facility requested by Purchaser), the amount of such costs and expenses to be mutually determined by the Parties in good faith.

(d) From the Effective Date to the Closing Date, as reasonably requested by Purchaser, Sellers shall use commercially reasonable efforts to provide Purchaser with access to each of Sellers’ suppliers and facilitate Purchasers’ placement of purchase orders for Sellers’ products with any such suppliers; provided, that any goods purchased or delivered pursuant to such purchase orders shall be at Purchasers’ sole cost and expense.

IX. CONDITIONS TO CLOSING

9.1 Conditions Precedent to Obligations of Purchaser. The obligation of Purchaser to consummate the Transactions is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Purchaser in whole or in part to the extent permitted by applicable Law):

(a) the representations and warranties of Sellers contained in this Agreement (i) that are not qualified by materiality or Seller Material Adverse Effect or similar qualification shall be true and correct in all material respects on and as of the Closing, except to the extent expressly made as of an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date, and (ii) that are qualified by materiality or Seller Material Adverse Effect or

similar qualification shall be true and correct in all respects on and as of the Closing, except to the extent expressly made as of an earlier date, in which case such representations and warranties shall be true and correct in all respects as of such earlier date, and Purchaser shall have received a certificate signed by an authorized officer of each Seller on behalf of such Seller, dated the Closing Date, to the foregoing effect;

(b) Sellers shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by them prior to or on the Closing Date, and Purchaser shall have received a certificate signed by an authorized officer of each Seller on behalf of such Seller, dated the Closing Date, to the foregoing effect;

(c) the Bidding Procedures Order (i) shall not have been voided, reversed or vacated or subject to a stay and (ii) shall not have been amended, modified or supplemented in any way, subject only to immaterial clarifications, without Purchaser's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed;

(d) the Bankruptcy Court shall not have entered an order (i) appointing a trustee or examiner with expanded powers or (ii) dismissing the Bankruptcy Cases or converting the Bankruptcy Cases to cases under Chapter 7 of the Bankruptcy Code;

(e) the Bankruptcy Court shall have entered the Sale Order and the Sale Order shall (i) be a Final Order, provided that Purchaser agrees to waive the requirement that the Sale Order become a Final Order unless (a) it reasonably and in good faith determines that waiving such condition would adversely impact it in any material respect or (b) the Sale Order has been voided, reversed or vacated or is subject to a stay, (ii) not have been amended, modified or supplemented in any way, subject only to immaterial clarifications, without Purchaser's prior written consent, which shall not be unreasonably withheld, conditioned or delayed and (iii) be in full force and effect;

(f) Sellers shall have complied with and fulfilled the Wholesale Purchase Order in all material respects; and

(g) Sellers shall have delivered, or caused to be delivered, to Purchaser all of the items set forth in Section 4.2.

9.2 Conditions Precedent to Obligations of Sellers. The obligations of Sellers to consummate the Transactions are subject to the fulfillment, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by Sellers in whole or in part to the extent permitted by applicable Law):

(a) the representations and warranties of Purchaser contained in this Agreement (i) that are not qualified by materiality or Purchaser Material Adverse Effect

or similar qualification shall be true and correct in all material respects on and as of the Closing, except to the extent expressly made as of an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such earlier date, and (ii) that are qualified by materiality or Purchaser Material Adverse Effect or similar qualification shall be true and correct in all respects on and as of the Closing, except to the extent expressly made as of an earlier date, in which case such representations and warranties shall be true and correct in all respects as of such earlier date, and Sellers shall have received a certificate signed by an authorized officer of Purchaser on behalf of Purchaser, dated the Closing Date, to the foregoing effect;

(b) Purchaser shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by Purchaser prior to or on the Closing Date, and Sellers shall have received a certificate signed by an authorized officer of Purchaser on behalf of Purchaser, dated the Closing Date, to the foregoing effect;

(c) the Bankruptcy Court shall have entered the Sale Order and the Sale Order shall not be subject to a stay or have been vacated or revoked; and

(d) Purchaser shall have delivered to Sellers all of the items set forth in Section 4.3.

9.3 Conditions Precedent to Obligations of Purchaser and Sellers. The respective obligations of Purchaser and Sellers to consummate the Transactions are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Purchaser and Sellers in whole or in part to the extent permitted by applicable Law) there shall not be in effect any Order by a Governmental Body restraining, enjoining or otherwise prohibiting the consummation of the Transactions.

9.4 Frustration of Closing Conditions. No Party may rely on the failure of any condition set forth in Sections 9.1, 9.2 or 9.3, as the case may be, if such failure was caused by such Party's breach of any provision of this Agreement.

X. TAXES

10.1 Transfer Taxes. All documentary, stamp, transfer, motor vehicle registration, sales, use, value added, excise and other similar non-income Taxes and all filing and recording fees (and any penalties and interest associated with such Taxes and fees) arising from or relating to the consummation of the Transactions (collectively, "Transfer Taxes") will be borne by Purchaser, regardless of the Party on whom liability is imposed under the provisions of the Laws relating to such Transfer Taxes. Sellers and Purchaser will consult and cooperate in timely preparing and making all filings, Tax Returns, reports and forms as may be required to comply with the provisions of the Laws

relating to such Transfer Taxes and will cooperate and otherwise take commercially reasonable efforts to obtain any available refunds for or exemptions from such Transfer Taxes, including preparing exemption certificates and other instruments as are applicable to claim available exemptions from the payment of Transfer Taxes under applicable Law and executing and delivering such affidavits and forms as are reasonably requested by the other Party.

10.2 Purchase Price Allocation.

(a) As promptly as practicable after the Closing Date, but no later than 90 days thereafter, Purchaser will prepare and deliver to Sellers, an allocation schedule setting forth the amounts to be allocated among Sellers and among the Purchased Assets of each Seller, pursuant to (and to the extent necessary to comply with) Section 1060 of the Code and the applicable regulations promulgated thereunder (or, if applicable, any similar provision under state, local or foreign Law or regulation) (the “Proposed Allocation Statement”). Sellers will have 20 Business Days following delivery of the Proposed Allocation Statement during which to notify Purchaser in writing (an “Allocation Notice of Objection”) of any objections to the Proposed Allocation Statement, setting forth in reasonable detail the basis of their objections. If Sellers fail to deliver an Allocation Notice of Objection in accordance with this Section 10.2(a) the Proposed Allocation Statement will be conclusive and binding on all Parties and will become the “Final Allocation Statement.” If Sellers submit an Allocation Notice of Objection, then for 20 Business Days after the date Purchaser receives the Allocation Notice of Objection, Purchaser and Sellers will use their commercially reasonable efforts to agree on the allocations. Failing such agreement within 20 Business Days of such notice, the unresolved allocations will be submitted to an independent, internationally-recognized accounting firm mutually agreeable to Purchaser and Sellers, which firm will be instructed to determine its best estimate of the allocation schedule based on its determination of the unresolved allocations and provide a written description of the basis for its determination within 45 Business Days after submission, such written determination to be final, binding and conclusive. The fees and expenses of such accounting firm will be apportioned among Sellers and Purchaser equally. For the avoidance of doubt, in administering any Legal Proceeding, the Bankruptcy Court shall not be required to apply the Final Allocation Statement in determining the manner in which the Purchase Price should be allocated as between Sellers and their respective estates.

(b) Sellers and Purchaser and their respective Affiliates will report, act, and file Tax Returns (including, but not limited to IRS Form 8594) in all respects and for all purposes consistent with the Final Allocation Statement. Neither Sellers nor Purchaser will take any position (whether in audits, Tax Returns, or otherwise) that is inconsistent with the Final Allocation Statement unless required to do so by applicable Law.

10.3 Cooperation and Audits. Purchaser, Sellers and their respective Affiliates will cooperate fully with each other regarding Tax matters and will make available to the other as reasonably requested all information, records and documents relating to Taxes governed by this Agreement until the expiration of the applicable statute of limitations or extension thereof or the conclusion of all audits, appeals or litigation with respect to such Taxes.

XI. GENERAL GOVERNING PROVISIONS

11.1 No Survival of Representations and Warranties. The Parties agree that the representations and warranties contained in this Agreement will not survive the Closing hereunder, and none of the Parties will have any liability to each other after the Closing for any breach thereof. The Parties agree that the covenants contained in this Agreement to be performed at or after the Closing will survive the Closing hereunder until the expiration of the applicable statute of limitations or for such shorter period explicitly specified therein, and each Party will be liable to the other after the Closing for any breach thereof.

11.2 Expenses. Except as otherwise expressly provided in this Agreement, whether or not the Transactions are consummated, each of Sellers, on the one hand, and Purchaser, on the other hand, will bear its own expenses incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the Transactions and all proceedings incident thereto.

11.3 Injunctive Relief.

(a) The Parties agree that irreparable damages would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, and that damages at law may be an inadequate remedy for the breach of any of the covenants, promises and agreements contained in this Agreement, and, accordingly, any Party will be entitled to injunctive relief to prevent any such breach, and to specifically enforce specifically the terms and provisions of this Agreement, including without limitation specific performance of such covenants, promises or agreements or an order enjoining a Party from any threatened, or from the continuation of any actual, breach of the covenants, promises or agreements contained in this Agreement. The rights set forth in this Section 11.3 will be in addition to any other rights which a Party may have at law or in equity pursuant to this Agreement.

(b) The Parties hereby agree not to raise any objections to the availability of the equitable remedy of specific performance to prevent or restrain breaches of this Agreement by Purchaser or Sellers, as applicable, and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened

breaches of, or to enforce compliance with, the respective covenants and obligations of Purchaser or Sellers, as applicable, under this Agreement all in accordance with the terms of this Section 11.3.

11.4 Submission to Jurisdiction; Consent to Service of Process.

(a) Without limiting any Party's right to appeal any order of the Bankruptcy Court, (i) the Bankruptcy Court will retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the Transactions, and (ii) any and all proceedings related to the foregoing will be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court for such purposes and will receive notices at such locations as indicated in Section 11.8; provided, however, that if the Bankruptcy Cases have been closed pursuant to Section 350 of the Bankruptcy Code, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or in the event (but only in the event) that such court does not have subject matter jurisdiction over such Action in the United States District Court for the District of Delaware) and any appellate court from any thereof, for the resolution of any such claim or dispute. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(b) Each of the Parties hereby consents to process being served by any other Party in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 11.8; provided, however, that such service will not be effective until the actual receipt thereof by the Party being served.

11.5 Waiver of Right to Trial by Jury. Each Party to this Agreement waives any right to trial by jury in any action, matter or proceeding regarding this Agreement or any provision hereof.

11.6 Entire Agreement; Amendments and Waivers. This Agreement represents the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the Party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including any investigation by or on

behalf of any Party, will be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any Party of a breach of any provision of this Agreement will not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder will operate as a waiver thereof, nor will any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.

11.7 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Delaware applicable to contracts made and performed in such State.

11.8 Notices. All notices and other communications under this Agreement will be in writing and will be deemed given (i) when delivered personally by hand, (ii) when sent by email (with written confirmation of transmission) or (iii) one Business Day following the day sent by overnight courier (with written confirmation of receipt), in each case at the following addresses and email addresses (or to such other address or email address as a Party may have specified by notice given to the other Party pursuant to this provision):

If to Sellers, to:

American Apparel, LLC
747 Warehouse Street
Los Angeles, CA 90021
Attention: Chelsea A. Grayson, Chief
Executive Officer
Lance E. Miller, VP of Legal
Email: cgrayson@AmericanApparel.net
lancemiller@AmericanApparel.net

With a copy (which will not constitute notice) to:

Jones Day
250 Vesey Street
New York, NY 10281
Attention: Scott J. Greenberg
James P. Dougherty
Carl E. Black
Email: sgreenberg@jonesday.com
jpdougherty@jonesday.com
ceblack@jonesday.com

If to Purchaser, to:

Gildan Activewear SRL
c/o Gildan Activewear Inc.
600 de Maisonneuve Boulevard West, 33rd
Floor
Montréal, Quebec H3A 3J2
Attention: Lindsay Matthews
Email: LMatthews@gildan.com

With copies (which will not constitute notice) to:

Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004
Attention: Brian E. Hamilton
Michael H. Torkin
Email: Hamiltonb@sullcrom.com
Torkinm@sullcrom.com

11.9 Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any law or public policy, all other terms or provisions of this Agreement will nevertheless remain in full force and effect so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the Transactions are consummated as originally contemplated to the greatest extent possible.

11.10 Assignment. This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Nothing in this Agreement will create or be deemed to create any third party beneficiary rights in any Person or entity not a party to this Agreement. No assignment of this Agreement or of any rights or obligations hereunder may be made by either Sellers or Purchaser (by operation of law or otherwise) without the prior written consent of the other Parties and any attempted assignment without the required consents will be void; provided, however, that (a) Purchaser may assign some or all of its rights or delegate some or all of its obligations hereunder to one or more Affiliates, (b) Purchaser may assign some or all of its rights to receive assignment of any Purchased Assets hereunder to any third party and (c) Sellers may assign some or all of their rights or delegate some or all of their obligations hereunder to successor entities (including any liquidating trust) pursuant to a Chapter 11 plan confirmed by the Bankruptcy Court, in the case of each clause (a) to (c) without any other Party's consent. No assignment of any obligations hereunder will

relieve the Parties of any such obligations. Upon any such permitted assignment, the references in this Agreement to Sellers or Purchaser will also apply to any such assignee unless the context otherwise requires.

11.11 Non-Recourse. No past, present or future director, officer, employee, incorporator, member, partner, equityholder, incorporator, manager, agent, attorney, representative or Affiliate of the parties to this Agreement or any of their Affiliates will have any liability for any obligations or liabilities of Sellers or Purchaser, as applicable, under this Agreement or any agreement entered into in connection herewith of or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby and thereby. Any claim or cause of action based upon, arising out of, or related to this Agreement or any agreement, document or instrument contemplated hereby may only be brought against Persons that are expressly named as Parties or thereto, and then only with respect to the specific obligations set forth herein or therein. Other than the Parties, no other party will have any liability or obligation for any of the representations, warranties, covenants, agreements, obligations or liabilities of any Party under this Agreement or the agreements, documents or instruments contemplated hereby or of or for any Legal Proceeding based on, in respect of, or by reason of, Transactions (including the breach, termination or failure to consummate such transactions), in each case whether based on contract, tort, fraud, strict liability, other Laws or otherwise and whether by piercing the corporate veil, by a claim by or on behalf of a Party or another Person or otherwise. In no event will any Person be liable to another Person for any remote, speculative or punitive damages with respect to the Transactions.

11.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the Effective Date.

PURCHASER:

GILDAN ACTIVEWEAR SRL

By: _____

Name: _____

Title: _____

Michael R. Hoffman
President

COMPANY:


AMERICAN APPAREL, LLC

By: 
Name: Bradley Scher
Title: Chairman


[Signature Page to Asset Purchase Agreement]

OTHER SELLERS:


AMERICAN APPAREL (USA), LLC

By: 
Name: Bennett L. Nussbaum
Title: Chief Financial Officer


AMERICAN APPAREL DYEING &
FINISHING, INC.

By: 
Name: Bennett L. Nussbaum
Title: Chief Financial Officer

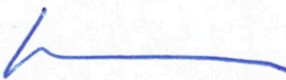
KCL KNITTING, LLC

By: 
Name: Bennett L. Nussbaum
Title: Chief Financial Officer

AMERICAN APPAREL RETAIL, INC.

By: 
Name: Bennett L. Nussbaum
Title: Chief Financial Officer

FRESH AIR FREIGHT, INC.

By: 
Name: Bennett L. Nussbaum
Title: Chief Financial Officer

AMERICAN APPAREL MEXICO, S. DE
R.L. DE C.V.



By: _____
Name: Bennett L. Nussbaum
Title: Director

Disclosure Schedules Omitted

(Available to Qualified Bidders upon Request and
Entry into a Satisfactory Confidentiality Agreement)

Exhibit A

Form of Bidding Procedures

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
	:	
AMERICAN APPAREL, LLC, <i>et al.</i> , ¹	:	Case No. 16- _____ ()
	:	
Debtors.	:	(Jointly Administered)
	:	
	:	

BIDDING PROCEDURES

On November 14, 2016, the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") a motion (Docket No. __) (the "Motion") seeking entry of (a) an order (i) authorizing and approving bidding procedures (the "Bidding Procedures"), to be used in connection with the sale (the "Sale" or "Sale Transaction") of substantially all of the Debtors' assets (the "Assets"); (ii) approving and authorizing the Debtors to enter into the stalking horse asset purchase agreement substantially in the form (the "Stalking Horse APA") attached as Exhibit 1, by and between certain of the Debtors as sellers and Gildan Activewear SRL as buyer (the "Stalking Horse"), subject to higher and better offers submitted in accordance with these Bidding Procedures (iii) authorizing the Debtors to pay the termination fee (the "Termination Fee") and expense reimbursement (the "Expense Reimbursement") set forth in and pursuant to the terms of the Stalking Horse APA (the "Bid Protections"); (iv) scheduling an auction for the Assets (the "Auction"), the hearing with respect to the approval of the sale (the "Sale Hearing") and approval of the form and manner of notice thereof; (v) authorizing certain procedures related to the Debtors' assumption and assignment of executory contracts and unexpired leases (the "Assignment Procedures") in connection with any Sale, including notice to each non-Debtor counterparty (each, a "Counterparty") to an executory contract or unexpired lease (collectively, the "Contracts") of the Debtors' proposed cure amounts to cure all monetary defaults under the Contracts (the "Cure Costs"), if any, and notice of proposed assumption and assignment of certain Contracts (collectively, the "Proposed Assumed Contracts") in connection with a particular Sale; and (vi) granting related relief.

On [__], the Bankruptcy Court entered the *Order (I) Approving Bidding Procedures for the Sale of Substantially all of the Debtors' Assets, (II) Authorizing the Debtors to Enter into the Stalking Horse Purchase Agreement, (III) Approving Bid Protections, (IV) Scheduling an*

¹ The Debtors are the following six entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): American Apparel, LLC (0601); American Apparel (USA), LLC (8940); American Apparel Retail, Inc. (7829); American Apparel Dyeing & Finishing, Inc. (0324); KCL Knitting, LLC (9518); and Fresh Air Freight, Inc. (3870). The address of each of the Debtors is 747 Warehouse Street, Los Angeles, California 90021.

Auction, (V) Approving the Form and Manner of Notice Thereof, (VI) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof and (VII) Granting Related Relief (Docket No. __) (the "Bidding Procedures Order"). Pursuant to the Bidding Procedures Order, the Debtors are authorized to employ the Bidding Procedures in connection with the Sale and are empowered to take all actions necessary or appropriate to implement the following:

Set forth below are the Bidding Procedures that will be employed in connection with the Sale of substantially all of the Debtors' Assets, including the Debtors' intellectual property, wholesale inventory and at the Stalking Horse's option, the Debtors' manufacturing and distribution facilities in Garden Grove, La Mirada and South Gate, California and the Debtors' corporate headquarters in Los Angeles, California (collectively, the "Stalking Horse Assets").

The ability to undertake and consummate the Sale of Stalking Horse Assets pursuant to the Stalking Horse APA and the Sale(s) of any Asset other than the Stalking Horse Assets, shall be subject to competitive bidding as set forth herein and approval by the Bankruptcy Court. In addition to the Stalking Horse bid, the Debtors will consider bids for any or all of the Assets (including the Stalking Horse Assets) in a single bid from a single bidder, or in multiple bids from multiple bidders.

I. KEY DATES AND DEADLINES

November 30, 2016	Hearing to Consider Entry of the Bidding Procedures Order
December 15, 2016	Deadline to file Cure Objections
December 19, 2016	Bid Deadline
December 20, 2016	Deadline for Debtors to notify bidders of their status as Qualified Bidders
December 21, 2016	Auction, to be held at the offices of Jones Day, 250 Vesey Street, New York, New York 10281
December 22, 2016	Deadline to file objections to Sale Transaction(s)
December 27, 2016	Deadline to file Adequate Assurance Objections
December 30, 2016	Hearing to approve proposed Sale Transaction(s)

II. DUE DILIGENCE

To be eligible to participate in the Auction, each person or entity that desires to participate in the Auction (each, a "Prospective Bidder") must first deliver to each of the Bid Notice Parties:

- an executed confidentiality agreement, in form and substance satisfactory to the Debtors and consistent with the terms of the confidentiality agreements that the

Debtors required potential bidders to sign prior to the filing of these chapter 11 cases;

- a statement and other factual support demonstrating to the Debtors' satisfaction in the exercise of their reasonable business judgment that the Prospective Bidder has a *bona fide* interest in purchasing the Assets; and
- preliminary proof by the Prospective Bidder of its financial capacity to close a proposed Sale Transaction, which may include current unaudited or verified financial statements of, or verified financial commitments obtained by, the Prospective Bidder (or, if the Prospective Bidder is an entity formed for the purpose of acquiring the property to be sold, the party that will bear liability for a breach), the adequacy of which the Debtors and its advisors will determine; provided that such proof shall not be required to the extent that the Prospective Bidder's financial capacity is reasonably known to the Debtors' investment banker.

Upon execution of a valid confidentiality agreement, any Prospective Bidder identified by the Debtors as reasonably likely to be a Qualified Bidder (as defined below) that wishes to conduct due diligence on the Assets may be granted access to all material information regarding the Assets; provided that, if any Prospective Bidder is (or is affiliated with) a competitor of the Debtors, the Debtors will not be required to disclose to such Prospective Bidder any trade secrets or proprietary information, as determined in their sole discretion, unless the confidentiality agreement executed by such Prospective Bidder has an effective term of at least 18 months and contains appropriate provisions to ensure that such trade secrets or proprietary information will not be used for an improper purpose or to gain an unfair competitive advantage. If the Debtors determine at any time that a Prospective Bidder is not reasonably likely to qualify as a Qualified Bidder, then such Prospective Bidder shall not be entitled to receive further due diligence access or non-public information and all information provided by the Debtors prior to such time will be returned to the Debtors or destroyed in accordance with the terms of the applicable confidentiality agreement.

The Debtors will work to accommodate all reasonable requests for additional information and due diligence access from Prospective Bidders. All due diligence requests shall be directed to (i) the Debtors, American Apparel, LLC, 747 Warehouse Street, Los Angeles, California 90021 (Attn: Lance Miller), (ii) the Debtors' financial advisors, Berkeley Research Group, LLC, (Attn: Joe D'Ascoli (jdascoli@thinkbrg.com)) and (iii) the Debtors' investment banker, Houlihan Lokey, Inc., 245 Park Avenue, 20th Fl., New York, NY 10167 (Attn: Devin Shanahan (dshanahan@hl.com)).

III. BID DEADLINE

Any Prospective Bidder that intends to participate in the Auction must submit its bid (and such bid must constitute a Qualified Bid (as hereinafter defined)) on or before **December 19, 2016 at 5:00 p.m. (prevailing Eastern Time)** (the "Bid Deadline") in writing to the Bid Notice Parties (as defined in Section VIII.B). Any bid received after the Bid Deadline will not constitute a Qualified Bid. A Good Faith Deposit (as defined below) must be contemporaneously provided

with any bid by wire transfer or certified check pursuant to delivery instructions to be provided by the Debtors prior to the Bid Deadline.

The Debtors shall promptly provide copies of all bids received to the Consultation Parties; provided that the Debtors shall not be required to provide to any Consultation Party any material, nonpublic information regarding bids for the Assets if such Consultation Party submits a bid to purchase all or any portion of the Assets. Further, the Debtors shall not be required to consult with any Consultation Party pursuant to the terms of these Bidding Procedures if such party is an active bidder at the applicable time.

IV. BID REQUIREMENTS

A. Qualified Bid Requirements

To qualify as a "Qualified Bid," the bid must be in writing and the Debtors must determine that the bid satisfies the following requirements:

1. Purchased Assets. A Qualified Bid must identify the following:
 - a) the Assets or the portion thereof to be purchased, including any Contracts of the Debtors that would be assumed and assigned in connection with the relevant Sale Transaction (all such Contracts, the "Proposed Assumed Contracts");
 - b) the liabilities, if any, to be assumed, including any debt to be assumed;
 - c) the cash purchase price of, and any other consideration offered in connection with, the bid; provided that, if the bid is for the Stalking Horse Assets, such purchase price must exceed the aggregate sum of (i) the Stalking Horse's Bid, (ii) the Termination Fee, (iii) the Expense Reimbursement payable to the Stalking Horse under the Stalking Horse APA (which for purposes of determining the Baseline Bid (defined below) shall be deemed to be \$1 million;
 - d) the proposed form of adequate assurance of future performance with respect to any Proposed Assumed Contracts; and
 - e) whether the Prospective Bidder intends to operate all or a portion of the Debtors' business as a going concern (as applicable), or to liquidate the business.
2. Identification of Bidder. A Qualified Bid must fully disclose the legal identity of each person or entity bidding for the applicable Assets or otherwise sponsoring, financing (including through the issuance of debt in connection with such bid), participating in (including through license or similar arrangement with respect to the assets to be acquired in connection with such bid) such bid or the Auction in connection with such bid, and

the complete terms of any such participation, and must also disclose any past or present connections or agreements with the Debtors, the Stalking Horse, any other known Prospective Bidder or Qualified Bidder, and/or any officer or director of the foregoing (including any current or former officer or director of the Debtors).

3. Asset Purchase Agreement for Stalking Horse Assets Only. A Qualified Bid solely for the Stalking Horse Assets must include a duly authorized and executed copy of the Stalking Horse APA modified to reflect such Qualified Bidder's Proposed Sale Transaction (the "Alternative IP/ Inventory Transaction Agreement") (including all exhibits and schedules thereto), together with copies marked to show any amendments and modifications to (i) the Stalking Horse APA and (ii) the proposed order approving the Sale attached to the Motion as Exhibit C (the "Proposed Sale Order").
4. Asset Purchase Agreement for Non-Stalking Horse Assets. A Qualified Bid that includes any Assets other than the Stalking Horse Assets must include a duly authorized and executed copy of the form asset purchase agreement provided by the Debtors (the "Form APA") modified to reflect such Qualified Bidder's Proposed Sale Transaction (the "Alternative Transaction Agreement") (including all exhibits and schedules thereto), together with copies marked to show any amendments and modifications to (i) the Form APA and (ii) the Proposed Sale Order.
5. Credit Bidding. In connection with the Sale of all or any portion of the Assets, a person or entity holding a perfected security interest in such Assets may seek to credit bid some or all of their claims that are not subject to a bona fide dispute for their respective collateral (each such bid, a "Credit Bid") pursuant to section 363(k) of the Bankruptcy Code. A Credit Bid may be applied only to reduce the cash consideration with respect to the Assets in which the party submitting the Credit Bid holds a security interest. Each person or entity holding a valid, perfected security interest in Assets for which it submits a bid shall be deemed a Qualified Bidder with respect to its right to acquire such Assets by Credit Bid; provided, however, that the Prepetition Secured Lenders will not credit bid if the result of such credit bid would be to overbid an otherwise Successful Bid by the Stalking Horse for the Stalking Horse Assets.
6. Financial Information. A Qualified Bid must include the following:
 - a) a statement that the Prospective Bidder is financially capable of consummating the Sale Transaction(s) contemplated by the Stalking Horse APA or Alternative Transaction Agreement (as applicable);

- b) if the bid includes a Credit Bid pursuant to section 363(k) of the Bankruptcy Code, a statement that any remaining balance of the bid after reducing the applicable purchase price of the Assets by the amount of the proposed Credit Bid is based on an all-cash offer; and
 - c) satisfactory evidence of committed financing or other financial ability to consummate the proposed Sale Transaction(s) in a timely manner.
- 7. Good Faith Deposit. Each Qualified Bid [(other than one that includes a Credit Bid)] must be accompanied by a good faith deposit (the "Good Faith Deposit") in the form of cash (or other form acceptable to the Debtors in their sole and absolute discretion) in an amount equal to 10% of the purchase price offered to purchase the Assets (or portion thereof). All Good Faith Deposits shall be held in escrow in a non-interest bearing account identified by the Debtors until no later than five business days after the conclusion of the Auction unless such bidder is selected as the Successful Bidder or as a Backup Bidder (as hereinafter defined), and thereafter returned to the respective Qualified Bidders in accordance with the Bidding Procedures or in the case of the Stalking Horse, return of its Good Faith Deposit shall be governed by the Stalking Horse APA. The Debtors reserve the right to increase the Good Faith Deposit for one or more Qualified Bidders (as defined below) (other than the Stalking Horse's Good Faith Deposit) in their sole discretion after consulting with the Consultation Parties.
- 8. Adequate Assurance. A Qualified Bid must include evidence of the Prospective Bidder's ability to comply with section 365 of the Bankruptcy Code (to the extent applicable), including providing adequate assurance of such Prospective Bidder's ability to perform future obligations arising under the contracts and leases proposed in its bid to be assumed by the Debtors and assigned to the Prospective Bidder, in a form that will permit the immediate dissemination of such evidence to the Counterparties to such contracts and leases.
- 9. Representations and Warranties. A Qualified Bid must include the following representations and warranties:
 - a) expressly state that the Prospective Bidder has had an opportunity to conduct any and all due diligence regarding the Debtors' businesses and the Assets prior to submitting its bid; and
 - b) a statement that the Prospective Bidder has relied solely upon its own independent review, investigation, and/or inspection of any relevant documents and the Assets in making its bid and did not rely on any written or oral statements, representations, promises,

warranties, or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the Debtors' businesses or the Assets or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in the Alternative IP/ Inventory Transaction Agreement or Alternative Transaction Agreement (as applicable) signed by the Prospective Bidder and ultimately accepted and executed by the Debtors;

10. Authorization. A Qualified Bid must include evidence of authorization and approval from the Prospective Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of a bid, participation in the Auction, and closing of the proposed Sale Transaction(s) in accordance with the terms of the bid and these Bidding Procedures.
11. Other Requirements. A Qualified Bid shall:
 - a) state that the bid is formal, binding, not subject to or conditioned on any further due diligence, and irrevocable until the selection of the Successful Bid (as defined below) in accordance with these Bidding Procedures; provided that if such Prospective Bidder is selected as the Successful Bidder or Backup Bidder, its bid must remain irrevocable until the Debtors' consummation of a sale with the Successful Bidder;
 - b) if the bid is for the Stalking Horse Assets, state that the bid is not subject to conditions more burdensome than those in the Stalking Horse APA;
 - c) expressly state that the Prospective Bidder is committed to closing the proposed Sale Transaction(s) contemplated by the bid as soon as practicable;
 - d) except for the Bid Protections (as defined in the Bidding Procedures Order) for the Stalking Horse approved in the Bidding Procedures Order, expressly state and acknowledge that no Prospective Bidder shall be entitled to a break-up fee, termination fee, expense reimbursement, or similar type of "bid protection" in connection with the submission of a bid;
 - e) expressly waive any claim or right to assert any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code in connection with bidding for the Assets and/or participating in the Auction;
 - f) not contain any financing contingencies of any kind;

- g) not contain any condition to closing of the proposed Sale Transaction(s) on the receipt of any third party approvals (excluding Bankruptcy Court approval and any applicable required governmental and/or regulatory approval);
- h) state that all necessary filings under applicable regulatory, antitrust, and other laws will be made (pursuant to the terms of the Alternative IP/ Inventory Transaction Agreement or Alternative Transaction Agreement (as applicable)) and that payment of the fees associated therewith shall be made by the Prospective Bidder;
- i) expressly state that the Prospective Bidder agrees to serve as a backup bidder (a "Backup Bidder") if such bidder's Qualified Bid is selected as the next highest or next best bid after the Successful Bid with respect to the applicable Assets;
- j) include contact information for the specific person(s) the Debtors should contact in the event they have any questions about the Prospective Bidder's bid; and
- k) be received by the Bid Notice Parties set forth in Section VIII.B below by the Bid Deadline.

12. Disqualification of Bids. The Debtors, in their business judgment, and in consultation with the Consultation Parties, reserve the right to reject any bid (other than the Stalking Horse bid) if such bid, among other things:

- a) is on terms that are more burdensome or conditional than the terms of the Stalking Horse APA;
- b) requires any indemnification of the Prospective Bidder;
- c) is not received by the Bid Deadline;
- d) is subject to any contingencies (including representations, warranties, covenants and timing requirements) of any kind or any other conditions precedent to such party's obligation to acquire the relevant Assets; or
- e) does not, in the Debtors' determination (after consultation with the Consultation Parties), include a fair and adequate price or the acceptance of which would not be in the best interests of the Debtors estates or the Auction.

Any bid rejected pursuant to this paragraph shall not be deemed to be a Qualified Bid. In the event that any bid is so rejected, the Debtors shall cause the Good Faith Deposit of such Prospective Bidder (including all

accumulated interest thereon) to be refunded to it within five (5) business days after the Bid Deadline.

B. Qualified Bidders

A bid received for all or any portion of the Assets that is determined by the Debtors to meet the requirements set forth in Section IV.A will be considered a "Qualified Bid," and any bidder that submits a Qualified Bid will be considered a "Qualified Bidder." Wilmington Trust, National Association, in its capacity as Administrative Agent under the Debtors' prepetition secured term loan facility and Encina Business Credit, LLC in its capacity as DIP Agent, and their respective designees, affiliates, and assigns automatically shall be deemed Qualified Bidders, and their respective bids automatically shall be deemed to constitute Qualified Bids, regardless of whether their respective Credit Bids meet the requirements set forth in Section IV.A. Wilmington Trust, National Association and Encina Business Credit, LLC shall not be required to submit a Good Faith Deposit in connection with any Credit Bid, provided, however, that the Prepetition Secured Lenders will not credit bid if the result of such credit bid would be to overbid an otherwise Successful Bid by the Stalking Horse for the Stalking Horse Assets. For the avoidance of doubt, (a) the Stalking Horse is a Qualified Bidder, (b) the Stalking Horse APA is a Qualified Bid, (c) the Stalking Horse is authorized to submit any Minimum Overbid during the Auction, in each instance without further qualification required of the Stalking Horse and (d) the Stalking Horse will be deemed to be the Backup Bidder only in accordance with the terms of the Stalking Horse APA and with the prior written consent of the Stalking Horse, exercisable in its sole and absolute discretion.

The Debtors will value a Qualified Bid using any and all factors that the Debtors deem reasonably pertinent, including, without limitation, (i) the amount of the purchase price [and Credit Bid], as applicable, set forth in the Qualified Bid; (ii) the risks and timing associated with consummating a Sale Transaction(s) with the Qualified Bidder; and (iii) any Assets included in or excluded from the Qualified Bid, including any Proposed Assumed Contracts. In addition, the Debtors will consider bids for any or all of the Assets. The Debtors, may, after consulting with the Consultation Parties, accept as a single Qualified Bid, multiple bids for non-overlapping portions of the Assets such that, when taken together in the aggregate, such bids would otherwise meet the standards for a single Qualified Bid.

The Debtors may permit otherwise Qualified Bidders who submitted bids by the Bid Deadline for less than a substantial (but nevertheless a material) portion of the Assets but who were not identified as a component of a single Qualified Bid consisting of such multiple bids, to participate in the Auction and to submit higher or otherwise better bids that in subsequent rounds of bidding may be considered, together with other bids for non-overlapping material portions of the Assets, as part of such a single Qualified Bid for overbid purposes.

The Debtors shall make a determination regarding which bids qualify as a Qualified Bids and as Baseline Bids (as hereinafter defined) and shall notify bidders whether they have been selected as Qualified Bidders by no later than **December 20, 2016 at 12:00 p.m. (prevailing Eastern Time)**.

C. Bid Protections

Except as set forth in the Bidding Procedures Order with respect to the Stalking Horse, no party submitting a bid, whether or not such bid is determined by the Debtors to qualify as a Qualified Bid, shall be entitled to a break-up fee or expense reimbursement, or any other bid protection, unless such break-up fee, expense reimbursement, or other bid protection is approved by the Bankruptcy Court.

V. THE AUCTION

If the Debtors receive more than one Qualified Bid for the same Assets with acceptable purchase prices by the Bid Deadline, the Debtors shall conduct the Auction. The Auction, if required, will be conducted at the offices of Jones Day, 250 Vesey Street, New York, New York 10281 on **December 21, 2016 at 10:00 a.m. (prevailing Eastern Time)**, or at such other time and location as designated by the Debtors in consultation with the Consultation Parties and the Stalking Horse Bidder; provided that the Auction shall not be rescheduled for a date that is beyond the outside date or milestone for the Auction set forth in the Stalking Horse APA. The Debtors shall have the right to conduct any number of Auctions on the date of the Auction to accommodate multiple bids that comprise a single Qualified Bid, if the Debtors determine, in their reasonable business judgment that conducting such auctions would be in the best interests of the Debtors' estates.

If the Debtors receive no more than one Qualified Bid (including the Stalking Horse bid), the Debtors will not hold the Auction and instead shall request at the Sale Hearing (defined below) that the Bankruptcy Court approve the Stalking Horse APA with the Stalking Horse.

All bidders at the Auction will be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to jury trial in connection with any disputes relating to the Auction, the Sale and the construction and enforcement of the Stalking Horse APA or Alternative Transaction Agreement (if applicable) and all other agreements entered into in connection with any proposed Sale Transaction.

A. Participants and Attendees

Only Qualified Bidders that have submitted Qualified Bids by the Bid Deadline are eligible to participate in the Auction, subject to other limitations as may be reasonably imposed by the Debtors in accordance with these Bidding Procedures. Qualified Bidders participating in the Auction must appear in person at the Auction, or through a duly authorized representative. Subject to the Auction Procedures set forth in Section V.B, the Auction will be conducted openly and all undisputed creditors may be permitted to attend; provided that the Debtors may, in their sole and exclusive discretion, establish a reasonable limit on the number of representatives and/or professional advisors that may appear on behalf of or accompany each Qualified Bidder at the Auction. Each of the Consultation Parties shall be entitled to have a reasonable number of representatives and/or professional advisors attend the Auction.

Each Qualified Bidder participating in the Auction will be required to confirm in writing and on the record at the Auction that (i) it has not engaged in any collusion with respect to the submission of any bid or the Auction, and (ii) its Qualified Bid represents a binding, good faith,

and bona fide offer to purchase the Assets identified in such bid if selected as the Successful Bidder.

B. Auction Procedures

The Auction shall be governed by the following procedures, subject to the Debtors' right to modify such procedures in their reasonable business judgment:

1. Baseline Bids. Bidding shall commence at the amount of the Qualified Bid or combination of Qualified Bids that the Debtors, in consultation with the Consultation Parties, determine in their business judgment to be the highest and/or best Qualified Bid (the "Baseline Bid"). The Stalking Horse bid shall constitute the portion of the Baseline Bid attributable to the Stalking Horse Assets.
2. Minimum Overbid. Qualified Bidders may submit successive bids higher than the previous bid, based on and increased from the Baseline Bid for the relevant Assets; provided, however, that to the extent that there is more than one Qualified Bid for the Stalking Horse Assets, the bidding for Stalking Horse Assets will start at an amount equal to \$66 million, plus the aggregate amount of the Break Up Fee and the Expense Reimbursement (solely for purposes of conducting the Auction, the amount of the Expense Reimbursement shall be deemed to be \$1 million). The minimum required increments for successive Qualified Bids (each such bid, a "Minimum Overbid") will be announced at the outset of the Auction. The Debtors may, in their reasonable business judgment, and after consulting with the Consultation Parties, announce increases or reductions to Minimum Overbids at any time during the Auction.

Except as specifically set forth herein, for the purpose of evaluating the value of the consideration provided by any bid subsequent to a Baseline Bid, the Debtors will, at each round of bidding, give effect to the Bid Protections payable to the Stalking Horse under the Stalking Horse APA, as well as any additional liabilities to be assumed by a Qualified Bidder and any additional costs that may be imposed on the Debtors. To the extent that a Minimum Overbid has been accepted entirely or in part because of the addition, deletion, or modification of a provision or provisions in the applicable Stalking Horse APA, Alternative IP/Inventory Transaction Agreement or Alternative Transaction Agreement (as applicable), the Debtors will identify such added, deleted or modified provision or provisions and the value thereof.

3. Highest or Best Offer. After the first round of bidding and between each subsequent round of bidding, the Debtors shall announce the bid that they believe to be the highest or otherwise best offer for the relevant Assets (the "Leading Bid") and describe the material terms thereof. Each round of bidding will conclude after each participating Qualified Bidder has had

the opportunity to submit a subsequent bid with full knowledge of the Leading Bid.

The Auction may include open bidding in the presence of all other Qualified Bidders. All Qualified Bidders shall have the right to submit additional bids and make modifications to the Stalking Horse APA or their Alternative Transaction Agreement at the Auction to improve their bids. The Debtors may, in their reasonable business judgment, negotiate with any and all Qualified Bidders participating in the Auction.

The Debtors shall have the right, after consulting with the Consultation Parties, to determine, in their reasonable business judgment, which bid is the highest or otherwise best bid with respect to the applicable Asset(s) and reject at any time, without liability, any bid that the Debtors deem to be inadequate or insufficient, not in conformity with the requirements of the Bankruptcy Code, Bankruptcy Rules, or the Local Rules, these Bidding Procedures, any order of the Bankruptcy Court or the best interests of the Debtors and their estates.

Any Leading Bid made from time to time by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless (i) the Debtors accept a higher or otherwise better bid submitted by another Qualified Bidder during the Auction as a Leading Bid and (ii) such Leading Bid is not selected as the Backup Bid.

To the extent not previously provided (which will be determined by the Debtors), a Qualified Bidder (other than the Stalking Horse) submitting a subsequent bid must submit at the Debtors' request, as part of its subsequent bid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors) demonstrating such Qualified Bidder's ability to close the transaction at the purchase price contemplated by such subsequent bid.

4. Transcription. The bidding at the Auction shall be transcribed and the Debtors shall maintain a transcript of all bids made and announced at the Auction.

C. Auction Results

1. Successful Bids. Immediately prior to the conclusion of the Auction, the Debtors shall, in the exercise of their reasonable business judgment and in consultation with the Consultation Parties, (a) determine, consistent with these Bidding Procedures, which bid constitutes the highest or otherwise best bid(s) for the applicable Asset(s) (each such bid, a "Successful Bid"); and (b) notify all Qualified Bidders at the Auction for the applicable Asset(s) of the identity of the bidder that submitted the Successful Bid (each such bidder, the "Successful Bidder") for such Asset(s) and the

amount of the purchase price and other material terms of the Successful Bid.

2. Backup Bids. Immediately prior to the conclusion of the Auction, the Debtors shall, in consultation with the Consultation Parties, (a) determine, consistent with these Bidding Procedures, which Qualified Bid is the next highest or otherwise best Qualified Bid for the relevant Assets after the Successful Bid (each such Qualified Bid, a "Backup Bid"); and (b) notify all Qualified Bidders at the Auction for the applicable Asset of the identity of the Backup Bidder and the amount of the purchase price and other material terms of the Backup Bid. Notwithstanding the foregoing, the Stalking Horse will be deemed to be the Backup Bidder only in accordance with the terms of the Stalking Horse APA and with the prior written consent of the Stalking Horse, exercisable in its sole and absolute discretion. In the event the Debtors select the Stalking Horse APA as the Backup Bid and the Stalking Horse does not consent to be the Backup Bidder, the Debtors may select the next highest and otherwise best bid submitted by a Qualified Bidder during the Auction, as determined by the Debtors pursuant to these Bidding Procedures, as the Backup Bid, and the Qualified Bidder that submitted such Qualified Bid will be deemed to be the Backup Bidder.

Subject to the Stalking Horse APA, if the Stalking Horse consents in its sole discretion to be the Backup Bidder, Backup Bids must remain open until the Debtors' consummation of a sale with the Successful Bidder. If the Successful Bidder for the applicable Assets fails to consummate a Sale Transaction, the Backup Bidder shall be deemed the new Successful Bidder, and the Debtors will be authorized, but not required, to consummate a Sale Transaction for the applicable Assets with the Backup Bidder.

3. No Late Bids. The Debtors shall not consider any bids submitted after the conclusion of the Auction and any and all such bids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.

On or before **December 22, 2016 at 5:00 p.m. (prevailing Eastern Time)**, the Debtors shall file with the Bankruptcy Court, serve on the Sale Notice Parties, and cause to be published on the website maintain by the Debtors' claim and noticing agent, Prime Clerk, LLC located at <http://cases.primeclerk.com/americanapparel> (the "Prime Clerk Website"), the results of the Auction, which shall include (i) a copy of the Successful Bid(s) and Backup Bid(s); and (ii) the identities of the Successful Bidder(s) and Backup Bidder(s).

On or before **December 23, 2016 at 5:00 p.m. (prevailing Eastern Time)**, the Debtors shall file with the Bankruptcy Court, serve on the Sale Notice Parties, and cause to be published on the Prime Clerk Website, (i) the Notice of the Proposed Assumed Contracts; and (ii) each Successful Bidder's and Backup Bidder's proposed form of adequate assurance of future performance with respect to the relevant Proposed Assumed Contracts.

D. Return of Good Faith Deposit

The Good Faith Deposit of all Prospective Bidders shall be held in escrow by the Debtors in a non-interest-bearing escrow or trust account, and shall not become property of the Debtors' estates. The Good Faith Deposits of all Prospective Bidders shall be retained by the Debtors, notwithstanding Bankruptcy Court approval of Sale Transactions for the applicable Assets, until no later than five business days after the conclusion of the Auction, except for the Good Faith Deposits of Successful Bidders and Backup Bidders; provided that if the Stalking Horse Bidder is not the Successful Bidder, the Stalking Horse Bidder's Good Faith Deposit shall be returned to the Stalking Horse Bidder in accordance with the Stalking Horse APA. The Debtors shall retain the Good Faith Deposits of Backup Bidders until no later than three business days after the closing of a Sale Transaction with the Successful Bidder for the applicable Assets.

At the closing of a Sale Transaction, the Successful Bidder will be entitled to a credit for the amount of its Good Faith Deposit. If a Successful Bidder fails to consummate a Sale Transaction because of a breach that entitles the Debtors to terminate the applicable asset purchase agreement, then, the Debtors and their estates shall be entitled to retain the Good Faith Deposit of the Successful Bidder as part of the damages resulting to the Debtors and their estates for such breach or failure to perform. Notwithstanding the foregoing, retention and application by the Debtors of the Good Faith Deposit delivered by the Stalking Horse shall be governed by the Stalking Horse APA.

VI. SALE HEARING

Each Successful Bid (including any Backup Bid that is subsequently deemed a Successful Bid) will be subject to approval by the Bankruptcy Court. The hearing to approve the Sale and any Successful Bid(s) in respect of the Assets shall take place on **December 30, 2016** (the "Sale Hearing") before the Honorable _____, United States Bankruptcy Judge, in the Bankruptcy Court, located at 824 N. Market St., Wilmington, DE 19801.

At the Sale Hearing, the Debtors will seek entry of order(s) (each, a "Sale Order") approving, among other things, the Sale of the relevant Assets to the Successful Bidder(s). The Sale Hearing may be adjourned or rescheduled by the Debtors. The Debtors may not consider or support any other bid to purchase Assets that are the subject of a Successful Bid pending consideration by the Bankruptcy Court of the Successful Bid for such Assets at the Sale Hearing.

Objections to a Sale Transaction, including any objection to the sale of any Assets free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code, any of the relief requested in the Motion (each, a "Sale Objection"), and entry of any Sale Order must (i) be in writing and specify the nature of such objection; (ii) comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and all orders of the Bankruptcy Court; (iii) be filed with the Bankruptcy Court and served on the Objection Recipients by **December 22, 2016, 2016 at 5:00 p.m. (prevailing Eastern Time)**.

All Sale Objections not otherwise resolved by the parties prior thereto shall be heard at the Sale Hearing. The failure of any party to timely file with the Bankruptcy Court and serve on the Objection Recipients a Sale Objection forever shall be barred from asserting, at the

applicable Sale Hearing or thereafter, any objection to the relief requested in the Motion, or to the consummation and performance of the applicable Sale Transaction(s) contemplated by an applicable asset purchase agreement with a Successful Bidder, including the transfer of the Assets to the applicable Successful Bidder(s), free and clear of all liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code. Notwithstanding the foregoing or anything herein to the contrary, and as set forth below, the deadline to file an Adequate Assurance Objection in connection with a proposed Sale Transaction shall be two days prior to the applicable Sale Hearing.

The Debtors may reject at any time, before entry of an order of the Bankruptcy Court approving the Sale, any bid that, in the Debtors' judgment, upon considering any comments of the Consultation Parties, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code or the Bidding Procedures, or (iii) contrary to the best interests of the Debtors and their estates.

The Debtors' presentation to the Bankruptcy Court for approval of a selected Qualified Bid as a Successful Bid does not constitute the Debtors' acceptance of such bid. The Debtors will have accepted a Successful Bid only when such Successful Bid has been approved by the Bankruptcy Court at the Sale Hearing. Upon the Court's approval of a Successful Bid, the Debtors will be bound by the terms of that Successful Bid with no further opportunity for an auction or other process.

VII. MODIFICATION OF PROCEDURES

The Debtors may, after consulting with the Consultation Parties, modify the rules, procedures and deadlines set forth herein (including, without limitation, extending the Bid Deadline, modifying the Qualified Bid Requirements, modifying the procedures for conducting the Auction, rescheduling the Auction or adjourning the Sale Hearing), or adopt new rules, procedures and deadlines or otherwise modify these Bidding Procedures in order to, in their reasonable discretion, better promote the goals of such procedures, namely, to maximize value for the estates; provided that all modifications and additional rules, procedures and deadlines may in no event permit the submission of bids after the close of the Auction or extend any deadline beyond the applicable outside date or milestone set forth in the Stalking Horse APA. All such modifications and additional rules will be communicated to each of the Notice Parties, Prospective Bidders and Qualified Bidders.

VIII. NOTICING

A. Consultation Parties

Throughout the sale process, as necessary or appropriate, the Debtors and their professionals will evaluate bids and will consult the following parties with respect to such bids: (1) Milbank, Tweed, Hadley & McCloy LLP and Fox Rothschild LLP, as counsel to certain of the Debtors' prepetition secured lenders, (2) Covington & Burling LLP, as counsel to Wilmington Trust, National Association, as administrative agent to the Debtors' prepetition secured lenders, (3) Riemer & Braunstein LLP and Ashby & Geddes, P.A., as counsel to the DIP

Lenders and (4) counsel for any official committee of unsecured creditors appointed in these chapter 11 cases (collectively, the "Consultation Parties").

B. Bid Notice Parties

Qualified Bids (as hereinafter defined) must be submitted in writing to (i) the Debtors, American Apparel, LLC, 747 Warehouse Street, Los Angeles, California 90021 (Attn: Chelsea Grayson (cgrayson@americanapparel.net), Bennett Nussbaum (bennett@americanapparel.net) and Lance Miller (lancemiller@americanapparel.net); (ii) counsel for the Debtors, (a) Jones Day, 250 Vesey Street, New York, NY 10281 (Attn: Scott J. Greenberg, Esq. (sgreenberg@jonesday.com)) and 901 Lakeside Avenue, Cleveland, OH 44114 (Attn: Carl E. Black, Esq. (ceblack@jonesday.com)) and (b) Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Attn: Laura Davis Jones, Esq., (ljones@pszjlaw.com), James E. O'Neill, Esq. (jo'neill@pszjlaw.com) and Joseph M. Mulvihill (jmulvihill@pszjlaw.com)); (iii) the Debtors' financial advisors, Berkeley Research Group, LLC, 75 State Street, Suite 1805, Boston, MA 01109 (Attn: Mark Weinstein (mweinstein@thinkbrg.com) and Joe D'Ascoli (jdascoli@thinkbrg.com)); and (iv) the Debtors' investment banker, Houlihan Lokey, Inc., 245 Park Avenue, 20th Fl., New York, NY 10167 (Attn: Saul Burian (SBurian@HL.com) and Devin Shanahan (DShanahan@hl.com)) (the foregoing entities in clauses (i) through (iv), the "Bid Notice Parties").

C. Sale Notice and Sale Notice Parties

1. Sale Notice Parties. The "Sale Notice Parties" shall include the following: (i) the Consultation Parties (as applicable); (ii) Sullivan & Cromwell LLP, as counsel to the Stalking Horse; (iii) all persons and entities known by the Debtors to have expressed an interest to the Debtors in a Sale Transaction involving any of the Assets during the past twelve (12) months, including any person or entity that has submitted a bid for any of the Assets, as applicable; (iv) all persons and entities known by the Debtors to have asserted any lien, claim, interest, or encumbrance in the Assets (for whom identifying information and addresses are available to the Debtors); (v) all non-Debtor parties to any executory contracts or unexpired leases of the Debtors (collectively, the "Contracts") that are proposed to be assumed or rejected in connection with a Sale Transaction; (vi) any governmental authority known to have a claim against the Debtors in these chapter 11 cases; (vii) the United States Attorney General; (viii) the Antitrust Division of the United States Department of Justice; (ix) the United States Attorney for the District of Delaware; (x) the Office of the Attorney General in each state in which the Debtors operate; (xi) the Federal Trade Commission; (xii) the office of the United States Trustee for the District of Delaware; (xiii) the Internal Revenue Service; (xiv) the United States Securities and Exchange Commission; (xv) all of the Debtors' known creditors (for whom identifying information and addresses are known to the Debtors); (xvi) all parties who have filed a notice of appearance and request for service of papers in these chapter 11 cases pursuant to Bankruptcy Rule 2002; and (xvii) all other persons and entities as directed by the Bankruptcy Court.

2. Sale Notice. Within two (2) days after entry of the Bidding Procedures Order, the Debtors shall file with the Bankruptcy Court, serve on the Sale Notice Parties, and cause to be published on the Prime Clerk Website a notice (the "Sale Notice") setting forth (i) the date, time, and place of (a) the Auction and (b) Sale Hearing; and (ii) the deadline to object to the Sale and the relief requested in the Motion (the "Sale Objection Deadline").
3. Publication Notice. Within five (5) days after entry of the Bidding Procedures Order, the Debtors shall cause the information contained in the Sale Notice to be published once in the *Wall Street Journal* or *USA Today*.

D. Sale Objections

Sale Objections (as hereinafter defined) shall be filed in accordance with these Bidding Procedures be served on (i) the Debtors, American Apparel, LLC, 747 Warehouse Street, Los Angeles, California 90021 (Attn: Chelsea Grayson, Bennett Nussbaum, and Lance Miller); (ii) counsel for the Debtors, (a) Jones Day, 250 Vesey Street, New York, NY 10281 (Attn: Scott J. Greenberg, Esq.) and 901 Lakeside Avenue, Cleveland, OH 44114 (Attn: Carl E. Black, Esq.) and (b) Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Attn: Laura Davis Jones, Esq., James E. O'Neill, Esq., and Joseph M. Mulvihill); (iii) counsel for any official committee of unsecured creditors appointed in these chapter 11 cases; (iv) counsel for the Debtors' prepetition secured lenders, Milbank, Tweed, Hadley & McCloy LLP, 28 Liberty Street, New York, NY 10005 (Attn: Gerard Uzzi, Esq.); (v) Covington & Burling LLP, as counsel to Wilmington Trust, National Association, as administrative agent to the Debtors' prepetition secured lenders; (vi) Riemer & Braunstein LLP and Ashby & Geddes, P.A., as counsel to the DIP Secured Parties; (vii) counsel (if applicable) of any applicable Successful Bidder(s); (viii) counsel (if applicable) of any applicable Backup Bidder(s); (ix) counsel to the Stalking Horse, Sullivan & Cromwell LLP, 125 Broad Street, New York, New York 10004 (Attn: Michael H. Torkin, Esq. and Mimi Wu, Esq.); and (x) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: _____, Esq.) (the foregoing entities in clauses (i) through (x), the "Objection Recipients").

E. Assumption and Assignment

The Debtors shall provide all notices regarding the proposed assumption, assignment, and rejection of contracts in accordance with the Assumption and Assignment Procedures set forth in the Motion and Bidding Procedures Order.

IX. CONSULTATION BY THE DEBTORS

The Debtors shall consult with the Consultation Parties as explicitly provided for in these Bidding Procedures; provided, however, that the Debtors shall not be required to consult with any Consultation Party (or its advisors) that submits a bid or has a bid submitted on its behalf for so long as such bid remains open, including any credit bid, if the Debtors determine, in their reasonable business judgment, that consulting with such Consultation Party regarding any issue, selection, or determination is (a) likely to have a chilling effect on the potential bidding or

(b) otherwise contrary to the goal of maximizing value from the sale process for the Debtors' estates, their creditors, and all other parties in interest.

Dated: _____, 2016
Wilmington, Delaware

PACHULSKI STANG ZIEHL & JONES LLP

Laura Davis Jones (DE Bar No. 2436)
James E. O'Neill (DE Bar No. 4042)
Joseph M. Mulvihill (DE Bar No. 6061)
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and

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Telephone: (212) 326-3830
Facsimile: (212) 755-7306
Email: sgreenberg@jonesday.com

and

Carl E. Black
901 Lakeside Avenue
Cleveland, OH 44114
Telephone: (216) 586-3939
Facsimile: (212) 579-0112
Email: ceblack@jonesday.com

Proposed Co-Counsel for the Debtors
and Debtors in Possession

Exhibit 1

(Stalking Horse APA)

Exhibit B

Form of Bidding Procedures Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: AMERICAN APPAREL, LLC, <i>et al.</i> , ¹ Debtors.	: : : : : : : : :	Chapter 11 Case No. _____ (Joint Administration Requested)
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**ORDER (I) APPROVING BIDDING PROCEDURES FOR THE SALE OF
SUBSTANTIALLY ALL OF DEBTORS' ASSETS, (II) AUTHORIZING THE DEBTORS
TO ENTER INTO THE STALKING HORSE PURCHASE AGREEMENT,
(III) APPROVING BID PROTECTIONS, (IV) SCHEDULING AN AUCTION,
(V) APPROVING THE FORM AND MANNER OF NOTICE THEREOF,
(VI) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES,
(VII) SCHEDULING A SALE HEARING AND APPROVING THE FORM AND
MANNER OF NOTICE THEREOF AND (VIII) GRANTING RELATED RELIEF**

This Court having considered the *Motion of the Debtors for Entry of Orders*

(I)(A) Approving Bidding Procedures for the Sale of Substantially all of the Debtors' Assets,

(B) Authorizing the Debtors to Enter into the Stalking Horse Purchase Agreement,

(C) Approving Bid Protections, (D) Scheduling an Auction, (E) Approving the Form and Manner of Notice thereof, (F) Scheduling a Sale Hearing and Approving the Form and Manner of Notice thereof, and (G) Approving Assumption and Assignment Procedures; (II)(A) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of Liens, Claims, Interests and Encumbrances and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief (the "Motion"),² filed by the above-captioned debtors and debtors in possession (the "Debtors"), the Declaration of Mark

¹ The Debtors are the following six entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): American Apparel, LLC (0601); American Apparel (USA), LLC (8940); American Apparel Retail, Inc. (7829); American Apparel Dyeing & Finishing, Inc. (0324); KCL Knitting, LLC (9518); and Fresh Air Freight, Inc. (3870). The address of each of the Debtors is 747 Warehouse Street, Los Angeles, California 90021.

² Capitalized terms not specifically defined herein have the meaning assigned to them in the Motion.

Weinsten in Support of First Day Pleadings (the "First Day Declaration"), the *Declaration of Saul E. Burian in Support of the Sale and Bidding Procedures Motion* (the "Burian Declaration") and the statements of counsel and the evidence adduced with respect to the Motion at a hearing before this Court (the "Bidding Procedures Hearing") to consider a portion of the relief requested in the Motion; and after due deliberation, this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates and their creditors, and the Debtors having demonstrated good, sufficient and sound business justification for the relief approved herein and that such relief is necessary to prevent immediate and irreparable harm to the Debtors, their estates and their creditors; and good and sufficient cause having been shown;

IT IS HEREBY FOUND AND DETERMINED THAT:³

A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

B. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The statutory predicates for the relief requested in the Motion are (i) sections 105, 107(b)(1), 363, 365 and 503 of the title 11 of the United States Code (the "Bankruptcy Code"), (ii) Rules 2002, 6004, 6006, 9014 and 9018 of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules"); and (iii) Rules 6004-1 and 9018-1 of the Local Rules and Procedures for the Bankruptcy Court for the District of Delaware (the "Local Rules").

D. Notice of the Motion and the Bidding Procedures Hearing was sufficient under the circumstances and that no other or further notice need be provided.

³ The findings of fact and the conclusions of law stated herein shall constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law shall be determined to be a finding of fact, it shall be so deemed.

E. There is good cause to waive the 14 day stay imposed by Bankruptcy Rules 6004(h) and 6006(d) to the extent it is applicable.

F. The Bidding Procedures attached hereto as Exhibit 1 (the "Bidding Procedures") are fair, reasonable and appropriate, and are designed to maximize the value of the proceeds of a sale (the "Sale") of substantially all of the Debtors' assets (the "Assets") to one or more purchasers (each, a "Sale Transaction") following an auction (the "Auction").

G. The Bidding Procedures comply with the requirements of Local Rule 6004-1(c).

H. The Assumption and Assignment Procedures set forth in ¶ [17] of the Motion (the "Assumption and Assignment Procedures") are fair, reasonable and appropriate and comply with the provisions of section 365 of the Bankruptcy Code.

I. The Debtors have articulated good and sufficient business reasons for this Court to approve (i) the Bidding Procedures, (ii) the Sale Notice attached hereto as Exhibit 3 (the "Sale Notice"), (iii) the Assumption and Assignment Notice and the (iv) Assumption and Assignment Procedures.

J. The Bidding Procedures were negotiated in good faith and at arm's-length, and are reasonably designed to promote participation and active bidding and to ensure that the highest or otherwise best value is generated for the Assets.

K. Good and sufficient notice of the relief sought in the Motion has been provided under the circumstances, and no other or further notice is required except as set forth in the Bidding Procedures and Assumption and Assignment Procedures. A reasonable opportunity to object and be heard regarding the relief requested in the Motion has been afforded to parties in interest.

L. The Sale Notice, Publication Notice (as defined below), Gift Card Notice Procedures, Assumption and Assignment Notice and Proposed Assumed Contracts Notice (as defined below) are all appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, Sale Hearing, Bidding Procedures, Assumption and Assignment Procedures, the Debtors' proposed good faith calculation of cure amounts (the "Cure Costs") due under any executory contract or unexpired lease (the "Contracts") to be assumed and assigned in connection with a Sale Transaction, Proposed Assumed Contracts (as defined below) and all relevant important dates and deadlines with respect to the foregoing, and no other or further notice of the Sale, the Debtors' treatment of gift cards, the Auction or the assumption and assignment of Contracts in connection therewith shall be required.

M. The Debtors have demonstrated compelling and sound business justifications for authorizing the entry into the asset purchase agreement for the sale (subject to competitive bidding at the Auction) of the Debtors' intellectual property, wholesale inventory and at the Stalking Horse's option, the Debtors' manufacturing and distribution facilities in Garden Grove, La Mirada and South Gate, California and the Debtors' corporate headquarters in Los Angeles, California (the "Stalking Horse Assets") attached hereto as Exhibit 4 (the "Stalking Horse APA") by and between the Debtors and Gildan Activewear SRL (the "Stalking Horse") and the payment of the Bid Protections (as defined below) under the circumstances, and in the time frame and in accordance with the procedures set forth herein, in the Motion and in the Stalking Horse APA.

N. The Debtors and the Stalking Horse each negotiated the Bidding Procedures and the Stalking Horse APA in good faith and at arm's-length. The process for the Stalking Horse's selection was fair and appropriate under the circumstances and is in the best interests of the Debtors' estates.

O. The Debtors have demonstrated a compelling and sound justification for authorizing the payment of the Bid Protections in the event that the Stalking Horse is not the Successful Bidder including, without limitation, that:

1. the Bid Protections are the product of negotiations between the Debtors and the Stalking Horse conducted in good faith and at arm's-length, and the Stalking Horse APA is the culmination of a process undertaken by the Debtors and their professionals to ensure a transaction with a bidder who is prepared to pay the highest or otherwise best purchase price for the Assets (subject to higher or otherwise better bids) in order to maximize the value of the Debtors' estates;
2. the Bid Protections are actual and necessary costs and expenses of preserving the Debtors' estates within the meaning of sections 503(b) of the Bankruptcy Code;
3. the Bid Protections are fair, reasonable, and appropriate in light of, among other things, the size and nature of the proposed Sale under the Stalking Horse APA, the substantial efforts that have been and will be expended by the Stalking Horse, notwithstanding that the proposed Sale is subject to higher or better offers, and the substantial benefits the Stalking Horse has provided to the Debtors, their estates, their creditors and all parties in interest, including, among other things, by increasing the likelihood that the best possible price for the Stalking Horse Assets will be received;
4. the protections afforded to the Stalking Horse by way of the Bid Protections were material inducements for, and express conditions of, the Stalking Horse's willingness to enter into the Stalking Horse APA, and was necessary to ensure that the Stalking Horse would continue to pursue the proposed acquisition on terms acceptable to the Debtors in their sound business judgment, subject to competitive bidding; and
5. the offer of the Bid Protections is intended to promote more competitive bidding by inducing the Stalking Horse's bid, which (a) will serve as a minimum floor bid on which all other bidders can rely with respect to the Stalking Horse Assets, (b) may prove to be the highest or otherwise best available offer for the Stalking Horse Assets and (c) increases the likelihood that the final purchase price will reflect the true value of the Stalking Horse Assets.

P. Entry of this Order is in the best interests of the Debtors' estates, their creditors and all other interested parties.

**NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED
THAT:**

1. The Motion is GRANTED as set forth herein.
2. Except as expressly provided herein, nothing herein shall be construed as a determination of the rights of any party in interest in these chapter 11 cases (these "Cases").
3. All objections to the relief granted in this Bidding Procedures Order that have not been withdrawn, waived, or settled, and all reservations of rights included therein, hereby are overruled and denied on the merits with prejudice.

A. The Bidding Procedures

4. The Bidding Procedures attached hereto as Exhibit 1 are hereby APPROVED and fully incorporated into this Bidding Procedures Order. The Debtors are authorized to take all actions necessary or appropriate to implement the Bidding Procedures. The failure to specifically include a reference to any particular provision of the Bidding Procedures in this Bidding Procedures Order shall not diminish or impair the effectiveness of such provision.
5. The Stalking Horse shall be deemed a Qualified Bidder pursuant to the Bidding Procedures for all purposes.
6. The Bidding Procedures shall apply to the Qualified Bidders and the conduct of the sale of the Assets and the Auction.
7. The following dates and deadlines regarding competitive bidding are hereby established (subject to modification in accordance with the Bidding Procedures):
 - a. **Bid Deadline: December 19, 2016 at 5:00 p.m. (Prevailing Eastern Time)** is the deadline by which all Qualified Bids must be **actually received** by the parties specified in the Bidding Procedures (the "Bid Deadline");
 - b. **Notification of Status as Qualified Bidder: December 20, 2016 at 12:00 p.m. (Prevailing Eastern Time)** is the deadline by which the Debtors must notify bidders of their status as Qualified Bidders; and

- c. **Auction: December 21, 2016 at 10:00 a.m. (Prevailing Eastern Time)** is the date and time the Auction, if one is needed, will be held at the offices of Jones Day, 250 Vesey Street, New York, New York 10281.

8. Only a Qualified Bidder that has submitted a Qualified Bid will be eligible to participate at the Auction. As described in the Bidding Procedures, if the Debtors do not receive any Qualified Bids other than from the Stalking Horse, the Debtors will not hold the Auction, the Stalking Horse will be named the Successful Bidder and the Debtors will seek final approval at the Sale Hearing of the sale of the Stalking Horse Assets to the Stalking Horse, in accordance with the terms of the Stalking Horse APA.

9. The Stalking Horse is a Qualified Bidder, the Stalking Horse APA is a Qualified Bid and the Stalking Horse is authorized to submit any Minimum Overbids during the Auction at any time, in each case, pursuant to the Bidding Procedures for all purposes.

10. If the Auction is conducted, (i) each Qualified Bidder participating in the Auction shall be required to confirm that it has not engaged in any collusion with respect to the bidding process or the sale and (ii) the Auction shall be conducted openly and shall be transcribed or videotaped.

11. If the Auction is conducted, absent irregularities in the conduct of the auction, or reasonable and material confusion during the bidding, this Court will not consider bids made after the Auction has closed.

B. The Stalking Horse APA

12. The Debtors are authorized to perform all of their respective pre-closing obligations under the Stalking Horse APA, attached to the Motion as Exhibit C; provided that, for the avoidance of doubt, consummation of the transactions contemplated by the Stalking Horse APA shall be subject to entry of an order approving the sale of the Assets and the satisfaction or waiver of the other conditions to closing on the terms set forth in the Stalking

Horse APA. For the avoidance of doubt, the following Articles and Sections of the Stalking Horse APA are valid, binding and enforceable against the Debtors: Section 4.4 (Termination of Agreement); Section 4.5 (Procedure Upon Termination); Section 4.6 (Effect of Termination); Section 4.7 (Termination Fee; Expense Reimbursement); Section 7.1 (Competing Transactions); Section 7.2 (Bankruptcy Court Filings); Section 8.1 (Access to Information); Section 8.2 (Actions Pending the Closing); and Section 8.7(a) (Limited License to Purchased Intellectual Property).

C. The Bid Protections

13. To the extent due under the Stalking Horse APA, the Debtors are authorized and required to pay the Stalking Horse (a) a fee of \$1.98 million (the "Termination Fee") and (b) an expense reimbursement of no more than \$1 million for the Stalking Horse's reasonable, documented, out-of-pocket fees, costs and expenses (including, without limitation, consultants' and attorneys' fees, costs and expenses) incurred in connection with the transactions contemplated by the Stalking Horse APA (the "Expense Reimbursement" and together with the Termination Fee, the "Bid Protections").

14. The Debtors' obligations arising under or in connection with the Stalking Horse APA, including with respect to the Bid Protections, shall (i) survive termination of the Stalking Horse APA, (ii) constitute an administrative expense claim under sections 503(b) of the Bankruptcy Code and (iii) be payable under the terms and conditions of the Stalking Horse APA and this Order without any further order of this Court. Notwithstanding anything to the contrary in any order approving the Debtors' postpetition financing facility (the "DIP Order"), any amounts due and owing to the prepetition secured lenders in respect of the Prepetition Obligations (as defined in the DIP Order) shall be subordinated to any amounts due and payable

to the Stalking Horse with respect to the Bid Protections, as and when such amounts are due under the terms and conditions of the Stalking Horse APA and this Order.

15. Each Debtor's obligations relating to the Bid Protections arising under or in connection with the Stalking Horse APA shall be binding and enforceable against each such Debtor and its respective estate, and, as applicable, subject to section 363(f) of the Bankruptcy Code, (i) any of its successors or assigns, (ii) any trustee, examiner, or other representative of the Debtors' estates, (iii) the reorganized Debtors and (iv) any other entity vested or revested with any right, title or interest in or to a material portion of the assets directly or indirectly owned by the Debtors or any other person claiming any rights in or control over a material portion of such assets (each, a "Debtor Successor") as if such Debtor Successor was the Debtors.

D. Sale Notice

16. The form of Sale Notice attached hereto as Exhibit 3 is approved and fully incorporated into this Bidding Procedures Order. The failure to specifically include a reference to any particular provision of the Bidding Procedures in this Bidding Procedures Order shall not diminish or impair the effectiveness of such provision.

17. Within two (2) days after entry of this Bidding Procedures Order, the Debtors shall serve the Sale Notice on (a) the Consultation Parties (as applicable);⁴ (b) all persons and entities known by the Debtors to have expressed an interest to the Debtors in a Sale Transaction involving any of the Assets during the past 12 months, including any person or entity that has submitted a bid for any of the Assets, as applicable; (c) all persons and entities known by the Debtors to have asserted any lien, claim, interest, or encumbrance on or against any of the Assets

⁴ The "Consultation Parties" are (a) Milbank, Tweed, Hadley & McCloy LLP and Fox Rothschild LLP, as counsel to certain of the Debtors' prepetition secured lenders, (b) Covington & Burling LLP, as counsel to Wilmington Trust, National Association, as administrative agent to the Debtors' prepetition secured lenders, (c) Riemer & Braunstein LLP and Ashby & Geddes, P.A., as counsel to the DIP Lenders and (d) counsel for any official committee of unsecured creditors appointed in these Cases.

(for whom identifying information and addresses are available to the Debtors); (d) all Counterparties to the Contracts that may be assumed and assigned in connection with a Sale Transaction; (e) any governmental authority known to have a claim against the Debtors in these Cases; (f) the United States Attorney General; (g) the Antitrust Division of the United States Department of Justice; (h) the United States Attorney for the District of Delaware; (i) the Office of the Attorney General in each state in which the Debtors operate; (j) the Federal Trade Commission; (k) all of the Debtors' known creditors (for whom identifying information and addresses are known to the Debtors); (l) counsel to the Stalking Horse; (m) the office of the United States Trustee for the District of Delaware; (n) the Internal Revenue Service; (o) the United States Securities and Exchange Commission; (p) all parties who have filed a notice of appearance and request for service of papers in these chapter 11 cases pursuant to Bankruptcy Rule 2002; and (q) all other persons and entities as directed by the Bankruptcy Court (collectively, the "Notice Parties").

18. As soon as reasonably practicable, but in no event later than two days after the entry of this Bidding Procedures Order, the Debtors will also post the Sale Notice and this Bidding Procedures Order on the website maintained by the Debtors' claim and noticing agent, Prime Clerk, LLC, located at [http://cases.primeclerk.com/ americanapparel](http://cases.primeclerk.com/americanapparel) (the "Prime Clerk Website").

19. Not later than five days after entry of this Bidding Procedures Order, the Debtors shall cause the information contained in the Sale Notice to be published once in the *Wall Street Journal* or *USA Today* (the "Publication Notice").

20. Objections to any Sale Transaction (each, a "Sale Objection"), including any objection to the sale of any Assets free and clear of liens, claims, interests, and encumbrances

pursuant to section 363(f) of the Bankruptcy Code and entry of any Sale Order must (a) be in writing and specify the nature of such objection; (b) comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules and all orders of the Bankruptcy Court; and (c) be filed with the Bankruptcy Court and served on: (i) the Debtors, American Apparel, LLC, 747 Warehouse Street, Los Angeles, California 90021 (Attn: Chelsea Grayson, Bennett Nussbaum, and Lance Miller); (ii) counsel for the Debtors, (1) Jones Day, 250 Vesey Street, New York, NY 100281 (Attn: Scott J. Greenberg) and 901 Lakeside Avenue, Cleveland, OH 44114 (Attn: Carl E. Black, Esq.) and (2) Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Attn: Laura Davis Jones, Esq., James E. O'Neill, Esq., and Joseph M. Mulvihill); (iii) counsel for any official committee of unsecured creditors appointed in these chapter 11 cases; (iv) counsel for the Debtors' prepetition secured lenders, Milbank, Tweed, Hadley & McCloy LLP, 28 Liberty Street, New York, NY 10005 (Attn: Gerard Uzzi, Esq.); (v) counsel to the DIP Lenders, (1) Riemer & Braunstein LLP, Seven Times Square, Suite 2506, New York, New York 10036 (Attn: Steven Fox, Esq.) and (2) Ashby & Geddes, P.A., 500 Delaware Avenue, P.O. Box 1150 Wilmington, DE 19899 (Attn: Gregory Taylor); (vi) counsel (if applicable) of any applicable Successful Bidder(s); (vii) counsel (if applicable) of any applicable Backup Bidder(s); (x) counsel to the Stalking Horse, Sullivan & Cromwell LLP, 125 Broad Street, New York, NY 10004 (Attn: Michael H. Torkin, Esq. and Mimi Wu, Esq.); and (xi) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: [____], Esq.) (collectively, the "Objection Recipients") by **December 22, 2016 at 5:00 p.m. (prevailing Eastern Time)** (the "Sale Objection Deadline").

21. Any replies to Sale Objections shall be submitted no later than one day before the Sale Hearing.

22. The failure of any party to timely file with the Court and serve on the Objection Recipients a Sale Objection shall be barred from asserting, at the applicable Sale Hearing or thereafter, any objection to the relief requested in the Motion, or to the consummation and performance of the applicable Sale Transaction(s), including the transfer of the Assets to the applicable Successful Bidder(s), free and clear of all liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code, and shall be deemed to be a "consent" for purposes of section 363(f) of the Bankruptcy Code.

23. Notwithstanding the foregoing or anything herein to the contrary, and as set forth below, the deadline to file a Cure Objection or an Adequate Assurance Objection (each as defined below) in connection with a proposed Sale Transaction shall be as set forth below.

E. Assumption and Assignment Procedures

24. The Assumption and Assignment Notice attached hereto as Exhibit 2 is approved and fully incorporated into this Bidding Procedures Order. The failure to specifically include a reference to any particular provision of the Bidding Procedures in this Bidding Procedures Order shall not diminish or impair the effectiveness of such provision.

25. Within two days after the entry of this Bidding Procedures Order, the Debtors shall file with this Court, serve on the Notice Parties, including each Counterparty to a Contract that may be assumed, and cause to be published on the Prime Clerk Website, the Assumption and Assignment Notice, which shall (i) identify the Contracts; (ii) list the Debtors' good faith calculation of Cure Costs with respect to each Contract; (iii) expressly state that assumption or assignment of a Contract is not guaranteed and is subject to Court approval; and (iv) prominently

display the deadline to file objections to the assumption, assignment or sale of the Debtors' Proposed Assumed Contracts (as defined below).

26. In the event that the Debtors identify any non-Debtor counterparties (each, a "Counterparty") that were not served with the Assumption and Assignment Notice, the Debtors may subsequently serve such Counterparty with an Assumption and Assignment Notice, and the following procedures will nevertheless apply to such Counterparty; provided, however, that the deadline to file a Cure Objection (as defined below) with respect to such Counterparty shall be **5:00 p.m. (prevailing Eastern Time)** on the date that is 14 days following service of the Assumption and Assignment Notice.

27. No later than four business days after the Bid Deadline (as defined in the Bidding Procedures), the Debtors shall file with this Court, serve on the Notice Parties (including each applicable Counterparty) and cause to be published on the Prime Clerk Website a list of the Contracts that the Debtors will seek to assume and assign pursuant to the Stalking Horse APA or one or more Alternative Transaction Agreements (as applicable) (the "Proposed Assumed Contracts Notice" and each Contract used therein, a "Proposed Assumed Contract").

28. Any Counterparty that wishes to object to the proposed assumption, assignment and sale of the Contract, the subject of which objection is the Debtors' proposed Cure Costs to cure any outstanding monetary defaults then existing under such contract (each, a "Cure Objection") shall file with this Court and serve on the Objection Recipients its Cure Objection, which must state, with specificity, the legal and factual bases thereof, including any appropriate documentation in support thereof, by no later than **December 15, 2016 at 5:00 p.m. (prevailing Eastern Time)**.

29. The Debtors and a Counterparty that has filed a Cure Objection shall first confer in good faith to attempt to resolve the Cure Objection without Court intervention. If the parties are unable to consensually resolve the Cure Objection prior to the commencement of the Sale Hearing, the amount to be paid or reserved with respect to such Cure Objection shall be determined by this Court at the Sale Hearing. This Court shall make all necessary determinations relating to the applicable Cure Costs and Cure Objections at a hearing scheduled pursuant to the following paragraph. All other objections to the proposed assumption and assignment of the Debtors' right, title, and interest in, to, and under a Contract, if it is ultimately designated a Proposed Assumed Contract, will be heard at the Sale Hearing.

30. If a timely Cure Objection cannot otherwise be resolved by the parties, such objection shall be heard at the Sale Hearing; provided that, a Cure Objection (and only a Cure Objection) may, at the Debtors' discretion, after consulting with the Consultation Parties and the applicable Successful Bidder, be adjourned (an "Adjourned Cure Objection") to a subsequent hearing. An Adjourned Cure Objection may be resolved after the closing date of the applicable Sale Transaction; provided that, the Debtors maintain a cash reserve equal to the cure amount the objecting Counterparty believes is required to cure the asserted monetary default under the applicable Proposed Assumed Contract. Upon resolution of an Adjourned Cure Objection and the payment of the applicable cure amount, if any, the applicable Proposed Assumed Contract that was the subject of such Adjourned Cure Objection shall be deemed assumed and assigned to the applicable Successful Bidder, as of the closing date of the applicable Sale Transaction.

31. If a Counterparty fails to timely file with this Court and serve on the Objection Recipients a Cure Objection, such Counterparty shall be deemed to have consented to the assumption, assignment and sale of the Proposed Assumed Contract (unless such Counterparty

has timely filed an Adequate Assurance Objection (as defined below) with respect to the Proposed Assumed Contract) to the applicable Successful Bidder and forever shall be barred from asserting any objection with regard to such assumption, assignment and sale. The Cure Costs set forth in the Assumption and Assignment Notice shall be controlling and will be the only amount necessary to cure outstanding defaults under a Proposed Assumed Contract under section 365(b) of the Bankruptcy Code, notwithstanding anything to the contrary in any Proposed Assumed Contract, or any other document, and the Counterparty to the Proposed Assumed Contract shall be deemed to have consented to the Cure Costs and forever shall be barred from asserting any other claims related to such Proposed Assumed Contract against the Debtors or any Successful Bidder(s), or their property.

32. Upon request by a Counterparty, the Debtors shall serve, by electronic mail, the evidence of adequate assurance of future performance under the Proposed Assumed Contracts, including the legal name of the proposed assignee, the proposed use of any leased premises, the proposed assignee's financial ability to perform under the Proposed Assumed Contracts and a contact person with the proposed assignee that Counterparties may contact if they wish to obtain further information regarding the Stalking Horse or any other purchaser of the Assets. Any Counterparty to a Proposed Assumed Contract that wishes to object to the proposed assumption, assignment and sale of the Proposed Assumed Contract, the subject of which objection is a Successful Bidder's proposed form of adequate assurance of future performance with respect to such Contract (each, an "Adequate Assurance Objection") shall file with this Court and serve on the Objection Recipients an Adequate Assurance Objection, which must state, with specificity, the legal and factual bases thereof, including any appropriate documentation in support thereof, by no later than **December 27, 2016, at 5:00 p.m. (prevailing Eastern Time)**; provided that, if

the Sale Hearing is adjourned to a later date, the Adequate Assurance Objection Deadline shall be at 5:00 p.m. (prevailing Eastern Time) two days prior to the Sale Hearing.

33. If a Counterparty fails to timely file with this Court and serve on the Objection Recipients an Adequate Assurance Objection, such Counterparty shall be deemed to have consented to the assumption, assignment and sale of the Proposed Assumed Contract (unless the Counterparty has filed a timely Cure Objection with respect to the Proposed Assumed Contract) to the applicable Successful Bidder and forever shall be barred from asserting any objection with regard to such assumption, assignment and sale. The applicable Successful Bidder shall be deemed to have provided adequate assurance of future performance with respect to the applicable Proposed Assumed Contract in accordance with section 365(f)(2)(B) of the Bankruptcy Code, notwithstanding anything to the contrary in the Proposed Assumed Contract, or any other document.

F. Related Relief

34. If the Debtors receive more than one Qualified Bid for the same Assets with acceptable purchase prices by the Bid Deadline, the Debtors shall conduct the Auction. The Auction, if required, will be conducted at the offices of Jones Day, 250 Vesey Street, New York, New York 10281 on December 21, 2016 at 10:00 a.m. (prevailing Eastern Time) (the "Auction Date"), or at such other time and location as designated by the Debtors, with the prior consent of the Consultation Parties and the Stalking Horse (not to be unreasonably withheld, conditioned or delayed). The Debtors shall have the right to conduct any number of Auctions on the Auction Date, if the Debtors determine, in their reasonable business judgment that conducting such Auctions would be in the best interests of the Debtors' estates. If the Debtors receive no more than one Qualified Bid (including the Stalking Horse bid), the Debtors will not hold the Auction and instead shall request at the Sale Hearing that this Court approve the Stalking Horse APA.

35. As the Debtors are seeking to sell the assets in accordance with the terms of their existing privacy policy, a copy of which can be found on the Debtors' website at <http://store.americanapparel.net/en/aboutus/privacypolicy.jsp> and the Prime Clerk Website (the "Privacy Policy") and the Privacy Policy permits the Debtors to transfer Personal Information (as defined in the Privacy Policy), there is no requirement that the U.S. Trustee appoint a consumer privacy ombudsman pursuant to sections 363(b)(1) and 332(a) of the Bankruptcy Code.

36. The Good Faith Deposits of the Stalking Horse and any other bidder, and any other amounts deposited into escrow pursuant to the applicable purchase agreement (which, in the case of the Stalking Horse, shall be the Stalking Horse APA), shall be held in the Escrow Account by the Escrow Agent and shall not become property of the Debtors' bankruptcy estates unless the Deposit Amount or other Escrow Amount is otherwise due and payable to the Debtors in accordance with the applicable purchase agreement (which, in the case of the Stalking Horse, shall be the Stalking Horse APA). The agreement with respect to the Escrow Account set forth in the Stalking Horse APA (the "Escrow Account") shall be binding and enforceable against the Debtors and their estates in all respects and the Debtors are authorized and directed to perform its obligations thereunder. The Debtors are authorized to enter into an escrow agreement substantially in the form of the Escrow Agreement with each other bidder (if any), and when executed by the Debtors, such escrow agreements (if any) shall be binding and enforceable against the Debtors and their estates in all respects.

37. All persons and entities that participate in the bidding process or the Auction shall be deemed to have knowingly and voluntarily submitted to the exclusive jurisdiction of this

Court with respect to all matters related to the terms and conditions of the transfer of Assets, the Auction and any Sale Transaction.

38. In the event there is a conflict between this Order and the Motion or the Stalking Horse APA, this Order shall control and govern.

39. The Stalking Horse has standing to enforce the terms of this Order.

40. This Order shall be immediately effective and enforceable upon its entry. The 14 day stay imposed by Bankruptcy Rules 6004(h) and 6006(d) is hereby waived.

41. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

42. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied.

43. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

44. The Debtors are authorized to take all steps necessary or appropriate to carry out this Bidding Procedures Order.

45. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: _____, 2016
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

Exhibit 1
(Bidding Procedures)

Exhibit 2

(Assumption and Assignment Notice)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: AMERICAN APPAREL, LLC, <i>et al.</i> , ¹ Debtors.	: : : : : : : :	Chapter 11 Case No. _____ (Joint Administration Requested)
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**NOTICE OF POSSIBLE ASSUMPTION
AND ASSIGNMENT OF CERTAIN EXECUTORY
CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH SALE**

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On November 14, 2016, the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed with the United States Court for the District of Delaware (the "Bankruptcy Court") a motion (Docket No. _) (the "Motion") for entry of (a) an order (the "Bidding Procedures Order")² (i) authorizing and approving bidding procedures, substantially in the form attached to the Bidding Procedures Order as Exhibit 1 (the "Bidding Procedures"), to be employed in connection with the sale or disposition (the "Sale" or "Sale Transaction") of substantially all of the Debtors' assets or any portion thereof; (ii) scheduling an auction (the "Auction") for the Assets; (iii) scheduling a hearing (the "Sale Hearing") to consider approval of one or more Sale Transaction(s); (iv) authorizing and approving the form and manner of notice of the Auction and Sale Hearing, notice to each non-Debtor counterparty (each, a "Counterparty") to an executory contract or unexpired lease (collectively, the "Contracts") of the Debtors' proposed cure amounts to cure all monetary defaults under the Contracts (the "Cure Costs"), if any, and notice of proposed assumption and assignment of certain Contracts (collectively, the "Proposed Assumed Contracts") in connection with a particular Sale or Transaction; (v) authorizing and approving procedures for the assumption and assignment of Contracts; (b) entry of one or more orders, as applicable, authorizing and approving (i) the Sale of the Assets free and clear of all liens, claims, interests or encumbrances, with liens to attach to the proceeds of such sale(s); and (ii) the assumption and assignment of the Proposed Assumed Contracts; and (c) granting related relief.

¹ The Debtors are the following six entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): American Apparel, LLC (0601); American Apparel (USA), LLC (8940); American Apparel Retail, Inc. (7829); American Apparel Dyeing & Finishing, Inc. (0324); KCL Knitting, LLC (9518); and Fresh Air Freight, Inc. (3870). The address of each of the Debtors is 747 Warehouse Street, Los Angeles, California 90021.

² Capitalized terms not otherwise defined herein shall have the meanings given to them in the Bidding Procedures and the Bidding Procedures Order, as applicable. Any summary of the Bidding Procedures or the Bidding Procedures Order is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any conflict between any such summary contained in this Notice and such actual terms and conditions, the actual terms and conditions in the Bidding Procedures shall control.

2. On _____, the Bankruptcy Court entered the Bidding Procedures Order (Docket No. _) approving, in part, the relief requested in the Motion.

3. **The Sale Hearing will take place on _____ at _ : _ [a.m./p.m.]** before the Honorable _____, United States Bankruptcy Judge, in the Bankruptcy Court, located at 824 N. Market St., Wilmington, DE 19801. The Debtors' presentation to the Bankruptcy Court for approval of one or more highest and best bid resulting from the Auction (each a "Successful Bid") does not constitute the Debtors' acceptance of such bid. The Debtors will have accepted the terms of a Successful Bid only when such bid has been approved by the Bankruptcy Court pursuant to a Sale Order.

4. In connection with the Sale, and in accordance with the Assumption and Assignment Procedures set forth in the Motion and the Bidding Procedures Order, the Debtors may seek to assume and assign to one or more Successful Bidder (as defined in the Bidding Procedures) certain Contracts of the Debtors. Each of the Debtors' Contracts is identified on Schedule 1 attached hereto. The inclusion of any Contract on Schedule 1 does not constitute an admission that a particular Contract is an executory contract or unexpired lease or require or guarantee that such Contract will be assumed or assigned, and all rights of the Debtors with respect thereto are reserved. The Cure Costs, if any, that the Debtors believe are required to be paid to the applicable Counterparty to cure any monetary defaults under each contract pursuant to Bankruptcy Code sections 365(b)(1)(A) and (B) is set forth on the Schedule 1.

5. Any Counterparty that wishes to object to the proposed assumption, assignment and sale of a Proposed Assumed Contract, the subject of which objection is the Debtors' proposed Cure Costs to cure any outstanding monetary defaults then existing under such Contract (each, a "Cure Objection") shall file with the Bankruptcy Court and serve its Cure Objection on (a) the Debtors, American Apparel, LLC, 747 Warehouse Street, Los Angeles, California 90021 (Attn: Chelsea Grayson, Bennett Nussbaum, and Lance Miller); (b) counsel for the Debtors, (i) Jones Day, 901 Lakeside Avenue, Cleveland, OH 44114 (Attn: Carl E. Black, Esq.) and 250 Vesey Street, New York, NY 10281 (Attn: Scott J. Greenberg, Esq.); and (ii) Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Attn: Laura Davis Jones, Esq., James E. O'Neill, Esq., and Joseph M. Mulvihill); (c) counsel for any official committee of unsecured creditors appointed in these chapter 11 cases; (d) counsel for the Debtors' prepetition secured lenders, Milbank, Tweed, Hadley & McCloy LLP, 28 Liberty Street, New York, NY 10005 (Attn: Gerard Uzzi, Esq.); (e) counsel to the DIP Lenders, (i) Riemer & Braunstein LLP, Seven Times Square, Suite 2506, New York, New York 10036 (Attn: Steven Fox, Esq.) and (ii) Ashby & Geddes, P.A., 500 Delaware Avenue, P.O. Box 1150 Wilmington, DE 19899 (Attn: Gregory Taylor); (f) counsel (if applicable) of any applicable Successful Bidder(s); (g) counsel (if applicable) of any applicable Backup Bidder(s) (as defined in the Bidding Procedures); (h) counsel for the Stalking Horse, Sullivan & Cromwell LLP, 125 Broad Street, New York, NY 10004 (Attn: Michael H. Torkin, Esq. and Mimi Wu, Esq.) and (i) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: [____], Esq.) (collectively, the "Objection Recipients") by **December 15, 2016 at 5:00 p.m. (Prevailing Eastern Time)** (the "Cure Objection Deadline"). Any Cure Objection must state, with specificity, the legal and factual bases thereof, including any appropriate documentation in support thereof.

6. The Bidding Procedures Order requires that the Debtors and a Counterparty that has filed a Cure Objection first confer in good faith to attempt to resolve the Cure Objection without Bankruptcy Court intervention. If the parties are unable to consensually resolve the Cure Objection prior to the commencement of the Sale Hearing, the amount to be paid or reserved with respect to such objection shall be determined by the Bankruptcy Court at the Sale Hearing. The Bankruptcy Court shall make all necessary determinations relating to the applicable Cure Costs and Cure Objection at a hearing scheduled pursuant to the following paragraph. All other objections to the proposed assumption and assignment of the Debtors' right, title, and interest in, to, and under a Contract, if it is ultimately designated a Proposed Assumed Contract, will be heard at the Sale Hearing.

7. If a timely Cure Objection cannot otherwise be resolved by the parties, such objection shall be heard at the Sale Hearing; provided that, a Cure Objection (and only a Cure Objection) may, at the Debtors' discretion, after consulting with the Consultation Parties³ and the applicable Successful Bidder, be adjourned (an "Adjourned Cure Objection") to a subsequent hearing. An Adjourned Cure Objection may be resolved after the closing date of the applicable Sale Transaction; provided that, the Debtors maintain a cash reserve equal to the cure amount the objecting Counterparty believes is required to cure the asserted monetary default under the applicable Proposed Assumed Contract. Upon resolution of an Adjourned Cure Objection and the payment of the applicable cure amount, if any, the applicable Proposed Assumed Contract that was the subject of such Adjourned Cure Objection shall be deemed assumed and assigned to the applicable Successful Bidder, as of the closing date of the applicable Sale Transaction.

8. If a Counterparty fails to timely file with the Court and serve on the Objection Recipients a Cure Objection, the Counterparty shall be deemed to have consented to the assumption, assignment and sale of the Proposed Assumed Contract (unless such Counterparty has timely filed an Adequate Assurance Objection (as hereinafter defined) with respect to the Proposed Assumed Contract) to the applicable Successful Bidder and forever shall be barred from asserting any objection with regard to such assumption, assignment and sale. The Cure Costs set forth in the Assumption and Assignment Notice shall be controlling and will be the only amount necessary to cure outstanding defaults under the Proposed Assumed Contract under Bankruptcy Code section 365(b), notwithstanding anything to the contrary in any Proposed Assumed Contract, or any other document, and the Counterparty to the Proposed Assumed Contract shall be deemed to have consented to the Cure Costs and forever shall be barred from asserting any other claims related to such Proposed Assumed Contract against the Debtors or any Successful Bidder(s), or the property of any of them.

9. In the event that the Debtors identify any Counterparties that were not served with the Assumption and Assignment Notice, the Debtors may subsequently serve such Counterparty with an Assumption and Assignment Notice, and the following procedures will nevertheless

³ The "Consultation Parties" are (a) Milbank, Tweed, Hadley & McCloy LLP and Fox Rothschild LLP, as counsel to certain of the Debtors' prepetition secured lenders, (b) Covington & Burling LLP, as counsel to Wilmington Trust, National Association, as administrative agent to the Debtors' prepetition secured lenders, (c) Riemer & Braunstein LLP and Ashby & Geddes, P.A., as counsel to the DIP Lenders and (d) counsel for any official committee of unsecured creditors appointed in these Cases.

apply to such Counterparty; provided, however, that the deadline to file a Cure Objection with respect to such Counterparty shall be **5:00 p.m. (prevailing Eastern Time)** on the date that is 14 days following service of the Assumption and Assignment Notice.

10. Any Counterparty to a Proposed Assumed Contract that wishes to object to the proposed assumption, assignment and sale of the Proposed Assumed Contract, the subject of which objection is a Successful Bidder's proposed form of adequate assurance of future performance with respect to such contract (each, an "Adequate Assurance Objection") shall file with the Court and serve on the Objection Recipients an Adequate Assurance Objection, which must state, with specificity, the legal and factual bases thereof, including any appropriate documentation in support thereof, by no later than **December 27, 2016, at 5:00 p.m. (prevailing Eastern Time)** (the "Adequate Assurance Objection Deadline"); provided that, if the Sale Hearing is adjourned to a later date, the Adequate Assurance Objection Deadline shall be at 5:00 p.m. (Prevailing Eastern Time) two days prior to the Sale Hearing.

11. The Bidding Procedures Order requires that the Debtors and a Counterparty that has filed an Adequate Assurance Objection first confer in good faith to attempt to resolve the Adequate Assurance Objection without Bankruptcy Court intervention. If the parties are unable to consensually resolve the Adequate Assurance Objection prior to the commencement of the Sale Hearing, such objection and all issues of adequate assurance of future performance of the applicable Successful Bidder shall be determined by the Court at the Sale Hearing.

12. **If a Counterparty fails to timely file with the Court and serve on the Objection Recipients an Adequate Assurance Objection, the Counterparty shall be deemed to have consented to the assumption, assignment, and sale of the Proposed Assumed Contract (unless the Counterparty has filed a timely Cure Objection with respect to the Proposed Assumed Contract) to the applicable Successful Bidder and forever shall be barred from asserting any objection with regard to such assumption, assignment and sale. The applicable Successful Bidder shall be deemed to have provided adequate assurance of future performance with respect to the applicable Proposed Assumed Contract in accordance with section 365(f)(2)(B) of the Bankruptcy Code, notwithstanding anything to the contrary in the Proposed Assumed Contract, or any other document.**

13. The inclusion of a Contract or other document or Cure Costs on the Contracts Schedule 1 attached hereto or on any Proposed Assumed Contracts Notice (as defined in the Motion) (collectively, the "Contract Notices") shall not constitute or be deemed a determination or admission by the Debtors, the applicable Successful Bidder(s), or any other party in interest that such Contract or other document is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code or that the stated Cure Costs are due (all rights with respect thereto being expressly reserved). The Debtors reserve all of their rights, claims, and causes of action with respect to each Contract or other document listed on the Contract Notices. **The Debtors' inclusion of any Contract on the Contract Notices shall not be a guarantee that such contract ultimately will be assumed or assumed and assigned.** The Contract Notices shall be without prejudice to each Successful Bidder's rights, if any, under the applicable asset purchase agreement, to subsequently exclude Proposed Assumed Contracts from the assumption or assignment prior to the closing of an applicable Sale Transaction(s).

14. The Debtors' assumption and/or assignment of a Contract is subject to approval by the Bankruptcy Court and consummation of one or more Sale Transactions. Absent consummation of one or more Sale Transactions and entry of a Sale Orders approving the assumption and/or assignment of the Contracts, the Contracts shall be deemed neither assumed nor assigned, and shall in all respects be subject to subsequent assumption or rejection by the Debtors.

15. Copies of the Motion, the Bidding Procedures Order and the Bidding Procedures may be obtained free of charge at the website dedicated to the Debtors' chapter 11 cases maintained by their claims and noticing agent and administrative advisor, Prime Clerk LLC (<http://cases.primeclerk.com/americanapparel>). Copies of these documents are also available for inspection during regular business hours at the Office of the Clerk of the Bankruptcy Court, located at 824 N. Market Street, 3rd Floor, Wilmington, DE 19801, and may be viewed for a fee on the internet at the Bankruptcy Court's website (<http://www.deb.uscourts.gov/>) by following the directions for accessing the ECF system on such website.

Dated: _____, 2016
Wilmington, Delaware

PACHULSKI STANG ZIEHL & JONES LLP

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James E. O'Neill (DE Bar No. 4042)
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and

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and

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Proposed Co-Counsel for the Debtors
and Debtors in Possession

Schedule 1

Counterparty	Counterparty Address	Title/Description of Contract	Cure Cost

Exhibit 3

(Sale Notice)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: AMERICAN APPAREL, LLC, <i>et al.</i> , ¹ Debtors.	: : : : : : :	Chapter 11 Case No. _____ (Joint Administration Requested)
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**NOTICE OF (A) THE DEBTORS SALE OF SUBSTANTIALLY ALL OF THEIR
ASSETS, FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES AS
SET FORTH IN THE STALKING HORSE APA, (B) APPROVAL OF CEWRTAIN
BIDDING PROCEDURES RELATED TO SUCH SALE, (C) THE TIME, PLAN AND
MANNER OF CONDUCTING AN AUCTION AND (D) THE TIME AND PLACE OF
CONDUCTING THE SALE HEARING, AND OBJECTION AND OTHER DEADLINES
RELATED THERETO**

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On November 14, 2016, the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed with the United States Court for the District of Delaware (the "Bankruptcy Court") a motion (Docket No.) (the "Motion") for entry of (a) an order (the "Bidding Procedures Order")² (i) authorizing and approving bidding procedures (the "Bidding Procedures"), substantially in the form attached to the Bidding Procedures Order as Exhibit 1, to be employed in connection with the sale or disposition (the "Sale" or "Transaction") of substantially all of the Debtors' assets (the "Assets") or any portion thereof; (ii) scheduling an auction (the "Auction") of the Assets; (iii) scheduling a hearing (the "Sale Hearing") to consider approval of the Sale Transactions; (iv) authorizing and approving the form and manner of notice of the Auction and Sale Hearing, notice to each non-Debtor counterparty (each, a "Counterparty") to an executor contract or unexpired lease (collectively, the "Contracts") of the Debtors' proposed cure amounts to cure all monetary defaults under the Contracts (the "Cure Costs"), if any, and notice of proposed assumption and assignment of certain Contracts (collectively, the "Proposed Assumed Contracts") in connection with a particular Sale or Transaction; (ii) authorizing and approving procedures for the assumption and assignment of

¹ The Debtors are the following six entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): American Apparel, LLC (0601); American Apparel (USA), LLC (8940); American Apparel Retail, Inc. (7829); American Apparel Dyeing & Finishing, Inc. (0324); KCL Knitting, LLC (9518); and Fresh Air Freight, Inc. (3870). The address of each of the Debtors is 747 Warehouse Street, Los Angeles, California 90021.

² Capitalized terms not otherwise defined herein shall have the meanings given to them in the Bidding Procedures and the Bidding Procedures Order, as applicable. Any summary of the Bidding Procedures or the Bidding Procedures Order is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any conflict between any such summary contained in this Notice and such actual terms and conditions, the actual terms and conditions in the Bidding Procedures shall control.

Contracts; (b) entry of one or more orders, as applicable, authorizing and approving (i) the Sale of the Assets free and clear of all liens, claims, interests or encumbrances, except certain permitted encumbrances as determined by the Debtors and any purchaser of the Assets, and subject to any defenses or claims of the Debtors with respect thereto, with liens to attach to the proceeds of such sale(s); and (ii) the assumption and assignment of the Proposed Assumed Contracts; and (c) granting related relief.

2. On _____, the Bankruptcy Court entered the Bidding Procedures Order (Docket No. ____).

3. Pursuant to the Bidding Procedures Order, any person or entity interested in participating in the Auction must submit a Qualified Bid (as defined in the Bidding Procedures) for the relevant Assets on or before **December 19, 2016 at 5:00 p.m. (prevailing Eastern Time)** (the "Bid Deadline") to the following parties: to (a) the Debtors, American Apparel, LLC, 747 Warehouse Street, Los Angeles, California 90021 (Attn: Chelsea Grayson (cgrayson@americanapparel.net), Bennett Nussbaum (bennettnussbaum@americanapparel.net) and Lance Miller (lancemiller@americanapparel.net); (b) counsel for the Debtors, (i) Jones Day, 901 Lakeside Avenue, Cleveland, OH 44114 (Attn: Carl E. Black, Esq. (ceblack@jonesday.com)) and 250 Vesey Street, New York, NY 10281 (Attn: Scott J. Greenberg, Esq. (sgreenberg@jonesday.com)) and (ii) Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Attn: Laura Davis Jones, Esq., (ljones@pszjlaw.com), James E. O'Neill, Esq (jo'neill@pszjlaw.com) and Joseph M. Mulvihill (jmulvihill@pszjlaw.com)); (c) the Debtors' financial advisors, Berkeley Research Group, LLC, 75 State Street, Suite 1805, Boston, MA 01109 (Attn: Mark Weinsten (mweinsten@thinkbrg.com) and Joe D'Ascoli (jdascoli@thinkbrg.com)); and (d) the Debtors' investment banker, Houlihan Lokey, Inc., 245 Park Avenue, 20th Fl., New York, NY 10167 (Attn: Saul Burian (SBurian@HL.com) and Devin Shanahan (DShanahan@hl.com)) (collectively, the "Bid Notice Parties").

4. If the Debtors receive more than one timely Qualified Bid for the same Assets with an acceptable purchase price by the Bid Deadline, the Debtors will conduct the Auction. The Auction, if required, will be conducted at the offices of Jones Day, **250 Vesey St., New York, New York 10281** on **December 21, 2016 at 10:00 a.m. (Prevailing Eastern Time)**, or at such other time and location as designated by the Debtors, with the prior consent of the Consultation Parties³ and the Stalking Horse (not to be unreasonably withheld, conditioned or delayed).

5. Objections to the Sale Transaction(s) (each, a "Sale Objection"), including any objection to the sale of any Assets free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code and entry of any sale order (other than Adequate Assurance Objections (as defined below)) must (a) be in writing and specify the nature

³ The "Consultation Parties" are (i) Milbank, Tweed, Hadley & McCloy LLP, as counsel to the Debtors' prepetition secured lenders; (ii) Wilmington Trust, National Association, as administrative agent under the debtors' prepetition secured term loan credit facility; (iii) Riemer & Braunstein LLP and Ashby & Geddes, P.A., as counsel to the DIP Secured Parties; and (iv) counsel for any official committee of unsecured creditors appointed in these Cases.

of such objection; (b) comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules and all orders of the Bankruptcy Court; and (c) be filed with the Bankruptcy Court and served on: (i) the Debtors, American Apparel, LLC, 747 Warehouse Street, Los Angeles, California 90021 (Attn: Chelsea Grayson, Bennett Nussbaum, and Lance Miller); (ii) counsel for the Debtors, (1) Jones Day, 901 Lakeside Avenue, Cleveland, OH 44114 (Attn: Carl E. Black, Esq.) and 250 Vesey Street, New York, NY 10281 (Attn: Scott J. Greenberg, Esq.); and (2) Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17th Floor, P.O. Box 8705, Wilmington, DE 19899-8705 (Attn: Laura Davis Jones, Esq., James E. O'Neill, Esq., and Joseph M. Mulvihill); (iii) counsel for any official committee of unsecured creditors appointed in these chapter 11 cases; (iv) counsel for the Debtors' prepetition secured lenders, Milbank, Tweed, Hadley & McCloy LLP, 28 Liberty Street, New York, NY 10005 (Attn: Gerard Uzzi, Esq.); (v) counsel for the DIP Lender, (1) Riemer & Braunstein LLP, Seven Times Square, Suite 2506, New York, New York 10036 (Attn: Steven Fox, Esq.) and (2) Ashby & Geddes, P.A., 500 Delaware Avenue, P.O. Box 1150 Wilmington, DE 19899 (Attn: Gregory Taylor); (vi) counsel (if applicable) of any applicable Successful Bidder(s) (as defined in the Bidding Procedures); (vii) counsel (if applicable) of any applicable Backup Bidder(s); (viii) counsel to the Stalking Horse, Sullivan & Cromwell LLP, 125 Broad Street, New York, NY 10004 (Attn: Michael H. Torkin, Esq. and Mimi Wu, Esq.); and (ix) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: [____], Esq.) (collectively, the "Objection Recipients") by **December 22, 2016 at 5:00 p.m. (Prevailing Eastern Time)** (the "Sale Objection Deadline"). All Sale Objections not otherwise resolved by the parties prior thereto shall be heard at the Sale Hearing. **THE FAILURE OF ANY PARTY TO TIMELY FILE WITH THE BANKRUPTCY COURT AND SERVE ON THE OBJECTION RECIPIENTS A SALE OBJECTION FOREVER SHALL BE BARRED FROM ASSERTING, AT THE APPLICABLE SALE HEARING OR THEREAFTER, ANY OBJECTION TO THE RELIEF REQUESTED IN THE MOTION, OR TO THE CONSUMMATION AND PERFORMANCE OF THE APPLICABLE SALE TRANSACTION(S) CONTEMPLATED BY AN APPLICABLE ASSET PURCHASE AGREEMENT WITH A SUCCESSFUL BIDDER, INCLUDING THE TRANSFER OF THE ASSETS TO THE APPLICABLE SUCCESSFUL BIDDER(S), FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES PURSUANT TO SECTION 363(F) OF THE BANKRUPTCY CODE.** Notwithstanding the foregoing or anything herein to the contrary, and as set forth below, the deadline to file an Adequate Assurance Objection in connection with a proposed Sale Transaction shall be **two days** prior to the applicable Sale Hearing.

6. The Sale Hearing will take place on _____, 201[_] at _:_ [a.m./p.m.], before the Honorable _____, United States Bankruptcy Judge, in the Bankruptcy Court, located at 824 N. Market St, Wilmington, DE 19801. The Debtors' presentation to the Bankruptcy Court for approval of a Successful Bid does not constitute the Debtors' acceptance of such bid. The Debtors will have accepted the terms of a Successful Bid only when such bid has been approved by the Bankruptcy Court pursuant to a Sale Order.

7. To the extent set forth in the Bidding Procedures, the Debtors reserve the right to, in their reasonable business judgment, and in consultation with the Consultation Parties, modify the Bidding Procedures at any time, including, without limitation, to extend deadlines and proposed dates set forth therein, including extending the Bid Deadline, modifying the date of the

Auction, and adjourning and/or rescheduling the Sale Hearing. This Notice is subject to the full terms and conditions set forth in the Bidding Procedures Order and the Bidding Procedures.

8. Parties interested in receiving additional information, including, with regard to the Sale, the Assets, the Auction or the Bidding Procedures may make requests to the Debtors' investment banker, Houlihan Lokey, Inc., 245 Park Avenue, 20th Fl., New York, NY 10167 (Attn: Saul Burian (SBurian@HL.com) and Devin Shanahan (DShanahan@hl.com)).

9. Copies of the Motion, the Bidding Procedures Order and the Bidding Procedures may be obtained free of charge at the website dedicated to the Debtors' chapter 11 cases maintained by their claims and noticing agent and administrative advisor, Prime Clerk LLC (<http://cases.primeclerk.com/americanapparel>). Copies of these documents are also available for inspection during regular business hours at the Office of the Clerk of the Bankruptcy Court, located at 824 N. Market Street, 3rd Floor, Wilmington, DE 19801, and may be viewed for a fee on the internet at the Bankruptcy Court's website (<http://www.deb.uscourts.gov/>) by following the directions for accessing the ECF system on such website.

Dated: _____, 2016
Wilmington, Delaware

PACHULSKI STANG ZIEHL & JONES LLP

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Proposed Co-Counsel for the Debtors
and Debtors in Possession

Exhibit 4

(Stalking Horse APA)

Exhibit C

Form of Sale Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re: AMERICAN APPAREL, LLC, <i>et al.</i> , ¹ Debtors.	: : : : : : : : : :	Chapter 11 Case No. _____ (Jointly Administered)
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**ORDER (I) APPROVING THE SALE OF [STALKING HORSE
ASSETS] FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND
ENCUMBRANCES AND (II) APPROVING THE ASSUMPTION AND
ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES
IN CONNECTION THEREWITH; AND (III) GRANTING RELATED RELIEF**

This Court having considered the *Motion of the Debtors for Entry of Orders (I)(A) Approving Bidding Procedures for the Sale of Substantially all of the Debtors' Assets, (B) Authorizing the Debtors to Enter into the Stalking Horse Purchase Agreement, (C) Approving Bid Protections, (D) Scheduling an Auction, (E) Approving the Form and Manner of Notice thereof, (F) Scheduling a Sale Hearing and Approving the Form and Manner of Notice thereof, and (G) Approving Assumption and Assignment Procedures; (II)(A) Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of Liens, Claims, Interests and Encumbrances and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related*

¹ The Debtors are the following six entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): American Apparel, LLC (0601); American Apparel (USA), LLC (8940); American Apparel Retail, Inc. (7829); American Apparel Dyeing & Finishing, Inc. (0324); KCL Knitting, LLC (9518); and Fresh Air Freight, Inc. (3870). The address of each of the Debtors is 747 Warehouse Street, Los Angeles, California 90021.

Relief (the "Motion"),² filed by the above-captioned debtors and debtors in possession (the "Debtors") and upon the *Declaration of Mark Weinsten in Support of First Day Pleadings* (the "First Day Declaration") and upon the *Declaration of Saul E. Burian in Support of Sale and Bidding Procedures Motion* (the "Burian Declaration"); and upon the *Order (I) Approving Bidding Procedures for the Sale of Substantially All of Debtors' Assets, (II) Authorizing the Debtors to Enter into the Stalking Horse Purchase Agreement, (III) Approving Bid Protections, (IV) Scheduling an Auction, (V) Approving the Form and Manner of Notice Thereof; (VI) Approving Assumption and Assignment Procedures; (VII) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof and (VIII) Granting Related Relief* (the "Bidding Procedures Order"); and an auction (the "Auction") having been held on December 21, 2016 in accordance with the Bidding Procedures Order; and the Sale Transaction[s] represented by [the Stalking Horse APA and/or the Alternative Transaction Agreement[s] (each as defined below)] having been determined to be the highest and best offer for the Assets; and Purchaser[s] having been deemed the Successful Bidder[s] by the Debtor, in consultation with the official committee of unsecured creditors (the "Committee") appointed in these chapter 11 cases (the "Cases"); and the Sale Hearing having been held on _____ to consider the remaining relief requested in the Motion and approval of the [the Stalking Horse APA and/or the Alternative Transaction Agreement[s]]; and appearances of all interested parties having been noted on the record of the Sale Hearing; and upon all of the proceedings had before this Court (including but not limited to the testimony and other evidence proffered or adduced at the Sale Hearing); and it appearing that this matter is a core proceeding pursuant to

² Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion.

28 U.S.C. § 157(b); and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties-in-interest; and it appearing that proper and adequate notice of the Motion has been given under the circumstances and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor;

IT IS HEREBY FOUND AND DETERMINED THAT:³

A. Jurisdiction: This Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1134. Approval of the Debtors entry into the [the Stalking Horse APA and/or the Alternative Transaction Agreement[s]], and each of the transactions contemplated thereby (collectively, the "Sale Transactions") is a core proceeding under 28 U.S.C. §§ 157(b)(2)(A), (D), (N) and (O).

B. Venue: Venue of these Cases in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409(a).

C. Statutory Predicates: The statutory predicates for the approval of the [[the Stalking Horse APA and/or the Alternative Transaction Agreement[s]] and Sale Transactions contemplated therein are sections 105, 363 and 365 of the Bankruptcy Code, Rules 2002, 6004, 6006 and 9014 of the Bankruptcy Rules, and Local Rule 6004-1.

D. Notice: Proper, timely, adequate and sufficient notice of the Motion and the Sale Hearing has been provided in accordance with sections 102(1), 105(a), and 363 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001 and 6004, and in compliance with the Local

³ The findings of fact and the conclusions of law stated herein shall constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law shall be determined to be a finding of fact, it shall be so deemed.

Rules and Bidding Procedures Order, including without limitation to the Notice Parties (as defined below) and more broadly by publication as set forth in the [TITLE OF AFFIDAVIT OF PUBLICATION] on [DATE]. The foregoing notice was good, sufficient and appropriate under the circumstances, and no other or further notice of the Motion, the Sale Hearing, the Stalking Horse APA and/or the Alternative Transaction Agreement[s] or the Sale Transactions is required. The disclosures made by the Debtors concerning the Stalking Horse APA and/or the Alternative Transaction Agreement[s], the Sale Transaction[s] and the Sale Hearing were good, complete and adequate.

E. Opportunity to be Heard: A reasonable opportunity to object or be heard regarding the relief requested in the Motion and the transactions pursuant thereto has been afforded to all interested persons and entities, including, without limitation, the following: (i) Milbank, Tweed, Hadley & McCloy LLP and Fox Rothschild LLP, as counsel to certain of the Debtors' prepetition secured lenders, (ii) Covington & Burling LLP, as counsel to Wilmington Trust, National Association, as administrative agent to the Debtors' prepetition secured lenders, (iii) Riemer & Braunstein LLP and Ashby & Geddes, P.A., as counsel to the DIP Lenders and (iv) counsel for any official committee of unsecured creditors appointed in these chapter 11 cases; (v) Sullivan & Cromwell LLP, as counsel to the Stalking Horse; (vi) all persons and entities known by the Debtors to have expressed an interest to the Debtors in a Sale Transaction involving any of the Assets during the past twelve (12) months, including any person or entity that has submitted a bid for any of the Assets, as applicable; (vii) all persons and entities known by the Debtors to have asserted any lien, claim, interest, or encumbrance in the Assets (for whom identifying information and addresses are available to the Debtors); (viii) all non-Debtor parties to any executory contracts or unexpired leases of the Debtors

(collectively, the "Contracts") that are proposed to be assumed or rejected in connection with a Sale Transaction; (ix) any governmental authority known to have a claim against the Debtors in these chapter 11 cases; (x) the United States Attorney General; (xi) the Antitrust Division of the United States Department of Justice; (xii) the United States Attorney for the District of Delaware; (xiii) the Office of the Attorney General in each state in which the Debtors operate; (xiv) the Federal Trade Commission; (xv) the Office of the United States Trustee for the District of Delaware; (xvi) the Internal Revenue Service; (xvii) the United States Securities and Exchange Commission; (xviii) all of the Debtors' known creditors (for whom identifying information and addresses are known to the Debtors); (xix) all parties who have filed a notice of appearance and request for service of papers in these chapter 11 cases pursuant to Bankruptcy Rule 2002; and (xx) all other persons and entities as directed by the Bankruptcy Court (the parties listed in (i) through (xx) collectively, the "Notice Parties"). Objections, if any, to the Motion have been withdrawn or resolved and, to the extent not withdrawn or resolved, are hereby overruled.

F. Cure Notices: The Debtors have served cure notices [Docket No. _] (the "Cure Notices" upon all executory contract and lease counterparties notifying such parties: (i) that the Debtors may seek to assume and assign certain of those contracts and leases on the Closing Dates of the Sale Transactions and (ii) of the proposed Cure Costs. The service of such notices was good, sufficient and appropriate under the circumstances and no further notice need be given in respect of establishing a Cure Cost for such contracts and leases. Each of the contract and lease counterparties has had an opportunity to object to the Cure Costs set forth in the Cure Notices.

G. Marketing Process: As demonstrated by (i) the Burian Declaration, (ii) the

testimony and other evidence proffered or adduced at the Sale Hearing and (iii) the representations of counsel made on the record at the Sale Hearing, the Debtors and their advisors thoroughly marketed the Assets and conducted the marketing and sale process as set forth in and in accordance with the Motion and the Bidding Procedures Order. Based upon the record of these proceedings, all creditors and other parties in interest and all prospective purchasers have been afforded a reasonable and fair opportunity to bid for the assets.

H. Bidding Procedures Fair: The Bidding Procedures were substantively and procedurally fair to all parties and all Prospective Bidders and afforded notice and a full, fair and reasonable opportunity for any person to make a higher or otherwise better offer for the assets.

I. Highest and Best Offer: After the conclusion of the Auction held on [December [___], 2016] and in accordance with the Bidding Procedures, the Debtors determined in a valid and sound exercise of their business judgment that the highest and best Qualified Bid for the Stalking Horse Assets was that of the Stalking Horse [as increased as a result of the Auction] [and that the highest and best Qualified Bid for the [other Assets] was [NAME OF PURCHASER]. The consideration provided by the Stalking Horse for the Stalking Horse Assets [and that provided by [NAME OF PURCHASER] for the [other Assets]] provides fair and reasonable consideration to the Debtors for the sale of all Assets and the assumption of all Assumed Liabilities, and the performance of the other covenants set forth in the Stalking Horse APA and/or the Alternative Transaction Agreement[s] will provide a greater recovery for Debtors' estates than would be provided by any other available alternative. The Stalking Horse and [NAME OF PURCHASER] are collectively referred to herein as the "Purchasers."

J. Stalking Horse APA: On November [___], 2016, the Debtors and the Stalking

Horse entered into the Stalking Horse APA. In accordance with the Bidding Procedures Order and Bidding Procedures, the Stalking Horse APA was deemed a Qualified Bid and the Stalking Horse was eligible to participate in the Auction.

K. [Alternative Transaction Agreements]: In accordance with the Bidding Procedures and Bidding Procedures Order, [NAME OF PURCHASER[S]] [was/were] determined to be [a] Qualified Bidder[s], and [NAME OF PURCHASER]'s Form APA as modified to reflect [NAME OF PURCHASER]'s proposed Sale Transaction was determined to be a Qualified Bid ([each] an "Alternative Transaction Agreement"). The Stalking Horse APA and each Alternative Transaction Agreement are collectively referred to herein as the "Purchase Agreements." Each of the Purchase Agreements are attached hereto as Exhibits 1 [and [___]], respectively.]

L. Entry of an order approving the Debtors' assumption of the Stalking Horse APA [and/or Alternative Transaction Agreement[s]] and the Debtors' performance of all the provisions thereof is a necessary condition precedent to Purchaser's consummation of the Sale Transaction[s].

M. Business Judgment: The Debtors' decisions to (i) enter into [each/the] Purchase Agreement, and (ii) perform under and make payments required by [each/the] Purchase Agreement, constitute reasonable exercises of the Debtors' sound business judgment consistent with their fiduciary duties and is in the best interests of the Debtors, their estates, their creditors, and all other parties in interest. Good and sufficient reasons for the approval of the Purchase Agreement[s] and the assumption thereof have been articulated by the Debtors. The Debtors have demonstrated compelling circumstances for the Sale Transaction[s] outside: (i) the ordinary course of business, pursuant to section 363(b) of the Bankruptcy Code and (ii) a

plan of reorganization, in that, among other things, the immediate consummation of the Sale Transaction[s] is necessary and appropriate to preserve and maximize the value of the Debtors' estates. To maximize the value of the Assets [and preserve the viability of the business to which the Assets relate,] it is essential that the Sale Transactions occur promptly.

N. Personally Identifiable Information: The Sale Transactions do not require the appointment of a consumer privacy ombudsman pursuant to section 363(b)(1) of the Bankruptcy Code because the Debtors ' existing privacy policy does not prohibit the transfer of personally identifiable information under the circumstances of the Sale Transaction[s].

O. Time is of the Essence: Time is of the essence in effectuating [each of the Purchase Agreements] and proceeding with the Sale Transactions contemplated therein without interruption. Based on the record of the Sale Hearing, and for the reasons stated on the record at the Sale Hearing and in the First Day Declaration and the Burian Declaration, the Sale Transactions contemplated by the Purchase Agreement[s] must be commenced as soon as possible following entry of this Sale Order, and in no event later than [___], 2017, to maximize the value that the Purchaser[s] may realize from the Sale Transactions, and the value that the Debtors may realize from entering into the Purchase Agreement[s]. Accordingly, cause exists to lift the stay to the extent necessary, as contemplated by Bankruptcy Rules 4001(a) and 6004(h) and permit the immediate effectiveness of this Sale Order.

P. Sale Free and Clear: Except for liabilities assumed by the Purchaser(s) pursuant to the Purchase Agreement(s), a sale of the Assets other than one free and clear of liens, defenses (including, without limitation, rights of setoff and recoupment) and interests, including, without limitation, security interests of whatever kind or nature, mortgages, conditional sales or title retention agreements, pledges, deeds of trust, hypothecations, liens,

encumbrances, assignments, preferences, debts, easements, charges, suits, licenses, options, rights-of-recovery, judgments, orders and decrees of any court or foreign or domestic governmental entity, taxes (including foreign, state and local taxes), licenses, covenants, restrictions, indentures, instruments, leases, options, off-sets, claims for reimbursement, contribution, indemnity or exoneration, successor, product, environmental, tax, labor, Employee Retirement Income Security Act of 1974 ("ERISA"), Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), alter ego and other liabilities, causes of action, contract rights and claims, to the fullest extent of the law, in each case, of any kind or nature (including, without limitation, all "claims" as defined in section 101(5) of the Bankruptcy Code), , known or unknown, whether pre-petition or post-petition, secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, perfected or unperfected, liquidated or unliquidated, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, statutory or non-statutory, matured or unmatured, legal or equitable, including any and all such liabilities, causes of action, contract rights and claims arising out of Debtors' continued operation of its retail locations following the Closing Date (as defined in the Stalking Horse APA [and any other Purchase Agreement], including Debtors' use of any Purchased Intellectual Property pursuant to Section 8.11 of the Stalking Horse APA (collectively, "Encumbrances") and without the protections of this Sale Order would hinder the Debtors' ability to obtain the consideration provided for in the Purchase Agreement[s] and, thus, would impact materially and adversely the value that the Debtors' estates would be able to obtain for the sale of such Assets. But for the protections afforded to the Purchaser[s] under the Bankruptcy Code and this Sale Order, the Purchaser[s] would not have offered to pay the consideration contemplated in the Purchase

Agreement[s]. In addition, each entity with an Encumbrance upon the Assets, (i) has consented to the Sale Transactions or is deemed to have consented to the Sale Transactions, (ii) could be compelled in a legal or equitable proceeding to accept money satisfaction of such interest, or (iii) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code, and therefore, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Encumbrances who did not object, or who withdrew their objections, to the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. All holders of Encumbrances are adequately protected—thus satisfying section 363(e) of the Bankruptcy Code—by having their Encumbrances, if any, attach to the proceeds of the Sale Transaction[s], in the same order of priority and with the same validity, force and effect that such Encumbrances had before the Sale Transaction[s], subject to any rights, claim and defenses of the Debtors or their estates, as applicable, or as otherwise provided herein. Therefore, approval of the Purchase Agreement[s] and the consummation of the Sale Transactions free and clear of Encumbrances is appropriate pursuant to section 363(f) of the Bankruptcy Code and is in the best interests of the Debtors' estates, their creditors and other parties in interest.

Q. The Purchaser[s] would not have entered into the Purchase Agreement[s] and would not consummate the sale of Assets, thus adversely affecting the Debtors, their estates, creditors, employees and other parties in interest, if the sale of the Stalking Horse Assets was not free and clear of all Encumbrances (other than Permitted Exceptions and Assumed Liabilities). A sale of the Assets, other than one free and clear of all Encumbrances, would yield substantially less value for the Debtors' estates, with less certainty than the Sale Transaction[s].

R. Arms'-length Sale: The consideration to be paid by the Purchaser[s] under the Purchase Agreement[s] was negotiated at arm's-length and constitutes reasonably equivalent value and fair and adequate consideration for the Assets under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, the Uniform Voidable Transactions Act, and the laws of the United States, any state, territory, possession thereof or the District of Columbia. The terms and conditions set forth in the Purchase Agreement[s] are fair and reasonable under these circumstances and were not entered into for the purpose of, nor do they have the effect of, hindering, delaying or defrauding the Debtors or their creditors under any applicable laws. There has been no showing that any of the Debtors or the Purchaser[s] [is/are] entering into the Purchase Agreement[s] or proposing to consummate the Sale Transaction[s] fraudulently, for the purpose of statutory or common law fraudulent conveyance or fraudulent transfer claims, whether under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing.

S. Good Faith: The Debtors, their management and their board of directors, and [each of the Purchasers, their members and their] officers, directors, employees, agents and representatives, actively participated in the bidding process and acted in good faith. The Purchase Agreement[s] between the Purchaser[s] and the Debtors were negotiated and entered into based upon arm's length bargaining, without collusion or fraud, and in good faith as that term is used in sections 363(m) and 364(e) of the Bankruptcy Code. The Purchaser[s] [is/are] entering into the Sale Transaction[s] in good faith and [is a/are] good faith purchaser[s] within the meaning of 363(m) of the Bankruptcy Code and the court decisions thereunder, and [is/are] therefore entitled to the full protection of sections 363(m) and 364(e) of the Bankruptcy Code

with respect to all aspects of the transactions contemplated by the Purchase Agreement[s], including the acquisition of the Assets, and otherwise [has/have] proceeded in good faith in all respects in connection with this proceeding. The Debtors were free to deal with any other party interested in buying or selling on behalf of the Debtors' estate some or all of the Assets. Neither the Debtors nor the Purchaser[s] have engaged in any conduct that would cause or permit the Sale Transactions, the Purchase Agreement[s], or any related action or the transactions contemplated thereby to be avoided under section 363(n) of the Bankruptcy Code, or that would prevent the application of sections 363(m) or 364(e) of the Bankruptcy Code. The Purchaser[s] have not violated section 363(n) of the Bankruptcy Code by any action or inaction. Specifically, the Purchaser[s] have not acted in a collusive manner with any person and were not controlled by any agreement among bidders. The Purchaser[s]' prospective performance and payment of amounts owing under the Purchase Agreement[s] are in good faith and for valid business purposes and uses.

T. Insider Status: The Purchaser[s] are not the Debtors' "insiders" as that term is defined in section 101(31) of the Bankruptcy Code. No common identity of directors or controlling stockholders exists between [any Purchaser] and the Debtors.

U. Wherewithal: In accordance with section 365 of the Bankruptcy Code, including sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code, the Debtors have shown that the Purchaser[s] [has/have] the wherewithal, financial and otherwise, to perform all of its obligations under the Purchase Agreement[s].

V. Corporate Authority: The Debtors (i) have full corporate or other power to execute, deliver and perform their obligations under the Purchase Agreements[s] and all other transactions contemplated thereby and entry into the Purchase Agreement[s] has been duly

and validly authorized by all necessary corporate or similar action, (ii) have all of the corporate or other power and authority necessary to consummate the Sale Transactions, and (iii) have taken all actions necessary to authorize and approve the Purchase Agreement[s] and the Sale Transactions. No consents or approvals, other than those expressly provided for herein or in the Purchase Agreement[s], are required for the Debtors to consummate such transactions.

W. Purchaser[s] shall have no obligations with respect to any Encumbrances against or in respect of any of the Debtors or their Assets (other than Permitted Exceptions and Assumed Liabilities, each as defined in the Stalking Horse APA or the Purchase Agreement(s)).

X. The consummation of the Sale Transaction[s] is legal, valid and properly authorized under all applicable provisions of the Bankruptcy Code, including sections 105(a), 363(b), 363(f), 363(m), 363(n), 365(b)(1) and 365(f)(2) of the Bankruptcy Code, and with respect to the Assumed Contracts (as defined below), all of the applicable requirements of such sections have been or will be complied with in respect of the Transaction as of the effective date of assignment.

Y. The Assets constitute property of the Debtors' estates and title thereto is presently vested in the Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code. The sale of the Assets to the Purchaser[s] will be, as of the Closing Date or such later date as such Assets are transferred under the Purchase Agreement[s], a legal, valid and effective transfer of such assets, and each transfer and assignment vests or will vest the Purchaser[s] with all right, title and interest of the Debtors to the Assets free and clear of all Encumbrances (other than Permitted Exceptions and Assumed Liabilities).

Z. Assumption and Assignment of the Assumed Contracts: The assumption and

assignment of the executory contracts and unexpired leases of the Debtors that will be assumed and assigned in connection with the Sale Transaction[s] (all such executory contracts and unexpired leases, the "Assumed Contracts" (as such Assumed Contracts may be amended, supplemented or otherwise modified prior to assumption and assignment without further order of this Court with the consent of the Debtors, the Counterparty and the [applicable] Purchaser) that are designated for assumption and assignment pursuant to the terms of this Sale Order and the Purchase Agreement[s] is integral to [each] Purchase Agreement, does not constitute unfair discrimination, is in the best interests of the Debtors, their estates, their creditors and all other parties in interest, and represents the reasonable exercise of sound and prudent business judgment by the Debtors.

AA. The Debtors have met all requirements of section 365(b) of the Bankruptcy Code for each of the Assumed Contracts. Pursuant to the Purchase Agreement[s], the Debtors and, solely with respect to the Cure Costs, the Purchaser[s] have (i) cured and/or provided adequate assurance of cure of any default existing prior to the assignment of the Assumed Contracts to the Purchaser[s] in accordance with the terms of the Purchase Agreement[s], under all of the Assumed Contracts, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code; and (ii) provided compensation or adequate assurance of compensation to any counterparty for actual pecuniary loss to such party resulting from a default prior to the assignment of any of the Assumed Contracts, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code. Each of the Assumed Contracts is free and clear of all Encumbrances (other than Permitted Exceptions and Assumed Liabilities) against the [relevant] Purchaser.

BB. The Purchaser[[s] has/have] demonstrated adequate assurance of [its/their] future performance under the relevant Assumed Contracts within the meaning of

sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code. Pursuant to section 365(f) of the Bankruptcy Code, the Assumed Contracts to be assumed and assigned under the Purchase Agreement[s] shall be assigned and transferred to, and remain in full force and effect for the benefit of, the Purchaser[s] notwithstanding any provision in the contracts or other restrictions prohibiting their assignment or transfer.

CC. No monetary or non-monetary defaults exist in the Debtors' performance under the Assumed Contracts as of the date of this Sale Order other than the failure to pay amounts equal to the Cure Costs or defaults that are not required to be cured as contemplated in section 365(b)(1)(A) of the Bankruptcy Code. In accordance with the terms set forth in the Purchase Agreement and this Sale Order, the [applicable] Purchaser shall pay the Cure Costs for each of the Assumed Contracts.

DD. No Successor Liability: No sale, transfer or other disposition of the Assets pursuant to the Purchase Agreement[s] or entry into the Purchase Agreement[s] will subject [any/the] Purchaser to any liability for claims, obligations or Encumbrances asserted against the Debtors or the Debtors' interests in such Assets by reason of such transfer under any laws, including, without limitation, any bulk-transfer laws or any theory of successor or transferee liability, antitrust, environmental, product line, *de facto* merger or substantial continuity or similar theories. By virtue of the consummation of the Sale Transaction[s] contemplated by the Purchase Agreement[s], (i) the Purchaser[s] [is/are] not a continuation of the Debtors and their respective estates, there is no continuity or continuity of enterprise between Purchaser[s] and the Debtors, there is no common identity between the Debtors and the Purchaser[s], (ii) the Purchaser[s] [is/are] not holding themselves out to the public as a continuation of the Debtors or their respective estates, and (iii) the Sale Transaction[s] do not amount to a

consolidation, merger or *de facto* merger of Purchaser[s] and the Debtors and/or the Debtors' estates. Accordingly, the Purchaser[s] [is/are] not and shall not be deemed successors to the Debtors or their respective estates as a result of the consummation of the Sale Transaction[s] contemplated by the Purchase Agreement[s].

EE. No Sub Rosa Plan: Entry into the Purchase Agreement[s] and the transactions contemplated thereby neither impermissibly restructure the rights of the Debtors' creditors, nor impermissibly dictate the terms of a chapter 11 plan of reorganization for the Debtors. Entry into the Purchase Agreement[s] does not constitute a sub rosa chapter 11 plan.

FF. Nothing in the Purchase Agreement[s] creates any third party beneficiary rights in any entity not a party to the Purchase Agreement[s].

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:⁴

A. Motion Granted, Objections Overruled

1. The relief requested in the Motion is granted as set forth herein. Any remaining objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included in such objections are overruled on the merits with prejudice and denied. All parties and entities given notice of the Motion that failed to timely object thereto are deemed to consent to the relief sought therein.

2. This Court's findings of fact and conclusions of law in the Bidding Procedures Order and the record of the Bidding Procedures Hearing are incorporated herein by reference.

⁴ Where appropriate herein, findings of fact shall be deemed conclusions of law and conclusions of law shall be deemed findings of fact.

B. The Purchase Agreement[[s] Is/Are] Approved and Authorized

3. The Purchase Agreement[s] are approved pursuant to pursuant to sections 105, 363 and 365 of the Bankruptcy Code and Rules 2002, 4001, 6004, 6006 and 9014 of the Bankruptcy Rules. [The Stalking Horse APA is hereby assumed in accordance with section 365 and the Debtors are bound thereby]. The Debtors are hereby authorized and directed to perform under the Purchase Agreement[s] (and each of the transactions contemplated therein is hereby approved in its entirety and is incorporated herein by reference). The failure to include specifically any particular provision of the Purchase Agreement[s] in this Sale Order shall not diminish or impair the effectiveness of such provisions, it being the intent of this Court that the Purchase Agreement[s] and all of their provisions, payments and transactions, be authorized and approved in their entirety. Likewise, all of the provisions of this Sale Order are nonseverable and mutually dependent.

4. Subject to the provisions of this Sale Order, the Debtors and the Purchaser[s] are hereby authorized, pursuant to sections 105(a) and 363(b)(1) of the Bankruptcy Code, to consummate the Sale Transactions in accordance with the Purchase Agreement[s], and to assume any and all Assumed Contracts as and when provided in the Purchase Agreement[s].

5. Pursuant to section 363(b) of the Bankruptcy Code, the Debtors, the Purchaser[s] and each of their respective officers, employees and agents are hereby authorized and directed to execute such documents and to do such acts as are necessary or desirable to carry out the Sale Transactions and effectuate the Purchase Agreement[s] and each of the transactions and related actions contemplated or set forth therein.

6. The Debtors are hereby authorized and directed to instruct the Escrow Agent to (i) hold the Deposit Amount[s] in accordance with the Purchase Agreement[s] and (ii) release and deliver the Deposit Amount[s] pursuant to the terms of the Purchase Agreement[s].

C. Sale and Transfer Free and Clear of Encumbrances

7. Upon Closing, all of the Debtors' legal, equitable and beneficial right, title and interest in and to, and possession of, the Assets shall be immediately vested in the Purchaser[s] pursuant to sections 105(a), 363(b), 363(f) and 365 of the Bankruptcy Code free and clear of Encumbrances (other than Permitted Exceptions and Assumed Liabilities), with all Encumbrances to attach to the proceeds of the Sale Transaction[s], in the order of their priority, with the same validity, force and effect that they now have against the Assets (subject with respect to such proceeds to any rights, claims and defenses the Debtors or any parties in interest may possess with respect thereto). Such transfer shall constitute a legal, valid, binding and effective transfer of such Assets and shall vest Purchaser[s] with good and marketable title to the Assets. [For the avoidance of doubt and without limiting the generality of the foregoing, upon Closing, the Stalking Horse shall be immediately vested with good and marketable title to the property that is the subject of litigation in *American Apparel, LLC v. Atalaya Asset Income Fund I LP, et al.*, Case No. 30-2016-00866694 (Cal. Sup. Ct.).]

8. The holders of claims related solely to the Permitted Exceptions and Assumed Liabilities shall have the right to seek payment directly from the Purchaser[s] on account of the Permitted Exceptions and Assumed Liabilities; *provided, however*, that the Purchaser[s] reserve[s] any and all rights, defenses or objections with regard to such Permitted Exceptions and Assumed Liabilities, including the Purchaser['s][s'] rights hereunder and under the Purchase Agreement[s].

D. Order Binding

9. This Sale Order shall be binding upon and shall govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies,

governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to the Assets.

10. This Sale Order and the terms and provisions of the Purchase Agreement[s] shall be binding on all of the Debtors' creditors (whether known or unknown), the Debtors, the Purchaser[s], and their respective affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting an interest in the Assets, notwithstanding any subsequent appointment of any trustee, party, entity or other fiduciary under any section of the Bankruptcy Code with respect to the forgoing parties, and as to such trustee, party, entity or other fiduciary, such terms and provisions likewise shall be binding. The provisions of this Sale Order and the terms and provisions of the Purchase Agreement[s], and any actions taken pursuant hereto or thereto shall survive the entry of any order which may be entered confirming or consummating any plan(s) of the Debtors or converting the Debtors' Cases from chapter 11 to chapter 7, and the terms and provisions of the Purchase Agreement[s], as well as the rights and interests granted pursuant to this Sale Order and the Purchase Agreement[s], shall continue in these or any superseding cases and shall be binding upon the Debtors, the Purchaser[s] and their respective successors and permitted assigns, including any trustee or other fiduciary hereafter appointed as a legal representative of the Debtors under chapter 7 or chapter 11 of the Bankruptcy Code. Any trustee appointed in these Cases shall be and hereby is authorized to operate the business of the Debtors to the fullest extent necessary to permit compliance with the terms of this Sale

Order and the Purchase Agreement[s], and [each Purchaser] and the trustee shall be and hereby are authorized to perform under the Purchaser Agreement[s] upon the appointment of the trustee without the need for further order of this Court.

11. Except with respect to the Assumed Liabilities, all persons and entities (and their respective successors and assigns), including all debt security holders, equity security holders, affiliates, governmental, tax and regulatory authorities, lenders, customers, vendors, employees, trade creditors, litigation claimants and other creditors holding Encumbrances arising under or out of, in connection with, or in any way relating to, the Debtors, the Assets, the ownership, sale or operation of the Assets and the business prior to the Closing or the transfer of Assets to Purchaser[s], are hereby forever barred, estopped and permanently enjoined from asserting such Encumbrances against the Purchaser[s], its property or the Acquired Assets. Following the Closing, no holder of any Encumbrance shall interfere with Purchaser['s][s'] title to or use and enjoyment of the Assets based on or related to any such Encumbrance, or based on any action the Debtors may take in the Cases.

12. If any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens* or other documents or agreements evidencing Encumbrances against or in the Assets shall not have delivered to the Debtors prior to the Closing of the Sale Transaction[s] in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction or releases of all Encumbrances that the person or entity has with respect to such Assets, then only with regard to the Assets that are purchased by the Purchaser[s] pursuant to the Purchase Agreement[s] and this Sale Order, (i) the Debtors are hereby authorized to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Assets, and (ii) the Purchaser[s]

[is/are] hereby authorized to file, register or otherwise record a certified copy of this Sale Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Encumbrances against the Purchaser[s] and the applicable Assets. This Sale Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department or office.

E. Good Faith

13. There has been no showing that the Debtors or the Purchaser[s] engaged in any action or inaction that would cause or permit the Transactions to be avoided or costs or damages to be imposed under section 363(n) of the Bankruptcy Code. Entry into the Purchase Agreement[s] is undertaken by the parties thereto in good faith, as that term is used in sections 363(m) and 364(e) of the Bankruptcy Code, and [each of the Purchaser[s]] shall be entitled to all of the benefits of and protected by sections 363(m) and 364(e) of the Bankruptcy Code. The reversal or modification on appeal of the authorization provided herein to enter into the Purchase Agreement[s] and consummate the Sale Transactions shall not affect the validity of such Sale Transactions, unless such authorization is duly stayed pending such appeal. The Sale Transactions are not subject to avoidance pursuant to section 363(n) of the Bankruptcy Code and the Purchaser[s] [is/are] entitled to all the protections and immunities thereunder.

F. No Successor or Transferee Liability

14. The Purchaser[s] shall not be deemed, as a result of any action taken in connection with the Purchase Agreement[s], the consummation of the Sale Transaction[s], the transfer, operation or use of the Assets or the employment of the Selected Employees or Transferred Employees to (i) be a legal successor, or otherwise be deemed a successor to the Debtors (other than, for the Purchaser[s], with respect to any obligations arising after the

Closing as an assignee under Assumed Contracts); (ii) have, *de facto* or otherwise, merged with or into the Debtors; or (iii) be an alter ego or a mere continuation or substantial continuation or successor in any respect of the Debtors, including within the meaning of any foreign, federal, state or local revenue, pension, ERISA, tax, labor, employment, environmental or other law, rule or regulation (including filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the Debtors' liability under such law, rule or regulation or doctrine.

15. Except as expressly provided in the Purchase Agreement[s] with respect to Assumed Liabilities, the Purchaser[s] shall have no liability whatsoever with respect to the Debtors' (or their predecessors or affiliates) respective businesses or operations or any of the Debtors' (or their predecessors' or affiliates') obligations (as described below, "Successor or Transferee Liability") based, in whole or part, directly or indirectly, on any theory of successor or vicarious liability of any kind or character, or based upon any theory of labor law, employment law, ERISA and benefits law, antitrust, environmental, successor or transferee liability, *de facto* merger or substantial continuity, labor and employment or products liability, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated, including any liabilities or non-monetary obligations on account of any settlement or injunction, or any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Assets or the Business prior to the Closing or such later time as the Purchaser[s] [is/are] assigned and assumes any Assumed Contract. Except to the extent expressly included in the Assumed Liabilities or otherwise provided for in the Purchase Agreement[s] with respect to WARN liabilities, the Purchaser[s] shall have no liability or obligation under the WARN Act

(29 U.S.C. §§ 2101 et seq.) or CERCLA or any foreign, federal, state or local labor, employment or environmental law whether of similar import or otherwise by virtue of Purchaser['s][s] purchase of the Assets or assumption of the Assumed Liabilities.

16. The Purchaser[s] [has/have] given substantial consideration under the Purchase Agreement[s] for the benefit of the holders of any Encumbrance. The consideration given by the Purchaser[s] shall constitute valid and valuable consideration for the releases of any potential claims of Successor or Transferee Liability of the Purchaser[s], which releases shall be deemed to have been given in favor of the Purchaser[s] by all holders of any Encumbrance.

17. Except as expressly provided in the Purchase Agreement[s] with respect to the Assumed Liabilities, nothing in this Sale Order or the Purchase Agreement[s] shall require the Purchaser[s] to (i) continue or maintain in effect, or assume any liability in respect of any employee, pension, welfare, fringe benefit or any other benefit plan, trust arrangement or other agreements to which the Debtors are a party or have any responsibility therefor including medical, welfare and pension benefits payable after retirement or other termination of employment, or (ii) assume any responsibility as a fiduciary, plan sponsor or otherwise, for making any contribution to, or in respect of the funding, investment or administration of any employee benefit plan, arrangement or agreement (including but not limited to pension plans) or the termination of any such plan, arrangement or agreement.

18. Effective upon the Closing Date, all persons and entities are forever prohibited and enjoined from commencing or continuing in any matter any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral or other proceeding against the Purchaser[s], or its assets (including the Assets), or its successors and assigns, with respect to any (i) Encumbrance or (ii) Successor or Transferee Liability including the following actions

with respect to clauses (i) and (ii): (a) commencing or continuing any action or other proceeding pending or threatened; (b) enforcing, attaching, collecting or recovering in any manner any judgment, award, decree or order; (c) creating, perfecting or enforcing any Encumbrance; (d) asserting any setoff, right of subrogation or recoupment of any kind; (e) commencing or continuing any action, in any manner or place, that does not comply with, or is inconsistent with, the provisions of this Sale Order or other orders of this Court, or the agreements or actions contemplated or taken in respect hereof; or (f) revoking, terminating or failing or refusing to renew any license, permit or authorization to operate any of the Assets or conduct any of the businesses operated with such assets.

G. Assumption and Assignment of Purchased Contracts

19. Pursuant to sections 105(a) and 365 of the Bankruptcy Code, the Debtors are authorized and directed to assume and assign to the [applicable] Purchaser each of the Assumed Contracts pursuant to the terms of the Purchase Agreement[s], free and clear of all Claims. The payment of the Cure Costs by the [applicable] Purchaser under the Purchase Agreement[s] and this Sale Order (a) cures all monetary defaults existing thereunder as of the assignment of the Assumed Contracts to the Purchaser[s] in accordance with the terms of the Purchase Agreement[s]; (b) compensates the applicable Counterparties for any actual pecuniary loss resulting from such default; and (c) together with the assumption of the Assumed Contracts by the Debtors and the assignment of the Assumed Contracts to the [applicable] Purchaser constitutes adequate assurance of future performance thereof. The [applicable] Purchaser has provided adequate assurance of future performance under the Assumed Contracts within the meaning of sections 365(b)(1)(c), 365(b)(3) (to the extent applicable) and 365(f)(2)(B) of the Bankruptcy Code. Pursuant to the Purchase Agreement[s], the Debtors shall be responsible for all cure costs beyond the Cure Costs (as defined in the [applicable] Purchase Agreement) for

any Assumed Contract.

20. To the extent that any Counterparty to a Assumed Contract did not timely file an Adequate Assurance Objection by the Adequate Assurance Objection deadline, such Counterparty is deemed to have consented to the assumption and assignment of the Assumed Contract pursuant to the terms of this Sale Order.

21. To the extent that any Counterparty to a Assumed Contract did not timely file an Cure Objection by the Cure Objection deadline, such Counterparty is deemed to have consented to the proposed Cure Cost set forth on the Assumption and Assignment Notice. The counterparties to the Assumed Contracts are forever bound by the applicable Cure Amounts and, upon payment of such Cure Amounts as provided for herein, are hereby enjoined from taking any action against the [applicable] Purchaser or the Assets with respect to any claim for cure under the applicable Assumed Contracts.

22. Any provision in any Assumed Contract that prohibits or conditions the assignment of such Assumed Contract or allows the Counterparty to such Assumed Contract to impose any penalty, fee, rent increase, profit sharing arrangement or other condition on renewal or extension, or to modify any term or condition upon the assignment of such Assumed Contract, constitutes an unenforceable anti-assignment provision that is void and of no force and effect in connection with the Sale Transactions. All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the [applicable] Purchaser of the Assumed Contracts have been satisfied. Upon the closing of the Sale Transaction[s], in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser[s] shall be fully and irrevocably vested with all right, title and interest of the Debtors under the Assumed Contracts, and such Assumed Contracts shall remain

in full force and effect for the benefit of the [applicable] Purchaser.

23. Upon the assignment of the Assumed Contracts to the [applicable] Purchaser in accordance with the terms of the [relevant] Purchase Agreement, the Purchaser shall be deemed to be substituted for the Debtors as a party to the applicable Assumed Contracts, and the Debtors and their estates shall be released, pursuant to section 365(k) of the Bankruptcy Code, from any liability under the Assumed Contracts occurring after such assignment. The Purchaser[s] shall pay any undisputed Cure Costs within [___] days of the assignment of the Assumed Contracts. There shall be no assignment fees, increases or any other fees charged to the Purchaser[s] or the Debtors as a result of the assumption and assignment of the Assumed Contracts.

24. Each Counterparty to an Assumed Contract is forever barred, estopped, and permanently enjoined from asserting against the Debtors or the Purchaser[s] or their respective property (including, without limitation, the Assets) in connection with this transaction (a) any assignment fee, acceleration, default, breach or claim or pecuniary loss, or condition to assignment existing, arising or accruing as of the [Closing Date] (as such term is defined in the Purchase Agreement), including any breach related to or arising out of change-in-control in such Assumed Contracts, or any purported written or oral modification to the Assumed Contracts; or (b) any claim, counterclaim, defense, breach, default, condition, setoff or other claim asserted or capable of being asserted against the Debtors existing as of the Closing Date. In addition, without relieving the Purchaser[s] of [its/their] obligations under the Purchase Agreement[s], nothing in this Sale Order, the Motion or the Purchase Agreement[s] shall affect the Debtors' obligations under section 365(d)(3) of the Bankruptcy Code (or Purchaser['s][s'] assumption thereof) prior to the assumption and assignment or rejection of any Assumed

Contracts.

25. Other than the Assumed Contracts, the Purchaser[s] shall assume none of the Debtors' other contracts or leases and shall have no liability whatsoever thereunder.

H. Other Provisions

26. Authorization of Performance by the Debtors. Without any further corporate action or orders of this Court, the Debtors are authorized to fully perform under, consummate, and implement the terms of the Purchase Agreement[s] together with any and all additional instruments and documents that may be reasonably necessary or desirable to implement and effectuate the terms of the Purchase Agreement[s], this Sale Order, and the Sale Transaction[s].

27. The Debtors are authorized and empowered to cause to be filed with the secretary of state of any state or other applicable officials of any applicable governmental units, any and all certificates, agreements, or amendments necessary or appropriate to effectuate the Sale Transaction[s], any related agreements and this Sale Order, including amended and restated certificates or articles of incorporation and by-laws or certificates or articles of amendment, and all such other actions, filings, or recordings as may be required under appropriate provisions of the applicable laws of all applicable governmental units or as any of the officers of the Debtors may determine are necessary or appropriate. The execution of any such document or the taking of any such action will be, and hereby is, deemed conclusive evidence of the authority of such person to so act.

28. The Purchaser[s] will have no obligation to close the Sale Transaction[s] until all conditions precedent to its obligations to do so have been met, satisfied, or waived in accordance with the terms of the [applicable] Purchase Agreement.

29. Direction to Government Agencies. Each and every filing agent, filing officer, title agent, recording agency, governmental department, secretary of state, federal, state, and

local official and any other person and entity who may be required by operation of law, the duties of their office, or contract to accept, file, register, or otherwise record or release any documents or instruments or who may be required to report or insure any title in, or to, the Assets, is hereby authorized and directed to accept any and all documents and instruments necessary or appropriate to consummate the Sale Transaction[s] and this Sale Order. All the entities described above in this paragraph are authorized and specifically directed to strike all recorded liens against the Assets from their records, official and otherwise.

30. Transfer of Title and Interests. All of the Debtors' interests in the Assets and the Assumed Contracts shall be, as of the Closing Date transferred to, and vested in, the [applicable] Purchaser. On the Closing Date, this Sale Order shall be considered, and constitute for any and all purposes, a full and complete general assignment, conveyance, and transfer of the Assets and the Debtors' interests under the Assumed Contracts and a bill of sale or assignment transferring indefeasible title in the Assets and interest in the Assumed Contracts, to the [relevant] Purchaser.

31. Excluded Liabilities. All persons, all Governmental Units (as defined in sections 101(27) and 101(41) of the Bankruptcy Code) and all holders of Encumbrances, based upon or arising out of the Excluded Liabilities are hereby barred and estopped from taking any action against Purchaser[s] or the Acquired Assets to recover property on account of any Adverse Interests or on account of any Liabilities of the Debtors other than Assumed Liabilities pursuant to the Purchase Agreement[s]. All persons holding or asserting any Encumbrances with respect to the Excluded Assets are hereby enjoined from asserting or prosecuting such Encumbrances against the Purchaser or the Assets for any Liability whatsoever associated with the Excluded Assets.

32. No Bulk Sales; No Brokers. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Sale Transaction[s]. No brokers were involved in consummating the Sale Transaction[s], and no brokers' commissions shall be due to any person or entity in connection with the Sale Transaction[s]. The Purchaser[s] [is/are] not obligated to pay any fee or commission or like payment to any broker, finder, or financial advisor as a result of the consummation of the Sale Transaction. Notwithstanding the foregoing, the Debtors may be obligated to pay their financial advisor or investment banker for services rendered in connection with the sale in accordance with other orders of this Court.

33. Failure to Specify Provisions. The failure specifically to mention any particular provisions of the Purchase Agreement[s] or any related agreements in this Sale Order shall not diminish or impair the effectiveness of such provision; it being the intent of this Court, the Debtors, and the Purchaser[s] that the Purchase Agreement[s] and any related agreements are authorized and approved in their entirety with such amendments thereto as may be made by the parties in accordance with this Sale Order.

34. Allocation of Consideration. All rights of the respective Debtors' estates with respect to the allocation of consideration received from the Purchaser[s] in connection with the Sale Transaction[s] are expressly reserved for later determination by this Court and, to the extent consideration is received by any Debtor that is determined to be allocable to another Debtor, such other Debtor shall have a claim against the recipient Debtor with the status of an expense of administration in the case of the recipient Debtor under section 503(b) of the Bankruptcy Code.

35. Subsequent Plan Provisions. Nothing contained in any chapter 11 plan to be confirmed in these Cases or any order to be entered in these Cases (including any order entered

after conversion of these chapter 11 cases to cases under chapter 7 of the Bankruptcy Code) shall alter, conflict with, or derogate from, the provisions of the Purchase Agreement[s] or this Sale Order.

36. Further Assurances. From time to time, as and when requested, all parties shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as the requesting party may reasonably deem necessary or desirable to consummate the Sale Transaction[s], including, without limitation, such actions as may be necessary to vest, perfect, or confirm or record or otherwise in the Purchaser[s] [its/their] right, title and interest in and to the Assets.

37. Governing Terms. To the extent this Sale Order is inconsistent with any prior order or pleading in these Cases, the terms of this Sale Order shall govern. To the extent there is any inconsistency between the terms of this Sale Order and the terms of the Purchase Agreement[s] (including all ancillary documents executed in connection therewith), the terms of this Sale Order shall govern.

38. Approval of Backup Bidder[s]. In accordance with the Bidding Procedures, the bid submitted by the Backup Bidder[s] for, among other things, the [specify assets] shall be open and irrevocable until the earlier of: (i) [] and (ii) the first business day following the occurrence of the Closing Date.

39. Modifications. The Purchase Agreement[s] and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto and in accordance with the terms thereof, without further order of this Court; provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates.

40. Automatic Stay. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby modified with respect to the Debtors to the extent necessary, without further order of this Court, to allow the Purchaser[s] to deliver any notice provided for in the Purchase Agreement[s] and allow the Purchaser[s] to take any and all actions permitted or required under the Purchase Agreement[s] in accordance with the terms and conditions thereof. The Purchaser[s] shall not be required to seek or obtain any further relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the Purchase Agreement[s] or any other sale-related document.

41. No Stay of Order. Notwithstanding Bankruptcy Rules 6004(h), 6006(d) and 7062, this Sale Order shall be effective and enforceable immediately upon entry and its provisions shall be self executing. Neither the Debtors nor the Purchaser[s] shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate and implement the provisions of this Sale Order. Any party objecting to this Sale Order must exercise due diligence in filing an appeal and obtaining a stay prior to the Closing Date or risk its appeal being foreclosed as moot.

42. Name of Debtor. Except as permitted in the Stalking Horse APA, neither the Debtors nor any of their Affiliates shall use, license or permit any third party to use, any name, slogan, logo or trademark which is confusingly or deceptively similar to any of the names, trademarks or service marks included in the Intellectual Property included in the Assets, and each Debtor is directed to change its corporate name to a name which (i) does not use the name ["_"] 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 the Stalking Horse.

43. Within one (1) Business Day of the occurrence of the Closing of the Sale Transaction[s], the Debtors shall file and serve a notice of same, substantially in the form attached hereto as Exhibit [2] (the "Notice of Sale Closing and Effective Date of Amendment of Case Caption") and upon the filing of such notice, the Debtors' case caption shall be amended as follows:

44. Upon the filing of the Notice of Sale Closing and Effective Date of Amendment of Case Caption, the Clerk of the Court is authorized and directed to make a docket entry in case numbers [] consistent with Paragraph 44 of this Order.

45. Retention of Jurisdiction. This Court shall retain jurisdiction to interpret, implement, and enforce the terms and provisions of this Sale Order, the Bidding Procedures Order, and the Purchase Agreement[s], including, without limitation, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith; and decide any issues or disputes concerning this Sale Order and the Purchase Agreements or the rights and duties of the parties hereunder or thereunder, including, without limitation, the interpretation of the terms, conditions, and provisions hereof and thereof, the status, nature, and extent of the Assets.

46. The Transactions contemplated hereunder are not receiving an exemption under section 1146(a) of the Bankruptcy Code.

47. The Purchaser[s] [has/have] standing to seek to enforce the terms of this Order.

48. The Debtors are authorized to take all actions necessary or appropriate to effectuate the relief granted pursuant to this Order.

49. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

50. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied.

51. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

Dated: _____
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

[Purchase Agreement[s]]

Exhibit D
(Burian Declaration)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:	:	Chapter 11
AMERICAN APPAREL, LLC, <i>et al.</i> , ¹	:	Case No. 16-12551 (BLS)
Debtors.	:	(Joint Administration Requested)
	:	

**DECLARATION OF SAUL E. BURIAN IN SUPPORT OF
DEBTORS' SALE AND BIDDING PROCEDURES MOTION**

I, Saul E. Burian, state the following under penalty of perjury:

1. I am a Managing Director of Houlihan Lokey Capital Inc. ("Houlihan"), the proposed investment banker for American Apparel, LLC ("American Apparel") and its affiliated debtors and debtors in possession (collectively, the "Debtors") in the above-captioned cases under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

2. I make this Declaration in support of the *Motion of the Debtors for Entry of Orders (I)(A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors' Assets, (B) Authorizing the Debtors to Enter into the Stalking Horse Purchase Agreement, (C) Approving Bid Protections, (D) Scheduling an Auction, (E) Approving the Form and Manner of Notice thereof, (F) Approving Assumption and Assignment Procedures; and (G) Scheduling a Sale Hearing and Approving the Form and Manner of Notice thereof; (II)(A) Approving the Sale of Substantially all of the Debtors' Assets Free and Clear of Liens, Claims, Interests and*

¹ The Debtors are the following six entities (the last four digits of their respective taxpayer identification numbers follow in parentheses): American Apparel, LLC (0601); American Apparel (USA), LLC (8940); American Apparel Retail, Inc. (7829); American Apparel Dyeing & Finishing, Inc. (0324); KCL Knitting, LLC (9518); and Fresh Air Freight, Inc. (3870). The address of each of the Debtors is 747 Warehouse Street, Los Angeles, California 90021.

*Encumbrances and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief (the "Motion").*²

3. Except where specifically noted, all statements in this Declaration are based on my personal knowledge gleaned during the course of my engagement with the Debtors, my discussions with the Debtors' senior management, the Debtors' other advisors and other members of my team at Houlihan and my review of relevant documents and/or my opinion based upon my experience. If called to testify, I could and would testify to each of the facts set forth herein based on such personal knowledge, discussions, review of documents and/or opinion.

Qualifications

4. Houlihan is a financial advisory and investment banking firm with its principal office located at 10250 Constellation Boulevard, Los Angeles, CA 90067. Houlihan is a registered broker-dealer with the United States Securities and Exchange Commission and is a member of the Financial Industry Regulatory Authority and the Securities Investor Protection Corporation. Houlihan was founded in 1970 and, together with its subsidiaries, has approximately 800 employees located in 24 offices worldwide. Houlihan has one of the largest worldwide financial restructuring practices of any investment bank. Houlihan's Financial Restructuring Group, which has more than 165 professionals, is one of the leading advisors and investment bankers to debtors, secured and unsecured creditors, acquirers, and other parties-in-interest involved in financially troubled companies both in and outside of bankruptcy. In particular, Houlihan has extensive experience in providing advisory services to debtors and creditors in complex sale transactions pursuant to section 363 of the Bankruptcy Code. In 2015,

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

Houlihan ranked as the number one M&A advisor for all U.S. transactions, according to Thomson Reuters. The firm also is one of the leading providers of M&A fairness opinions and has substantial experience working with both healthy and distressed retailers. Houlihan annually serves more than 800 clients ranging from closely held companies to Global 500 corporations.

5. I specialize in advising both debtors and creditors in financial restructurings and distressed mergers and acquisitions, raising capital for troubled businesses, and representing debtors and creditor constituencies in bankruptcy proceedings. My distressed sale and restructuring experiences include the representation of distressed companies, debtors, official committees of creditors, and other significant stakeholders, including the following: Mark IV Automotive, Extended Stay America, MSR Hotels & Resorts Inc., Buffets Holdings, RCS Capital Corporation, Barneys New York, Kaisa Group Holdings, Lehman Brothers, TI Automotive, Global Power and Magellan Health. Before joining Houlihan, I was a partner in the New York law firm Kramer Levin Naftalis & Frankel LLP, where I specialized in corporate reorganizations and bankruptcy. I was a national director of the Turnaround Management Association, and lectured frequently for, inter alia, the American Bankruptcy Institute, the National Conference of Bankruptcy Judges and the Turnaround Management Association. I received my B.A. in economics at Yeshiva University and my J.D. from Columbia University School of Law.

Houlihan Retention and The Prepetition Sale Process

6. In July 2016, facing liquidity constraints and sustained poor sales performance, the Debtors retained Houlihan as their investment banker, and in August, Houlihan began to explore and solicit interest in a sale of all or a portion of the Debtors' businesses. In September 2016, the Debtors engaged Houlihan to act as their investment banker in connection

with the commencement of potential chapter 11 cases. Throughout the course of its engagement, Houlihan has worked closely with members of the Debtors' management and the Debtors' other professionals and has become well-acquainted with the Debtors' operations, core assets, competitors and overall position in the apparel manufacturing and retail industries.

7. Houlihan conducted a robust three-month prepetition marketing process, canvassing the market and contacting 53 potential strategic and financial buyers that, based on our experience and involvement in the retail apparel market, we believed would be interested in some or all of the Debtors' businesses. This list of potential buyers was developed in concert with the Debtors' management and Board of Directors (the "Board"), who supplemented the initial list supplied by Houlihan with additional potential purchasers that had expressed interest in the Debtors' businesses in prior sale processes, including the processes that the Debtors ran prior to, and during, their previous chapter 11 cases. As the sale efforts progressed, Houlihan further expanded the scope of potential purchasers to include liquidators and buyers interested in acquiring the Debtors' assets outside of a going concern sale. Additionally, as news of the Debtors' sale process became public, the Debtors and Houlihan received inquiries from other interested parties and, where appropriate, Houlihan provided diligence and engaged in negotiations with those parties as well.

8. Of the 53 potential strategic and financial buyers Houlihan contacted, 30 parties signed non-disclosure agreements and were provided with access to extensive diligence materials, including Board presentations, inventory tracking reports, regularly updated financial data, sales reports and information about the Debtors' intellectual property—each specifically targeted to provide buyers with the information most relevant to the assets they were interested in acquiring.

9. Of the 30 parties who received diligence materials, seven submitted Indications of Interest and three of those parties moved forward with the sale process and submitted Letters of Intent. After engaging in extensive negotiations with all parties, the Debtors determined that the bid submitted by Gildan Activewear SRL (the "Stalking Horse") for the Debtors' intellectual property, wholesale inventory and, at its option, the Debtors' manufacturing and distribution facilities in La Mirada, South Gate and Garden Grove, California, as well as the Debtors' corporate headquarters in Los Angeles (collectively, the "Stalking Horse Assets"), was the highest and best bid available to the Debtors. The Debtors' advisors worked with the Stalking Horse to finalize an asset purchase agreement, which is attached to the Motion as Exhibit B (the "Stalking Horse APA"), to memorialize the Stalking Horse's bid and certain other key terms of the parties' agreement, including the Debtors agreement to produce, and the Stalking Horse's agreement to purchase, certain wholesale apparel during the interim period between the signing of the Stalking Horse APA and the closing of the transaction if the Stalking Horse is the winning bidder at the auction.

10. The Debtors, with Houlihan's assistance, intend to continue the marketing process for substantially all of their assets during the first several weeks of these chapter 11 cases (these "Cases") leading up to an auction and to seek court approval of the sale to the Stalking Horse or another third party in the event a higher or better offer emerges at an auction.

11. In my view, under the circumstances, the process that the Debtors and their advisors pursued in order to identify potential buyers for their assets was fair, open, comprehensive and afforded all likely interested parties sufficient opportunity to conduct due diligence and formulate proposals if they chose to do so.

12. The Stalking Horse APA has been extensively negotiated between the parties at arm's length and in good faith and confers several substantial benefits on the Debtors' estates. First, the Stalking Horse APA allows the Debtors to continue pursuing a sale for substantially all of their assets while at the same time locking in a purchase price of \$66 million for their intellectual property. Perhaps more importantly, however, the Stalking Horse APA includes a commitment from the Stalking Horse to purchase the Debtors' wholesale inventory remaining at the conclusion of the sale process and—critically—provides immediate support for the Debtors' manufacturing operations by committing the Stalking Horse to issue purchase orders throughout the course of the Cases for certain of the Debtors' wholesale goods. This commitment will allow the Debtors to keep their supply chain active and produce sufficient inventory to support a sale to either the Stalking Horse or a third party. In addition to maintaining the supply chain, the Stalking Horse's bid effectively allows the Debtors to amortize overhead costs incurred maintaining its manufacturing facilities and corporate headquarters, which provides significant value for the exclusive benefit of estates by preserving the value of assets not subject to the Stalking Horse APA, such as the Debtors' retail inventory and below-market leases, if any, that the Debtors may be able to sell. Additionally, because the Stalking Horse APA provides the Stalking Horse with the option to acquire certain of the Debtors' manufacturing and distribution facilities, the Stalking Horse bid has the potential to preserve jobs and minimize unsecured claims through the assumption of leases.

13. The Bidding Procedures and the Stalking Horse APA contain certain bid protections for the Stalking Horse, including a \$1.98 million termination fee and expense reimbursement for all reasonable, out-of-pocket and documented expenses of the Stalking Horse up to \$1 million (collectively, the "Bid Protections"). The Bid Protections were negotiated by

the Stalking Horse and the Debtors and their respective advisors at arms' length and in good faith. I believe the Bid Protections, collectively and individually, are fair and reasonable, will not chill bidding, and will enable the Debtors to maximize value through a sale process.

14. The Bid Protections were a material inducement for the Stalking Horse to enter into the Stalking Horse APA, and the Stalking Horse has the ability to terminate the Stalking Horse APA if the Bid Protections are not approved on the terms set forth therein. The Bid Protections are: (a) commensurate to the real and substantial benefits conferred upon the Debtors' estates by the Stalking Horse and (b) fair, reasonable, and appropriate in light of the size and nature of the proposed sales and the efforts that have been and will be expended by the Stalking Horse, and should be approved.

The Need for an Expedited Sale Process

15. The Stalking Horse APA sets forth several milestones, including:
- Entry of an order approving, among other things, bid and auction procedures and authorizing the Debtors' to pay the Bid Protections (the "Bidding Procedures Order") by December 5, 2016;
 - Conducting an auction for the Stalking Horse Assets by January 5, 2017;
 - Entry of an order approving the sale of the Stalking Horse Assets to the Stalking Horse (or such other transaction determined to be the highest and best at the conclusion of the auction) (the "Sale Order") by January 15, 2017; and
 - Closing of the sale of the Stalking Horse Assets by no later than February 15, 2017.

Failure to adhere to these milestones can result in termination of the Stalking Horse APA, and in certain circumstances, trigger the payment of the Bid Protections. Additionally, pursuant to Section 7.1 of the Stalking Horse APA, the Debtors have agreed to use their reasonable best efforts to obtain entry of the Bidding Procedures Order by November 30, 2016.

16. Additionally, as set forth in the declaration I submitted in support of the *Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Senior Secured Superpriority Financing Pursuant to 11 U.S.C. §§ 361, 362, 363(c), 363(e), 364(c), 364(d)(1), 364(e) And 507 and (B) Utilize Cash Collateral, (II) Granting Priming Liens, Priority Liens and Superpriority Claims to the DIP Lenders, (III) Granting Adequate Protection to Certain Prepetition Secured Parties, (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rules 4001(b) and (c) and (V) Granting Related Relief* (the "DIP Motion"), the Debtors' post-petition financing is premised on the prompt consummation of a sale transaction and sets out certain milestones that must be met in order to avoid a default under the DIP Credit Agreement (as defined in the DIP Motion), including:

- Entry of the Bidding Procedures Order by December 5, 2016;
- Conducting an auction by January 18, 2017;
- Entry of the Sale Order by January 23, 2017; and
- Closing of the sale transaction by February 2, 2017.

17. Failure to adhere to the milestones in the DIP Credit Agreement and a resulting loss of financing would require an immediate shut down of the Debtors' operations, foreclose any possibility of going concern value being extracted at an auction and result in a substantial loss of value for creditors.

18. While the milestones independently dictate an accelerated path to consummation of a sale, the Debtors have significant business and financial imperatives to move quickly to protect and preserve value. Even with the DIP Facility, there are limited funds available to the Debtors and they continue to incur expenses every day that a sale transaction is not consummated. The Debtors have balanced the benefits of running an extended auction with

their liquidity needs and ability to maintain going concern operations and are proposing a sale timeline that is designed to maximize value, while at the same time limiting needless expenditures and the incurrence of administrative expenses, that may risk a liquidity shortfall that could have a disastrous impact on their businesses. The Debtors have determined, in their business judgment, that a shorter marketing period, which will allow the Debtors to devote funds to maintaining the business as a going concern, offers the estates the best chance of maintaining value, saving jobs and maximizing returns to creditors.

19. As has become clear during intense negotiations of multiple asset purchase agreements, the Debtors intellectual property and going concern value are greatly enhanced by maintaining operations to supply sufficient inventory to support their wholesale and retail businesses. Therefore, it is in the best interest of the Debtors' estates for the sale to proceed on the proposed timeline, which offers the Debtors the best chance of preserving going concern value. Anything, including a disorderly chapter 7 proceeding, that may disrupt production or retail operations during the critical sale period could have devastating consequences for the value of the business.

20. Additionally, conducting the sale process within the proposed timeframe is reasonable and appropriate in light of the Debtors' prepetition marketing efforts and the sale efforts that were recently undertaken in connection with the Debtors' prior chapter 11 cases. As set forth above, the Debtors have already scoured the market for potential purchasers, provided potential purchasers with extensive access to diligence and are, in fact, already in conversations with the most likely potential bidders at the auction. Because the Debtors have engaged in substantial marketing efforts to date, a lengthy and protracted marketing and sales process is unlikely to elicit additional offers from parties that are new to the process. Nevertheless,

Houlihan continues to aggressively market the Debtors' assets and target additional potential purchasers and will continue to do so up to and through the auction.

21. Over and above the robust marketing process and negotiations that occurred prior to the Petition Date, and that will continue postpetition in these Cases, the Debtors have proposed a postpetition process for the sale of the Debtors' assets that will allow for an auction to be conducted should any qualified third party ultimately desire to propose a bid with respect to all of, or any class of, the Debtors' assets. The Debtors' proposed auction process will "market test" the value the Debtors will receive in the sale of their assets and ensure that such value received is fair and reasonable. This process, in my opinion, will ensure that the Debtors receive the greatest value possible for their assets while preserving the value of the proposals received to date.

22. I believe that the Stalking Horse APA and the process negotiated with the Stalking Horse (including the timelines set forth in the Stalking Horse APA) are fair and reasonable under the necessarily accelerated circumstances of these Cases, particularly in light of (a) the Debtors' and Houlihan's efforts to date; (b) the strength and value of the Stalking Horse's bid; (c) the lack of any viable alternative available to the Debtors at this time; and (d) the opportunity for third-parties to make overbids as part of the sale process via the auction.

23. In sum, based on my experience, I believe that the Debtors' decision to move forward with the Stalking Horse APA and sale process and Bid Protections on the timetable described in the Motion will preserve, protect and enhance value in these Cases.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 14, 2016
New York, New York

/s/ Saul E. Burian

Saul E. Burian
Managing Director
Houlihan Lockey, Inc.