

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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In re:	:	Chapter 11
	:	
BLEACHER CREATURES, LLC,	:	Case No. 17-13162 (JKF)
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Debtor. <sup>1</sup>	:	<b>Hearing Date: June 14, 2017, at 9:30 a.m.</b>
	:	
	:	<b>Hearing Location: Courtroom #3</b>
	:	<b>Robert N.C. Nix Sr. Federal</b>
	:	<b>Courthouse, 900 Market Street,</b>
	:	<b>Philadelphia, Pennsylvania 19107</b>

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**MOTION OF THE DEBTOR AND DEBTOR IN POSSESSION FOR ENTRY OF AN ORDER (I) APPROVING AN ASSET PURCHASE AGREEMENT BETWEEN THE DEBTOR AND THE STALKING HORSE, OR SUCH OTHER PURCHASE AGREEMENT BETWEEN THE DEBTOR AND THE PREVAILING BIDDER; (II) AUTHORIZING THE SALE OF CERTAIN ASSETS OF THE DEBTOR FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (III) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (IV) GRANTING RELATED RELIEF**

Bleacher Creatures, LLC, debtor and debtor in possession in the above-captioned case (the “Debtor”), hereby moves the Court for entry of an Order (i) approving an asset purchase agreement between the Debtor and Bleacher Acquisition, LLC (the “Stalking Horse”), or such other purchase agreement between the Debtor and the Prevailing Bidder (as defined below) that may result from the Bidding Process described herein; (ii) authorizing the sale of certain of the Debtor’s assets free and clear of all liens, claims, encumbrances, and other interests; (iii) authorizing the assumption of certain executory contracts and/or unexpired leases (the “Designated Contracts”) and the assignment of the Designated Contracts to the Stalking Horse or

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<sup>1</sup> The last four digits of the Debtor’s federal tax identification number are (4547). The principal place of business of the Debtor is 527 Plymouth Road, Suite 407, Plymouth Meeting, Pennsylvania 19462.

Prevailing Bidder, as the case may be; and (iv) granting related relief (collectively, the “Sale”).

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

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are sections 105(a), 363, and 365 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1, 6004-1, and 9014-3 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Eastern District of Pennsylvania (the “Local Rules”).

### **BACKGROUND**

#### **I. Overview of the Debtor’s Business.**

4. The Debtor is a Delaware limited liability company with its principal place of business in Plymouth Meeting, Pennsylvania. The Debtor was formed in 2011.

5. The Debtor is in the business of manufacturing, distributing, and selling plush toys that resemble popular athletes, sports mascots, public figures, and characters from movies, comics, and other popular media. The Debtor sells most of its products under licenses from organizations such as Major League Baseball, the National Football League, the National Basketball Association, the National Hockey League, Disney, Marvel Comics, and DC Comics, among others. Certain of its products, including likenesses of historical figures and individuals in the public domain, are able to be sold without a license.

6. The Debtor engages factories located in China to manufacture its products, and employs shippers and logistics companies to transport finished goods either directly to the

customer or to be warehoused in California pending their sale. The Debtor sells its products in the United States and internationally. The Debtor derives most of its revenue from wholesaling its products to retailers such as Target, Toys “R” Us, and Sears, among others, who re-sell the products to consumers. Additionally, approximately 4% of the Debtor’s sales are direct-to-consumer sales through the Debtor’s online sales platforms. The primary end consumers of the Debtor’s products are children and memorabilia collectors.

## **II. The Debtor’s Need for Protection Under Chapter 11 of the Bankruptcy Code.**

7. Like other companies that depend ultimately upon retail sales, the Debtor has faced numerous obstacles recently. First, the general difficulties of the current challenging retail market have been compounded by the terms of certain of the Debtor’s licenses, which require the Debtor to make minimum guaranteed payments to certain licensors, irrespective of actual sales of the licensed product. At the same time, certain of the Debtor’s licensors recently prohibited the Debtor from selling their licensed products on Amazon.com, which had historically proven to be a lucrative sales platform for the Debtor. These pressures have caused the Debtor to experience significant liquidity constraints for well over a year.

8. Additionally, beginning in 2014, the Debtor attempted to expand its direct-to-consumer sales through the use of mall kiosks. This strategy did not result in the sales volume the Debtor had expected, while at the same time burdening the Debtor with additional expenses.

9. Due to these issues, among others, the Debtor began exploring strategic alternatives in January 2016. The Debtor engaged Gregory Weinberg of GMW Organization, LLC (“GMW”) as its investment banker to market a potential sale, merger, or other transaction that would maximize the going concern value of the Debtor’s business. From February through May of 2016, GMW contacted approximately 10 potential counterparties. Those contacts resulted in meetings or calls with no less than six potential strategic partners. Each of these six

parties entered into nondisclosure agreements, and certain entered into prolonged discussions, but none entered into a transaction. Around May 2016, however, the Debtor experienced an upward trend in sales, which prompted a current investor and member of the Debtor's board, Arrow Promotional Group, LLC ("Arrow"), to make a \$200,000 unsecured loan to the Debtor in an effort to stabilize the business.

10. Despite the brief turnaround, the Debtor's sales began to decline in October 2016, and the Debtor required additional liquidity. That month, the Debtor's management proposed a merger of the Debtor and Pangea Brands (an affiliate of Arrow) to capture certain synergies and cost savings that a combined entity could expect to realize. The proposed merger did not come to fruition.

11. Sales continued to decrease, producing poor results for the fourth quarter of 2016. Following the failed merger with Pangea, the Debtor worked to identify investment and sale opportunities with existing investors. Again, nothing materialized, due in part to the Debtor's poor fourth quarter performance.

12. In January 2017, the Debtor's management recommended to the board that the Debtor should cease operations by the end of February 2017 unless new capital could be raised or a merger with Pangea Brands approved. In response, the Debtor's board voted to approve a merger with Pangea, subject to certain conditions and the receipt of approvals from certain licensors. Although the Debtor and GMW made significant efforts to satisfy such conditions and obtain the necessary approvals, these prerequisites for closing the merger have not been met, and the merger has been put on hold and is highly unlikely to close.

13. In March of 2017, the Debtor declined to renew its licenses with Marvel and the NFL because the Debtor lacked sufficient capital to pay the approximately \$200,000 in advance payments due on renewal.

14. Throughout March and April of 2017, the Debtor laid off a significant portion of its workforce in an effort to reduce costs.

15. In late April 2017, Arrow—the investor and board member who made a \$200,000 unsecured loan to the Debtor approximately a year ago—proposed a transaction in which a newly formed entity, Bleacher Acquisition, LLC (the “Stalking Horse”), would acquire certain of the Debtor’s assets and assume certain of the Debtor’s liabilities through a sale under section 363 of the Bankruptcy Code. Arrow asked that the Debtor’s current President, Matthew S. Hoffman, participate as an equity holder in the Stalking Horse and serve as an executive of the post-bankruptcy acquiring entity, should the Stalking Horse’s offer prevail as the highest and best offer for the Debtor’s assets at a final hearing on the Debtor’s sale motion.

16. Around the same time, at the direction of the Debtor’s management, GMW canvassed the market for potential third-party buyers, merger partners, or investors who might provide the Debtor with the capital necessary to continue as a viable going concern. GMW contacted approximately five parties. To date, no third party has proposed transaction likely to yield more return for the Debtor’s creditors than the offer of the Stalking Horse.

17. The Debtor commenced the above-captioned chapter 11 case on May 2, 2017 (the “Petition Date”). The purpose of this case is to permit the Debtor’s business to continue as a viable going concern while the Debtor attempts to consummate a sale transaction, either to the Stalking Horse or to any other purchaser who may present a higher or better offer for the Debtor’s assets.

18. The Debtor continues to operate its business and manage its assets as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

19. To date, no trustee or official committee of unsecured creditors has been appointed or designated by the Office of the United States Trustee.

### **III. The Stalking Horse Agreement, Bidding Process, Sale Hearing, and Sale.**

#### **A. The Stalking Horse Agreement.**

20. As described above, the Debtor has engaged in an extensive marketing campaign for over 15 months, seeking to enter into a value-maximizing transaction, whether through raising capital, selling assets, and/or merging with another entity.

21. In the weeks leading to the Petition Date, as the Debtor's liquidity constraints worsened and it appeared that a liquidation and wind down of the Debtor was the only alternative, certain officers, directors, and members of the Debtor proposed a transaction that would transfer certain of the Debtor's assets to the Stalking Horse—a new entity formed and controlled by these officers, directors, and members—in exchange for substantial benefits to the Debtor's estate, namely: (i) the assumption of obligations related to administration of this chapter 11 case; (ii) the satisfaction of the Debtor's obligations to its secured creditor; and (iii) the opportunity for a meaningful return to unsecured creditors. The Debtor, through its officers and counsel, negotiated with the Stalking Horse regarding the terms of a potential transaction. These negotiations culminated in the asset purchase agreement attached hereto as Exhibit A (the "Stalking Horse Agreement").<sup>2</sup>

22. Pursuant to the Stalking Horse Agreement, the Debtor agrees to sell, transfer, convey, assign, and deliver to the Stalking Horse, and the Stalking Horse agrees to purchase and

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Stalking Horse Agreement. In the event of any conflict between the recitations in this Motion and the terms of the Stalking Horse Agreement, the terms of the Stalking Horse Agreement shall control.

acquire all of the Debtor's right, title, and interest in and to certain assets of the Debtor required to operate and support the Debtor's business, as more particularly described in Article 2 of the Stalking Horse Agreement (collectively, as defined in the Stalking Horse Agreement, the "Acquired Assets").

23. Pursuant to the Stalking Horse Agreement, the Stalking Horse will purchase the Acquired Assets pursuant to section 363 of the Bankruptcy Code. In connection therewith, the Stalking Horse proposes to pay a purchase price comprised of the following: (i) a credit bid of all outstanding, funded obligations under the Debtor's DIP Facility (which includes funding to pay off the Debtor's secured creditor) (*see* Stalking Horse Agreement § 3.1); (ii) the assumption of certain liabilities, including the assumption of all liabilities of the Debtor for any allowed administrative expenses accrued from the Petition Date through the Closing Date but unpaid as of the Closing Date, to the extent that the proceeds of the DIP Facility are insufficient to pay such expenses (*see* Stalking Horse Agreement § 2.3); and (iii) the payment of all amounts necessary to cure defaults under the Designated Contracts (*See* Stalking Horse Agreement § 2.5(b)). Additionally, the Stalking Horse has agreed that it shall distribute to the Debtor's estate for the benefit of the Debtor's unsecured creditors 50% of the proceeds of all accounts receivable purchased in the Sale and liquidated by the Stalking Horse after the Closing. *See* Stalking Horse Agreement § 2.1(c).

24. The Debtor believes that the overall value that it will receive from the Stalking Horse Agreement constitutes fair value for the Acquired Assets and will maximize value for the Debtor's various creditor constituencies and lead to a successful conclusion to this chapter 11 case. The Debtor believes that, subject to the receipt of any higher or better offers submitted at the hearing on this Motion (the "Sale Hearing") in accordance with the bidding process described

below, the Stalking Horse Agreement represents the best alternative currently available to the Debtor.

B. The Bid Process, Auction, and Sale Hearing.

25. The Debtor is seeking a sale process that will provide benefit to the Debtor's estate while promoting participation and active bidding, and ultimately ensure that the Debtor receives the highest and best offer for the Acquired Assets. Given the posture of this case and the Debtor's extensive prepetition marketing efforts, the Debtor believes that the timeline between notice of the Sale and the Sale Hearing will provide sufficient notice for consummating a sale process that is in the best interests of the estate and all parties in interest.

26. Set forth below is the general process that the Debtor proposes to employ with respect to the bidding on and proposed Sale of its assets (the "Bidding Process"):

- A. **Assets to Be Sold.** The Debtor is offering the Acquired Assets for sale pursuant to section 363 of the Bankruptcy Code. The Debtor shall retain all rights and title to assets that are not subject to a bid accepted by the Debtor and approved by the Court at the Sale Hearing. A Qualified Bidder (as defined below) may also submit a bid that includes assets of the Debtor that are not defined as Acquired Assets in the Stalking Horse Agreement (the "Other Assets" and, together with the Acquired Assets, the "Assets") at the time of the Sale Hearing.
- B. **The Bidding Process.** To the extent that any Qualified Bidders (as defined below) appear at the Sale Hearing, the Debtor, in conjunction with its advisors, shall: (i) determine whether any person is a Potential Bidder (as defined below); (ii) receive offers from Qualified Bidders; and (iii) negotiate any offer made to purchase the Assets, together or separately.
- C. **Due Diligence.** Neither the Debtor nor its representatives shall be obligated to furnish any information of any kind whatsoever relating to the Assets to any person who is not a Potential Bidder (as defined below). All bidders are advised to exercise their own discretion before relying on any information regarding the Assets provided by anyone other than the Debtor or its representatives. *Any Potential Bidder that appears at the Sale Hearing waives their right to conduct due diligence as to the Assets.* To be a "Potential Bidder," each bidder must have delivered the following at the Sale Hearing:



1. an executed confidentiality agreement in form and substance satisfactory to the Debtor; and
2. current audited and unaudited financial statements or other financial information of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of acquiring the Assets, current audited and unaudited financial statements or other financial information of the Potential Bidder's equity holder or other financial backer, or such other form of financial disclosure and evidence acceptable to the Debtor and its advisors in their sole discretion, demonstrating such Potential Bidder's ability to close the proposed transaction.

D. **Participation Requirements.** Unless otherwise ordered by the Court, for cause shown, or as otherwise determined by the Debtor, in order to participate in the Bidding Process each person (a "Qualified Bidder") must submit a bid at the time of the Sale Hearing that adheres to the following requirements (a "Qualified Bid"):

1. All Qualified Bids shall be in the form of an offer letter submitted at the Sale Hearing from a person or persons that the Debtor deems financially able to consummate the purchase of the Assets, which letter states:
  - (a) that such Qualified Bidder offers to purchase some or all of the Assets upon the terms and conditions set forth in an executed asset purchase agreement (Qualified Bidders shall present a hard copy and an electronic version in Word format and blacklined against the Stalking Horse Agreement), together with its exhibits and schedules, including terms relating to price and the time of closing (the "Proposed Agreement");
  - (b) that such Qualified Bidder is prepared to consummate the transaction on or before July 15, 2017;
  - (c) that such Qualified Bidder's offer is irrevocable until the closing of the Auction, if any, subject to the requirements pertaining to any Back-up Bidder discussed below;
  - (d) the actual value of such Qualified Bidder's bid to the Debtor's estate; and
  - (e) that such Qualified Bidders has not engaged in any collusion with any other bidder regarding the Sale.

2. All Qualified Bids shall be accompanied by a deposit check at the Sale Hearing with the Debtor of an amount equal to 10% of consideration offered by the Qualified Bidder for the Assets (the “Good Faith Deposit”).
  3. All Qualified Bids shall be accompanied by satisfactory evidence, in the opinion of the Debtor and its advisors, of committed financing or other ability to perform all transactions contemplated by the Proposed Agreement.
  4. Qualified Bids cannot contain any financing conditions or contingencies (other than those that may be set forth in the Stalking Horse Agreement).
  5. All Qualified Bidders must provide such additional information deemed appropriate by the Debtor’s management, in its sole and absolute discretion, to demonstrate that the Qualified Bidders have the financial wherewithal to close on the Sale.
- E. **“As Is, Where Is.”** The sale of the Acquired Assets or the Assets shall be on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by the Debtor, its agents, or estate, except to the extent otherwise set forth in the Stalking Horse Agreement or Proposed Agreement. Except as otherwise provided in the Stalking Horse Agreement or Proposed Agreement, all of the Debtor’s right, title, and interest in and to the Assets to be acquired shall be sold pursuant to section 363 of the Bankruptcy Code free and clear of all liens, claims, charges, security interests, restrictions, and other encumbrances of any kind or nature thereon and there against (collectively, the “Liens”), with such Liens to be satisfied in accordance with the terms of the sale order. Each bidder shall be deemed to acknowledge and represent that it has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or Assets in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection with the Assets, the Bidding Process, or the Auction, except as expressly stated in these Bidding Procedures or, as to the Successful Bidder, in the applicable Proposed Agreement.
- F. **Stalking Horse.** The Stalking Horse is a Potential Bidder and has submitted a Qualified Bid pursuant to the Stalking Horse Agreement, which Qualified Bid shall serve as the opening bid at any Auction.
- G. **Stalking Horse Bid Protections:** The Debtor is not seeking any stalking horse bid protections pursuant to this Motion.

- H. **Credit Bid**: A holder of a valid lien on any assets of the Debtor, including the Stalking Horse, shall be permitted to credit bid pursuant to section 363(k) of the Bankruptcy Code, to the extent permitted thereunder.
- I. **Auction**. If one or more Qualified Bidders appear at the Sale Hearing, the Debtor shall conduct an auction (the "Auction") at the Sale Hearing, or such later time or other place as the Debtor shall notify all Qualified Bidders who have submitted Qualified Bids. Based upon the terms of the Qualified Bids received, the number of Qualified Bidders participating in the Auction, and such other information as the Debtor determines is relevant, the Debtor, in its sole discretion, may conduct an auction at the Sale Hearing in the manner it determines will achieve the maximum value for the Assets.

As soon as practicable after the submission of Qualified Bids at the Sale Hearing, the Debtor shall: (i) review each Qualified Bid on the basis of financial and contractual terms and the factors relevant to the sale process, including, among other things, the following: (a) the amount and nature of the consideration; (b) the proposed assumption of liabilities (if any); (c) the ability of the Qualified Bidder to close the proposed transaction; (d) the proposed closing date and the likelihood, extent, and impact of any potential delays in closing; (e) any purchase price adjustments; (f) the impact of the transaction on any actual or potential litigation; (g) the net after-tax consideration to be received by the Debtor's estate; and (h) those factors affecting the speed and certainty of consummating the Sale and confirming a plan of reorganization; and (ii) identify, in its sole discretion, the highest or otherwise best offer or combination of offers for the Assets (the "Successful Bid") of the prevailing bidder(s) ("Prevailing Bidder"). The Debtor reserves all rights to not submit any bid which is not acceptable to the Debtor.

If an Auction is conducted, the party with the next highest or otherwise best bid, as determined by the Debtor in its sole discretion and in the exercise of its business judgment, shall be required to serve as a back-up bidder (the "Back-Up Bidder") and keep such bid (the "Back-Up Bid") open and irrevocable through the Closing of the Sale.

- J. **Acceptance of Qualified Bids**. The Debtor shall sell the Assets for the highest and otherwise best bid received as determined by the Debtor and approved by the Bankruptcy Court. The Debtor's presentation to the Bankruptcy Court for approval of a particular bid does not constitute the Debtor's acceptance of a bid. The Debtor will be deemed to have accepted a bid only when the bid has been approved by the Court at the Sale Hearing.

- K. **Return of Good Faith Deposit.** Upon entry of the sale order, the Deposits of all Qualified Bidders, other than the Prevailing Bidder and the Back-Up Bidder, shall be returned to such Qualified Bidders. The Deposits of the Prevailing Bidder and the Back-Up Bidder shall be held in escrow until 10 days after Closing.
  
- L. **Modifications.** The Debtor may: (i) determine, in its business judgment, which Qualified Bid, if any, is the highest or otherwise best offer; and (ii) reject at any time before entry of the Sale Order approving a Qualified Bid, any bid that, in the Debtor's sole discretion, is: (x) inadequate or insufficient; (y) not in conformity with the requirements of the Bankruptcy Code or the terms and conditions of sale; or (z) contrary to the best interests of the Debtor, its estate, its creditors, and other parties in interest.
  
- M. **Reservation of Rights:** The Debtor may impose, at or prior to the Auction, additional terms and conditions on the proposed Sale of the Assets if, in its reasonable judgment, such modifications would be in the best interests of the Debtor's estate and promote an open and fair sale process.

27. The Debtor believes that the Bidding Process provided herein will permit a sale process that promotes participation and active bidding, and ensures that the Debtor receives the highest and best offer for the Assets. Accordingly, the Debtor is prepared to proceed with the sale of its business and the Acquired Assets to the Stalking Horse, subject to higher and better bids in accordance with the Bidding Process.

#### **IV. The Assumption and Assignment of Certain Contracts and Executory Leases and Procedures Relating Thereto.**

28. Pursuant to the Stalking Horse Agreement, the Debtor proposes to assume the Designated Contracts and assign the Designated Contracts to the Stalking Horse or, if applicable, to the Prevailing Bidder.

29. The Designated Contracts that the Debtor intends to assume and assign to the Stalking Horse, as well as the proposed cure amounts for such Designated Contracts, will be set forth on Exhibit B hereto. The Debtor will supplement this Motion with Exhibit B on or before May 12, 2017.

30. To the extent that any counterparty to a Designated Contract (i) objects to the proposed cure amount set forth on Exhibit B hereto (the “Cure Amount”), (ii) objects to the ability of the Stalking Horse to provide adequate assurance of future performance under the Designated Contract, or (iii) otherwise objects to the assumption and/or assignment of the Designated Contract, the following procedures apply (the “Assignment Procedures”): such counterparty to a Designated Contract must, on or before the day that is 14 days after service of the supplement to this Motion containing Exhibit B (the “Assignment Objection Deadline”), (i) file with the Court; and (ii) serve upon (a) counsel to the Debtor, Michael J. Barrie, Esquire, Benesch Friedlander Coplan & Aronoff LLP, One Liberty Place, 1650 Market Street, Suite 3628, Philadelphia, PA 19103-7301 and (b) counsel to the Stalking Horse, Thomas D. Bielli, Esquire, Bielli & Klauder, LLC, 1500 Walnut Street, Suite 900, Philadelphia, PA 19102, so as to be received by the Assignment Objection Deadline, a written objection setting forth with specificity the basis for the objection as well as any cure amount that the counterparty asserts to be due (in all cases with appropriate documentation in support thereof) that complies with the Bankruptcy Rules and Local Rules (an “Assignment Objection”). To the extent that the parties are unable to resolve any Assignment Objection before the Sale Hearing, the Assignment Objection shall be heard by the Court at the Sale Hearing or such other date as the parties agree.

31. If the Prevailing Bidder submits a Successful Bid at the Auction, the Debtor will promptly notify the counterparties to the Designated Contracts identified on Exhibit B hereto. Such Designated Contract counterparties may object to the ability of the Prevailing Bidder to provide adequate assurance of future performance by filing a written objection in accordance with the Assignment Procedures set forth above within 14 days of the Debtor’s mailing of the notice of Prevailing Bidder; provided, however, that any counterparties to any Designated

Contract listed on Exhibit B hereto that did not submit an Assignment Objection by the Assignment Objection Deadline are limited to objecting to the Prevailing Bidder's ability to provide adequate assurance of future performance of their respective Designated Contracts, and are barred from asserting any objection to the proposed Cure Amount as set forth on Exhibit B hereto.

32. If the Prevailing Bidder requests that the Debtors assume and assign to it a contract(s) not listed on Exhibit B hereto, the Debtor shall promptly notify the counterparty to such contract(s) in writing, including the proposed cure amount, and such contract shall be deemed a Designated Contract. If such counterparties object to any aspect of the assumption or assignment of the Designated Contract to the Prevailing Bidder, the counterparty shall have 14 days from the mailing of the Debtor's notice to submit an Assignment Objection in accordance with the Assignment Procedures set forth above.

33. To the extent that any party does not timely object in accordance with the Assignment Procedures as set forth above, such party may be (a) forever barred from objecting to the assumption and assignment of any Designated Contract including, without limitation, asserting any additional cure payments or requesting additional assurance of future performance as it relates to this Sale; (b) deemed to have consented to the applicable Cure Amount, if any, and to the assumption and assignment of the Designated Contract as part of this Sale; (c) bound to such corresponding Cure Amount, if any; (d) deemed to have agreed that the Stalking Horse or Prevailing Bidder, as applicable, has provided adequate assurance of future performance within the meaning of section 365(b)(1)(C) of the Bankruptcy Code; (e) deemed to have agreed that all defaults under the applicable Designated Contract arising or continuing prior to the Assignment Objection Deadline have been cured as a result or precondition of the assignment, such that the

Stalking Horse or Prevailing Bidder, as applicable, and the Debtor, shall have no liability or obligation with respect to any default occurring or continuing prior to the Assignment Objection Deadline, and from and after the date of assignment, the applicable Designated Contract shall remain in full force and effect for the benefit of the Stalking Horse or Prevailing Bidder, as applicable, and such counterparty in accordance with the Designated Contract's terms; (f) deemed to have waived any right to terminate the applicable Designated Contract or designate an early termination date under the applicable Designated Contract as a result of any default that occurred and/or was continuing prior to the assignment date; and (g) deemed to have agreed that the terms of the order approving the Sale shall apply to the assumption and assignment of the applicable Designated Contract.

34. The Debtor, in consultation with the Stalking Horse or Prevailing Bidder, as applicable, reserves the right to add items to, delete items from, supplement, and/or modify the list of Designated Contracts at any time, provided that to the extent that the Debtor adds a contract to the list of Designated Contracts, or reduces a Cure Amount, the affected counterparty shall receive a separate notice and an opportunity to object to such addition or reduction in accordance with the Assignment Procedures set forth above. Additionally, the determination whether a Designated Contract is to be assumed and assigned is subject to approval by the Court. The listing of a contract on Exhibit B hereto or any subsequent notice is not an admission by the Debtor that such contract is an executory contract or unexpired lease or that the Debtor has any liability thereunder.

**RELIEF REQUESTED**

35. By this Motion, the Debtor seeks the entry of an Order, substantially in the form of Exhibit C hereto, approving the Sale to the Stalking Horse or the Prevailing Bidder, as

applicable, and authorizing the assumption and assignment of the Designated Contracts to the Stalking Horse or Prevailing Bidder, as the case may be. The relief requested in this Motion should be granted for the reasons set forth herein.

### **BASIS FOR RELIEF**

#### **I. Approval of the Sale Is Appropriate and in the Best Interest of the Debtor's Estate.**

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

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

37. Although section 363 does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of the estate, the Third Circuit, like others, has required that such use, sale, or lease be based upon the sound business judgment of the debtor. *See, e.g., Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *see also Official Comm. of Unsecured Creditors v. LTV Corp. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992). In that regard, "[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct." *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

38. The business judgment rule shields a debtor's management from judicial second-guessing. *See, e.g., id.* at 615-16 ("[A] presumption of reasonableness attaches to a debtor's management decisions."). Once a debtor articulates a valid business justification, "[t]he business judgment rule 'is a presumption that in making a business decision the directors of a corporation



acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)). Indeed, when applying the “business judgment” standard, courts show great deference to a debtor’s business decisions. *See, e.g., DiStefano v. Stern (In re JFD Enters.)*, 2000 U.S. App. LEXIS 9162, at \*15-16 (1st Cir. May 1, 2000) (“Courts have much discretion on whether to approve proposed sales, but the trustee’s business judgment is subject to great judicial deference.” (internal quotation marks omitted)). Thus, if a debtor acts on an informed basis, in good faith, and in the honest belief that the action was in the best interests of the company, then the transaction in question should be approved under section 363(b)(1).

39. The Debtor’s determination to sell the Assets through the Bidding Process at the Sale Hearing and seek approval of the Stalking Horse Agreement (or, alternatively, approval of a transaction with the Prevailing Bidder) is a valid and sound exercise of the Debtor’s business judgment because the Stalking Horse Agreement provides substantial benefits to the Debtor’s estate, namely, (i) the assumption of obligations related to administration of this chapter 11 case; (ii) the satisfaction of the Debtor’s obligations to its secured creditor; and (iii) the opportunity for a meaningful return to unsecured creditors. The Debtor submits that the Stalking Horse Agreement or a necessarily better purchase agreement with a Prevailing Bidder, will constitute the highest and best offer for the Assets and will provide a greater recovery for the Debtor’s estate than would be provided by any other currently available alternative. Therefore, the Debtor requests that the Court find that the proposed Sale of the Assets is a proper exercise of the Debtor’s business judgment and is rightly authorized.

B. The Sale of the Assets Free and Clear of Claims and Interests Is Authorized by Section 363(f) of the Bankruptcy Code.

40. The Debtor submits that it is appropriate to sell the Assets free and clear of all liens, claims, encumbrances, and all other interests pursuant to section 363(f) of the Bankruptcy Code. Section 363(f) authorizes a debtor to sell assets free and clear of liens, claims, encumbrances, and all other interests if (1) applicable nonbankruptcy law permits the sale of such property free and clear of such interests; (2) the entity asserting such claims or interests consents; (3) such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. 11 U.S.C. § 363(f).

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

42. Because Bankruptcy Code section 363(f) is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Assets “free and clear” of liens, claims, encumbrances, and all other interests. *See, e.g., Mich. Empl. Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that section 363(f) is written in the disjunctive; holding that a court may approve a sale “free and clear” provided at least one of the subsections of Bankruptcy Code section 363(f) is met); *In re Bygraph, Inc.*, 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986) (same).

43. The Debtor believes that several of the provisions of section 363(f) of the Bankruptcy Code will be satisfied with respect to the transfer of the Assets pursuant to the Stalking Horse Agreement or, as the case may be, a purchase agreement with a Prevailing

Bidder. The Debtor believes that section 363(f)(2), (3), (4) and/or (5) of the Bankruptcy Code will be met in connection with the Sale. In particular, and without limiting the generality of the foregoing, the credit bid portion of the purchase price under the Stalking Horse Agreement includes funds that have been advanced to pay in full the claim of the Debtor's secured creditor.

C. The Assets Should be Sold Free and Clear of Successor Liability.

44. Under the terms of the Stalking Horse Agreement, the Stalking Horse shall not be liable for any liabilities as an alleged successor to the Debtor's business. Such a provision ensures that the Stalking Horse or the Prevailing Bidder is protected from any claims or lawsuits premised on the theory that the Stalking Horse or the Prevailing Bidder is a successor to the Debtor as a result of, among other things, a consolidation merger or de facto merger of the Stalking Horse or the Prevailing Bidder and the Debtor.

45. Courts have consistently held that a buyer of a debtor's assets pursuant to a section 363 sale takes the assets free from any successor liability relating to the debtor's business. *See, e.g., Elliott v. GM LLC (In re Motors Liquidation Co.)*, 829 F.3d 135, 156 (2d Cir. 2016) (“[A] bankruptcy court may approve a § 363 sale ‘free and clear’ of successor liability claims if those claims flow from the debtor's ownership of sold assets.”); *In re Trans World Airlines, Inc.*, 322 F.3d 283, 288-89 (3d Cir. 2003) (holding that section 363(f) permits sales free and clear of successor liability). The purpose of an order authorizing the transfer of assets free and clear of all liens, claims, encumbrances, and all other interests would be frustrated if claimants could thereafter use the transfer as a basis to assert claims against a purchaser arising from a seller's pre-sale conduct.

46. Accordingly, consistent with the above-cited case law, the order approving the sale of the Assets should state that the Stalking Horse or, as the case may be, the Prevailing

Bidder is not liable as a successor under any theory of successor liability, for claims or interests that encumber or relate to the Assets.

- D. The Stalking Horse or the Prevailing Bidder is a Good Faith Purchaser and is Entitled to the Full Protection of Section 363(m) of the Bankruptcy Code, and the Transfer and Sale of the Assets Does Not Violate Section 363(n) of the Bankruptcy Code.
- 

47. The Debtor seeks a finding by the Court that the Stalking Horse or the Prevailing Bidder a good faith purchaser is entitled to the full protections of section 363(m) of the Bankruptcy Code. Further, the Debtor requests a finding that section 363(n) is not applicable to the Sale of the Assets.

48. The Third Circuit has indicated that a party would have to show fraud or collusion between the buyer and the debtor in possession or trustee or other bidders in order to demonstrate a lack of good faith. *See, e.g., In re Abbotts Dairies*, 788 F.2d 143, 147-48 (3d Cir. 1986); *see also, e.g., Kabro Assocs. of West Islip, LLC v. Colony Hill Assocs. (In re Colony Hill Assocs.)*, 111 F.3d 269, 276 (2d Cir. 1997) (“Typically, the misconduct that would destroy a [buyer]’s good faith status at a judicial sale involves fraud, collusion between the [buyer] and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.”).

49. The Stalking Horse and the Debtor have engaged in thorough arms’ length negotiations over the terms of the Stalking Horse Agreement. There has been no fraud, collusion, or gross unfairness. In the event someone other than the Stalking Horse is the Prevailing Bidder, the Debtor and the Prevailing Bidder will have engaged in thorough arms’ length negotiations over the terms of any Proposed Agreement. Further, all Qualified Bidders are required to certify that they have not engaged in collusion in connection with the Sale pursuant to the Bidding Process described above.

50. Accordingly, the Debtor requests that the Court find that the Stalking Horse Agreement or, as the case may be, a purchase agreement with the Prevailing Bidder, was at arms' length and is entitled to the full protections of section 363(m) of the Bankruptcy Code, and that section 363(n) of the Bankruptcy Code is inapplicable to the Sale. The Debtor will submit evidence at the Sale Hearing to support these conclusions.

**II. Assumption of Certain Executory Contracts and Assignment to the Stalking Horse or Prevailing Bidder, as Applicable, is Appropriate.**

51. Pursuant to the Stalking Horse Agreement, the Debtor proposes to assume Designated Contracts and assign them to the Stalking Horse or, if applicable, to the Prevailing Bidder in accordance with the Assignment Procedures set forth above. The Designated Contracts that the Debtor currently intends to assume and assign to the Stalking Horse are identified on Exhibit B hereto.

52. Section 365(a) of the Bankruptcy Code provides that a debtor in possession “subject to the court’s approval, may assume . . . any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a).

53. Further, section 365(f) of the Bankruptcy Code provides that a debtor in possession “may assign an executory contract or unexpired lease of the debtor only if (A) the trustee assumes such contract or lease in accordance with the provisions of [section 365]; and (b) adequate assurance of future performance by the assignee of such contract or lease is provided.” 11 U.S.C. § 365(f)(2).

54. Assumption or rejection of a contract—like a sale under section 363—is a matter of the debtor’s business judgment. *See, e.g., N.L. R.B. v. Bildisco & Bildisco (In re Bildisco)*, 682 F.2d 72, 79 (3d Cir. 1982), *aff’d sub nom., N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513 (1984); *In re Physiotherapy Holdings, Inc.*, 506 B.R. 619, 622 (Bankr. D. Del. 2014). As

discussed above, to satisfy the business judgment test, a debtor must only show that assumption or rejection of an executory contract will benefit the estate. *See Bildisco*, 682 F.2d at 79; *see also In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (“Under the business judgment standard, the sole issue is whether the rejection benefits the estate.”). A debtor’s decision in this regard is “entitled to great deference from the Court.” *In re Armstrong World Indus.*, 348 B.R. 136, 162 (Bankr. D. Del. 2006).

55. Once an executory contract or unexpired lease is assumed, the debtor in possession may generally elect to assign such contract, so long as it cures any defaults and provides adequate assurance of future performance. *See* 11 U.S.C. § 365(f)(2). The requirement to show “adequate assurance of future performance” will depend on the facts and circumstances of each case, but should be given a “practical, pragmatic construction.” *In re DBSI, Inc.*, 405 B.R. 698, 708 (Bankr. D. Del. 2009); *see also Cinicola v. Scharffenberger*, 248 F.3d 110, 120 n. 10 (3d Cir. 2001). 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 Bygraph*, 56 B.R. at 605-06. (finding adequate assurance of future performance where the assignee of a lease has the financial resources and has expressed a willingness to devote sufficient funding to the business in order to give it a strong likelihood of succeeding).

56. Here, assumption of the Designated Contracts is a sound exercise of business judgment because it will come at no cost to the Debtor’s estate. The Stalking Horse has agreed to assume liability for cure amounts associated with each Designated Contract. *See* Stalking Horse Agreement § 2.5(b).

57. Additionally, the Stalking Horse will be able to provide adequate assurance of future performance because it will have the financial wherewithal to perform the Designated

Contracts and consummate the Sale. Contract counterparties can also be confident that the Stalking Horse will also be on firmer financial footing than the Debtor. Further, because the Stalking Horse was formed by and will be controlled by certain directors, officers, and members of the Debtor, who necessarily have experience and are familiar with the Designated Contracts and the Debtor's business, there is little risk in disruption or interruption of the performance to be rendered by the Stalking Horse under the Designated Contracts.

58. To facilitate the Sale and maximize the value received for the Debtor's assets, the Debtor requests that any order approving the Sale provide that the Designated Contracts will be transferred to, and remain in full force and effect for the benefit of the Stalking Horse or Prevailing Bidder, as applicable, notwithstanding any provision in the Designated Contracts, including those described in sections 365(b)(2), (f)(1), and (f)(3) of the Bankruptcy Code, that prohibits or purports to prohibit such assignment.

59. To the extent that any counterparty to a Designated Contract has any objection to any aspect of the assumption or assignment of its respective Designated Contract, it may submit an Assignment Objection in accordance with the Assignment Procedures set forth above. The Debtor submits that the Assignment Procedures are fair and appropriate in this case, because they provide counterparties with 14 days following service of this Motion to submit an Assignment Objection, consistent with Local Rule 9014-3(i), and provide for a hearing on any Assignment Objection that the parties cannot resolve on mutually agreeable terms.

### **III. Relief Under Bankruptcy Rules 6004(h) and 6006(d) Is Appropriate.**

60. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h).

61. Additionally, Bankruptcy Rule 6006(d) provides that an “order authorizing the trustee to assign and executory contract or unexpired lease . . . is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6006(d).

62. The Debtor requests that any order approving the Stalking Horse Agreement or, as the case may be, a purchase agreement with the Prevailing Bidder, and assumption and assignment of Designated Contracts be effective immediately by providing that the 14-day stays under Bankruptcy Rules 6004(h) and 6006(d) are waived.

63. The Debtor seeks to close the Sale as soon as possible after the Sale Hearing in order to maximize the value of the Assets. Specifically, because the terms of the Stalking Horse Agreement provide for the payment of 50% of all accounts receivable that the Stalking Horse liquidates after Closing to be distributed to the Debtor for the benefit of unsecured creditors, a quick Closing is in unsecured creditors’ best interest. Moreover, because the Stalking Horse’s purchase price includes the assumption of liability for unfunded administrative expenses through Closing, the value of any potential topping bid from a Prevailing Bidder may erode if Closing is delayed. Accordingly, the Debtor respectfully requests that the Court waive the 14-day stay period under Bankruptcy Rules 6004 and 6006.

### **SUMMARY**

64. In summary, the Debtor will present, in conjunction with this Motion, evidence at the Sale Hearing to (i) support a finding that a sound business reason exists for the Sale, (ii) support a finding that the Assets have been adequately marketed, (iii) demonstrate that fair and reasonable value will be received and the proffered purchase price for the Assets is the highest or best under the circumstances, and (iv) support a finding that the Debtor and the Stalking Horse or the Prevailing Bidder, as the case may be (to the extent appropriate), have complied with section 365 of the Bankruptcy Code.



**NOTICE**

65. Notice of this Motion has been or will be given to (a) the office of the United States Trustee, (b) all of the Debtor's known creditors; (c) those potential investors, acquirers, and/or merger partners that the Debtor identified during its prepetition marketing process; (d) each party that has requested to receive notice pursuant to Bankruptcy Rule 2002; and (e) to the extent not included in the foregoing, counterparties to the Designated Contracts.

66. Notice of this Motion will be published in the *Philadelphia Inquirer* and a trade publication.

67. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is required.

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

*[Remainder of Page Intentionally Blank]*

WHEREFORE, the Debtor respectfully requests that the Court enter an order (i) approving the Stalking Horse Agreement between the Debtor and the Stalking Horse or, as the case may be, approving a purchase agreement between the Debtor and the Prevailing Bidder, to acquire the Assets, (ii) authorizing the sale of the Assets free and clear of all Liens, claims, and interests, (iii) authorizing the assumption and assignment of the Designated Contracts to the Stalking Horse or the Prevailing Bidder, as the case may be, and (iv) granting such other and further relief as is just and proper under the circumstances.

Dated: May 3, 2017

**BENESCH, FRIEDLANDER,  
COPLAN & ARONOFF LLP**

*/s/ Michael J. Barrie*

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*Proposed Counsel for the Debtor  
and Debtor in Possession*

**EXHIBIT A**

[Stalking Horse Agreement]

## **ASSET PURCHASE AGREEMENT**

This Asset Purchase Agreement (this “Agreement”), is made as of May 3, 2017, by and between **Bleacher Creatures, LLC** a Delaware limited liability company registered to do business in Pennsylvania, with a mailing address of 527 Plymouth Road, Suite 407, Plymouth Meeting, Pennsylvania, 19462 (“Seller”), and **Bleacher Acquisition, LLC** a Delaware limited liability company with a mailing address of 6 West 20th Street, 3rd Floor, New York, NY 10011 (“Buyer”). Buyer and Seller are each a “Party” and collectively the “Parties.” Capitalized terms used but not otherwise defined herein shall have the meanings assigned to them in Article 1 below.

### **RECITALS:**

**WHEREAS**, Seller is engaged in the business of manufacturing, distributing, and selling plush toys that resemble popular athletes, sports mascots, public figures, and characters from movies, comics, and other popular media (the “Business”);

**WHEREAS**, on or about May 2, 2017, Seller commenced a voluntary case (the “Bankruptcy Case”) under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Eastern District of Pennsylvania (the “Bankruptcy Court”) and docketed as *In re Bleacher Creatures, LLC*, Case No. 17-13162;

**WHEREAS**, Seller desires to sell substantially all of the Business (*i.e.*, the Acquired Assets (as defined below)) and Buyer desires to purchase from Seller the Acquired Assets, subject to the terms and conditions of this Agreement;

**WHEREAS**, the Parties intend that the Acquired Assets include (but are not limited to) all of Seller’s intellectual property, inventory, equipment, leases, accounts receivable, related Documentation, and certain other assets and Contracts which Buyer requires to operate Seller’s Business; and

**WHEREAS**, the Acquired Assets will be sold pursuant to the terms of this Agreement and an order of the Bankruptcy Court approving and authorizing such sale pursuant to, *inter alia*, sections 363 and 365 of the Bankruptcy Code.

### **AGREEMENTS:**

**NOW, THEREFORE**, in consideration of the foregoing and the mutual covenants and promises contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

#### **ARTICLE 1** **DEFINITIONS**

1.1. **Defined Terms**. In addition to terms that are used and otherwise defined in this Agreement, the terms below shall have the following meanings:

“**Acquired Assets**” has the meaning set forth in Section 2.1 of this Agreement.

“**Agreement**” has the meaning set forth in the introductory paragraph of this Agreement.

“**Alternative Bid**” shall mean a bid made by a Person other than Buyer.

“**Ancillary Agreements**” shall mean (i) the Bill of Sale; and (ii) the Intellectual Property Assignment Agreement.

“**Assumed Contract**” has the meaning set forth in Section 2.5(a) of this Agreement.

“**Assumed Liabilities**” has the meaning set forth in Section 2.3 of this Agreement.

“**Auction**” shall mean the auction that shall, subject to the terms of this Agreement, be scheduled to take place for the purpose of determining the Successful Bidder for the purchase of the Acquired Assets pursuant to the Sale Approval Order.

“**Back-Up Bidder**” shall have the meaning set forth in the Sale Approval Motion.

“**Bankruptcy Case**” has the meaning set forth in the Recitals of this Agreement.

“**Bankruptcy Code**” has the meaning set forth in the Recitals of this Agreement.

“**Bankruptcy Court**” has the meaning set forth in the Recitals of this Agreement.

“**Bidding Procedures**” means the bidding procedures described in the Sale Approval Motion.

“**Bill of Sale**” shall mean the Bill of Sale to be executed by Seller and Buyer on the Closing Date substantially in the form attached hereto as Exhibit B.

“**Business**” has the meaning set forth in the Recitals to this Agreement.

“**Business Day**” shall mean any day excluding Saturday, Sunday and any day that is a legal holiday within the meaning of Rule 9006(a) of the Federal Rules of Bankruptcy Procedure.

“**Buyer**” shall mean Bleacher Acquisition, LLC an entity formed and organized under the laws of the State of Delaware, as provided in Section 10.3.

“**Buyer Documents**” has the meaning set forth in Section 6.1 of this Agreement.

“**Closing**” has the meaning set forth in Section 4.1 of this Agreement.

“**Closing Date**” has the meaning set forth in Section 4.1 of this Agreement.

“**Contemplated Transactions**” shall mean the transactions contemplated by this Agreement and the Ancillary Agreements.

“**Contract**” shall mean any contract, lease, deed, mortgage, license, instrument, note, commitment, undertaking, indenture, joint venture and any other agreement, commitment and legally binding arrangement, whether written or oral.

“**Cure Amounts**” shall mean all amounts and other consideration that pursuant to section 365 of the Bankruptcy Code, as of the Closing Date, shall be required to cure any defaults on the part of Seller pursuant to the Assumed Contracts or that will be otherwise due to non-debtor parties pursuant to the Assumed Contracts, as a prerequisite to the assignment and assumption of the Assumed Contracts pursuant to section 365 of the Bankruptcy Code.

“**DIP Facility**” means the debtor in possession financing provided to the Seller by the DIP Lender and approved by an interim and/or final order of the Bankruptcy Court.

“**DIP Lender**” shall mean Bleacher Acquisition, LLC as lender under the DIP Facility.

“**Distribution Scheme**” shall mean 50% of accounts receivable of the Seller as of the Closing Date, which shall be collected by the Buyer from and after the Closing Date and distributed to the Seller’s bankruptcy estate for the benefit of the Seller’s unsecured creditors.

“**Documentation**” shall include any and all manuals, schematic drawings, plans, leases, designs, agreements, internal and external specifications and the like, instructions, and other documentation Seller uses to design, create, contract for, manufacture or use in manufacturing, , use, distribute, maintain, support, update, compile or otherwise exploit the Seller Intellectual Property, including, without limitation, the materials described by Schedule 1.1(a), which Schedule shall be acceptable to Buyer.

“**Encumbrance**” shall mean any interest (including ownership interest), pledge, lien (including any lien or liens granted in connection with, or as security for, debtor in possession financing), mortgage, security interest, judgment, demand, tax, successor liability claim, restriction, charge of any kind or nature, claim (as and to the full extent that term is defined in section 101(5) of the Bankruptcy Code), obligation, option, right, or restriction, whether imposed by agreement, understanding, Law, equity or otherwise (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or subordinated), in or with respect to any assets of (or used by) Seller and/or against Seller.

“**Excluded Assets**” has the meaning set forth in Section 2.2 of this Agreement.

“**Excluded Liabilities**” has the meaning set forth in Section 2.4 of this Agreement.

“**Executory Contracts**” shall mean all of the contracts, agreements, joint venture arrangements, leases and/or licenses under which the obligations of both Seller and the other party to the contract are unperformed such that the failure by either party to perform would excuse further performance by the other party.

“**Final Order**” shall mean an order of the Bankruptcy Court as to which time for appeal has expired and 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 for request of review, or other similar motion, application, notice or request (collectively, a “Challenge”) has been timely filed or if a Challenge has been timely filed, such Challenge has been denied and no Challenge to such denial has been timely filed.

“**Intellectual Property**” shall mean all intellectual property rights or similar rights arising from or associated with the following, whether protected, created, or arising under the Laws of the United States or any other jurisdiction, including (i) Trademarks, domain names and other Internet addresses or identifiers, and renewals therefor; (ii) Patents; (iii) copyrights; (iv) Trade Secrets; and (v) any other intellectual property rights of any kind or nature.

“**Intellectual Property Assignment Agreement**” shall mean the Intellectual Property Assignment Agreement to be executed by Buyer and Seller on the Closing Date substantially in the form attached hereto as Exhibit C.

“**IRS**” has the meaning set forth in Section 3.5 of this Agreement.

“**Law**” shall mean any constitutional provision, statute or other law (including common law), rule, ordinance, code, requirement, regulation, administrative ruling or executive order in the United States of America, any foreign country or any domestic or foreign national state, provincial, municipal or other local political subdivision thereof issued or promulgated by any governmental authority.

“**Liabilities**” shall mean any and all debts, liabilities, commitments, and obligations of every kind and description whatsoever, whether such debts, liabilities, commitments or obligations are known or unknown, disclosed or undisclosed, matured or unmatured, accrued, fixed, absolute, contingent, determined or undeterminable, on- or off- balance sheet and otherwise.

“**Licensed Intellectual Property**” shall mean all Intellectual Property that is currently licensed to Seller.

“**Material Adverse Effect**” shall mean any change, occurrence or development that has a material adverse effect on the assets, Liabilities, operations, property or prospects of the Business, but excludes: (i) any change in general economic conditions in the industries or markets in which Seller operates (which changes, individually or in the aggregate, do not disproportionately affect Seller, taken as a whole); (ii) seasonal reductions in revenue and/or earnings of Seller in the ordinary course of business (which seasonal reductions, individually or in the aggregate, do not disproportionately affect Seller, taken as a whole); (iii) national or international political conditions, including any engagement in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack (which conditions, individually or in the aggregate, do not disproportionately affect Seller, taken as a whole); and (iv) the entry into or announcement of this Agreement, actions contemplated by this Agreement, or the consummation of the Contemplated Transactions.

“**Newly-Hired Employees**” has the meaning set forth in Section 2.6(b) of this Agreement.

“**Patent**” shall mean a patent or application therefor, including any continuation, divisional, continuation-in-part or reissue of a patent application and patents issuing thereon, and renewals thereof, industrial design registrations and applications, design rights, and inventions.

“**Permitted Encumbrances**” shall mean (i) Encumbrances that will be removed prior to or in connection with the Closing; (ii) the Assumed Liabilities; and (iii) any other Encumbrance expressly assumed in writing by Buyer.

“**Person**” shall mean any individual, corporation, partnership, limited liability company, trust, association, joint venture or other entity of any kind whatsoever.

“**Personnel**” shall mean all former and current employees, agents, consultants and independent contractors of Seller.

“**Petition Date**” shall mean May 2, 2017, i.e., the date of the commencement of the Bankruptcy Case.

“**Purchase Price**” has the meaning set forth in Section 3.1 of this Agreement.

“**Sale Approval Motion**” shall mean Seller’s *Motion of the Debtor and Debtor in Possession for Entry of an Order (I) Approving an Asset Purchase Agreement Between the Debtor and the Stalking Horse, or such Other Purchase Agreement Between the Debtor and the Prevailing Bidder; (II) Authorizing the Sale of Certain Assets of the Debtor Free and Clear of All Liens, Claims, Encumbrances, and Other Interests; (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; and (IV) Granting Related Relief* filed in the Bankruptcy Case.

“**Sale Approval Order**” shall mean an order of the Bankruptcy Court substantially in the form and substance filed with the Sale Approval Motion and incorporated by reference herein, and in form and substance acceptable to Seller and Buyer, naming Buyer as the Successful Bidder at the Auction and approving, without limitation, this Agreement and all of the terms and conditions hereof and approving and authorizing Seller to consummate the transactions contemplated hereby pursuant to sections 363 and 365 of the Bankruptcy Code, and finding that Buyer is a good faith purchaser, entered after a hearing conducted on notice given in the Bankruptcy Case and in accordance with the terms specified in Section 9.8, Section 9.9 and Section 9.10.

“**Sale Hearing**” shall mean the Bankruptcy Court hearing to approve the sale of the Acquired Assets to, and the assumption of the Assumed Liabilities by, Buyer pursuant to this Agreement and the Sale Approval Motion.

“**Seller**” has the meaning set forth in the introductory paragraph of this Agreement.



“**Seller Data**” shall mean all data that is material to the Business and contained in any database used or maintained by Seller or by a contractor to Seller.

“**Seller Documents**” has the meaning set forth in Section 5.1 of this Agreement.

“**Seller Intellectual Property**” shall mean all Intellectual Property and Licensed Intellectual Property.

“**Subsidiary**” shall mean, with respect to Seller, any other Person, whether incorporated or unincorporated, of which (i) more than fifty percent (50%) of the securities or other ownership interests or (ii) securities or other interests having by their terms ordinary voting power to elect more than fifty percent (50%) of the board of directors or others performing similar functions with respect to such corporation or other organization, is directly owned or controlled by Seller.

“**Successful Bidder**” means the bidder that is determined by Seller, in accordance with the Bidding Procedures, to have submitted the best and highest bid for the purchase of the Acquired Assets.

“**Trade Secrets**” shall mean non-public know-how, inventions, discoveries, improvements, concepts, ideas, methods, processes, designs, plans, schematics, drawings, formulae, technical data, customer lists, specifications, research and development information, technology and product roadmaps, databases, and other proprietary or confidential information or trade secrets, in each case protectable under the laws of an applicable jurisdiction, excluding any Intellectual Property that may cover or protect any of the foregoing.

“**Trademarks**” shall mean trademarks, service marks, trade names, trade dress, logos, business and product names, slogans, whether or not registered, and registrations, applications for registration, and renewals thereof.

“**WARN**” shall mean the Workers Adjustment Retraining and Notification Act and similar state laws.

“**Work Product**” shall mean, with respect to a Person, all tangible and intangible original work product developed within the scope of their service or employment for Seller.

## **ARTICLE 2** **PURCHASE AND SALE OF ASSETS BY** **BUYER AND ASSUMPTION OF LIABILITIES**

2.1. **Purchase and Sale of Assets**. Upon the terms and subject to the conditions and provisions contained in this Agreement and the Sale Approval Order, at the Closing, Seller shall sell, convey, transfer, assign and deliver to Buyer, and Buyer shall acquire and accept from Seller, free and clear of any and all Encumbrances (except for Permitted Encumbrances), (x) all Assumed Contracts listed on Schedule 1, as such Schedule may be amended as provided in Section 2.5 of this Agreement, to which Seller is a party, and (y) all other assets of Seller required to operate and support the Business as conducted in all material respects by Seller on

the Petition Date, including, without limitation, the following assets (such Contracts and assets collectively, the “Acquired Assets”):

- (a) Tangible personal property of the Seller
- (b) All inventories of the Seller;
- (c) All accounts receivable of the Seller as of the Closing Date, subject to the Distribution Scheme;
- (d) All governmental authorizations and all pending applications therefor or renewals thereof;
- (e) All data and records related to the operations of Seller, including client and customer lists and records, referral sources, research and development reports and records, production reports and records, service and warranty records, equipment logs, operating guides and manuals, financial and accounting records, creative materials, advertising materials, promotional materials, studies, reports, correspondence and other similar documents and records (all in the state in which such records and information presently exists) and, subject to legal requirements, copies of all personnel records and any other records described in this Agreement;
- (f) All of the intangible rights and property of Seller, good-will, telephone and telecopy numbers, domain names, e-mail addresses, and websites, including with respect to the Seller’s online store, to the extent any of the foregoing are transferable;
- (g) All leasehold improvements;
- (h) All Intellectual Property;
- (i) All software and supplies;
- (j) Warranties and guarantees received by Seller from vendors and suppliers, to the extent transferable;
- (k) All claims against third parties relating to the purchased assets, whether choate or inchoate, known or unknown, contingent or non-contingent;
- (l) All rights relating to deposits and retainers, claims for refunds and rights to offset;
- (m) All other assets, properties, rights and claims of the Seller of any kind or nature which relate to the purchased assets, which are used or are useful to the purchased assets not otherwise described above;
- (n) All current claims for refund of taxes and other governmental charges of whatever nature; and
- (o) Seller’s corporate seals, stock record books, corporate record books containing minutes of meetings of directors and stockholders; tax returns and records, books of account and

ledgers and such other records having to do solely with the Buyer's organization or stock capitalization or excluded assets or excluded liabilities; provided, however, that the Acquired Assets shall not include any information or communications of the Seller that are protected by any applicable privilege (including the attorney-client privilege), the work product doctrine, or other immunity under applicable Law (the "Seller's Privileges") or the right to assert, waive, or claim any of the Seller's Privileges.

2.2. **Excluded Assets**. Except as expressly set forth in Section 2.1 of this Agreement, Buyer shall not acquire and accept from Seller any assets of Seller other than the Acquired Assets, including, without limitation, any Contracts that are not Assumed Contracts and the following specific assets (collectively, the "Excluded Assets"):

- (a) Seller's cash;
- (b) All rights of the Seller under this Agreement;
- (c) Claims against third parties related solely to any Excluded Assets or Excluded Liabilities;
- (d) All personnel records and other records that the Seller is required by law to retain in its possession with the exception of those personnel records for those employees who are to be retained and employed by the Buyer;
- (e) Seller's claims, causes of action, choses in action and rights of recovery pursuant to Sections 544 through 550 and Section 553 of the Bankruptcy Code and any other avoidance action under any other applicable provisions of the Bankruptcy Code; and
- (f) The Seller's Privileges.

2.3. **Assumption of Liabilities**. Upon the terms and subject to the conditions and provisions contained in this Agreement, at the Closing, Buyer shall, effective as of the Closing, assume, satisfy and perform when due only the following Liabilities of Seller (collectively, the "Assumed Liabilities"):

- (a) all Liabilities under the Assumed Contracts arising or to be performed from the period commencing on or after the Closing (other than to the extent such Liabilities relate to or arise from any tort or violation of Law occurring prior to the Closing);
- (b) all Liabilities in respect of the Acquired Assets arising from the period commencing on or after the Closing (other than to the extent such Liabilities relate to or arise from any breach of contract, tort or violation of Law occurring prior to the Closing); and
- (c) all Liabilities of the Seller for any allowed (at any time, before or after Closing) administrative expenses accrued from the Petition Date through Closing Date and unpaid as of the Closing Date to the extent that the proceeds of the DIP Facility are insufficient to pay such expenses.

2.4. **Liabilities Not Assumed.** Except as expressly set forth in Section 2.3 of this Agreement, Buyer shall not assume, satisfy, be liable for or perform any Liabilities of Seller or the Business, including, without limitation, Liabilities under WARN (collectively, the “Excluded Liabilities”). Except as otherwise provided herein, the Acquired Assets shall be sold and conveyed to Buyer free and clear of all Encumbrances except for Permitted Encumbrances.

2.5. **Assumed Contracts.**

(a) **Assumed Contracts List.** Seller shall assume and assign to Buyer all Contracts on Schedule 1 (the “Assumed Contracts”), as such Schedule may be amended (i) by mutual written agreement of Seller and Buyer, or (ii) as set forth in Section 2.5(c), by Buyer without the consent of Seller.

(b) **Payment of Cure Amounts.** To the extent required by the Bankruptcy Court under the Bankruptcy Code to permit the assumption and assignment of the Assumed Contracts to Buyer at Closing pursuant to this Agreement, Buyer shall pay all related Cure Amounts at Closing (which Cure Amount payment by Buyer shall be added to the Purchase Price payable by Buyer pursuant to Section 3.1 of this Agreement).

(c) **Additional Contracts.** From the date of execution of this Agreement through the Closing, Buyer may remove Contracts designated on Schedule 1 so that any such Contract is not an Assumed Contract, or Buyer may designate any Contracts in addition to the Contracts designated on Schedule 1 (and that Seller has not rejected pursuant to section 365 of the Bankruptcy Code) as an Assumed Contract, and Seller shall use commercially reasonable efforts to seek an order authorizing the assumption and assignment to Buyer of the Contract so designated, and Buyer shall be obligated to pay any Cure Amounts with respect to any such Assumed Contract (which Cure Amount payment by Buyer shall be added to the Purchase Price payable by Buyer pursuant to Section 3.1 of this Agreement). From the date of execution of this Agreement through the Closing, Seller shall not reject any Contract unless otherwise agreed to in writing by Buyer.

2.6. **Employees.**

(a) **Employees.** As of the Closing Date, unless otherwise agreed by the Parties, Seller shall terminate the employment of those employed in the Business who have accepted employment offers from Buyer. Buyer shall have sole discretion in determining those employees to whom it may extend employment offers.

(b) **Newly-Hired Employees.** With respect to all employees of Seller who become employees of Buyer as of the Closing Date (collectively, the “Newly-Hired Employees”), Buyer shall be responsible for all Liabilities arising for the period commencing on or after the Closing and in accordance with Buyer’s employment offers to and employment of the Newly-Hired Employees (and, if appropriate, consistent with applicable law).

**ARTICLE 3**  
**CONSIDERATION AND RELATED MATTERS**

3.1. **Consideration.** Subject to the provisions of Section 3.5, the aggregate consideration for the Acquired Assets (the "Purchase Price") shall be equal to (a) the sum of Three Hundred Thousand Dollars (\$300,000.00) in the form of a credit bid of the DIP Facility, plus (b) the assumption of the Assumed Liabilities.

3.2. **[Reserved.]**

3.3. **Payment of Purchase Price.** On the Closing Date, Buyer shall be deemed to have paid Seller in full, and the DIP Facility shall be deemed satisfied and paid in full.

3.4. **[Reserved.]**

3.5. **Allocation.** The Parties to allocate the Purchase Price among the Acquired Assets in accordance with Schedule 2, which shall be prepared by Buyer and provided to Seller within thirty (30) days after the Closing Date. Seller and Buyer agree to file all tax reports, returns and claims and other statements in a manner consistent with the allocation set forth on Schedule 2 and shall not make any inconsistent written statement or take any inconsistent position on any returns, in any refund claim, during the course of IRS or other tax audit, for any financial or regulatory purpose, in any litigation or investigation or otherwise, so long as there exists a reasonable basis in law to maintain such position. Each Party shall notify the other Party if it receives notice that the IRS proposes any allocation different from Schedule 2.

3.6. **Transaction Expenses.** Except as expressly provided herein, each Party shall bear its own costs and expenses, including attorneys, accountants and other consultants' fees, in connection with the execution and negotiation of this Agreement and the consummation of the Contemplated Transactions.

**ARTICLE 4**  
**CLOSING**

4.1. **Closing.** The consummation of the Contemplated Transactions (the "Closing") shall occur at the offices of Benesch, Friedlander, Coplan & Aronoff LLP, 222 Delaware Avenue, Suite 801, Wilmington, DE 19801 or such other location mutually agreed to by the Parties, not later than July 15, 2017 provided that all of the conditions to Closing set forth in Article 8 and Article 9 have been satisfied or waived in accordance with the terms of this Agreement, unless such date is extended by agreement of the Parties hereto (the "Closing Date").

4.2. **Conveyances at Closing.**

(a) At the Closing, and in connection with effecting and consummating the Contemplated Transactions, Seller shall deliver the following to Buyer:

(1) the Bill of Sale;

- (2) physical custody of the Acquired Assets;
- (3) up-to-date electronic copies of all Seller Data in a format reasonably acceptable to Buyer;
- (4) all Ancillary Agreements to which Seller is a party, duly executed by Seller;
- (5) the Sale Approval Order; and
- (6) such other instruments as may be reasonably requested by Buyer to vest in Buyer title in and to the Acquired Assets in accordance with the provisions hereof and the Sale Approval Order.

(b) At the Closing, and in connection with effectuating and consummating the Contemplated Transactions, Buyer shall deliver, or cause to be delivered, the following to Seller:

- (1) all Ancillary Agreements to which Buyer is a party.

To the extent that a form of any document to be delivered under this Section 4.2 is not attached as an Exhibit hereto, such documents shall be in form and substance, and shall be executed and delivered in a manner, reasonably satisfactory to Buyer and Seller.

4.3. **Other Closing Matters.** Each of the Parties shall use its commercially reasonable efforts to take such other actions required hereby to be performed by it prior to or on the Closing Date.

## **ARTICLE 5** **REPRESENTATIONS AND WARRANTIES OF SELLER**

As an inducement to Buyer to enter into this Agreement, Seller hereby, as of the date hereof, makes the following representations and warranties to Buyer. None of these representations and warranties shall survive the Closing of the Contemplated Transactions:

5.1. **Existence and Authority.** Seller is a validly existing entity under the laws of the jurisdiction of its organization, and has all requisite authority and power to own and, subject to the Sale Approval Order, dispose of the Acquired Assets, to execute and deliver this Agreement and the Ancillary Agreements to which it is a party (collectively, the "Seller Documents"), to perform its obligations hereunder and thereunder, and to consummate the Contemplated Transactions.

5.2. **Authorization.** Except for obtaining the Sale Approval Order, Seller has taken all necessary action to authorize the execution and delivery of the Seller Documents and the performance of its obligations hereunder and thereunder and to consummate the Contemplated Transactions.

5.3. **Execution and Delivery.** This Agreement has been executed and delivered by duly authorized officers of each Seller, and, subject to entry of the Sale Approval Order, will

constitute the legal, valid and binding obligation of Seller, and will be enforceable against Seller in accordance with its terms, subject in all respects to the Sale Approval Order. As of the Closing Date, each of the Seller Documents will be executed and delivered by a duly authorized officer of Seller, will constitute the legal, valid and binding obligations of Seller, and will be enforceable against Seller in accordance with their respective terms, subject in all respects to the Sale Approval Order.

5.4. **Approval and Consents.** Except for entry of the Sale Approval Order and except as set forth in this Agreement, no material approval, authorization, consent, license, certification or other action by, or filing with, any governmental authority, administrative agency, court or other party is necessary for Seller's execution and delivery of any of the Seller Documents, the performance of its obligations thereunder or the consummation of the Contemplated Transactions.

5.5. **Non-Contravention.** Except as set forth in this Agreement, Seller is not in breach or violation of or default under, and the execution and delivery by Seller of any of the Seller Documents and the performance of its obligations and the consummation of the Contemplated Transactions, each in accordance with the terms and conditions thereunder and subject to entry of the Sale Approval Order and the terms and conditions of the Sale Approval Order, will not cause a breach or violation of or default or event of default under, any provision of (i) the charter or bylaws or other organizational documents of Seller, (ii) any Contract to which Seller is a party, is bound, or by which any of the Acquired Assets are bound or affected, (iii) any Law of any governmental authority applicable to Seller, the Acquired Assets, or the Business, or (iv) any decree, order, injunction or other decision of any court, arbitrator, governmental authority or administrative agency with jurisdiction over Seller, the Acquired Assets or the Business.

5.6. **No Encumbrances.** Seller will, upon the entry of the Sale Approval Order and the consummation of the Contemplated Transactions, transfer all right, title and interest in and to the Acquired Assets to Buyer, free and clear of any and all Encumbrances, except for Permitted Encumbrances, pursuant to the applicable provisions of the Bankruptcy Code and the authority granted under the Sale Approval Order.

5.7. **Litigation.** Except for matters pending before the Bankruptcy Court, there are no actions, suits, claims or legal, administrative or arbitration proceedings pending or, to Seller's knowledge, threatened against, relating to or involving Seller.

5.8. **Intellectual Property.**

(a) For each item of Intellectual Property consisting of Patents, registered Trademarks and registered Copyrights, Schedule 3 sets forth the record owner and (i) for each Patent, the patent number or application serial number for each jurisdiction in which filed, date issued and/or filed and present status thereof; (ii) for each registered Trademark, the application serial number or registration number, by country, province and state, and the class of goods or services covered, the nature of the goods or services, the date issued and/or filed and the present status thereof; (iii) for each domain name, the renewal date and name of registry; (iv) for each Copyright, if applicable, the number and date of each registration or Copyright application by

country, province and/or state; (v) for each registered design, the registration number or serial number for each jurisdiction in which filed, date issued and/or filed and present status thereof; (vi) all actual or threatened claims (including reexamination and reissue proceedings) before any court, tribunal or other governmental authority (including the United States Patent and Trademark Office or equivalent authority anywhere in the world) related to any transferred Intellectual Property; and (vii) any actions that must be taken within ninety (90) days after the date hereof for the purposes of obtaining, maintaining, perfecting, preserving or renewing any transferred Intellectual Property that is registered or subject to a pending application for registration before any authorized Intellectual Property office, including the payment of any registration, maintenance or renewal fees or the filing of documents, applications or certificates or any responses to office actions.

(b) All Intellectual Property has been duly registered in, filed in or issued by the appropriate governmental authority where such registration, filing or issuance is necessary to perfect Seller's rights therein or for the conduct of the Business as presently conducted. Seller is the sole and exclusive owner of, and Seller has the right to use, execute, reproduce, display, perform, modify, enhance, distribute, prepare derivative works of and sublicense, without payment to any other Person, all transferred Intellectual Property. Seller maintains the ownership of transferred Intellectual Property, and no ownership rights or rights to use transferred Intellectual Property have been assigned or licensed to any third party other than under nonexclusive licenses granted to contractors or service providers for use solely for the benefit of Seller. Except as set forth on Schedule 3, Seller has not received any communication from any Person asserting any ownership interest in any transferred Intellectual Property or suggesting that any other Person has any claim of legal or beneficial ownership with respect thereto, nor is there any basis for any claim that Seller does not so own such transferred Intellectual Property. Seller has a valid license to all Licensed Intellectual Property.

(c) **[Reserved.]**

(d) Except as set forth on Schedule 3, subject to entry of the Sale Approval Order, the execution and delivery of this Agreement and the consummation of the Contemplated Transactions do not and will not affect, contravene, conflict with, alter or impair the ownership of or rights in the Seller Intellectual Property, and Buyer will not be obligated to pay any royalties or other amounts after Closing to any Person in excess of those payable by Seller in the absence of this Agreement or the consummation of the Contemplated Transactions.

(e) To the Seller's knowledge, the conduct of the Business as presently conducted does not violate, misappropriate, dilute or infringe the Intellectual Property rights of any other Person. The Intellectual Property rights are enforceable (to the extent such concepts are applicable and, with respect to U.S. Copyrights, assuming registration when required for enforcement), subsisting, and have not been abandoned or cancelled. No claims are pending or threatened, against Seller by any Person with respect to the ownership, validity, enforceability, registration, effectiveness or use in the Business of any transferred Intellectual Property. No claims are pending or threatened, and Seller has not received any communication alleging that Seller violated any rights relating to Intellectual Property of any third party. No third party, to



the Seller's knowledge, is misappropriating, infringing, diluting, or violating any transferred Intellectual Property or any of Seller's rights in Licensed Intellectual Property.

(f) All transferred Intellectual Property comprising Trade Secrets that Seller has chosen to retain as a trade secret under the laws of the applicable jurisdiction has been maintained in confidence in accordance with commercially reasonable protection procedures. All Personnel are under obligations restricting such Person's right to disclose proprietary information of Seller. Except as set forth on Schedule 3, all Personnel who have contributed to or participated in the conception and development of transferred Intellectual Property either (i) have been party to a written "work-for-hire" or similar Contract with Seller that, in accordance with all Laws, has accorded Seller full, effective, exclusive and original ownership of all Work Product and all right, title and interest therein, including Intellectual Property rights or (ii) have executed appropriate instruments of assignment in favor of Seller as assignee that have conveyed to Seller full, effective and exclusive ownership of all Work Product. To the Seller's knowledge, no former or current Personnel have any claim against Seller in connection with such Person's involvement in the conception, maintenance and development of any transferred Intellectual Property and no such claim has been asserted or threatened. To the Seller's knowledge, none of the Personnel of Seller has any patents issued or applications pending for any device, process, design or invention of any kind now used or needed by Seller in the furtherance of the Business.

(g) **[Reserved.]**

(h) **[Reserved.]**

(i) **[Reserved.]**

(j) Except as set forth in Schedule 3, all right, title and interest in and to the Seller Data is owned by Seller, free and clear of all Encumbrances.

5.9. **Tax Returns.** Except as disclosed in this Agreement, to the extent that under applicable Law the failure of this representation to be true or correct could result in an Encumbrance upon or claim against the Acquired Assets or in a claim against Buyer as transferee or owner of the Acquired Assets: (i) Seller have caused to be filed (or will file) all tax returns that are or were required to be filed on or prior to the Closing Date with respect to the Acquired Assets and the operation of the Business; (ii) all such tax returns accurately reflect all tax liabilities required to be reflected thereon; and (iii) all taxes due and payable by Seller with respect to the Acquired Assets and the operation of the Business shown in such tax returns have been paid or will be paid pursuant to the terms of the Plan.

5.10. **Compliance With Laws.** Except as disclosed in this Agreement, Seller is in compliance with all material Laws applicable to the Business. Except as disclosed in this Agreement, Seller has not received any written notice within the past twelve (12) months relating to violations or alleged violations or defaults under any applicable Law or order.

5.11. **Privacy and Data Protection.**

(a) Seller has complied in all material respects with applicable Laws and its internal privacy policies relating to the use, collection, storage, disclosure and transfer of any personally identifiable information collected, accessed or obtained by Seller or by third parties having authorized access to the records of Seller. Seller is in material compliance with all of the terms of all Contracts to which Seller is a party relating to the use, collection, storage, disclosure and transfer of any personally identifiable information collected, accessed or obtained by Seller or by third parties having authorized access to the records of Seller. Each of the Internet websites owned or operated by Seller since the date on which Seller was formed has maintained a publicly posted privacy policy that describes Seller's practices with respect to the collection, use and disclosure of personally identifiable information and that complies in all material respects with all applicable Laws. The execution, delivery and performance of this Agreement will comply with all applicable Laws relating to privacy, security and data protection and with Seller's privacy policies. Since the date on which Seller was formed, Seller has not received a written complaint or been involved in any investigation or inquiry regarding its use, collection, storage, disclosure or transfer of personally identifiable information, other than as disclosed in this Agreement.

(b) Seller has implemented and maintains a security plan that is customary and reasonable for its industry that (i) identifies internal and external risks to the security of any personally identifiable information in Seller's possession, custody or control, (ii) implements, monitors and improves administrative, electronic and physical safeguards to control those risks, (iii) maintains notification procedures in material compliance with applicable Laws in the case of any breach of security compromising data containing personally identifiable information and (iv) complies in all material respects with the obligations of Seller in any Contracts to which Seller is a party regarding the security of personally identifiable information in Seller's possession, custody or control. To the Seller's knowledge, it has not, since the date on which Seller was formed, experienced any breach of security or otherwise unauthorized access by third parties to any personally identifiable information in Seller's possession, custody or control.

(c) To the Seller's knowledge, the execution, delivery and performance of this Agreement and the consummation of the Contemplated Transactions, including any transfer of personally identifiable information, will not violate any applicable Law, the privacy policy of Seller or any data security requirements imposed on Seller. Upon Closing, subject to the terms of the Sale Approval Order, Buyer will continue to have the right to use such personally identifiable information on identical terms and conditions as the Business enjoyed immediately prior to the Closing.

5.12. **Completeness and Condition of Assets.** Seller has good and marketable title to and is the lawful owner of, or has a valid license or right to use, all of the Acquired Assets, free and clear of any and all Encumbrances (except for Permitted Encumbrances). All items of tangible personal property included in the Acquired Assets are structurally sound, in good operating condition, in a state of good maintenance and repair and are adequate for the uses to which they are being put, and none of such items of tangible personal property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost.

5.13. **Brokerage Fee.** No brokerage, finder's or similar fee, commission or other payment is or shall become payable by Buyer in connection with the Contemplated Transactions pursuant to any agreement, contract or other arrangement entered into by Seller.

## **ARTICLE 6** **REPRESENTATIONS AND WARRANTIES OF BUYER**

As an inducement to Seller to enter into this Agreement, Buyer hereby makes the following representations and warranties as of the date hereof to Seller, but none of which shall survive the Closing of the Contemplated Transactions for any reason whatsoever:

6.1. **Existence and Authority.** Buyer is a validly existing entity under the laws of the jurisdiction of its organization and has all requisite authority and power to execute and deliver this Agreement and the Ancillary Agreements to which it is a party (collectively, the "**Buyer Documents**"), to perform its obligations hereunder and thereunder, and to consummate the Contemplated Transactions.

6.2. **Authority.** Buyer has taken all necessary or appropriate actions to authorize the execution and delivery of each of the Buyer Documents and the performance of its obligations hereunder and thereunder and to consummate the Contemplated Transactions.

6.3. **Execution and Delivery.** This Agreement has been executed and delivered by a duly authorized officer of Buyer, constitutes the legal, valid and binding obligation of Buyer, and is enforceable against Buyer in accordance with its terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity (whether applied in a proceeding at law or in equity). As of the Closing Date, each of the Buyer Documents will be executed and delivered by a duly authorized officer of Buyer, will constitute the legal, valid and binding obligations of Buyer, and will be enforceable against Buyer in accordance with their respective terms, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity (whether applied in a proceeding at law or in equity).

6.4. **Approval and Consents.** Except for entry of the Sale Approval Order, no approval, authorization, consent or other action by, or filing with, any governmental authority, administrative agency, court or other party is necessary for Buyer's execution and delivery of any of the Buyer Documents, the performance of its obligations thereunder or the consummation of the Contemplated Transactions.

6.5. **Financial Resources.** Buyer has the financial resources necessary to consummate the Contemplated Transactions upon the terms and conditions set forth in this Agreement and the Ancillary Agreements, and such financial resources are not subject to any constraints, conditions or contingencies that could in any way affect Buyer's ability to consummate the Contemplated Transactions or perform thereunder.

**ARTICLE 7**  
**COVENANTS**

Seller and Buyer covenant and agree as follows:

7.1. **Conduct Pending the Closing.** During the period from the date of this Agreement through the earlier to occur of (x) the Closing Date, and (y) the date on which this Agreement is terminated in accordance with the provisions of this Agreement or pursuant to an order of the Bankruptcy Court, except (i) as consented to in writing by Buyer, (ii) as contemplated by this Agreement, (iii) as set forth in a Schedule to this Agreement, or (iv) as required by, arising out of, relating to, or resulting from Seller's obligations and duties under the Bankruptcy Code or orders entered by the Bankruptcy Court, Seller will use commercially reasonable efforts to operate the Business only in the ordinary course consistent with reasonable business practices of a similarly situated debtor. For so long as the Parties are pursuing the Closing in accordance with the terms and conditions of this Agreement, without the prior written consent of Buyer, Seller shall not:

- (a) sell or dispose of any of the Acquired Assets; or
- (b) assume or reject any Contracts.

7.2. **Access to Information Before Closing.** Seller agrees that during the period from the date of this Agreement through the earlier to occur of (x) the Closing Date, and (y) the date on which this Agreement is terminated in accordance with the provisions of this Agreement or pursuant to an order of the Bankruptcy Court, Buyer shall be entitled, through its officers, employees, consultants and representatives, to make such investigation of the Business and such examination of the books and records and financial and operating data of Seller related to the Business, the Acquired Assets and the Assumed Liabilities, and to have access to the officers, key employees and accountants of Seller in connection with the Business, as it reasonably requests.

7.3. **Consents.** Seller shall use its commercially reasonable efforts, and Buyer shall cooperate with Seller, to obtain the consents set forth in this Agreement, if any; provided, however, that except for Cure Amounts, which are to be paid in accordance with Section 2.5(b), neither Seller nor Buyer shall 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.

7.4. **Submission for Bankruptcy Court Approval.**

(a) On or before the date hereof, Seller filed in the Bankruptcy Case the Sale Approval Motion. The Seller shall prosecute the Sale Approval Motion and seek entry of the Sale Approval Order. The Parties shall use their respective commercially reasonable efforts to have the Bankruptcy Court enter the Sale Approval Order on or before July 1, 2017. Seller shall give and have given notice under the Bankruptcy Code of the request for the relief specified in the Sale Approval Motion to all Persons entitled to such notice, including all Persons that have asserted Encumbrances in the Acquired Assets, and all non-debtor parties to the Assumed

Contracts and other appropriate notice, including such additional notice as the Bankruptcy Court shall direct or as Buyer may reasonably request, and provide appropriate opportunity for hearing, to all parties entitled thereto, of all motions, orders, hearings, or other proceedings in the Bankruptcy Court relating to this Agreement or the transactions contemplated hereby. Seller shall be responsible for making all appropriate filings relating thereto with the Bankruptcy Court, which filings shall be submitted, to the extent practicable, to Buyer prior to their filing with the Bankruptcy Court for Buyer's prior review.

(b) A list of the Assumed Contracts shall be filed as an exhibit to the Sale Approval Motion (or, alternatively, a motion to assume and assign the Assumed Contracts may be brought), and shall be described in sufficient detail to provide adequate notice to the non-debtor parties to such Contracts. Upon designation or removal by Buyer of the Assumed Contracts in accordance with Section 2.5, Seller shall add any Assumed Contracts, respectively, to such exhibit to the Sale Approval Motion or remove any Assumed Contracts. Such exhibit shall set forth the amounts necessary to cure defaults under each Assumed Contract shown thereon, as reasonably determined in good faith by Seller. Where Seller is unable to establish that a default exists, the relevant cure amount shall be set at \$0.00.

(c) Seller and Buyer shall consult with one another regarding pleadings which any of them intends to file with the Bankruptcy Court in connection with, or which might reasonably affect the Bankruptcy Court's approval of the Sale Approval Order. Seller shall promptly provide Buyer and its counsel with copies of all notices, filings and orders of the Bankruptcy Court that Seller has in its possession (or receives) pertaining to the Sale Approval Motion or the Sale Approval Order or any other order related to any of the transactions contemplated by this Agreement, but only to the extent such papers are not publicly available on the docket of the Bankruptcy Court or otherwise made available to Buyer and its counsel.

(d) If the the Sale Approval Order or any other orders of the Bankruptcy Court relating to this Agreement or the transactions contemplated hereby shall be appealed by any Person (or if any petition for certiorari or motion for reconsideration, amendment, clarification, modification, vacation, stay, rehearing or re-argument shall be filed with respect to the Sale Approval Order or other such order), subject to rights otherwise arising from this Agreement, Seller and Buyer shall use their commercially reasonable efforts to prosecute such appeal, petition or motion and obtain an expedited resolution of any such appeal, petition or motion.

7.5. **[Reserved]**.

7.6. **[Reserved]**.

7.7. **Further Assurances**. In addition to the provisions of this Agreement, from time to time after the Closing Date, Seller will use all commercially reasonable efforts to execute and deliver such other instruments of conveyance, transfer or assumption, as the case may be, and take such other actions as may be reasonably requested to implement more effectively the conveyance and transfer of the Acquired Assets and the assumption of the Assumed Liabilities.

7.8. **Taxes**. All past due taxes that constitute an Encumbrance on any Acquired Assets shall be paid and satisfied in full by Seller at or prior to the Closing, or otherwise paid pursuant

to the terms of a chapter 11 plan confirmed in the Bankruptcy Case. Any and all current *ad valorem* property taxes for 2017 shall be paid at Closing and pro-rated; provided that Seller shall be solely responsible for payment of any interest and penalties, and any such amounts shall not be pro-rated.

7.9. **Condition of the Acquired Assets.** BUYER AGREES AND ACKNOWLEDGES THAT AT CLOSING, BUYER WILL ACQUIRE THE ACQUIRED ASSETS “AS-IS, WHERE-IS,” AND SELLER DOES NOT MAKE (AND EXPRESSLY DISCLAIMS) ANY REPRESENTATION OR WARRANTY OTHER THAN AS EXPRESSLY SET FORTH IN THIS AGREEMENT, EXPRESS OR IMPLIED, WITH RESPECT TO SUCH ACQUIRED ASSETS, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

7.10. **Access to Information After Closing; Maintenance of Records.**

(a) Following the Closing, for a period of the earlier of (i) two (2) years after the Closing Date and (ii) the date of entry of an order of the Bankruptcy Court closing the Bankruptcy Case, or if converted to a case under chapter 7 of the Bankruptcy Code, an order of the Bankruptcy Court closing such case, (a) Buyer shall accord the Seller and its representatives reasonable access to all of the books and records turned over to Buyer by Seller relating to the Acquired Assets and Assumed Liabilities for purposes related to taxes and (b) Seller shall accord Buyer and its representatives reasonable access to all of the books and records retained by Seller relating to the Acquired Assets and Assumed Liabilities for purposes related to taxes and the on-going conduct of the Business.

(b) Such access shall be afforded by the Party in possession of such books and records upon receipt of reasonable advance written notice and during normal business hours; provided, however, that: (i) any such access shall be conducted in such a manner as not to interfere unreasonably with the operation of the business of any Party; (ii) no Party shall be required to take any action which would constitute a waiver of the attorney-client privilege; (iii) no Party shall be required to take any action which would reveal confidential or proprietary information without the execution of an appropriate confidentiality agreement by the other Party; and (iv) no Party shall be required to supply the other Party with any information which such Party is under a legal obligation not to supply. The applicable Party exercising this right of access shall be solely responsible for any costs or expenses incurred by it hereunder.

7.11. **Communications with Key Parties.** Prior to the Closing, Buyer and its affiliates may, as part of its due diligence and efforts to satisfy applicable conditions to its obligation to close, after consultation with Seller, have discussions with Seller’s landlord(s), material suppliers, and others with whom Seller has material commercial dealings. Seller shall not have the right to participate in such discussions, but Buyer shall inform Seller of the scope and manner of such discussions.

7.12. **Schedules.** The Schedules attached to this Agreement as of the date hereof, if any, are not final. Seller and Buyer agree to use commercially reasonable efforts to finalize the Schedules by the conclusion of the Auction. Until such time, either Seller or Buyer may

terminate this Agreement if it in good faith does not accept the Schedules. After such time, Seller may not amend the Schedules unless Buyer consents in writing.

7.13. **Non-Competition; Non-Solicitation** For one (1) year after the Closing, without the consent of Buyer, Seller shall not, and shall not permit any of their current or future affiliates to, directly or indirectly, own any interest in, manage, control, participate in (whether as an owner, operator, manager, consultant, officer, director, employee, investor, agent, representative or otherwise), consult with, render services for or otherwise engage in any business or entity that competes with the Business within the United States; provided, notwithstanding anything herein to the contrary and for the avoidance of doubt, nothing herein is intended to nor shall it be deemed to impair or restrict Seller, from and after the Closing, from effectuating the wind-down of its estate in the Bankruptcy Case and performing its obligations under any plan of reorganization or plan of liquidation and order confirming same. Notwithstanding the foregoing, Seller and its affiliates may own, directly or indirectly, in the aggregate one percent (1%) or less of the combined voting power of a publicly-traded entity that competes with the Business so long as neither Seller nor any of its current or future affiliates has any active participation in the business of such entity.

(b) For one (1) year after the Closing, without the prior written consent of Buyer, Seller shall not, and Seller shall not permit any of its affiliates to, directly or indirectly, hire or solicit any Newly-Hired Employees or other employees of Buyer or any of its current or future affiliates, or encourage any such employee to leave such employment or hire any such employee who has left such employment, except pursuant to a general solicitation that is not directed specifically to any such employees.

(c) Seller acknowledges that a breach or threatened breach of this Section 7.13 would give rise to irreparable harm to Buyer, for which monetary damages would not be an adequate remedy, and hereby agrees that if it breaches or threatens to breach any such obligations, Buyer will, in addition to any and all other rights and remedies that may be available to it in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance and any other relief that may be available from a court of competent jurisdiction (without any requirement to post bond or other security and without having to demonstrate irreparable harm).

(d) Seller acknowledges that the restrictions contained in this Section 7.13 are reasonable and necessary to protect the legitimate interests of Buyer and constitute a material inducement to Buyer to enter into this Agreement and complete the Contemplated Transactions. If any covenant contained in this Section 7.13 is adjudicated to exceed the time, geographic, product or service or other limitations permitted by applicable Law in any jurisdiction, then any court of competent jurisdiction is expressly empowered to reform such covenant, and such covenant will be deemed reformed, in that jurisdiction to the maximum time, geographic, product or service or other limitations permitted by applicable Law. Each covenant contained in this Section 7.13 and each provision of this Section 7.13 is a severable and distinct covenant or provision, as applicable. The invalidity or unenforceability of any covenant or provision in this Section 7.13 as written will not invalidate or render unenforceable the remaining covenants or

provisions of this Section 7.13, and any such invalidity or unenforceability in any jurisdiction will not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

## **ARTICLE 8** **CONDITIONS TO SELLER'S OBLIGATIONS**

The obligation of Seller to consummate the Contemplated Transactions is subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions; provided, the conditions set forth in Section 8.1, Section 8.2 and Section 8.5 may be waived (in whole or in part) by Seller in accordance with Section 10.6 hereof:

8.1. **Representation and Warranties of Buyer.** The representations and warranties of Buyer contained in Article 6 of this Agreement shall be true and correct at Closing, in all material respects.

8.2. **Covenants of Buyer.** The covenants of Buyer contained in Article 7 of this Agreement required to be performed or complied with prior to the Closing shall have been performed and complied with prior to the Closing, in all material respects.

8.3. **Entry of Orders.** The Sale Approval Order, in form and substance acceptable to Seller, shall have been entered by the Bankruptcy Court and no court of competent jurisdiction shall have entered an order staying such order pending appeal.

8.4. **Payment.** Buyer shall deliver the Purchase Price to Seller in accordance with Section 3.1.

8.5. **Ancillary Agreements.** Buyer shall execute and deliver, or cause to be executed and delivered, to Seller at the Closing all of the Ancillary Agreements to which Buyer is a party, and all such Ancillary Agreements shall be in form and substance acceptable to Seller.

## **ARTICLE 9** **CONDITIONS TO BUYER'S OBLIGATIONS**

The obligations of Buyer to purchase the Acquired Assets, to assume the Assumed Liabilities and to consummate the Contemplated Transactions are subject to the satisfaction, on or prior to the Closing Date, of each of the following conditions, any of which may be waived (in whole or in part) by Buyer in accordance with Section 10.6 hereof:

9.1. **Representation and Warranties.** The representations and warranties of Seller contained in Article 5 of this Agreement, individually and in the aggregate, shall be true and correct at Closing, in all material respects, except for those qualified by materiality, which shall be true and correct.

9.2. **Covenants of Seller.** The covenants of Seller contained in this Agreement required to be performed or complied with prior to the Closing shall have been performed and complied with prior to the Closing, in all material respects.



9.3. **Approvals.** All required approvals shall have been received.

9.4. **No Material Adverse Effect.** Since January 1, 2017, no event or events shall have occurred which has or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

9.5. **Key Agreements.** Buyer shall have entered into agreements with such key parties (as determined during the due diligence process and as identified on Schedule 4 which Schedule shall be acceptable to Buyer) on terms and conditions acceptable to Buyer.

9.6. **[Reserved].**

9.7. **[Reserved].**

9.8. **Entry of Sale Approval Order.** No later than July 1, 2017, the Sale Approval Order, in form and substance reasonably acceptable to Buyer, shall have been entered by the Bankruptcy Court.

9.9. **Specific Requirements for Sale Approval Order.** Notwithstanding any provision of this Agreement, the Sale Approval Order shall have, without limitation, (i) approved the sale of the Acquired Assets to Buyer on the terms and conditions set forth in this Agreement and authorized Seller to proceed with the Contemplated Transactions; (ii) contained specific findings that Buyer is a “good faith purchaser” of the Acquired Assets for purposes of section 363(m) of the Bankruptcy Code and that there have been no agreements between Buyer and any other Person regarding the Acquired Assets within the ambit of section 363(n) of the Bankruptcy Code; (iii) provided that the sale of the Acquired Assets to Buyer shall be free and clear of all Encumbrances except for Permitted Encumbrances; (iv) provided that, except for the Assumed Liabilities provided in this Agreement, Buyer shall not assume any Liabilities of Seller or relating to the Business; and (v) provided for the assumption by Seller and assignment to Buyer of the Assumed Contracts, with the Cure Amounts to be paid in accordance with Section 2.5(b).

9.10. **Final Order/No Stay.** No court of competent jurisdiction shall have entered an order staying the Sale Approval Order pending appeal and there shall be no Challenge to the finding that Buyer is a “good faith purchaser” for purposes of section 363(m) of the Bankruptcy Code.

9.11. **[Reserved].**

9.12. **Instruments of Conveyance.** Seller shall have executed and delivered to Buyer at the Closing in recordable form (where applicable) the documents provided for in Section 4.2(a) hereof.

9.13. **Consent to Assumed Contracts.** Seller shall have delivered to Buyer all necessary consents with respect to the transfer of the Assumed Contracts and the Bankruptcy Court shall have entered an Order permitting the assumption and assignment of such Assumed Contracts.

9.14. **Title to Acquired Assets.** Pursuant to the Sale Approval Order, Seller shall have transferred good title to all of the Acquired Assets free and clear of any Encumbrances other than (i) Permitted Encumbrances; and (ii) interests pursuant to Assumed Contracts (including equipment lessor interests, if any).

9.15. **Employment Agreements.** Buyer shall have entered into employment agreements with certain of the Newly-Hired Employees on terms and conditions acceptable to Buyer.

9.16. **Board Approval.** The Board of Directors of Buyer shall have approved the purchase of the Acquired Assets by Buyer pursuant to this Agreement.

## **ARTICLE 10** **MISCELLANEOUS**

### 10.1. **Termination.**

(a) **Right to Terminate.** In addition to any other rights of termination expressly provided in this Agreement, this Agreement may be terminated prior to the Closing:

- (1) by the mutual written consent of Buyer and Seller;
- (2) by Buyer, (i) upon written notice to Seller, of a material breach of any covenant or agreement to be performed or complied with by Seller if such breach would result in the failure of closing conditions to be satisfied, or (ii) upon dismissal of the Bankruptcy Case or conversion of the Bankruptcy Case to one under chapter 7 of the Bankruptcy Code;
- (3) by Seller, upon written notice to Buyer, of a material breach of any covenant or agreement to be performed or complied with by Buyer if such breach would result in the failure of closing conditions to be satisfied;
- (4) by either Buyer or Seller if any foreign, federal, state, local or other governmental, administrative or regulatory authority, body, agency, court, tribunal or similar entity (other than the Bankruptcy Court) having competent jurisdiction issues a final and non-appealable order, decree or ruling prohibiting the transaction;
- (5) by either Buyer or Seller upon a determination by Seller or its board of directors to accept an Alternative Bid and where Buyer is not designated as the Back-Up Bidder upon completion of the Auction;
- (6) **[Reserved.]**;
- (7) by either Buyer or Seller, if the Bankruptcy Court shall not have entered the Sale Approval Order on or before July 1, 2017; and

(8) by either Buyer or Seller, if the Closing Date has not occurred on or before July 15, 2017, provided, however, that the Party seeking to terminate shall not be the cause of the delay or be in default of this Agreement.

(b) **Effect of Termination.** In the event of termination of this Agreement pursuant to the terms hereof:

(1) If such termination is for any reason, the DIP Facility shall remain in full force and effect and the Seller and Buyer must comply in all respects with the loan agreement for the DIP Facility.

(2) The rights and obligations of the Parties hereto under this Agreement shall terminate (other than the provisions of this Article 10) and there shall be no liability of any Party hereto to any other Party hereunder and each Party hereto shall bear its own expenses incurred in connection with the negotiation, preparation, execution and performance of this Agreement except as provided herein.

10.2. **Specific Performance.** With respect to any breach prior to the Closing by Seller of any of Seller's covenants contained herein, Seller recognizes that if it breaches or refuses to perform any such covenant, monetary damages alone would not be adequate to compensate Buyer for its injuries, and Buyer shall therefore be entitled, subject to Bankruptcy Court approval, in lieu of termination under Section 10.1(a)(2)(i), if available, to seek specific performance of the terms of such covenants as its sole and exclusive remedy, and Buyer shall not have any further cause of action for damages or other legal relief against Seller with respect thereto.

10.3. **Assignment; Successors.** Except for an assignment by Buyer to one or more affiliates prior to Closing, which shall not be subject to the prior written consent of Seller and not operate to relieve Buyer from its obligations hereunder, neither this Agreement nor any of the rights or obligations hereunder may be assigned by any Party without the prior written consent of the other Parties to this Agreement. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective representatives, heirs, legatees, successors and permitted assigns, including, without limitation, any chapter 11 trustee, but not any chapter 7 trustee, appointed in Seller's Bankruptcy Case, and no other Person shall have any right, benefit or obligation hereunder.

10.4. **Notices.** All notices, requests, demands and other communications which are required or may be given under this Agreement shall be in writing and shall be deemed to have been duly given (a) when received if personally delivered; (b) on the date transmitted if transmitted by facsimile or email, if such transmission is completed at or prior to 5:00 p.m., local time of the recipient Party, and on the next Business Day if such transmission is completed after 5:00 p.m., local time of the recipient Party; (c) the next Business Day after it is sent, if sent for next day delivery to a domestic address by a nationally recognized overnight delivery service (including Federal Express); and (d) upon receipt, if sent by certified or registered mail, return receipt requested. In each case notice shall be sent to:

Seller: Bleacher Creatures, LLC  
Attn: Managing Member  
527 Plymouth Road, Suite 407  
Plymouth Meeting, PA 19462

With a copy to: Benesch, Friedlander, Coplan & Aronoff LLP  
(which shall not constitute notice) Attn: Michael J. Barrie, Esq.  
222 Delaware Avenue, Suite 801  
Wilmington, DE 19801  
mbarrie@beneschlaw.com

Buyer: Bleacher Acquisition, LLC  
Attn: Managing Member  
6 West 20th Street, 3rd Floor  
New York, NY 10011

With a copy to: Bielli & Klauder, LLC  
(which shall not constitute notice) Attn: David M. Klauder, Esq.  
1500 Walnut Street, Suite 900  
Philadelphia, PA 19102  
dklauder@bk-legal.com

or to such other place and with such other copies as a Party may designate as to itself by written notice to the others.

10.5. **Choice of Law; Jurisdiction.** This Agreement shall be construed and interpreted, and the rights of the Parties determined in accordance with, the laws of the Commonwealth of Pennsylvania (without regard to its conflicts of laws principles) and the Bankruptcy Code. Each Party irrevocably consents to the service of any and all process in any action or proceeding arising out of or relating to this Agreement by the transmitting of copies of such process to each Party at its address specified in Section 10.4 in a manner provided for in Section 10.4. The Parties hereto irrevocably submit to the exclusive jurisdiction of the Bankruptcy Court (or any court exercising appellate jurisdiction over the Bankruptcy Court) over any dispute arising out of or relating to this Agreement and any other agreement or instrument contemplated hereby or entered into in connection herewith, or any of the transactions contemplated hereby or thereby and any such dispute shall be deemed to have arisen in the Commonwealth of Pennsylvania. Each Party hereby irrevocably agrees that all claims in respect of such dispute or proceeding may be heard and determined in such courts. 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 in connection therewith.

10.6. **Entire Agreement; Amendments and Waivers.** This Agreement, together with the Ancillary Agreements and all Exhibits and Schedules hereto and thereto, constitutes the entire agreement by and among the Parties pertaining to the subject matter hereof and supersedes

all prior agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. No amendment, supplement, modification or waiver of this Agreement shall be binding unless executed in writing by or on behalf of the Party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided.

10.7. **Construction.** The headings and captions of the various Articles and Sections of this Agreement have been inserted solely for purposes of convenience, are not part of this Agreement, and shall not be deemed in any manner to modify, explain, expand or restrict any of the provisions of this Agreement. All Exhibits and Schedules attached are made a part hereof. All terms defined herein shall have the same meaning in the Exhibits and Schedules, except as otherwise provided therein. All references in this Agreement to an Article, section or clause is deemed to refer to an Article, section or clause of this Agreement, unless the context clearly indicates otherwise. The terms “hereby”, “hereof”, “hereto”, “hereunder” and any similar terms as used in this Agreement, refer to this Agreement in its entirety and not only to the particular portion of this Agreement where the term is used. Whenever in this Agreement provision is made for the payment of attorneys’ fees, such provision shall be deemed to mean reasonable attorneys’ fees and paralegals’ fees. The term “including” when used herein shall mean “including, without limitation.” Wherever in this Agreement the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. All references in this Agreement to “\$”, “Dollars” or “US\$” refer to currency of the United States of America.

10.8. **No Third Party Beneficiaries.** No Person other than the Parties hereto shall have any rights or claims hereunder.

10.9. **No Waiver.** The failure of any Party hereto to seek redress for any breach, or to insist upon the strict performance, of any covenant or condition of this Agreement by the other Parties shall not be, or be deemed to be, a waiver of the breach or failure to perform nor prevent a subsequent act or omission in violation of, or not strictly complying with, the terms hereof from constituting a default hereunder.

10.10. **Multiple Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument, and it may be executed by facsimile.

10.11. **Invalidity.** If any one or more of the provisions, or any portion thereof, contained in this Agreement or in any other instrument referred to herein, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then such provision shall remain valid and enforceable to the maximum extent permitted by law. Such invalidity, illegality or unenforceability shall not affect any other provision, or any portion thereof, of this Agreement or any other such instrument.

10.12. **Publicity.** Each Party shall consult with the other Parties prior to issuing any press release or otherwise making any public statements with respect to the Contemplated Transactions, and no Party shall issue any such press release or make any such public statements

or comments relating to these transactions without the prior written consent of the other Parties (which consent shall not be unreasonably withheld), except as may be required by applicable Law.

10.13. **Remedies.** All rights and remedies of any Party hereto are cumulative of each other and of every other right or remedy such Party may otherwise have at law or in equity, and the exercise of one or more rights or remedies shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies, including the right to specific performance of the terms hereof. Seller and Buyer hereby acknowledge and agree that money damages may not be an adequate remedy for any breach or threatened breach of any of the provisions of this Agreement and that, in such event, Seller or its successors or assigns, or Buyer or its successors or assigns, as the case may be, shall, in addition to any other rights and remedies existing in their favor, be entitled to petition any court of competent jurisdiction for specific performance, injunctive and/or other relief in order to enforce or prevent any violations of this Agreement.

10.14. **Representation by Counsel; Mutual Negotiation.** Each Party has been represented by counsel of its choice in negotiating this Agreement and the Ancillary Agreements. This Agreement and the Ancillary Agreements shall therefore be deemed to have been negotiated and prepared at the joint request, direction and construction of the Parties, at arm's length with the advice and participation of counsel, and will be interpreted in accordance with its terms without favor to any Party.


10.15. **No Survival of Representations and Warranties.** The Parties hereby acknowledge and agree that the representations and warranties contained in Article 5 and Article 6 shall not survive after the Closing.

10.16. **Time.** Time is of the essence of this Agreement.


[Signature Pages Follow]

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed under seal all as of the day and year first above written.

BLEACHER CREATURES, LLC

By:   
Name: Matthew Hoffman  
Title: president

BLEACHER ACQUISITION, LLC

By:   
Name: Edward Strauss  
Title: managing member