

ZEICHNER ELLMAN & KRAUSE LLP

1211 Avenue of the Americas, 40th Floor
 New York, New York 10036
 Telephone: (212) 223-0400
 Facsimile: (212) 753-0396
 Nathan Schwed

Proposed Attorneys for the Debtors and Debtors-in-Possession

**UNITED STATES BANKRUPTCY COURT
 EASTERN DISTRICT OF NEW YORK**

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In re	:
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BLUE GOLD EQUITIES LLC, <i>et al.</i> ,	:
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Debtors. ¹	:
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Chapter 11
 Case No. 18-() ()
 Joint Administration Pending

DEBTORS' MOTION FOR ORDERS PURSUANT TO SECTIONS 105(a), 363, 365 AND 503 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 2002, 6004 AND 6006: (A)(i) ESTABLISHING BIDDING PROCEDURES AND BID PROTECTIONS IN CONNECTION WITH THE SALE OF CERTAIN OF THE ASSETS OF THE DEBTORS, (ii) APPROVING THE FORM AND MANNER OF NOTICES, (iii) APPROVING THE ASSET PURCHASE AGREEMENT SUBJECT TO HIGHER AND BETTER OFFERS AND (iv) SETTING A SALE HEARING DATE; AND (B)(i) APPROVING THE SALE OF CERTAIN ASSETS OF THE DEBTORS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES, (ii) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN UNEXPIRED LEASES AND EXECUTORY CONTRACTS; AND (iii) GRANTING RELATED RELIEF

TO THE HONORABLE _____, UNITED STATES BANKRUPTCY JUDGE:

¹ The Debtors in these Chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Blue Gold Equities LLC (7766), Central Avenue Market LLC (7961), Amsterdam Avenue Market LLC (7988), Wilmot Road Market LLC (8020), Seasons Express Inwood LLC (1703), Seasons Lakewood LLC (0295), Seasons Maryland LLC (1895), Seasons Clifton LLC (3331), Seasons Cleveland LLC (7367), Lawrence Supermarket LLC (8258), Upper West Side Market LLC (8895) and Seasons Corporate LLC (2266). The mailing address for the Debtors, solely for purposes of notices and communications, is: 5 Doughty Boulevard, Inwood, NY 11096.

Blue Gold Equities LLC, (“Blue Gold”), Central Ave. Market LLC (“Central Avenue”), Amsterdam Ave. Market LLC (“Amsterdam Avenue”), Wilmot Road Market, LLC (“Wilmot Road”), Seasons Express Inwood LLC (“Inwood”), Seasons Lakewood, LLC (“Lakewood”), Seasons Maryland LLC (“Maryland”), Seasons Clifton LLC (“Clifton”), Seasons Cleveland LLC (“Cleveland”), Lawrence Supermarket LLC (“Lawrence”), Upper West Side Supermarket LLC, (“Upper West Side”, and collectively with Blue Gold, Central Avenue, Amsterdam Avenue, Wilmot Road, Inwood, Lakewood, Maryland, Clifton, Cleveland and Lawrence the “Operating Entities”), and Seasons Corporate LLC (“Corporate”, and collectively with the Operating Entities, the “Debtors”, and each a “Debtor”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”) by its proposed attorneys, Zeichner Ellman & Krause LLP, hereby move (the “Motion”) for entry of orders:

- a. Substantially in the form attached hereto as **Exhibit A** (the “Bidding Procedures Order”) (a) establishing bidding procedures and bid protections (the “Bidding Procedures”) substantially in the form attached to the Bidding Procedures Order as Schedule 1, (b) setting a hearing on [____], 2018 (the “Sale Hearing”) to consider approval of the Sale Transaction, and (c) approving the form and manner of notice of sale (the “Sale Notice”), substantially in the form attached to the Bidding Procedures Order as Schedule 2;
- b. Substantially in the form attached hereto as **Exhibit B** (the “Sale Order”) (a) approving the Asset Purchase Agreement, dated September 16, 2018 (the “Purchase Agreement”), substantially in the form attached hereto as **Exhibit C**, among the Debtors and SKNY LLC (“SKNY” or the “Purchaser”), pursuant to which the Debtors propose to sell certain of their assets to Purchaser free and clear of any and all liens, claims and encumbrances, subject to higher and better offers (the “Sale Transaction”), (b) approving certain procedures with respect to the Debtors’ assumption and assignment of certain executory contracts and unexpired leases, and approving the form and manner of notice of assumption and assignment of executory contracts, (c) approving the sale of the Acquired Assets (as defined in the Purchase Agreement) free and clear of liens, claims and encumbrances, and (d) granting related relief.

In support of the Motion, the Debtors incorporate the statements contained in the Declaration of Joel Getzler pursuant to Local Bankruptcy Rule 1007 dated September 16, 2018 [Docket No. ☐] (the “First Day Declaration”) and respectfully represent and allege as follows:

PRELIMINARY STATEMENT

The Debtors’ principal business is the ownership and operation of nine (9) retail kosher food stores under the name of “Seasons” in New York, New Jersey, Ohio and Maryland. The consummation of value-maximizing, job-preserving, going-concern sales of the Debtors’ stores is the cornerstone of these Chapter 11 Cases. To that end, the Debtors have identified the Purchaser which is willing to expeditiously consummate the transaction set forth in the Purchase Agreement providing for the sale of substantially all of the Debtors’ assets free and clear of all liens, claims and encumbrances, to the Purchaser for a purchase price of approximately \$12 million. The Sale Transaction is subject to higher and better offers pursuant to the Bidding Procedures. The Debtors believe that the timely consummation of the Sale Transaction is in the best interests of the estates and their creditors.

For all of these reasons and those set forth below, the Debtors respectfully request approval of the Motion and authority to consummate the Sale Transaction or a better transaction.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this case is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief sought herein are sections 105, 363, 365 and 503 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”), rules 6004-1, 6006-1 and 9006-1 of the Local Bankruptcy Rules for the Eastern District of New York (the “Local

Rules”), and Administrative Order No. 557 of the Bankruptcy Court for the Eastern District of New York (“Administrative Order 557”).

BACKGROUND

A. Bankruptcy Cases

9. On the date hereof (the “Petition Date”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of New York (the “Court”).

10. The Debtors are authorized to continue to operate their businesses and manage their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

11. No trustee, examiner, or statutory committee of creditors has been appointed in these Chapter 11 Cases.

12. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of the Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b).

13. The Court and interested parties are respectfully referred to the First Day Declaration for a detailed discussion regarding the Debtors, their operations, and the events leading to the filing of the Bankruptcy Cases.

B. Secured Debt

14. In February 2018, SKNY loaned \$1 million (the “February 2018 Secured Loan”) to the Operating Entities, evidenced by a promissory note and a security agreement (“Prepetition Security Agreement”) pursuant to which the Operating Entities granted SKNY a security interest in all their assets. In March 2018, SKNY loaned an additional \$1 million to the Operating Entities subject to the Prepetition Security Agreement and the original promissory note was replaced by an Amended and Restated Promissory Note in the amount of \$2 Million (the “March

2018 Secured Loan”). On September 5, 2018, pursuant to a Second Amended and Restated Promissory Note and the Prepetition Security Agreement, SKNY made an additional \$1,000,000 available to the Debtors and funded \$250,794.64 for payroll and \$400,000 (the “September 5, 2018 Secured Loan”) to the Debtors to provide them with the necessary funds to retain Zeichner Ellman & Krause LLP as counsel to the Debtors, Getzler Henrich & Associates LLC (“GHA”) as restructuring consultants to the Debtors (as well as retention of Joel Getzler as Chief Restructuring Officer and other GHA employees) and Omni Management Group as Claims Agent for the Debtors. On September 7, 2018, SKNY advanced another \$165,000 for the purpose of allowing the Debtors to pay insurance premiums, which were due on September 10, 2018 (the “September 7, 2018 Secured Loan”, and collectively with the February 2018 Secured Loan, the March 2018 Secured Loan and the September 5, 2018 Secured Loan, the “Prepetition Secured Loan”).

15. As of the Petition Date the Operating Entities owed \$3,250,000 to SKNY on account of the Prepetition Secured Loan (the “Prepetition Indebtedness”).

16. The Prepetition Indebtedness is secured by a blanket lien on substantially all of the Operating Entities’ assets pursuant to the terms and conditions of the Prepetition Secured Loan documents.

17. In October 2016, Bank United loaned \$10 Million (the “Bank United Loan”) to Corporate and obtained a security interest in all of Corporate’s assets. The Operating Entities guaranteed the Bank United Loan on an unsecured basis. Prior to the Petition Date, Bank United declared a default under the Bank United Loan and set-off the liability against \$600,000 maintained in Central Avenue’s accounts. As of the Petition Date, approximately \$8,800,000 was owed to Bank United on account of the Bank United Loan.

D. DIP Financing Facility

18. The Debtors have requested that SKNY provide a senior priority, perfected secured term loan in an aggregate principal amount not to exceed \$5,700,000 at any time outstanding.

19. SKNY has agreed to provide the Debtors with debtor-in-possession financing to administer their Chapter 11 Cases (the “DIP Financing”) on the terms and conditions set forth in that certain loan and security agreement dated as of September 16, 2018, subject to Court approval.

A. Pre-Petition Marketing and Sales Process

20. The Debtors require working capital in order to preserve and maintain their Businesses during the bankruptcy cases up to the date on which they consummate the Sale pursuant to the Sale Motion. In making the decision to sell their assets under section 363 of the Bankruptcy Code, and seek financing as a part of that transaction, the Debtors considered the impending collapse of the Debtors’ business and the best opportunity to save the business and the jobs of approximately 400 employees.

21. In order to complete a sale of its assets and create value for the Debtors’ creditors, the Debtors would need immediate financing. No party, other than SKNY, had the enough knowledge of the Debtors’ businesses to move on an immediate basis. Moreover, when the Debtors were unable to fund payroll and insurance premiums during the past few weeks, they faced immediate cessation of their business operations which would have been catastrophic. SKNY stepped forward, without adequate financial information, and provided the necessary funding as well as funding of retainers for professionals, to keep the operations going and facilitate a bankruptcy filing which would preserve the value of the Debtors’ businesses. A

condition of that funding was the Debtors' agreement to proceed, in the first instance, with the APA presented by SKNY on terms that are generally favorable.

22. In short, the Debtors determined that a consensual DIP Facility with SKNY coupled with the APA, will save expense, time, and costly valuation litigation at the outset of these chapter 11 cases, thereby allowing the Debtors to preserve value and focus on the Sale of their assets in an effort to provide a distribution to those creditors who are not otherwise satisfied as part of the assumption of liabilities by SKNY pursuant to the APA.

23. On September 16, 2018, the Debtors and the SKNY agreed to the terms and conditions contained in the form of APA² pursuant to which the Debtors proposed to sell substantially all of their assets to the SKNY and the SKNY agreed to assume certain liabilities of the Debtors.

24. Prior to the Petition Date, the Debtors engaged in discussions with other possible purchasers, including at least one who may present alternative bids at the Sale.

RELIEF REQUESTED

A. The Proposed Sale

25. The Purchase Agreement sets forth the terms of the sale of certain of the Debtors' assets and business and related transactions, subject to higher and better offers, free and clear of liens, claims, interests and encumbrances. Pursuant to the terms and conditions of the Purchase Agreement, the Debtors agreed to sell, transfer and assign to Purchaser all of their right, title and interest in and to the Transferred Contracts, including leases, and certain inventory, equipment, furnishings, fixtures, customer data, and goodwill related to the following stores (the "Stores"):

² The Debtor reserves the right to revise the APA prior to the commencement of the Auction.

Debtor	Premises Description	Leased/ Owned	Premises Address
Seasons Corporate LLC	Inwood Store	Leased	5 Doughty Boulevard Inwood, NY 11096
Blue Gold Equities, LLC	Queens Store	Leased	68-18 Main Street Flushing, NY 11367
Central Avenue Market LLC	Lawrence Store	Leased	330 Central Ave. Lawrence, NY 11559
Seasons Express Inwood LLC	Inwood Store	Leased	50 Doughty Boulevard Lawrence, NY 11559
Amsterdam Avenue Market LLC	New York Store	Leased	661 Amsterdam Ave. New York, NY 10025
Wilmot Road Market LLC	Scarsdale Store	Leased	1136 & 1104 Wilmot Road Scarsdale, NY 10583
Seasons Clifton LLC	Clifton Store	Leased	761 Allwood Road Clifton, NJ 07012
Seasons Lakewood LLC	Lakewood Store	Leased	711 Cedarbridge Avenue, Lakewood, NJ 08701
Seasons Maryland LLC	Maryland Store	Leased	1630 Reistertown Road Pikesville, MD 21208
Seasons Cleveland LLC	Cleveland Store	Leased	1930 Warrensville Center Road South Euclid, OH 44121
Lawrence Supermarket LLC	Tenant of Lawrence Store	Leased	330 Central Ave. Lawrence, NY 11559
Upper West Side Supermarket LLC	Tenant of New York Store	Leased	661 Amsterdam Ave. New York, NY 10025

26. In exchange, Purchaser has agreed to pay to the Debtors a purchase price of approximately \$12,000,000 (the “Purchase Price”), subject to certain adjustments as set forth in the Purchase Agreement. Purchaser is responsible for paying any cure costs (the “Cure Costs”) related to the assumption and assignment of the Leases and such Cure Costs are included in the Purchase Price.

27. The Purchase Agreement requires a closing to occur no later than December 31, 2018 and entitles Purchaser to certain Bidding Protections (as defined herein).

28. In addition, Purchaser may make an offer of employment to the Debtors' active employees at the Stores on such terms and conditions as Purchaser determines in its sole discretion. Purchaser intends to offer employment to Mayer Gold, who is an insider of the Debtors.

29. As a result, the Sale Transaction provides for the continuation of business operations, preservation of attendant jobs to the extent employees of the Debtors become employees of Purchaser, most of which are expected to be offered employment by the Purchaser, and maximization of value for the benefit of the Debtors, their creditors and the estates.

B. Extraordinary Provisions

30. In accordance with General Order 557, the Debtors disclose the following Extraordinary Provisions provided for in the Purchase Agreement:

(a) Agreements with Management: Purchaser intends to offer employment to Mayer Gold, an insider of the Debtors.

(b) Deadlines that Effectively Limit Notice: The Purchase Agreement includes provisions requiring entry of the Bidding Procedures Order on or before October 9, 2018, and entry of the Sale Order on or before December 31, 2018. The Purchase Agreement allows Purchaser to terminate the Purchase Agreement if either of these benchmarks are not met.

(c) Record Retention: After the Closing Date, Purchaser shall provide Sellers and their representatives reasonable access to the books and records of Sellers included in the Acquired Assets during normal business hours and on reasonable prior notice, to enable Sellers to prepare tax returns, deal with tax audits and administer claims in the Chapter 11 Cases. The Debtors believe these provisions are sufficient to allow the Debtors to administer their estates.

(d) Use of Proceeds: Other than payment of the Bidding Protections, if any, at the Closing Sellers shall be required to use the proceeds of the Purchase Price to satisfy in full Sellers' obligations under the DIP Financing Facility.

(e) Successor Liability: The proposed form of Sale Order contains findings and provisions limiting Purchaser's successor liability.

(f) Relief from Bankruptcy Rule 6004(h): The proposed form of Sale Order contains a waiver of the stay imposed by Bankruptcy Rule 6004(h). The Debtors submit such relief is appropriate under the circumstances.

(g) Sale of Avoidance Actions: Included in the Acquired Assets are avoidance actions against Persons that do not qualify as Insiders or Affiliates of Insiders.

PROPOSED BIDDING PROCEDURES, AUCTION AND AUCTION PROCEDURES

31. Consistent with the Purchase Agreement, the Debtors are proposing the Bidding Procedures, which are designed to maximize the value of the Acquired Assets for the Debtors' estates, creditors and other interested parties. Specifically, as discussed in more detail below, the Sale Transaction is subject to higher and better offers. In that regard, Purchaser has expended considerable time, effort and resources conducting due diligence, negotiating the Purchase Agreement, and taking steps necessary to acquire necessary licenses, permits and insurance if it becomes the successful purchaser of the Acquired Assets. Accordingly, the Purchaser required certain break-up fees and expenses reimbursements to the extent it is outbid.

32. The Debtors propose that competing offers ("Competing Offers") for the Acquired Assets be governed by the following Bidding Procedures:³

(a) Any entity that wishes to make a bid for the Acquired Assets must provide the Debtors with sufficient and adequate information to demonstrate, to the absolute satisfaction of the Debtors, that such entity (i) has the financial wherewithal and ability to consummate the Sale Transaction, including evidence of adequate financing and any proposed conditions to Closing, (ii) can provide all non-debtor contracting parties to the Transferred Contracts with adequate assurance of future performance as contemplated by section 365 of the Bankruptcy Code; (iii) will be on substantially the same terms and conditions as the Purchase Agreement except for price; (iv) will require the payment of a closing cash payment

³ The summary description of the Bidding Procedures provided herein is provided for the convenience of the Court and parties in interest. To the extent that there are any discrepancies between this summary and the Bidding Procedures Order, the terms and language of the Bidding Procedures Order shall govern. Unless otherwise defined herein, capitalized terms defined in the Bidding Procedures shall have the meaning ascribed to them in the Bidding Procedures Order or the Purchase Agreement.

of not less than \$12,600,000.00, (the “Minimum Bid”); (v) will be accompanied by an earnest money deposit of 10% of the initial purchase price set forth in any Modified Purchase Agreement, plus the amount of the Bidding Protections. Any bid satisfying such criteria shall be designated as a “Qualified Bid.” Except as provided for in the Purchase Agreement, the bid must not contain any contingencies of any kind, including, but not limited to (a) obtaining financing or shareholder, board of directors or other approval, or (b) the outcome or completion of due diligence. Each Potential Bidder must also affirmatively acknowledge that the Potential Bidder (x) had an opportunity to conduct due diligence regarding the Acquired Assets prior to making its offer and does not require further due diligence, (y) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Acquired Assets in making its bid, and (z) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the Acquired Assets, or the completeness of any information provided in connection therewith, except as expressly stated in the Bidding Procedures.

(b) Competing Offers must (a) be in writing and (b) be received by proposed counsel to the Debtors, Zeichner Ellman & Krause LLP, 1211 Avenue of the Americas, 40th Floor, New York, New York 10036, Attn: Nathan Schwed so as to be actually received no later than **5:00 p.m. (prevailing Eastern Time) on [_____], 2018** (the “Bid Deadline”). Parties who do not submit Competing Offers by the Bid Deadline shall not be permitted to participate at the Auction.

(c) Competing Offers must be accompanied by a good faith deposit in the amount of 10% of the initial purchase price set forth in any Modified Purchase Agreement, plus the amount of the Bidding Protections, in the form of a wire transfer or a certified check payable to Zeichner Ellman & Krause LLP, as attorneys. All such deposits shall be retained by the Debtors pending the hearing to consider the Sale Motion and shall be returned to a Potential Bidder (x) as soon as practicable if the Potential Bidder is not determined to be a Qualified Bidder or (y) no later than five (5) business days after entry of the Sale Order if the Potential Bidder is deemed to be a Qualified Bidder (who has not otherwise forfeited its Deposit), but is not the Successful Bidder or the Backup Bidder; provided, however, that in the event Purchaser is not the Successful Bidder, its Deposit shall be returned to it promptly upon termination of the Purchase Agreement, but in no event later than five (5) business days from the date of that termination. The Debtors will maintain any Deposit in a non-interest bearing account.

(d) Any Competing Offer by a Qualified Party conforming to the within requirements shall be considered at the auction to be held at the

Offices of Zeichner Ellman & Krause LLP, 1211 Avenue of the Americas, 40th Floor, New York, New York 10036 commencing on , 2018, at (EST), or in such manner and at such alternative location as the Debtors may determine or the Court may direct (the “Auction”).

(e) The Debtors shall, after the Bid Deadline and prior to the Auction, in consultation with the Creditors’ Committee evaluate all bids received, and determine which bid reflects the highest or best offer for the Acquired Assets. The Debtors shall announce such determination at the commencement of the Auction and then the Debtors shall conduct the Auction among the parties submitting Competing Offers to determine if any higher or better offer might be obtained. Any further bids made at the Auction shall be in increments of at least \$100,000 greater than the preceding bid.

(f) If there is a successful Competing Offer for the Acquired Assets, such successful bidder shall have such rights and responsibilities of Purchaser, as set forth in the Modified Purchase Agreement, or the Purchase Agreement, as applicable with appropriate modifications for (i) the identity of the successful bidder and (ii) the purchase price as the same shall have been increased at the Auction.

(g) In the event that the Court enters a Final Order approving an Alternate Transaction, then Purchaser shall be entitled to and Debtors shall pay to Purchaser at the consummation of an Alternate Transaction 3.0% of the Purchase Price (the “Breakup Fee”). The Breakup Fee is intended to cover opportunity costs incurred by Purchaser in pursuing and negotiating this Agreement and the transactions contemplated hereby, and is considered by the Parties to be reasonable for such purposes. The Breakup Fee shall be paid from the first sale proceeds of an Alternate Transaction. The claims of Purchaser to the Breakup Fee shall constitute an administrative expense against the Debtors’ bankruptcy estates under the applicable provisions of the Bankruptcy Code.

(h) In addition to any Breakup Fee that may be payable pursuant to the Purchase Agreement, upon (i) any event in which the Breakup Fee is payable, or (ii) the Purchase Agreement is terminated by Purchaser pursuant to Sections 8.1, other than Section 8.1(m), the Debtors shall reimburse Purchaser the actual and necessary expenses, including reasonable attorney’s fees, incurred in connection with negotiation and entry into the Purchase Agreement, due diligence with respect to the transactions contemplated by the Purchase Agreement, and obtaining Bankruptcy Court approval of the Purchase Agreement, in an amount not to exceed \$150,000 (the “Expense Reimbursement”). The claims of Purchaser to the Expense Reimbursement shall constitute an administrative expense against the Debtors’ bankruptcy estate under the applicable provisions of the Bankruptcy Code.

(i) In the event that a Competing Offer is the Successful Bidder and such Successful Bidder fails to consummate the proposed transaction by the Closing Date, such bidder's deposit shall be forfeited to the Debtors (but not as liquidated damages, the Debtors reserving the right to pursue all remedies that may be available to them) and the Debtors shall be free to consummate the proposed transaction with the next highest bidder at the final price bid by such bidder at the Auction (or, if that bidder is unable to consummate the transaction at that price, the Debtors may consummate the transaction with the next higher bidder, and so forth) without the need for an additional hearing or order of the Bankruptcy Court.

(j) All bids for the purchase of the Debtors' assets shall be subject to approval of the Bankruptcy Court.

(k) No bids shall be considered by the Debtors or the Bankruptcy Court unless a party submitted a Competing Offer in accordance with the Bidding Procedures and participated in the Auction. The Debtors, in their absolute discretion, may reject any Competing Offers not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules or the Local Bankruptcy Rules of the Court, or contrary to the best interests of the Debtors and parties of interest.

(l) All bids (other than those of the Successful Bidder and Backup Bidder) are irrevocable until the earlier of (A) ninety (90) days following entry of the Sale Order (defined below) and (B) closing with the Successful Bidder.

(m) All bids are subject to such other terms and conditions as are announced by the Debtors at the outset of the Auction.

BIDDING PROTECTIONS

33. The proposed Purchase Agreement contemplates the payment of certain protections, including a Breakup Fee and Expense Reimbursement (collectively, the "Bidding Protections"), in certain circumstances. The Debtors request the Court grant the proposed Bidding Protections administrative expense priority pursuant to sections 503(b) and 507(b) of the Bankruptcy Code, which shall be payable solely from the first proceeds of an Alternate Transaction or as otherwise provided for in the Purchase Agreement. The Purchase Agreement provides that if the proposed Bidding Protections are not approved by the Court, Purchaser shall

have the right, but not the obligation, to not enter into the Purchase Agreement and none of the parties shall have any further obligations to the other.

34. The Debtors submit that (a) approval of the proposed Bidding Protections is an integral part of the Purchase Agreement, (b) in the absence of the Debtors' obligation to pay the Bidding Protections, Purchaser will not enter into the Purchase Agreement, (c) the entry into the Purchase Agreement is necessary for the preservation of the Debtors' estates and is beneficial to the Debtors, their estates, creditors and other parties in interest, and (d) the Bidding Protections are reasonable in relation to Purchaser's efforts and the amount of consideration contemplated by the Purchase Agreement.

35. The efforts of Purchaser have increased the chances that the Debtors will receive the highest or otherwise best offer for the Acquired Assets by establishing a minimum bid for other bidders, subjecting the Acquired Assets to an open auction and serving as a catalyst for other potential or actual bidders. Thus, the Bidding Protections benefit the Debtors, their estates, their creditors and all other parties in interest.

36. As stated above, Purchaser is unwilling to commit to hold open its offer to purchase the Acquired Assets under the terms of the Purchase Agreement unless the Bidding Protections are approved. Accordingly, the Debtors request that the Court approve the Bidding Protections and authorize payment of the Breakup Fee and Expense Reimbursement pursuant to the terms and conditions of the Purchase Agreement.

ASSUMPTION AND ASSIGNMENT AND REJECTION OF EXECUTORY CONTRACTS AND LEASES

A. Transferred Contracts

37. In connection with the Sale Transaction, the Debtors seek authority under section 365 of the Bankruptcy Code to (a) assume and assign the Transferred Contracts, and (b) execute

and deliver to Purchaser (or the Successful Bidder, as the case may be) such documents or other instruments as may be necessary to assign and transfer the Transferred Contracts as of the date of the Closing on the Purchase Agreement (and expressly subject to Closing).

38. By and through this Motion, the Debtors are seeking authority to assume any and all Transferred Contracts (as defined in the Purchase Agreement) following and subject to the Closing, and to assign all such contracts to Purchaser. The Debtors seek the authority to assume and assign to Purchaser any and all of the Transferred Contracts which Purchaser in its sole discretion elects to assume and gives notice of the same to the Debtors.

39. To effectuate the assumption/assignment process, the Debtors propose to serve a notice on the non-debtor parties to the Transferred Contracts of the potential assumption and assignment of the Transferred Contracts (the “Assignment Notice”), advising each such party of the Debtors’ interest to assume and assign such executory contract. The Assignment Notice shall be served no later than fifteen (15) days prior to the Objection Deadline (defined herein). The list of Transferred Contracts attached to the Assignment Notice, which comprises all of the Debtors’ executory contracts, except for those specifically excluded from the Acquired Assets, will set forth (a) the name and address of the counterparties to the executory contracts proposed to be assumed and assigned to Purchaser or its designee; (b) the nature of the executory contract; and (c) the amount of any Cure Costs that the Debtors believe to be due and owing as reflected on their books and records.

40. Under the terms of the Purchase Agreement, Purchaser is responsible for paying Cure Costs, if any, under any Transferred Contracts that are ultimately assumed and assigned to Purchaser.

41. Any non-debtor party who objects to its Cure Amount set forth in its Assignment Notice must file an objection to the Cure Amount with respect to such Transferred Contract, state with specificity the nature of the objection and the amount of the alleged Cure Amount and include appropriate supporting documentation demonstrating the calculation of the Cure Amounts as claimed not later than the Objection Deadline as provided for below. Any such objections must be (a) filed with the Court and (b) served upon (i) the proposed attorneys for the Debtors, Zeichner Ellman & Krause LLP, 1211 Avenue of the Americas, 40th Floor, New York, New York 10036 (Attn: Nathan Schwed), (ii) the attorneys for the Purchaser, Klestadt Winters Jureller Southard & Stevens, LLP, 200 West 41st Street, 17th Floor, New York, New York 10036 (Attn: Tracy L. Klestadt), (iii) the Office of the United States Trustee for the Eastern District of New York, U.S. Federal Office Building, 201 Varick Street, Room 1006, New York, New York 10014 (Attn: William Curtin) and (iv) the Debtors' thirty (30) largest unsecured creditors and, upon its appointment, counsel for the official committee of unsecured creditors (the "Creditors' Committee"), so as to be actually received no later than [____], 2018 (the "Objection Deadline").

42. If no objection to the Cure Amounts is timely received in accordance with the preceding paragraph, or if a timely objection is received but is not in compliance with the foregoing requirements, any non-debtor party to a Transferred Contract shall be barred and permanently enjoined from asserting any amounts in excess of the Cure Amount set forth in its Assignment Notice. Any timely filed and serve objection to any Cure Amount shall be heard at the Sale Hearing.

43. The Assignment Notice may be amended at any time prior to the Closing Date to add or remove a Transferred Contract. In such event, the Debtors shall give and serve a notice of

amendment (the “Amendment Notice”), reflecting appropriate changes to the Assumption Schedule, including changes to any proposed Cure Amounts, on all counter-parties to the Transferred Contracts removed or added to, or otherwise modified by, the amendment to the Assumption Schedule.

44. In an effort to provide the most up-to-date information to non-debtor parties to the Transferred Contracts, in the event Purchaser is not the Successful Bidder at the Auction, the Debtors will use their reasonable best efforts to provide non-debtor parties to the Transferred Contracts with the identity of the Successful Bidder prior to the Sale Hearing. Otherwise, the non-debtor parties to the Transferred Contracts may wish to plan to attend the Sale Hearing.

45. Any non-debtor party to a Transferred Contract shall have the right to request adequate assurance of performance by Purchaser of such Transferred Contract either by contacting Purchaser through its attorneys, or filing, prior to the deadline for objecting to the proposed Sale Order, such request with the Court and serving (a) the proposed attorneys for the Debtors, Zeichner Ellman & Krause LLP, 1211 Avenue of the Americas, 40th Floor New York, New York 10036 (Attn: Nathan Schwed), (b) the attorneys for the Purchaser, Klestadt Winters Jureller Southard & Stevens, LLP, 200 West 41st Street, 17th Floor, New York, New York 10036 (Attn: Tracy L. Klestadt), (c) the Office of the United States Trustee for the Eastern District of New York, U.S. Federal Office Building, 201 Varick Street, Room 1006, New York, New York 10014 (Attn: William Curtin) and (d) the Debtors’ thirty (30) largest unsecured creditors and, upon its appointment, counsel for the Creditors’ Committee, so as to be actually received no later than the Objection Deadline, indicating what adequate assurance it requires from Purchaser.

46. If no such requests for adequate assurance are timely made or filed, Purchaser shall be deemed to have provided adequate assurance as required by section 365(f)(2)(B) of the

Bankruptcy Code. If any such requests are filed, the Court, at the Sale Hearing, shall determine whether Purchaser has provided adequate assurance as required by section 365(f)(2)(B) of the Bankruptcy Code.

47. The Debtors believe that the suggested procedures and deadlines are fair and reasonable, and will provide sufficient notice to the non-debtor parties to the Transferred Contracts. These procedures are designed to provide certainty to the Debtors and the non-debtor parties to the Transferred Contracts regarding their obligations and rights in respect of the Cure Amounts. Accordingly, the Debtors request that the Court approve the foregoing procedures and deadlines.

NOTICE OF SALE, AUCTION AND BIDDING PROCEDURES

48. The Debtors, no later than three (3) business day after entry of the Bidding Procedures Order, will serve a copy of the Bidding Procedures Order and all exhibits attached thereto upon the following persons by first-class mail, postage prepaid: (i) the Office of the United States Trustee; (ii) the attorneys for any committee(s) established in these Chapter 11 Cases; (iii) the attorneys for Purchaser; (iv) all counterparties to the Transferred Contracts; (v) all parties who have made an expression of interest in acquiring the Acquired Assets or the Business within twelve (12) months prior to the date of the Motion; (v) all known persons holding a lien on any of the Acquired Assets and/or their attorneys; (vi) all taxing authorities that have jurisdiction over the Acquired Assets; and (vii) all parties who have requested notice in the Chapter 11 Cases (collectively, the “Bidding Procedures Parties”).

49. In addition, no later than three (3) business days after entry of the Bidding Procedures Order, the Debtors shall cause the form of auction notice, a copy of which is annexed to the Bidding Procedures Order as Schedule 2 to be (i) served upon the Bidding Procedures

Parties, and (ii) served upon all known creditors and all known parties in interest in these Chapter 11 Cases (collectively, the “Auction Notice Parties”).

50. The Debtors believe that the foregoing notice to the Auction Notice Parties is sufficient to provide effective notice of the Bidding Procedures, the Auction and the proposed Sale to potentially interested parties in a manner designed to maximize the chance of obtaining the broadest possible participation in the Auction while minimizing the costs to the estates. Accordingly, the Debtors request that the Court find that notice in this manner is sufficient and that no further notice of the Auction, the Bidding Procedures or the proposed Sale is required.

BASIS FOR RELIEF REQUESTED

A. The Proposed Sale is Within the Debtors’ Sound Business Judgment and Should Therefore Be Approved

51. The Debtors submit that ample authority exists for the approval of the Sale Transaction to Purchaser pursuant to the Purchase Agreement, or to such other purchaser submitting a higher and better offer for the Acquired Assets. Section 363(b) of the Bankruptcy Code permits a debtor to sell assets outside the ordinary course of its business. That section provides in pertinent part, “[t]he trustee,⁴ 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). While Section 363(b) does not provide any standards to be applied to a debtor’s request to sell assets, a wide body of case law has evolved containing the judicial standards governing sales of assets.

52. In In re Lionel Corp., 722 F.2d 1063 (2d Cir. 1983), one of the seminal and most widely followed cases dealing with asset sales, the Second Circuit determined that a sale of assets could be approved if the debtor could demonstrate an “articulated business justification”

⁴ Pursuant to Section 1107(a) of the Bankruptcy Code, the debtor in possession has all of the powers of a trustee (except the power to investigate the debtor’s own financial affairs).

for the sale. 722 F.2d at 1070. The Second Circuit further held that the factors to be considered in determining whether a sound business reason exists include the following:

the proportionate value of the asset to the estate as a whole, the amount of elapsed time since the filing, the likelihood that a plan of reorganization will be proposed and confirmed in the near future, the effect of the proposed disposition on future plans of reorganization, the proceeds to be obtained from the disposition vis-à-vis any appraisals of the property, which of the alternatives of use, sale or lease the proposal envisions and, *most importantly perhaps, whether the asset is increasing or decreasing in value.*

Id. at 1071 (emphasis supplied).

53. The Lionel decision has been widely accepted and applied by numerous other courts facing a debtor's request to sell assets, including requests to approve a sale of certain of the assets of a debtor's estate. See, e.g., In re the Delaware & Hudson Ry. Co., 124 B.R. 169 (D. Del. 1991); In re Eng'g Prod. Co., 121 B.R. 246 (Bankr. E.D. Wis. 1990); In re Thomson McKinnon Sec., Inc., 120 B.R. 301 (Bankr. S.D.N.Y. 1990); In re Channel One Communications, Inc., 117 B.R. 493 (Bankr. E.D. Mo. 1990); In re Brethren Care, 98 B.R. 927 (Bankr. N.D. Ind. 1989). As will be demonstrated below, application of the above-listed factors demonstrates that approval of the Purchase Agreement is warranted at this time.

54. In addition to requiring sound business reasons to approve a sale pursuant to section 363(b) of the Bankruptcy Code, many courts have required a showing that the price to be obtained for assets be fair and reasonable; that the sale to the proposed purchaser was negotiated in good faith; and that it does not unfairly benefit insiders, the purchaser, or a certain creditor or class of creditors. See, e.g., In re Channel One Communications, 117 B.R. at 494-97; In re Indus. Valley Refrig. & Air Cond. Supplies, Inc., 77 B.R. 15 (Bankr. E.D. Pa. 1987).

55. The Debtors and Purchaser negotiated in good faith, at arms' length, and with a view towards maximizing the value of the Debtors' estates for all creditors, rather than to benefit insiders or a particular creditor.

56. The Debtors are confident that the Purchase Price is the best achievable under the present circumstances. Nonetheless, the Purchase Agreement is subject to higher and better offers, thereby ensuring that the best possible offer has been or will be received.

57. Many courts require that “fair and accurate notice” be given of the proposed sale under section 363(b) of the Bankruptcy Code. See, e.g., In re Delaware & Hudson Ry., 124 B.R. 169, 176 (D. Del. 1991); Channel One 117 B.R. at 496 (Bankr. E.D. Mo. 1990); Naron & Wagner, Chartered, 88 B.R. 85, 88 (Bankr. D.Md. 1988). Fair and accurate notice should inform all interested parties of the liquidation of the debtor’s business; disclose accurately the terms of the sale; explain the effect of the sale upon the debtor’s business; and explain why the sale is in the best interests of the debtor’s estate. Delaware & Hudson, 124 B.R. at 180; see also, Naron & Wagner, 88 B.R. at 88.

58. The Debtors submit that the notice given here alerted parties in interest to the sale contemplated by the Purchase Agreement, described and explained all material terms thereof, and explained the effect of the sale on the Debtors’ business.

B. The Purchaser is a Good Faith Purchaser and is Entitled to the Protections of Section 363(m) of the Bankruptcy Code

59. Section 363(m) of the Bankruptcy Code provides: “[t]he reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.” 11 U.S.C. § 363(m).

60. Although the Bankruptcy Code does not define “good faith,” in In re Colony Hill Assocs., 111 F.3d 269 (2d Cir. 1997) the Second Circuit held that:

The “good faith” component of the test under § 363(m) speaks to the equity of [the bidder’s] conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser’s good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

111 F.3d at 276 (quoting In re Rock Industries Machinery Corp., 572 F.2d 1195, 1198 (7th Cir. 1978)) (internal quotations omitted).

61. [As set forth above, Purchaser was selected by the Debtors after engaging numerous parties and determining that the terms of Purchaser’s bid were the only viable option.] The Purchase Agreement is a product of extensive arms-length negotiations and was not in any way tainted by fraud, collusion or bad faith. Accordingly, the Debtors request that the Court make a finding that Purchaser is entitled to the protections of section 363(m) of the Bankruptcy Code.

C. The Sale Satisfies the Requirements of Section 363(f) of the Bankruptcy Code for a Sale Free and Clear of Liens, Claims, Encumbrances and Interests

62. The Debtors seek authorization to sell the Acquired Assets to Purchaser free and clear of all liens, claims and encumbrances, except as expressly permitted by the Purchase Agreement. Nonetheless, the Acquired Assets may be sold free and clear of liens in accordance with section 363(f) of the Bankruptcy Code, which provides, in pertinent part:

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

- (1) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or

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

11 U.S.C. § 363(f).

63. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will be sufficient to permit the Sale Transaction free and clear of liens, claims, encumbrances, pledges, mortgages, security interests, charges, options, and other interests. See In re Grubb & Ellis Co., Case No. 12-10685 (MG), 2012 Bankr. LEXIS 1279, at *31 (Bankr. S.D.N.Y. Mar. 27, 2012) (discussing Bankruptcy Code § 363(f)); In re Borders Group, Inc., 453 B.R. 477, 483–84 (Bankr. S.D.N.Y. 2011) (discussing Bankruptcy Code § 363(f)). The Debtors submit that the Purchase Agreement provides that the proposed Purchase Price is greater than the aggregate value of all such liens. As such, the rights of secured creditors are preserved. Thus, the Acquired Assets may be sold free and clear of such liens pursuant to section 363(f)(3) of the Bankruptcy Code. In re General Bearing Corp., 136 B.R. 361 (Bankr. S.D.N.Y. 1992); In re Oneida Lake Development, Inc., 114 B.R. 352 (Bankr. N.D.N.Y. 1990).

D. The Court Should Waive or Reduce the Fourteen-Day Stay Periods Required by Rules 6004(g) and 6006(d) of the Federal Rules of Bankruptcy Procedure

64. Pursuant to Bankruptcy Rule 6004(g), unless the court orders otherwise, all orders authorizing the sale of property pursuant to section 363 of the Bankruptcy Code are automatically stayed for 14 days after entry of the order. See FED. R. BANKR. P. 6004(g). The purpose of Bankruptcy Rule 6004(g) is to provide sufficient time for an objecting party to appeal before the order can be implemented. See Advisory Committee Notes to Fed. R. Bankr. P. 6004(g).

65. Although Bankruptcy Rule 6004(g) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the 14-day stay period,

Collier suggested that the 14-day stay period should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to the procedure.” 10 Collier on Bankruptcy 15th Ed. Rev., 6004.09 (L. King, 15th rev. ed. 2005). Furthermore, Collier provides that if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. Id.

66. Similarly, Bankruptcy Rule 6006(d) stays all orders authorizing a debtor to assign an executory contract or unexpired lease pursuant to section 365(f) of the Bankruptcy Code for 14 days, unless the court orders otherwise.

67. To preserve the value of the Acquired Assets and limit the costs of administering and preserving the Acquired Assets, it is critical that the Debtors close the Sale Transaction as soon as possible after all closing conditions have been met or waived. Accordingly, the Debtors hereby requests that the Court waive the 14-day stay periods under Bankruptcy Rules 6004(g) and 6006(d), or in the alternative, if an objection to the sale or to the assignment of a contract or lease is filed, reduce the stay period to the minimum amount of time needed by the objecting party to file its appeal to allow the sale to close as provided under the Purchase Agreement.

E. The Assumption and Assignment of Transferred Contracts Should be Authorized

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

69. Section 365(b)(1) of the Bankruptcy Code, in turn, codifies the requirements for assuming an unexpired lease or executory lease or executory contract of a debtor. This subsection provides:

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee –

(A) cures or provides adequate assurance that the trustee will promptly cure, such default . . . ;

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

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

11 U.S.C. § 365(b)(1).

70. The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given “practical, pragmatic construction.” EBG Midtown South Corp. v. McLaren/Hart Env'tl. Eng'g Corp. (In re Sanshoe Worldwide Corp.), 139 B.R. 585, 592 (S.D.N.Y. 1992) (citations omitted), aff'd, 993 F.2d 300 (2d Cir.1993).

71. When an executory contract or lease is to be assumed and assigned, adequate assurance may be provided by, among other things, demonstrating the financial health of the assignee and its experience and ability in managing the type of enterprise or property assigned. See e.g., In re Bygaph, Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (stating that adequate assurance of future performance is present when a prospective assignee of a lease from debtor

has financial resources and has expressed a willingness to devote sufficient funding to the business in order to give it a strong likelihood of success).

72. To the extent that any defaults exist under any Transferred Contracts, the Debtors will cure, or provide adequate assurance of cure of, such defaults within the meaning of section 365(b)(1)(A) and in accordance with the Purchase Agreement. Moreover, the Debtors will demonstrate facts at the Sale Hearing that show Purchaser's (or the Successful Bidder's, as the case may be) financial credibility, experience in the industry, and willingness and ability to perform under the Transferred Contracts. Therefore, the Sale Hearing will provide the Court and other interested parties with an opportunity to evaluate and, if necessary, challenge the ability of Purchaser (or the Successful Bidder, as the case may be) to provide adequate assurance of future performance under the Transferred Contracts. Accordingly, the Debtors submit that the assumption and assignment of the Transferred Contracts as set forth herein should be approved.

F. Conducting an Auction Pursuant to the Bidding Procedures is in the Best Interests of the Debtors' Estates and Their Creditors

73. In order to maximize the value of the Acquired Assets for the benefit of the Debtors, their creditors and their chapter 11 estates, the Debtors seek to implement a competitive bidding process typical for transactions of this size and nature and designed to generate a maximum recovery. The Debtors believe that the Auction and proposed Bidding Procedures will encourage participation by financially capable bidders that demonstrate the ability to close a transaction. Furthermore, the Bidding Procedures are consistent with other procedures previously approved within this district, and are appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings. See e.g., In re Kmart, Case No. 02-B02474 (SPS) (Bankr. N.D. Ill. May 10, 2002); In re Global Crossing, Case

No. 02-40188 (S.D.N.Y. March 25, 2002) (REG); In re Randall's Island Family Golf Ctrs., Inc., 261 B.R. 96 (S.D.N.Y. 2001); In re Integrated Resources, Inc., 147 B.R. 650 (S.D.N.Y. 1992).

G. Bidding Protections Are Warranted

74. The Debtors propose that if overbidding occurs at the Auction, Purchaser shall have the right, but not the obligation, to participate in the overbidding subject only to the limitations provided by the Bidding Procedures. However, to compensate Purchaser for serving as a “stalking horse,” thereby subjecting its bid to better or higher offers, the Debtors and Purchaser seek authority for the Debtors to pay Purchaser the Breakup Fee and Expense Reimbursement if an Alternate Transaction is approved or consummated or there is a material breach by the Debtors preventing a Closing as provided in the Purchase Agreement. The Debtors and Purchaser believe that the Bidding Protections are (a) fair and reasonable, given the benefits to the estates of having a definitive Purchase Agreement and the risk to Purchaser that a third-party offer may ultimately be accepted and (b) are necessary to preserve the value of the Debtors’ estates.

75. Bidding incentives such as the Breakup Fee encourage a potential purchaser to invest the requisite time, money and effort to conduct due diligence and sale negotiations with a debtor despite the inherent risks and uncertainties of the chapter 11 process. See e.g., In re 995 Fifth Ave. Assocs., L.P., 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (finding bidding incentives may be “legitimately necessary to convince a ‘white knight’ to enter the bidding by providing some form of compensation for the risks it is undertaking”) (citation omitted); In re Marrose Corp., 89 B 12171-12179 (CB), 1992 WL 33848, at *5 (Bankr. S.D.N.Y. 1992) (stating that “[a]greements to provide breakup fees or reimbursement of fees and expenses are meant to compensate the potential acquirer who serves as a catalyst or ‘stalking horse’ which attracts more favorable offers”).

76. The Debtors submit that the Bidding Protections are a normal and necessary component of sales outside the ordinary course of business under section 363 of the Bankruptcy Code. See e.g., In re Kmart, Case No. 02 B02474 (SPS) (Bankr. N.D. Ill. May 10, 2002) (authorizing a termination fee and bid protections for potential bidders); In re Comdisco, Inc., Case No. 01 24795 (RB) (Bankr. N.D. Ill. Aug. 9, 2002) (approving a termination fee as, *inter alia*, an actual and necessary cost and expense of preserving the debtor's estate, of substantial benefit to the debtor's estate, and a necessary inducement for, and a condition to, the proposed purchaser's entry into the Asset Purchase Agreement); In re Integrated Resources, Inc., 147 B.R. at 660 (noting that break-up fees may be legitimately necessary to convince a "white knight" to offer an initial bid by providing some form of compensation for the expenses such bidder incurs, and the risks such bidder faces by having its offer held open, subject to higher and better offers); In re Crowthers McCall Pattern, Inc., 114 B.R. 877 (Bankr. S.D.N.Y. 1990) (approving an overbid requirement in an amount equal to the approved break up fee); In re Kupp Acquisition Corp., Case No. 96 1223 (PJW) (Bankr. D. Del. March 3, 1997).

77. Here, the proposed Breakup Fee is 3% percent of the Purchase Price and the Expense Reimbursement cannot exceed \$150,000, totaling in the aggregate 4.25% of the Purchase Price. Courts in this District have approved termination or breakup fees in approximately the same amount as measured in proportion to the proposed purchase price offered for a debtor's assets. See In re Long Beach Medical Center, et al., Case No. 14-70593 (AST) (Bankr. E.D.N.Y. Mar. 13, 2014) (approving termination fee in the amount of \$630,000 and expense reimbursement not to exceed \$210,000, which together aggregated 4% of the proposed purchase price); In re Personal Communications Devices, LLC, et al., Case No. 13-74303 (AST) (Bankr. E.D.N.Y. Sept. 16, 2013) (approving termination fee in the amount of

\$3,500,000 million in transaction with a proposed purchase price of \$105,250,000); In re Sound Shore Medical Center of Westchester, et al., Case No. 13-22840 (RDD) (Bankr. S.D.N.Y. June 25, 2013) (conditionally approving a break-up fee of 3% on a \$58.75 million purchase price); In re New York Westchester Square Medical Center, Case No. 06-13050 (SMB) (Bankr. S.D.N.Y. Feb. 1, 2013); (approving a break-up fee of 3% on a \$15.3 million assets sale); In re Saint Vincent Catholic Medical Center, et al., Case No. 10-11963 (CGM) (Bankr. S.D.N.Y. June 30, 2011) (approving a break-up fee of 2% on a \$34 million sale of assets); In re Cabrini Med. Ctr., Case No. 09-14398 (AJG) (Bankr. S.D.N.Y. Dec. 30, 2009) (approving a break-up fee of 3.75% for an \$80 million sale); In re Bearingpoint, Inc. et al., No. 09-10691 (REG) (Bank. S.D.N.Y. Apr. 7, 2009) (approving a break-up fee of approximately 3% on a \$350 million sale).

78. Thus, the Breakup Fee and Expense Reimbursement are within the range of fees typically paid in other significant sales transactions that have been consummated in a bankruptcy setting. Further, the amount of the Breakup Fee and Expense Reimbursement is reasonably calculated to compensate Purchaser (a) for committing the time to perform due diligence, (b) for lost opportunity in being bound to a transaction that could be topped in a competitive auction process and (c) for serving as a “stalking horse” to encourage the submission of other bids. Accordingly, the Debtors believe that the Bidding Protections should be approved.

NOTICE

79. No trustee or examiner has been appointed in these Chapter 11 Cases. Notice of this Motion and the hearing to consider the relief sought in the Motion in the form annexed hereto as Exhibit D, will be given to (i) the Office of the United States Trustee; (ii) the Debtors' thirty (30) largest unsecured creditors and, upon its appointment, the attorneys for any committee(s) established in these Chapter 11 Cases; (iii) the attorneys for Purchaser; (iv) all counterparties to the Transferred Contracts; (v) all parties who have made an expression of interest in acquiring the Acquired Assets or the Business within twelve (12) months prior to the date of the Motion; (vi) all known persons holding a lien on any of the Acquired Assets and/or their attorneys; (vii) all taxing authorities that have jurisdiction over the Acquired Assets; and (viii) all parties who have requested notice in the Chapter 11 Cases. Additional notices will be provided in accordance with the notice provisions contained herein. The Debtors submit that such notice is sufficient and requests that this Court find that no other or further notice is necessary.

NO PRIOR REQUEST

80. No previous application for the relief requested herein has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that this Court enter orders, substantially in the form annexed hereto, granting the Motion and such other relief as may be just and proper.

Dated: New York, New York
September 16, 2018

ZEICHNER ELLMAN & KRAUSE LLP

By: /s/ Nathan Schwed

Nathan Schwed
1211 Avenue of the Americas, 40th Floor
New York, New York 10036
Telephone: (212) 223-0400
Facsimile: (212) 753-0396
Email: nschwed@zeklaw.com

*Proposed Attorneys for Debtors and Debtors-
in-Possession*

EXHIBIT A

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

-----X	
In re	:
	:
	:
	:
BLUE GOLD EQUITIES, LLC, <i>et al.</i> ,	:
	:
	:
	:
Debtors. ¹	:
-----X	

Chapter 11
Case No. 18-() ()
Joint Administration Pending

**ORDER (A) APPROVING BIDDING PROCEDURES FOR THE SALE
OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (B) SCHEDULING
AN AUCTION AND A SALE HEARING RELATED THERETO, (C) APPROVING
THE FORM AND MANNER OF NOTICE OF THE AUCTION AND THE SALE
HEARING, AND (D) APPROVING BIDDING PROTECTIONS**

Upon that portion of the motion (the "Motion"),² dated September 16, 2018 [Docket No. []], of Blue Gold Equities, LLC and certain of its affiliates, as debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (the "Chapter 11 Cases"), seeking the entry of an Order, pursuant to sections 105, 363, 365, and 503 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 6004-1, 6006-1 and 9006-1 of the Local Bankruptcy Rules for the Eastern District of New York (the "Local Bankruptcy Rules"): (a) approving the proposed Bidding Procedures, substantially in the form of Schedule 1 attached

¹ The Debtors in these Chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Blue Gold Equities LLC (7766), Central Avenue Market LLC (7961), Amsterdam Avenue Market LLC (7988), Wilmot Road Market LLC (8020), Seasons Express Inwood LLC (1703), Seasons Lakewood LLC (0295), Seasons Maryland LLC (1895), Seasons Clifton LLC (3331), Seasons Cleveland LLC (7367), Lawrence Supermarket LLC (8258), Upper West Side Market LLC (8895) and Seasons Corporate LLC (2266). The mailing address for the Debtors, solely for purposes of notices and communications, is: 5 Doughty Boulevard, Inwood, NY 11096.

²Capitalized terms used but not otherwise defined herein shall be ascribed the meanings provided to those terms in the Motion or the Purchase Agreement (defined below), as applicable.

hereto, to be used in connection with the proposed sale (the “Sale”) of substantially all of the Debtors’ assets (the “Acquired Assets”) to SKNY LLC (the “Purchaser”), pursuant to an Asset Purchase Agreement between the Debtors and the Purchaser, dated as of September 16, 2018, or to any competing bidder (or competing bidders) (the “Successful Bidder”) that submits (or collectively submits) higher or otherwise better offer (or offers) for the Acquired Assets; (b) scheduling an auction (the “Auction”) and a hearing to approve the Sale (the “Sale Hearing”); (c) approving the form and manner of the notice of the Auction and the Sale Hearing (the “Sale Notice”), substantially in the form of Schedule 2 attached hereto; and (d) approving the payment of the Breakup Fee and Expense Reimbursement (together, the “Bidding Protections”) and certain overbid procedures (collectively, the “Bidding Procedures”); and this Court having held a hearing on September [], 2018 to consider the Bidding Procedures (the “Bidding Procedures Hearing”); and upon the Motion and the record of the Bidding Procedures Hearing, it now appearing that the Bidding Procedures are in the best interest of the Debtors’ estates, their creditors and other parties in interest; and after due deliberation thereon and good cause appearing therefor, it is hereby:

FOUND AND DETERMINED THAT:³

A. This Court has jurisdiction over the Motion and the Bidding Procedures pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Bidding Procedures is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Good and sufficient notice of the Bidding Procedures sought in the Motion has been given and no additional or further notice is required. A reasonable opportunity to object or be

³Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, when appropriate. See Fed. R. Bankr. P. 7052.

heard regarding the Bidding Procedures requested in the Motion has been afforded to interested persons and entities, including: (i) counsel for the official committee of unsecured creditors (the “Creditors’ Committee”), if any; (ii) the Office of the United States Trustee for the Eastern District of New York (the “U.S. Trustee”); (iii) all parties in interest who requested notice pursuant to Bankruptcy Rule 2002; (iv) all counterparties to the Transferred Contracts; (v) counsel to the Purchaser; (vi) all parties who are known to assert a Lien on the Acquired Assets; (vii) all parties who have made an expression of interest in acquiring the Acquired Assets or the Business within twelve (12) months prior to the date of the Motion; and (viii) all taxing authorities that have jurisdiction over the Acquired Assets (collectively, the “Bidding Procedures Parties”).

C. The proposed Sale Notice constitutes good, appropriate, adequate and sufficient notice, and is reasonably calculated to provide all interested parties, including the Bidding Procedures Parties with timely and proper notice of the Bidding Procedures, the Bidding Protections, the Auction, the assumption and assignment of the Transferred Contracts and Cure Amounts, and the Sale, as set forth herein and in the Motion, and no other or further notice is required.

D. The Debtors have articulated good and sufficient reasons for this Court to grant the relief requested in the Motion, including this Court’s (i) approval of the Bidding Procedures, (ii) approval of payment of the Bidding Protections from the proceeds of any Alternate Transaction or as otherwise provided for under the terms of the Purchase Agreement, (iii) determination of final Cure Amounts, and (iv) approval of the form and manner of service of the Sale Notice.

E. The Debtors have articulated good and sufficient reasons for, and the best interests of the Debtors’ estates will be served by, this Court scheduling the Sale Hearing to consider whether to grant the remainder of the relief requested in the Motion, including approval of the

proposed Sale in accordance with either (i) the Purchase Agreement between the Debtors and the Purchaser, attached as Exhibit C to the Motion, or (ii) such other agreement or agreements by and between the Debtors and the Successful Bidder or Successful Bidders, free and clear of, among other things, any and all liens, claims, encumbrances and interests (collectively, “Liens”) (other than the Permitted Liens (as defined in the Purchase Agreement)), with the same to attach to the proceeds of the Sale pursuant to section 363 of the Bankruptcy Code.

F. The Bidding Protections to be paid in accordance with the terms set forth in the Purchase Agreement are (i) an actual and necessary cost and expense of preserving the Debtors’ estates within the meaning of section 503(b) of the Bankruptcy Code, (ii) commensurate to the real and substantial benefit conferred upon the Debtors’ estates by the Purchaser, (iii) reasonable and appropriate in light of the size and nature of the proposed Sale and comparable transactions, the commitments that have been made, and the efforts that have been and will be expended by the Purchaser, and (iv) necessary to induce Purchaser to continue to pursue the Sale and to continue to be bound by the terms of the proposed Purchase Agreement.

G. The Debtors authorization to pay the Bidding Protections is an essential inducement and condition relating to the Purchaser’s entry into, and continuing obligations under, the Purchase Agreement. The Debtors commitment to pay the Bidding Protections, which has induced Purchaser to submit its bid that will serve as a minimum or floor bid for the Sale of the Acquired Assets on which the Debtors can rely, provides a material benefit to the Debtors’ estates, their creditors and other parties in interest by increasing the likelihood that the best possible purchase price for the Acquired Assets will be received.

H. The Bidding Protections and the Bidding Procedures are reasonable and appropriate.

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

1. All objections to entry of this Order or to the Bidding Procedures requested in the Motion that have not been withdrawn, waived, resolved or settled are hereby denied and overruled in their entirety.

The Bidding Procedures

2. The Bidding Procedures, as set forth on Schedule 1 attached hereto and incorporated herein by reference, are hereby approved in all respects and shall govern all bids and bid proceedings relating to the Sale of the Acquired Assets. Notwithstanding the above, any party in interest may object at the Sale Hearing to the criteria used by the Debtors in ultimately selecting the highest or otherwise best offer for the Acquired Assets.

3. The deadline for submitting bids for the Acquired Assets (the "Bid Deadline") shall be [], 2018, at 5:00 p.m. (EST).

4. Except as may be limited by the Purchase Agreement, the Debtors are authorized to extend the deadlines set forth in this Order and/or adjourn, continue or suspend the Auction and/or the Sale Hearing for any reason, in its sole discretion.

5. The Debtors are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures.

The Auction

6. The Auction shall commence at [] (EST) on [], 2018 at Zeichner Ellman & Krause LLP, 1211 Avenue of the Americas, 40th Floor, New York, New York 10036, or during such later time or at such other place as decided by the Debtors. The Debtors shall notify all Qualified Bidders of any such later time or different place; provided, however, that in the event that no Qualified Bids (other than that submitted by Purchaser, which is hereby deemed to be a

Qualified Bid) are received by the Bid Deadline, or if the aggregate value of the highest Qualified Bids that have been submitted for all or a portion of the Acquired Assets does not exceed the Minimum Bid (as defined in the Bidding Procedures), the Debtors shall not be required to conduct an Auction, and in such event the Debtors shall proceed with the approval of the Purchase Agreement.

The Bidding Protections

7. Sections 2.4 (Breakup Fee and Expense Reimbursement) and 5.4 (Bankruptcy Court Matters) of the Purchase Agreement are approved and binding on the Debtors and their estates. The Debtors are authorized and directed to pay the Bidding Protections to the extent incurred and solely in the event of the consummation of an Alternate Transaction from the first proceeds of such transaction, or as otherwise set forth in the Purchase Agreement, without further order of the Court.

Sale Hearing

8. The Sale Hearing shall be held before the Honorable [____], United States Bankruptcy Judge, on [____], 2018 at [____] (EST), at the United States Bankruptcy Court for the Eastern District of New York, 271-C Cadman Plaza East, Brooklyn, New York 11201-1800, Courtroom No. [____], at which time this Court shall consider: (i) approval of the Sale to Purchaser or any other Successful Bidder(s); (ii) the proposed assumption and assignment of the Transferred Contracts and related Cure Amounts in connection with the Sale; (iii) the entry of the proposed sale order, substantially in the form attached to the Motion as Exhibit B (the “Sale Order”); (iv) any issues or objections that are timely interposed by any parties; and (v) such other or further relief as this Court may deem just or proper.

9. Except as may be limited by the Purchase Agreement, the Sale Hearing may be adjourned by the Debtors without further order of this Court, by filing a notice with this Court and serving such notice on all Qualified Bidders.

Notice

10. The Sale Notice, substantially in the form attached hereto as Schedule 2, is hereby approved.

11. By no later than three (3) business days after the entry of this Order, the Debtors shall cause a copy of this Order, the Bidding Procedures, and the Sale Notice to be served upon the Bidding Procedures Parties.

12. By no later than three (3) business days after the entry of this Order, the Debtors shall cause a copy of the Sale Notice to be served upon all creditors of the Debtors who are listed on each of the Debtor's Schedules of Assets and Liabilities [Docket Nos. ____], or who filed proofs of claim against the Debtors' estates via first class mail.

13. The notice set forth in the preceding paragraphs shall constitute good and sufficient notice of the Motion, the Auction, the Sale Hearing and the proposed Sale Order, and no other or further notice of the Motion, the Auction, the Sale Hearing and/or the proposed Sale Order shall be necessary or required.

Objections to Motion

14. Objections, if any, to the remaining relief sought in the Motion must (a) be made in writing, (b) state with particularity the reasons for the objection or response, (c) conform to the Bankruptcy Rules and the Local Bankruptcy Rules, (d) set forth the name of the objecting party, the nature and basis of the objection, and the specific grounds therefore, and (e) be filed with the Clerk of the Court (with a copy to be delivered to the Chambers of the Honorable [____]), United States Bankruptcy Court for the Eastern District of New York, 271-C Cadman Plaza East,

Brooklyn, New York 11201-1800, and shall be served so as to be **actually received** no later than **4:00 p.m. (EST) on [_____] 1, 2018** (the “Objection Deadline”), upon: (i) the proposed attorneys for the Debtors, Zeichner Ellman & Krause LLP, 1211 Avenue of the Americas, 40th Floor, New York, New York 10036 (Attn: Nathan Schwed), (ii) the attorneys for the Purchaser, Klestadt Winters Jureller Southard & Stevens, LLP, 200 West 41st Street, 17th Floor, New York, New York 10036 (Attn: Tracy L. Klestadt), (iii) the Office of the United States Trustee for the Eastern District of New York, U.S. Federal Office Building, 201 Varick Street, Room 1006, New York, New York 10014 (Attn: [____]) and (iv) the proposed attorneys for the Creditors’ Committee, [____] (Attn: [____]).

Transferred Contracts

15. The Debtors shall file a copy of the Schedule of Transferred Contracts (the “Assumption Schedule”) with the Court no later than fifteen (15) days prior to the Objection Deadline and shall concurrently serve notice of such schedule upon all counterparties to the Transferred Contracts and the Bidding Procedures Parties.

16. The Assumption Schedule shall identify the proposed Transferred Contracts and the corresponding Cure Amounts required under section 365 of the Bankruptcy Code, if any. The Debtors, with the consent of Purchaser or the Successful Bidder(s), as applicable, shall have the right until the fifth (5th) day prior to the closing of the Sale to amend and remove executory contracts or unexpired leases from the Assumption Schedule. The Debtors shall file and serve notice of any such amendment (an “Amendment Notice”) on all non-Debtor parties to the Transferred Contracts that are impacted by any amendment to the Assumption Schedule.

17. All non-Debtor parties to the Transferred Contracts shall have until the Objection Deadline to file an objection (an “Assumption Objection”) to the assumption and assignment of the Transferred Contracts to which they are parties, or to the Cure Amounts listed for those

Transferred Contracts. Any party filing an Assumption Objection shall state with specificity the basis of the objection and asserted Cure Amount, and shall include appropriate documentation in support thereof.

18. If an Assumption Objection is timely filed and not consensually resolved, this Court may hold a hearing with respect to the Assumption Objection either at the Sale Hearing or at such other date as this Court shall designate. If the Assumption Objection relates only to the Cure Amount of an Assigned Contract, that Assigned Contract may be assumed by the Debtors and assigned to Purchaser or the Successful Bidder(s), as applicable; provided, however, that the amount asserted by the objecting party as the proper Cure Amount, or a different amount set by this Court, shall be held in escrow pending further order of this Court or mutual agreement of the parties as to the proper Cure Amount for that Assigned Contract. The Debtors and Purchaser or the Successful Bidder(s), as the case may be, are hereby authorized to settle, compromise or otherwise resolve any disputed Cure Amounts with the relevant non-Debtor party to any Assigned Contract without Court approval or notice to any party.

19. If no Assumption Objection is timely filed and served, then subject to entry of an Order by this Court upon the Sale Hearing approving the Sale and proposed assumption and assignment of the Transferred Contracts in connection therewith, the Cure Amounts set forth in the Assumption Schedule shall control notwithstanding any terms or conditions to the contrary in any Assigned Contract. The non-Debtor parties to the Transferred Contracts shall be barred from asserting against the Debtors or the Purchaser (or the Successful Bidder(s), as the case may be) any other claim arising from the Transferred Contracts.

20. The effective date of any assumption and assignment of the Transferred Contracts shall be the date on which the Sale closes. Any Cure Amounts to be paid under any of the

Transferred Contracts shall be paid by the Purchaser (or Successful Bidder(s), as the case may be) either prior to, upon or promptly following the closing of the Sale, or as otherwise agreed to by the parties to the Transferred Contracts.

Additional Provisions

21. The Debtors are authorized and empowered to take all steps, and incur and pay all costs and expenses, as may be reasonably necessary to fulfill the requirements established by this Order.

22. Nothing contained in this Order precludes any party in interest from objecting to the Sale in accordance with the objection procedures set forth herein, and no party shall be deemed to have consented to the Sale by virtue of not having objected to the Bidding Procedures requested in the Motion.

23. The Debtors are hereby authorized to implement the Bidding Procedures and conduct the Auction without the necessity of complying with any state or local bulk transfers law, or requirement or any similar law of any state or other jurisdiction which may apply in any way to any of the transactions under the Purchase Agreement.

24. This Court shall retain jurisdiction over any and all matters or disputes arising from or relating to the implementation of this Order.

25. Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), this Order shall not be stayed for fourteen (14) days after the entry hereof, and shall be effective and enforceable immediately upon entry hereof.

Schedule 1

Bidding Procedures

BIDDING PROCEDURES AND TERMS AND CONDITIONS OF SALE

Blue Gold Equities, LLC and certain of its affiliates, as debtors and debtors in possession (collectively, the “**Debtors**” or “**Sellers**”) in Lead Bankruptcy Case No. 18-45280 (the “**Chapter 11 Cases**”) currently pending in the United States Bankruptcy Court for the Eastern District of New York (the “**Court**”), have entered into an asset purchase agreement (the “**Purchase Agreement**”) with SKNY LLC (the “**Purchaser**”), dated as of September 16, 2018, for the sale of substantially all of the Debtors’ assets (collectively, the “**Acquired Assets**”), free and clear of any and all liens, claims, encumbrances and other interests (except as explicitly stated in the Purchase Agreement). The Debtors are currently soliciting higher or otherwise better bids for the sale of the Acquired Assets (the “**Sale**”).⁴

A. Bidding Procedures

Set forth below are the bidding procedures (the “**Bidding Procedures**”) with respect to the Sale of the Acquired Assets. On September [], 2018, the Court entered the *Order Approving Bidding Procedures for the Sale of Substantially All of the Debtors’ Assets, (B) Scheduling an Auction and a Sale Hearing Related Thereto, (C) Approving the Form and Manner of Notice of the Auction and the Sale Hearing, and (D) Approving Bidding Protections* [Docket No. []] (the “**Bidding Procedures Order**”), which, among other things, granted those portions of the Debtors’ sale motion [Docket No. []] (the “**Sale Motion**”) concerning approval of the Bidding Procedures and Bidding Protections to be employed in connection with the solicitation of higher or otherwise better bids and an auction (the “**Auction**”) for the Sale of the Acquired Assets.

B. Relevant Dates

Bid Deadline:	[], 2018 (5:00 p.m. EST)
Auction:	[], 2018)([] EST)
Objection Deadline:	[], 2018 (4:00 p.m. EST)
Sale Hearing:	[], 2018 ([] EST)

C. Acquired Assets to be Sold Free and Clear

The Debtors are offering to sell the Acquired Assets. Except as otherwise provided for in the Purchase Agreement, with respect to the Sale, all of the Sellers’ right, title and interest

⁴ Capitalized terms used but not otherwise defined herein shall be ascribed the meanings provided to those terms in the Motion or the Purchase Agreement, as applicable.

in and to the Acquired Assets shall be sold free and clear of any and all liens, claims, encumbrances, security interests and other restrictions on transfer (collectively, the “**Liens**”) to the extent permitted by section 363 of title 11 of the United States Code (the “**Bankruptcy Code**”) and other applicable law (except as otherwise expressly provided for in the Purchase Agreement) with such Liens to attach to the proceeds of the Sale. For the avoidance of doubt, the Purchaser has agreed to a sale free and clear of its liens, but subject to a right to credit bid.

Except as expressly provided in the Purchase Agreement, the Sale of the Acquired Assets shall be on an “**as is, where is**” basis and without representations or warranties of any kind, nature or description by the Debtors or their agents.

D. Stalking Horse Bidder

The Purchaser shall act as the “stalking horse bidder” at the Auction for the Acquired Assets with the right to receive a break-up fee of \$360,000.00 (or 3% of the Purchase Price) (the “**Breakup Fee**”) and reimbursement of its actual and necessary expenses, including reasonable attorney’s fees, incurred in connection with negotiation and entry into the Purchase Agreement, due diligence with respect to the transactions contemplated by the Purchase Agreement, and obtaining Bankruptcy Court approval of the Purchase Agreement, in an amount not to exceed \$150,000 (the “**Expense Reimbursement**” and, together with the Breakup Fee, the “**Bidding Protections**”) under the terms set forth in the Purchase Agreement. The Bidding Protections shall be paid from the first proceeds of an Alternate Transaction, including the Sale, or as otherwise set forth in the Purchase Agreement.

THE DEBTORS RESERVE THE RIGHT, IN THEIR DISCRETION, AND AFTER CONSULTATION WITH THE CREDITORS’ COMMITTEE, TO DETERMINE WHETHER ANY BID IS BETTER, IF NOT HIGHER, THAN ANOTHER BID SUBMITTED DURING THE AUCTION. THE DEBTORS MAY CONSIDER A VARIETY OF FACTORS IN MAKING THIS DECISION, INCLUDING, WITHOUT LIMITATION, ANY PROPOSED CONDITIONS TO CLOSING, TIMING OF CLOSING OF THE PROPOSED TRANSACTION AND THE LIKELIHOOD OF THE BIDDER TO OBTAIN REQUISITE APPROVALS.

E. Mailing the Sale Notice

The Debtors shall provide notice of the Auction and the Sale of the Acquired Assets (the “**Sale Notice**”), together with a copy of these Bidding Procedures, by first class mail, postage prepaid, to: (i) counsel for the Creditors’ Committee, if any; (ii) the Debtors’ secured creditors or their counsel; (iii) the Office of the United States Trustee for the Eastern District of New York (the “**U.S. Trustee**”); (iv) all parties in interest who have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”); (v) all counterparties to the Transferred Contracts; (vi) the following federal, state and local taxing and regulatory authorities: (a) the United States Attorney for the Eastern District of New York, (b) the Attorney General of the State of New York, (c) the Internal Revenue Service, (d) New York State Department of Taxation and Finance, (e) New York City Department of Finance and (f) the Environmental Protection Agency; (vii) counsel to the Purchaser; (viii) all parties who are known to assert a lien on any portion of the Acquired Assets; (ix) all parties identified by the Debtors as potentially having an interest in acquiring some or all of the Acquired Assets; and (x) all creditors of the

Debtors who are listed on each of the Debtor's Schedules of Assets and Liabilities [Docket Nos. ____] or who have filed proofs of claim against the Debtors' estates.

Any other party in interest that wishes to receive a copy of the Bidding Procedures Order and/or the Sale Motion may make such request in writing to Angela Fitzpatrick, Zeichner Ellman & Krause LLP, 1211 Avenue of the Americas, 40th Floor, New York, New York 10036, by telephone: (212) 223-0400 or via email at afitzpatrick@zeklaw.com.

F. Confidentiality Agreement / Due Diligence

Any entity that wishes to conduct due diligence with respect to the Acquired Assets, other than Purchaser, must (i) deliver to the Debtors an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtors and on terms no less favorable than the confidentiality agreement executed by the Purchaser, and (ii) deliver to the Debtors a written non-binding expression of interest to purchase the Acquired Assets, reasonably acceptable to the Debtors.

Interested parties that comply with the foregoing (each such entity referred to as a "**Potential Bidder**"), shall be permitted to conduct diligence with respect to the Acquired Assets; provided, however, that the Debtors shall not be obligated to furnish any due diligence information after the Bid Deadline (defined below).

G. Qualification of Bids and Bidders

To participate in the bidding process and have a bid considered by the Debtors, each Potential Bidder must deliver a written, irrevocable offer to purchase some or all of the Acquired Assets that satisfies the following criteria.

A BID MAY BE MADE FOR ALL OR ONLY A PORTION OF THE ASSETS.

To become a "**Qualified Bidder**", a Potential Bidder must deliver a binding bid that, in the Debtors' discretion, satisfies the following (a "**Qualified Bid**"):

- i. **Bid Deadline.** Each Bid Package (as defined below) must be delivered, in written form, to: proposed counsel to the Debtors, Zeichner Ellman & Krause LLP, 1211 Avenue of the Americas, 40th Floor, New York, New York 10036, Attn: Nathan Schwed so as to be **actually received no later than 5:00 p.m. (prevailing Eastern Time) on [____], 2018 (the "Bid Deadline")**.
- ii. **Bid Package.** Each bid must include:
 - (a) a written and signed irrevocable offer (i) stating that the bidder seeks to consummate a sale transaction on terms and conditions no less favorable than in the Purchase Agreement and in an amount at least equal to the Minimum Bid (defined below), (ii) confirming that the bid will remain irrevocable until the earlier of (A) ninety (90) days

Proposed Bidding Procedures

following entry of the Sale Order (defined below) and (B) closing with the Successful Bidder, and (iii) that the Potential Bidder had the opportunity to conduct due diligence prior to submitting its bid, does not require further due diligence, has relied solely upon its own independent review and investigation when submitting its bid, and did not rely on any written or oral representation of the Debtors in preparation for submission of its bid;

- (b) an executed copy of the Purchase Agreement, as modified by the Potential Bidder in accordance with its bid (the “**Modified Purchase Agreement**”), as well as an electronic markup of the Purchase Agreement clearly identifying the revisions in the Modified Purchase Agreement (formatted as a Microsoft Word document or such other word processing format acceptable to the Debtors)

(collectively, the “**Bid Package**”).

The Debtors, in consultation with the Creditors’ Committee, shall determine whether any Modified Purchase Agreement that modifies the Purchase Agreement in any respect beyond the identity of the purchaser and the purchase price constitutes a Qualified Bid.

- iii. **Minimum Bid.** For a Bid Package submitted by a Potential Bidder to qualify as a Qualified Bid, the purchase price in that bid must provide for net cash in an amount not less than \$12,610,000 which represents the Purchase Price, the maximum amount of the Bidding Protections and a \$100,000 minimum overbid (the “**Minimum Bid**”).
- iv. **Financial Information.** To constitute a Qualified Bid, the Bid Package must contain financial and other information of the Potential Bidder that will allow the Debtors to make a determination as to the Potential Bidder’s financial wherewithal to consummate the transactions contemplated by any Modified Purchase Agreement, including (a) any proposed conditions to Closing and (b) adequate assurance of such Potential Bidder’s ability to perform under any Transferred Contracts and to pay all cure amounts required to assume and assign any such Transferred Contracts. A Potential Bidder shall cooperate reasonably with any request by any creditor, the Debtors, the U.S. Trustee, the Creditors’ Committee or any other interested party (except the Purchaser or another Potential Bidder) for further due diligence that is reasonably necessary and customary to evaluate the viability and terms of the Potential Bidder’s Qualified Bid. Any due diligence conducted of a Potential Bidder shall be completed no later than five (5) business days following the submission of the Potential Bidder’s Bid Package.
- v. **Additional Bid Protections.** The bid shall not request or entitle the Potential Bidder to any termination fee, transaction or break-up fee, expense reimbursement or similar type of payment.

- vi. Identity of Bidders. Each Potential Bidder must fully disclose the identity of each entity that will be bidding for the Acquired Assets, as well as disclose the organizational form and business conducted by each entity, and what connections, if any, the Potential Bidder has with the Debtors. Potential Bidders shall be required to provide such additional information as the Debtors may require regarding a bidder's ability to satisfy the requirements of the transaction contemplated by any Modified Purchase Agreement.
- vii. Due Diligence. Except as provided for in the Purchase Agreement, the bid must not contain any contingencies of any kind, including, but not limited to (a) obtaining financing or shareholder, board of directors or other approval, or (b) the outcome or completion of due diligence. Each Potential Bidder must also affirmatively acknowledge that the Potential Bidder (x) had an opportunity to conduct due diligence regarding the Acquired Assets prior to making its offer and does not require further due diligence, (y) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Acquired Assets in making its bid, and (z) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the Acquired Assets, or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures.
- viii. Consents. Each Potential Bidder must represent that it obtained all necessary organizational (not regulatory) approvals to make its competing bid and to enter into and perform any Modified Purchase Agreement.
- ix. Deposit. A Potential Bidder must deposit 10% of the Purchase Price, as set forth in any Modified Purchase Agreement, plus the amount of the Bidding Protections, with the Debtors in the form of a certified check or wire transfer on or before the Bid Deadline (the "Deposit"). The Potential Bidder or the Backup Bidder (defined below) shall forfeit the Deposit if (a) the Potential Bidder or the Backup Bidder is determined to be a Qualified Bidder and withdraws or modifies its bid other than as provided herein before the Court approves the Debtors' selection of the Successful Bidder (defined below), or (b) the bidder is a Successful Bidder and modifies or withdraws its bid without the Debtors' consent before the consummation of the sale contemplated by the bid, or breaches any of the terms of the relevant Modified Purchase Agreement.

The Deposit shall be returned to a Potential Bidder (x) as soon as practicable if the Potential Bidder is not determined to be a Qualified Bidder or (y) no later than five (5) business days after entry of the Sale Order if the Potential Bidder is deemed to be a Qualified Bidder (who has not otherwise forfeited its Deposit), but is not the Successful Bidder or the Backup Bidder; provided, however, that in the event the Purchaser is not the Successful

Bidder, its Deposit shall be returned to it promptly upon termination of the Purchase Agreement, but in no event later than five (5) business days after the date of that termination. The Debtors will maintain any Deposit in a non-interest bearing account.

- x. “As Is, Where Is”. Any Modified Purchase Agreement must provide that the Sale will be on an “as is, where is” basis and without representations or warranties of any kind, except and solely to the extent expressly set forth in the Modified Purchase Agreement of the Successful Bidder. Each Qualified Bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Acquired Assets prior to making its bid and that it has relied solely upon its own independent review and investigation in making its bid.
- xi. Debtors’ Considerations. The Debtors, after consultation with the Creditors’ Committee, shall have the right to determine that a bid is not a Qualified Bid if the terms of the bid are materially more burdensome or conditional than the terms of the Purchase Agreement and are not offset by a material increase in purchase price, which determination may take into consideration: (1) whether the bid requires any indemnification of the Qualified Bidder; (2) whether the bid does not provide sufficient cash consideration to pay transfer taxes, cure costs or other cash costs of the transaction (including professionals’ fees and the Bidding Protections); (3) whether the bid includes a non-cash instrument or similar consideration that is not freely marketable; or (4) any other factors that the Debtors, after consultation with the Creditors’ Committee, may deem relevant.

The Debtors are offering to sell the Acquired Assets. The Debtors, in consultation with the Creditors’ Committee, shall have the exclusive right to determine whether a bid is a Qualified Bid and shall notify Potential Bidders whether their respective bid(s) have been determined to be Qualified Bid(s) prior to the Auction. The Debtors may reject any bid that is on terms more burdensome or conditional than the Purchase Agreement or is otherwise contrary to the best interests of the Debtors’ estates. In addition to the requirements above, the Debtors may request any additional information from any Potential Bidder to assist the Debtors in making a determination as to whether a bid is a Qualified Bid.

H. Sale to Purchaser

The Purchase Agreement shall be deemed a Qualified Bid and the Purchaser shall be deemed a Qualified Bidder. If no Qualified Bid other than Purchaser’s is submitted by the Bid Deadline, the Debtors shall not hold the Auction, but may proceed with the Sale Hearing and seek approval of the Purchase Agreement and the transactions contemplated thereby.

I. Auction

In the event that the Debtors timely receive at least one Qualified Bid (excluding the Purchaser’s Qualified Bid) by the Bid Deadline for all or any portion of the Acquired Assets,

the Debtors shall conduct the Auction with respect to the Acquired Assets. The Auction will take place at Zeichner Ellman & Krause LLP, 1211 Avenue of the Americas, 40th Floor, New York, New York 10036 on [_____, 2018, starting at [_____] (EST), or at such other date, time or place as may be determined by the Debtors at or prior to the Auction. The Auction shall be governed by the following procedures:

- i. Participation. Only Qualified Bidders that have submitted a Qualified Bid and provided Deposits will be eligible to participate in the Auction, and each Qualified Bidder shall appear in person at the Auction (and any attorney for a Qualified Bidder may appear at the Auction at the discretion of the Qualified Bidder). In the event that a Qualified Bidder does not attend the Auction, the relevant Qualified Bid shall nonetheless remain fully enforceable against that Qualified Bidder in accordance herewith.

The Debtors, in consultation with the Creditors' Committee, shall evaluate all Qualified Bids received and will select the Qualified Bid that reflects the highest or otherwise best offer for all or any portion of the Acquired Assets, and otherwise complies with the bid requirements set forth herein (the "Starting Auction Bid"). The Debtors may consider a variety of factors to determine the Starting Auction Bid, including, but not limited to, modifications to the Purchase Agreement and the Qualified Bidder's ability to consummate the Sale. At the Auction, the Debtors shall announce the material terms of the Starting Auction Bid and the basis for calculating the total consideration offered in the Starting Auction Bid.

- ii. Bidding. Bidding at the Auction shall commence at the amount of the Starting Auction Bid. Qualified Bidders may then submit successive bids in increments of no less than \$100,000 (the "Minimum Bid Increment"); provided, however, that the Debtors, in consultation with the Creditors' Committee, shall retain the right to modify the Minimum Bid Increment during the Auction. Any bid submitted after the conclusion of the Auction shall not be considered for any purpose.
- iii. Higher or Otherwise Better. The Debtors reserve the right, in consultation with the Creditors' Committee, to determine whether any bid is better, if not higher, than another bid submitted during the Auction. The Debtors may consider any other factor that they, in consultation with the Creditors' Committee, deem relevant.
- iv. Successful Bid. The Auction shall continue until there is only one collective offer or separate offers for the Acquired Assets that the Debtors, in consultation with the Creditors' Committee, determines, subject to Court approval, is (or are) the highest or otherwise best offer(s) from among the Qualified Bids submitted at the Auction (the "Successful Bid(s)") and the Debtors announce that the Auction is closed. The Qualified Bidder(s) submitting such Successful Bid(s) shall become the "Successful Bidder(s)," and shall have such rights and responsibilities of the Purchaser,

as set forth in the Modified Purchase Agreement, or the Purchase Agreement, as applicable.

Within one (1) business day after the conclusion of the Auction (but in any event prior to the commencement of the Sale Hearing), the Successful Bidder(s) shall (a) complete and execute all agreements, contracts, instruments or other documents evidencing and containing the terms and conditions upon which the Successful Bid(s) was/were made, and (b) supplement the relevant Deposit by wire transfer or other immediately available funds so that, to the extent necessary, such Deposit equals 10% of the Successful Bid(s) plus the amount required for payment of the Bidding Protections.

- v. Anti-Collusion. At the commencement of the Auction, each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with any other Qualified Bidder or Potential Bidder with respect to the bidding or the Sale.
- vi. Conduct of Auction. The Auction may be conducted openly with the proceeding being transcribed and each Qualified Bidder being informed of the terms of the previous bid. The Debtors or their counsel may meet privately with any Qualified Bidder to negotiate the terms of its bid. The Debtors, in consultation with the Creditors' Committee, may adopt other rules for the conduct of the Auction at the Auction, which, in their judgment, will better promote the goals of the Auction.
- vii. Backup Bid. At the conclusion of the Auction, the Debtors will announce the second highest or otherwise best bid(s) from among the Qualified Bids submitted at the Auction (the "**Backup Bid(s)**"). The Qualified Bidder(s) submitting such Backup Bid(s) shall become the "**Backup Bidder(s)**," and subject to the rights of the Successful Bidder(s), shall have such rights and responsibilities of the Purchaser, as set forth in the Modified Purchase Agreement or the Purchase Agreement, as applicable.

The Backup Bid shall remain open and irrevocable until the earlier of (a) ninety (90) days following entry of the Sale Order and (b) Closing of the Sale; provided, however, that if the Purchaser's bid is deemed the Backup Bid, the Purchaser's rights and obligations with respect to such bid shall be subject to the terms of the Purchase Agreement. The Backup Bidder's Deposit will be returned by the Debtors upon consummation of the Sale of the Acquired Assets to the Successful Bidder(s), or will be otherwise applied or forfeited as provided in Section G(ix) above if the Backup Bidder is determined to be the Successful Bidder, except with respect to the Purchaser, which shall be subject to the terms of the Purchase Agreement.

- viii. Extensions/Adjournment. The Debtors reserve their rights, in the exercise of their reasonable business judgment, and in consultation with the

Creditors' Committee, to modify any non-material provisions of these Bidding Procedures at or prior to the Auction, including, without limitation, extending the deadlines set forth in the Auction procedures, modifying bidding increments, adjourning the Auction at the Auction and/or adjourning the Sale Hearing in open court without further notice consistent with the Purchase Agreement and Bidding Procedures Order.

J. Sale Hearing and Return of Deposits

The Successful Bid(s) and the Backup Bid(s) will be subject to approval by the Court after a hearing (the "**Sale Hearing**") and entry of an order (the "**Sale Order**"). The Sale Hearing will take place on [] 2018 at [] (EST). The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court. Upon approval of the Backup Bid(s) by the Court, the Backup Bid(s), other than the Purchaser's bid which shall be subject to the terms of the Purchase Agreement, shall remain open and irrevocable until the earlier of ninety (90) days following entry of the Sale Order or the Closing of the Sale.

No offer shall be deemed accepted unless and until it is approved by the Court and the Sale Order is entered.

Objections, if any, to the Sale Motion and any filed supplements thereto, shall: (i) be in writing; (ii) specify, with particularity, the basis of the objection; and (iii) be filed with the Court and simultaneously served on: (a) proposed attorneys for the Debtors, Zeichner Ellman & Krause LLP, 1211 Avenue of the Americas, 40th Floor, New York, New York 10036 (Attn: Nathan Schwed), (ii) the attorneys for the Purchaser, Klestadt Winters Jureller Southard & Stevens, LLP, 200 West 41st Street, 17th Floor, New York, New York 10036 (Attn: Tracy L. Klestadt), (iii) the Office of the United States Trustee for the Eastern District of New York, U.S. Federal Office Building, 201 Varick Street, Room 1006, New York, New York 10014 (Attn: []) and (iv) the attorneys for the Creditors' Committee, [] (Attn: []), so as to **be actually received by 5:00 p.m. (EST) on [], 2018 (the "Objection Deadline").**

K. Consummation of the Sale

Except as provided herein and in the Purchase Agreement, following the Sale Hearing, if for any reason the Successful Bidder fails to consummate the Sale of the Acquired Assets, then the Backup Bidder shall automatically be deemed to have submitted the highest or otherwise best bid. The Debtors and the Backup Bidder are authorized to effectuate the Sale of the Acquired Assets to the Backup Bidder as soon as is commercially reasonable without further order of the Court. If the failure to consummate the Sale is the result of a breach by the Successful Bidder, its Deposit shall be forfeited to the Debtors. The Debtors specifically reserve the right to seek all available damages from the defaulting Successful Bidder.

L. Jurisdiction

The Court shall retain exclusive jurisdiction over any matter or dispute relating to the Sale of the Acquired Assets, the Bidding Procedures, the Sale Hearing, the Auction, the

Successful Bid(s), the Backup Bid(s) and/or any other matter that in any way relates to the foregoing.

¹The Debtors in these Chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Blue Gold Equities LLC (7766), Central Avenue Market LLC (7961), Amsterdam Avenue Market LLC (7988), Wilmot Road Market LLC (8020), Seasons Express Inwood LLC (1703), Seasons Lakewood LLC (0295), Seasons Maryland LLC (1895), Seasons Clifton LLC (3331), Seasons Cleveland LLC (7367), Lawrence Supermarket LLC (8258), Upper West Side Market LLC (8895) and Seasons Corporate LLC (2266). The mailing address for the Debtors, solely for purposes of notices and communications, is: 5 Doughty Boulevard, Inwood, NY 11096.

(the “**Chapter 11 Cases**”) filed a motion (the “**Motion**”) [Docket No. []]² which sought, among other things, entry of an order pursuant to sections 105, 363, 365, and 503 of title 11 of the United States Code (the “**Bankruptcy Code**”), rules 2002, 60004 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and rules 6004-1, 6006-1 and 9006-1 of the Local Bankruptcy Rules for the Eastern District of New York (the “**Local Rules**”): (a) approving the proposed Bidding Procedures to be used in connection with the proposed sale of substantially all of the Debtors’ assets, free and clear of any and all liens, claims, encumbrances, security interests and other interests, to SKNY LLC (the “**Purchaser**”), or to any competing bidder or bidders (the “**Successful Bidder(s)**”) that submits or collectively submit a higher or better offer or offers for the Acquired Assets; (b) scheduling the Auction and Sale Hearing to approve the Sale of the Acquired Assets; (c) approving the form and manner of notice of the Auction and Sale Hearing; and (d) approving the Bidding Protections and certain overbid procedures in connection therewith (the “**Bidding Procedures Order**”). The Bankruptcy Court conducted a hearing on September [], 2018 to consider entry of the Bidding Procedures Order. On September [], 2018, the Court entered the Bidding Procedures Order [Docket No. []].

The Motion, the Bidding Procedures, and the Bidding Procedures Order have been filed electronically with the Clerk of the United States Bankruptcy Court for the Eastern District of New York, and may be reviewed by all registered users of the Court’s website at <http://ecf.nyeb.uscourts.gov>. Copies of the Motion, the Bidding Procedures, and the Bidding Procedures Order can also be obtained by telephonic, written, or e-mail request to the undersigned counsel to the Debtors, Attn: Angela Fitzpatrick (Telephone: (212) 223-0400 or e-mail: afitzpatrick@zeklaw.com).

² Capitalized terms used but not otherwise defined herein shall be ascribed the meanings provided in the Motion.

As set forth in the Bidding Procedures, the sale of the Acquired Assets remains subject to higher or better offers for all or a portion of the Acquired Assets and Bankruptcy Court approval. All interested parties are invited to make competing offers for all or a portion of the Acquired Assets in accordance with the terms of the Bidding Procedures and the Bidding Procedures Order. The deadline to submit a competing offer in accordance with the terms of the Bidding Procedures is [], **2018 at 4:00 p.m. (ET)** (the “**Bid Deadline**”). Pursuant to the Bidding Procedures Order, if a Qualified Bid other than the Purchaser’s bid is received by the Bid Deadline, the Debtors may conduct an auction (the “**Auction**”) for the sale of the Acquired Assets at Zeichner Ellman & Krause LLP, 1211 Avenue of the Americas, 40th Floor, New York, New York 10036, **beginning at [] (EST) on [], 2018.**

The Bidding Procedures Order further provides that a Sale Hearing will be held on [], **2018 at [] (EST)** before the Honorable [], United States Bankruptcy Judge, United States Bankruptcy Court for the Eastern District of New York, 271-C Cadman Plaza East, Brooklyn, New York 11201-1800, Courtroom No. [].

At the Sale Hearing, the Debtors will request that the Bankruptcy Court enter an order, among other things, approving the highest or otherwise best bid for the Acquired Assets (which will be determined in accordance with the terms of the Bidding Procedures). In addition, the Debtors shall request that the Bankruptcy Court provide that the transfer of the Acquired Assets be free and clear of any and all liens, claims, interests, encumbrances and security interests, including successor liability claims.

At the Sale Hearing, the Bankruptcy Court may enter such orders as it deems appropriate under applicable law and as required by the circumstances and equities of these Chapter 11 Cases. Objections, if any, to the Motion must (a) be made in writing, (b) state with particularity the reasons

for the objection or response, (c) conform to the Bankruptcy Rules and the Local Bankruptcy Rules for the Eastern District of New York, (d) set forth the name of the objecting party, the nature and basis of the objection, and the specific grounds therefore, and (e) be filed with the Clerk of the Court (with a copy to be delivered to the Chambers of the Honorable [____]), United States Bankruptcy Court for the Eastern District of New York, 271-C Cadman Plaza East, Brooklyn, New York 11201-1800, and shall be served upon: (i) proposed attorneys for the Debtors, Zeichner Ellman & Krause LLP, 1211 Avenue of the Americas, 40th Floor, New York, New York 10036 (Attn: Nathan Schwed), (ii) the attorneys for the Purchaser, Klestadt Winters Jureller Southard & Stevens, LLP, 200 West 41st Street, 17th Floor, New York, New York 10036 (Attn: Tracy L. Klestadt), (iii) the Office of the United States Trustee for the Eastern District of New York, U.S. Federal Office Building, 201 Varick Street, Room 1006, New York, New York 10014 (Attn: William Curtis and (iv) the attorneys for the Creditors' Committee, [____] (Attn: [____]), so as to be **actually received** no later than **4:00 p.m. (EST) on [____], 2018.**

Requests for information concerning the sale of the Acquired Assets should be directed by written or telephonic request to: Nathan Schwed, Zeichner Ellman & Krause LLP, 1211 Avenue of the Americas, 40th Floor, New York, New York 10036, (212) 223-0400 or via email at nschwed@zeklaw.com.

Dated: New York, New York
[____], 2018

ZEICHNER ELLMAN & KRAUSE LLP

By: _____

Nathan Schwed
1211 Avenue of the Americas, 40th Floor
New York, New York 10036
Telephone: (212) 223-0400
Facsimile: (212) 753-0396
Email: nschwed@zeklaw.com
*Proposed Attorneys for Debtors and Debtors-
in-Possession*

EXHIBIT B

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

-----X	
In re	:
	:
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	:
BLUE GOLD EQUITIES, LLC, <i>et al.</i> ,	:
	:
	:
	:
	:
Debtors. ¹	:
-----X	

Chapter 11
Case No. 18-() ()
Joint Administration Pending

ORDER AUTHORIZING AND APPROVING (I) THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS; (II) THE PROCEDURES GOVERNING THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS; AND (III) RELATED RELIEF²

Upon the motion of the above-captioned debtors (the “Debtors”), pursuant to sections 105(a), 363, 365 and 503 of title 11 of the United States Code (the “Bankruptcy Code”), Federal Rules of Bankruptcy Procedure 2002, 6004, and 6006 (the “Bankruptcy Rules”), and Rules 6004-1, 6006-1 and 9006-1 of the Local Bankruptcy Rules for the Eastern District of New York (the “Local Bankruptcy Rules”) for entry of an order authorizing and approving, among other things, the sale of substantially all of the Debtors’ assets to SKNY LLC (the “Purchaser”) free and clear of all liens, Claims and Encumbrances (as defined below), the assumption and assignment of the Transferred Contracts (as defined below), and related relief [Docket No. ____]

¹ The Debtors in these Chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are as follows: Blue Gold Equities LLC (7766), Central Avenue Market LLC (7961), Amsterdam Avenue Market LLC (7988), Wilmot Road Market LLC (8020), Seasons Express Inwood LLC (1703), Seasons Lakewood LLC (0295), Seasons Maryland LLC (1895), Seasons Clifton LLC (3331), Seasons Cleveland LLC (7367), Lawrence Supermarket LLC (8258), Upper West Side Market LLC (8895) and Seasons Corporate LLC (2266). The mailing address for the Debtors, solely for purposes of notices and communications, is: 5 Doughty Boulevard, Inwood, NY 11096.

² Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact when appropriate. *See* FED. R. BANKR. P. 7052.

(as amended, the “Motion”);³ and the *Order (A) Approving Bidding Procedures for the Sale of Substantially all of the Debtors’ Assets, (B) Scheduling an Auction and a Sale Hearing Related Thereto, (C) Approving the Form and Manner of Notice of the Auction and the Sale Hearing, and (D) Approving Bidding Protections* [Docket No. ____] (the “Bid Procedures Order”); and it appearing that due and appropriate notice of the Motion, the Bid Procedures Order, the Bid Procedures, the Auction and the Sale Hearing having been given; and it appearing that no other notice of the relief granted by this Order need be given; and the Court having conducted a hearing on the Motion on [____], 2018 (the “Sale Hearing”) at which time all interested parties were offered an opportunity to be heard with respect to the Motion; and the Debtors having conducted a marketing process in compliance with the Bid Procedures Order and determined that the Purchaser has submitted the highest and best bid for the assets of the Debtors that the Purchaser has offered to purchase as more specifically described in the Purchase Agreement between the Debtors and Purchaser, dated as of September 16, 2018 (the “Purchase Agreement”) and (the “Acquired Assets”); and all parties in interest having been heard, or having had the opportunity to be heard, regarding entry of this Order and approval of the sale of substantially all of the Debtors’ assets to the Purchaser and assumption and assignment of certain contracts (the “Sale Transaction”) and Purchase Agreement; and this Court being fully advised; this Court, based upon the arguments, testimony and evidence presented to it, hereby makes the following findings of fact and conclusions of law:

A. This Court has jurisdiction to hear and determine the Motion and to grant the relief requested in the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this case and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

³ Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion or the Purchase Agreement (as defined below). A copy of the Purchase Agreement is attached as Exhibit C to the Motion.

B. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). To any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Order, and expressly directs entry of judgment as set forth herein.

C. This proceeding is a “core proceeding” within the meaning of 28 U.S.C. § 157(b)(2)(A), (N) and (O).

D. The statutory predicates for the Motion are sections 105, 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9007 and 9014.

E. As evidenced by the affidavits of service filed with the Court, and based upon the representations of counsel at the Sale Hearing, (i) proper, timely and adequate notice of the Motion, the Bid Procedures Order, the Sale Hearing, the Sale Transaction, the Auction and the Bid Deadline as approved herein has been provided in accordance with Bankruptcy Rules 2002, 6004, 9007 and 9014, (ii) such notice was good, sufficient and appropriate under the circumstances and (iii) no other or further notice of the Motion, the Bid Procedures Order, the Sale Hearing, the Sale Transaction, the Auction or the Bid Deadline as provided herein is necessary or shall be required.

F. A reasonable opportunity to object or be heard with respect to the Motion and the Sale Transaction has been afforded to all interested persons and entities, including, without limitation: (i) the U.S. Trustee, (ii) counsel for the Purchaser, (iii) counsel for the Creditors’ Committee, (iv) the Debtors’ creditors, and (v) all other parties who filed requests for notice under Bankruptcy Rule 2002 in this case.

G. Notice, as specified in the preceding paragraph and as evidenced by the affidavits of service filed with the Court, has been provided in the form and manner specified in the Motion and required by the Bid Procedures Order, and such notice is reasonable and adequate.

H. The sale process for the Acquired Assets and the Auction were conducted in accordance with the Bid Procedures Order. At the conclusion of the Auction, the Purchaser was deemed the Successful Bidder with the highest and best offer for the Acquired Assets. The Auction was conducted in a non-collusive, fair and good faith manner and a reasonable opportunity has been given to any interested party to make a higher and better offer for the Acquired Assets.

I. The Purchaser is purchasing the Acquired Assets in good faith and is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code, and is therefore entitled to the protection of that provision.

J. The Purchase Agreement was negotiated, proposed and entered into by the Debtors and the Purchaser without collusion, in good faith and from arms' length bargaining positions. Neither the Debtors nor the Purchaser have engaged in any conduct that would cause or permit the Sale Transaction or any part of the transactions contemplated by the Purchase Agreement to be avoidable under section 363(n) of the Bankruptcy Code.

K. As demonstrated by the record established at the Sale Hearing, the Debtors afforded interested potential purchasers a full and fair opportunity to qualify as Qualified Bidders under the Bid Procedures and to submit an offer for the Acquired Assets.

L. The Purchaser is not an "insider" of the Debtors as that term is defined in section 101(31) of the Bankruptcy Code.

M. The consideration provided by the Purchaser for the Acquired Assets pursuant to the Purchase Agreement (i) is fair and reasonable, (ii) is the highest and best offer for the Acquired Assets, (iii) will provide a greater recovery for all of the Debtors' stakeholders than would be provided by any other practical available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, New York State Debtor Creditor Law and all other applicable laws.

N. The Debtors have demonstrated a sufficient basis and compelling circumstances requiring the Debtors to enter into the Purchase Agreement and sell the Acquired Assets under section 363 of the Bankruptcy Code, and such actions are appropriate exercises of the Debtors' business judgment and are in the best interests of the Debtors, the estates, and their creditors.

O. The marketing and bidding processes implemented by the Debtors and their advisors, as set forth in the Motion, were fair, proper, and reasonably calculated to result in the best value received for the Acquired Assets.

P. The Debtors have full authority and power to execute and deliver the Purchase Agreement and related agreements and all other documents contemplated by the Purchase Agreement, to perform its obligations therein and to consummate the Sale Transaction. Except as set forth in the Purchase Agreement, no additional consents or approvals are necessary or required for the Debtors to enter into the Purchase Agreement, perform its obligations therein and consummate the Sale Transaction.

Q. The Purchaser would not have entered into the Purchase Agreement and would not consummate the Sale Transaction, thus adversely affecting the Debtors, the estates, and their creditors, if the Acquired Assets were not sold to it free and clear of all Claims and

Encumbrances or if the Purchaser would, or in the future could, be liable for any Claims and Encumbrances against the Acquired Assets.

R. Selling the Acquired Assets other than free and clear of any and all liens, claims (as defined in section 101(5) of the Bankruptcy Code), security interests, mortgages, encumbrances, obligations, including employee benefit obligations charges against or interests in property, adverse claims, claims of possession, rights of way, licenses, easements or restrictions of any kind, demands, guarantees, actions, suits, defenses, deposits, credits, allowances, options, rights, restrictions, limitations, contractual commitments, rights of first refusal, rights of setoff or recoupment, or interests of any kind or nature whether known or unknown, legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of these Chapter 11 Cases, whether imposed by agreement, understanding, law, equity or otherwise, subject to applicable law, including section 363 of the Bankruptcy Code (collectively, the “Claims and Encumbrances”) would adversely impact the Debtors’ estates, and the sale of the Acquired Assets other than as free and clear of all Claims and Encumbrances would be of substantially less value to the Debtors’ estates.

S. The provisions of section 363(f) of the Bankruptcy Code have been satisfied. All holders of Claims and Encumbrances, if any, who did not object, or withdrew their objections to the Sale Transaction, are deemed to have consented to the Sale Transaction.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, EFFECTIVE IMMEDIATELY, AS FOLLOWS:

1. The relief requested in the Motion is granted and approved in all respects, as set forth herein. The Debtors’ entry into the Purchase Agreement and the Sale Transaction is hereby

approved in all respects. Except as may be expressly provided herein, objections to the relief sought in the Motion that have not been previously resolved or withdrawn are hereby overruled on their merits.

2. The Debtors are authorized and directed to take any and all actions necessary or appropriate to (a) consummate the Sale Transaction in accordance with the Motion, the Purchase Agreement and this Order, and (b) perform, consummate, implement and close fully the Sale Transaction, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement including, without limitation, consenting to the assignment by the Purchaser of any of its rights under or relating to the Purchase Agreement.

3. Those holders of Claims and Encumbrances and other non-Debtor parties who did not object, or who withdrew their objections to entry of this Order, the Motion, the Bid Procedures Order, the Sale Hearing, the Sale Transaction and the Purchase Agreement are deemed to have consented to this Order, the Bid Procedures Order, the Sale Transaction and the Purchase Agreement pursuant to section 363(f)(2) of the Bankruptcy Code and are enjoined from taking any action against the Purchaser, its successors, its assigns, its representatives, its affiliates, its properties, or any agent of the foregoing to recover any claim which such person or entity has against the Debtors or any of their affiliates or any of the Debtors' property. Those holders of Claims and Encumbrances and other non-Debtor parties who did object, if any, fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their Claims and Encumbrances, if any, attach to the proceeds of the Sale Transaction ultimately attributable to the property against or in which they assert a Claim or Encumbrance.

Sale and Transfer of the Acquired Assets

4. Upon Closing, the Acquired Assets transferred, sold and delivered to the Purchaser shall be free and clear of all Claims and Encumbrances of any person or entity. The transfer of the Acquired Assets to the Purchaser constitutes a legal, valid and effective transfer of the Acquired Assets and shall vest the Purchaser with all right, title and interest in and to the Acquired Assets.

5. Upon closing of the Sale Transaction, this Order shall be construed as, and shall constitute for any and all purposes, a full and complete general assignment, conveyance and transfer of the Acquired Assets pursuant to the terms of the Purchase Agreement.

6. Effective on the Closing, all entities, including, but not limited to, the Debtors, creditors, employees, former employees and shareholders, administrative agencies, tax and regulatory authorities, governmental departments, secretaries of state, federal, state and local officials, and their respective successors or assigns, including, but not limited to, persons asserting any Claims or Encumbrance against the Debtors' assets, shall be permanently and forever barred, restrained and enjoined from commencing or continuing in any manner any action or other proceeding of any kind against the Acquired Assets or the Purchaser (or its successors, assigns, agents or representatives) as alleged successor or otherwise with respect to any Claims and Encumbrances on or in respect of the Acquired Assets.

7. Each and every term and provision of the Purchase Agreement, together with the terms and provisions of this Order, shall be binding in all respects upon all entities, including, but not limited to the Debtors, the Purchaser, creditors, employees, former employees and shareholders, administrative agencies, governmental departments, secretaries of state, federal, state and local officials and their respective successors or assigns, including but not limited to

persons asserting any Claim or Encumbrance against or interest in the Debtors' estates or the Debtors' assets, including any subsequent appointment of a trustee or other fiduciary under any section of the Bankruptcy Code.

8. Upon the Closing, all entities holding Claims and Encumbrances of any kind and nature against the Debtors' assets hereby are barred from asserting such Claims and Encumbrances against the Purchaser (or its successors, assigns, agents or representatives) and/or the Acquired Assets and, effective upon the transfer of the Acquired Assets to the Purchaser upon Closing, the Claims and Encumbrances shall attach to the proceeds of the Sale Transaction with the same force, validity, priority and effect, if any, as against the Debtors' assets.

9. This Order (a) is and shall be effective as a determination that, upon Closing, all Claims and Encumbrances existing as to the Debtors' assets conveyed to the Purchaser have been and hereby are adjudged to be unconditionally released, discharged and terminated, with all such Claims and Encumbrances attaching automatically the proceeds in the same manner and priority, and (b) shall be binding upon and govern the acts of all entities, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies or units, governmental departments or units, secretaries of state, federal, state and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Debtors' assets conveyed to the Purchaser. All Claims and Encumbrances of record as of the date of this Order shall be deemed to be removed and stricken as against the Acquired Assets in accordance with the foregoing. All entities are

authorized and specifically directed to strike all such recorded Claims and Encumbrances against the Acquired Assets from their records, official or otherwise.

10. If any person or entity which has filed financing statements, mortgage, *lis pendens* or other documents or agreements evidencing Claims and Encumbrances on the Acquired Assets shall not have delivered to the Debtors prior to closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements and any other documents necessary for the purpose of documenting the release of all Claims and Encumbrances which the person or entity has or may assert with respect to the Acquired Assets, the Debtors are hereby authorized and directed upon closing, and the Purchaser is hereby authorized upon closing, to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Acquired Assets. Upon closing of the Sale Transaction, each of the Debtors' creditors is authorized and directed to execute such documents and take all such actions as may be necessary to release their respective Claims and Encumbrances against the Acquired Assets.

11. Upon closing, the Purchaser (or its successors, assigns, agents or representatives) shall not be deemed to be (a) a successor to the Debtors, (b) *de facto* merged with the Debtors or (c) a mere continuation of the Debtors. Without limiting the generality of the foregoing, and except as specifically provided in the Purchase Agreement, the Purchaser (or its successors, assigns, agents or representatives) shall not be liable for any claims against the Debtors or any of their predecessors or affiliates or assets, other than as expressly provided for in the Purchase Agreement and/or in this Order.

Assumption and Assignment of Contracts

12. Schedule 1.1(a) to the Purchase Agreement identifies all Contracts the Purchaser wishes to be assumed by the Debtors and assigned by the Debtors to the Purchaser (the “Transferred Contracts”). All Contracts not identified in Schedule 1.1(a) to the Purchase Agreement shall not be assumed by the Debtors and assigned to the Purchaser and shall be referred to as “Excluded Contracts”. The Debtors shall assume in the Chapter 11 Cases and assign to the Purchaser, all of the Transferred Contracts, provided that the Purchaser shall pay all scheduled and disclosed cure amounts in connection with such assumption, and assign said Transferred Contracts to the Purchaser. The Debtors shall use best efforts to seek assumption and assignment of any Contracts designated prior to and after the Closing and obtain an order of the Court authorizing such assumptions and assignments.

Additional Provisions

13. The provisions of this Order and the Purchase Agreement and any actions taken pursuant hereto or thereto shall survive entry of any order which may be entered (a) confirming or consummating any plan of reorganization of the Debtors, (b) converting the Debtors’ cases from chapter 11 to chapter 7, (c) dismissing the Debtors’ bankruptcy cases or (d) appointing a chapter 11 trustee or examiner, and the terms and provisions of the Purchase Agreement as well as the rights and interests granted pursuant to this Order and the Purchase Agreement shall continue in this or any superseding case and shall be binding upon the Debtors, the Purchaser, and their respective successors and permitted assigns.

14. The Debtors shall assign to the Purchaser any claim and cause of action related to the Acquired Assets, including, without limitation, those arising under chapter 5 of the Bankruptcy Code (“Avoidance Actions”), excluding those claims relating to any Insider of the

Debtors (as insider is defined under Section 101(31) of the Bankruptcy Code) or any Affiliate (as defined in the Purchase Agreement) of an Insider, and excluding any potential Avoidance Actions against L&N Consulting Group LLC, SuperSol Ltd, Laurence Garber and Norman Lampert .

15. Each and every federal, state, and governmental agency or department and any other person or entity is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

16. Nothing contained in any order of any type or kind entered in these Chapter 11 Cases or any related proceeding subsequent to entry of this Order, nor in any chapter 11 plan confirmed in these Chapter 11 Cases, shall conflict with or derogate from the provisions of the Purchase Agreement or the terms of this Order. In any plan of reorganization or liquidation or otherwise, the Debtors shall not make any statement, take any position or take any act that supports an argument that the Purchaser assumed debt that is not expressly assumed under the Purchase Agreement.

17. To the extent, if any, anything contained in this Order conflicts with a provision in the Purchase Agreement, this Order shall govern and control.

18. The Purchaser is purchasing the Acquired Assets in good faith and is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code, and is therefore entitled to the protection of that provision. The consideration provided by the Purchaser for the Acquire Assets is fair and reasonable, and the Sale Transaction may not be avoided under section 363(n) of the Bankruptcy Code.

19. This Court retains jurisdiction, even after conversion of these Chapter 11 Cases to cases under chapter 7, to (a) interpret, implement and enforce the terms and provisions of this Order (including any injunctive relief provided in this Order) and the terms of the Purchase Agreement, all amendments thereto and any waivers and consents thereunder and of each of the agreements executed in connection therewith; (b) protect the Purchaser (and its successors, assigns, agents and representatives) and the Acquired Assets from and against any of the Claims and Encumbrances; (c) resolve any disputes arising under or related to the Purchase Agreement or the Sale Transaction; (d) adjudicate all issues concerning (alleged) pre-Closing Claims and Encumbrances and any other (alleged) interest(s) in and to the Debtors' assets, including the extent, validity, enforceability, priority and nature of all such (alleged) Claims and Encumbrances and any other (alleged) interest(s); and (e) adjudicate any and all issues and/or disputes relating to the Debtors' right, title or interest in the Debtors' assets, the Motion and/or the Purchase Agreement.

20. From and after the date hereof, the Debtors shall act in accordance with the terms of the Purchase Agreement and the Debtors, to the extent they have not already done so, shall execute the Purchase Agreement prior to Closing.

21. This Order and the Purchase Agreement shall be binding in all respects upon all creditors (whether known or unknown) of the Debtors, all successors and assigns of the Purchaser, the Debtors and their affiliates and subsidiaries, the Debtors' assets, and any subsequent trustees appointed in the Debtors' chapter 11 cases or in any chapter 7 cases or upon (a) a conversion of these Chapter 11 Cases to cases under chapter 7 or (b) dismissal of the Debtors' bankruptcy cases.

22. The failure specifically to include any particular provisions of the Purchase Agreement in this Order shall not diminish or impair the efficacy of such provisions, it being the intent of the Court that the Purchase Agreement and each and every provision, term and condition thereof be, and therefore is, authorized and approved in its entirety.

23. The provisions of this Order are non-severable and mutually dependent.

24. The automatic stay of section 362(a) of the Bankruptcy Code shall not apply to and otherwise shall not prevent the exercise or performance by any party of its rights or obligations under the Purchase Agreement, including, without limitation, with respect to any cash held in escrow pursuant to the provisions thereof.

25. This Sale Order shall take effect immediately and shall not be stayed pursuant to Bankruptcy Rules 6004(h), 6006(d), 7062, or otherwise.

Dated: _____, New York
_____, 2018

HONORABLE
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

**ASSET PURCHASE
AGREEMENT BY AND
AMONG
BLUE GOLD EQUITIES LLC, *ET AL.*, AND
SKNY LLC**

September 14, 2018

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Exhibit A – Form of Bill of Sale

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “Agreement”) is entered into as of September 16, 2018 by and (i) Blue Gold Equities LLC, a New York limited liability company (“Blue Gold”), (ii) Central Ave. Market LLC, a New York limited liability company (“Central Avenue”) (iii) Amsterdam Ave. Market LLC, a New York limited liability company (“Amsterdam Avenue”), (vi) Wilmot Road Market, LLC, a New York limited liability company (“Wilmot Road”), (v) Seasons Express Inwood LLC, a New York limited liability company (“Inwood”), (vi) Seasons Lakewood, LLC, a New Jersey limited liability company (“Lakewood”), (vii) Seasons Maryland LLC, a Maryland limited liability company (“Maryland”), (viii) Seasons Clifton LLC, a New Jersey limited liability company (“Clifton”), (ix) Seasons Cleveland LLC, an Ohio limited liability company (“Cleveland”), (x) Lawrence Supermarket LLC, a New York limited liability company (“Lawrence”), (xi) Upper West Side Supermarket LLC, a New York limited liability company (“Upper West Side”, and collectively with Blue Gold, Central Avenue, Amsterdam Avenue, Wilmot Road, Inwood, Lakewood, Maryland, Clifton, Cleveland and Lawrence the “Operating Entities”), and (xii) Seasons Corporate LLC, a New York limited liability company (“Corporate”, and collectively with the Operating Entities, the “Sellers”) and SKNY LLC, a New York limited liability company (the “Purchaser”). Sellers and Purchaser are referred to collectively herein as the “Parties”.

WITNESSETH

WHEREAS, Sellers filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) on September 16, 2018 in the United States Bankruptcy Court for the Eastern District of New York (the “Bankruptcy Court”); and

WHEREAS, Sellers operate the nine (9) supermarkets at the locations set forth in Section 3.5 of the Disclosure Schedule (as defined below) under the name “Seasons” (each a “Store” and, collectively, the “Stores”); and

WHEREAS, Sellers desire to sell, transfer and assign to Purchaser, and Purchaser desires to purchase, acquire and assume from Sellers, all of the Acquired Assets (as defined below) and Assumed Liabilities (as defined below), all as more specifically provided herein.

NOW, THEREFORE, in consideration of the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, the Parties hereby agree as follows:

ARTICLE I **DEFINITIONS**

Section 1.1 Definitions. For purposes of this Agreement:

“Acquired Assets” means all of Sellers’ right, title, and interest in and to all of the following assets of Sellers used or held for use exclusively in the operation of the Stores and (to the extent applicable) located at the Stores on the Closing Date:

- (a) the Inventory;
- (b) the Furnishings and Equipment owned by Sellers (other than Excluded Furnishings and Equipment);
- (c) to the maximum extent permitted by the Bankruptcy Code and in accordance with the terms herein, the Leases, together with (to the extent of the Sellers' interest therein) the buildings, fixtures and improvements located on or attached to such real property, and all rights arising therefrom, and all tenements, hereditaments, appurtenances and other real property rights appertaining thereto, subject to the rights of the applicable landlord (including rights to ownership or use of such property) under such Leases;
- (d) to the maximum extent permitted by the Bankruptcy Code and in accordance with the terms herein, all rights under those Contracts set forth on Schedule 1.1(a), other than those Contracts that expire or that are terminated prior to the Closing (such Contracts, together with the Leases (the "Transferred Contracts");
- (e) all of Sellers' security deposits, prepaid rent, and prepaid expenses previously paid by Sellers to fulfill Sellers' obligations under the Leases and, to the extent transferable, other deposits by Sellers relating to the Stores under any of the Transferred Contracts (collectively, the "Prepaid Expenses"). For each Lease, the Prepaid Expenses as of the date hereof are listed on Schedule 1.1(b), which Schedule shall be updated three (3) Business Days prior to the Closing Date;
- (f) all Cash Equivalents and accounts receivable (excluding amounts due from credit card companies limited to the amounts due to the Concessions);
- (g) all Causes of Action, including without limitation, Avoidance Actions against any Person who is not an Insider and/or Affiliate of an Insider, other than L&N Consulting Group LLC, SuperSol Ltd., Laurence Garber and Norman Lampert;
- (h) all Permits;
- (i) all Intellectual Property owned, used, or held for use by Sellers, including, for the avoidance of doubt, the names "Seasons" and all other marks set forth on Schedule 1.1(c), any name or trademark, service mark, trade name, logo, trade dress, Internet domain name or other indicia of origin that includes, relates to or derives from any such name, or any related abbreviations, acronyms or other formatives based on any such name, whether alone or in combination with any other words, phrases, or designs, and all registrations, applications and renewals thereof, all rights and goodwill associated therewith and any name or trademark, service mark, trade name, logo, Internet domain name, or other indicia of origin that is confusingly similar thereto or derived therefrom (collectively, the "Seller Marks");
- (j) all files, documents, instruments, papers, computer files, information and

records and all other books and records of Sellers in any media primarily relating to the Acquired Assets, including real property documents, surveys (boundary and topographical), construction drawings, soil reports, all records relating to Liabilities which constitute Assumed Liabilities, asbestos inspections, environmental reports and assessments, fixture plans, personnel records, ledgers, journals, studies, reports, budgets, forecasts, projections and competitive or capital spending analysis of the Stores, and information relating to Taxes (collectively, the “Files and Records”);

(k) Subject to applicable customer protections, all customer data and information derived from branded loyalty promotion or co-branded credit card programs (to the extent in existence) and other similar information related to customer purchases at the Stores; provided, however, if Purchaser determines in its sole discretion to purchase data and records subject to applicable Law regarding privacy related to Sellers’ business, the costs of a privacy ombudsman relating solely to such data and records purchased by Purchaser, to the extent that the Bankruptcy Court requires a privacy ombudsman to be appointed, shall be borne equally between Purchaser, on the one hand, and Sellers, on the other hand (and, for the avoidance of doubt, in all other circumstances, the costs of the privacy ombudsman shall not be borne by Purchaser);

(l) all goodwill of Sellers arising, directly or indirectly, primarily out of the operation or conduct of the Business;

(m) to the extent transferable, all warranties related to any of the foregoing; and

(n) without limiting the foregoing, all other business, assets, rights or properties used exclusively in or located at the Stores and not specifically set forth herein.

provided, however, notwithstanding anything to the contrary set forth in this definition, the Acquired Assets shall not include any Excluded Assets.

“Affiliate” means, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person, where “control” means the power, directly or indirectly, to direct or cause the direction of the management and policies of another Person, whether through the ownership of voting securities, by contract, or otherwise.

“Agreement” has the meaning set forth in the preamble.

“Allocation Principles” has the meaning set forth in Section 2.8.

“Alternate Transaction” has the meaning set forth in Section 2.4(b).

“Assignment and Assumption Agreement” has the meaning set forth in Section 2.6(b).

“Assumed Liabilities” means all liabilities of each of the Sellers incurred exclusively in the operation of the Stores as of the Closing, including:

- (a) all Liabilities under the Transferred Contracts (inclusive of Cure Costs);
 - (b) all Liabilities relating to Gift Cards;
 - (c) all amounts allocated to Purchaser under Section 2.8; and
 - (d) all Liabilities relating to or arising out of the ownership or operation of the Stores or any Acquired Asset from and after the Closing Date;
- provided, however, that notwithstanding anything to the contrary set forth in this definition, the Assumed Liabilities shall not include any Excluded Liabilities.

“Auction” has the meaning set forth in Section 5.4(a).

“Avoidance Actions” means all causes of action of Sellers under Sections 544 through 553 of the Bankruptcy Code with respect to payments or transfers of property made prior to the filing of the Bankruptcy Cases.

“Bankruptcy Cases” means the Chapter 11 cases of Sellers.

“Bankruptcy Code” has the meaning set forth in the recitals.

“Bankruptcy Court” has the meaning set forth in the recitals.

“Bidding Procedures” has the meaning set forth in Section 5.4(a).

“Bidding Procedures Order” means the *Order (A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors’ Assets, (B) Scheduling an Auction and a Sale Hearing Related Thereto, (C) Approving the Form and Manner of Notice of the Auction and the Sale Hearing, and (D) Approving Bidding Procedures* entered by the Bankruptcy Court on September [], 2018 [Docket No. []].

“Bill of Sale” has the meaning set forth in Section 2.6(b).

“Bonding Requirements” means standby letters of credit, guarantees, indemnity bonds and other financial commitment credit support instruments issued by third parties on behalf of Sellers or any of their respective Subsidiaries or Affiliates regarding any of the Acquired Assets.

“Breakup Fee” has the meaning set forth in Section 2.4(a).

“Business” means the operation of the Stores by Sellers.

“Business Day” means any day, other than a Saturday, Sunday, Jewish holiday and any day which is a legal holiday under the laws of the State of New York or is a day on which banking institutions located in the State of New York are authorized or required by Law or other governmental action to close.

“Cash Equivalents” means cash, checks, money orders, funds in time and demand deposits or similar accounts, marketable securities, short-term investments, and other cash equivalents and liquid investments.

“Causes of Action” means all claims, causes of action, choses in action, rights of recovery, repayment obligations, rights of setoff and rights of recoupment that Sellers have or may have against any Person.

“Closing” has the meaning set forth in Section 2.5.

“Closing Date” has the meaning set forth in Section 2.5.

“Competing Bid” has the meaning set forth in Section 5.4(a).

“Confidentiality Agreement” means the confidentiality agreement, dated as of September 16, 2018 by and between Sellers and Purchaser.

“Contract” means any agreement, contract, arrangement, commitment, promise, obligation, right, instrument, document or other similar understanding, which in each case is in writing and signed by parties intending to be bound thereby, other than the Leases.

“Contracting Parties” has the meaning set forth in Section 9.14.

“Cure Costs” means all amounts payable in order to cure any monetary defaults required to be cured under section 365(b)(1) of the Bankruptcy Code or otherwise to effectuate, pursuant to the Bankruptcy Code, the assumption by the applicable Seller and assignment to Purchaser of the Transferred Contracts.

“Damages” means any actual losses, claims, liabilities, debts, damages, fines, penalties, or costs (in each case, including reasonable out-of-pocket expenses (including reasonable fees and expenses of counsel)).

“Decree” means any judgment, decree, ruling, injunction, assessment, attachment, undertaking, award, charge, writ, executive order, administrative order, or any other order of any Governmental Authority.

“Deposit” has the meaning set forth in Section 2.3(c).

“DIP Financing Facility” means the debtor-in-possession financing facility approved by the Bankruptcy Court by and between Sellers and SKNY LLC, or another lender.

“Disclosure Schedule” has the meaning set forth in Article III.

“Employee Benefit Plan” means all “employee benefit plans,” as defined in section 3(3) of ERISA, including any multiemployer plans as defined in section 3(37) of ERISA, and all other material employee benefit plans or arrangements (other than governmental plans and statutorily

required benefit arrangements), including bonus or incentive plans, deferred compensation arrangements, severance pay, sick leave, vacation pay, disability, medical insurance and life insurance maintained or contributed to by Sellers and their Subsidiaries with respect to Sellers' employees.

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

"Excluded Assets" means all assets of Sellers as of the Closing that are not expressly included in the Acquired Assets, including:

(a) any asset of Sellers that is (i) not located in the Stores and used or held for use exclusively in the operation of the Stores or (ii) inseparable from any other business of Sellers or any of their Affiliates (other than the operation of the Stores), in each case, including (A) organizational documents, qualifications to conduct business as a foreign corporation, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books, stock certificates, and other documents relating to Sellers' organization, maintenance, existence, and operation; (B) books and records related to (1) Taxes paid or payable by Sellers or (2) any claims, obligations or liabilities not included in Assumed Liabilities; (C) any Tax refund, deposit, prepayment, credit, attribute, or other Tax asset of or with respect to either of the Sellers; and (D) any assets not customarily based or located at the Stores;

(b) all insurance policies and binders and all claims, refunds and credits from insurance policies or binders due or to become due with respect to such policies or binders;

(c) all of Sellers' rights under this Agreement or any Related Agreement;

(d) all of Sellers' rights under any Contracts primarily related to any Excluded Asset;

(e) [INTENTIONALLY DELETED];

(f) except as otherwise provided in this Agreement, any other payment, reimbursement, rebate or refund arising from the operation of the Stores prior to the Closing;

(g) all leased equipment located at or used in the Stores and all in-store processors, direct access storage devices, and electronic funds transfer devices, except any equipment leased pursuant to a Transferred Contract;

(h) the Furnishings and Equipment described on Schedule 1.1(d);

(i) all Contracts and Leases other than the Transferred Contracts; and

(j) those items set forth on Schedule 1.1(e).

“Excluded Liabilities” means the following Liabilities of Sellers:

- (a) any Liability not relating to or arising out of the operation of the Stores or the Acquired Assets, including any Liability exclusively relating to or exclusively arising out of the Excluded Assets;
- (b) any Liability of Sellers for Taxes (except as provided for in Section 2.8);
- (c) all accounts payable;
- (d) all Liabilities of Sellers under this Agreement or any Related Agreement and the transactions contemplated hereby or thereby;
- (e) all Liabilities of Sellers relating to or arising out of the Stores or Acquired Assets prior to the Closing Date not specifically assumed by Purchaser hereunder or by operation of law; and
- (f) all Liabilities of Sellers or any of their respective Subsidiaries or any ERISA Affiliate with respect to any Employee Benefit Plan or any other compensation or benefit plan, program, policy, agreement or arrangement of any such Seller, Subsidiary thereof, or any ERISA Affiliate, including, for the avoidance of doubt, any Liability of Sellers or any of their respective Subsidiaries or any ERISA Affiliate under Title IV of ERISA with respect to any single-employer plan (within the meaning of Section 4001(a)(15) of ERISA) or any multiemployer plan (within the meaning of Section 4001(a)(3) of ERISA).

“Expense Reimbursement” has the meaning set forth in Section 2.4(b).

“Final Order” means an order or judgment, the operation or effect of which is not stayed, and as to which order or judgment (or any revision, modification or amendment thereof), the time to appeal or seek review or rehearing has expired, and as to which no appeal or petition for review or motion for re-argument has been taken or been made and is pending for argument.

“Furnishings and Equipment” means all trade fixtures, store models, shelving, and refrigeration equipment owned by Sellers and located at the Stores, including those items listed on Schedule 1.1(f).

“GAAP” means United States generally accepted accounting principles consistently applied.

“Governmental Authority” means any federal, state, local, or foreign government or governmental or regulatory authority, agency, board, bureau, commission, court, department, or other governmental entity.

“Insider” as defined in section 101(31) of the Bankruptcy Code.

“Inventory” means all food, beverages and other merchandise and products (including general merchandise items described in Schedule 1.1(g) but excluding [alcohol]) and offered for sale to customers at the Stores.

“Knowledge” of Sellers (and other words of similar import) means the actual knowledge of persons holding a position of senior vice president or senior thereto at Sellers. “Knowledge” of Purchaser (and other words of similar import) means the actual knowledge of persons holding a position of senior vice president or senior thereto at Purchaser.

“Law” means any constitution applicable to, and any statute, treaty, code, rule, regulation, ordinance, or requirement of any kind of, any Governmental Authority.

“Leases” means all leases, subleases, licenses, concessions, options (including lease renewal options), contracts, extension letters, easements, reciprocal easements, assignments, termination agreements, subordination agreements, non-disturbance agreements, estoppel certificates and other agreements (written or oral), and any amendments or supplements to the foregoing, and recorded memoranda of any of the foregoing, pursuant to which any Seller holds any leasehold or subleasehold estates and other rights of use and occupancy of any Store.

“Liability” means any liability or obligation of whatever kind or nature (whether known or unknown, whether asserted or unasserted, whether determined, determinable or otherwise, whether directly incurred, absolute or contingent, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated and whether due or to become due) regardless of when arising.

“Lien” means any mortgage, pledge, lien, charge, security interest, option, right of first refusal, easement, security agreement or other encumbrance or restriction on the use or transfer of any property; provided, however, that “Lien” shall not be deemed to include any license of Intellectual Property.

“Litigation” means any action, cause of action, suit, claim, charge, investigation, audit, demand, hearing or proceeding, whether civil, criminal, administrative, or arbitral, whether at law or in equity (including actions or proceedings seeking injunctive relief) and whether before any Governmental Authority.

“Loan Documents” has the meaning set forth in Section 2.3(b).

“Material Adverse Effect” means any effect or change that has a material adverse effect on the condition of the Acquired Assets, taken as a whole, other than any effects or changes arising from or related to: (a) general business or economic conditions in any of the geographical areas in which the Stores operate; (b) any condition or occurrence affecting retail grocery generally; (c) national or international political or social conditions, including the engagement by any country in hostilities, whether commenced before or after the date hereof and whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack; (d) financial, banking, or securities markets (including any disruption thereof or any decline in the price of securities generally or any market or index); (e) the occurrence of any act of God or other

calamity or force majeure events (whether or not declared as such), including civil disturbance, embargo, natural disaster, fire, flood, hurricane, tornado, or other weather event; (f) changes in Law or accounting rules; (g) the taking of any action contemplated by this Agreement or any Related Agreement or taken with the consent of the other Party; (h) any effects or changes as a result of the announcement or pendency of this Agreement; (i) the sale of any other assets or stores to any third parties by any Seller or any of its Affiliates; (j) any effects or changes arising from or related to the breach of the Agreement by Purchaser; (k) the failure of Sellers to obtain any consent, permit, authorization, waiver or approval required in connection with the transactions contemplated hereby; (l) any strike or labor dispute, (m) any items set forth in the Disclosure Schedule; (n) any effect resulting from the filing of the Bankruptcy Cases; or (o) any matter of which Purchaser is aware on the date hereof.

“Non-Party Affiliates” has the meaning set forth in Section 9.14.

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

“Outside Date” has the meaning set forth in Section 8.1(b)(ii).

“Parties” has the meaning set forth in the preamble.

“Permit” means any franchise, approval, permit, license, order, registration, certificate, variance or similar right obtained from any Governmental Authority.

“Permitted Lien” means (a) Liens for Taxes not yet delinquent or which are being contested in good faith by appropriate proceedings; (b) mechanic’s, workmen’s, repairmen’s, warehousemen’s, carrier’s or other similar Liens, including all statutory liens, arising or incurred in the Ordinary Course of Business, that in each case have been bonded over or otherwise secured in a manner acceptable to Purchaser in Purchaser’s reasonable discretion; (c) with respect to leased or licensed real or personal property, the terms and conditions of the lease, license, sublease or other occupancy agreement applicable thereto; (d) with respect to real property, zoning, building codes and other land use laws regulating the use or occupancy of such real property or the activities conducted thereon which are imposed by any Governmental Authority having jurisdiction over such real property; (e) easements, covenants, conditions, restrictions and other similar matters affecting title to real property and other encroachments and title and survey defects that do not or would not reasonably be expected to have a Material Adverse Effect; (f) matters that would be disclosed on an accurate survey of the real property; (g) any liens shown in any title commitment, report or policy, or otherwise of record; (h) any other Liens that Purchaser has expressly stated are acceptable to Purchaser in a writing delivered to Sellers; and (i) other than any of the Liens set forth in the foregoing clauses (a) through (h) and other than any Lien that is required to be removed or cured by the applicable tenant under the applicable Lease or was created by such tenant, any Liens on the fee property underlying any Lease that do not or would not reasonably be expected to adversely affect the current occupancy or use of such real property in any material respect or impose any material adverse obligations on Purchaser following the applicable Closing.

“Person” means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or any

other entity, including any Governmental Authority or any group of any of the foregoing.

“Pre-Closing Period” has the meaning set forth in Section 6.4(c).

“Prepaid Expenses” has the meaning set forth in the definition of Acquired Assets.

“Prorated Charges” has the meaning set forth in Section 2.9(a).

“Proration Period” has the meaning set forth in Section 6.4(b).

“Purchase Price” has the meaning set forth in Section 2.3(a).

“Purchase Price Allocation” has the meaning set forth in Section 2.8.

“Purchaser Proration Amount” has the meaning set forth in Section 2.9(a).

“Purchaser” has the meaning set forth in the preamble.

“Related Agreements” means the Bill of Sale and the Assignment and Assumption Agreement.

“Representative” means, when used with respect to a Person, the Person’s controlled Affiliates (including Subsidiaries) and such Person’s and any of the foregoing Persons’ respective officers, directors, managers, members, shareholders, partners, employees, agents, representatives, advisors (including financial advisors, bankers, consultants, legal counsel, and accountants), and financing sources.

“Sale Motion” means the motion filed in the Bankruptcy Court on behalf of Sellers, for among other things, approval of the notice of auction and sale hearing, Bidding Procedures and bidding protections, including the Breakup Fee and Expense Reimbursement, the sale of the Acquired Assets to Purchaser and the assignment by Sellers, and assumption by Purchaser, of the Transferred Contracts.

“Sale Order” means an order of the Bankruptcy Court in substantially the form attached hereto as Exhibit C (a) approving (i) this Agreement and the execution, delivery, and performance by Sellers of this Agreement and the other instruments and agreements contemplated hereby; (ii) the sale of the Acquired Assets to Purchaser free and clear of all Liens, other than any Permitted Liens or any Assumed Liabilities; (iii) the assumption of the Assumed Liabilities by Purchaser on the terms set forth herein; and (iv) the assumption and assignment to Purchaser of the Transferred Contracts on the terms set forth herein; (b) determining that Purchaser is a good faith purchaser; and (c) providing that the Closing will occur in accordance with the terms and conditions hereof.

“Seasons” has the meaning set forth in the preamble.

“Seller Marks” has the meaning set forth in the definition of Acquired Assets.

“Seller Proration Amount” has the meaning set forth in Section 2.9(a).

“Sellers” has the meaning set forth in the preamble.

“Stores” has the meaning set forth in the recitals.

“Subsidiary” means, with respect to any Person, means, on any date, any Person (a) the accounts of which would be consolidated with and into those of the applicable Person in such Person’s consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date or (b) of which securities or other ownership interests representing more than fifty percent of the equity or more than fifty percent (50%) of the ordinary voting power or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests or more than fifty percent of the profits or losses of which are, as of such date, owned, controlled or held by the applicable Person or one or more subsidiaries of such Person.

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

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

“Transfer Tax” has the meaning set forth in Section 6.4(a).

“Transferred Contracts” has the meaning set forth in the definition of Acquired Assets and, without limiting the preceding, shall include the Leases.

Section 1.2 Interpretations. Unless otherwise indicated herein to the contrary:

(a) When a reference is made in this Agreement to an Article, Section, Exhibit, Schedule, clause or subclause, such reference shall be to an Article, Section, Exhibit, Schedule, clause or subclause of this Agreement.

(b) The words “include,” “includes” or “including” and other words or phrases of similar import, when used in this Agreement, shall be deemed to be followed by the words “without limitation.”

(c) The words “hereof,” “herein” and “hereunder” and words of similar import, when used in this Agreement, refer to this Agreement as a whole and not to any particular provision of this Agreement.

(d) The word “if” and other words of similar import shall be deemed, in each case, to

be followed by the phrase “and only if.”

(e) The use of “or” herein is not intended to be exclusive.

(f) The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of names and pronouns shall include the plural and vice versa.

(g) All terms defined in this Agreement have their defined meanings when used in any certificate or other document made or delivered pursuant hereto, unless otherwise defined therein.

(h) References herein to a Person are also to its successors and permitted assigns. Any reference herein to a Governmental Authority shall be deemed to include reference to any successor thereto.

(i) Any reference herein to “Dollars” or “\$” shall mean United States dollars.

(j) Purchaser acknowledges and agrees that the specification of any dollar amount in the representations, warranties, or covenants contained in this Agreement is not intended to imply that such amounts or higher or lower amounts are or are not material, and Purchaser shall not use the fact of the setting of such amounts in any dispute or controversy between the Parties as to whether any obligation, item, or matter is or is not material.

(k) References in this Agreement to materials or information “furnished to Purchaser” and other phrases of similar import include all materials or information made available to Purchaser or its Representatives or provided to Purchaser or its Representatives in response to requests for materials or information.

ARTICLE II

PURCHASE AND SALE

Section 2.1 Purchase and Sale of Assets. On the terms and subject to the conditions set forth in this Agreement, Purchaser will purchase from Sellers, and Sellers will sell, transfer, assign, convey, and deliver to Purchaser at the Closing all of the Acquired Assets.

Section 2.2 Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, Purchaser will assume and become responsible for the Assumed Liabilities at the Closing. Purchaser agrees to pay, perform, honor, and discharge, or cause to be paid, performed, honored and discharged, all Assumed Liabilities in a timely manner in accordance with the terms thereof.

Section 2.3 Consideration; Deposit.

(a) The consideration for the Acquired Assets at and including the Stores, including the Inventory, shall be an aggregate Dollar amount equal to the sum of (A) \$12,000,000 *plus* (B) the amount of the Prepaid Expenses, *plus* (C) the Seller Proration Amount, if any, *minus* (D) the Purchaser Proration Amount, if any (such calculation, the “Purchase Price”).

(b) Subject to the terms and conditions hereof, on the Closing Date, Purchaser shall pay to Sellers the amount of the Purchase Price *less* an amount equal to the entire outstanding principal amount and accrued interest, and all other outstanding payment obligations, under (i) (A) that certain Amended and Restated Promissory Note between, among others, certain Sellers, as borrowers, and SKNY, as lender, dated March 6, 2018, and (B) that certain Second Amended and Restated Promissory Note between among others, certain Sellers, as borrowers, and SKNY, as lender, dated September 5, 2018 (collectively, the “Prepetition Secured Loan Documents”) and (ii) any subsequently entered into loan and security agreement and promissory note evidencing DIP financing provided by SKNY to Sellers (together with the Prepetition Secured Loan Documents, the “Loan Documents”), which will be terminated and deemed paid in full as of the Closing.

(c) Upon the execution of this Agreement, Purchaser shall be deemed to have made a cash deposit in the amount of \$1,200,000 on account of the Prepetition Secured Loan Documents (the “Deposit”). The Deposit shall be liquidated damages, available to Sellers as their sole remedy, if this Agreement is properly terminated by Sellers pursuant to section 8.1(m) or upon the failure of Purchaser to consummate the Sale, provided that all conditions precedent to Closing have been satisfied and there shall not have been a material breach by Sellers of any representation, warranty or covenant contained in this Agreement or the Loan Documents.

Section 2.4 Breakup Fee and Expense Reimbursement.

(a) In the event that the Bankruptcy Court enters a Final Order approving an Alternate Transaction, then Purchaser shall be entitled to and Sellers shall pay to Purchaser at the consummation of an Alternate Transaction 3.0% of the Purchase Price allocated above to such Store (the “Breakup Fee”). The Breakup Fee provided for by this Section is intended to cover opportunity costs incurred by Purchaser in pursuing and negotiating this Agreement and the transactions contemplated hereby, and is considered by the Parties to be reasonable for such purposes. The Breakup Fee shall be paid from the first sale proceeds of an Alternate Transaction. The claims of Purchaser to the Breakup Fee shall constitute an administrative expense against Sellers’ bankruptcy estates under the applicable provisions of the Bankruptcy Code.

(b) In addition to any Breakup Fee that may be payable pursuant to this Section 2.4, upon (i) any event in which the Breakup Fee is payable pursuant to this Section or (ii) termination of this Agreement by Purchaser pursuant to Sections 8.1, other than Section 8.1(m), Sellers shall reimburse the actual and necessary expenses, including reasonable attorney’s fees, incurred in connection with negotiation and entry into this Agreement, due diligence with respect to the transactions contemplated by this Agreement, and obtaining

Bankruptcy Court approval of this Agreement, in an amount not to exceed \$150,000 (the “Expense Reimbursement”). The claims of Purchaser to the Expense Reimbursement shall constitute an administrative expense against Sellers’ bankruptcy estates under the applicable provisions of the Bankruptcy Code. “Alternate Transaction” means (a) a merger, consolidation, restructuring, reorganization, plan of reorganization in the Bankruptcy Cases, joint venture, refinancing, funding of a plan of reorganization in the Bankruptcy Cases, business combination, transaction or series of transactions involving the sale or other disposition (including, without limitation, by lease, foreclosure, transfer in lieu of foreclosure, or management agreement) of all or any part of Sellers, the Business, the Acquired Assets pursuant to one or more transactions to a Person other than Purchaser; (b) the sale of outstanding or newly issued (or some combination of sold and newly issued) capital stock of Sellers (including by way of a debt for equity swap, tender offer, foreclosure or plan of reorganization or liquidation) resulting in a transfer of voting control of Sellers to a Person or group of Persons who, before the transaction or series of transactions, did not hold voting control of Sellers; (c) the dismissal of the Bankruptcy Cases, converting the Bankruptcy Cases to Chapter 7 cases or if Sellers file a motion or other pleading seeking the dismissal or conversion of the Bankruptcy Cases under Section 1112 of the Bankruptcy Code or otherwise prior to the Closing, or (d) the appointment of a Chapter 7 trustee or an examiner with expanded powers in the Bankruptcy Cases prior to the Closing.

(c) The provisions of this Section 2.4 shall survive the closing or earlier termination of the transactions contemplated hereby.

Section 2.5 Closing. The closing of the transactions contemplated by this Agreement (the “Closing”) shall take place at the offices of Zeichner Ellman & Krause LLP, located at 1211 Avenue of the Americas, 40th Floor, New York, New York 10036 (or such other location as shall be mutually agreed upon by Sellers and Purchaser) commencing at 10:00 a.m. local time on a date (the “Closing Date”) that is the third (3rd) Business Day following the date upon which all of the conditions to the obligations of Sellers and Purchaser to consummate the transactions contemplated hereby set forth in Article VII (other than conditions that by their nature are to be satisfied at the Closing itself, but subject to the satisfaction or waiver of those conditions) have been satisfied or waived, or on such other date as shall be mutually agreed upon by Sellers and Purchaser prior thereto. For purposes of this Agreement and the transactions contemplated hereby, the Closing will be deemed to occur and be effective, and title to and risk of loss associated with the Acquired Assets, shall be deemed to occur at 12:01 am, New York City time, on the Closing Date. The Closing Date shall occur no later than December 31, 2018, unless extended by Purchaser in its sole discretion.

Section 2.6 Closing Payments and Deliveries.

(a) On the Closing Date, Purchaser shall pay the Purchase Price to Sellers (less the amounts set forth in Section 2.3), which shall be paid by wire transfer of immediately available funds into an account designated by Sellers.

(b) Subject to Section 2.3(B), at the Closing, Sellers shall be required to use the

proceeds of the Purchase Price to satisfy in full the Sellers' obligations under the DIP Financing Facility.

(c) At the Closing, Sellers will deliver to Purchaser (i) a duly executed Bill of Sale substantially in the form of Exhibit A (the "Bill of Sale"); (ii) a duly executed Assignment and Assumption Agreement substantially in the form of Exhibit B (the "Assignment and Assumption Agreement"); and (iii) a duly executed certificate from an officer of each Seller to the effect that each of the conditions specified in Section 7.1(a) and Section 7.1(b) is satisfied.

(d) At the Closing, Purchaser will deliver to Sellers (i) the Bill of Sale duly executed by Purchaser; (ii) the Assignment and Assumption Agreement duly executed by Purchaser; and (iii) a duly executed certificate from an officer of Purchaser to the effect that each of the conditions specified in Section 7.2(a) and Section 7.2(b) are satisfied; and (iv) the executed originals of each of the Leases to the extent in Sellers' possession.

Section 2.7 Intentionally Deleted.

Section 2.8 Allocation. Purchaser and Sellers agree to allocate the Purchase Price (as finally determined hereunder) and all other relevant items among the Acquired Assets in accordance with section 1060 of the IRC and the Treasury Regulations thereunder (the "Allocation Principles"). No later than sixty (60) days after the Closing Date, Sellers shall deliver to Purchaser an allocation of the Purchase Price and the Assumed Liabilities (and all other relevant items) as of the Closing Date among the Acquired Assets determined in a manner consistent with the Allocation Principles (the "Purchase Price Allocation") for Purchaser's review and comment. Any reasonable comments provided by Purchaser to the Sellers under this Section 2.8 shall be considered by the Sellers in good faith. The Purchase Price Allocation (inclusive of any reasonable comments accepted by the Sellers) shall be conclusive and binding on the parties, and Purchaser and Sellers agree (and agree to cause their respective subsidiaries and Affiliate) to prepare, execute, and file IRS Form 8594 and all Tax Returns on a basis consistent with the Purchase Price Allocation. None of the Parties will take any position inconsistent with the Purchase Price Allocation on any Tax Return or in any audit or Tax proceeding, unless otherwise required by a final determination by a Governmental Authority. For the avoidance of doubt, the Parties shall cooperate in determining the portion of the Purchase Price allocable to the Acquired Assets that are subject to a Transfer Tax prior to the due date of the Tax Return required to be filed in connection with such Transfer Taxes; provided, that if the Parties do not agree with respect to such determination, such matter shall be resolved in accordance with the process outlined in this Section 2.8, provided further, that such Tax Return shall be amended if the Purchase Price Allocation is subsequently adjusted pursuant to the procedures described above. Notwithstanding any other provision of this Agreement, the terms and provisions of this Section 2.8 shall survive the Closing without limitation.

Section 2.9 Proration.

(a) On the Closing Date all monthly payments for the month in which the Closing occurs (including base rent, common area maintenance fees, and utility charges)

under the Leases transferred at the Closing (the “Prorated Charges”) shall be apportioned and prorated between Sellers and Purchaser as of the Closing Date with (i) Purchaser bearing the expense of Purchaser’s proportionate share of such Prorated Charges that shall be equal to the product obtained by multiplying (A) a fraction, the numerator being the amount of the Prorated Charges under the applicable Lease and the denominator being the total number of days in the lease month in which the Closing occurs, times (B) the number of days in such lease month following the day that immediately precedes the Closing Date and paying such amount to Sellers to the extent payment for such Prorated Charges has been made by Sellers prior to the Closing, and (ii) Sellers bearing the remaining portion of such Prorated Charges (and paying the amounts thereof to Purchaser to the extent payment for such Prorated Charges has not been previously made by Sellers). The net amount of all Prorated Charges owed to Purchaser and Sellers under this shall be referred to as the “Purchaser Proration Amount” if owed to Purchaser or the “Seller Proration Amount” if owed to Sellers. Except as set forth in this Section 2.9, no amounts paid or payable under or in respect of any Acquired Asset or group of Acquired Assets shall be apportioned and prorated between Sellers and Purchaser. Notwithstanding the foregoing there shall be no apportionment nor reduction in Purchase Price for percentage rents, if any.

(b) Real estate taxes and assessments and water and sewer charges shall be adjusted in the manner set forth in Section 6.4.

(c) As to all non-monthly real estate related payments, the same shall be apportioned between Sellers and Purchaser as of 12:01 a.m. on the Closing Date. If any amounts are payable in installments, all installments due through the Closing together with the accrued but unpaid portion of any other installments not yet due as of the Closing shall be prorated based on the periods of time covered by such installments occurring before and after the Closing Date.

(d) If any of the items subject to apportionment under the foregoing provisions cannot be apportioned at the Closing because of the unavailability of the information necessary to compute such apportionment, or if any errors or omissions in computing apportionments at the Closing are discovered subsequent to the Closing, then such item shall be reapportioned and such errors and omissions corrected as soon as practicable after the Closing Date and the proper party reimbursed, provided, however, that such apportionment must occur within sixty (60) days from and after the Closing Date.

Section 2.10 Removal of Excluded Assets. As promptly as practicable following the Closing Date (and in any event within fifteen (15) Business Days), Purchaser shall allow Sellers to remove at Sellers’ sole cost and expense all Excluded Assets that are located at the Stores and, if requested by Sellers, Purchaser shall arrange transportation of such Excluded Assets to a location designated by Sellers at Sellers’ sole cost and expense.

ARTICLE III **SELLERS’ REPRESENTATIONS AND WARRANTIES**

Sellers represent and warrant to Purchaser that, to the best of their knowledge and belief,

the statements contained in this Article III are true and correct as of the date of this Agreement, except as (i) set forth in the disclosure schedule accompanying this Agreement (the “Disclosure Schedule”) or (ii) disclosed in any forms, statements, or other documents filed with the Bankruptcy Court.

Section 3.1 Organization of Sellers; Good Standing. Each Seller is a corporation or limited liability company, as applicable, duly organized, validly existing and in good standing under the laws of the state of its formation. Each Seller has, subject to the necessary authority from the Bankruptcy Court, all requisite corporate or other organizational power and authority to own, lease and operate its assets and to carry on its business as now being conducted, except where the failure to be so organized, existing, or in good standing or have such power and authority would not reasonably be expected to have a Material Adverse Effect.

Section 3.2 Authorization of Transaction. Subject to the Bankruptcy Court’s entry of the Sale Order and any other necessary order to close the sale of the Acquired Assets, each Seller has full power and authority (including full corporate or other organizational power and authority) to execute and deliver this Agreement and all other agreements contemplated hereby to which it is a party and to perform its obligations hereunder and thereunder. The execution, delivery, and performance of this Agreement and all other agreements contemplated hereby to which each Seller is a party have been duly authorized by such Seller. Upon due execution hereof by each Seller, this Agreement (assuming due authorization and delivery by Purchaser) shall constitute, subject to the Bankruptcy Court’s entry of the Sale Order and any other necessary order to close the sale of the Acquired Assets, the valid and legally binding obligation of such Seller, enforceable against such Seller in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium, or other similar laws relating to creditors’ rights and general principles of equity.

Section 3.3 Noncontravention; Government Filings. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby (including the assignments and assumptions referred to in Article II), will (a) conflict with or result in a breach of the organizational documents of any Seller, (b) subject to the entry of the Sale Order and any other necessary order to close the sale of the Acquired Assets, materially violate any law or Decree to which any Seller is subject in respect of the Acquired Assets, or (c) subject to the entry of the Sale Order and any other necessary order to close the sale of the Acquired Assets, result in a material breach of, constitute a material default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under any material Contract to which any Seller is a party or to which any of the Acquired Assets is subject, except, in the case of either clause (b) or (c), for such conflict, violations, breaches, defaults, accelerations, rights or failures to give notice as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Other than as required or pursuant to the Bankruptcy Code, the Sale Order and any other necessary order to close the sale of the Acquired Assets, no Seller is required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any Governmental Authority in order for the Parties to consummate the transactions contemplated by this Agreement or any Related Agreement, except where the failure to give notice, file or obtain such authorization, consent or approval would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or

prevent or materially impair or delay any Seller's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis.

Section 3.4 Title to Assets. At the Closing, subject to any Permitted Liens, Sellers will have good and valid title to, or the right to use, the tangible Acquired Assets except to the extent the failure to have such title or right to use would not be expected to have a Material Adverse Effect. Pursuant to the Sale Order, Sellers will convey such title to or rights to use, all of the tangible Acquired Assets, free and clear of all Liens (other than Permitted Liens).

Section 3.5 Real Property. Section 3.5 of the Disclosure Schedule sets forth the location of each Store, each of which is leased to a Seller by a third party, and a list of all Store lease agreements and related amendments. Sellers have made available to Purchaser a true and complete copy of each Lease to the extent in their possession. With respect to each Lease, (a) assuming due authorization and delivery by the other party thereto, such Lease constitutes the valid and legally binding obligation of the Seller party thereto and, to Sellers' Knowledge, the counterparty thereto, enforceable against such Seller and, to Sellers' Knowledge, the counterparty thereto in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium or other similar laws relating to creditors' rights and general principles of equity, and (b) neither such Seller nor, to Sellers' Knowledge, the counterparty thereto is in material breach or material default under such Lease, except (i) for those defaults that will be cured in accordance with the Sale Order or waived in accordance with section 365 of the Bankruptcy Code (or that need not be cured under the Bankruptcy Code to permit the assumption and assignment of the Leases) or (ii) to the extent such breach or default would not reasonably be expected to have a Material Adverse Effect. To Sellers' Knowledge, there are no subleases at the Stores to which any Seller is sublessor.

Section 3.6 Litigation; Decrees. Except as set forth in Section 3.6 of the Disclosure Schedule and other than the Bankruptcy Cases, there is no Litigation pending or, to the Knowledge of Sellers, threatened, that (a) would reasonably be expected to have a Material Adverse Effect or (b) challenges the validity or enforceability of this Agreement or seeks to enjoin or prohibit consummation of the transactions contemplated hereby. Other than the Bankruptcy Cases, no Seller is subject to any outstanding Decree that would (a) reasonably be expected to have a Material Adverse Effect or (b) prevent or materially delay such Seller's ability to consummate the transactions contemplated hereby or perform in any material respect its obligations hereunder.

Section 3.7. Intentionally Deleted.

Section 3.8 Brokers' Fees. Except as provided in their engagement agreement with Getzler Henrich & Associates LLC, no Seller has entered into any Contract to pay any fees or commissions to any broker, finder, or agent with respect to the transactions contemplated hereby for which Purchaser could become liable or obligated to pay.

Section 3.9 [INTENTIONALLY DELETED]

Section 3.10 Compliance with Laws; Permits.

(a) Sellers are in compliance with all Laws applicable to the Business, except where the failure to be in compliance would not be reasonably expected to result in a Material Adverse Effect. Sellers have not received any written notice of or been charged with the violation of any Laws, except where such violation would not be reasonably expected to result in a Material Adverse Effect.

(b) Sellers have all Permits which are required for the operation of the Business as presently conducted, except where the absence of which would not be reasonably expected to result in a Material Adverse Effect. Sellers are not in default or violation (and no event has occurred which, with notice or the lapse of time or both, would constitute a default or violation) of any term, condition or provision of any Permit to which they are parties, except where such default or violation would not be reasonably expected to result in a Material Adverse Effect.

Section 3.11 Disclaimer of Other Representations and Warranties. Except for the representations and warranties contained in this Article III (as modified by the Disclosure Schedule) or expressly contained in any Related Agreement, neither Sellers nor any other Person shall be deemed to have made any representation or warranty, express or implied, including as to the accuracy or completeness of any information regarding Sellers, any Acquired Assets, any Assumed Liabilities or any other matter. Notwithstanding anything herein to the contrary, but without limitation of any representation or warranty expressly contained in this Article III or any Related Agreement, SELLERS MAKE NO OTHER (AND HEREBY DISCLAIM EACH OTHER) REPRESENTATION, WARRANTY, OR GUARANTY WITH RESPECT TO THE VALUE, CONDITION, OR USE OF THE ACQUIRED ASSETS, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PURCHASER ACKNOWLEDGES THAT, SHOULD THE CLOSING OCCUR, PURCHASER WILL ACQUIRE THE ACQUIRED ASSETS AND ASSUME THE ASSUMED LIABILITIES IN AN "AS IS" CONDITION AND ON A "WHERE IS" BASIS, WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED (INCLUDING ANY WITH RESPECT TO ENVIRONMENTAL, HEALTH, OR SAFETY MATTERS). Sellers disclaim all Liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to Purchaser or its Affiliates or representatives (including any opinion, information, projection, or advice that may have been or may be provided to Purchaser by any director, officer, employee, agent, consultant, or representative of Sellers or any of their Affiliates).

ARTICLE IV **PURCHASER'S REPRESENTATIONS AND WARRANTIES**

Purchaser represents and warrants to each Seller that the statements contained in this Article IV are true and correct as of the date of this Agreement.

Section 4.1 Organization of Purchaser; Good Standing. Purchaser is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of New York and has all requisite corporate or similar power and authority to own, lease,

and operate its assets and to carry on its business as now being conducted.

Section 4.2 Authorization of Transaction. Purchaser has full power and authority (including full corporate or other entity power and authority) to execute and deliver this Agreement and all other agreements contemplated hereby to which it is a party and to perform its obligations hereunder and thereunder. The execution, delivery, and performance of this Agreement and all other agreements contemplated hereby to which Purchaser is a party have been duly authorized by Purchaser. This Agreement (assuming due authorization and delivery by Sellers) constitutes the valid and legally binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium, or other similar laws relating to creditors' rights and general principles of equity.

Section 4.3 Noncontravention. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby (including the assignments and assumptions referred to in Article II) will (a) conflict with or result in a breach of the certificate of incorporation or bylaws, or other organizational documents, of Purchaser, (b) violate any law or Decree to which Purchaser is, or its assets or properties are, subject or (c) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify or cancel, or require any notice under any Contract to which Purchaser is a party or by which it is bound, except, in the case of either clause (b) or (c), for such conflicts, breaches, defaults, accelerations, rights or failures to give notice as would not, individually or in the aggregate, have a material adverse effect on Purchaser. Purchaser is not required to give any notice to, make any filing with, or obtain any authorization, consent or approval of any Governmental Authority in order for the Parties to consummate the transactions contemplated by this Agreement or any Related Agreement, except where the failure to give notice, file or obtain such authorization, consent or approval would not, individually or in the aggregate, prevent or materially impair or delay Purchaser's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis.

Section 4.4 Litigation; Decrees. There is no Litigation pending or, to Purchaser's Knowledge, threatened in writing that challenges the validity or enforceability of this Agreement or seeks to enjoin or prohibit consummation of the transactions contemplated hereby. Neither Purchaser nor any of its Subsidiaries is subject to any outstanding Decree that would prevent or materially impair or delay Purchaser's ability to consummate the transactions contemplated hereby or perform its obligations hereunder on a timely basis.

Section 4.5 Brokers' Fees. Purchaser has not entered into any Contract to pay any fees or commissions to any broker, finder or agent with respect to the transactions contemplated by this Agreement for which Sellers or any of their Affiliates could become liable or obligated to pay.

Section 4.6 Sufficient Funds. Purchaser has or on the Closing Date shall have the resources and capabilities (financial or otherwise), including immediately available funds, to consummate the Closing on the Closing Date and otherwise perform its obligations hereunder,

Section 4.7 Adequate Assurances. Purchaser is and shall be capable of satisfying

the conditions contained in sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Transferred Contracts and the related Assumed Liabilities.

ARTICLE V

PRE-CLOSING COVENANTS

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

Section 5.1 Efforts; Cooperation.

(a) Upon the terms and subject to the conditions set forth in this Agreement, each of the Parties shall use (except as otherwise set forth in Section 5.3) its commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other Parties in doing, all things necessary, proper, or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated hereby (including by giving, or causing to be given, any notices to, making any filings with, and using commercially reasonable efforts to obtain any consents of Governmental Authorities, as applicable, as are necessary and appropriate to consummate the transactions contemplated hereby). Without limiting the generality of the foregoing, (i) each Seller shall use its commercially reasonable efforts to cause the conditions set forth in Section 7.1 that are within its control or influence to be satisfied or fulfilled, (ii) Purchaser shall use its commercially reasonable efforts to cause the conditions set forth in Section 7.2 that are within its control or influence to be satisfied or fulfilled, and (iii) in the event the Bankruptcy Court requires a consumer privacy ombudsman to be appointed in connection with the transactions contemplated by this Agreement, Purchaser shall provide any cooperation reasonably required by such ombudsman and shall use commercially reasonable efforts to take all reasonable actions recommended by such ombudsman in any report provided to the Bankruptcy Court.

(b) Without limiting the generality of Section 5.1(a), neither Party shall take any action, or permit any of its Subsidiaries to take any action, to materially diminish the ability of any Party to consummate, or materially delay any Party's ability to consummate, the transactions contemplated hereby, including any action that is intended or would reasonably be expected to result in any of the conditions to any Party's obligations to consummate the transactions contemplated hereby set forth in Article VII to not be satisfied.

Section 5.2 Conduct of the Business Pending the Closing.

(a) Prior to the Closing, except (i) as set forth on Section 5.2(a) of the Disclosure Schedule, (ii) as required by applicable Law or by order of the Bankruptcy Court, (iii) as otherwise expressly contemplated by this Agreement or (iv) with the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed), each Seller shall (A) conduct the Business only in the Ordinary Course of Business and (B) use its commercially reasonable efforts to (1) preserve the

present business operations, organization and goodwill of the Business, and (2) preserve the present relationships with material vendors and suppliers of the Business.

(b) Except (i) as set forth on Section 5.2(b) of the Disclosure Schedule, (ii) as required by applicable Law or by order of the Bankruptcy Court, (iii) as otherwise contemplated by this Agreement or (iv) with the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed), no Seller shall, solely as it relates to the Business:

(i) other than in the Ordinary Course of Business or as required by applicable Law or pursuant to any Contract or policy in effect as of the date of this Agreement, (A) materially increase the annual level of compensation of any Covered Employee or (B) materially increase the coverage or benefits available under any (or create any new) Employee Benefit Plan;

(ii) subject any of the Acquired Assets to any Lien, except for Permitted Liens and any Lien securing any debtor in possession loan facility or granted in an order authorizing use of cash collateral;

(iii) other than in the Ordinary Course of Business, sell, transfer, assign, license, sub-license, or otherwise dispose of any Acquired Asset;

(iv) other than in the Ordinary Course of Business, remove any tangible Acquired Asset from the Stores; or

(v) agree to do anything prohibited by this Section 5.2.

Section 5.3 Intentionally Deleted.

Section 5.4 Bankruptcy Court Matters.

(a) Bidding Procedures Order. This Agreement is subject to approval by the Bankruptcy Court in accordance with the Bidding Procedures Order and the consideration by Sellers of higher or better competing bids in respect of all or any part of the Acquired Assets in accordance with the bidding procedures attached hereto as Exhibit D (the "Bidding Procedures") (whether in combination with other assets of the Sellers or their Affiliates or otherwise) (each a "Competing Bid") and an auction to be conducted in accordance with the Bidding Procedures (the "Auction"). From the date hereof (and any prior time) and until the transactions contemplated hereby are consummated, Sellers are permitted to and to cause their Representatives and Affiliates to, initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Purchaser and its Affiliates and Representatives) in connection with a Competing Bid, including, to (and to cause their Representatives and Affiliates to) respond to any inquiries or offers to purchase all or any part of the Acquired Assets, (including supplying information relating to the Business and the assets of Sellers to prospective purchasers).

(b) Sale Order. Provided Purchaser is selected as the winning bidder in respect of the Acquired Assets at the Auction, or if no Competing Bid is submitted with respect to the Acquired Assets, Sellers shall seek entry of the Sale Order and any other necessary orders of the Bankruptcy Court to close the sale of the Acquired Assets in accordance with the terms and conditions of the Bidding Procedures Order. Purchaser and Sellers understand and agree that the consummation of the transactions contemplated by this Agreement is subject to approval by the Bankruptcy Court. Purchaser agrees that it will promptly take such actions as are reasonably requested by Sellers to assist in obtaining entry of the Sale Order including a finding of adequate assurance of future performance by Purchaser, including by furnishing affidavits or other documents or information for providing the adequate assurance information as required by the Bidding Procedures Order, and filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Purchaser under this Agreement and demonstrating that Purchaser is a “good faith” purchaser under section 363(m) of the Bankruptcy Code. Purchaser shall not, without the prior written consent of Sellers, file, join in, or otherwise support in any manner whatsoever any motion or other pleading relating to the sale of the Acquired Assets hereunder. In the event the entry of the Sale Order is appealed, Sellers shall use commercially reasonable efforts to defend such appeal.

(i) Sellers shall file such motions or pleadings as may be appropriate or necessary to assume and assign the Transferred Contracts and to determine the amount of the Cure Costs; provided, that nothing herein shall preclude Sellers from filing such motions, including upon commencement of the Bankruptcy Cases, to reject any Contracts that are not Transferred Contracts.

(c) Back-up Bidder. Purchaser agrees that, in the event that Purchaser is not the winning bidder at the Auction, if and only if Purchaser is notified that its bid at the Auction or the terms of this Agreement constitute the next highest or best bid for the applicable Acquired Assets (for the avoidance of doubt, on a Store by Store basis), Purchaser shall be the Back-Up Bidder (as defined in the Bidding Procedures) and shall comply with the obligations of a Back-Up Bidder set forth in the Bidding Procedures.

Section 5.5 Notice of Developments. Each Seller and Purchaser will give prompt written notice to the other Parties of (a) the existence of any fact or circumstance, or the occurrence of any event, of which it has Knowledge that would reasonably be likely to cause a condition to a Party’s obligations to consummate the transactions contemplated hereby set forth in Article VII not to be satisfied as of a reasonably foreseeable Closing Date, or (b) the receipt of any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; provided, however, that the delivery of any such notice pursuant to this Section 5.5 shall not be deemed to amend or supplement this Agreement and the failure to deliver any such notice shall not constitute a waiver of any right or condition to the consummation of the transactions contemplated hereby by any Party.

Section 5.6 Access; No Contact. Upon the reasonable request of Purchaser, and to the extent not otherwise prohibited by applicable Law, Sellers will permit Purchaser and its

Representatives to have, upon reasonable advance written notice, reasonable access to all premises, properties, books and records and Transferred Contracts included in the Acquired Assets during normal business hours, and in a manner so as not to interfere unreasonably with the normal business operations of any Seller; provided, however, that, for avoidance of doubt, the foregoing shall not require any Person to waive, or take any action with the effect of waiving, its attorney-client privilege with respect thereto. Prior to the Closing, Purchaser shall not, and shall cause its Representatives not to, contact any employees, vendors, suppliers, landlords, or licensors of any Seller in connection with or pertaining to any subject matter of this Agreement except with the prior written consent of each Seller; provided, however, that so long as the applicable landlord for the applicable Store(s) is not a potential bidder at the Auction, Purchaser may contact the landlords for the Stores beginning one (1) day following the bid deadline for the Auction.

Section 5.7 Bulk Transfer Laws. Purchaser acknowledges that Sellers will not comply with the provisions of any bulk transfer laws or similar laws of any jurisdiction in connection with the transactions contemplated by this Agreement, including the United Nations Convention on the Sale of Goods, and hereby waives all claims related to the non-compliance therewith.

Section 5.8 Replacement Bonding Requirements. On or prior to the Closing Date, Purchaser shall provide replacement guarantees, standby letters of credit or other assurances of payment with respect to all Bonding Requirements, in form and substance satisfactory to Sellers and any banks or other counterparty thereto, and, both prior to and following the Closing Date, Purchaser and Sellers shall cooperate to obtain a release in form and substance reasonably satisfactory to Purchaser and Sellers with respect to all Bonding Requirements. To the extent Purchaser is unable to make such arrangements with respect to any Bonding Requirements prior to the Closing, with Sellers' consent in lieu thereof, Purchaser shall deliver to Sellers an irrevocable, unconditional standby letter of credit in favor of Sellers in an amount equal to the amount of such Bonding Requirements, issued by a bank rated "A" or better by Standard and Poor's, in form and substance reasonably satisfactory to Sellers. To Sellers' Knowledge there are no Bonding Requirements with respect to the Transferred Contracts.

ARTICLE VI

OTHER COVENANTS

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

Section 6.1 Further Assurances. In case at any time after the Closing any further action is necessary to carry out the purposes of this Agreement, each of the Parties will, at the requesting Party's sole cost and expense, take such further action (including the execution and delivery of such other reasonable instruments of sale, transfer, conveyance, assignment, assumption and confirmation, providing materials and information) as the other Party may reasonably request which actions shall be reasonably necessary to transfer, convey or assign to Purchaser all of the Acquired Assets or to confirm Purchaser's assumption of the Assumed Liabilities.

Section 6.2 Access; Enforcement; Record Retention. From and after the Closing, upon request by any Seller, Purchaser will permit Sellers and their Representatives to have reasonable access during normal business hours, and in a manner so as not to interfere unreasonably with the normal business operations of Purchaser, to all premises, properties, personnel, books and records, and Contracts of or related to the Acquired Assets or the Assumed Liabilities for the purposes of (a) preparing Tax Returns, (b) monitoring or enforcing rights or obligations of any Seller under this Agreement or any of the Related Agreements, or (c) complying with the requirements of any Governmental Authority; provided, however, that, for avoidance of doubt, the foregoing shall not require Purchaser to take any such action if (i) such action may result in a waiver or breach of any attorney/client privilege, (ii) such action could reasonably be expected to result in violation of applicable law, or (iii) providing such access or information would be reasonably expected to be disruptive to its normal business operations. Purchaser agrees to maintain the files or records which are contemplated by the first sentence of this Section 6.2 in a manner consistent in all material respects with its document retention and destruction policies, as in effect from time to time, for six (6) years following the Closing.

Section 6.3 Employees, Labor Matters, etc.

(a) Purchaser shall have no obligation to employ any of Sellers' employees, provided however, Sellers' employees may make applications for employment with Purchaser available to Sellers' employees, excluding Sellers' executives or insiders.

(b) Except to the extent specifically provided in this Agreement and subject to the Bankruptcy Code and other applicable Laws, Sellers shall be responsible and liable for all amounts owed to any of its employees or former employees, including, without limitation, accrued wages, salaries, sick pay, vacation, compensation, bonuses or other benefits or payments on account of termination. Purchaser shall not assume or accept any obligation or liability under any Employee Benefit Plan or compensation arrangement of Sellers.

(c) Sellers shall be solely responsible for any and all liabilities, penalties, fines or other sanctions that may be assessed or otherwise due under the WARN Act and similar laws and regulations, if applicable, on account of the dismissal or termination of any of the employees of Sellers by them on or prior to the Closing Date.

(d) Purchaser shall have the right, subject to applicable Laws, to review and inspect Sellers' employee files and records, and, upon request, interview employees of Sellers, in order for Purchaser to evaluate each and every employee for possible hiring and employment, in Purchaser's absolute and sole discretion. Purchaser intends to offer employment to Sellers' employees, in the Purchaser's discretion. To the extent that Purchaser offers employment to any employee of any Seller and such employee accepts such employment, then, at the Closing or within ten (10) days thereafter, such Seller shall pay to such employee or to Purchaser all amounts owing by such Seller prior to the Closing with respect to such employees for accrued vacation time, sick pay time and other unpaid wages, salaries and other compensation.

(e) Purchaser acknowledges that any and all decisions regarding which of the employees may be offered employment by Purchaser are solely those of Purchaser.

(f) The obligations of Sellers and of Purchaser hereunder relating to Sellers' employees are for the sole benefit of either Sellers or Purchaser, and no inference should be drawn that any employee is a beneficiary of any of the terms, provisions and obligations hereunder; and the ability to enforce the obligations of Sellers and/or Purchaser hereunder with respect to such employees shall be the right of either Sellers or Purchaser, as applicable, but not any employee.

Section 6.4 Certain Tax Matters.

(a) Transfer Taxes. Sellers shall pay any and all stamp, documentary, filing, recording, registration, use, transfer, added-value or other non-income Tax, fee or governmental charge imposed under applicable Law in connection with the transactions contemplated hereby (a "Transfer Tax"), other than sales taxes, if any. The party that is required by applicable Law to file any Tax Returns in connection with Transfer Taxes described in the immediately preceding sentence shall, subject to Section 2.8, prepare and timely file such Tax Returns. Purchaser shall be entitled to receive such Tax Returns and other documentation reasonably in advance of filing by the applicable Seller, but not less than ten (10) Business Days prior to the due date of such Tax Returns, and such Tax Returns and other documentation shall be subject to Purchaser's approval, which shall not be unreasonably withheld, delayed, or conditioned. Purchaser and Sellers shall cooperate in making, in a timely manner, all Tax Returns, filings, reports, forms and other documentation as are necessary or appropriate to comply with all applicable Laws in connection with the payment of Transfer Taxes and shall cooperate in good faith to minimize, to the fullest extent possible under such Laws, the amount of any such Transfer Taxes.

(b) Tax Adjustments. Taxes (other than Transfer Taxes) imposed upon or assessed directly against the Acquired Assets (including real estate Taxes (other than those subsumed in Section 2.8), personal property Taxes and similar Taxes) for the Tax period in which the Closing occurs (the "Proration Period") will be apportioned and prorated between Sellers and Purchaser as of the Closing Date with Purchaser bearing the expense of Purchaser's proportionate share of such Taxes which shall be equal to the product obtained by multiplying (i) a fraction, the numerator being the amount of the Taxes and the denominator being the total number of days in the Proration Period, times (ii) the number of days in the Proration Period following the Closing Date, and Sellers shall bear the remaining portion of such Taxes. If the precise amount of any such Tax cannot be ascertained on the Closing Date, apportionment and proration shall be computed on the basis of the amount payable for each respective item during the Tax period immediately preceding the Proration Period and any proration shall be adjusted thereafter on the basis of the actual charges for such items in the Proration Period. When the actual amounts become known, such proration shall be recalculated by Purchaser and Sellers, and Purchaser or Sellers, as the case may be, promptly (but not later than ten (10) days after notice of payment due and delivery of reasonable supporting documentation with respect to such amounts) shall make any additional payment or refund so that the correct prorated

amount is paid by each of Purchaser and Sellers.

(c) Tax Refunds. In furtherance of Sellers' right to retain those assets described in section (a)(C) of the definition of Excluded Assets, Sellers shall be entitled to receive from Purchaser all refunds (or credits for overpayments) of Taxes, including any interest paid thereon, by a Governmental Authority, attributable to any tax period ending on or prior to the Closing Date (a "Pre-Closing Period") or the portion of any Proration Period ending on and including the Closing Date, net of any costs, fees, expenses or Taxes incurred in obtaining such refunds (or credits). Purchaser and Sellers shall execute all documents, take reasonable additional actions and otherwise reasonably cooperate as may be necessary to obtain the Tax refunds (or credits) contemplated by this Section 6.4(c). Purchaser shall pay any such Tax refund (or the amount of any such credit) to the Sellers within five (5) calendar days after Purchaser receives such Tax refund from a Governmental Authority or files a Tax Return claiming such credit.

Section 6.5 Insurance Matters. Purchaser acknowledges that, upon Closing, all insurance coverage provided in relation to Sellers, the Stores, or the Acquired Assets that is maintained by any Seller or its Affiliates (whether such policies are maintained with third party insurers or with such Seller or its Affiliates) shall cease to provide any coverage to Purchaser, the Stores, or the Acquired Assets and no further coverage shall be available to Purchaser, the Stores, or the Acquired Assets under any such policies.

Section 6.6 Acknowledgements.

(a) Purchaser acknowledges that it has received from Sellers certain projections, forecasts, and prospective or third party information relating to Sellers, the Stores, the Acquired Assets, the Assumed Liabilities, and other related topics. Purchaser acknowledges that (i) there are uncertainties inherent in attempting to make such projections and forecasts and in such information; (ii) Purchaser is familiar with such uncertainties and is taking full responsibility for making its own evaluation of the adequacy and accuracy of all projections, forecasts, and information so furnished; and (iii) neither Purchaser nor any other Person shall have any claim against any Seller or any of its respective directors, officers, Affiliates, agents, or other Representatives with respect thereto. Accordingly, without limiting the generality of Section 3.11 or Section 9.1, Purchaser acknowledges that neither Sellers nor any other Person makes any representations or warranties with respect to such projections, forecasts, or information.

(b) Purchaser acknowledges that, except for the representations and warranties expressly set forth in Article III (which representations and warranties shall terminate and be of no further force or effect as of the Closing), and without limiting the generality of Section 3.11, neither Sellers nor any other Person makes any representation or warranty, express or implied, including as to the accuracy or completeness of any information regarding any Seller, the Stores, any Acquired Assets, any Assumed Liabilities or any other matter, and neither Sellers nor any other Person will be subject to any Liability to Purchaser or any other Person resulting from such matters or the distribution to Purchaser, or the use of, any such information. Purchaser acknowledges that, should the Closing occur,

Purchaser will acquire the Acquired Assets and assume the Assumed Liabilities in an “as is” condition and on a “where is” basis, without any representation or warranty of any kind, express or implied (including any with respect to environmental, health or safety matters). Further, without limiting any representation, warranty, or covenant of any Seller expressly set forth herein, Purchaser acknowledges that it has waived and hereby waives as a condition to the Closing any further due diligence reviews, inspections, or examinations with respect to any Seller, the Stores, the Acquired Assets, the Assumed Liabilities, or any other matter, including with respect to engineering, environmental, title, survey, financial, operational, regulatory, and legal compliance matters.

Section 6.7 Press Releases and Public Announcements. No Party shall issue any press release or make any public announcement relating to the existence or subject matter of this Agreement without the prior written approval of the other Parties, unless a press release or public announcement is required by applicable Law or a Decree of the Bankruptcy Court. If any such announcement or other disclosure is required by applicable Law or a Decree of the Bankruptcy Court, the disclosing Party shall give the nondisclosing Parties prior notice of, and an opportunity to comment on, the proposed disclosure. The Parties acknowledge that Sellers shall file this Agreement with the Bankruptcy Court in connection with obtaining the Sale Order.

Section 6.8 Licenses. With respect to any license to which any Seller is a party to related to any part of the space covered by the Leases, such Seller shall use commercially reasonable efforts to either terminate such license and/or reject such license under the Bankruptcy Code, excluding for the avoidance of doubt, any unexpired leases of real property under which a Seller is the lessor that is governed by section 365(h)(1)(A) of the Bankruptcy Code.

ARTICLE VII

CONDITIONS TO OBLIGATION TO CLOSE

Section 7.1 Conditions to Purchaser’s Obligations. Purchaser’s obligation to consummate the transactions contemplated hereby in connection with the Closing is subject to satisfaction or waiver of the following conditions:

(a) the representations and warranties set forth in Article III shall have been true and correct on the date hereof and as of the Closing (except to the extent expressly made as of an earlier specific date, in which case as of such date as if made at and as of such date), except where the failure of such representations and warranties to be so true and correct (without giving effect to any limitation as to “material” or “Material Adverse Effect” set forth therein) has not resulted in a Material Adverse Effect;

(b) Sellers shall have performed and complied with its covenants and agreements hereunder through the Closing in all material respects;

(c) in accordance with the Bidding Procedures Order, the Bankruptcy Court shall have entered (i) the Sale Order and (ii) any other order necessary to close the sale of the Acquired Assets, and no order staying, reversing, modifying, or amending such orders shall be in effect on the Closing Date;

(d) no material Decree shall be in effect that prohibits consummation of the transactions contemplated by this Agreement; and

(e) each delivery contemplated by Section 2.6(b) to be delivered to Purchaser shall have been delivered.

Section 7.2 Conditions to Sellers' Obligations. Sellers' obligations to consummate the transactions contemplated hereby in connection with the Closing are subject to satisfaction or waiver of the following conditions:

(a) the representations and warranties set forth in Article IV shall have been true and correct in all material respects (except that any representation or warranty that is qualified by materiality shall have been true and correct in all respects) on the date hereof and as of the Closing (except to the extent expressly made as of an earlier date, in which case as of such date as if made at and as of such date);

(b) Purchaser shall have performed and complied with its covenants and agreements hereunder through the Closing in all material respects;

(c) the Bankruptcy Court shall have entered (i) the Sale Order and (ii) any other order necessary to close the sale of the Acquired Assets, and no order staying, reversing, modifying, or amending such orders shall be in effect on the Closing Date;

(d) no material Decree shall be in effect that prohibits consummation of any of the transactions contemplated by this Agreement; and

(e) each payment contemplated by Section 2.6(a) to be made to Sellers shall have been made, and each delivery contemplated by Section 2.6(c) to be delivered to Sellers shall have been delivered.

Section 7.3 No Frustration of Closing Conditions. Neither Purchaser nor Sellers may rely on the failure of any condition to their respective obligations to consummate the transactions contemplated hereby set forth in Section 7.1 or Section 7.2, as the case may be, to be satisfied if such failure was caused by such Party's or its Affiliates' failure to use its reasonable best efforts (or commercially reasonable efforts, with respect to those matters contemplated by Section 5.3, respectively, as applicable) to satisfy the conditions to the consummation of the transactions contemplated hereby or by any other breach of a representation, warranty, or covenant hereunder.

ARTICLE VIII

TERMINATION

Section 8.1 Termination of Agreement. The Parties may terminate this Agreement at any time prior to the Closing as provided below:

- (a) by the mutual written consent of the Parties;
- (b) by any Party by giving written notice to the other Parties if any court of competent jurisdiction or other competent Governmental Authority shall have enacted or issued a Law or Decree or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement and such Law or Decree or other action shall have become final and non-appealable;
- (c) by Purchaser by giving notice to each Seller if the Closing has not occurred prior to December 15, 2018 (the "Outside Date");
- (d) by Purchaser by giving notice to each Seller if the Bankruptcy Court has not entered the Bidding Procedures Order on or before October 9, 2018 or the Bidding Procedures Order has been entered but is stayed, withdrawn, or rescinded as of such date;
- (e) by Purchaser giving notice to each Seller if the Bankruptcy Court has not entered the Sale Order on or before December 15, 2018;
- (f) by Purchaser by giving notice to each Seller if the Bankruptcy Court does not approve the Breakup Fee and Expense Reimbursement;
- (g) by Purchaser by giving notice to each Seller if an order has been entered dismissing the Bankruptcy Cases, converting the Bankruptcy Cases to Chapter 7 cases or if Sellers file a motion or other pleading seeking the dismissal or conversion of the Bankruptcy Cases under Section 1112 of the Bankruptcy Code or otherwise;
- (h) by Purchaser by giving notice to each Seller at any time after the appointment of a Chapter 7 trustee or an examiner with expanded powers in the Bankruptcy Cases;
- (i) by Purchaser by giving notice to each Seller in the event the Bankruptcy Court grants relief from the automatic stay to any party to permit foreclosure or the exercise of other remedies on any material Acquired Assets of the Sellers;
- (j) by Purchaser by giving notice to each Seller in the event that the Sellers modify, alter or amend this Agreement without the consent of Purchaser, or in the event that the Sellers consent to any such modification, alteration or amendment;
- (k) by Purchaser by giving notice to each Seller if an event of default under the DIP Financing Facility has occurred and has not been cured or waived in accordance with the terms of the DIP Financing Facility documents;
- (l) by Purchaser by giving written notice to each Seller if there has been a material breach by any Seller of any representation, warranty, covenant, or agreement contained in this Agreement that has prevented the satisfaction of the conditions to the

obligations of Purchaser at Closing set forth in Section 7.1(a) and Section 7.1(b), and such breach has not been waived by Purchaser, or, if such breach is curable, cured by such Seller prior to the earlier to occur of (A) ten (10) days after receipt of Purchaser's notice of intent to terminate or (B) the Outside Date;

(m) by any Seller by giving written notice to Purchaser and the other Sellers if there has been a material breach by Purchaser of any representation, warranty, covenant, or agreement contained in this Agreement that has prevented the satisfaction of the conditions to the obligations of Sellers at Closing set forth in Section 7.2(a) and Section 7.2(b), and such breach has not been waived by such Seller, or, if such breach is curable, cured by Purchaser prior to the earlier to occur of (A) ten (10) days after receipt of such Seller's notice of intent to terminate or (B) the Outside Date;

(n) by Sellers or Purchaser with respect to any of the Stores (and the Acquired Assets related thereto), if (x) Sellers enter into a definitive agreement with respect to a Competing Bid with respect to the applicable Store(s), (y) the Bankruptcy Court enters an order approving a Competing Bid with respect to such Store(s) and (z) the Person making such Competing Bid consummates such Competing Bid, subject to Purchaser's right to payment of the Breakup Fee and Expense Reimbursement, if applicable, in accordance with the provisions of Section 2.4; or

(o) by Sellers or Purchaser, if the Bankruptcy Court enters an order that precludes the consummation of the transactions contemplated hereby on the terms and conditions set forth in this Agreement.

Section 8.2 Effect of Termination. If any Party terminates this Agreement pursuant to Section 8.1, all rights and obligations of the Parties hereunder shall terminate upon such termination and shall become null and void (except that Article I, Section 3.11, Section 6.6, Section 8.3, Article IX, and this Section 8.2 shall survive any such termination) and no Party shall have any Liability (except as set forth in Section 2.4 and Section 8.3) to the other Party hereunder; provided, however, that nothing in this Section 8.2 shall relieve any Party from Liability for any breach occurring prior to any such termination (but solely to the extent such breach was willful, grossly negligent, or fraudulent) set forth in this Agreement; provided, further, that other than in the case of fraud or willful misconduct, that (a) the maximum Liability of Sellers under this Agreement shall not exceed the Breakup Fee and Expense Reimbursement and (b) the maximum liability of Purchaser under this Agreement shall not exceed the amount of the Deposit.

Section 8.3 Lease Indemnity. If this Agreement is terminated pursuant to Section 8.1(m), Purchaser shall indemnify Sellers for all Liabilities and Damages arising out of any Lease assumed by Sellers pursuant to section 365(k) of the Bankruptcy Code.

ARTICLE IX **MISCELLANEOUS**

Section 9.1 Survival. Except for any covenant that by its terms is to be performed (in whole or in part) by any Party following the Closing, none of the representations,

warranties, or covenants of any Party set forth in this Agreement or in any certificate delivered pursuant to Section 2.6(b) or Section 2.6(c) shall survive, and each of the same shall terminate and be of no further force or effect as of, the Closing.

Section 9.2 Expenses. Except as otherwise expressly set forth herein, each Party will bear its own costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby, including all fees of law firms, commercial banks, investment banks, accountants, public relations firms, experts and consultants. For the avoidance of doubt, Purchaser shall pay all recording fees arising from the transfer of the Acquired Assets.

Section 9.3 Entire Agreement. This Agreement, the Related Agreements and the Confidentiality Agreement constitute the entire agreement between the Parties and supersede any prior understandings, agreements or representations (whether written or oral) by or between the Parties to the extent they relate in any way to the subject matter hereof.

Section 9.4 Incorporation of Exhibits and Disclosure Schedule. The Exhibits to this Agreement and the Disclosure Schedule are incorporated herein by reference and made a part hereof.

Section 9.5 Amendments and Waivers. No amendment of any provision of this Agreement shall be valid unless the same shall be in writing and signed by each Party except as expressly provided herein. No waiver of any breach of this Agreement shall be construed as an implied amendment or agreement to amend or modify any provision of this Agreement. No waiver by any Party of any default, misrepresentation or breach of warranty or covenant hereunder, whether intentional or not, shall be valid unless the same shall be in writing and signed by the Party making such waiver, nor shall such waiver be deemed to extend to any prior or subsequent default, misrepresentation or breach of warranty or covenant hereunder or affect in any way any rights arising by virtue of any prior or subsequent default, misrepresentation or breach of warranty or covenant. No conditions, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement the terms or conditions of this Agreement shall be binding unless this Agreement is amended or modified in writing pursuant to the first sentence of this Section 9.5 except as expressly provided herein. Except where a specific period for action or inaction is provided herein, no delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

Section 9.6 Succession and Assignment. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. No Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written consent of the other Parties. Notwithstanding the preceding, prior to Closing and only upon the advance written notice to Sellers, Purchaser may assign its rights under this Agreement with respect to the Stores and Leases to one or more Affiliates of Purchaser; provided, that any such assignment pursuant to this Section 9.6 shall not relieve Purchaser of any Liability or any of its obligations hereunder.

Section 9.7 Notices. All notices, requests, demands, claims and other communications hereunder shall be in writing except as expressly provided herein. Any notice, request, demand, claim, or other communication hereunder shall be deemed duly given (a) when

delivered personally to the recipient; (b) one (1) Business Day after being sent to the recipient by reputable overnight courier service (charges prepaid); (c) upon receipt of confirmation of receipt if sent by facsimile transmission; (d) on the day such communication was sent by e-mail; or (e) three (3) Business Days after being mailed to the recipient by certified or registered mail, return receipt requested and postage prepaid, and addressed to the intended recipient as set forth below:

If to any Sellers: Seasons Corporate LLC
c/o Getzler Henrich & Associates LLC
295 Madison Avenue
20th Floor
New York, NY 10017
Telephone: 212-697-2400 ext. 20
Facsimile: 212-697-4812

With a copy (which shall not constitute notice to Sellers)

to: Zeichner Ellman & Krause LLP
1211 Avenue of the Americas, 40th Floor
New York, New York 10036
Attention: Nathan Schwed
Facsimile: (212) 753-0396
Email: nschwed@zeklaw.com

If to Purchaser: SKNY LLC
200 Public Square, Suite 2500
Cleveland, OH 44114
Attention: Mitchell Wolf
Telephone: (216) 738-3040
Facisimile: (216) 738-3050

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

Klestadt Winters Jureller Southard & Stevens, LLP
200 West 41st Street, 17th Floor
New York, New York 10036
Attention: Tracy L. Klestadt
Facsimile: (212) 972-2245
Email: tklestadt@klestadt.com

Any Party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other Parties notice in the manner set forth in this Section 9.7.

Section 9.8 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York (without giving effect to the principles of conflict of Laws thereof), except to the extent that the Laws of such state are

superseded by the Bankruptcy Code.

Section 9.9 Submission to Jurisdiction; Service of Process. Each of the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the Bankruptcy Court in any Litigation arising out of or relating to this Agreement or any Related Agreement or the transactions contemplated hereby or thereby and agrees that all claims in respect of such Litigation may be heard and determined in any such court. Each Party also agrees not to (a) attempt to deny or defeat such exclusive jurisdiction by motion or other request for leave from the Bankruptcy Court or (b) bring any action or proceeding arising out of or relating to this Agreement or any Related Agreement or the transactions contemplated hereby or thereby in any other court. Each of the Parties irrevocably and unconditionally waives any objection to the laying of venue in, and any defense of inconvenient forum to the maintenance of, any Litigation so brought and waives any bond, surety or other security that might be required of any other Party with respect thereto. Any Party may make service on any other Party by sending or delivering a copy of the process to the Party to be served at the address and in the manner provided for the giving of notices in Section 9.7; provided, however, that nothing in this Section 9.9 shall affect the right of any Party to serve legal process in any other manner permitted by law or in equity. Each Party agrees that a final judgment in any Litigation so brought shall be conclusive and may be enforced by Litigation or in any other manner provided by law or in equity. The Parties intend that all foreign jurisdictions will enforce any Decree of the Bankruptcy Court in any Litigation arising out of or relating to this Agreement or any Related Agreement or the transactions contemplated hereby or thereby.

Section 9.10 Waiver of Jury Trial. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY RELATED AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

Section 9.11 Specific Performance. Purchaser acknowledges and agrees that Sellers and their respective estates would be damaged irreparably in the event Purchaser does not perform its obligations under this Agreement in accordance with its specific terms or otherwise breaches this Agreement, so that, in addition to any other remedy that Sellers may have under law or equity, each Seller shall be entitled, without the requirement of posting a bond or other security, to injunctive relief to prevent any breaches of the provisions of this Agreement and to enforce specifically this Agreement and the terms and provisions hereof.

Section 9.12 Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be illegal, invalid or unenforceable, such provisions shall be limited or eliminated only to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

Section 9.13 No Third Party Beneficiaries. This Agreement shall not confer any rights or remedies upon any Person other than Purchaser, each Seller, and their respective successors and permitted assigns.

Section 9.14 Non-Recourse. All claims or causes of action (whether in contract or in tort, in law or in equity, or granted by statute) that may be based upon, in respect of, arise under, out or by reason of, be connected with, or related in any manner to this Agreement or the Related Agreements may be made only against (and are expressly limited to) the Persons that are expressly identified as parties hereto or thereto (the “Contracting Parties”). In no event shall any Contracting Party have any shared or vicarious Liability for the actions or omissions of any other Person. No Person who is not a Contracting Party, including any director, officer, employee, incorporator, member, partner, manager, stockholder, Affiliate, agent, attorney or representative of, and any financial advisor or lender to, any of the foregoing (“Non-Party Affiliates”), shall have any Liability (whether in contract or in tort, in law or in equity, or granted by statute or based upon any theory that seeks to impose Liability of an entity party against its owners or affiliates) for any claims, causes of action, obligations or Liabilities arising under, out of, in connection with or related in any manner to this Agreement or the Related Agreements or based on, in respect of, or by reason of this Agreement or the Related Agreements or their negotiation, execution, performance or breach; and, to the maximum extent permitted by Law, each Contracting Party waives and releases all such Liabilities, claims and obligations against any such Non-Party Affiliates. Without limiting the foregoing, to the maximum extent permitted by Law, (a) each Contracting Party hereby waives and releases any and all rights, claims, demands, or causes of action that may otherwise be available at law or in equity, or granted by statute, to avoid or disregard the entity form of a Contracting Party or otherwise impose Liability of a Contracting Party on any Non-Party Affiliate, whether granted by statute or based on theories of equity, agency, control, instrumentality, alter ego, domination, sham, single business enterprise, piercing the veil, unfairness, undercapitalization, or otherwise; and (b) each Contracting Party disclaims any reliance upon any Non-Party Affiliates with respect to the performance of this Agreement or the Related Agreements or any representation or warranty made in, in connection with, or as an inducement to this Agreement or the Related Agreements. The Parties acknowledge and agree that the Non-Party Affiliates are intended third-party beneficiaries of this Section 9.14.

Section 9.15 Mutual Drafting. The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

Section 9.16 Disclosure Schedule. All capitalized terms not defined in the Disclosure Schedule shall have the meanings ascribed to them in this Agreement. The representations and warranties of Sellers in this Agreement are made and given, and the covenants are agreed to, subject to the disclosures and exceptions set forth in the Disclosure Schedule. The disclosure of any matter in any section of the Disclosure Schedule shall be deemed to be a disclosure for all purposes of this Agreement and all other sections of the Disclosure Schedule to which such matter relates. The listing of any matter shall expressly not be deemed to constitute an admission by Sellers, or to otherwise imply, that any such matter is material, is required to be disclosed under this Agreement or falls within relevant minimum thresholds or materiality standards set forth in this Agreement. No disclosure in the Disclosure Schedule relating to any possible breach or violation of any Contract or law shall be construed as an admission or indication

that any such breach or violation exists or has actually occurred. In no event shall the listing of any matter in the Disclosure Schedule be deemed or interpreted to expand the scope of Sellers' representations, warranties, or covenants set forth in this Agreement. All attachments to the Disclosure Schedule are incorporated by reference into the applicable section of the Disclosure Schedule in which they are directly or indirectly referenced. The information contained in the Disclosure Schedule is in all respects provided subject to the Confidentiality Agreement.

Section 9.17 Headings; Table of Contents. The section headings and the table of contents contained in this Agreement and the Disclosure Schedule are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.


Section 9.18 Counterparts; Facsimile and Electronic Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. This Agreement or any counterpart may be executed and delivered by facsimile copies or delivered by electronic communications by portable document format (.pdf), each of which shall be deemed an original.

Section 9.19 Limitations Under Applicable Law. Notwithstanding anything to the contrary contained in this Agreement, Sellers' obligations hereunder shall be subject to limitations under applicable Law.

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


BLUE GOLD EQUITIES LLC

By:  _____

Title: 

CENTRAL AVE. MARKET LLC

By:  _____

Title: 


AMSTERDAM AVE. MARKET LLC

By:  _____

Title: 

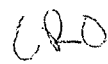
WILMOT ROAD MARKET, LLC

By:  _____

Title: 

SEASONS EXPRESS INWOOD LLC

By:  _____

Title: 

SEASONS EXPRESS LAKEWOOD LLC

By:  _____

Title: CRO

SEASONS MARYLAND LLC

By:  _____

Title: CRO

SEASONS CLIFTON LLC

By:  _____

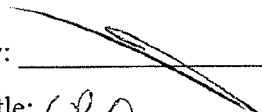
Title: CRO

SEASONS CLEVELAND LLC

By:  _____

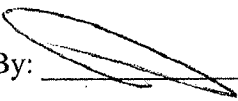
Title: CRO

LAWRENCE SUPERMARKET LLC

By:  _____

Title: CRO

UPPER WEST SIDE MARKET LLC

By:  _____

Title: CFO

SEASONS CORPORATE LLC

By:  _____

Title: CFO

SKNY LLC

By: _____

Title:

UPPER WEST SIDE MARKET LLC

By: _____

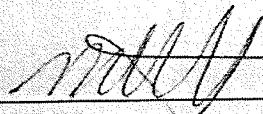
Title:

SEASONS CORPORATE LLC

By: _____

Title:

SKNY LLC

By:  _____

Title: Authorized Signatory

Schedule 1.1(a) – Transferred Contracts

TO BE SUPPLIED LATER

Schedule 1.1(b) – Prepaid Expenses

TO BE SUPPLIED LATER

Schedule 1.1(c) – Seller Marks

TO BE SUPPLIED LATER

Schedule 1.1(d) - Furnishings and Equipment (Leased)

TO BE SUPPLIED LATER

Schedule 1.1(e) - Other Leased Equipment

TO BE SUPPLIED LATER

Schedule 1.1 (f) – Furnishings and Equipment (Owned)

TO BE SUPPLIED LATER

Schedule 1.1(g) – Inventory

TO BE SUPPLIED LATER

Disclosure Schedule

TO BE SUPPLIED LATER

Exhibits

TO BE SUPPLIED LATER

A – Bill of Sale

TO BE SUPPLIED LATER

B – Assignment & Assumption Agreement

TO BE SUPPLIED LATER

C – Sale Order Form

TO BE SUPPLIED LATER

D – Bidding Procedures

TO BE SUPPLIED LATER

EXHIBIT D

Hearing Date:

Hearing Time:

Objection Deadline:

Proposed Sale Hearing:

ZEICHNER ELLMAN & KRAUSE LLP

1211 Avenue of the Americas, 40th Floor

New York, New York 10036

Telephone: (212) 223-0400

Facsimile: (212) 753-0396

Nathan Schwed

Proposed Attorneys for the Debtors and Debtors-in-Possession

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK**

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In re	:
	:
	:
	:
	:
BLUE GOLD EQUITIES LLC, <i>et al.</i> ,	:
	:
	:
	:
	:
Debtors. ¹	:
-----X	

Chapter 11

Case No. 18-() ()

Joint Administration Pending

NOTICE OF HEARING ON MOTION FOR ORDERS PURSUANT TO SECTIONS 105(a), 363, 365 AND 503 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 2002, 6004 AND 6006: (A)(i) ESTABLISHING BIDDING PROCEDURES AND BID PROTECTIONS IN CONNECTION WITH THE SALE OF CERTAIN OF THE ASSETS OF THE DEBTORS, (ii) APPROVING THE FORM AND MANNER OF NOTICES, (iii) APPROVING THE ASSET PURCHASE AGREEMENT SUBJECT TO HIGHER AND BETTER OFFERS AND (iv) SETTING A SALE HEARING DATE; AND (B)(i) APPROVING THE SALE OF CERTAIN ASSETS OF THE DEBTORS FREE AND CLEAR OF LIENS, CLAIMS AND ENCUMBRANCES, (ii) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN UNEXPIRED LEASES AND EXECUTORY CONTRACTS; AND (iii) GRANTING RELATED RELIEF

¹ The Debtors in these Chapter 11 cases, together with the last four digits of each Debtor's federal tax identification number, are as follows: Blue Gold Equities LLC (7766), Central Avenue Market LLC (7961), Amsterdam Avenue Market LLC (7988), Wilnot Road Market LLC (8020), Seasons Express Inwood LLC (1703), Seasons Lakewood LLC (0295), Seasons Maryland LLC (1895), Seasons Clifton LLC (3331), Seasons Cleveland LLC (7367), Lawrence Supermarket LLC (8258), Upper West Side Market LLC (8895) and Seasons Corporate LLC (2266). The mailing address for the Debtors, solely for purposes of notices and communications, is: 5 Doughty Boulevard, Inwood, NY 11096.

TO: (I) COUNSEL FOR THE CREDITORS' COMMITTEE; (II) THE DEBTORS' SECURED CREDITORS OR THEIR COUNSEL; (III) THE OFFICE OF THE UNITED STATES TRUSTEE FOR THE EASTERN DISTRICT OF NEW YORK (THE "U.S. TRUSTEE"); (IV) ALL PARTIES IN INTEREST WHO HAVE REQUESTED NOTICE PURSUANT TO RULE 2002 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE (THE "BANKRUPTCY RULES")"; (V) ALL COUNTERPARTIES TO THE TRANSFERRED CONTRACTS; (VI) THE FOLLOWING FEDERAL, STATE AND LOCAL TAXING AND REGULATORY AUTHORITIES: (A) THE UNITED STATES ATTORNEY FOR THE EASTERN DISTRICT OF NEW YORK, (B) THE ATTORNEY GENERAL OF THE STATE OF NEW YORK, (C) THE INTERNAL REVENUE SERVICE, (D) NEW YORK STATE DEPARTMENT OF TAXATION AND FINANCE, (E) NEW YORK CITY DEPARTMENT OF FINANCE AND (F) THE ENVIRONMENTAL PROTECTION AGENCY; (VII) COUNSEL TO THE PURCHASER; (VIII) ALL PARTIES WHO ARE KNOWN TO ASSERT A LIEN ON ANY PORTION OF THE ACQUIRED ASSETS; (IX) ALL PARTIES IDENTIFIED BY THE DEBTORS AS POTENTIALLY HAVING AN INTEREST IN ACQUIRING SOME OR ALL OF THE ACQUIRED ASSETS; AND (X) ALL CREDITORS OF THE DEBTORS WHO ARE LISTED ON EACH OF THE DEBTOR'S SCHEDULES OF ASSETS AND LIABILITIES [DOCKET NOS. __] OR WHO HAVE FILED PROOFS OF CLAIM AGAINST THE DEBTORS' ESTATES.

PLEASE TAKE NOTICE that, on September 16, 2018, the above-captioned Debtors and debtors-in-possession (the "Debtors") filed their Motion For Orders Pursuant to Sections 105(a), 363 and 365 of the Bankruptcy Code and Rules 2002, 6004 and 6006: (A)(i) Establishing Bidding Procedures and Bid Protections in Connection with the Sale of Certain of the Assets of the Debtors, (ii) Approving the Form and Manner of Notices; (iii) Approving the Asset Purchase Agreement ("APA") Subject to Higher and Better Offers, and (iv) Setting a Sale Hearing Date; and (B) (i) Approving the Sale of Certain Assets of the Debtors Free and Clear of Liens, Claims and Encumbrances; (ii) Authorizing the Assumption and Assignment of Certain Unexpired Leases and Executory Contracts and (iii) Granting Related Relief (the "Motion").

PLEASE TAKE FURTHER NOTICE that a hearing seeking approval of the proposed bidding procedures, bidder protections, form and manner of notices, and requesting that the Court schedule a sale hearing date will be held on _____, 2018 at ____ a.m/p.m. (ET) (the "Sale Procedures Hearing") before the Honorable _____, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Eastern District of New York (the "Bankruptcy Court"), 271-C Cadman Plaza E #1595, Brooklyn, NY 11201 in Courtroom ____.

PLEASE TAKE FURTHER NOTICE that copies of the Motion are available upon request to the undersigned proposed attorneys for the Debtor, Zeichner Ellman & Krause LLP, 1211 Avenue of the Americas, 40th Fl., New York, New York 10036 Attn: Angela Fitzpatrick, at afitzpatrick@zeklaw.com.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the proposed bidding procedures, bidder protections, form and manner of notices, and the scheduling of a sale hearing date must be (a) in writing, (b) conform to the Federal Rules of Bankruptcy Procedure, the Local

Bankruptcy Rules for the Eastern District of New York, be filed with the Bankruptcy Court electronically in accordance with the Administrative Order of this Court, by registered users of the Bankruptcy Court's case filing system and, by all other parties in interest, on a 3.5 inch disk, preferably in Portable Document Format (PDF), Word Perfect, Microsoft Word, DOS text (ASCII) or a scanned image of the filing, with a hard-copy delivered directly to Chambers, and be served in accordance with the Administrative Orders of this Court, upon (i) Proposed Counsel to the Debtor, Zeichner Ellman & Krause LLP, 1211 Avenue of the Americas, 40th Fl., New York, New York 10036, (ii) the Office of the United States Trustee and (iii) Attorneys for the purchaser under the APA, Klestadt Winters Jureller Southard & Stevens LLP, 200 West 41 Street, New York, New York 10036, and (iv) submitted in hard-copy form directly to the chambers of the Honorable _____, United States Bankruptcy Judge, by 12:00 p.m. on _____, 2018.

PLEASE TAKE FURTHER NOTICE that only those objections filed and served as set forth herein will be considered by the Bankruptcy Court at the Sale Procedures Hearing. If no objections to the proposed bidding procedures, bidder protections, form and manner of notices, and the scheduling of a sale hearing date are timely filed and served in accordance with the procedures set forth herein, the Bankruptcy Court may enter an order approving the proposed bidding procedures, bidder protections, form and manner of notices, and scheduling a sale hearing date without further notice.

PLEASE TAKE FURTHER NOTICE that the Motion has been filed electronically with the Clerk of the United States Bankruptcy Court for the Eastern District of New York, and may be reviewed by all registered users of the Court's website at www.nysb.uscourts.gov.

Dated: New York, New York
September 16, 2018

ZEICHNER ELLMAN & KRAUSE LLP

/s/ Nathan Schwed

Nathan Schwed
1211 Avenue of the Americas, 40th Floor
New York, New York 10036
Telephone: (212) 223-0400
Facsimile: (212) 753-0396
Email: nschwed@zeklaw.com

*Proposed Attorneys for Debtors and Debtors-
in-Possession*