

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re

Charlotte Russe Holding, Inc. *et al.*,¹
Debtors.

Chapter 11

Case No.: 19-10210 (___)

(Joint Administration Requested)

**DEBTORS' COMBINED MOTION FOR ENTRY OF
AN ORDER (I) APPROVING BID AND SALE PROCEDURES,
(II) APPROVING CERTAIN BIDDING PROTECTIONS, (III)
APPROVING THE FORM AND MANNER OF NOTICE OF THE SALE
AND ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND
UNEXPIRED LEASES, (IV) SCHEDULING AN AUCTION AND
SALE HEARING, AND (V) APPROVING THE SALE**

Charlotte Russe Holding, Inc. and its chapter 11 affiliates, the debtors and debtors in possession (the "Debtors") in the above-captioned chapter 11 cases (the "Cases"), hereby move the Court (the "Motion"), pursuant to sections 105, 363, 365, 503 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), Rules 2002, 6004, 6006, and 9006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rules 2002-1, 6004-1 and 9006-1 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), for the entry of:

(i) an order (the "Bidding Procedures Order"), substantially in the form attached hereto as **Exhibit A**:²

¹ The Debtors and the last four digits of their respective federal taxpayer identification numbers are as follows: Charlotte Russe Holding, Inc. (4325); Charlotte Russe Holdings Corporation (1045); Charlotte Russe Intermediate Corporation (6345); Charlotte Russe Enterprise, Inc. (2527); Charlotte Russe, Inc. (0505); Charlotte Russe Merchandising, Inc. (9453); and Charlotte Russe Administration, Inc. (9456). The Debtors' headquarters are located at 5910 Pacific Center Boulevard, Suite 120, San Diego, CA 92121.

² As is further set forth herein, and in accordance with milestones established by the Debtors' proposed post-petition financing facility, the Debtors are pursuing a dual track process that requires the selection of either a going concern stalking horse bid or a full chain liquidation stalking horse bid prior to the date of the proposed Bidding Procedures Hearing. The proposed deadlines for the sale process vary depending on which path the Debtors pursue. As such, the

(a) approving proposed auction and bid procedures (the “Bidding Procedures”), in connection with the sale (the “Sale”) of substantially all of the Debtors’ assets (collectively, the “Assets”);³

(b) scheduling an auction (the “Auction”) and a final sale hearing (the “Sale Hearing”) in connection with the Sale;

(c) establishing procedures for the assumption and assignment of executory contracts and unexpired leases in connection with the Sale, including notice of proposed cure amounts (the “Assumption and Assignment Procedures”), and approving the form and manner of notice of the proposed assumption and assignment of executory contracts and unexpired leases in the form attached hereto as **Exhibit B** (the “Assumption and Assignment Notice”); and

(d) approving the form and manner of notice of the Auction and the Sale Hearing, including the form and manner of notice (the “Auction and Hearing Notice”) attached hereto as **Exhibit C**; and

(ii) an order (the “Sale Order”);⁴

(a) authorizing the Sale to the party or parties that are the successful bidders at the Auction, free and clear of all liens, claims and encumbrances, except for certain assumed liabilities;

Debtors will submit and serve an updated proposed Bidding Procedures Order prior to the Bidding Procedures Hearing that reflects either a Going Concern Path or a Liquidation Path (as defined herein).

³ Contemporaneously herewith, the Debtors are filing *the Debtors’ Emergency Motion for Interim and Final Orders (i) Authorizing the Commencement of Store Closing Sales in Accordance with the Store Closing Agreement and Sale Guidelines, with such Sales to be Free and Clear of All Liens, Claims and Encumbrances; (ii) Authorizing the Assumption of the Store Closing Agreement; and (iii) Granting Related Relief* (the “Store Closing Motion”). The Assets as defined herein do not include the assets and merchandise set forth in the Store Closing Motion.

⁴ The Debtors propose to file a proposed form of the Sale Order no later than 14 days prior to the Sale Hearing, subject to modifications by the Debtors and the Successful Bidders following the Auction.

(b) authorizing the assumption and assignment, or rejection, as the case may be, of certain executory contracts and unexpired leases in connection with the Sale; and

(c) granting certain related relief as described herein.

In support of this Motion, the Debtors incorporate the statements contained in the (a) *Declaration of Brian M. Cashman, Chief Restructuring Officer of Charlotte Russe Holding, Inc., in Support of Debtors' Chapter 11 Petitions and First Day Motions* (the "First Day Declaration")⁵ filed contemporaneously herewith, and further respectfully represent as follows:

JURISDICTION

1. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over these Cases and the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of these Cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. Pursuant to Rule 9013-1(f) of the Local Rules, the Debtors consent to the entry of a final judgment or order with respect to the Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. The statutory and legal predicates for the relief requested herein are sections 105(a), 363, 365, 503, and 507 of title 11 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006, and Local Rule 6004-1.

⁵ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the First Day Declaration.

BACKGROUND

4. On the date hereof (the "Petition Date"), each of the Debtors commenced a case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

5. The Debtors are continuing in possession of their properties and are managing their businesses, as debtors in possession, pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. Founded in 1975, Charlotte Russe is a specialty fashion retailer of young women's apparel and accessories. Headquartered in San Diego, California, the Debtors sell their merchandise to customers in the contiguous 48 states, Hawaii and Puerto Rico through their online store and 512 brick-and-mortar stores located in various regional malls, outlet centers, and lifestyle centers.

7. In addition, the Debtors acquired the Peek brand in 2016, which offers playfully inspired designer clothing for babies, boys and girls ranging in age from infant to 12 years old. The Peek brand allows the Debtors to reach a secondary market, offering an array of children's apparel and shoes as well as toys and accessories. The Debtors operate ten Peek store locations in seven states as well as an e-commerce website, www.peakkids.com. Peek is also distributed at wholesale to a few third-party retailers, most significantly Nordstrom.

8. As is further discussed in the First Day Declaration, the Debtors commenced these Cases to either (i) effectuate the Sale of the Debtors' Assets pursuant to a Court-approved bidding and auction process; or (ii) otherwise dispose of their Assets pursuant to store closing sales and other value maximizing transactions.

9. By this Motion, the Debtors seek approval of (i) Bidding Procedures in connection with a Sale of substantially all of the Debtors' Assets, to market and sell the balance of the

Debtors' business and assets through a section 363 asset sale process, which process may include a stalking horse going concern bid or liquidation stalking horse bid subject to the terms of the Bidding Procedures, the DIP Order and the DIP Documents, and (ii) approval of a sale to the successful bidder or bidders following such process.

I. Prepetition Sale and Marketing Efforts

10. The Debtors retained Guggenheim Securities, LLC ("Guggenheim Securities") as their investment banker in December 2018 to explore possible strategic alternatives. The Debtors (with the assistance of Guggenheim Securities) began testing the market for potential purchasers of substantially all of the Debtors' assets on a going concern basis. The Debtors (with the assistance of Guggenheim Securities) cast a wide net in soliciting interest from potential purchasers.

11. While doing so, the Debtors' financial condition continued to deteriorate to the point that they can no longer operate in the ordinary course without immediate access to additional financing. Unfortunately, the Debtors' assets cannot adequately collateralize additional financing, and in order to sustain further operations (including payment of payroll and inventory purchases), the Debtors are left with no choice but to immediately seek the Court's approval of the sale of substantially all of their assets through the consummation of one or more transactions.

12. As of the Petition Date, certain potential buyers have already signed non-disclosure agreements and begun due diligence in consideration of a potential acquisition of a material portion of the Debtors' business operations. In addition, an electronic data room has been made available for potential bona fide bidders. Despite some interest, no party has yet submitted a final proposal for a sale transaction. In order to finalize an already robust pre-petition marketing and sales process, the Debtors have negotiated a timeline for the sale of their business that will provide

existing potential going concern bidders the opportunity to finalize and submit a bid while simultaneously obtaining liquidation bids for the Debtors' assets. The Debtors and their advisors believe that this process is appropriate under the circumstances, particularly given the extensive pre-petition marketing, and that it will maximize value for all stakeholders.

II. The Proposed Sale Process

13. Among other things, the First Day Motions are designed to meet the Debtors' goals of: (i) continuing their operations in chapter 11 with as little disruption and loss of productivity and value as possible; (ii) maintaining the confidence and support of their customers, employees, vendors and service providers; and (iii) establishing procedures for the smooth and efficient administration of these Cases. Through these chapter 11 proceedings, the Debtors will continue their turn-around and marketing efforts towards the goal of consummating a going-concern sale, or if necessary, a liquidation.

14. Accordingly, through this Motion, the Debtors seek the approval of an expedited sale process that provides the Debtors with an opportunity to obtain a going concern bid. The Debtors continue to believe that, if available, a going concern sale would provide the best result for all interested parties (the "Going Concern Path").

15. In accordance with the milestones (the "Sale Milestones") established by the Debtors' proposed DIP facility (the "DIP Facility"), the Debtors are required to obtain a firm commitment from a Going Concern Stalking Horse Bidder (as defined below) by February 17, 2019, and an order approving the Going Concern Stalking Horse Bid (as defined below) by February 25, 2019. In the event that no such commitment or order is obtained by the respective dates, the Sale Milestones require the Debtors to pursue a full chain liquidation pursuant to the timeline set forth herein (the "Liquidation Path") in order to maximize value for all stakeholders.

16. In light of the foregoing, the Debtors propose the following deadlines in connection with their post-petition Sale process:

Proposed Action	Liquidation Path	Going Concern Path
Deadline to Obtain Stalking Horse Agreement for Liquidation Sale on Equity Bid Basis Pending Court Confirmation	February 17, 2019	
Deadline to Obtain Firm Commitment Stalking Horse for Going Concern Sale Pending Court Confirmation – <i>If Obtained, Going Concern Path Available</i>	February 17, 2019	
Bidding Procedures Hearing	February 19, 2019	
Deadline for Debtors to File Notice of Proposed Cure	<i>N/A</i>	February 20, 2019
Deadline to Object to Proposed Cure and General Sale Objections	March 4, 2019 (General Sale Objections Only)*	March 6, 2019
Deadline for Bids	March 3, 2019	March 7, 2019
Deadline to Notify Potential Bidders of Qualified Status	March 4, 2019	March 8, 2019
Auction (if held)	March 5, 2019	March 11, 2019
Deadline to Object to Adequate Assurance	<i>N/A</i>	March 13, 2019
Sale Hearing	March 6, 2019	March 13, 2019
Deadline to Close Sale	March 7, 2019	March 14, 2019

*The Debtors do not anticipate any contracts or leases will be assumed pursuant to the Liquidation Path, and therefore, no cure objections will need to be filed.

17. The Debtors propose to sell the Assets free and clear of liens, claims and encumbrances, and if the Going Concern Path is pursued, contemplate the potential assumption and assignment of certain executory contracts and unexpired leases in connection therewith. As outlined above, with the assistance of Berkeley Research Group, LLC (“BRG”) and Guggenheim Securities, the Debtors anticipate engaging in a comprehensive post-petition marketing process for either a going concern transaction (the “Going Concern Transaction”) or a full chain liquidation (the “Liquidation Transaction”) pursuant to section 363 of the Bankruptcy Code with financial and strategic buyers. The proposed Bidding Procedures are designed to permit the Debtors to pursue any available transaction to maximize the value of the Debtors’ assets for the benefit of their

estates. Moreover, for the reasons set forth in the First Day Declaration, the Debtors believe that the proposed deadlines summarized above provide these estates with a full opportunity to market the Debtors' business as a going concern or a full chain liquidation and maximize value for all stakeholders.

RELIEF REQUESTED AND BASIS FOR RELIEF

18. By this motion, the Debtors seek entry of the Bidding Procedures Order:
 - a. approving (i) the Debtors' proposed Bidding Procedures for marketing the Assets, which procedures are attached as Annex 1 to the Bidding Procedures Order; (ii) the Auction and Hearing Notice; and (iii) if a Going Concern Stalking Horse Bid is obtained in accordance with the Sale Milestones, the Assumption and Assignment Notice;
 - b. if a Going Concern Stalking Horse Bid is obtained in accordance with the Sale Milestones, approving procedures to determine cure amounts for the Debtors' executory contracts and unexpired leases that may be assumed and assigned in connection with the Sale;
 - c. establishing March 3, 2019 at 4:00 p.m. (prevailing Eastern Time) as the deadline for the submission of liquidation bids (the "Liquidation Bid Deadline") or establishing March 7, 2019 at 4:00 p.m. (prevailing Eastern Time) as the deadline for the submission of going concern bids (the "Going Concern Bid Deadline");
 - d. scheduling the Auction, if necessary, for the Liquidation Path, no later than March 5, 2019 or, for the Going Concern Path, no later than March 11, 2019; and
 - e. scheduling the Sale Hearing for March 6, 2019 for the Liquidation Path or March 13, 2019 for the Going Concern Path, subject to the Court's availability, to consider the Sale of the Assets to the Buyer or such other party that is the successful bidder at the Auction.

19. In addition, the Debtors respectfully request the entry of the Sale Order:
 - a. approving the Sale of all or any of the Assets to such party that is the successful bidder at the Auction;
 - b. if a Going Concern Stalking Horse Bid is obtained in accordance with the Sale Milestones, approving the assumption and assignment

of executory contracts and unexpired leases in connection with the Sale;

- c. finding that the party that is the successful bidder is a “good faith purchaser,” as that term is defined in section 363(m) of the Bankruptcy Code, and has not violated section 363(n) of the Bankruptcy Code;
- d. waiving the 14 day stay requirements of Bankruptcy Rules 6004(h) and 6006(d); and
- e. granting certain related relief.

I. The Proposed Bidding Procedures.⁶

20. The Debtors are requesting that the Court approve Bidding Procedures for the Sale of the Assets with a final sale hearing (the “Sale Hearing”) to occur either (x) no later than March 6, 2019 (the “Liquidation Sale Hearing”) if the Liquidation Path is pursued or, (y) no later than March 13, 2019 (the “Going Concern Sale Hearing”) if the Going Concern Path is pursued.⁷ The following is a summary of the Debtors’ proposed Bidding Procedures as required by Local Rule 6004-1.

21. Participation Requirements. Unless otherwise ordered by the Court, to participate in the bidding process for either the Liquidation Path or the Going Concern Path, each person or entity (each, an “Interested Party”) will be required to deliver (unless previously delivered) the following materials to (a) Charlotte Russe, Inc., 575 Florida Street, San Francisco, CA 94110 (Attn: Marie Satterfield, Esq.), email: marie.satterfield@charlotterusse.com; (b) counsel to the Debtors, (i) Cooley LLP, 1114 Avenue of the Americas, New York, NY 10036 (Attn: Seth Van Aalten, Esq. and Michael A. Klein, Esq.), email: svanaalten@cooley.com and

⁶ Unless explicitly set forth herein, the proposed Bidding Procedures are the same regardless of whether the Debtors pursue the Liquidation Path or the Going Concern Path.

⁷ The form of Bidding Procedures Order will contain dates proposed by the Debtors. These dates will be subject to the availability of the Court and may change.

mklein@cooley.com; and (ii) Bayard, P.A., 600 North King Street, Suite 400, P.O. Box 25130, Wilmington, DE 19899 (Attn: Justin Alberto, Esq. and Erin Fay, Esq.) email: jalberto@bayardlaw.com and efay@bayardlaw.com; (c) BRG, 75 State Street, Boston, MA 02109 (Attn: Brian Cashman), email: bcashman@thinkbrg.com; and (d) Guggenheim Securities, LLC, 330 Madison Avenue, New York, NY 10017 (Attn: Stuart Erickson and Stephen Preefer), email:stuart.erickson@guggenheimpartners.com and stephen.preefer@guggenheimpartners.com, so as to be received no later than the Bid Deadline:

- a. an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtors;
- b. a statement and other factual support demonstrating to the Debtors' satisfaction (determined following consultation with the Consultation Parties)⁸ a *bona fide* interest in purchasing or liquidating the Assets;
- c. sufficient information, as determined by the Debtors, to allow the Debtors to determine that the Interested Party has the financial wherewithal, and any required internal corporate, legal or other authorizations, to complete a Going Concern Transaction or a Liquidation Transaction, as applicable (a "Sale Transaction"), including financial statements of the Interested Party (or such other form of financial disclosure reasonably acceptable to the Debtors in their discretion); and
- d. the items comprising a bid.

A person or entity that has a *bona fide* interest in any of the Assets and delivers the required information (other than the bid) to the Debtors is hereinafter referred to as a "Potential Bidder."

⁸ The "Consultation Parties" shall be: (A) the professionals retained by any statutory committee appointed in the Debtors' Cases (each a "Committee"); (B) counsel to Bank of America, N.A., as Prepetition ABL Agent and DIP Agent, (i) Morgan, Lewis & Bockius LLP, One Federal Street, Boston, MA 02110 (Attn: Julia Frost-Davies, Esq. and Christopher L. Carter, Esq.), email: julia.frost-davies@morganlewis.com and christopher.carter@morganlewis.com; and (ii) Richards, Layton & Finger, PA, One Rodney Square, 920 North King Street, Wilmington, DE 19801 (Attn: Mark D. Collins, Esq.), email: collins@rlf.com; (C) counsel to Jefferies Finance LLC, as Prepetition Term Agent, King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036 (Attn: Michael Collins Rupe, Esq. and W. Austin Jowers, Esq.), email: mrupe@kslaw.com and ajowers@kslaw.com; and (D) counsel to certain of the Prepetition Term Loan Lenders (collectively, the "Steering Committee"), King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036 (Attn: Michael Collins Rupe, Esq. and W. Austin Jowers, Esq.), email: mrupe@kslaw.com and ajowers@kslaw.com).

After a Potential Bidder delivers all of the materials required above (other than the bid), the Debtors will allow each such Potential Bidder access to the data room.

22. Stalking Horse Bids. The Bidding Procedures contemplate that the Debtors will continue to solicit “stalking horse” bids (a “Stalking Horse Bid” and each entity, a “Stalking Horse Bidder”) for both the Liquidation Path and the Going Concern Path, which bid or bids (each a “Liquidation Stalking Horse Bid” or “Going Concern Stalking Horse Bid” and any asset purchase agreement memorializing the proposed transaction set forth in the Liquidation Stalking Horse Bid or Going Concern Stalking Horse Bid, a “Liquidation Stalking Horse APA” or “Going Concern Stalking Horse APA”) will be binding on such bidder (the “Liquidation Stalking Horse Bidder” or “Going Concern Stalking Horse Bidder”) and set the floor for all Qualified Bids for applicable Assets at the Auction pursuant to the Liquidation Path (the “Liquidation Auction”) or the Auction pursuant to the Going Concern Path (the “Going Concern Auction”).

23. In the event that following consultation with the Consultation Parties, and with the consent of the DIP Agent, the Debtors obtain one or more Going Concern Stalking Horse Bid(s) on or before February 17, 2019 (the “Stalking Horse Bid Deadline”, applicable to either the Going Concern Path or Liquidation Path), the Debtors will announce the designation of such Going Concern Stalking Horse Bidder by filing a notice (the “Going Concern Stalking Horse Bid Notice”) on the Court’s docket containing the identity of the Going Concern Stalking Horse Bidder and the Assets that are the subject of the Going Concern Stalking Horse Bid(s) and attaching any agreement accompanying the Going Concern Stalking Horse Bid as may be agreed between the Debtors and the Going Concern Stalking Horse Bidder, subject to the consent of the DIP Agent.

24. In the event that a Going Concern Stalking Horse Bidder is identified prior to the Stalking Horse Bid Deadline, following consultation with the Consultation Parties, the Debtors

may seek Court approval, at the Bidding Procedures Hearing or on shortened notice thereafter, to provide customary bid protections to the Going Concern Stalking Horse Bidder, including but not limited to, a break-up fee and/or expense reimbursement.

25. Determination by the Debtors. Following consultation with the Consultation Parties, the Debtors will (a) determine, with the assistance of their advisors, whether any person or entity is a Qualified Bidder, (b) receive bids from Qualified Bidders, (c) evaluate and negotiate such bids, and (d) conduct the Liquidation Auction or Going Concern Auction; provided that the Debtors shall not consult with any Consultation Party (or its advisors) who is also a Potential Bidder. Except as concerns the Consultation Parties as provided herein below, neither the Debtors nor their representatives will be obligated to furnish any information relating to the Debtors to any person who is not a Potential Bidder.

26. Due Diligence. The Debtors will establish an electronic data room into which substantial information about the Debtors and their businesses will be deposited. All Potential Bidders and the Consultation Parties will be granted full access to the data room. The Debtors, with the assistance of BRG and Guggenheim Securities, will coordinate all reasonable requests for additional information and due diligence access from Potential Bidders and the Consultation Parties. In the event that any such due diligence material is in written form and has not previously been provided to any other Potential Bidder, the Debtors will simultaneously provide access to such materials to (a) all Potential Bidders, and (b) all Consultation Parties. Except as provided above with respect to access to the data room, neither the Debtors nor their representatives will be obligated to furnish any information of any kind whatsoever relating to the Acquired Assets or the Other Assets to any party; provided that nothing herein is intended to modify the Debtors' obligations to provide information to the DIP Agent, the Prepetition ABL Agent, or the Prepetition

Term Agent pursuant to any orders approved by this Court approving any debtor-in-possession financing for, or any use of cash collateral by, the Debtors (the “DIP Order”).

27. Bid Deadline. On or before the Liquidation Bid Deadline or the Going Concern Bid Deadline, a Potential Bidder that desires to make a bid is required to deliver written copies of its bid in both Portable Document Format (.pdf) and Microsoft Word (.doc/.docx) format to the Debtors and their advisors. As soon as reasonably practicable following the Liquidation Bid Deadline or Going Concern Bid Deadline, but in no event later than one day after the applicable Bid Deadline, the Debtors will identify the Baseline Bid(s) and provide to the Consultation Parties copies of all Qualified Bids (with such distribution permissible by electronic means).

28. Bid Requirements. All bids must: (a) identify the legal name of the Potential Bidder (including any equity holders or other financial backers, if the Potential Bidder is an entity formed for the purpose of consummating the Sale Transaction); (b) with respect to bids for a Going Concern Transaction for any portion of the Assets, provide that the Potential Bidder offers to purchase the assets at the purchase price and upon the terms and conditions set forth in a copy of an asset purchase agreement enclosed therewith, marked to show any proposed amendments and modifications to the form agreement annexed hereto as **Exhibit D** (the “Marked Agreement”); (c) with respect to bids for a Liquidation Transaction, be presented on an equity/guaranteed basis, supported by cash consideration in an amount and payable at such times as is consistent with the terms of the proposed agency agreement provided by the Debtors to prospective Liquidation Transaction bidders or other agreement providing for the liquidation of the Debtors’ stores; (d) state that all necessary filings under applicable regulatory, antitrust and other laws will be made (pursuant to the terms and conditions in the applicable bid documents) and that payment of the fees associated with such filings will be made by the Potential Bidder; (e) be formal, binding

and unconditional (except for those conditions expressly set forth in the applicable bid documents), and not subject to any due diligence and are irrevocable until (x) pursuant to the Liquidation Path, the later of March 16, 2019 and the first business day following the closing of the Sale Transaction or (y) pursuant to the Going Concern Path, the later of March 14, 2019 and the first business day following the closing of the Sale Transaction; (f) include a commitment to close the transactions contemplated by the bid no later than March 16, 2019 pursuant to the Liquidation Path or March 14, 2019 pursuant to the Going Concern Path; (g) other than as may be exclusively applicable to either a Liquidation Stalking Horse Bidder or a Going Concern Stalking Horse Bidder, does not entitle such Potential Bidder to a breakup fee, termination fee, expense reimbursement or similar type of payment or reimbursement and include a waiver of any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code related to bidding for the Assets; (h) be accompanied by a cash deposit to an escrow account selected by the Debtors equal to 10% of the gross cash consideration payable at closing pursuant to the applicable bid documents (the “Good Faith Deposit”); and (i) be received by the Liquidation Bid Deadline or Going Concern Bid Deadline.

29. In addition, in the event that a Going Concern Stalking Horse Bid is selected prior to the Stalking Horse Bid Deadline, all subsequent bids must provide consideration to the Debtors of at least the sum of (i) the Stalking Horse Bid, (ii) any break-up fee or expense reimbursement approved by the Court, and (iii) a reasonable minimum overbid amount to be calculated in the Debtors’ reasonable discretion (as may be determined by the Debtors following consultation with the Consultation Parties) (the “Stalking Horse Overbid”).

30. A Potential Bidder must accompany its bid with: (a) written evidence of available cash, a commitment for financing (not subject to any conditions other than those expressly set

forth in the applicable bid documents), or such other evidence of ability to consummate the transaction contemplated by the bid documents (and, as applicable, to provide adequate assurance of future performance of all obligations to be assumed in such Sale Transaction) as the Debtors may reasonably request; (b) a copy of a board resolution or similar document demonstrating the authority of the Potential Bidder to make a binding and irrevocable bid on the terms proposed; (c) a covenant to cooperate with the Debtors to provide pertinent factual information regarding the Potential Bidder's operations reasonably required to analyze issues arising with respect to any applicable antitrust laws and other applicable regulatory requirements; and (d) if the Qualified Bid includes a Marked Agreement that is not executed, a signed statement that such bid is irrevocable until the later of (x) March 16, 2019 and the first business day following the closing of the Sale Transaction pursuant to the Liquidation Path or (y) March 14, 2019 and the first business day following the closing of the Sale Transaction pursuant to the Going Concern Path. A bid received from a Potential Bidder for any portion of the Assets that is determined by the Debtors to meet the above requirements will be considered a "Qualified Bid" and each Potential Bidder that submits such a Qualified Bid will be considered a "Qualified Bidder." The Debtors may, in their discretion, withdraw some or all of the Assets from the Auction or Sale at any time before entry of an order approving a Sale of the Other Assets to a Qualified Bidder. For the avoidance of doubt, the DIP Agent and the Prepetition Agents shall each be deemed to be a Qualified Bidder for all purposes, and shall be entitled (together with their respective retained professionals) to participate in the Auction. Further, for the avoidance of doubt, the DIP Agent and the Prepetition Agents shall each be entitled to credit bid for the Assets at the Auction in accordance with their respective rights under section 363(k) of the Bankruptcy Code.

31. The Debtors may value a Qualified Bid based upon any and all factors that the Debtors deem pertinent, including, among others: (a) the purported amount of the Qualified Bid, including non-cash consideration, if applicable; (b) the value to be provided to the Debtors under the Qualified Bid; (c) contingencies with respect to the Sale Transaction and the ability to close the proposed Sale Transaction on a basis acceptable to the Debtors, and any incremental costs to the Debtors in closing delays; (d) the ability to obtain any and all necessary antitrust or other applicable regulatory approvals for the proposed transaction; and (e) any other factors the Debtors may deem relevant (as may be determined by the Debtors following consultation with the Consultation Parties).

32. Baseline Bids. Qualified Bidders that have submitted Qualified Bids are eligible to participate in the Liquidation Auction or the Going Concern Auction. Following consultation with the Consultation Parties, the Debtors will select what they determine to be the highest and/or otherwise best Qualified Bid or combination of Qualified Bids for any portion of the Assets (the “Baseline Bid(s)”) to serve as the starting point at the Liquidation Auction or the Going Concern Auction taking into account all relevant considerations, including the financial condition of the applicable bidder and certainty of closing.

33. Auction. If at least one Qualified Bid in respect of the Assets is received by the Bid Deadline, the Debtors will conduct the Auction. If the Liquidation Path is pursued, the Liquidation Auction will take place at the offices of Cooley LLP, 1114 Avenue of the Americas, New York, NY 10036 on March 5, 2019 at 10:00 a.m. (prevailing Eastern Time) or such other place or time as the Debtors may notify Qualified Bidders who have submitted Qualified Bids. If the Going Concern Path is pursued, the Going Concern Auction will take place at the offices of Cooley LLP, 1114 Avenue of the Americas, New York, NY 10036 on March 11, 2019 at 10:00 a.m. (prevailing

Eastern Time) or such other place or time as the Debtors may notify Qualified Bidders who have submitted Qualified Bids. Only a Qualified Bidder that has submitted a Qualified Bid will be eligible to participate at the Auction, subject to such limitations as the Debtors may impose (following consultation with the Consultation Parties). At the Auction, participants will be permitted to increase their bids and improve their terms; provided that any such increased or improved bid must be a Qualified Bid (except that the Bid Deadline will not apply). Bidding for any part of the Assets will start at the purchase price and terms proposed in the applicable Baseline Bid. Following consultation with the Consultation Parties, the Debtors will announce the bidding increments for bids on one or more of the Acquired Assets or Other Assets at the outset of the Auction (the “Minimum Overbid”). Following consultation with the Consultation Parties, the Debtors may at any time adopt rules for the Auction that the Debtors reasonably determine to be appropriate to promote the goals of the Bidding Process and not in conflict with the Bidding Procedures, including one or more adjournments of the Auction.

34. Prior to the conclusion of the Auction, the Debtors will: (a) review and evaluate each bid made at the Auction on the basis of financial and contractual terms and other factors relevant to the Sale process, including those factors affecting the speed and certainty of consummating the Sale Transaction; (b) in the exercise of their good faith business judgment and consistent with the Bidding Procedures, identify the highest or otherwise best offer or collection of offers in respect of the Assets (the “Successful Bid(s)”); (c) inform and consult with the Consultation Parties regarding the foregoing, so long as the Consultation Party is not also a Potential Bidder; and (d) notify all Qualified Bidders participating in the Auction, prior to its adjournment, of the successful bidder or bidders (the “Successful Bidder(s)”) and the amount and other material terms of the Successful Bid(s). After determining the Successful Bid(s) for the

Assets, the Debtors may determine, in their reasonable business judgment, in consultation with the Consultation Parties, which Qualified Bid(s) are the next best bids for the Assets (the “Next Best Bid(s)”). The terms of each Successful Bid and Next Best Bid shall be reasonably acceptable to the DIP Agent and shall, among other things, either (a) provide for cash proceeds in an amount sufficient to repay in full in cash all of the DIP Obligations (as defined in the DIP Order) and, if applicable, all of the Prepetition ABL Obligations (as defined in the DIP Order), or (b) be approved and consented to by the DIP Agent and the Prepetition ABL Agent.

35. Acceptance of Qualified Bids. The Debtors’ selection and submission to this Court of the selected bid as the Successful Bid will not constitute the Debtors’ acceptance of the bid. The Debtors will have accepted a Qualified Bid only when a contract therefor has been executed and such Qualified Bid has been approved by the Court at the Liquidation Sale Hearing or the Going Concern Sale Hearing. If the Successful Bidder does not close the Sale by the date agreed to by the Debtors and the Successful Bidder, then the Debtors shall be authorized, but not required, to close with the party that submitted the Next Best Bid (the “Next-Highest Bidder”) pursuant to further order of this Court.

36. Modification of Bidding Procedures. Following consultation with the Consultation Parties, and with the consent of the DIP Agent, and consistent with the DIP Documents (as defined in the DIP Order), the Debtors may amend the Bidding Procedures or the bidding process at any time and from time to time in any manner that they determine in good faith will best promote the goals of the process, including extending or modifying any of the dates described herein; *provided, however*, that any such extension shall be subject to the prior consent of the DIP Agent and the Prepetition ABL Agent, and consistent with the DIP Documents (as defined in the DIP Order).

37. Return of Good Faith Deposit. The Good Faith Deposits of all Qualified Bidders will be held in escrow and while held in escrow will not become property of the Debtors' bankruptcy estates unless released from escrow pursuant to terms of the applicable escrow agreement or pursuant to further order of the Court. At the closing of a Sale Transaction contemplated by a Successful Bid, the applicable Successful Bidder will be entitled to a credit for the amount of its Good Faith Deposit to the extent such a deposit was provided. The Good Faith Deposits of each Next-Highest Bidder shall be retained until three (3) business days after the applicable Closing Date. The Good Faith Deposits of the other Qualified Bidders will be returned as soon as practicable but no later than seven business days following the Auction.

38. The Debtors believe that the proposed Bidding Procedures provide an appropriate framework for selling the Assets and will enable the Debtors to fully review, analyze and compare all Bids received to determine which Bid is in the best interests of the Debtors' estates.

II. The Flexibility to Obtain Stalking Horse Bids is Appropriate and Warranted.

39. As discussed above, the Bidding Procedures contemplate that the Debtors will continue to solicit potential bidders to serve as a Stalking Horse Bidder. Accordingly, in the event that a Stalking Horse Bid is obtained prior to the Stalking Horse Bid Deadline, all bidders will be required to submit a bid in the amount of at least the Stalking Horse Overbid. Further, the Bidding Procedures contemplate that the Debtors may seek Court approval to provide customary bid protections to the Stalking Horse Bidder, including a break-up fee and/or expense reimbursement.

40. Approval of break-up fees and other forms of bid protections in connection with the sale of significant assets pursuant to section 363 of the Bankruptcy Code is an established practice in chapter 11 cases. In the Third Circuit, termination or break-up fees are considered administrative expenses and, therefore, the payment of such fees must provide a post-petition benefit to the bankruptcy estate. *Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl.*

Energy, Inc.), 181 F.3d 527, 533 (3d Cir. 1999). In *O'Brien*, the Third Circuit provided two examples of a potential benefit accruing from the payment of a termination fee. *Id.* First, a benefit to the estate may arise if, “assurance of a break-up fee promoted [a] more competitive bidding [process], such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited.” *Id.* at 537. Second, a break-up fee encourages potential bidders to evaluate thoroughly a debtor’s value, thereby “increasing the likelihood that the price at which the debtor is sold will reflect its true worth.” *Id.*

41. By conducting due diligence, participating in negotiations for a potential transaction and entering into a Stalking Horse APA, any Stalking Horse Bidder will have established a bid standard, including a price floor, and initiated a legitimate sales process that should serve as a catalyst for other bidders. As a result, the Debtors would be in a favorable position to solicit competing bids that may be materially higher or otherwise more favorable than the Stalking Horse Bidder’s bid. In short, any Stalking Horse Bidder should be compensated for the risk they are taking and the benefit they are providing to the Debtors’ estates.

42. The Debtors submit that (i) the flexibility to designate a Stalking Horse Bidder and (ii) the Debtors’ reservation of rights to seek bid protections for any such Stalking Horse Bidder is necessary and appropriate given the significant benefits that a Stalking Horse Bid may provide to the Debtors.

III. Proposed Notice of the Sale Hearing.

43. Pursuant to Bankruptcy Rule 2002(a), the Debtors are required to provide their creditors with 21 days’ notice of the Sale Hearing. Pursuant to Bankruptcy Rule 2002(c), such notice must include the date, time, and place of the Auction and the Sale Hearing, and the deadline for filing any objections to the relief requested in the Sale Motion. The Debtors propose that the

deadline for objecting to approval of the proposed Sale be (x) March 4, 2019 at 12:00 p.m. (prevailing Eastern Time) pursuant to the Liquidation Path or (y) March 6, 2019 at 4:00 p.m. (prevailing Eastern Time) pursuant to the Going Concern Path.

44. As soon as practicable, but within one business day after entry of the Bidding Procedures Order, the Debtors will serve the Auction and Hearing Notice by first-class mail, postage prepaid upon the following parties: (a) the office of the United States Trustee for the District of Delaware (the "U.S. Trustee"); (b) upon appointment, counsel to any Committee; (c) the Debtors' 30 largest unsecured creditors on a consolidated basis, as identified in the Debtors' chapter 11 petitions, (d) all parties who have asserted a lien or security interest against any of the Assets, (e) all parties to the Debtors' executory contracts and unexpired leases that may be assumed and assigned in connection with the Sale (the "Assumed and Assigned Agreements"); (f) applicable taxing authorities, including the Internal Revenue Service; (g) all state attorneys' general and consumer protection agencies in jurisdictions in which the Assets are located; (h) all parties known to the Debtors who have expressed an interest to the Debtors' Assets during the past six months; and (i) all parties requesting notice in these Cases. The Auction and Hearing Notice shall indicate that copies of the Sale Motion and the Stalking Horse APA (if any) can be obtained on the website of the Debtors' claims and noticing agent, Donlin, Recano & Company, Inc. In addition, the Debtors will serve this motion, including a copy of the Stalking Horse APA (if any), on those persons in categories (a) through (d), above. Further, within two business days after entry of the Bidding Procedures Order and if proceeding pursuant to the Going Concern Path, or as soon as practicable thereafter, the Debtors will place a publication version of the Auction and Hearing Notice for one day in the national edition of *The Wall Street Journal* or *USA Today*.

45. The Auction and Hearing Notice will include, among other things, the date, time and place of the Auction and the Sale Hearing and the deadline for filing any objections to the relief requested in the Sale Motion once they are set by the Court. The Debtors submit that the methods of notice described herein substantially comply fully with Bankruptcy Rule 2002 and constitute good and adequate notice of the proposed Sale of the Assets. Therefore, the Debtors respectfully request that this Court approve the notice procedures proposed above.

IV. Proposed Assumption and Assignment Procedures.

46. Pursuant to the Going Concern Path, the Debtors, as part of the Sale, may assume and assign Assumed and Assigned Agreements. By no later than 21 days prior to the Going Concern Sale Hearing, the Debtors will file a schedule of cure obligations (the "Cure Schedule") for the Assumed and Assigned Agreements. The Cure Schedule will include a description of each Assumed and Assigned Agreement potentially to be assumed and assigned by a potential buyer and the amount, if any, the Debtors believe is necessary to cure such agreements pursuant to section 365 of the Bankruptcy Code (the "Cure Costs"). A copy of the Cure Schedule, together with the Assumption and Assignment Notice, will be served on each of the nondebtor parties listed on the Cure Schedule by first class mail on the date that the Cure Schedule is filed with the Court.

47. The Debtors propose that any objections to the assumption and assignment of any executory contract or unexpired lease identified on the Cure Schedule, including, but not limited to, the Cure Costs set forth on such schedule, must be in writing, filed with the Court, and be actually received on or before March 6, 2019 by (a) Charlotte Russe, Inc., 575 Florida Street, San Francisco, CA 94110 (Attn: Marie Satterfield, Esq.), email: marie.satterfield@charlotterusse.com; (b) counsel to the Debtors, (i) Cooley LLP, 1114 Avenue of the Americas, New York, NY 10036 (Attn: Seth Van Aalten, Esq. and Michael A. Klein, Esq.), email: svanaalten@cooley.com and mklein@cooley.com; and (ii) Bayard, P.A., 600 North King Street, Suite 400, P.O. Box 25130,

Wilmington, DE (Attn: Justin Alberto, Esq. and Erin Fay, Esq.) email: jalberto@bayardlaw.com and efay@bayardlaw.com; (c) counsel to the Prepetition ABL Agent and the DIP Agent, (i) Morgan, Lewis & Bockius LLP, One Federal Street, Boston, MA 02110 (Attn: Julia Frost-Davies, Esq. and Christopher L. Carter, Esq.), email: julia.frost-davies@morganlewis.com and christopher.carter@morganlewis.com; and (ii) Richards, Layton & Finger, PA, One Rodney Square, 920 North King Street, Wilmington, DE 19801 (Attn: Mark D. Collins, Esq.), email: collins@rlf.com; (d) counsel to the Prepetition Term Agent, King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036 (Attn: Michael Collins Rupe, Esq. and W. Austin Jowers, Esq.), email: mrupe@kslaw.com and ajowers@kslaw.com; (e), counsel to the Steering Committee, King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036 (Attn: Michael Collins Rupe, Esq. and W. Austin Jowers, Esq.), email: mrupe@kslaw.com and ajowers@kslaw.com; (f) once it is formed, counsel to each Committee; and (g) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Jane Leamy), email: Jane.M.Leamy@usdoj.gov) (collectively, the “Notice Parties”); *provided, however*, that the deadline for objecting to the assignment of the Assumed and Assigned Agreements to such Successful Bidder on the basis of adequate assurance of future performance will be the commencement of the Going Concern Sale Hearing. Any such objection shall set forth a specific default in any Assumed and Assigned Agreements and claim a specific monetary amount that differs from the amount (if any) specified by the Debtors in the Cure Schedule.

48. If no objections are received, then the Cure Costs set forth in the Cure Schedule will be binding upon the nondebtor parties to the Assumed and Assigned Agreements for all purposes in these Cases and will constitute a final determination of the total Cure Costs required to be paid by the Debtors in connection with the assumption and assignment of the Assumed and Assigned

Agreements. In addition, all counterparties to the Assumed and Assigned Agreements will (a) be forever barred from asserting any additional cure or other amounts with respect to the Assumed and Assigned Agreements, and the Debtors and the Successful Bidder will be entitled to rely solely upon the Cure Costs set forth in the Assumption and Assignment Notice; (b) be deemed to have consented to the assumption and assignment; and (c) be forever barred and estopped from asserting or claiming against the Debtors or the Successful Bidder that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied under such Assumed and Assigned Agreements or that there is any objection or defense to the assumption and assignment of such Assumed and Assigned Agreements.

49. Where a nondebtor counterparty to an Assumed and Assigned Agreement files an objection asserting a cure amount higher than the proposed Cure Costs (the “Disputed Cure Amount”), then (a) to the extent that the parties are able to consensually resolve the Disputed Cure Amount, the Cure Amount shall be as agreed between the parties, or (b) to the extent the parties are unable to consensually resolve the dispute prior to the Going Concern Sale Hearing, the amount to be paid under section 365 of the Bankruptcy Code with respect to such Disputed Cure Amount will be determined at the Going Concern Sale Hearing or at such other date and time as may be fixed by this Court. All other objections to the proposed assumption and assignment of an Assumed and Assigned Agreement will be heard at the Going Concern Sale Hearing, unless adjourned by agreement of the parties. The Debtors intend to cooperate with counterparties to Assumed and Assigned Agreements to attempt to reconcile any differences with respect to a particular cure amount.

50. The Debtors request that any party failing to object to the proposed transactions be deemed to consent to the treatment of its executory contract and/or unexpired lease under section

365 of the Bankruptcy Code. *See Hargrave v. Twp. of Pemberton (In re Tabone, Inc.)*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to sale motion, creditor deemed to consent); *Pelican Homestead v. Wooten (In re Gabeel)*, 61 B.R. 661, 667 (Bankr. W.D. La. 1985) (same). Moreover, the Debtors request that each such party be deemed to consent to the assumption and assignment of its executory contract and/or unexpired lease notwithstanding any anti-alienation provision or other restriction on assignment. *See* 11 U.S.C. §§ 365(c)(1)(B), (e)(2)(A)(ii), and (f).

V. The Proposed Sale Order.

51. The Debtors anticipate that the Sale Order will contain certain provisions that require disclosure under Local Rule 6004-1 and the Debtors will highlight applicable provisions in connection with the notice of filing of proposed Sale Order. At this time, the Debtors make the following statements:

- a) Local Rule 6004-1(b)(iv)(A). To the extent a proposed purchaser is an insider (within the meaning of section 101(31) of the Bankruptcy Code), the Debtors will make the necessary disclosures to the Court and take measures to ensure the fairness of the sale process and the proposed transaction.
- b) Local Rule 6004-1(b)(iv)(B). The Debtors do not presently have any agreement between any interested bidder and the Debtors' management or key employees. If any agreements are reached, the Debtors will make the necessary disclosures.
- c) Local Rule 6004-1(b)(iv)(C). To the extent that the Sale Order includes a release in favor of any entity, the Debtors will make the necessary disclosures.
- d) Local Rule 6004-1(b)(iv)(F). The Debtors are requiring Qualified Bids to include a good faith deposit constituting 10% of the total cash consideration of the bid.
- e) Local Rule 6004-1(b)(iv)(G). The Debtors do not currently have any interim management or other agreement with any party. If any agreements are reached, the Debtors will make the necessary disclosures.
- f) Local Rule 6004-1(b)(iv)(H). The Debtors are not seeking to release or allocate any sale proceeds without further order of the Court.

- g) Local Rule 6004-1(b)(iv)(I). The Debtors are not seeking pursuant to this Motion to have the Sale declared exempt from taxes under section 1146(a) of the Bankruptcy Code.
- h) Local Rule 6004-1(b)(iv)(J). The Debtors will retain necessary books and records, or copies thereof, to enable them to administer their bankruptcy cases in any Sale.
- i) Local Rule 6004-1(b)(iv)(K). The Debtors may seek to sell avoidance actions.
- j) Local Rule 6004-1(b)(iv)(L). The Debtors are seeking to sell the Assets free and clear of successor liability claims. The Debtors will have material unpaid prepetition unsecured claims after the closing of the Sale. No party would likely be willing to purchase the Debtors' assets if it were at risk of liability for those claims under principles of successor liability.
- k) Local Rule 6004-1(b)(iv)(M). The Debtors are seeking to sell the Assets free and clear of all liens, claims and encumbrances to the fullest extent permitted by sections 363 and 365 of the Bankruptcy Code.
- l) Local Rule 6004-1(b)(iv)(N). Pursuant to the proposed Bidding Procedures, Qualified Bidders may credit bid some or all of their claims to the full extent permitted by section 363(k) of the Bankruptcy Code
- m) Local Rule 6004-1(b)(iv)(O). The Debtors are seeking relief from the fourteen-day stay imposed by Bankruptcy Rule 6004(h) for any sale, as further described below.

VI. Approval of the Sale Is Warranted Under Section 363 of the Bankruptcy Code.

52. Section 363(b) of the Bankruptcy Code provides that a debtor “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). A debtor must demonstrate a sound business justification for a sale or use of assets outside the ordinary course of business. *See, e.g., In re Martin*, 91 F.3d 389 (3d Cir. 1996) (citing *In re Schipper*, 933 F.2d 513 (7th Cir. 1991)); *In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992); *Stephens Indus., Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983).

53. Courts typically consider the following factors in determining whether a proposed sale meets this standard:

- a. whether a sound business justification exists for the sale;
- b. whether adequate and reasonable notice of the sale was given to interested parties;
- c. whether the sale will produce a fair and reasonable price for the property; and
- d. whether the parties have acted in good faith.

In re Decora Indus., Inc., 2002 WL 32332749, at * 2 (D. Del. May 20, 2002) (citing *Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991)).

54. When a debtor demonstrates a valid business justification for a decision, a strong presumption arises “that in making [the] business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1990) (holding that Delaware business judgment rule has “vitality by analogy” in chapter 11) (citations omitted).

55. In the instant case, a strong business justification exists for the Sale. Any extended delay in selling the Assets could have a severe detrimental effect on the Debtors’ ability to continue operations and preserve value to the fullest extent possible. Furthermore, notice of the Sale has been reasonable and adequate. If proceeding pursuant to the Going Concern Path, the Debtors are publishing notice of the Sale in the national edition of *The Wall Street Journal* or *USA Today*. Further, the Sale has been proposed in good faith. Finally, because the Sale is subject to bid procedures and an auction, the price ultimately received as a result of the successful bid should, based on the process alone, be deemed fair and reasonable.

VII. The Purchaser is a Good Faith Purchaser.

56. The Debtors anticipate that that any party that is the Successful Bidder at the Auction will ask the Debtors to request that they receive the protections set forth in section 363(m) of the Bankruptcy Code. Specifically, section 363(m) of the Bankruptcy Code provides:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m). While the Bankruptcy Code does not define “good faith,” the United States Court of Appeals for the Third Circuit previously addressed the meaning of the term:

The requirement that a purchaser act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser’s good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

In re Abbotts Dairies of Pa., Inc., 788 F.2d 143, 147 (3d Cir. 1986).

57. The Debtors intend to introduce evidence at the Sale Hearing to support such a finding.

VIII. Approval of the Sale Free and Clear of Liens, Claims and Encumbrances.

58. The Debtors request approval to sell the Assets free and clear of any and all liens, claims, interests and encumbrances in accordance with section 363(f) of the Bankruptcy Code. Pursuant to section 363(f), a debtor in possession may sell estate property “free and clear of any interest in such property of an entity other than the estate” if any one of the following conditions is satisfied:

- a. applicable nonbankruptcy law permits sale of such property free and clear of such interest;

- b. such entity consents;
- c. 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;
- d. such interest is in bona fide dispute; or
- e. such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); *see Citicorp Homeowners Serv., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988) (because section 363(f) is written in the disjunctive, a court may approve a “free and clear” sale even if only one of the subsections is met).

59. Furthermore, it is well established that a bankruptcy court has the power, pursuant to section 363(f) of the Bankruptcy Code, to approve the sale of a debtor’s assets free and clear of any claims against the debtor. *In re TWA Airlines, Inc.*, 322 F.3d 283, 288-90 (3d Cir. 2003) (holding that successor liability claims are “interests in property” within the meaning of §363(f)); *United Mine Workers of Am. Benefit Plan v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal Co.)*, 99 F.3d 573 (4th Cir. 1996) (same).

60. The Debtors submit that the Sale of their Assets free and clear of liens, claims and encumbrances will satisfy the requirements of section 363(f) of the Bankruptcy Code. The Debtors also believe that the service of the Auction and Hearing Notice in accordance with the terms set forth in this Motion will afford creditors sufficient notice of the Sale and therefore provides additional justification for approval of the Sale free and clear of all liens, claims and encumbrances.

IX. Approval of the Assumption and Assignment of Executory Contracts and Unexpired Leases.

61. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession “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). The standard governing bankruptcy court

approval of a debtor's decision to assume or reject an executory contract or unexpired lease is whether the debtor's reasonable business judgment supports assumption or rejection. *See, e.g., In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (finding that debtor's decision to assume or reject executory contract is governed by business judgment standard and can only be overturned if decision was product of bad faith, whim or caprice); *see also In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992) (finding that assumption or rejection of lease "will be a matter of business judgment by the bankruptcy court").

62. The business judgment test "requires only that the trustee [or debtor in possession] demonstrate that [assumption] or rejection of the contract will benefit the estate." *Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co.*, (*In re Wheeling-Pittsburgh Steel Corp.*), 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987). Any more exacting scrutiny would slow the administration of a debtor's estate and increase costs, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten a court's ability to control a case impartially. *See Richmond Leasing Co. v. Capital Bank*, 762 F.2d 1303, 1311 (5th Cir. 1985). Moreover, pursuant to section 365(b)(1) of the Bankruptcy Code, for a debtor to assume an executory contract, it must "cure, or provide adequate assurance that the debtor will promptly cure," any default, including compensation for "actual pecuniary loss" relating to such default. 11 U.S.C. 365(b)(1).

63. Under section 365(f) of the Bankruptcy Code, a debtor, after assuming a contract, may assign its rights under the contract to a third party. 11 U.S.C. § 365(f); *see also In re Rickel Home Center, Inc.*, 209 F.3d 291, 299 (3d Cir. 2000) ("The Code generally favors free assignability as a means to maximize the value of the debtor's estate."); *see also In re Headquarters Dodge, Inc.*, 13 F.3d 674, 682 (3d Cir. 1994) (noting that the purpose of section 365(f) is to assist the

trustee in realizing the full value of the debtor's assets). Section 365(f)(2)(B) requires, however, that adequate assurance of future performance by an assignee exist. 11 U.S.C. § 365(f)(2)(B). The purpose of the adequate assurance requirement is to protect the interests of the non-debtor party to an assigned contract, as section 365(k) of the Bankruptcy Code relieves a debtor from liability for any breach of a contract that may occur after an assignment. *Cinicola v. Scharffeberger*, 248 F.3d 110, 120 (3d Cir. 2001). Adequate assurance of future performance is not required for every term of an executory contract or unexpired lease, but only such terms that are "material and economically" significant. *In re Fleming Cos., Inc.*, 499 F.3d 300, 305 (3d Cir. 2007).

64. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given a "practical, pragmatic construction." *In re DBSI, Inc.*, 405 B.R. 698, 708 (Bankr. D. Del. 2009); *see also In re Decora Indus.*, 2002 U.S. Dist. LEXIS 27031, at *23 (D. Del. 2002) ("[A]dequate assurance falls short of an absolute guarantee of payment."). Adequate assurance may be provided by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. *See, e.g., In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (finding that adequate assurance is present when prospective assignee of lease from debtor has financial resources and has expressed willingness to devote sufficient funding to business to give it strong likelihood of success).

65. The assumption and assignment of certain executory contracts and unexpired leases is an integral part of the Sale. It is thus an appropriate exercise of business judgment for the Debtors to agree to assume and assign the contracts and leases as will be required by the Successful Bid. Additionally, the Debtors submit that the notice provisions and the objection deadline for

counterparties to raise objections to the assumption and assignment of contracts and leases as proposed in this Motion are adequate to protect the rights of counterparties to the Debtors' contracts and leases. Furthermore, the Debtors will demonstrate adequate assurance of future performance at the Going Concern Sale Hearing.

X. Basis for Relief for Liquidation Transaction.

66. The proposed Bidding Procedures permit going concern and liquidation bids for the Assets. In the event that the winning bid contemplates a Liquidation Transaction, the legal basis for relief in connection with a liquidation of the Debtors' Assets is discussed below.

A. Waiver of Compliance With Laws Regarding Liquidation Sales

67. Many state and local laws, statutes, rules and ordinances require special and cumbersome licenses, waiting periods, time limits and other procedures for store closing, liquidation or similar sales. By virtue of section 1334 of title 28 of the United States Code, however, this Court has exclusive jurisdiction over the Debtors' property wherever located. 28 U.S.C. § 1334 (2018). As such, in the context of a bankruptcy case, when creditors receive notice of a proposed sale, as well as the opportunity to be heard in court, enforcement of such statutes and regulations is redundant and unnecessary. As a result, the Debtors request that, in the event that the Successful Bid is a Liquidation Transaction, any order approving a Liquidation Transaction include a provision that specifically waives the Debtors' or their future agent's obligation to comply with any state or local laws restricting store closing, going out of business or similar sales.

68. In general, debtors must comply with 28 U.S.C. § 959(b), which provides that a debtor in possession must "manage and operate the property . . . according to the requirements of the valid laws of the state in which such property is situated" Courts, however, have held that a debtor in possession that is liquidating estate assets does not "manage and operate" the property for the purposes of 28 U.S.C. § 959(b). *Alabama Surface Mining Comm'n v. N.P. Mining Co.*,

Inc. (In re N.P. Mining Co., Inc.), 963 F.2d 1449, 1460-61 (11th Cir. 1992) (holding that 28 U.S.C. § 959(b) does not apply when debtor in possession is liquidating property and no longer operating its business). In addition, the Bankruptcy Code preempts state and local laws that conflict with its underlying policies. *Belculfine v. Aloe (In re Shenango Group, Inc.)*, 186 B.R. 623, 628 (Bankr. W.D. Pa. 1995) (“Trustees and debtors-in-possession have unique fiduciary and legal obligations pursuant to the bankruptcy code. . . . [A] state statute [] cannot place burdens on [a debtor] where the result would contradict the priorities established by the federal bankruptcy code.”), *aff’d*, 112 F.3d 633 (3d Cir. 1997).⁹

B. Unenforceability of Any Restriction in the Leases

69. Certain of the Debtors’ leases governing the premises of the stores subject to any Liquidation Transaction may contain provisions purporting to restrict or prohibit the Debtors from conducting store closing, liquidation, or similar sales. Such provisions have been held to be unenforceable in chapter 11 cases as they constitute an impermissible restraint on a debtor’s ability to properly administer its reorganization case and maximize the value of its assets under section 363 of the Bankruptcy Code. *Ames Dep’t Stores*, 136 B.R. at 359 (deciding that enforcement of such lease restrictions would “contravene overriding federal policy requiring debtor to maximize estate assets. . . .”); *In re R. H. Macy and Co., Inc.*, 170 B.R. 69, 73-74 (Bankr. S.D.N.Y. 1994) (holding that the lessor could not recover damages for breach of a covenant to remain open

⁹ See also *In re Coldwater Creek*, Case No. 14-10867 (BLS) (Bankr. D. Del. May 7, 2014) (stating that debtors were authorized to conduct store closing sales “without the necessity of further showing compliance” with going out of business or liquidation laws); *In re Boscov’s*, Case No. 08-11637 (Bankr. D. Del. Aug. 15, 2008) (ordering that “[g]overnmental units shall not fine, assess or otherwise penalize Debtors or Agent (or any of the landlords of the Closing Stores) for conducting or advertising the Store Closing Sales in a manner inconsistent with Liquidation Sales Laws, provided that the Store Closing Sales are conducted and advertised in compliance with this Order”).

throughout the lease term, because the debtor had a duty to maximize the value to the estate and the debtor fulfilled this obligation by holding a store closing sale and closing the store.).¹⁰

70. Thus, to the extent that such provisions or restrictions exist in any of the leases of the stores subject to any Liquidation Transaction, the Debtors request that the Court authorize the Debtors and/or the Successful Bidder to conduct any liquidation sales without interference by any landlords or other persons affected, directly or indirectly, by the liquidation sales.

C. Any Liquidation Sales Should Be Exempt From Any “Fast Pay” Laws

71. Many states in which the Debtors operate also have laws and regulations that require the Debtors to pay an employee substantially contemporaneously with his or her termination (the “Fast Pay Laws”). In many cases, these laws require the payment to occur either immediately or within a period of only a few days from the date such employee is terminated. To the extent that a Liquidation Transaction results in a significant number of employees being terminated, the Debtors respectfully submit that the Debtors should be granted relief from the Fast Pay Laws. As set forth above, the Bankruptcy Code preempts state and local laws that conflict with its underlying policies. *See, e.g., Coldwater Creek Inc.*, Case No. 14-10867 (BLS) (waiving “fast pay” laws and regulations in connection with approval of store closing sales); *Filene’s Basement, LLC*, Case No. 11-13511(KJC) (Bankr. D. Del. Nov. 2, 2011) (same); *In re Linens Holding Co.*, Case No. 08-10832 (Bankr. D. Del. Oct. 28, 2008) (same).

¹⁰ In addition, bankruptcy courts in this District have held that restrictive lease provisions affecting store liquidation sales in chapter 11 cases are unenforceable. *See, e.g., In re Coldwater Creek*, Case No. 1410867 (ordering that store closing sales be conducted without the further need for compliance with, among other things, lease provisions); *In re Boscov’s*, Case No. 08-11637 (same); *In re Goody’s Family Clothing, Inc.*, Case No. 08-11133 (CSS) (Bankr. D. Del. June 13, 2008) (same); *In re Linens Holding Co.*, Case No. 08-10832 (CSS) (Bankr. D. Del. May 30, 2008) (same).

WAIVER OF RULES 6004(h) AND 6006(d)

72. The Debtors request that, upon entry of the Sale Order, the Court waive the 14 day stay requirements of Bankruptcy Rules 6004(h) and 6006(d). The waiver of the 14 day stay imposed by Bankruptcy Rules 6004(h) and 6006(d) is required to permit the sale to close expeditiously as required by the Debtors' post-petition financing. The Debtors respectfully submit that the Court waive the 14 day stay requirements contained in Bankruptcy Rules 6004(h) and 6006(d).

NOTICE

73. Notice of this motion will be provided to the following, or their counsel, if known: (i) the U.S. Trustee; (ii) holders of the thirty (30) largest unsecured claims on a consolidated basis against the Debtors; (iii) the DIP Agent and Prepetition ABL Agent; (iv) the Prepetition Term Agent; (v) the Steering Committee; (vi) all parties who are known by the Debtors to assert liens against the Assets; (vii) all state attorneys general and consumer protection agencies in jurisdictions in which the Assets are located; (viii) all non-Debtor parties to the Debtors' unexpired real property leases; (ix) any party known or reasonably believed to have expressed an interest in acquiring some or substantially all of the Debtors' assets; and (x) all parties who, as of the filing of this Motion, have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002.

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

WHEREFORE, the Debtors respectfully request that the Court (i) enter the Bidding Procedures Order, in substantially the form attached hereto as **Exhibit A**, (ii) enter the Sale Order, or such other order approving a sale to such other party that is the successful bidder at the Auction and (iii) grant such other and further relief to the Debtors as the Court may deem proper.

Dated: February 3, 2019
Wilmington, Delaware

BAYARD, P.A.

/s/ Justin R. Alberto
Justin R. Alberto (No. 5126)
Erin R. Fay (No. 5268)
600 North King Street, Suite 400
Wilmington, Delaware 19801
Telephone: (302) 655-5000
Facsimile: (302) 658-6395
Email: jalberto@bayardlaw.com
efay@bayardlaw.com

- and -

COOLEY LLP
Seth Van Aalten
Michael Klein
Summer M. McKee
1114 Avenue of the Americas
New York, New York 10036
Telephone: (212) 479-6000
Facsimile: (212) 479-6275
Email: svanaalten@cooley.com
mklein@cooley.com
smckee@cooley.com

*Proposed Co-Counsel for the Debtors
and Debtors in Possession*

EXHIBIT A

Bidding Procedures Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re

Charlotte Russe Holding, Inc., *et al.*,¹
Debtors.

Chapter 11

Case No.: 19-10210 (____)

(Joint Administration Requested)

**ORDER (I) APPROVING BID AND SALE PROCEDURES,
(II) APPROVING CERTAIN BIDDING PROTECTIONS,
(III) APPROVING THE FORM AND MANNER OF NOTICE OF THE SALE
AND ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND
UNEXPIRED LEASES, (IV) SCHEDULING AN AUCTION AND
SALE HEARING, AND (V) APPROVING THE SALE**

Upon the motion (the “Motion”),² of Charlotte Russe Holding, Inc. and its chapter 11 affiliates, the debtors and debtors in possession (the “Debtors”) in the above-captioned jointly administered chapter 11 cases (the “Cases”), seeking, pursuant to sections 105, 363, 365, 503 and 507 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, 6006, 9007, 9008 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rules 2002-1, 6004-1 and 9006-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), an order (i) authorizing and approving the procedures that are attached hereto as Annex 1 (the “Bidding Procedures”) for the sale of certain of the Debtors’ assets (the “Sale”), (ii) scheduling an Auction and Sale Hearing in connection with the Sale, and (iii) approving the form and manner of notice of the Auction and

¹ The Debtors and the last four digits of their respective federal taxpayer identification numbers are as follows: Charlotte Russe Holding, Inc. (4325); Charlotte Russe Holdings Corporation (1045); Charlotte Russe Intermediate Corporation (6345); Charlotte Russe Enterprise, Inc. (2527); Charlotte Russe, Inc. (0505); Charlotte Russe Merchandising, Inc. (9453); and Charlotte Russe Administration, Inc. (9456). The Debtors’ headquarters are located at 5910 Pacific Center Boulevard, Suite 120, San Diego, CA 92121.

² Capitalized terms not otherwise defined in this Order shall have the meanings given to them in the Motion or the Bidding Procedures, as applicable.

the Sale Hearing; the Court having reviewed the Motion and conducted a hearing to consider the relief requested therein regarding the Bidding Procedures and related matters (the “Bidding Procedures Hearing”); and the Court having considered the First Day Declaration and the statements of counsel and the evidence presented at the Bidding Procedures Hearing, it is hereby **FOUND AND DETERMINED THAT:**³

A. The Court has jurisdiction over this matter and over the property of the Debtors and their respective bankruptcy estates pursuant to 28 U.S.C. §§ 157(a) and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M), (N), and (O). The statutory predicates for the relief sought herein are 11 U.S.C. §§ 105, 363, 365 and Fed. R. Bankr. P. 2002, 6004, 6006, 9007, 9008, and 9014. Venue of these Cases and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The Debtors have offered good and sufficient reasons for, and the best interests of their estates will be served by, this Court granting the Motion to the extent provided in this Order, including approval of (i) the Bidding Procedures, attached hereto as Annex 1, (ii) the procedures described below for the determination of the amounts necessary to cure defaults under the Assumed and Assigned Agreements so as to permit the assumption and assignment under section 365 of the Bankruptcy Code of the Assumed and Assigned Agreements, and (iii) the form and manner of notice of the Auction and Sale Hearing described in the Motion and this Order.

³ The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such. All findings of fact and conclusions of law announced by the Court at the Bidding Procedures Hearing are hereby incorporated herein to the extent not inconsistent herewith.

C. Good and sufficient notice of the relief sought in the Motion has been given under the circumstances, and no further notice is required except as set forth herein with respect to the Auction and the Sale Hearing. Subject to the immediately preceding sentence, a reasonable opportunity to object or to be heard regarding the relief requested in the Motion was afforded to all interested persons and entities.

D. In accordance with Local Rules 6004-1(c), Debtors have properly filed and noticed the Motion. The issuance and immediate effectiveness of this Order as of the date hereof, including approval of the Bidding Procedures, is supported by evidence of compelling business justifications and other circumstances demonstrating that the relief granted by this Order is necessary to prevent immediate and irreparable harm to the Debtors and their estates.

E. The proposed notice of the Auction, the Sale Hearing and the Bidding Procedures and the Assumption and Assignment Notice, as set forth in the Motion and this Order, is appropriate and sufficient, and is reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the Sale Hearing, the Bidding Procedures, and the assumption and assignment of executory contracts and unexpired leases, and no other or further notice shall be required for the Sale or the assumption and assignment of executory contracts and unexpired leases.

F. The Bidding Procedures were negotiated in good faith and at arms' length.

G. The Bidding Procedures are fair, reasonable and appropriate under the circumstances and are reasonably designed to maximize the value to be achieved for the Assets.

H. **THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED to the extent provided herein.

2. All objections to the entry of this Order or to the relief provided herein that have not been withdrawn with prejudice, waived, resolved or settled are hereby denied and overruled on the merits with prejudice.

3. The Bidding Procedures, as attached as Annex 1, are hereby approved, are incorporated herein by reference, and shall govern all bids and bid proceedings relating to the Assets. The Debtors and their claims agent are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures.

4. The deadline for submitting a Qualified Bid shall be March ___ at __:00 p.m. (prevailing Eastern Time), unless extended by the Debtors pursuant to the Bidding Procedures (the "Bid Deadline"), provided that the Debtors, with the consent of the DIP Agent, may extend the Bid Deadline without further order of the Court.

5. All bidders submitting a Qualified Bid are deemed to have submitted to the exclusive jurisdiction of this Court with respect to all matters related to the Auction and the terms and conditions of the transfer of the Assets.

6. If at least two Qualified Bids in respect of the Assets are received by the Bid Deadline, the Debtors shall conduct the Auction. The Auction will take place at the offices of Cooley LLP, 1114 Avenue of the Americas, New York, NY 10036 on March __, 2019 at 10:00 a.m. (prevailing Eastern Time) or such other place or time as the Debtors, with the consent of the DIP Agent, shall designate and notify to all Qualified Bidders, the Committee and the Prepetition Term Agent. Only Qualified Bidders will be permitted to participate in the Auction. The DIP Agent and the Prepetition Agents (each as defined in the DIP Order) are deemed to be a Qualified Bidder for all purposes, and shall be entitled (together with their respective retained professionals) to participate in the Auction.

7. The DIP Agent and the Prepetition Agents shall be entitled to credit bid all or a portion of their respective DIP Obligations or Prepetition Secured Obligations (each as defined in the DIP Order) for the Assets at any such auction, in each case in accordance with their respective rights under section 363(k) of the Bankruptcy Code

8. Each Qualified Bidder participating at the Auction will be required to confirm in writing, that (a) it has not engaged in any collusion with respect to the bidding process, and (b) its Qualified Bid is a good faith *bona fide* offer that it intends to consummate if selected as the Successful Bidder.

9. The Auction will be conducted openly and will be transcribed or videotaped, at the Debtors' option.

10. Within 24 hours following the conclusion of the Auction, the Debtors will file a notice identifying the Successful Bidder and the Next-Highest Bidder.

11. The Court shall convene the Sale Hearing on March __, 2019 at __:__ .m. (prevailing Eastern Time) or as soon thereafter as counsel and interested parties may be heard, at which time the Court will consider approval of the Sale to the Successful Bidder(s) and the entry of the Sale Order. The Debtors shall file a form of Sale Order no later than 14 days before the Sale Hearing. At the Sale Hearing, the Debtors will seek the entry of the Sale Order approving and authorizing the Sale to the Successful Bidder(s). Subject to consultation with the Consultation Parties, and with the consent of the DIP Agent, the Debtors may adjourn the Sale Hearing from time to time without further notice to creditors or other parties in interest other than by announcement of said adjournment at the Sale Hearing or in notice or agenda filed with the Court.

12. Objections to approval of the Sale, including the Sale of the Debtors' assets free and clear of liens, claims, encumbrances and interests pursuant to section 363(f) of the Bankruptcy Code, must be in writing, state the basis of such objection with specificity and be filed with this Court and served so as to be received on or before __:00 p.m. (prevailing Eastern Time) on March __, 2019 at __:__.m. (prevailing Eastern Time) (the "Objection Deadline") by:

- (a) Charlotte Russe, Inc., 575 Florida Street, San Francisco, CA 94110 (Attn: Marie Satterfield, Esq.), email: marie.satterfield@charlotterusse.com;
- (b) counsel to the Debtors, (i) Cooley LLP, 1114 Avenue of the Americas, New York, NY 10036 (Attn: Seth Van Aalten, Esq. and Michael A. Klein, Esq.), email: svanaalten@cooley.com and mklein@cooley.com; (ii) Bayard, P.A., 600 North King Street, Suite 400, P.O. Box 25130, Wilmington, DE (Attn: Justin Alberto, Esq. and Erin Fay, Esq.) email: jalberto@bayardlaw.com and efay@bayardlaw.com;
- (c) counsel to the Prepetition ABL Agent and the DIP Agent, (i) Morgan, Lewis & Bockius LLP, One Federal Street, Boston, MA 02110 (Attn: Julia Frost-Davies, Esq. and Christopher L. Carter, Esq.), email: julia.frost-davies@morganlewis.com and christopher.carter@morganlewis.com; and (ii) Richards, Layton & Finger, PA, One Rodney Square, 920 North King Street, Wilmington, DE 19801 (Attn: Mark D. Collins, Esq.), email: collins@rlf.com;
- (d) counsel to the Prepetition Term Agent (i) King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036 (Attn: Michael Collins Rupe, Esq. and W. Austin Jowers, Esq.), email: mrupe@kslaw.com and ajowers@kslaw.com;
- (e) counsel to the Steering Committee, (King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036 (Attn: Michael Collins Rupe, Esq. and W. Austin Jowers, Esq.), email: mrupe@kslaw.com and ajowers@kslaw.com;
- (f) once it is formed, counsel to each Committee; and
- (g) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Jane Leamy), email: Jane.M.Leamy@usdoj.gov) (collectively, the "Notice Parties").

Failure to timely file an objection in accordance with this Order shall forever bar the assertion of any objection to the Motion, entry of the Sale Order, or consummation of the Sale, and shall be deemed to constitute consent to entry of the Sale Order and consummation of the Sale and all

transactions related thereto including, without limitation, for purposes of section 363(f) of the Bankruptcy Code.

13. On _____, the Debtors will file an Assumption and Assignment Notice, which shall include a schedule of cure obligations (the “Cure Schedule”) for the Assumed and Assigned Agreements, and serve such Assumption and Assignment Notice on each of the non-Debtor parties listed therein by first class mail. The Cure Schedule will include a description of each Assumed and Assigned Agreement potentially to be assumed and assigned by a potential buyer and the amount, if any, the Debtors believe is necessary to cure, or compensate the non-Debtor parties for, any defaults under such agreements pursuant to section 365 of the Bankruptcy Code (the “Cure Costs”).

14. Objections to (a) the Cure Costs set forth in the Cure Schedule or (b) the assumption and assignment of any executory contract or unexpired lease identified in the Cure Schedule must be in writing, state the basis of such objection with specificity and be filed with the Court, and be actually received on or before _____ at __:__ .m. (prevailing Eastern Time) by the Notice Parties; *provided, however*, that if the Successful Bidder is not the Stalking Horse Purchaser, the deadline for objecting to the assignment of the Assumed and Assigned Agreements to such Successful Bidder on the basis of adequate assurance of future performance shall be the commencement of the Sale Hearing.

15. Unless a non-Debtor party to an Assumed and Assigned Agreement has timely and properly filed and served an objection to the assumption and assignment of its Assumed and Assigned Agreement, all counterparties to the Assumed and Assigned Agreements shall (a) be forever barred from objecting to the Cure Costs and from asserting any additional cure or other amounts with respect to the Assumed and Assigned Agreements, and the Debtors and the Successful

Bidder shall be entitled to rely solely upon the Cure Costs set forth in the Cure Schedule; (b) be deemed to have consented to the assumption and assignment; and (c) be forever barred, estopped and permanently enjoined from asserting or claiming against the Debtors, the Successful Bidder or their respective property that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied under such Assumed and Assigned Agreement or that there is any objection or defense to the assumption and assignment of such Assumed and Assigned Agreement. In addition, the Cure Costs set forth in the Cure Schedule shall be binding upon the non-Debtor parties to the Assumed and Assigned Agreements for all purposes in these Cases and otherwise, and will constitute a final determination of the total Cure Costs required to be paid by the Debtors in connection with the assumption and assignment of the Assumed and Assigned Agreements; *provided, however*, that the Cure Cost set forth in the Cure Schedule may be reduced by any amounts Debtors pay or value Debtors provide under an Assumed and Assigned Agreement on or after the Petition Date or by agreement of the parties.

16. Where a non-Debtor counterparty to an Assumed and Assigned Agreement files an objection asserting a cure amount higher than the proposed Cure Amounts (the “Disputed Cure Amounts”), then (a) to the extent that the parties are able to consensually resolve the Disputed Cure Amounts, the Cure Amounts shall be as agreed between the parties, or (b) to the extent the parties are unable to consensually resolve the dispute prior to the Sale Hearing, then such objection will be heard at the Sale Hearing or, at the sole discretion of the Debtors (with the consent of the Consultation Parties and Successful Bidder, at such other date and time as may be fixed by this Court. All other objections to the proposed assumption and assignment of an Assumed and Assigned Agreement will be heard at the Sale Hearing.

17. The form of the Auction and Hearing Notice and the Assumption and Assignment Notice are hereby approved and appropriate and sufficient for all purposes and no other or further notice shall be required. No finding or ruling is made in this Order as to the merits of any motion for approval of the Sale. Within one (1) business day of the entry of this Order or as soon thereafter as practicable, the Debtors shall cause the Auction and Hearing Notice to be served upon, without limitation, (i) the U.S. Trustee; (ii) counsel to any Committee; (iii) counsel to the Prepetition ABL Agent and the DIP Agent; (iv) counsel to the Prepetition Term Agent; (v) counsel to the Steering Committee; (vi) the attorneys general and consumer protections agencies in jurisdictions in which the Assets are located; (vii) all taxing authorities having jurisdiction over any of the Assets, including the Internal Revenue Service; (viii) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002(i); (ix) all parties that are known or reasonably believed to have expressed an interest in acquiring the Acquired Assets or any of the Other Assets; (x) all parties that are known or reasonably believed by the Debtors to have asserted any lien, encumbrance, claim or other interest in the Acquired Assets; (xi) all governmental agencies that are known or reasonably believed by the Debtors to be an interested party with respect to the Sale and the related transactions; and (xii) all non-Debtor parties to the Debtors' real property leases.

18. All Interested Parties (whether or not Qualified Bidders) that participate in the Bidding Process shall be deemed to have knowingly and voluntarily (a) consented to the entry of a final order by this Court in connection with the Motion or this Order (including any disputes relating to the Bidding Process, the Auction and/or the Sale) to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution and (b) waived any right to jury trial in connection with any disputes relating to the any of the foregoing matters.

19. The requirements set forth in Local Rules 6004-1 and 9013-1 are hereby satisfied, modified, or waived.

20. Notwithstanding any applicability of Bankruptcy Rule 6004(h), 6006(d), 7052 or 9014, this Order shall be immediately effective and enforceable upon entry of this Order. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

21. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

Dated: _____, 2019
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

ANNEX 1

Bidding Procedures

BIDDING PROCEDURES

Set forth below are the bidding procedures (the “Bidding Procedures”)¹ to be used with respect to the sale or disposition (the “Sale”) of the Assets (as defined below) of Charlotte Russe Holding, Inc.; Charlotte Russe Holdings Corporation; Charlotte Russe Intermediate Corporation; Charlotte Russe Enterprise, Inc.; Charlotte Russe, Inc.; Charlotte Russe Merchandising, Inc.; and Charlotte Russe Administration, Inc. (collectively, the “Debtors”).

Additional information regarding the Assets can be obtained by contacting both Stuart Erickson and Stephen Preefer of Guggenheim Securities, LLC (email: stuart.erickson@guggenheimpartners.com and stephen.preefer@guggenheimpartners.com, phone: (212) 518-9970), the Debtors’ proposed investment banker in these Cases.

I. Description of the Assets to be Sold

The Debtors are seeking to sell all or substantially all of their business as a going concern or subsets of the operating business, including but not limited to the inventory, receivables, equipment, intellectual property, unexpired leases, contract rights and other assets related to or necessary to operate the business of selling clothing and related apparel to retail customers in store, online and by catalog, currently operated by the Debtors, (the “Assets”), in each case free and clear of all liens, claims and encumbrances thereon.

The Sale of the Assets shall be subject to a competitive bidding process as set forth herein and approval by the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) pursuant to sections 105, 363, and 365 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6003, 6004, 6006, 9007, 9008 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1, 6004-1 and 9006-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”). The Debtors may consider bids for the Assets (or any portion thereof) in a single bid from a single bidder, or in multiple bids from multiple bidders.

II. Confidentiality Agreement

Unless otherwise ordered by the Bankruptcy Court for cause shown, to participate in the Bidding Process (as defined below), each person or entity must enter into (unless previously entered into) with the Debtors, on or before the Bid Deadline (as defined below), an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtors (the “Confidentiality Agreement”). Each person or entity that enters into the Confidentiality Agreement with the Debtors on or before the Bid Deadline is hereinafter referred to as a “Potential Bidder.”

After a Potential Bidder enters into the Confidentiality Agreement with the Debtors, the Debtors shall deliver or make available (unless previously delivered or made available) to each Potential Bidder certain designated information (including, if applicable, financial data) with respect to the Assets.

¹ Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

III. Determination by the Debtors

As appropriate throughout the Bidding Process, the Debtors will consult with (1) the Prepetition ABL Agent and DIP Agent, (2) the Prepetition Term Agent, (3) the Steering Committee, and (4) any statutory committee appointed in the Debtors' Cases, if any (each a "Committee" and, collectively with the Prepetition ABL, the DIP Agent, the Prepetition Term Agent, and the Steering Committee, the "Consultation Parties") and shall (a) coordinate the efforts of Potential Bidders in conducting their respective due diligence, (b) evaluate bids from Potential Bidders on any or all of the Assets, (c) following consultation with the Consultation Parties, negotiate any bid made to acquire any or all of the Assets, and (d) following consultation with the Consultation Parties, make such other determinations as are provided in these Bidding Procedures (collectively, the "Bidding Process"); provided that the Debtors shall not consult with a Consultation Party (or its advisors) that is actively participating as a bidder for the Assets. Neither the Debtors nor their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Assets to any party that is not a Potential Bidder or a Consultation Party.

IV. Due Diligence

Up to and including the Bid Deadline (as defined below) (such period, the "Diligence Period"), the Debtors shall afford any Potential Bidder such available due diligence access or additional information as may be reasonably requested by the Potential Bidder that the Debtors, in their business judgment, determine to be reasonable and appropriate under the circumstances. The Debtors will provide, in an electronic data room to be established for these purposes, a form of asset purchase agreements for the Sale of substantially all of the Debtors' Assets (the "Form APA"), and will grant each Potential Bidder or Consultation Party, as applicable, access to such data room. The Debtors may designate a representative or representatives to coordinate all reasonable requests for additional information and due diligence access from such Potential Bidders and/or or Consultation Parties, as applicable. Each Potential Bidder shall be required to acknowledge that it has had an opportunity to conduct any and all due diligence regarding the Assets in conjunction with submitting its Bid (as defined below).

V. Bid Deadline

A Potential Bidder that desires to make a Bid shall deliver copies of its Bid to (a) Charlotte Russe, Inc., 5910 Pacific Center Boulevard, Suite 120, San Diego, CA 92121 (Attn: Marie Satterfield, Esq.), email: marie.satterfield@charlotterusse.com; (b) counsel to the Debtors, (i) Cooley LLP, 1114 Avenue of the Americas, New York, NY 10036 (Attn: Seth Van Aalten, Esq. and Michael A. Klein, Esq.), email: svanaalten@cooley.com and mklein@cooley.com; and (ii) Bayard, P.A., 600 North King Street, Suite 400, P.O. Box 25130, Wilmington, DE (Attn: Justin Alberto, Esq. and Erin Fay, Esq.) email: jalberto@bayardlaw.com and efay@bayardlaw.com; (c) BRG, 75 State Street, Boston, MA 02109 (Attn: Brian Cashman), email: bcashman@thinkbrg.com; and (d) Guggenheim Securities, LLC, 330 Madison Avenue, New York, NY 10017 (Attn: Stuart Erickson and Stephen Preefer), email:stuart.erickson@guggenheimpartners.com and stephen.preefer@guggenheimpartners.com; and (e) counsel to the Prepetition ABL Agent and the DIP Agent (i) Morgan, Lewis & Bockius LLP, One Federal Street, Boston, MA, 02110 (Attn: Julia Frost-Davies, Esq. and Christopher L.

Carter, Esq.) email: Julia.frost-davies@morganlewis.com and christopher.carter@morganlewis.com; and (ii) Richards, Layton & Finger, PA, One Rodney Square, 920 North King Street, Wilmington, DE 19801 (Attn: Mark D. Collins, Esq.), email:collins@rlf.com, by either (a) no later than March 3, 2019 at 5:00 p.m. (prevailing Eastern Time) pursuant to the Liquidation Path or (b) no later than March 7, 2019 at 5:00 p.m. (prevailing Eastern Time) pursuant to the Going Concern Path (as may be extended, with the consent of the DIP Agent, and each, a “Bid Deadline”). As soon as reasonably practicable following the Bid Deadline, but in no event later than one day after the Bid Deadline, the Debtors will identify the Baseline Bid(s) and provide to the Consultation Parties copies of all Qualified Bids (with such distribution permissible by electronic means).

VI. Bid Requirements

All bids (each hereinafter, a “Bid”) must (collectively, the “Bid Requirements”):

- (a) be accompanied by a letter or email, or at the request of the Debtors, a non-binding letter of intent:
- (i) stating with specificity the Assets (including the specific executory contracts and unexpired leases) such Potential Bidder wishes to bid on and the liabilities and obligations (including applicable cure costs) to be assumed by the Potential Bidder in the Sale;
 - (ii) detailing the following:
 - (A) a duly executed purchase agreement (the “Purchase Agreement”);
 - (B) a redline of the Purchase Agreement marked to reflect any proposed amendments and modifications to the Form APA and the applicable schedules and exhibits; and
 - (C) with respect to bids for a Liquidation Transaction, such transaction shall be presented on an equity/guaranteed basis, supported by cash consideration in an amount and payable at such times as is consistent with the terms of any other agreement providing for the liquidation of the Debtors’ stores.
 - (iii) Agreeing that, other than as agreed by the Debtors in connection with seeking approval of protections for a Stalking Horse Bidder (defined below), is not subject to any break up fee, transaction fee, expenses reimbursement or any similar type of reimbursement;
 - (iv) agreeing that the Potential Bidder’s offer is binding and irrevocable (x) under the Liquidation Path, the later of (i) March 7, 2019 or (ii) the first business day following the closing of the Sale, and (y) under the Going Concern Path, the later of (i) March 14, 2019 or (ii) the first business day following the closing of the Sale;

- (iv) providing for a Closing Date (as defined below) (x) pursuant to the Liquidation Path, not later than March 7, 2019 or (y) pursuant to the Going Concern Path, not later than March 14, 2019;
- (v) providing that such Bid is not subject to any due diligence or financing contingency; and
- (vii) providing that the Potential Bidder agrees to serve as a backup bidder (the “Next-Highest Bidder”) if the Potential Bidder’s Qualified Bid (as defined below) is the next highest and best bid after the Successful Bid (as defined below) (the “Next-Highest Bid”) with respect to the relevant Assets.

(b) be accompanied by any reasonable information requested by a consumer privacy ombudsman, if one is appointed pursuant to section 363(b)(1)(B) of the Bankruptcy Code;

(c) be accompanied by adequate assurance of future performance information (the “Adequate Assurance Information”) for Bids under the Going Concern Path, which may include (i) information about the Potential Bidder’s financial condition, such as federal tax returns for two years, a current financial statement, or bank account statements, (ii) information demonstrating (in the Debtors’ reasonable business judgment) that the Potential Bidder has the financial capacity to consummate the proposed Sale, (iii) evidence that the Potential Bidder has obtained authorization or approval from its board of directors (or comparable governing body) with respect to the submission of its Bid, (iv) the identity and exact name of the Potential Bidder (including any equity holder or other financial backer if the Potential Bidder is an entity formed for the purpose of consummating the proposed Sale), and (v) such additional information regarding the Potential Bidder as the Potential Bidder may elect to include. By submitting a Bid, Potential Bidders agree that the Debtors may disseminate their Adequate Assurance Information to affected landlords, contract counterparties, and the Consultation Parties in the event that the Debtors determine such bid to be a Qualified Bid (as defined below); and

(d) as and to the extent applicable, be accompanied by a proposed Letter of Intent sufficient for purposes of any required filing under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (the “HSR Act”) and a statement indicating that the Potential Bidder would cover any filing fees under the HSR Act.

A Bid must be accompanied by (a) a deposit in the form of a certified check or wire transfer, payable to the order of the Debtors, in the amount of ten percent (10%) of the cash consideration of the Bid, which funds will be deposited into an escrow account to be identified and established by the Debtors (a “Good Faith Deposit”) and (b) written evidence, documented to the Debtors’ satisfaction, that demonstrates the Potential Bidder has available cash, a commitment for financing if selected as the Successful Bidder (as defined below) with respect to the relevant Assets (provided, however, that the closing shall not be contingent in any way on the Successful Bidder’s financing) and such other evidence of ability to consummate the transaction(s) as the Debtors may request, including proof that such funding commitments or other financing are not subject to any internal approvals, syndication requirements, diligence or credit committee approvals (provided that such commitments may have covenants and conditions acceptable to the Debtors). The

Debtors reserve the right to increase the Good Faith Deposit for one or more Qualified Bidders (as defined below) in their sole discretion after consulting with the Consultation Parties.

The Debtors may select a Stalking Horse APA, subject to the consent of the DIP Agent. Each Stalking Horse APA shall be subject to higher or better offers at the Auction (as defined below) and shall establish a minimum bid at the Auction for the Assets included in the Stalking Horse APA. The Stalking Horse APA may contain customary terms and conditions providing the Stalking Horse Bidder with reasonable bid protections (the “Bid Protections”) as may be agreed between the Debtors and the Stalking Horse Bidder, subject to the consent of the DIP Agent. If the Debtors enter into any such Stalking Horse APA(s), (a) on or before the Stalking Horse Bid Deadline, the Stalking Horse APA(s) shall be placed on the Court’s docket and notice thereof shall be given to all parties who received notice of this Motion, all parties on the Debtors’ 2002 notice list and all potential bidders; and (b) the Court shall conduct a hearing on a date that is one (1) or more business days thereafter, subject to the Court’s availability, to approve the Debtors’ entry into any Stalking Horse APA and consider approval of the proposed Bid Protections. The Bid Protections hearing may be adjourned or rescheduled without notice other than as stated on the record in court or in appropriate agenda letter.

The Debtors, in consultation with those Consultation Parties that have not submitted a Bid, will review each Bid received from a Potential Bidder to determine whether it meets the requirements set forth above. A Bid received from a Potential Bidder that meets the above requirements, and is otherwise satisfactory to the Debtors, will be considered a “Qualified Bid” and each Potential Bidder that submits a Qualified Bid will be considered a “Qualified Bidder.” The Debtors shall inform Qualified Bidders that their Bids have been designated as Qualified Bids no later than 24 hours after such Bids are received. For the avoidance of doubt, (a) any Stalking Horse APA entered into by the Debtors will be deemed a Qualified Bid, and (b) any Stalking Horse Bidder, the DIP Agent and the Prepetition Agents are hereby each deemed a Qualified Bidder for all purposes and requirements pursuant to the Bidding Procedures, notwithstanding the requirements that a Potential Bidder must satisfy to be a Qualified Bidder.

A Qualified Bid will be valued by the Debtors based upon any and all factors that the Debtors reasonably deem pertinent in their reasonable business judgment, including, among others, (a) the amount of the Qualified Bid, (b) the risks and timing associated with consummating the transaction(s) with the Qualified Bidder, (c) any excluded assets or executory contracts and leases, and (d) any other factors that the Debtors (in consultation with the Consultation Parties) may reasonably deem relevant.

The Debtors, in their business judgment, and in consultation with the Consultation Parties, reserve the right to reject any Bid if such Bid, among other things:

- (a) is on terms that are more burdensome or conditional than the terms of any stalking horse agreement (as defined below), if applicable;
- (b) requires any indemnification of the Potential Bidder in its Purchase Agreement;
- (c) is not received by the Bid Deadline;

- (d) is subject to any contingencies (including representations, warranties, covenants and timing requirements) of any kind or any other conditions precedent to such party's obligation to acquire the relevant Assets; or
- (e) does not, in the Debtors' determination (after consultation with the Consultation Parties), include a fair and adequate price or the acceptance of which would not be in the best interests of the Debtors estates or the Auction.

Any Bid rejected pursuant to this paragraph shall not be deemed to be a Qualified Bid; provided that the Debtors have the right to work with the parties to any rejected Bid to cure any such defects after cure. In the event that any Bid is so rejected, the Debtors shall cause the Good Faith Deposit of such Potential Bidder (including all accumulated interest thereon) to be refunded to it within five (5) business days after the Bid Deadline.

The Debtors may, in consultation with the Consultation Parties, and with the consent of the DIP Agent, among other things, (i) extend such Bid Deadline with respect to the subject Assets and postpone the Auction, or (ii) cancel the Auction and terminate the proposed Sale for the subject Assets.

VII. Credit Bidding

In connection with the Sale of all or any of the Assets, the DIP Agent and the Prepetition Agents may seek to credit bid some or all of their claims for their respective collateral (each such bid, a "Credit Bid") pursuant to section 363(k) of the Bankruptcy Code. A Credit Bid may be applied only to reduce the cash consideration with respect to those Assets in which the party submitting such Credit Bid holds a security interest. The DIP Agent and the Prepetition Agents shall each be considered a Qualified Bidder with respect to its right to acquire all or any of the Assets by Credit Bid. Unless otherwise provided herein, all Qualified Bids shall be cash bids.

VIII. Auction

Unless otherwise ordered by the Bankruptcy Court for cause shown, only the Qualified Bidders are eligible to participate at the Auction (as defined below). The Consultation Parties shall be permitted to attend the Auction. In addition, any other creditor or party the Debtors deem appropriate may observe the Auction; provided, however, that any such party must provide notice of its intent to observe to the Debtors at least five (5) days before the Auction by electronic mail to Summer M. McKee, Esq., (email: smckee@cooley.com). At least one (1) day prior to the Auction, each Qualified Bidder must inform the Debtors in writing whether it intends to participate in the Auction. If the Debtors receive only one Qualified Bid with regard to any particular Assets (or all of the Assets), (a) the Debtors shall not hold an Auction with respect to such Assets; (b) the Qualified Bid, as applicable, will be deemed the Successful Bid with respect to such Assets; and (c) the Qualified Bidder will be named the Successful Bidder with respect to such Assets. At any point and at their sole discretion, the Debtors shall have the right to remove any class of Assets from the Auction.

If at least two Qualified Bids are received by the Bid Deadline with regard to any particular Assets, the Debtors will conduct an auction (the "Auction") with respect to such Assets and shall

determine, after consultation with the Consultation Parties, which Qualified Bid is the highest or otherwise best Qualified Bid for the relevant Assets (the “Starting Bid”), which determination will be communicated to Qualified Bidders prior to the commencement of the Auction. If proceeding pursuant to the Liquidation Path, the Auction shall take place on March 5, 2019 at 10:00 a.m. (prevailing Eastern Time) at the offices of the Debtors’ counsel, Cooley LLP, 1114 Avenue of the Americas, New York, NY 10036 or such other place or time as the Debtors shall designate and notify to all Qualified Bidders who have submitted Qualified Bids. If proceeding pursuant to the Going Concern Path, the Auction shall take place on March 11, 2019 at 10:00 a.m. (prevailing Eastern Time) at the offices of the Debtors’ counsel, Cooley LLP, 1114 Avenue of the Americas, New York, NY 10036 or such other place or time as the Debtors shall designate and notify to all Qualified Bidders who have submitted Qualified Bids. Professionals and principals for the Debtors, the Stalking Horse Bidder(s) (if any), each Qualified Bidder and the Consultation Parties shall be able to attend and observe the Auction, along with any other parties the Debtors deem appropriate.

Each Qualified Bidder participating in the Auction will be required to confirm, in writing, and on the record at the Auction, that (a) it has not engaged in any collusion with respect to the Bidding Process, and (b) its Qualified Bid is a good faith *bona fide* offer that it intends to consummate if selected as the Successful Bidder.

Bidding at the Auction for the Assets (or subset thereof) that are subject to Qualified Bids will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one Subsequent Bid (defined below) is submitted by a Qualified Bidder that (i) improves on such Qualified Bidder’s immediately prior Qualified Bid (a “Subsequent Bid”) and (ii) the Debtors reasonably determine, in consultation with the Consultation Parties, that such Subsequent Bid is (A) for the first round, a higher or otherwise better offer than the Starting Bid, and (B) for subsequent rounds, a higher or otherwise better offer than the Leading Bid (as defined below). Each Subsequent Bid at the Auction shall provide net value to the estates in an amount to be announced at or prior the Auction (“Incremental Overbid”) over the Starting Bid or the Leading Bid (as defined below), as the case may be, as determined by the Debtors in the exercise of their reasonable business judgment and in consultation with the Consultation Parties; provided that: (i) if the Leading Bid was made by a Stalking Horse Bidder, such bid shall be deemed to include any Bid Protections that were previously approved by the Bankruptcy Court, and (ii) any Subsequent Bid made by any Stalking Horse Bidder shall only be required to equal the sum of the amount of (x) the Starting Bid or the Leading Bid, as applicable, and (y) the Incremental Overbid, less any bid protection amount (if applicable). After the first round of bidding and between each subsequent round of bidding, the Debtors shall announce the bid that they believe to be the highest or otherwise best offer for the subject Assets (the “Leading Bid”). A round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid, subject to the Debtors’ authority to revise the Auction procedures as set forth below.

The Debtors may, in consultation with the Consultation Parties, announce at the Auction additional procedural rules (*e.g.*, the amount of time to make Subsequent Bids, the amount of the Incremental Overbid, or the requirement that parties submit “best and final” Bids) for conducting the Auction or otherwise modify these Bidding Procedures; provided that such rules (1) are not materially inconsistent with these Bidding Procedures, the Bankruptcy Code, the DIP Documents

or any order of the Bankruptcy Court, and (2) are disclosed to each Qualified Bidder during the Auction. The bidding at the Auction shall be transcribed or videotaped and the Debtors shall maintain a transcript of all Bids made and announced at the Auction.

Immediately prior to the conclusion of the Auction, the Debtors, in consultation with the Consultation Parties will, for the Assets (or subset thereof) that were subject to the Auction: (a) determine, consistent with the Bidding Procedures, which bid constitutes the highest or otherwise best bid (the “Successful Bid”); and (b) notify all Qualified Bidders at the Auction for the subject Assets, prior to its conclusion, of the name of the maker of the Successful Bid (the “Successful Bidder”) with respect to the subject Assets, and the amount and other material terms of the Successful Bid. The Debtors may, in consultation with the Consultation Parties, designate the Next-Highest Bid (and the corresponding Next-Highest Bidder) to close with respect to the subject Assets in the event that the Successful Bidder does not close the Sale. The terms of each Successful Bid and Next-Highest Bid shall be reasonably acceptable to the DIP Agent and shall, among other things, either (a) provide for cash proceeds in an amount sufficient to repay in full in cash all of the DIP Obligations (as defined in any orders approved by this Court approving any debtor-in-possession financing for, or any use of cash collateral by, the Debtors (the “DIP Order”)) and, if applicable, all of the Prepetition ABL Obligations (as defined in the DIP Order), or (b) be approved and consented to by the DIP Agent and the Prepetition ABL Agent. Unless the Bankruptcy Court orders otherwise upon application by the Debtors, the Debtors shall not consider any Bids or Subsequent Bids submitted after the conclusion of the Auction and any and all such Bids and Subsequent Bids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.

Following conclusion of the Auction, the Debtors shall file a notice on the Bankruptcy Court’s docket identifying (with specificity) the Successful Bidder(s) for the Assets (or subset thereof) and any applicable Next-Highest Bidders.

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

IX. Acceptance of Qualified Bids

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

The Debtors’ presentation to the Bankruptcy Court for approval of a selected Qualified Bid as a Successful Bid does not constitute the Debtors’ acceptance of such Bid. The Debtors will have accepted a Successful Bid only when such Successful Bid has been approved by the Bankruptcy Court at the Sale Hearing.

X. No Fees for Potential Bidders or Qualified Bidders

Potential Bidders or Qualified Bidders, other than a Stalking Horse Bidder if so approved by the Bankruptcy Court, shall not be allowed any bidding, break-up, termination or other fee (a “Bidding Fee”) as a precondition to, or in consideration of, presenting any bid or participating in the Bidding Process provided for herein.

XI. Sale Hearing

Each Successful Bid and any Next-Highest Bid (or if no Qualified Bid other than that of a Stalking Horse Bidder or one Qualified Bidder is received with respect to the Assets (or subset thereof), then the Stalking Horse Bid or the Qualified Bidder, respectively) shall be subject to approval by the Bankruptcy Court. The hearing to approve a Successful Bid and any Next-Highest Bid (or if no Qualified Bid other than that of a Stalking Horse Bidder or one Qualified Bid is received with respect to the Assets (or subset thereof), then the Stalking Horse Bid or the Qualified Bid, respectively) shall take place on, (x) if proceeding pursuant to the Liquidation Path, March 6, 2019 at _____ (ET) (prevailing Eastern Time) or (y) if proceeding pursuant to the Going Concern Path, March 13, 2019 at _____ (ET) (prevailing Eastern Time) (the “Sale Hearing”). The Sale Hearing may be adjourned by the Debtors, consistent with the terms of the DIP Documents, from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or by filing a notice, which may be a hearing agenda stating the adjournment, on the docket of the Debtors’ Cases.

XII. Return of Good Faith Deposit

The Good Faith Deposits of all Potential Bidders shall be held in escrow, but shall not become property of the Debtors’ estates absent further order of the Bankruptcy Court. The Debtors shall retain any Good Faith Deposit submitted by each Successful Bidder. At the closing of a Sale contemplated by a Successful Bid, the applicable Successful Bidder will be entitled to a credit for the amount of its Good Faith Deposit to the extent such a deposit was provided. The Good Faith Deposits of each Next-Highest Bidder shall be retained until three (3) business days after the applicable closing date (the “Closing Date”). The Good Faith Deposits of the other Qualified Bidders will be returned as soon as practicable but no later than seven (7) Business Days following the Auction.

If a Successful Bidder (or, if the Sale is to be closed with a Next-Highest Bidder, then the Next-Highest Bidder) fails to consummate the Sale because of a breach or failure to perform on the part of such bidder, then, subject to the terms of the Purchase Agreement or the Stalking Horse APA, as applicable (and as such agreements may be amended or modified at the Auction), the Debtors and their estates shall be entitled to retain the Good Faith Deposit of such Successful Bidder (or, if the Sale is to be closed with the Next-Highest Bidder, then such Next-Highest Bidder) as part of the damages resulting to the Debtors and their estates for such breach or failure to perform.

XIII. Reservation of Rights and Modifications

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

The Debtors shall consult with the Consultation Parties as explicitly provided for in these Bidding Procedures; provided, however, that the Debtors shall not be required to consult with any Consultation Party (or its advisors) that actively bidding for the Assets, including by way of any credit bid, if the Debtors determine, in their reasonable business judgment, that consulting with such Consultation Party regarding any issue, selection, or determination is (a) likely to have a chilling effect on the potential bidding or (b) otherwise contrary to the goal of maximizing value from the Sale process for the Debtors' estates, their creditors, and all other parties in interest.

XIV. Next-Highest Bidder

Notwithstanding any of the foregoing, in the event that a Successful Bidder fails to close a Sale prior to such date as specified in the applicable Purchase Agreement (or such date as may be extended by the Debtors), the Debtors, upon written notice to the Next-Highest Bidder, may designate the applicable Next-Highest Bid as the Successful Bid for the Assets (or subset thereof), the Next-Highest Bidder will be deemed to be the Successful Bidder for such Assets, and the Debtors will be authorized, but not directed, to close the Sale to the Next-Highest Bidder subject to the terms of the Next-Highest Bid as approved by further order of the Bankruptcy Court.

XV. DIP Order

Notwithstanding anything to the contrary contained in these Bidding Procedures or otherwise: (a) any right of the DIP Agent to consent to the Sale of any portion of its collateral, including, without limitation, any Assets, on terms and conditions acceptable to the DIP Agent are hereby expressly reserved and not modified, waived or impaired in any way by these Bidding Procedures; (b) unless otherwise ordered by this Court, all proceeds generated from the Sale of any Assets shall be subject to the DIP Liens and the Prepetition Liens (each as defined in the DIP Order) and all cash proceeds shall be paid to the DIP Agent upon the closing of such sale for permanent application against the obligations owing by the Debtors under the DIP Documents in accordance with the terms and conditions of the DIP Order and thereafter, if applicable, in accordance with the terms and conditions of the Prepetition Documents until such time as all DIP Obligations and Prepetition Secured Obligations (each as defined in the DIP Order) have been paid in full in accordance with the terms and conditions of the DIP Documents, the DIP Order, and the Prepetition Documents, as applicable; and (c) nothing in these Bidding Procedures shall amend, modify or impair any provision of the DIP Order, or the rights of the Debtors, the DIP Agent, the DIP Lenders or the Term Loan Agent thereunder.

EXHIBIT B

Assumption and Assignment Notice

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re

CHARLOTTE RUSSE HOLDING, INC., *et al.*,¹
Debtors.

Chapter 11

Case No.: 19- (_____)

(Joint Administration Requested)

**NOTICE OF (I) POTENTIAL ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND (II) CURE AMOUNTS**

You are receiving this notice because you may be a counterparty to a contract or lease with Charlotte Russe Holding, Inc.; Charlotte Russe Holdings Corporation; Charlotte Russe Intermediate Corporation; Charlotte Russe Enterprise, Inc.; Charlotte Russe, Inc.; Charlotte Russe Merchandising, Inc.; or Charlotte Russe Administration, Inc. Please read this notice carefully as your rights may be affected by the transactions described herein.

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On February 3, 2019, Charlotte Russe Holding, Inc. and its debtor affiliates, as debtors and debtors in possession (collectively, the “Debtors”) filed a motion seeking approval of bidding procedures for the sale of certain of the Debtors’ assets (the “Assets”) and approval of the sale of the Debtors’ Assets (the “Bidding and Sale Motion”) to the highest or best qualified bidder (the “Successful Bidder”). The Debtors are seeking the Court’s approval at a hearing on February 19, 2019 of the proposed bidding procedures and the form of this notice. The Debtors have further requested a hearing to approve the sale of the Assets (the “Sale Hearing”) for March 13, 2019 in the United States Bankruptcy Court for the District of Delaware in Wilmington, Delaware (the “Bankruptcy Court”). The Bankruptcy Court will consider the sale of the Assets to the Successful Bidder and the assumption and assignment of executory contracts and unexpired leases at the Sale Hearing.

2. Pursuant to the Bidding and Sale Motion, the Debtors may potentially assume and assign to the Successful Bidder one or more of those executory contracts and unexpired leases listed on Exhibit A annexed hereto (collectively, the “Potentially Assigned Agreements” and each, a “Potentially Assigned Agreement”), pursuant to section 365 of the Bankruptcy Code.

¹ The Debtors and the last four digits of their respective federal taxpayer identification numbers are as follows: Charlotte Russe Holding, Inc. (4325); Charlotte Russe Holdings Corporation (1045); Charlotte Russe Intermediate Corporation (6345); Charlotte Russe Enterprise, Inc. (2527); Charlotte Russe, Inc. (0505); Charlotte Russe Merchandising, Inc. (9453); and Charlotte Russe Administration, Inc. (9456). The Debtors’ headquarters are located at 5910 Pacific Center Boulevard, Suite 120, San Diego, CA 92121.

3. The Debtors have indicated on Exhibit A annexed hereto the cure amounts that the Debtors believe must be paid to cure all pre-petition defaults and pay all amounts accrued, under the Potentially Assigned Agreements (in each instance, the “Cure Amount”).

4. Any party seeking to (i) object to the validity of the Cure Amount as determined by the Debtors or otherwise assert that any other amounts, defaults, conditions or pecuniary losses must be cured or satisfied under any of the Potentially Assigned Agreements in order for such contract or lease to be assumed and assigned or (ii) object to the assumption and assignment of any Potentially Assigned Agreements on any other basis other than objections to adequate assurance of future performance, must file an objection (the “Assumption/Assignment Objection”) that (a) is in writing, (b) sets forth the specific monetary amount the objector asserts to be due, and the specific types of the alleged defaults, pecuniary losses, accrued amounts and conditions to assignment and the support therefor, (c) is filed with the Clerk of the Bankruptcy Court and (d) is served so as to be actually received by (a) Charlotte Russe Inc., 5910 Pacific Center Boulevard, Suite 120, San Diego, CA 92121 (Attn: Marie Satterfield, Esq.), email: marie.satterfield@charlotterusse.com; (b) counsel to the Debtors, (i) Cooley LLP, 1114 Avenue of the Americas, New York, NY 10036 (Attn: Seth Van Aalten, Esq. and Michael A. Klein, Esq.), email: svanaalten@cooley.com and mklein@cooley.com; and (ii) Bayard, P.A., 600 North King Street, Suite 400, P.O. Box 25130, Wilmington, DE (Attn: Justin Alberto, Esq. and Erin Fay, Esq.) email: jalberto@bayardlaw.com and efay@bayardlaw.com; (c) counsel to the Prepetition ABL Agent and the DIP Agent, (i) Morgan, Lewis & Bockius LLP, One Federal Street, Boston, MA 02110 (Attn: Julia Frost-Davies, Esq. and Christopher L. Carter, Esq.), email: julia.frost-davies@morganlewis.com and christopher.carter@morganlewis.com; and (ii) Richards, Layton & Finger, PA, One Rodney Square, 920 North King Street, Wilmington, DE 19801 (Attn: Mark D. Collins, Esq.), email: collins@rlf.com; (d) counsel to the Prepetition Term Agent, King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036 (Attn: Michael Collins Rupe, Esq. and W. Austin Jowers, Esq.), email: mrupe@kslaw.com and ajowers@kslaw.com; (e), counsel to the Steering Committee, King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036 (Attn: Michael Collins Rupe, Esq. and W. Austin Jowers, Esq.), email: mrupe@kslaw.com and ajowers@kslaw.com; (f) once it is formed, counsel to each Committee; and (g) the U.S. Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (collectively, the “Notice Parties”) by March 6, 2019 at 4:00 p.m. (prevailing Eastern Time) (the “Assumption/Assignment Objection Deadline”).

5. The Debtors shall file a notice identifying the Successful Bidder with the Bankruptcy Court and serve such notice upon parties in interest not later than 24 hours after the conclusion of the Auction. The deadline for objecting to the assignment of the Potentially Assigned Agreements to such Successful Bidder on the basis of adequate assurance of future performance (“Adequate Assurance Objections”) shall be the commencement of the Sale Hearing (the “Adequate Assurance Objection Deadline”).

6. Unless an Assumption/Assignment Objection is filed and served before the Assumption/Assignment Objection Deadline or an Adequate Assurance Objection is raised before the Adequate Assurance Objection Deadline, all parties shall (i) be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts with respect to the Potentially Assigned Agreements, and the Debtors and the Successful Bidder shall be entitled to rely solely upon the Cure Amount; (ii) be deemed to have consented to the assumption and

assignment, and (iii) be forever barred and estopped from asserting or claiming against the Debtors or the Successful Bidder that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied under such Potentially Assigned Agreements or that there is any objection or defense to the assumption and assignment of such Potentially Assigned Agreements.

7. Any hearings with respect to the Assumption/Assignment Objections or Adequate Assurance Objections or may be held (i) at the Sale Hearing, or (ii) at such other date as may be agreed by the parties or set by the Bankruptcy Court. Where a nondebtor counterparty to a Potentially Assigned Agreement files an objection asserting a cure amount higher than the proposed Cure Amount, (the “Disputed Cure Amount”), then (i) the cure amount shall be as agreed between the parties or (ii) to the extent the parties are unable to consensually resolve the dispute, then the amount to be paid under section 365 of the Bankruptcy Code with respect to such Disputed Cure Amount will be determined at the Sale Hearing or at such other date and time as may be fixed by the Bankruptcy Court. All other objections to the proposed assumption and assignment of a Potentially Assigned Agreement will be heard at the Sale Hearing, unless adjourned by agreement of the parties.

8. An Assumption/Assignment Objection shall not constitute an objection to the relief generally requested in the Bidding and Sale Motion. Parties wishing to otherwise object to the relief requested in the Bidding and Sale Motion must file and serve a separate objection, stating with particularity such party’s grounds for objection, so as to be received by each of the Notice Parties listed above no later than March 6, 2019 at 4:00 p.m. (prevailing Eastern Time).

9. If you agree with the Cure Amount indicated on Exhibit A, and otherwise do not object to the Debtors’ assignment of your lease or contract, you need not take any further action.

10. The Debtors’ decision to assume and assign the Potentially Assigned Agreements is subject to Bankruptcy Court approval and consummation of the sale of the Assets. Accordingly, the Debtor shall be deemed to have assumed and assigned each of the Assigned Agreements as of the date of, and effective only upon, the closing of the sale of the Assets, and absent such closing, each of the Potentially Assigned Agreements shall neither be deemed assumed nor assigned and shall in all respects be subject to further administration under the Bankruptcy Code.

Inclusion of any document on the list of Potentially Assigned Agreements shall not constitute or be deemed to be a determination or admission by the Debtors or the Successful Bidder that such document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code, and all rights with respect thereto are being expressly reserved.

Dated: February 3, 2019

BAYARD, P.A.
/s/ _____
Justin R. Alberto (No. 5126)
Erin R. Fay (No. 5268)
600 North King Street, Suite 400
Wilmington, Delaware 19801

Telephone: (302) 655-5000
Facsimile: (302) 658-6395
Email: jalberto@bayardlaw.com
efay@bayardlaw.com

- and -

COOLEY LLP

Seth Van Aalten
Michael Klein
Summer M. McKee
1114 Avenue of the Americas
New York, New York 10036
Telephone: (212) 479-6000
Facsimile: (212) 479-6275
Email: svanaalten@cooley.com
mklein@cooley.com
smckee@cooley.com

Proposed Co-Counsel for the Debtors

EXHIBIT B

LEASES

Landlord Name / Address	<u>Address of Subject Property</u>	Cure Amount
-------------------------	------------------------------------	-------------

EXECUTORY CONTRACTS

<u>Counterparty Name / Address</u>	<u>Description of Contract</u>	Cure Amount
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EXHIBIT C

Auction and Hearing Notice

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re

CHARLOTTE RUSSE HOLDING, INC., *et al.*,¹

Debtors.

Chapter 11

Case No.: 19- (_____)

(Joint Administration Requested)

NOTICE OF AUCTION AND SALE HEARING

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On February 3, 2019, Charlotte Russe Holding, Inc. and its debtor affiliates, as debtors and debtors in possession (collectively, the “Debtors”), each filed voluntary petitions for relief pursuant to chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

2. On the same day, the Debtors filed a motion (the “Bidding Procedures and Sale Motion”), pursuant to sections 363 and 365 of the Bankruptcy Code and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”), seeking entry of an order (the “Bidding Procedures Order”) (a) scheduling an auction (the “Auction”) for the sale of the Debtors’ assets (the “Assets”) on or about March __, 2019 and a hearing to approve the sale of the Assets (the “Sale Hearing”) on or about March __, 2019; (b) approving procedures (the “Bidding Procedures”) for submitting competing bids for the Assets, (c) approving the form and manner of the notice of the Auction and the Sale Hearing; and (d) approving procedures for the assumption, assignment and sale of the Assumed and Assigned Agreements (as defined in the Bidding Procedures Order) to any purchaser(s) of the Assets, and/or to resolve any objections thereto.

3. On _____, 2019, the Bankruptcy Court entered the Bidding Procedures Order. Pursuant to the Bidding Procedures Order, if at least two Qualified Bids in respect of the Assets (as defined in the Bidding Procedures Order) are received by the Bid Deadline, the Debtors will conduct the Auction. The Auction will take place at the offices of Cooley LLP, 1114 Avenue of the Americas, New York, NY 10036 at 10:00 a.m. (prevailing Eastern Time) on March __, 2019 or such other place or time as the Debtors shall designate and notify to all Qualified Bidders, the Committee and the Debtors’ secured lenders. Only parties that have submitted a Qualified Bid, as set forth in the Bidding Procedures Order, by no later than March __, 2019 at 4:00 p.m. (prevailing Eastern Time) (the “Bid Deadline”) may bid at the Auction. Any party that wishes to take part in

¹ The Debtors and the last four digits of their respective federal taxpayer identification numbers are as follows: Charlotte Russe Holding, Inc. (4325); Charlotte Russe Holdings Corporation (1045); Charlotte Russe Intermediate Corporation (6345); Charlotte Russe Enterprise, Inc. (2527); Charlotte Russe, Inc. (0505); Charlotte Russe Merchandising, Inc. (9453); and Charlotte Russe Administration, Inc. (9456). The Debtors’ headquarters are located at 5910 Pacific Center Boulevard, Suite 120, San Diego, CA 92121.

this process and submit a bid for any portion of the Assets must submit their competing bid prior to the Bid Deadline and in accordance with the Bidding Procedures.

4. The Sale Hearing to consider approval of the sale of the Assets to the Successful Bidder(s) at the Auction, free and clear of all liens, claims and encumbrances, will be held before the Honorable [], United States Bankruptcy Judge, 824 North Market Street, Wilmington, Delaware 19801 on March __ 2019 at _____ (prevailing Eastern Time), or at such other time thereafter as counsel may be heard. 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 on the date scheduled for the Sale Hearing or by filing of a notice with the Bankruptcy Court.

5. Objections, if any, to the sale, must: (a) be in writing; (b) comply with the Bankruptcy Rules and Local Rules; and (c) **by March __, 2019 at 4:00 p.m. (prevailing Eastern Time)** be filed with the clerk of the Bankruptcy Court for the District of Delaware, Third Floor, 824 North Market Street, Wilmington, Delaware 19801, on and served upon:

(a) *the Debtors*, Charlotte Russe, Inc., 5910 Pacific Center Boulevard, Suite 120, San Diego, CA 92121 (Attn: Marie Satterfield, Esq.), email: marie.satterfield@charlotterusse.com;

(b) *counsel to the Debtors*, (i) Cooley LLP, 1114 Avenue of the Americas, New York, NY 10036 (Attn: Seth Van Aalten, Esq. and Michael A. Klein, Esq.), email: svanaalten@cooley.com and mklein@cooley.com; and (ii) Bayard, P.A., 600 North King Street, Suite 400, P.O. Box 25130, Wilmington, DE (Attn: Justin Alberto, Esq. and Erin Fay, Esq.) email: jalberto@bayardlaw.com and efay@bayardlaw.com;

(c) *counsel to the Prepetition ABL Agent and the DIP Agent*, (i) Morgan, Lewis & Bockius LLP, One Federal Street, Boston, MA 02110 (Attn: Julia Frost-Davies, Esq. and Christopher L. Carter, Esq.), email: julia.frost-davies@morganlewis.com and christopher.carter@morganlewis.com; and (ii) Richards, Layton & Finger, PA, One Rodney Square, 920 North King Street, Wilmington, DE 19801 (Attn: Mark D. Collins, Esq.), email: collins@rlf.com;

(d) *counsel to the Prepetition Term Agent*, King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036 (Attn: Michael Collins Rupe, Esq. and W. Austin Jowers, Esq.), email: mrupe@kslaw.com and ajowers@kslaw.com;

(e) *counsel to the Steering Committee*, King & Spalding LLP, 1185 Avenue of the Americas, New York, NY 10036 (Attn: Michael Collins Rupe, Esq. and W. Austin Jowers, Esq.), email: mrupe@kslaw.com and ajowers@kslaw.com);

(f) *once it is formed, counsel to each Committee*; and

(g) *the U.S. Trustee*, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (collectively, the "Notice Parties"); and

UNLESS AN OBJECTION IS TIMELY SERVED AND FILED IN ACCORDANCE WITH THIS NOTICE, IT MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT AND

THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED WITHOUT FURTHER HEARING AND NOTICE.

6. This Notice of Auction and Sale Hearing is subject to the fuller terms and conditions of the Bidding Procedures and Sale Motion and the Bidding Procedures Order, with such Bidding Procedures Order controlling in the event of any conflict. The Debtors encourage parties-in-interest to review such documents in their entirety. Parties interested in receiving more information regarding the sale of the Assets and/or copies of any related document, including the Bidding Procedures and Sale Motion or the Bidding Procedures Order, may make a written request to Summer M. McKee, Esq. (smckee@cooley.com). In addition, copies of the Bidding Procedures and Sale Motion, the Bidding Procedures Order and this Notice are on file with the Clerk of the Bankruptcy Court, Third Floor, 824 Market Street, Wilmington, Delaware 19801 and are available on the Debtors' claims and noticing agent's website for free at: www.donlinrecano.com/charlotterusse.

Dated: February 3, 2019

BAYARD, P.A.

/s/ _____

Justin R. Alberto (No. 5126)
600 North King Street, Suite 400
Wilmington, Delaware 19801
Telephone: (302) 655-5000
Facsimile: (302) 658-6395
Email: jalberto@bayardlaw.com
efay@bayardlaw.com

- and -

COOLEY LLP

Seth Van Aalten
Michael Klein
Summer M. McKee
1114 Avenue of the Americas
New York, New York 10036
Telephone: (212) 479-6000
Facsimile: (212) 479-6275
Email: svanaalten@cooley.com
mklein@cooley.com
smckee@cooley.com

Proposed Co-Counsel for the Debtors

EXHIBIT D

Form Asset Purchase Agreement

ASSET PURCHASE AND SALE AGREEMENT
BY AND AMONG
CHARLOTTE RUSSE HOLDINGS CORPORATION,
THE SUBSIDIARIES PARTY HERETO,
AND
[•]
Dated as of [•], 2019

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ASSET PURCHASE AND SALE AGREEMENT

THIS ASSET PURCHASE AND SALE AGREEMENT, dated as of [●], 2019 (this “Agreement”), is made and entered into by and among Charlotte Russe Holdings Corporation, a Delaware corporation (“Parent”), each of the Subsidiaries of Parent (together with Parent, “Sellers”, and individually a “Seller”) and [●], a [●] [corporation] [limited liability company] (“Purchaser”). Sellers and Purchaser are sometimes herein referred to collectively as the “Parties” and individually as a “Party.”

WITNESSETH:

WHEREAS, Sellers and their Subsidiaries are retailers of fashionable, affordable apparel, shoes and accessories targeting young women (such business and all other business conducted by any Seller or any of its Subsidiaries, the “Business”);

WHEREAS, on [●], 2019, Sellers filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”); and

WHEREAS, on the terms and subject to the conditions hereinafter set forth and pursuant to a Sale Order (as defined herein), the Parties desire to enter into this Agreement pursuant to which, among other things, Sellers shall sell to Purchaser, and Purchaser shall purchase from Sellers, all of Sellers’ right, title and interest in and to the Purchased Assets (as defined herein) and Purchaser shall assume from Sellers and thereafter pay, discharge and perform the Assumed Liabilities (as defined herein).

NOW, THEREFORE, in consideration of the premises and of the mutual covenants, representations, warranties and agreements herein contained, and intending to be legally bound hereby, the Parties hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. For the purposes of this Agreement, the following terms shall have the meanings specified in this Section 1.1:

“Action” means any action, suit, arbitration, claim, inquiry, proceeding or investigation by or before any Governmental Authority of any nature, civil, criminal, regulatory or otherwise, in law or in equity.

“Affiliate” (and, with a correlative meaning “affiliated”) means, with respect to any Person, any direct or indirect subsidiary of such Person, and any other Person that directly, or through one or more intermediaries, controls or is controlled by or is under common control with such first Person. As used in this definition, “control” (including with correlative meanings, “controlled by” and “under common control with”) means possession, directly or indirectly, of power to direct or cause the direction of the management or policies (whether through ownership of securities or partnership or other ownership interests, by Contract or otherwise).

“Applicable Law” means, with respect to any Person, any Law applicable to such Person or its business, properties or assets.

“Bankruptcy Cases” means the chapter 11 cases commenced by Sellers on [●], 2019 jointly administered under Case No. [●].

“Bidding Procedures Order” means an Order of the Bankruptcy Court, substantially in the form attached hereto as Exhibit A.

“Business Day” means a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by Law to close. Any event the scheduled occurrence of which would fall on a day that is not a Business Day shall be deferred until the next succeeding Business Day.

“Business Intellectual Property” means all (i) Purchased Intellectual Property and (ii) other Intellectual Property used by any Seller or any of its Subsidiaries.

“Cash Flow Budget” means the approved DIP Credit Agreement budget, as amended, and any budget subsequently adopted by Sellers and approved by Purchaser in connection with the DIP Credit Agreement, any refinancing thereof, or any other debtor-in-possession financing entered into by Sellers.

“COBRA” means the Consolidated Omnibus Reconciliation Act of 1985, as amended.

“Code” means the Internal Revenue Code of 1986, as amended.

“Competition Laws” means the HSR Act and all other Laws that are designed or intended to prohibit, restrict or regulate (i) actions having the purpose or effect of monopolization or restraint of trade or lessening of competition or (ii) foreign investment.

“Contract” means any written contract, indenture, note, bond, loan, instrument, lease, license, commitment or other agreement.

“Cure Costs” means amounts that must be paid and obligations that otherwise must be satisfied, including pursuant to sections 365(b)(1)(A) and (B) of the Bankruptcy Code, in connection with the assumption and/or assignment of any Purchaser Assumed Contract as determined pursuant to the Sale Order.

“DIP Credit Agreement” means that certain [Senior Secured, Super-Priority Debtor-In-Possession Revolving Credit Agreement], dated as of [●], 2019 among Sellers, the lenders signatory thereto and [●], as agent.

“Distribution Centers” means all of Sellers’ distribution centers located throughout the United States.

“Documents” means all files, documents, instruments, papers, books, reports, manuals, records, tapes, microfilms, hard drives, databases, compilations of information, photographs, letters, budgets, accounts, forecasts, ledgers, journals, title policies, customer and supplier lists,

regulatory filings, operating data and plans, technical documentation (design specifications, functional requirements, operating instructions, logic manuals, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (including sales brochures, flyers, pamphlets, web pages, etc.), and other similar materials related to the Business and the Purchased Assets in each case whether or not in electronic form.

“Employee” means any employee of any Seller who performs work primarily related to the operation of the Business.

“Employee Benefit Plans” means all employee benefit plans (as defined in Section 3(3) of ERISA), all employment or individual compensation agreements, and all other plans, policies, agreements, payroll practices or arrangements providing any bonus, incentive, retention, equity or equity-based compensation, deferred compensation, stock purchase, severance pay, sick leave, vacation pay, salary continuation, disability, welfare benefit, pension benefit, life insurance, medical insurance, fringe benefits, educational assistance, tax gross up, change in control or other material employee benefit, in each case as to which any Seller or its Subsidiaries has any Liability with respect to any current or former officers, employees or directors of any Seller or its Subsidiaries.

“Environmental Law” means all Applicable Laws in effect on the date hereof relating to the environment, natural resources, health and safety or the protection thereof, including but not limited to any applicable provisions of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*, the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 *et seq.*, the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, the Clean Air Act, 42 U.S.C. § 7401 *et seq.*, the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*, the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 136 *et seq.*, the Occupational Safety and Health Act, 29 U.S.C. § 651 *et seq.*, and the Oil Pollution Act of 1990, 33 U.S.C. § 2701 *et seq.*, and the regulations promulgated pursuant thereto, and all analogous state or local statutes.

“Environmental Liabilities and Obligations” means all Liabilities arising from any impairment or damage to the environment or failure to comply with Environmental Laws in connection with the prior or ongoing ownership or operation of the Business, including Liabilities related to: (i) the transportation, storage, use, arrangement for disposal or disposal of Hazardous Materials or waste; (ii) the Release of Hazardous Materials or waste; (iii) any other pollution or contamination of the surface, substrata, soil, air, ground water, surface water or marine environments; (iv) any other obligations imposed under Environmental Laws with respect to the Business; and (v) all obligations with respect to personal injury, property damage, wrongful death and other damages and losses arising under Applicable Law as a result of any of the matters identified in clauses (i) – (iv) of this definition.

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

“GAAP” means United States generally accepted accounting principles as in effect during the time period of the relevant financial statement.

“Governmental Authority” means any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to United States or foreign federal, state or local government, any governmental authority, agency, department, board, commission or instrumentality or any political subdivision thereof, and any tribunal or court or arbitrator(s) of competent jurisdiction, and shall include the Bankruptcy Court.

“Hazardous Materials” means all substances defined as “hazardous substances,” “hazardous wastes,” “hazardous materials,” “pollutants,” “toxic wastes,” “toxic substances” or “contaminants” or otherwise regulated under Environmental Laws or with respect to which liability or standards of conduct are imposed under Environmental Laws.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

“Indebtedness” of any Person means, without duplication, (i) the principal of and premium (if any) in respect of (A) indebtedness of such Person for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable; (ii) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable arising in the Ordinary Course of Business); (iii) all obligations of such Person under leases required to be capitalized in accordance with GAAP; (iv) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker’s acceptance or similar credit transaction; (v) all obligations of the type referred to in clauses (i) through (iv) of any Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations, “keep well” agreements, agreements to maintain or contribute cash or capital to any Person or other similar agreements or arrangements; and (vi) all obligations of the type referred to in clauses (i) through (v) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person).

“Intellectual Property” means all worldwide intellectual property and rights arising from or in respect of the following: all (i) inventions, discoveries, industrial designs, business methods, patents and patent applications (including provisional and Patent Cooperation Treaty applications), including continuations, divisionals, continuations-in-part, reexaminations and reissues, extensions, renewals and any patents that may be issued with respect to the foregoing; (ii) trademarks, service marks, certification marks, collective marks, trade names, business names, assumed names, d/b/a’s, fictitious names, brand names, trade dress, logos, symbols, Internet domain names and corporate names, and general intangibles of a like nature and other indicia of origin or quality, whether registered, unregistered or arising by Law, and all applications, registrations, and renewals for any of the foregoing, together with the goodwill associated with and symbolized by each of the foregoing; (iii) published and unpublished works of authorship in any medium, whether copyrightable or not (including databases and other compilations of information, computer software, source code, object code, algorithms, and other similar materials and Internet website content), copyrights and moral rights therein and thereto, and registrations and applications therefor, and all issuances, renewals, extensions, restorations and reversions thereof; and (iv) confidential and proprietary information, trade secrets, and know-how, including

methods, processes, business plans, schematics, concepts, software and databases (including source code, object code and algorithms), formulae, drawings, prototypes, models, designs, devices, technology, research and development and customer information and lists (collectively, “Trade Secrets”).

“Intellectual Property Licenses” means (i) any Contract that contains any grant by any Seller or any of its Subsidiaries to any third Person of any right to use, publish, perform or exploit any of the Business Intellectual Property, and (ii) any Contract that contains any grant by any third Person to any Seller or any of its Subsidiaries of any right to use, publish, perform or exploit any Intellectual Property of such third Person concerning or relating to the Business Intellectual Property.

“Law” means any foreign, federal, state or local law (including common law), statute, code, ordinance, rule, regulation or other requirement enacted, promulgated, issued or entered by a Governmental Authority.

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

“Liabilities” means any and all debts, losses, liabilities, claims (including claims as defined in the Bankruptcy Code), damages, expenses, fines, costs, royalties, proceedings, deficiencies or obligations (including those arising out of any action, such as any settlement or compromise thereof or judgment or award therein), of any nature, whether known or unknown, absolute, contingent, accrued or unaccrued, liquidated or unliquidated, or otherwise and whether due or to become due, and whether in contract, tort, strict liability or otherwise, and whether or not resulting from third party claims, and any reasonable out-of-pocket costs and expenses in connection therewith (including reasonable legal counsels’, accountants’, or other fees and expenses incurred in defending any action or in investigating any of the same or in asserting any rights thereunder or hereunder).

“Lien” means any lien, pledge, mortgage, deed of trust, security interest, claim, lease, charge, option, right of first refusal, right of first offer, easement, servitude, transfer restriction under any shareholder or similar agreement or encumbrance or any other restriction or limitation whatsoever.

“Order” means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award.

“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 during the one month period prior to the date of this Agreement, and without regard to store closures and liquidations.

“Permits” means any approvals, authorizations, consents, licenses, permits or certificates.

“Permitted Liens” means:

(a) with respect to any real property and to the extent that they do not materially interfere with the ownership, occupancy, use or operation of the affected Real Property Leases in the manner and for the purposes heretofore used by Sellers and their Subsidiaries in connection with the Business, easements, restrictive covenants, and rights-of-way on, over or in respect of any Real Property Lease, servitudes, permits, surface leases and other rights with respect to surface operations;

(b) all rights reserved to or vested in any Governmental Authority to control or regulate the Purchased Assets and all obligations and duties under all Applicable Laws or under any permit issued by any Governmental Authority;

(c) statutory Liens for current Taxes not yet delinquent or the amount or validity of which is being contested in good faith;

(d) any Lien that pursuant to section 363(f) of the Bankruptcy Code will be released from the Purchased Assets upon entry of the Sale Order; and

(e) other Liens that will be released on or prior to Closing at no cost or expense to Purchaser.

“Person” means and includes natural persons, corporations, limited partnerships, limited liability companies, general partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and all Governmental Authorities.

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

“Purchased Intellectual Property” means all Intellectual Property owned by any Seller.

“Purchaser Assumed Contracts” means, to the extent assignable pursuant to section 365 of the Bankruptcy Code, all Contracts set forth on Schedule 1.1(b) (as may be modified prior to the Closing pursuant to Section 2.5), which Schedule Purchaser shall deliver in writing to Sellers in accordance with the Bidding Procedures Order and which shall not be amended or supplemented after [●], 2019 for the purpose of including any additional Contracts thereon. For the avoidance of doubt, Purchaser shall have the right to remove Contracts from Schedule 1.1(b) at any time and from time to time in accordance with Section 2.5(c).

“Reimbursable Expenses” means the reasonable and documented out-of-pocket fees and expenses (including the fees and expenses of [●] as counsel, and [●] as financial advisor) incurred by Purchaser in connection with this Agreement, the Transactions, or related to or contemplated hereby or thereby, in an aggregate amount not to exceed \$[●].

“Release” means any release, spill, emission, discharge, migration, leaking, pumping, injection, deposit or disposal of Hazardous Materials into or through the environment.

“Remedial Action” means any investigation, response, corrective action, monitoring or remedial action required under any Environmental Law or by a Governmental Authority to address a Release or threatened Release of Hazardous Materials.

“Representatives” of a Person means its officers, directors, managers, employees, attorneys, investment bankers, accountants and other agents and representatives.

“Sale Order” means an order or orders of the Bankruptcy Court issued pursuant to sections 105, 363 and 365 of the Bankruptcy Code approving this Agreement and all of the terms and conditions hereof, and approving and authorizing Sellers to consummate the Transactions and enter into the Transaction Documents.

“Seller Material Adverse Effect” means any change, circumstance, fact, condition or event that, individually or in the aggregate with any other change, circumstance, fact, condition or event, (a) is or would reasonably be expected to have a materially adverse effect on (i) the Business, financial condition, results of operations, properties or assets of Sellers and their Subsidiaries (taken as a whole) as the same shall have existed as of the date hereof, or (ii) the ability of Sellers to perform their respective obligations under this Agreement, or (b) prevents or materially delays the consummation of the Transactions, in each case other than an Excluded Matter which shall not be taken into account in determining whether there has been or would reasonably be expected to be a Seller Material Adverse Effect. “Excluded Matter” means any adverse change, circumstance, fact, condition or event resulting from one or more of the following: (i) the condition of the economy or the securities markets in general, or any outbreak of hostilities, terrorist activities or war; (ii) the announcement, pendency or consummation of the sale of the Purchased Assets or any other action by Purchaser or its Affiliates contemplated or required hereunder, including the inability of Sellers to pay any administrative expense claims in the Bankruptcy Cases and any Action taken by any Person as a result thereof, if; (iii) any changes in general economic, political or regulatory conditions; (iv) the impact on the Business or assets of any Seller or any of their Subsidiaries as a result of the termination of the DIP Credit Agreement and any ability of Sellers to use cash collateral; (v) any changes in Applicable Laws or accounting rules; or (vi) any material breach by Purchaser of any covenant or agreement herein or any representation or warranty of Purchaser having been or having become untrue in any material respect.

“Sellers’ Knowledge” means the actual knowledge of [●].

“Stores” means Sellers’ retail store locations.

“Straddle Period” means any Tax period beginning before, and ending after, the Closing.

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

“Tax” means all federal, state, provincial, territorial, municipal, local or foreign income, profits, franchise, gross receipts, environmental (including taxes under Code Section 59A), customs, duties, net worth, sales, use, goods and services, withholding, value added, ad valorem, employment, social security, disability, occupation, pension, real property, personal property (tangible and intangible), stamp, transfer, conveyance, severance, production, excise and other taxes, withholdings, duties, levies, imposts and other similar charges and assessments (including any and all fines, penalties and additions attributable to or otherwise imposed on or with respect to any such taxes, charges, fees, levies or other assessments, and interest thereon) imposed by or on behalf of any Governmental Authority.

“Tax Returns” means any report, return, declaration, claim for refund, information report or return or statement required to be supplied to a Taxing Authority in connection with Taxes, including any schedule or attachment thereto or amendment thereof.

“Taxing Authority” means any Governmental Authority exercising any authority to impose, regulate, levy, assess or administer the imposition of any Tax.

“Transaction Documents” means this Agreement, the Escrow Agreement, the Assignment Agreement, [and, if applicable, the Transition Services Agreement entered into pursuant to Section 8.8 hereof], and all other Contracts and agreements necessary to effectuate the Transactions.

“Transactions” means the transactions contemplated by this Agreement and the other Transaction Documents.

[“Transition Services Agreement” means the agreement, if applicable, to be entered into by Parent and Purchaser pursuant to Section 8.8 hereof.]

“WARN Act” means the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101 *et seq.* (1988) and any similar state or local “mass layoff” or “plant closing” laws.

Section 1.2 Terms Defined Elsewhere in this Agreement. For purposes of this Agreement, the following terms have meanings set forth in the sections indicated:

Term	Section
Accounting Referee	Section 3.4
Agreement	Preamble
Asset Acquisition Statement	Section 3.4
Assignment Agreement	Section 4.2(b)
Assumed Cure Costs	Section 2.5(a)
Assumed Liabilities	Section 2.3
Balance Sheet	Section 5.4(a)
Balance Sheet Date	Section 5.4(a)
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
Break-Up Fee	Section 4.5
Business	Recitals
Capital Leases	Section 5.9(b)

Term	Section
Cash Purchase Price	Section 3.1
Closing	Section 4.1
Closing Date	Section 4.1
Closing Date Payment	Section 3.3(a)
Competing Bid	Section 7.1(a)
Confidentiality Agreement	Section 8.5
Contract Maintenance Costs	Section 2.5(b)
Deposit	Section 3.2(a)
Escrow Agent	Section 3.2(a)
Escrow Agreement	Section 3.2(a)
Excluded Assets	Section 2.2
Excluded Contract	Section 2.5(b)
Excluded Liabilities	Section 2.4
Excluded Matter	Section 1.1 (in Seller Material Adverse Effect definition)
Financial Statements	Section 5.4(a)
Material Contracts	Section 5.11(a)
Nonassignable Assets	Section 2.6(d)
Notice Period	Section 2.5(b)
Outside Date	Section 4.4(b)
Parent	Preamble
Parties	Preamble
Personal Property Leases	Section 5.9(a)
Proposed Allocation	Section 3.4
Proposed Rejection Date	Section 2.5(b)
Purchase Price	Section 3.1
Purchased Assets	Section 2.1
Purchaser	Preamble
Purchaser Documents	Section 6.2
Real Property Lease	Section 5.8(a)
Rejection Deferral Date	Section 2.5(b)
Rejection Deferral Notice	Section 2.5(b)
Removed Contract	Section 2.5(c)
Revised Statements	Section 3.4
Seller or Sellers	Preamble
Seller Documents	Section 5.2
Tax Claim	Section 9.3(c)
Taxable Consideration	Section 3.4
Trade Secrets	Section 1.1 (in Intellectual Property definition)
Transfer Taxes	Section 9.3(a)
Transferred Employees	Section 9.1(a)

Section 1.3 Other Definitional and Interpretative Provisions.

(a) 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.

(b) The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term.

(c) Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.”

(d) Any reference in this Agreement to “\$” shall mean United States dollars.

(e) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

(f) Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a Person are also to its permitted successors and assigns.

(g) All Article and Section references herein are to Articles and Sections of this Agreement, unless otherwise specified.

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

(i) This Agreement shall not be construed as if prepared by one of the Parties, but rather according to its fair meaning as a whole, as if all Parties had prepared it and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

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, at the Closing, Sellers shall sell, transfer, assign, convey and deliver to Purchaser (or its designee), and Purchaser (or its designee) shall purchase, acquire and accept from

Sellers, free and clear of any and all Liens (other than Liens created by Purchaser and Permitted Liens), all of Sellers' right, title and interest in, to and under any and all of the assets, properties, rights and claims of any kind or nature, whether tangible or intangible, real, personal or mixed, wherever located and whether or not carried or reflected on the books and records of any Seller, which are used or useful in or held for use in connection with the operation of the Business, excluding only the Excluded Assets expressly identified in Section 2.2 (such assets, properties, rights and claims to be acquired hereunder, collectively, the "Purchased Assets").

The Purchased Assets shall include the following:

- (a) all cash, cash equivalents, bank deposits or similar cash items of Sellers;
- (b) all accounts and notes receivable and other rights to payment (including credit card receivables), together with any unpaid financing charges accrued thereon, other than any accounts and notes receivable or other rights to payment arising out of or relating to any Excluded Asset and which receivable or right to payment is created or arises subsequent to the Closing, arising from the conduct of the Business;
- (c) all deposits (including security deposits for rent, electricity, telephone or otherwise) and prepaid or deferred charges and expenses of Sellers, including all prepaid rentals and unbilled charges, fees or deposits, other than deposits or prepaid charges and expenses paid in connection with or relating to any Excluded Asset which are made, created or arise subsequent to the Closing;
- (d) all tangible personal property owned by Sellers related to, useful in or held for use in the conduct of the Business, including apparel, shoe and accessory inventory, merchandise, supplies, samples, equipment, computers, hardware, electronics, file servers, scanners, printers, networks, copiers, cash registers, furniture, furnishings, fixtures, telephone lines, telecopy machines, telecommunication equipment, storeroom contents, spare parts, shipping materials, packaging materials and raw materials;
- (e) all rights, title and interest of Sellers under each Real Property Lease which is a Purchaser Assumed Contract, together with all improvements, fixtures and other appurtenances thereto and rights in respect thereof;
- (f) [all rights, title and interest of Sellers in and to any property subject to a personal property lease that is related to, useful in or held for use in the conduct of the Business, to the extent any such personal property lease is a Purchaser Assumed Contract;]
- (g) the Purchased Intellectual Property;
- (h) to the extent transferrable after giving effect to the Sale Order, all of the rights and benefits accruing under any of the Purchaser Assumed Contracts, including each Real Property Lease, personal property lease or Intellectual Property License that is a Purchaser Assumed Contract;
- (i) all Documents that are used in, held for use in or intended to be used in, or that arise primarily out of, the Business, including Documents relating to marketing, advertising,

promotional materials, Purchased Intellectual Property, personnel files for Transferred Employees and all files, customer files and documents (including credit information), supplier lists, records, literature and correspondence, whether or not physically located on any of the premises referred to in clause (e) above, but excluding (i) personnel files for Employees who are not Transferred Employees, (ii) such files as may not be transferred under Applicable Law regarding privacy, (iii) Documents which any Seller is not permitted to transfer pursuant to any contractual confidentiality obligation owed to any third party and (iv) Documents relating to an Excluded Asset or Excluded Liability;

(j) all of the rights and benefits accruing under any Permits held, used or made by any Seller in the Business to the extent assignable, except any such Permit that is an Excluded Contract;

(k) all warranties and guarantees related to the Purchased Assets, including warranties and guarantees made by suppliers, manufacturers and contractors under the Purchased Assets, and claims against suppliers and other third parties in connection with the Purchaser Assumed Contracts;

(l) any rights, demands, claims, causes of action, rights of recovery, credits, allowances, rebates, or rights of setoff or subrogation arising out of or relating to any of the Purchased Assets;

(m) all rights of Sellers under non-disclosure or confidentiality, non-compete, or non-solicitation agreements with employees and agents of Seller or with third parties to the extent relating to the Business or the Purchased Assets (or any portion thereof);

(n) all third party property and casualty insurance proceeds, and all rights to third party property and casualty insurance proceeds, in each case to the extent received or receivable in respect of the Business or the Purchased Assets (or to any portion thereof);

(o) all goodwill and other intangible assets associated with the Business, including customer and supplier lists and the goodwill associated with the Purchased Intellectual Property;

(p) all of Sellers' assets related to, located at, or used or useful in connection with the operation of Sellers' Distribution Centers;

(q) sales and use Tax refunds to the extent provided in Section 2.3(d); and

(r) all other assets, properties, rights and claims of Sellers of any kind or nature which relate to the Business, which are used or useful in or held for use in the Business, or which relate to the Purchased Assets (in each case, other than the Excluded Assets) not otherwise described in this Section 2.1, including, but not limited to, all of Sellers' assets related to, located at, or used or useful in connection with the operation of the Sellers' Stores and the Sellers' ecommerce businesses.

Section 2.2 Excluded Assets. Nothing herein contained shall be deemed to sell, transfer, assign or convey the Excluded Assets to Purchaser, and Sellers shall retain all right, title

and interest to, in and under the Excluded Assets. “Excluded Assets” shall mean only the following assets:

- (a) the Excluded Contracts, including any accounts receivable arising out of or in connection with any Excluded Contract;
- (b) all equity interests in Sellers;
- (c) any (i) confidential personnel and medical records pertaining to any Employee of Sellers not permitted to be transferred to Purchaser under Applicable Law; (ii) books and records that Sellers are required by Law to retain, that relate exclusively to the Excluded Assets or the Excluded Liabilities, including Tax Returns, financial statements, and corporate or other entity filings; and (iii) corporate charters, qualifications to do business, taxpayer and other identification numbers, corporate seals, minute books, stock ledgers, stock certificates and any other documentation related to governance, organization, maintenance or existence of Sellers;
- (d) any claim, right or interest of any Seller in or to any refund, rebate, abatement or other recovery for Taxes, together with any interest due thereon or penalty rebate arising therefrom, for any Tax period (or portion thereof) ending on or before the Closing Date;
- (e) all rights and claims of Sellers under the Transaction Documents;
- (f) all Employee Benefit Plans (and any trusts, 501(c)(9) organizations, insurance (including fiduciary insurance), administrative or other service contracts relating thereto); and
- (g) all restricted cash of Sellers relating to cash collateralized letters of credit and/or Excluded Liabilities.

Section 2.3 Assumption of Liabilities. Purchaser shall assume no Liability of Sellers except the Liabilities and to the extent expressly set forth in this Section 2.3 (collectively, the “Assumed Liabilities”). On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall assume the Assumed Liabilities and shall agree to pay, discharge, perform and otherwise satisfy such Assumed Liabilities in accordance with their respective terms, subject to any defenses or claimed offsets asserted in good faith against the obligee to whom such Liabilities of Sellers and their Subsidiaries are owed. The Assumed Liabilities shall consist of only the following Liabilities:

- (a) all Liabilities of Sellers under the Purchaser Assumed Contracts and Liabilities arising from events arising and occurring following the Closing Date;
- (b) all Liabilities of Sellers with respect to accrued and unpaid wages, accrued and unused vacation, and the employer’s share of any payroll Taxes, in each case with respect to Transferred Employees who accept Purchaser’s offer of employment and commence employment with Purchaser;
- (c) all Liabilities of Sellers to the extent specifically provided in Article IX;

(d) all sales or use or other Taxes of any Seller (but not including any Taxes assumed by Purchaser pursuant to Section 2.3(b), that (i) result from sales and use Tax audits or examinations of Sellers for periods prior to the Closing Date or (ii) for which any director, officer or employee of a Seller may be personally liable under Applicable Law); and

(e) all Liabilities with respect to the Assumed Cure Costs.

Section 2.4 Excluded Liabilities. Notwithstanding anything to the contrary in this Agreement, the Parties expressly acknowledge and agree that Purchaser shall not assume or in any manner whatsoever be liable or responsible for any Liabilities of any Seller or of any predecessor of any Seller, existing on the Closing Date or arising thereafter, other than the Assumed Liabilities. All of the Liabilities of any Seller or of any predecessor of any Seller not specifically and expressly assumed by Purchaser pursuant to Section 2.3 shall be referred to herein collectively as the “Excluded Liabilities.” Without limiting the foregoing, Purchaser shall not be obligated to assume, and does not assume, and hereby disclaims all of the Excluded Liabilities, including all of the following Liabilities, of each Seller or of any predecessor of any Seller:

(a) all Liabilities for accrued expenses and accounts payable incurred prior to the Closing Date, except to the extent that the same constitute Assumed Liabilities pursuant to Section 2.3;

(b) all Liabilities arising out of any of the Excluded Assets, including Excluded Contracts;

(c) all Environmental Liabilities and Obligations, and all other Liabilities relating to any Laws in connection with any environmental, health or safety matters based on facts arising or existing during Sellers’ operation of the Business prior to the Closing Date;

(d) all Liabilities relating to any claims for infringement, dilution, misappropriation or any other violation of or by the Business Intellectual Property arising from Sellers’ operation of the Business prior to the Closing Date;

(e) all Liabilities for (i) any Taxes of any Seller (other than those assumed pursuant to Sections 2.3(b) and 2.3(d)) and (ii) Transfer Taxes;

(f) all Liabilities arising out of, relating to or with respect to (i) the employment or performance of services by any Employee of Sellers or any of their Affiliates prior to the Closing, (ii) termination of employment or services of any Employee by any Seller or any of its Affiliates, including any severance payments, (iii) each of the Employee Benefit Plans subject to Title IV of ERISA and all Employee Benefit Plans and (iv) the WARN Act;

(g) all Liabilities arising as a result of any Action initiated at any time, to the extent related to the Business or the Purchased Assets on or prior to the Closing Date, including any shareholder Actions, Actions for breach of contract, or any tort Actions;

(h) all Liabilities arising under any Indebtedness of Sellers, including any Liabilities with respect to the DIP Credit Agreement and any obligations or Liabilities to equity holders;

(i) all Liabilities with respect to any costs and expenses (including all legal, accounting, financial advisory, valuation, investment banking and other third party advisory or consulting fees and expenses) incurred by or on behalf of any Seller or its Affiliates in connection with the Bankruptcy Cases or the Transactions;

(j) all Liabilities incurred in the Ordinary Course of Business existing prior to the filing of the Bankruptcy Cases that are subject to compromise under the Bankruptcy Cases, other than the Assumed Cure Costs;

(k) all Liabilities with respect to any customer programs or rights, including merchandise returns;

(l) all Liabilities with respect to any gift cards outstanding on the Closing Date;
and

(m) all Liabilities relating to the failure to comply with any bulk sales Laws.

Section 2.5 Assumed Contracts.

(a) Purchaser Assumed Contracts. At the Closing and pursuant to section 365 of the Bankruptcy Code and the Sale Order, Sellers shall assume and assign to Purchaser, and Purchaser shall consent to such assignment from Sellers, the Purchaser Assumed Contracts. All Cure Costs with respect to the Purchaser Assumed Contracts shall be paid in full by Purchaser on or before the Closing Date (the "Assumed Cure Costs"), and Sellers shall have no Liability therefor.

(b) [Excluded Contracts. Prior to the Closing, with respect to any executory Contract or unexpired real property lease that has not been designated as a Purchaser Assumed Contract (each, an "Excluded Contract"), Sellers shall, prior to the rejection of any such Excluded Contract, provide Purchaser with not less than five (5) Business Days' notice, which shall include the proposed date of such rejection (the "Proposed Rejection Date"), of their intent to reject such Excluded Contract (the "Notice Period"). If Purchaser desires to include such Excluded Contract as a Purchaser Assumed Contract, it shall provide Sellers with written notice of such election prior to the expiration of the Notice Period and such Contract shall thereafter be deemed to be a Purchaser Assumed Contract for purposes of this Agreement and the Sale Order and shall be added to Schedule 1.1(b). If Purchaser elects not to include such Excluded Contract as a Purchaser Assumed Contract, it shall have the option upon written notice to Sellers prior to the expiration of the Notice Period (a "Rejection Deferral Notice") to require Sellers, up until the date specified in the Rejection Deferral Notice (the "Rejection Deferral Date"), which date shall be on or before (and may be extended until, in Purchaser's sole discretion) the date of the applicable rejection deadline under the Bankruptcy Code, to defer the rejection of such Excluded Contract and Purchaser (whether or not the Closing occurs) shall thereafter pay, or promptly reimburse Sellers for, all out-of-pocket costs and expenses (including any rental amounts due during such period) incurred by Sellers with respect to (and solely as a result of the deferral of) such Excluded Contract during the period from the Proposed Rejection Date to the earlier of the Closing Date and the Rejection Deferral Date (the "Contract Maintenance Costs"); provided, that Purchaser shall not have any obligation with respect to Contract Maintenance Costs if this Agreement is terminated

pursuant to Section 4.4(e) or Section 4.4(h). Notwithstanding the foregoing, at any time and from time to time prior to Closing, Purchaser may elect, by written notice to Sellers, to cause any one or more of the Excluded Contracts (to the extent not previously rejected by Sellers after giving notice as required above) to be included as a Purchaser Assumed Contract, and such Contract shall be added to Schedule 1.1(b) and shall thereafter be deemed to be a Purchaser Assumed Contract for purposes of this Agreement and the Sale Order and, to the extent such Contract is actually assumed and assigned to Purchaser at Closing, Purchaser shall not have any obligation to pay or reimburse Sellers for any Contract Maintenance Costs with respect to such Purchaser Assumed Contract. In the event that Purchaser does not desire that Sellers defer such rejection or fails to provide Sellers with notice of any election prior to the expiration of the Notice Period, Sellers shall thereafter be permitted to file such motions and other documentation with the Bankruptcy Court and take such other action as they deem necessary to reject any such Excluded Contract(s) and to liquidate any assets related thereto.]

(c) Removed Contracts. Purchaser may elect to remove any Contract(s) and/or unexpired real property lease(s) (each, a “Removed Contract”) from the list of Purchaser Assumed Contracts by giving written notice thereof to Sellers no later than the conclusion of the Auction [(as defined in the Bidding Procedures Order)]. Upon designation in accordance with the foregoing, each such Removed Contract shall cease to be a Purchaser Assumed Contract for the purposes of this Agreement and the Sale Order and may thereafter be rejected at Sellers’ discretion without any additional notice to or consent from Purchaser or any liability of Purchaser (other than with respect to any Contract Maintenance Costs, if applicable).

Section 2.6 Further Conveyances and Assumptions.

(a) From time to time following the Closing and except as prohibited by Law, Sellers shall, or shall cause their Affiliates to, make available to Purchaser such non-confidential data in personnel records of Transferred Employees as is reasonably necessary for Purchaser to transition such employees into Purchaser’s records.

(b) From time to time following the Closing, Sellers and Purchaser shall, and shall cause their respective Affiliates to, execute, acknowledge and deliver all such further conveyances, notices, assumptions, releases and acquittances and such other instruments, and shall take such further actions, as may be reasonably necessary or appropriate to assure fully to Purchaser and its respective successors or assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Purchaser under this Agreement and the Seller Documents and to assure fully to Sellers and their Affiliates and their successors and assigns, the assumption of the Assumed Liabilities assumed by Purchaser under this Agreement and the Seller Documents, and to otherwise make effective the transactions contemplated hereby and thereby.

(c) To the extent not obtained at or prior to Closing, Sellers shall use commercially reasonable efforts to obtain termination statements, lien releases, discharges, financing change statements or other documents, notices or other instruments as Purchaser may reasonably deem necessary to release Liens (other than Permitted Liens) on the Purchased Assets.

(d) Nothing in this Agreement nor the consummation of the Transactions shall be construed as an attempt or agreement to transfer or assign any Purchased Asset, including any Contract, Permit, certificate, approval, authorization or other right, which (i) is not capable of being assigned pursuant to section 365 of the Bankruptcy Code or transferred pursuant to section 363 of the Bankruptcy Code to Purchaser at the Closing, or (ii) the transfer or assignment of which would result in a violation of any Applicable Law, if the consent of a third party is not obtained prior to such transfer or assignment (“Nonassignable Assets”) unless and until such consent shall have been obtained. Sellers shall use their commercially reasonable efforts, and Purchaser shall use commercially reasonable efforts to cooperate with Sellers, in endeavoring to obtain such consents; provided that no Party shall be obligated to incur any costs or expenses or provide any financial accommodation or other consideration of any nature to any Person to facilitate obtaining such consent to transfer any Nonassignable Asset. To the extent permitted by Applicable Law, in the event consents to the assignment thereof cannot be obtained, such Nonassignable Assets shall be held, as of and from the Closing Date, by Sellers in trust for Purchaser and the covenants and obligations thereunder shall be performed by Purchaser in the applicable Seller’s name to the extent it would have been responsible therefor if such consent or approval had been obtained, and all benefits and obligations existing thereunder shall be for Purchaser’s account. Sellers shall promptly pay over to Purchaser all money or other consideration received by it in respect of all Nonassignable Assets. Notwithstanding the foregoing, Sellers shall not have any obligation to renew any Nonassignable Asset upon the expiration or termination thereof. In addition, to the extent that any Nonassignable Asset contains an “evergreen” provision that automatically renews such Nonassignable Asset unless terminated or cancelled by either party thereto, Sellers shall not be prohibited from terminating or canceling such Nonassignable Asset as permitted pursuant to the terms thereof.

Section 2.7 Bulk Sales Laws. Purchaser hereby waives compliance by Sellers with the requirements and provisions of any “bulk-transfer” Laws of any jurisdiction that may otherwise be applicable with respect to the sale and transfer of any or all of the Purchased Assets to Purchaser.

Section 2.8 Receivables. If, following the Closing, any Seller shall receive payment in respect of accounts receivable that are included in the Purchased Assets, then such Seller shall hold such amounts in trust for Purchaser and shall promptly forward such payment to Purchaser.

ARTICLE III

PURCHASE PRICE

Section 3.1 Purchase Price. The aggregate consideration for the Purchased Assets (the “Purchase Price”) shall be (a) an amount in cash equal to the Closing Date Payment (the “Cash Purchase Price”), *plus* (b) the assumption of Assumed Liabilities.

Section 3.2 Deposit.

(a) Upon the execution of this Agreement, Purchaser shall deposit with [●], as escrow agent (the “Escrow Agent”), pursuant to that certain Escrow Agreement, dated as of the date hereof, among Parent, Purchaser and the Escrow Agent (the “Escrow Agreement”), by

certified check or wire transfer of immediately available funds, an amount equal to \$[●] (the “Deposit”).

(b) The Parties agree that the Deposit shall (i) be applied as a deposit towards the Closing Date Payment and delivered to Parent at Closing as provided in Section 3.3(c), (ii) be returned to Purchaser (with any accrued interest actually earned thereon and less the Escrow Agent’s fees and expenses) in the event that this Agreement is terminated pursuant to any provision of Section 4.4 other than by Sellers pursuant to (A) Section 4.4(i) or (B) pursuant to Section 4.4(b) in the event that Closing does not occur on or before the Outside Date solely as a result of Purchaser’s material breach of its obligations under this Agreement (including non-payment of the Closing Date Payment pursuant to Section 3.3), or (iii) be paid to Sellers (with any accrued interest actually earned thereon and less the Escrow Agent’s fees and expenses) in the event that this Agreement is properly terminated by Sellers (A) pursuant to Section 4.4(i) or (B) pursuant to Section 4.4(b) in the event that Closing does not occur on or before the Outside Date solely as a result of Purchaser’s material breach of its obligations under this Agreement (including payment of the Closing Date Payment pursuant to Section 3.3).

Section 3.3 Payment of Purchase Price.

(a) At the Closing, Purchaser shall deliver, or cause to be delivered, the Closing Date Payment (as defined below) by wire transfer of immediately available funds, as set forth in clause (b) below. “Closing Date Payment” means an amount calculated as follows:

- (i) an amount equal to \$[●]; *minus*
- (ii) an amount equal to the Deposit (with any accrued interest actually earned thereon and less the Escrow Agent’s fees and expenses).

(b) At the Closing, Purchaser will pay the Closing Date Payment in accordance with the Sale Order.

(c) At the Closing, Parent and Purchaser shall jointly instruct the Escrow Agent to transfer to Parent the Deposit (plus the amount of any accrued interest actually earned thereon and less the Escrow Agent’s fees and expenses) by wire transfer of immediately available funds into an account designated in writing by Parent.

(d) On or prior to the Closing Date, Purchaser shall deliver to each of the counterparties to the Purchaser Assumed Contracts the full amount of the applicable Cure Costs for the assumption and assignment of such Contracts by Sellers.

Section 3.4 Allocation of Purchase Price. Within thirty (30) days after the Closing Date, Purchaser shall prepare and deliver to Sellers an allocation of the Cash Purchase Price, the Assumed Liabilities and any other items that are treated as additional purchase price for Tax purposes (the “Taxable Consideration”) among the Purchased Assets in accordance with Section 1060 of the Code (the “Proposed Allocation”). Sellers shall have thirty (30) days after receipt of the Proposed Allocation to notify Purchaser in writing of any items of the Proposed Allocation that are not reasonable in Sellers’ view. If Sellers do not object in writing during such thirty (30) day period, then the Proposed Allocation shall be final and binding on all Parties. If Sellers object

in writing during such thirty (30) day period, then the Parties shall cooperate in good faith to reach a mutually agreeable allocation of the Taxable Consideration, which allocation shall be binding on all Parties. If the Parties are unable to reach an agreement within sixty (60) days of Sellers' receipt of the Proposed Allocation, then any disputed items shall be referred to an independent accountant to be mutually agreed upon by Parent and Purchaser (the "Accounting Referee") for resolution, and the determination of the Accounting Referee shall be final and binding on the Parties. The fees and expenses of the Accounting Referee shall be paid fifty percent (50%) by Purchaser and fifty percent (50%) by Sellers, with each Seller severally liable for the entire portion allocable to Sellers. In accordance with such allocation, Purchaser shall prepare and deliver to Sellers copies of Form 8594 and any required exhibits thereto (the "Asset Acquisition Statement"). Purchaser shall prepare and deliver to Sellers (or their designated successors) from time to time revised copies of the Asset Acquisition Statement (the "Revised Statements") so as to report any matters on the Asset Acquisition Statement that need updating, consistent with the agreed upon allocation. The Parties shall, and shall cause their respective Affiliates to, use the allocations set forth in the Asset Acquisition Statement or, if applicable, the last Revised Statement for all Tax purposes, file all Tax Returns in a manner consistent with such allocation statement and take no position contrary thereto, in each case, unless required to do so by a change in applicable Tax Laws or good faith resolution of a Tax contest.

ARTICLE IV

CLOSING AND TERMINATION

Section 4.1 Closing Date. Subject to the satisfaction of the conditions set forth in Section 10.1, Section 10.2 and Section 10.3 (or the waiver thereof by the Party entitled to waive that condition), the closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities provided for in Article II (the "Closing") shall take place at the offices of Cooley LLP located at 1114 Avenue of the Americas, New York, New York (or at such other place as the Parties may designate in writing) at 10:00 a.m. local time on the date that is three (3) Business Days following the satisfaction or waiver of the conditions set forth in Article X (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), unless another time or date, or both, are agreed to in writing by the Parties. The date on which the Closing shall be held is referred to in this Agreement as the "Closing Date." Unless otherwise agreed by the Parties in writing, the Closing shall be deemed effective and all right, title and interest of Sellers to be acquired by Purchaser hereunder shall be considered to have passed to Purchaser as of 12:01 a.m. (prevailing eastern time) on the Closing Date.

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

- (a) a duly executed bill of sale in the form attached as Exhibit B hereto;
- (b) a duly executed assignment and assumption agreement in the form attached as Exhibit C hereto (the "Assignment Agreement") and duly executed assignments transferring all of Sellers' rights, titles and interests in and to the Intellectual Property included in the Purchased Intellectual Property, in a form suitable for recording in the U.S. Patent and Trademark Office and U.S. Copyright Office;

- (c) copies of all consents, waivers and approvals referred to in Section 10.1(d);
- (d) for each Seller, a certificate of non-foreign status pursuant to Section 1445 of the Code and Treasury Regulation Section 1.1445-2(b);
- (e) a certified copy of the Sale Order, if requested; and
- (f) a certificate signed by an authorized officer of each Seller (in form and substance reasonably satisfactory to Purchaser) pursuant to Sections 10.1(a) and Section 10.1(b).

Section 4.3 Deliveries by Purchaser. At the Closing, Purchaser shall deliver to Sellers:

- (a) the Closing Date Payment;
- (b) a duly executed copy of the Assignment Agreement; and
- (c) a certificate signed by an authorized officer of Purchaser (in form and substance reasonably satisfactory to Sellers) pursuant to Section 10.2(a) and Section 10.2(b).

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

- (a) At any time prior to the Closing Date by the joint written consent of Sellers and Purchaser;
- (b) By either Sellers or Purchaser if the Closing has not occurred on or before [●], 2019 (as may be extended by written agreement of the Parties, the “Outside Date”); provided, however, that a Party may not terminate this Agreement pursuant to this Section 4.4(b) if such Party is in breach of its obligations hereunder in any material respect and such breach is the sole reason that the Closing has not occurred by such date;
- (c) By Purchaser or, prior to entry of the Sale Order, by Sellers, if (i) Sellers enter into a definitive agreement with respect to a Competing Bid, (ii) the Bankruptcy Court enters an Order approving a Competing Bid or (iii) the Bankruptcy Court enters an Order that otherwise precludes the consummation of the Transactions on the terms and conditions set forth in this Agreement;
- (d) By either Sellers or Purchaser, if an Order is entered by a Governmental Authority of competent jurisdiction having valid enforcement authority permanently restraining, prohibiting or enjoining either Party from consummating the Transactions and such Order shall have become final and non-appealable or shall not have been vacated prior to the Outside Date;
- (e) By Purchaser or Sellers, if the Bidding Procedures Order has not been entered by the Bankruptcy Court on or before [●], 2019;
- (f) By Purchaser or Sellers, if the Sale Order has not been entered by the Bankruptcy Court on or before [●], 2019;

(g) By Purchaser, if any of the Bankruptcy Cases are dismissed or converted to a case under chapter 7 of the Bankruptcy Code for any reason;

(h) By Purchaser, so long as Purchaser is not in breach of its obligations under this Agreement in any material respect, upon a breach of any covenant or agreement of Sellers set forth in this Agreement, or if any representation or warranty of Sellers shall have been or becomes untrue, in each case such that the conditions set forth in Section 10.1(a) or Section 10.1(b), as the case may be, would not be satisfied and such breach or untruth cannot be cured by the Outside Date; and

(i) By Sellers, so long as Sellers are not in breach of their obligations under this Agreement in any material respect, upon a breach of any covenant or agreement of Purchaser set forth in this Agreement, or if any representation or warranty of Purchaser shall have been or becomes untrue, in each case such that the conditions set forth in Section 10.2(a) or Section 10.2(b), as the case may be, would not be satisfied and such breach or untruth cannot be cured by the Outside Date.

Section 4.5 Effect of Termination.

(a) No termination of this Agreement pursuant to Section 4.4 shall be effective until notice thereof is given to the non-terminating Party specifying the provision hereof pursuant to which such termination is made. In the event that this Agreement is validly terminated as provided herein, this Agreement shall become wholly void and of no further force and effect without liability to Purchaser or Sellers, or any of their respective Representatives, and each shall be fully released and discharged from any Liability or obligation after the date of such termination and such termination shall be without liability to Purchaser or Sellers; provided, however, that the obligations of the Parties under the Escrow Agreement and Sections 4.5, 8.5, and 8.7 and Article XII of this Agreement shall survive any such termination and shall be enforceable hereunder.

(b) In the event this Agreement is properly terminated pursuant to Section 4.4(c) or Section 4.4(h), Sellers shall promptly (but in no event later than three (3) Business Days) pay to Purchaser by wire transfer of immediately available funds the Reimbursable Expenses. In the event this Agreement is properly terminated by Sellers pursuant to (i) Section 4.4(b) in the event that Closing does not occur on or before the Outside Date solely as a result of Purchaser's material breach of its obligations under this Agreement or (ii) Section 4.4(i) as a result of a material breach by Purchaser, Sellers shall be entitled to retain the Deposit as provided in Section 12.2(a)(ii).

(c) In the event this Agreement is properly terminated pursuant to Section 4.4(c), upon the closing of a transaction with respect to a Competing Bid, the Sellers shall pay to Purchaser a cash fee equal to \$[●] (the "Break-Up Fee"), which shall be payable as provided in the Bidding Procedures Order or such other order of the Court applying payment of such fee.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers hereby represent and warrant to Purchaser as follows:

Section 5.1 Organization and Good Standing. Each Seller is duly organized, validly existing, in good standing and duly qualified to transact business under the laws of the jurisdiction of its formation, and is duly qualified or licensed to do business in each jurisdiction in which the nature of its business or the ownership or leasing of its properties makes such qualification or licensing necessary, except where the failure to be so qualified would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect, and, subject to the limitations imposed on Sellers as a result of having filed petitions for relief under the Bankruptcy Code, or pursuant to any Order entered by the Bankruptcy Court, each Seller has the requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted. Each Seller has delivered or made available to Purchaser true, complete and correct copies of its organizational documents as in effect on the date hereof.

Section 5.2 Authorization of Agreement. Subject to the entry of the Sale Order, Sellers have all requisite power, authority and legal capacity to execute and deliver this Agreement and each other Transaction Document, agreement, document, or instrument or certificate contemplated by this Agreement or to be executed by any such Seller in connection with the consummation of the transactions contemplated by this Agreement (the "Seller Documents"), to perform their respective obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the Seller Documents and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate or limited liability company action, as applicable, on the part of each Seller. This Agreement has been, and each of the Seller Documents will be at or prior to the Closing, duly and validly executed and delivered by each Seller which is a party hereto and thereto and (assuming the due authorization, execution and delivery by the other parties hereto and thereto, the entry of the Sale Order and, with respect to Sellers' obligations under Section 12.13, the entry of the Bidding Procedures Order) this Agreement constitutes, and each of the Seller Documents when so executed and delivered will constitute, legal, valid and binding obligations of such Seller enforceable against such Seller in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 5.3 No Violation; Consents.

(a) Except as set forth on Schedule 5.3(a), none of the execution and delivery by Sellers of this Agreement or any of the Seller Documents, the consummation of the transactions contemplated hereby or thereby, or compliance by Sellers with any of the provisions hereof or thereof will conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or to loss of a material benefit under, or give rise to any obligation of any Seller or their

Subsidiaries to make any payment under or to the increased, additional, accelerated or guaranteed rights or entitlements of any Person under, or result in the creation of any Liens (other than Permitted Liens) upon any of the Purchased Assets or cancellation under any provision of (i) the certificate of incorporation and bylaws or comparable organizational documents of any Seller; (ii) subject to entry of the Sale Order, any Contract or Permit to which any Seller is a party or by which any of the properties or assets of any Seller are bound; (iii) subject to entry of the Sale Order, any Order of any Governmental Authority applicable to any Seller or any of the properties or assets of any Seller as of the date hereof and as of the Closing Date; or (iv) subject to entry of the Sale Order, any Applicable Law, other than, in the case of clauses (ii), (iii) and (iv), such conflicts, violations, defaults, terminations or cancellations that would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

(b) Except as set forth on Schedule 5.3(b), no consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Authority is required on the part of any Seller in connection with the execution and delivery of this Agreement or the Seller Documents, the compliance by any Seller with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby, the assignment and assumption of the Purchaser Assumed Contracts, or the taking by any Seller of any other action contemplated hereby or thereby, except for (i) compliance with the applicable requirements of the HSR Act, (ii) the entry of the Sale Order, (iii) the entry of the Bidding Procedures Order with respect to Sellers' obligations under Section 12.13 and (iv) other immaterial consents, waivers, approvals, Orders, Permits, authorizations, declarations, filings and notifications.

Section 5.4 Financial Information.

(a) Sellers have delivered to Purchaser copies of (i) the audited consolidated balance sheet of Sellers and their Subsidiaries as at [●] and the related audited consolidated statement of income and of cash flows of Sellers and their Subsidiaries for the year then ended and (ii) the unaudited consolidated balance sheet of Sellers and their Subsidiaries as at [●] and the related consolidated statement of income and cash flows of Sellers and their Subsidiaries for the [●] ([●]) month period then ended (such audited and unaudited statements, including the related notes and schedules thereto, are referred to herein as the "Financial Statements").¹ Each of the Financial Statements is complete and correct in all material respects, has been prepared in accordance with GAAP consistently applied throughout the periods indicated without modification of the accounting principles used in the preparation thereof throughout the periods presented and presents fairly in all material respects the consolidated financial position, results of operations and cash flows of Sellers and their Subsidiaries as at the dates and for the periods indicated therein, subject to normal year-end adjustments and the absence of complete notes in the case of the unaudited statements. For the purposes hereof, the unaudited consolidated balance sheet of Sellers and their Subsidiaries as at [●] is referred to as the "Balance Sheet" and [●] is referred to as the "Balance Sheet Date."

¹ NTD: To be updated to reflect latest financial statements.

(b) Sellers make and keep books, records and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of their respective assets. Sellers maintain systems of internal accounting controls sufficient to provide reasonable assurances that: (i) transactions are executed in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit the preparation of financial statements in conformity with GAAP and to maintain accountability for assets; (iii) access to assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for assets is compared with the actual levels at reasonable intervals and appropriate action is taken with respect to any differences.

Section 5.5 No Undisclosed Liabilities. No Seller nor any of its Subsidiaries has any Liabilities that would have been required to be reflected in, reserved against or otherwise described in the Balance Sheet or the notes thereto in accordance with GAAP, other than Liabilities incurred in the Ordinary Course of Business since the Balance Sheet Date, Liabilities under this Agreement, Liabilities of Sellers that will not be Assumed Liabilities and Liabilities that would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

Section 5.6 Title to Purchased Assets. Except as set forth in Schedule 5.6, and other than the real property subject to the Real Property Leases, Intellectual Property owned by third parties and licensed to Sellers subject to any Intellectual Property Licenses and personal property subject to personal property leases (including the Personal Property Leases), Sellers own each of the Purchased Assets, and at the Closing Purchaser will be vested with good and valid title to such Purchased Assets, free and clear of all Liens, other than Permitted Liens, to the fullest extent permissible under section 363(f) of the Bankruptcy Code.

Section 5.7 Taxes. Except as set forth on Schedule 5.7 and except as precluded by the Bankruptcy Code:

(a) (i) Sellers and each of their Subsidiaries have timely filed (or have caused to be timely filed) with the appropriate Taxing Authorities all material Tax Returns required to be filed with respect to the Purchased Assets (taking into account any extension of time to file granted or obtained with respect to such entity); (ii) all such Tax Returns are complete and accurate; and (iii) all income and other material Taxes due, regardless of whether shown on a filed Tax Return, have been timely paid.

(b) No Tax audits, investigations or administrative or judicial proceedings are pending or in progress or, to Sellers' Knowledge, have been threatened in writing with respect to the Purchased Assets.

(c) Each of Sellers has complied in all material respects with all Applicable Laws relating to the payment and withholding of Taxes and has duly and timely withheld and paid over to the appropriate Taxing Authorities all amounts required to be so withheld and paid over under all Applicable Laws.

(d) No Seller or any Subsidiary of a Seller has been party to any "listed transaction" as defined in Treasury Regulation Section 1.6011-4 or subject to any similar provision of state, local or foreign Law.

(e) No Seller is a foreign person within the meaning of Section 1445 of the Code.

(f) No power of attorney with respect to any Tax matter is currently in force with respect to the Purchased Assets, the Business that would, in any manner, bind, obligate, or restrict Purchaser.

(g) No Tax elections have been made with respect to the Purchased Assets or the Business that would, in any manner, bind, obligate or restrict Purchaser.

(h) Other than with respect to customary provisions related to a Tax pass-through, employee gross-up or other similar arrangements entered into in the Ordinary Course of Business, no Tax allocation, Tax sharing or Tax indemnity or similar agreement or arrangement is currently in effect with respect to the Purchased Assets or the Business that would, in any manner, bind, obligate or restrict Purchaser.

Section 5.8 Real Property.

(a) Sellers do not own and have never owned any real property. Schedule 5.8(a) sets forth a complete list of all material real property and interests in real property leased by Sellers (individually, a “Real Property Lease” and collectively, the “Real Property Leases”) as lessee or lessor. Sellers have provided Purchaser with, or access to, true, correct, accurate and complete copies of all leases and other instruments and agreements together with all amendments, modifications, supplements, and restatements thereto, if any, pertaining to the Real Property Leases. To Sellers’ Knowledge, there are no physical defects in the buildings or other facilities or machinery or equipment located at any of the properties subject to any of the Real Property Leases which would interfere with the continued use and operation of the properties subject to the Real Property Leases as currently used and operated, other than with respect to such defects as would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

(b) Except as disclosed in Schedule 5.8(b), no Seller has granted to any other Person any rights, adverse or otherwise, under such Real Property Lease, or sublet, assigned or otherwise conveyed all or any portion of the premises demised under the Real Property Lease or Real Property Lease to any other Person.

Section 5.9 Tangible Personal Property; Capital Leases.

(a) Schedule 5.9(a) sets forth all leases of personal property (“Personal Property Leases”) involving annual payments in excess of \$[●] relating to personal property used by Sellers in connection with the Business or to which any Seller is a party or by which the properties or assets of any Seller are bound.

(b) Schedule 5.9(b) sets forth all capital leases (“Capital Leases”) involving annual payments in excess of \$[●] relating to property used by Sellers in connection with the Business or to which any Seller is a party or by which the properties or assets of any Seller are bound.

(c) Sellers have a valid and enforceable leasehold interest under each of the Personal Property Leases and Capital Leases under which each is a lessee, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). Each of the Personal Property Leases and Capital Leases is in full force and effect.

(d) All personal property of Sellers (including personal property subject to Personal Property Leases) and all property of Sellers subject to Capital Leases, other than any Excluded Asset, is

(i) in good operating condition and repair (ordinary and reasonable wear and tear excepted), and

(ii) suitable for the purposes for which it is currently used.

(e) No Seller has leased or subleased to any other Person any property that is subject to a Personal Property Lease or a Capital Lease. No Seller has assigned to any other Person its interest under any lease or sublease with respect to any property subject to a Personal Property Lease or Capital Lease. The rental set forth in each lease or sublease of any item or distinct group of personal property of each Seller is and immediately after the Closing will be the actual rental being paid by such Seller and there are and immediately after the Closing will be no separate agreements or understandings in respect thereof.

Section 5.10 Intellectual Property.

(a) Schedule 5.10(a) sets forth a true and complete list of all material issuances and registrations and material applications for issuance or registration included in the Purchased Intellectual Property.

(b) Schedule 5.10(b) sets forth a true and complete list of (i) all material written Intellectual Property Licenses that are Purchaser Assumed Contracts and (ii) to Sellers' Knowledge, all material oral Intellectual Property Licenses that are Purchaser Assumed Contracts, regardless of whether such Intellectual Property Licenses involve annual payments by or to a Seller or an Affiliate of any Seller.

(c) Except as set forth on Schedule 5.10(c):

(i) A Seller or one of its Subsidiaries owns all Intellectual Property listed on Schedule 5.10(a) and has valid rights in and to, including rights to use, publish, and perform, as applicable, all other Business Intellectual Property included in the Purchased Assets as such Business Intellectual Property is used in the Ordinary Course of Business, in each case, free and clear of all Liens other than Permitted Liens and Intellectual Property Licenses.

(ii) The Purchased Intellectual Property is not the subject of any ownership, validity, use, or enforceability challenge or claim received by Sellers in writing or, to Sellers' Knowledge, any outstanding Order restricting the use by Sellers or any of their Subsidiaries thereof or adversely affecting any of the rights of Sellers or any of their Subsidiaries

thereto, except as would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

(iii) No Seller has received any written notice of any default or any event that with notice or lapse of time, or both, would constitute a default under any Intellectual Property License that is a Purchaser Assumed Contract and to which any Seller is a party or by which it is bound, except for defaults that would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect. To Sellers' Knowledge, no Person is violating any Purchased Intellectual Property or Business Intellectual Property exclusively licensed to any Seller or any of its Subsidiaries under an Intellectual Property License that is a Purchaser Assumed Contract, except for violations that would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

(iv) To Sellers' Knowledge, (A) no Seller nor any of its Subsidiaries is violating, and since January 1, 2018, has violated, any Intellectual Property rights of any other Person and (B) there are no Actions or Legal Proceedings, pending or threatened, concerning any claim that Sellers or any of their Subsidiaries have infringed, diluted, misappropriated, or otherwise violated any Intellectual Property rights of any other Person, in each case, except as would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

(v) Sellers and their Subsidiaries have used commercially reasonable efforts to protect the confidentiality of any material Trade Secrets and other material confidential and proprietary information included in the Purchased Assets.

Section 5.11 Material Contracts.

(a) Schedule 5.11(a) sets forth all of the following Contracts to which any Seller is a party or by which any Seller is bound in connection with the Business or by which the Purchased Assets may be bound or affected and that are Purchaser Assumed Contracts (collectively, the "Material Contracts"):

(i) Contracts with any Affiliate or current or former officer or director of any Seller or any of its Subsidiaries;

(ii) Contracts pursuant to which a Seller or any of its Subsidiaries grants to any Person any rights to represent a Seller with respect to any product, or act as agent for any Seller in connection with the marketing, distribution or sale of any Business product;

(iii) Contracts with any labor union or association representing any employees of any Seller;

(iv) Contracts for the sale of any of the material assets of the Business, other than in the Ordinary Course of Business;

(v) Contracts relating to the acquisition by any Seller or any of its Subsidiaries of any operating business or the capital stock of any other Person;

(vi) Contracts containing a covenant that materially restricts a Seller or any Affiliate of a Seller from engaging in any line of business, conducting the Business in any geographic area, competing with any Person or hiring any Person;

(vii) Contracts relating to incurrence of Indebtedness or the making of any loans, in each case involving amounts in excess of \$[●];

(viii) Contracts relating to a joint venture of the Business, any Seller or any of its Subsidiaries;

(ix) Contracts which involve the expenditure of more than \$[●] in the aggregate or require performance by any party more than one year from the date hereof that, in either case, are not terminable by a Seller without penalty on less than one hundred eighty (180) days' notice;

(x) Contracts providing for severance, retention, change in control or similar payments; and

(xi) Contracts for the employment of any individual on a full-time, part-time or consulting or other basis providing annual compensation in excess of \$[●].

(b) Each of the Material Contracts is in full force and effect and is the legal, valid and binding obligation of Sellers, enforceable against them in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a proceeding at law or in equity). Sellers have good and valid title to the Material Contracts, free and clear of all Liens (other than Permitted Liens). Sellers have delivered or otherwise made available to Purchaser true, correct and complete copies of all of the Material Contracts, together with all amendments, modifications or supplements thereto.

Section 5.12 Employee Benefits.

(a) Schedule 5.12(a) separately lists all material Employee Benefit Plans.

(b) True, correct and complete copies of each of the material Employee Benefit Plans have been made available to Purchaser.

(c) Except as disclosed on Schedule 5.12(c), each of the Employee Benefit Plans intended to qualify for tax-advantaged status under Applicable Laws so qualifies.

(d) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (i) result in any payment becoming due to any Employee of any Seller; (ii) increase any benefits otherwise payable under any Employee Benefit Plan; or (iii) result in the acceleration of the time of payment or vesting of any such benefits, in each case, that would be required to be satisfied by Purchaser following the Closing.

Section 5.13 Labor.

(a) Except as set forth on Schedule 5.13(a), no Seller is a party to any labor or collective bargaining agreement.

(b) Except as set forth on Schedule 5.13(b), there are no (i) strikes, work stoppages, work slowdowns or lockouts pending or, to Sellers' Knowledge, threatened against or involving any Seller, or (ii) unfair labor practice charges, grievances or complaints pending or, to Sellers' Knowledge, threatened by or on behalf of any employee or group of employees of any Seller, except in each case as would not have a Seller Material Adverse Effect.

Section 5.14 Litigation. Except (a) as set forth on Schedule 5.14, (b) for matters before the Bankruptcy Court involving any Seller or any of its Affiliates, and (c) any matters that will otherwise be resolved by the Sale Order without any Liability or restriction applicable to Purchaser or the Purchased Assets, there are no Legal Proceedings pending or, to Sellers' Knowledge, threatened against any Seller or any of its Subsidiaries, or relating to the Business or any of the Purchased Assets or Assumed Liabilities, before any Governmental Authority, which, if adversely determined, would reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

Section 5.15 Compliance with Laws; Permits.

(a) Except as set forth on Schedule 5.15, since January 1, 2018, Sellers have (i) conducted and continue to conduct the Business in accordance with all Applicable Laws and Orders applicable to their respective operations or assets or the Business in all material respects, (ii) complied with and continue to comply with all Laws and Orders applicable to the Purchased Assets and the Assumed Liabilities in all material respects, and (iii) are not in violation of any such Law or Order, except where the failure to be in compliance would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect and except with respect to Environmental Laws which are addressed in Section 5.16. Neither any Seller nor any of its Subsidiaries has received any written notice of or been charged with the violation of any Laws and, to Sellers' Knowledge, there are no facts or circumstances that would reasonably be expected to give rise to any such violation, except in each case where such violation would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

(b) Sellers currently have all Permits which are required for the operation of the Business as presently conducted, except where the absence of which would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect. Neither any Seller nor any of its Subsidiaries is 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 it is a party, and, to Sellers' Knowledge, there are no facts or circumstances that would reasonably be expected to give rise to any such violation, except in each case where such default or violation would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

Section 5.16 Environmental Matters.

(a) Except as set forth on Schedule 5.16(a), the operations of Sellers and their Subsidiaries are in material compliance with all applicable Environmental Laws and all Permits issued pursuant to Environmental Laws or otherwise and no Seller nor any of its Subsidiaries has any material Environmental Liabilities or Obligations and no facts exist or events have occurred that could reasonably be expected to give rise to any such material Environmental Liabilities or Obligations.

(b) Sellers and their Subsidiaries have obtained all Permits required under all applicable Environmental Laws necessary to operate the Business.

(c) No Seller or any of its Subsidiaries is the subject of any outstanding Order or Contract with any Governmental Authority respecting (i) Environmental Laws, (ii) Remedial Action or (iii) any Release or threatened Release of a Hazardous Material.

(d) No Seller or any of its Subsidiaries has received any written communication alleging that any Seller or any of its Subsidiaries may be in violation of any Environmental Law or any Permit issued pursuant to Environmental Law, or may have any Environmental Liabilities or Obligations.

(e) To Sellers' Knowledge, there are no investigations of the Business, or currently or previously owned, operated or leased property of any Seller or any of its Subsidiaries pending or, to Sellers' Knowledge, threatened which would reasonably be expected to result in the imposition of any material liability pursuant to any Environmental Law.

Section 5.17 Accounts and Notes Receivable and Payable.

(a) All accounts and notes receivable of Sellers have arisen from bona fide transactions in the Ordinary Course of Business consistent with past practice and are payable on ordinary trade terms, are properly reflected on Sellers' books and records and properly reserved for with respect to doubtful accounts, all in accordance with GAAP.

(b) All accounts payable of Sellers reflected in the Balance Sheet or arising after the date thereof are the result of bona fide transactions in the Ordinary Course of Business.

Section 5.18 Insurance. Set forth on Schedule 5.18 is a list of all material policies of insurance by which the Purchased Assets are covered as of the date hereof. Except as set forth on Schedule 5.18, all such policies are in full force and effect and there are no material claims pending as of the date hereof under any of such policies where underwriters have reserved their rights or disclaimed coverage under such policy with such exceptions that would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

Section 5.19 Financial Advisors. Except as set forth on Schedule 5.19, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for any Seller or any of its Subsidiaries in connection with the transactions contemplated by this Agreement. No Person is entitled to any fee or commission or like payment from Purchaser in respect thereof.

Section 5.20 No Other Representations or Warranties; Schedules. Except for the representations and warranties contained in this Article V (as modified by the Schedules hereto), no Seller nor any other Person makes any express or implied representation or warranty with respect to Sellers, their Subsidiaries, the Business, the Purchased Assets, the Assumed Liabilities or the transactions contemplated by this Agreement, and Sellers disclaim any other representations or warranties, whether made by Sellers, any Affiliate of Sellers or any of their respective officers, directors, employees, agents or representatives. Except for the representations and warranties contained in this Article V (as modified by the Schedules hereto), Sellers expressly disclaim and negate any representation or warranty, expressed or implied, at common law, by statute, or otherwise, relating to the condition of the Purchased Assets (including any implied or express warranty of merchantability or fitness for a particular purpose). Sellers make no representations or warranties to Purchaser regarding the probable success or profitability of the Business.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Sellers as follows:

Section 6.1 Organization and Good Standing. Purchaser is a [corporation] [limited liability company] duly organized, validly existing, in good standing and duly qualified to transact business under the laws of the State of [●] and has the requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted.

Section 6.2 Authorization of Agreement. Purchaser has all requisite power, authority and legal capacity to execute and deliver this Agreement, the other Transaction Documents and each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by Purchaser in connection with the consummation of the transactions contemplated hereby and thereby (the "Purchaser Documents"), to perform its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by Purchaser of this Agreement and each Purchaser Document have been duly authorized by all necessary [corporate] [limited liability company] action on behalf of Purchaser. This Agreement has been, and each Purchaser Document will be at or prior to the Closing, duly executed and delivered by Purchaser and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) this Agreement constitutes, and each Purchaser Document when so executed and delivered will constitute, the legal, valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

Section 6.3 No Violation; Consents.

(a) None of the execution and delivery by Purchaser of this Agreement or the Purchaser Documents, the consummation of the transactions contemplated hereby or thereby, or the compliance by Purchaser with any of the provisions hereof or thereof will conflict with, or

result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under any provision of (i) the [certificate of formation] [certificate of incorporation] and operating agreement or comparable organizational documents of Purchaser, (ii) any Contract or Permit to which Purchaser is a party or by which Purchaser or its properties or assets are bound, (iii) any Order of any Governmental Authority applicable to Purchaser or by which any of the properties or assets of Purchaser are bound or (iv) any Applicable Law, except in the case of clauses (ii), and (iii) and (iv) as would not reasonably be expected to have a material adverse effect on the ability of Purchaser to consummate the transactions contemplated by this Agreement.

(b) No consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Authority is required on the part of Purchaser in connection with the execution and delivery of this Agreement or the Purchaser Documents, the compliance by Purchaser with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby or the taking by Purchaser of any other action contemplated hereby or thereby, except for compliance with the applicable requirements of the HSR Act, or that would not reasonably be expected to have a material adverse effect on the ability of Purchaser to consummate the transactions contemplated by this Agreement.

Section 6.4 Litigation. There are no Legal Proceedings pending or, to the knowledge of Purchaser, threatened against Purchaser, or to which Purchaser is otherwise a party before any Governmental Authority, which, if adversely determined, would reasonably be expected to have a material adverse effect on the ability of Purchaser to consummate the transactions contemplated by this Agreement.

Section 6.5 Financial Capability. Purchaser (a) will have at the Closing sufficient funds available to pay the Purchase Price and any expenses incurred by Purchaser in connection with the transactions contemplated by this Agreement, and (b) will have at the Closing the resources and capabilities (financial or otherwise) to perform its obligations hereunder.

Section 6.6 Bankruptcy. There are no bankruptcy, reorganization or arrangement proceedings pending against, being contemplated by, or to the knowledge of Purchaser, threatened against, Purchaser.

Section 6.7 Financial Advisors. Except as set forth on Schedule 6.7, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for Purchaser in connection with the transactions contemplated hereunder and no Person is entitled to any fee or commission or like payment in respect thereof which would be payable by Sellers (other than pursuant to the requirement to pay the Reimbursable Expenses under Section 4.5(b)).

Section 6.8 Condition of the Business. Notwithstanding anything contained in this Agreement to the contrary, Purchaser acknowledges and agrees that no Seller is making any representations or warranties whatsoever, express or implied, beyond those expressly given by Sellers in Article V hereof (as modified by the Schedules hereto as supplemented or amended in accordance with Section 8.9), and Purchaser acknowledges and agrees that, except for the representations and warranties contained therein, the Purchased Assets are being transferred on a “where is” and, as to condition, “as is” basis. Purchaser further represents that no Seller or any of

its Affiliates or any other Person has made any representation or warranty, express or implied, as to the accuracy or completeness of any information regarding Sellers or any of their Subsidiaries, the Business or the transactions contemplated by this Agreement not expressly set forth in this Agreement, and no Seller, any of their Affiliates or any other Person will have or be subject to any liability to Purchaser or any other Person resulting from the distribution to Purchaser or its Representatives or Purchaser's use of, any such information, including any confidential memoranda distributed on behalf of Sellers relating to the Business or other publications or data room information provided to Purchaser or its representatives, in connection with the sale of the Business and the Transactions. Purchaser acknowledges that it has conducted to its satisfaction its own independent investigation of the Business and, in making the determination to proceed with the Transactions, Purchaser has relied on the results of its own independent investigation.

ARTICLE VII

BANKRUPTCY COURT MATTERS

Section 7.1 Competing Transaction.

(a) This Agreement is subject to approval by the Bankruptcy Court and the consideration by Sellers of higher or better competing bids, including, in consideration of any sale, transfer, liquidation or disposition of the Business or assets of Sellers or their Subsidiaries, or a plan of reorganization or liquidation with respect to the Business or assets of Sellers and their Subsidiaries (each a "Competing Bid"). From the date hereof (and any prior time) and until the earlier of: (i) the consummation of the Transactions and (ii) the conclusion of any bid process described in the Bidding Procedures Order, Sellers are permitted 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, agents and representatives) in compliance with the Bidding Procedures Order in connection with any sale or other disposition of the Purchased Assets and the Business. In addition, Sellers shall have the responsibility and obligation to respond to any inquiries or offers to purchase all or any part of the Purchased Assets or the Business and perform any and all other acts related thereto which are required under the Bankruptcy Code or other Applicable Law, including supplying information relating to the Business and the assets of Sellers and its Subsidiaries to prospective purchasers.

(b) Sellers shall not and shall not permit any of their Subsidiaries to furnish information concerning Sellers, the Business, or the properties or assets of Sellers or their Subsidiaries to any third party, except (i) in the Ordinary Course of Business, (ii) to any Governmental Authority, or (iii) pursuant to a confidentiality agreement entered into between any Seller and such third party. Sellers shall use commercially reasonable efforts to promptly provide, or identify and make available to Purchaser any non-public information concerning Sellers, the Purchased Assets or the Business provided to any other Person after the date hereof which was not previously provided to Purchaser.

(c) Following the date of the entry of the Sale Order approving this Agreement and until such time as this Agreement has been terminated in accordance with its express terms, Sellers shall not, nor shall any of their Subsidiaries authorize or permit any Representative of any Seller to, (i) directly or indirectly solicit, initiate or encourage the submission of any offer or

proposal concerning any Competing Bid, or (ii) directly or indirectly participate in any discussions or negotiations regarding, or furnish to any Person any information with respect to, or take any other action to facilitate the making of, any proposal or expression of interest that constitutes or is reasonably likely to lead to a Competing Bid.

ARTICLE VIII

COVENANTS

Section 8.1 Access to Information. Sellers agree that, prior to the Closing Date, Purchaser shall be entitled, through its officers, employees and Representatives, to (a) make such investigation of the properties, businesses and operations of the Business and (b) make such examination of the books and records of the Business, the Purchased Assets and the Assumed Liabilities as Purchaser reasonably requests and to make extracts and copies of such books and records. Any such investigation and examination shall be conducted during regular business hours upon reasonable advance notice and under reasonable circumstances and Sellers and their Subsidiaries shall cooperate fully therein. Purchaser and its Representatives shall cooperate fully with Sellers and their Representatives and shall use their reasonable efforts to minimize any disruption to the Business in connection with such investigation and examination. Notwithstanding anything herein to the contrary, no such investigation or examination shall be permitted to the extent that it would require Sellers or any of their Subsidiaries to disclose information subject to attorney-client privilege or conflict with any confidentiality obligations to which such Seller or any of its Subsidiaries is bound. With respect to any material vendor or other strategic partner of Sellers and their Subsidiaries that Purchaser desires to contact prior to Closing, Purchaser shall consult with Sellers and, so long as in Sellers' reasonable judgment such contact would not be detrimental to the Business, Sellers and their Subsidiaries shall promptly seek and use commercially reasonable efforts to arrange appropriate meetings and telephone conferences with such parties. No investigation by Purchaser prior to or after the date of this Agreement shall diminish or obviate any of the representations, warranties, covenants or agreements of Sellers contained in this Agreement or the Seller Documents. In order that Purchaser may have full opportunity to make such physical, business, accounting and legal review, examination or investigation as it may reasonably request of the affairs of Sellers and their Subsidiaries, Sellers shall cause the officers, employees, consultants, agents, accountants, attorneys and other representatives of Sellers and their Subsidiaries to cooperate fully with such representatives in connection with such review and examination.

Section 8.2 Conduct of the Business Pending the Closing.

(a) Prior to the Closing, except (1) as set forth on Schedule 8.2(a), (2) as required by Applicable Law or by Order of the Bankruptcy Court, (3) as otherwise expressly contemplated by this Agreement, or (4) with the prior written consent of Purchaser (which consent shall not be unreasonably withheld, delayed or conditioned), Sellers shall, and shall cause their Subsidiaries to:

(i) conduct the Business only in the Ordinary Course of Business and comply with the Cash Flow Budget in all material respects;

(ii) use their commercially reasonable efforts to (A) preserve the present business operations, organization and goodwill of the Business, and (B) preserve the present relationships with Persons having business dealings with Sellers and their Subsidiaries (including customers and suppliers of the Business);

(iii) (A) maintain the books, accounts and records of Sellers and their Subsidiaries in the Ordinary Course of Business, (B) continue to operate billing procedures and collect accounts receivable utilizing normal procedures and without discounting or accelerating payment of such accounts, and (C) subject to compliance with the Cash Flow Budget, pay accounts payable and comply with all contractual and other obligations applicable to the operation of the Business;

(iv) subject to any confidentiality restrictions which apply to Sellers or their Subsidiaries, use commercially reasonable efforts to consult in good faith from time to time with the Representatives of Purchaser to report cash flow results of the Business, material operational developments as they arise and the general status of ongoing operations of the Business;

(v) other than in the Ordinary Course of Business or in connection with any liquidations or going out of business sales, maintain the Purchased Assets in their current condition, reasonable wear and tear excepted; and

(vi) maintain in full force and effect until the Closing insurance upon all of the Purchased Assets in such amounts and of such kinds comparable to that in effect on the date of this Agreement.

(b) Except (1) as set forth on Schedule 8.2(b), (2) as required by Applicable Law or Order of the Bankruptcy Court, (3) as otherwise contemplated by this Agreement, (4) as permitted or contemplated by the Cash Flow Budget, or (5) with the prior written consent of Purchaser (which consent shall not be unreasonably withheld or delayed), Sellers shall not, and shall not permit their Subsidiaries to:

(i) (A) increase the compensation of any of their respective employees, (B) grant any bonus, benefit or other direct or indirect compensation to any director or employee, (C) increase the coverage or benefits available under (or create any new or otherwise amend) any Employee Benefit Plan or (D) enter into any employment, deferred compensation, severance, consulting, non-competition or similar agreement (or amend any such agreement) to which any Seller or any of its Subsidiaries is a party or involving a director or executive officer of any Seller or any of its Subsidiaries, except, in each case, in the Ordinary Course of Business or as required by Applicable Law from time to time in effect;

(ii) (A) make, change or rescind any material election relating to Taxes, (B) settle or compromise any material claim, action, suit, litigation, proceeding, arbitration, investigation, audit or controversy relating to Taxes, or (C) except as may be required by Applicable Law or GAAP, make any material change to any of its methods of accounting for Tax purposes from those employed in the preparation of its most recent Tax Returns;

(iii) subject any of the Purchased Assets to any Lien, except for Permitted Liens and except for non-exclusive licenses under any Purchased Intellectual Property granted in the Ordinary Course of Business;

(iv) other than in the Ordinary Course of Business, acquire any material properties or assets that would be Purchased Assets or, except for the purpose of disposing of obsolete or worthless assets, sell, assign, license, transfer, convey, lease or otherwise dispose of any of the Purchased Assets;

(v) acquire any entity or all or substantially all of the assets of any entity or enter into any commitment for capital expenditures in excess of \$[●] for any individual commitment and \$[●] for all commitments in the aggregate;

(vi) other than in the Ordinary Course of Business enter into any sublease with respect to any property subject to a Real Property Lease;

(vii) enter into any transaction or enter into, modify or renew any Contract which by reason of its size or otherwise is not in the Ordinary Course of Business;

(viii) enter into any Contract, understanding or commitment that materially restrains, restricts, limits or impedes the ability of the Business, or the ability of Purchaser, to compete with or conduct any business or line of business in any geographic area;

(ix) terminate, amend in any material respect, restate, supplement or waive any rights under (A) prior to the expiration of Purchaser's right to designate Purchaser Assumed Contracts pursuant to Section 2.5 and subject to Sellers' rights under Section 2.5(b), any Material Contract of Sellers, (B) following the expiration of Purchaser's right to designate Purchaser Assumed Contracts, any Purchaser Assumed Contract, or (C) any Permit;

(x) amend its certificate or articles of incorporation, bylaws, or other organizational documents or take any other action if any such amendment or action would reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect;

(xi) other than with respect to customary advances for expenses to Employees in the Ordinary Course of Business, make any loan or advance to any Person;

(xii) engage in any transaction with respect to the Business with any officer, director or Affiliate of Sellers or their Subsidiaries;

(xiii) incur or assume any Indebtedness;

(xiv) enter into or agree to enter into any merger or consolidation with any corporation or other entity, and engage in any new business or invest in, make a loan, advance or capital contribution to, or otherwise acquire the securities of, any other Person;

(xv) declare, set aside, make or pay any dividend or other distribution in respect of the capital stock of Sellers or their Subsidiaries or repurchase, redeem or otherwise

acquire any outstanding shares of the capital stock or other securities of, or interests in, Sellers or their Subsidiaries;

(xvi) introduce any material change with respect to the operation of the Business, including any material change in the types, nature, composition or quality of products or services, or make any change in product specifications or prices or terms of distributions of such products; or

(xvii) agree to do anything prohibited by this Section 8.2.

Section 8.3 Consents. Sellers shall use (and shall cause each of their Subsidiaries to use) commercially reasonable efforts, and Purchaser shall cooperate with Sellers, to obtain at the earliest practicable date all consents and approvals required to consummate the Transactions, including the consents and approvals referred to in Section 5.3(b); provided, however, that neither Sellers nor Purchaser shall be obligated to (a) pay any consideration therefor to any third party from whom consent or approval is requested, or (b) agree to any restrictions on its ability to operate the Business or the Purchased Assets or hold or exercise ownership over the Purchased Assets, or initiate any litigation or Legal Proceedings to obtain any such consent or approval.

Section 8.4 Appropriate Action; Filings.

(a) Through the Closing Date, Sellers and Purchaser shall cooperate with each other and use (and shall cause their respective Affiliates to use) commercially reasonable efforts: (i) to take, or to cause to be taken, all actions, and to do, or to cause to be done, all things reasonably necessary, proper or advisable on its part under this Agreement, Applicable Law or otherwise to consummate and make effective the Transactions, (ii) to obtain promptly from any Governmental Authority any Orders or Permits required to be obtained by Sellers or Purchaser or any of their respective Affiliates in connection with the authorization, execution, delivery and performance of this Agreement and the consummation of the Transactions, (iii) to promptly make all necessary filings and thereafter make any other required submissions with respect to this Agreement and prompt consummation of the Transactions required under (A) the HSR Act, (B) any notifications or filings required for the Transactions under other applicable Competition Laws, and (C) any Applicable Law, (iv) to defend any and all lawsuits and other proceedings by or before any Governmental Authority challenging this Agreement or the consummation of the Transactions, (v) to cause to be lifted or rescinded any injunction, decree, ruling, order or other action of any Governmental Authority adversely affecting the ability of any of the Parties to consummate the Transactions, and (vi) to provide prompt notification to the other Party of any actions pursuant to clauses (i) – (v) of this Section 8.4(a); provided, however, that nothing in this Section 8.4 shall be construed as altering the rights or obligations of Sellers under Section 7.1; provided further, subject to Section 8.4(b), that neither Purchaser nor any Seller shall be obligated to pay any consideration or incur any costs to obtain any approvals or consents from third parties, whether or not they may be necessary, proper or advisable to consummate the Transactions.

(b) As promptly as practicable, but in no event later than five (5) Business Days after the date of entry of the Bidding Procedures Order, the Parties shall (i) each file with the Federal Trade Commission and the Department of Justice any notifications and report forms, together with all required supplemental information, required to be filed under the HSR Act and

the regulations promulgated thereunder with respect to the Transactions, and request early termination of the waiting period with respect to the Transactions and (ii) file any notifications or filings required under the Transactions under other applicable Competition Laws. Sellers and Purchaser shall consult with each other as to the appropriate time of filing such notifications and shall use their reasonable best efforts to make such filings at the agreed upon time, to respond promptly to any requests for additional information made by the Federal Trade Commission, the Department of Justice or any other Governmental Authority, to cooperate with each other in connection with resolving any investigation or other inquiry concerning the Transactions commenced by the Federal Trade Commission, the Department of Justice or any other Governmental Authority and to cause the waiting periods under the HSR Act to terminate or expire at the earliest possible date after the date of filing. Sellers and Purchaser shall use their reasonable best efforts to (i) eliminate every impediment under any Competition Law, including taking all actions necessary to obtain any necessary approval under applicable Competition Laws and resisting in good faith any assertion that the Transactions contemplated hereby constitute a violation of the Competition Laws, and (ii) otherwise resolve all such objections, if any, as may be asserted by any Governmental Authority so as to enable the Closing to occur as soon as reasonably possible, all to the end of expediting the consummation of the Transactions contemplated hereby.

(c) Through the Closing Date, Sellers shall use (and shall cause their Subsidiaries to use) commercially reasonable efforts (subject to receipt of the Sale Order) to promptly obtain all necessary consents and approvals for the assignment and assumption of all of the Purchaser Assumed Contracts.

Section 8.5 Confidentiality. Purchaser acknowledges that Confidential Information (as defined in the Confidentiality Agreement) has been, and in the future will be, provided to it in connection with this Agreement, including under Section 8.1, and is subject to the terms of the confidentiality agreement between Parent and Purchaser, dated as of the date hereof (the “Confidentiality Agreement”), the terms of which are incorporated herein by reference. Purchaser acknowledges and understands that this Agreement may be made available by Sellers to prospective bidders and that such disclosure shall not be deemed to violate any confidentiality obligations owing to Purchaser, whether pursuant to this Agreement, the Confidentiality Agreement or otherwise. Effective upon, and only upon, the Closing, the Confidentiality Agreement shall terminate. Sellers agree that, from and after the Closing, no Seller will and Sellers will cause their Subsidiaries not to disclose to any Person any non-public information relating to Purchaser and its Affiliates, or the Business, including but not limited to the Purchased Assets and the Assumed Liabilities, except as required by Law or as otherwise becomes available in the public domain other than through any action by any Seller in violation of its obligations under this Section 8.5. The provisions of this Section 8.5 shall survive the Closing.

Section 8.6 Preservation of Records; Cooperation. Sellers and Purchaser shall (and shall cause their Affiliates to) preserve and keep in their possession all records held by them on and after the date hereof relating to the Purchased Assets for a period of three (3) years or such longer period as may be required by Applicable Law; (provided, however, that in no event shall Sellers be required to preserve such records after the Bankruptcy Cases are closed) and shall make such records and personnel available to the other Party as may reasonably be required by such Party, including in connection with any insurance claims or Legal Proceedings involving the

Purchased Assets, or any governmental investigations of Sellers or Purchaser or any of their respective Affiliates related to the Purchased Assets or in order to enable Sellers or Purchaser or any of their respective Affiliates to comply with their respective obligations hereunder and each other agreement, document or instrument contemplated hereby or thereby or otherwise; provided, however, that in no event shall either Party be obligated to provide any information the disclosure of which would jeopardize any privilege available to such Party or any of its Affiliates relating to such information or which would cause such Party or any of its Affiliates to breach a confidentiality obligation to which it is bound. Purchaser further acknowledges that Sellers shall be entitled to copy any such records, at Sellers' sole cost and expense, and to retain copies of such records. After the expiration of any applicable retention period, before Purchaser shall dispose of any of such records, at least ninety (90) days' prior written notice to such effect shall be given by Purchaser to Sellers or their successors (or a Person designated by Sellers) and Sellers or their successors (or a Person designated by Sellers) shall have the opportunity (but not the obligation), at their sole cost and expense, to remove and retain all or any part of such records as they may in their sole discretion select. In the event Sellers wish to destroy any records after the Bankruptcy Cases are closed, before Sellers shall dispose of any of such records, at least ninety (90) days' prior written notice to such effect shall be given by Sellers to Purchaser or its successors (or a Person designated by Purchaser) and Purchaser or its successors (or a Person designated by Purchaser) shall have the opportunity (but not the obligation), at its sole cost and expense, to remove and retain all or any part of such records as it may in its sole discretion select.

Section 8.7 Publicity. Prior to the Closing and without limiting or restricting any Party from making any filing with the Bankruptcy Court with respect to this Agreement or the Transactions, no Party shall issue any press release or public announcement concerning this Agreement or the Transactions without obtaining the prior written approval of the other Party, which approval will not be unreasonably withheld or delayed, unless, in the reasonable judgment of Purchaser or Sellers, disclosure is otherwise required by Applicable Law or by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement or by the applicable rules of the Securities Exchange Commission or any stock exchange on which Purchaser or such Seller lists securities, provided that the Party intending to make such release shall use its best efforts consistent with such Applicable Law or Bankruptcy Court requirement to consult with the other Party with respect to the text thereof. After the Closing, the Parties may issue public announcements regarding the Transactions so long as such announcements, in the case of announcements made by Sellers, do not disclose the specific terms or conditions of this Agreement or any Transaction Document except where such terms and conditions have already been disclosed as required by Law, applicable stock exchange regulation or in filings that any Seller is required to make in the Bankruptcy Court or office of the United States Trustee; provided, however, that the issuing party shall use its best efforts to consult with the other party with respect to the text thereof.

Section 8.8 Transition Services Agreement. [If requested by Purchaser, Sellers shall negotiate in good faith to execute an agreement at Closing pursuant to which Sellers will continue to provide to Purchaser, on terms to be mutually agreed upon, certain general and administrative services then being provided by Sellers with respect to the Business.]

Section 8.9 Supplements to Schedules. Sellers may in response to any changes or updates to Schedule 1.1(b) by Purchaser, supplement or amend the Schedules provided pursuant

to Sections 5.3(b), 5.10(b) and 5.11(a). Such supplements or amendments shall be effective to cure and correct, for all purposes, any breach of any representation or warranty which would have existed if Sellers had not made such supplements or amendments. All references to Schedules that are supplemented or amended pursuant to this Section 8.9 shall be deemed to be a reference to such Schedule as supplemented or amended.

Section 8.10 Further Assurances. Each Seller and Purchaser shall use its commercially reasonable efforts to (i) take all actions necessary or appropriate to consummate the Transactions and (ii) cause the fulfillment at the earliest practicable date of all of the conditions to their respective obligations to consummate the Transactions.

ARTICLE IX

EMPLOYEE AND EMPLOYEE BENEFITS MATTERS; TAX MATTERS

Section 9.1 Employment.

(a) Transferred Employees. At least five (5) days prior to the Closing, Purchaser shall deliver, in writing individually or generally, an offer of employment commencing on the Closing Date and contingent upon the Closing, on an at-will basis (except to the extent otherwise expressly agreed in a writing signed by Purchaser and such Employee) and on such other terms and conditions as Purchaser may determine, to substantially all of the Employees who remain employed by Sellers and are providing services with respect to the Purchased Assets immediately prior to the Closing. Such individuals who accept such offer are hereinafter referred to as the “Transferred Employees.”

(b) Standard Procedure. Pursuant to the “Standard Procedure” provided in Section 4 of Revenue Procedure 2004-53, 2004-2 C.B. 20, (i) Purchaser and Seller shall report on a predecessor/successor basis as set forth therein, (ii) Seller will not be relieved from filing a Form W-2 with respect to any Transferred Employees, and (iii) Purchaser will undertake to file (or cause to be filed) a Form W-2 for each such Transferred Employee with respect to the portion of the year during which such Employees are employed by Purchaser that includes the Closing Date, excluding the portion of such year that such Employee was employed by Seller or its Subsidiaries.

Section 9.2 Employee Benefits.

(a) Accrued Vacation. Purchaser shall be responsible for all Liabilities with respect to Transferred Employees attributable to their accrued and unused vacation, sick days and personal days through the Closing Date.

(b) Accrued Wages and Bonus. Purchaser shall assume and pay all accrued and unpaid wages of Transferred Employees through the Closing Date.

(c) Severance. Purchaser shall assume and pay all severance Liabilities and obligations arising under any plan, program, policy or agreement of or with Sellers or their Affiliates.

(d) COBRA. Purchaser shall provide continuation coverage under its group medical plan pursuant to ERISA or Section 4980B of the Code to all Employees as of the Closing Date and their respective qualified beneficiaries as of the Closing Date, all former Employees and their qualified beneficiaries who are entitled to such coverage as of the Closing Date under the Employee Benefit Plans, and all other “affected employees” as defined for purposes of ERISA and Section 4980B of the Code and their qualified beneficiaries.

(e) Nothing contained in this Section 9.2 or elsewhere in this Agreement shall be construed to prevent the termination of employment of any Transferred Employee or any change in the employee benefits available to any Transferred Employee.

Section 9.3 Tax Matters.

(a) Transfer Taxes. All sales, transfer, filing, recordation, registration, documentary, stamp, value-added, goods and services and similar Taxes and fees arising from or associated with the Transactions (collectively, “Transfer Taxes”), whether levied on Purchaser or Sellers, shall be paid by Purchaser. Purchaser shall prepare at Purchaser’s expense, with Sellers’ cooperation, any necessary Tax Returns and other documentation with respect to any Transfer Taxes, and the party required by law to file such Tax Return shall timely do so.

(b) From the date of this Agreement until the Closing, and taking into account Section 8.2(b), each Seller, on behalf of itself and its Subsidiaries, shall prepare and file (or cause to be prepared and filed) in accordance with past practice and in a timely manner all Tax Returns relating to such Seller, each of its Subsidiaries, and the Purchased Assets, that are required to be filed on or before the Closing Date (after giving effect to any applicable extensions), and shall pay all Taxes required to be paid by or on behalf of such Seller, its Subsidiaries, and the Purchased Assets on or before the Closing Date; provided, however, that Sellers shall deliver to Purchaser (i) a copy of any material Tax Return for a Straddle Period or a Pre-Closing Tax Period and shall consider in good faith any comments submitted by Purchaser at least ten (10) days prior to the due date for filing such Tax Return (after giving effect to any applicable extensions), and (ii) written notice of any material Tax payment obligation for which Sellers are liable hereunder at least ten (10) Business Days prior to the date on which such payment is required to be made. After the Closing, Purchaser shall prepare and file (or cause to be prepared and filed) all Tax Returns required to be filed with respect to the Purchased Assets. In connection with the foregoing, Sellers shall pay Purchaser, prior to the payment due date, any amounts attributable to any Tax obligation which is Sellers’ responsibility under Section 2.4(e); provided, however, that Purchaser shall deliver to Sellers (i) a copy of any material Tax Return and shall consider in good faith any comments submitted by Sellers at least ten (10) days prior to the due date for filing such Tax Return (after giving effect to any applicable extensions), and (ii) written notice of any material Tax payment obligation at least ten (10) Business Days prior to the date on which such payment is required to be made. Whenever it is necessary to determine liability for Taxes in respect of any Seller, any of its Subsidiaries or the Purchased Assets for a Straddle Period, the portion of such Tax which relates to the portion of the Straddle Period ending on the Closing Date shall (i) in the case of any Taxes, other than Taxes based upon or related to income or receipts, be deemed to be the amount of such Tax for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of days in the portion of the Straddle Period ending on the Closing Date and the denominator of which is the number of days in the entire Straddle Period; and (ii) in the case

of any Tax based upon or related to income or receipts, be deemed equal to the amount which would be payable on the basis of an interim closing of the books as of the end of the Closing Date. The dispute resolution provisions of Section 3.4 should apply in the case of any disagreement with respect to any Tax Returns governed under this Section 9.3(b).

(c) Sellers, at their expense, shall have the right, but not the obligation, to control the conduct of the defense of any audit, claim, proceeding, investigation, or other controversy relating solely to Taxes (“Tax Claim”) for which Sellers are liable pursuant to Section 2.4(e); provided, however, that Sellers will not have the right to settle any such Tax Claim if the resolution or determination of such Tax Claim is reasonably likely to adversely affect Purchaser without first obtaining Purchaser’s written consent, such consent to not be unreasonably withheld, conditioned or delayed. Purchaser shall control the conduct of all other Tax Claims; provided, however, that if such Tax Claim, if successful, could reasonably be expected to result in any Tax for which Sellers may be responsible for under this Agreement, Purchaser shall (i) promptly notify Sellers in writing of such claim, (ii) notify Sellers of any significant developments regarding such claim, (iii) consider in good faith recommendations of Sellers in connection with such claim, and (iv) not settle any such claim without first obtaining Sellers’ written consent, such consent to not be unreasonably withheld, conditioned or delayed.

(d) Sellers acknowledge and agree that no restructuring activities shall be undertaken by any Seller or any of its Affiliates in connection with the Bankruptcy Cases (or otherwise) that may produce any material adverse Tax consequences for Purchaser and its Affiliates. Upon Purchaser’s reasonable request, the Parties shall use their reasonable best efforts to restructure the transactions contemplated by this Agreement in a Tax-efficient manner.

(e) Sellers, on the one hand, and Purchaser will provide each other with such cooperation and information as either of them reasonably may request of the other in filing any Tax Return, amended Tax Return or claim for refund, determining a liability for Taxes or a right to a refund of Taxes, or participating in or conducting any audit or other proceeding in respect of Taxes. Such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings and other determinations by Taxing Authorities. Any information obtained under this Section 9.3 shall be kept confidential except as may be otherwise necessary in connection with the filing of Tax Returns or claims for refund or in conducting any audit or other proceeding.

(f) Any reimbursement payment to be made pursuant to this Agreement shall be treated by the Parties as an adjustment to the Cash Purchase Price for all Tax purposes.

ARTICLE X

CONDITIONS TO CLOSING

Section 10.1 Conditions Precedent to Obligations of Purchaser. The obligation of Purchaser to consummate the transactions contemplated by this Agreement is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which

may be waived by Purchaser, in its sole discretion, in whole or in part to the extent permitted by Applicable Law):

(a) the representations and warranties of Sellers set forth in this Agreement shall be true and correct at and as of the Closing, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct on and as of such earlier date); provided, however, that in the event of a breach of a representation or warranty other than a representation or warranty qualified by materiality or Seller Material Adverse Effect, the condition set forth in this Section 10.1(a) shall be deemed satisfied unless the effect of all such breaches of representations and warranties taken together results in a Seller Material Adverse Effect, and Purchaser shall have received a certificate signed by an authorized officer of each Seller (in form and substance reasonably satisfactory to Purchaser), dated the Closing Date, to such effect;

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

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

(d) all material consents (or in lieu thereof waivers) to the performance by Sellers of their obligations under this Agreement or to the consummation of the Transactions contemplated hereby as are required under any Contract to which any Seller is a party or by which any of their respective assets and properties are bound (i) shall have been obtained, (ii) shall not be subject to the satisfaction of any condition that has not been satisfied or waived and (iii) shall be in full force and effect, except where the failure to obtain any such consent (or in lieu thereof waiver) could not reasonably be expected, individually or in the aggregate with other such failures, to result in a Seller Material Adverse Effect.

Section 10.2 Conditions Precedent to Obligations of Sellers. The obligations of Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by Sellers, in their sole discretion, in whole or in part to the extent permitted by Applicable Law):

(a) the representations and warranties of Purchaser set forth in this Agreement shall be true and correct at and as of the Closing, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct on and as of such earlier date); provided, however, that in the event of a breach of a representation or warranty other than a representation or warranty qualified by materiality or material adverse effect, the condition set forth in this Section 10.2(a) shall be deemed satisfied unless the effect of all such breaches of representations and warranties taken together results in a material adverse effect on the ability of Purchaser to consummate the transactions contemplated by this Agreement, and Sellers shall have received a certificate signed by an

authorized officer of Purchaser (in form and substance reasonably satisfactory to Sellers), dated the Closing Date, to such effect;

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

(c) Purchaser shall have paid in full or otherwise satisfied all Cure Costs with respect to the Purchaser Assumed Contracts set forth on Schedule 1.1(b) prior to or on the Closing Date; and

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

Section 10.3 Conditions Precedent to Obligations of Purchaser and Sellers. The respective obligations of Purchaser and Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Purchaser and Sellers in whole or in part to the extent permitted by Applicable Law):

(a) there shall not be in effect any Law or Order by a Governmental Authority of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Transactions;

(b) the Bankruptcy Court shall have entered the Bidding Procedures Order and such Order shall be in full force and effect and shall not have been reversed, modified, amended or stayed;

(c) the Bankruptcy Court shall have entered the Sale Order and such Order shall be in full force and effect and shall not have been reversed, modified, amended or stayed; and

(d) the waiting period applicable to the transactions contemplated by this Agreement under the HSR Act shall have expired or early termination shall have been granted and the Parties shall have obtained any other consent, approval, order or authorization of, or registration, declaration or filing with, any Governmental Authority required to be obtained or made in connection with the execution and delivery of this Agreement or the performance of the Transactions.

Section 10.4 Frustration of Closing Conditions. Neither Sellers nor Purchaser may rely on the failure of any condition set forth in Section 10.1, Section 10.2 or Section 10.3, as the case may be, if such failure was caused by such Party's failure to comply with any provision of this Agreement.

ARTICLE XI

LIMITATIONS

Section 11.1 Purchaser's Review.

(a) No Reliance. Purchaser has had the opportunity to ask questions, and has received sufficient answers, in connection with its decision to enter into this Agreement, and to consummate the Transactions. In connection with the execution and delivery of this Agreement and the consummation of the Transactions, Purchaser has not relied upon, and Purchaser expressly waives and releases Sellers from any Liability for any claims relating to or arising from, any representation, warranty, statement, advice, document, projection, or other information of any type provided by Sellers or their Affiliates or any of their respective Representatives, except for those representations and warranties expressly set forth in Article V. In deciding to enter into this Agreement, and to consummate the Transactions, Purchaser has relied solely upon its own knowledge, investigation, judgment and analysis (and that of its Representatives) and not on any disclosure or representation made by, or any duty to disclose on the part of, Sellers or their Affiliates or any of their respective Representatives, other than the express representations and warranties of Seller set forth in Article V.

(b) Limited Duties. Any and all duties and obligations which any Party may have to any other Party with respect to or in connection with the Purchased Assets, this Agreement or the Transactions are limited to those specifically set forth in this Agreement. Neither the duties nor obligations of any Party, nor the rights of any Party, shall be expanded beyond the terms of this Agreement on the basis of any legal or equitable principle or on any other basis whatsoever.

Section 11.2 No Consequential or Punitive Damages. NO PARTY (OR ITS AFFILIATES OR REPRESENTATIVES) SHALL, UNDER ANY CIRCUMSTANCE, BE LIABLE TO THE OTHER PARTY (OR ITS AFFILIATES OR REPRESENTATIVES) FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES CLAIMED BY SUCH OTHER PARTY UNDER THE TERMS OF OR DUE TO ANY BREACH OF THIS AGREEMENT, INCLUDING LOSS OF REVENUE OR INCOME, DAMAGES BASED ON ANY MULTIPLIER OF PROFITS OR OTHER VALUATION METRIC, COST OF CAPITAL, DIMINUTION OF VALUE OR LOSS OF BUSINESS REPUTATION OR OPPORTUNITY.

ARTICLE XII

MISCELLANEOUS

Section 12.1 Survival of Representations, Warranties, Covenants and Agreements. The representations and warranties of any Party made herein, in any Transaction Document or in any other instrument delivered pursuant to this Agreement shall terminate at the Closing, or upon termination of this Agreement pursuant to Section 4.4, and, following the Closing or the termination of this Agreement, as the case may be, there shall be no Liability in respect thereof on the part of any Party or any of its Representatives. Except with respect to covenants or agreements which are to be performed on or prior to the Closing, all covenants and agreements contained in

this Agreement shall survive the Closing in accordance with their respective terms; provided, that any covenant or agreement contained herein whose survival is not limited by its terms shall survive until fully performed in accordance with its terms.

Section 12.2 Remedies.

(a) The Parties acknowledge and agree that the following remedies shall be available upon the following occurrences:

(i) the sole remedy available to Purchaser in the event of Sellers' breach of this Agreement shall be to terminate this Agreement pursuant to and to the extent permitted by Section 4.4 and, to the extent provided in Section 4.5(b), to receive the Reimbursable Expenses and, to the extent provided in Section 3.2(b), the Deposit; and

(ii) the sole remedy available to Sellers in the event of Purchaser's breach of this Agreement shall be to terminate this Agreement pursuant to and to the extent permitted by (A) Section 4.4(b) in the event that Closing does not occur on or before the Outside Date solely as a result of Purchaser's material breach of its obligations under this Agreement (including payment of the Closing Date Payment pursuant to Section 3.3) or (B) Section 4.4(i), and in connection therewith to receive the Deposit, to the extent provided in Section 3.2(b), as liquidated damages.

(b) The Parties acknowledge and agree that no Party shall have the right to seek injunctive or other similar relief to prevent or remedy any breach or purported breach hereof, except to enforce the payment of the Reimbursable Expenses as provided in Section 12.3 and the retention or delivery of the Deposit as provided in Section 3.2(b) and in the Escrow Agreement.

Section 12.3 Expenses. Except as otherwise set forth in this Agreement and subject to the right of Purchaser to receive the Reimbursable Expenses to the extent provided in Section 4.5(b), each Party shall bear its own expenses (including attorneys' fees) incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated hereby and the consummation of the Transactions contemplated hereby and thereby; provided, however, Purchaser shall bear sole responsibility for any governmental charges relating to HSR Act filing fees by Purchaser and its Affiliates and any UCC-3 filing fees, FAA, ICC, DOT, real estate, title recording or filing fees and other amounts payable in respect of transfer filings in connection with the transactions contemplated by this Agreement, which fees, expenses and other amounts shall constitute Reimbursable Expenses and shall be reimbursed to Purchaser to the extent provided in Section 4.5(b).

Section 12.4 Non-Recourse. The Parties acknowledge and agree that no past, present or future director, officer, employee, incorporator, member, partner, stockholder, agent, attorney, Representative or Affiliate of the Parties to this Agreement, in such capacity, shall have any liability for any obligations or liabilities of Purchaser or Sellers, as applicable, under this Agreement or for any claim based on, in respect of, or by reason of, the Transactions.

Section 12.5 Submission to Jurisdiction.

(a) Without limiting any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes among the Parties which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the Transactions, and (ii) any and all Actions related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court for such purposes and shall receive notices at such locations as indicated in Section 12.10; provided, however, that if the Bankruptcy Cases have been fully and finally dismissed and the Bankruptcy Court declines jurisdiction, the Parties agree to and hereby unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the District of Delaware sitting in New Castle County.

(b) The Parties hereby unconditionally and irrevocably waive, to the fullest extent permitted by Applicable Law, any objection which they may now or hereafter have to the laying of venue of any dispute arising out of or relating to this Agreement or any of the Transactions brought in any court specified in subsection (a) above, or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(c) Each of the Parties hereby consents to process being served by any Party in any suit, Action or proceeding by the mailing of a copy thereof in accordance with the provisions of Section 12.10; provided, however, that such service shall not be effective until the actual receipt thereof by the Party being served.

Section 12.6 Waiver of Jury Trial. THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT THEY MAY HAVE TO TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION, OR IN ANY PROCEEDING, DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT, OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 12.5.

Section 12.7 Authorization of Parent as Representative of Sellers.

(a) By entering into and executing this Agreement, Sellers irrevocably make, constitute and appoint Parent as their agent, effective as of the date hereof, and authorize and empower Parent to fulfill the role of Sellers' representative hereunder, and each Seller appoints Parent as such Person's true and lawful attorney in fact and agent, for such Person and in such Person's name, place and stead for all purposes necessary or desirable in order for Parent to take all actions contemplated by this Agreement, with the ability to execute and deliver all instruments,

certificates and other documents of every kind incident to the foregoing to all intents and purposes and with the same effect as such Seller could do personally, including to give and receive notices and communications; to object to such deliveries, to agree to, negotiate, enter into settlements and compromises of, and comply with orders of courts with respect to such claims; and to take all actions necessary or appropriate in the judgment of Parent for the accomplishment of the foregoing. The dissolution, liquidation, insolvency or bankruptcy of any Seller shall not terminate the authority and agency of Parent as each Seller's representative pursuant to this Section 12.6. The power of attorney granted in this Section 12.6 is coupled with an interest and is irrevocable.

(b) Purchaser shall be entitled to rely exclusively upon any communication given or other action taken by Parent pursuant to this Agreement, and shall not be liable for any action taken or not taken in good faith reliance on a communication or other instruction from Parent.

Section 12.8 Time of Essence. With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

Section 12.9 Entire Agreement; Amendments and Waivers. This Agreement (including the Schedules and Exhibits hereto) and the other Transaction Documents represent the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the Party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Section 12.10 Governing Law. THIS AGREEMENT, THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER, AND ANY CLAIM OR CONTROVERSY (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY) DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE NEGOTIATION, EXECUTION OR PERFORMANCE OF THIS AGREEMENT (INCLUDING ANY CLAIM OR CAUSE OF ACTION BASED UPON, ARISING OUT OF OR RELATED TO ANY REPRESENTATION OR WARRANTY MADE IN OR IN CONNECTION WITH THIS AGREEMENT OR AS AN INDUCEMENT TO ENTER INTO THIS AGREEMENT), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, SHALL IN ALL RESPECTS BE GOVERNED BY AND INTERPRETED, CONSTRUED, AND DETERMINED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF DELAWARE (WITHOUT REGARD TO ANY CONFLICT OF LAWS PROVISION THAT

WOULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION) AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.

Section 12.11 Notices. All notices and other communications under this Agreement shall be in writing and shall be deemed duly given (i) when delivered personally or by prepaid overnight courier, with a record of receipt, (ii) the fourth day after mailing if mailed by certified mail, return receipt requested, or (iii) the day of transmission, if sent by facsimile or telecopy during regular business hours or the Business Day after transmission, if sent after regular business hours (with a copy promptly sent by prepaid overnight courier with record of receipt or by certified mail, return receipt requested), to the Parties at the following addresses or facsimile numbers (or to such other address or facsimile number as a Party may have specified by notice given to the other Parties pursuant to this Section 12.10):

If to Sellers:

Charlotte Russe Holding Corporation
575 Florida Street, Suite 200
San Francisco, CA 94110
E-mail: [●]
Attention: [●]

With a copy to:

Cooley LLP
1114 Avenue of the Americas
New York, NY 10036
E-mail: svanaalten@cooley.com
rhopkinson@cooley.com
Attention: Seth Van Aalten
Ron Hopkinson

If to Purchaser:

[●]
[●]
[●]
E-mail: [●]
Attention: [●]
[●]

With a copy to:

[●]
[●]
[●]
E-mail: [●]
Attention: [●]

[•]

Section 12.12 Severability. If any term or provision of this Agreement is invalid, illegal or incapable of being enforced by Law or public policy, all other terms and provisions hereof shall nevertheless remain in full force and effect so long as the legal substance of the Transactions is not affected in any manner materially adverse to any Party. Upon such determination that any term or provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the Transactions are consummated as originally contemplated to the greatest extent possible.

Section 12.13 No Right of Set-Off. Purchaser for itself and for its Affiliates, successors and assigns hereby unconditionally and irrevocably waives any rights of set-off, netting, offset, recoupment, or similar rights that Purchaser or any of its Affiliates, successors and assigns has or may have with respect to the payment of the Purchase Price or any other payments to be made by Purchaser pursuant to this Agreement or any other document or instrument delivered by Purchaser in connection herewith. Each of Sellers, for itself and for its Affiliates, successors and assigns hereby unconditionally and irrevocably waives any rights of set-off, netting, offset, recoupment, or similar rights that Sellers or any of their Affiliates, successors and assigns has or may have with respect to the payment of the Reimbursable Expenses or any other payments to be made by Sellers pursuant to this Agreement or any other document or instrument delivered by Sellers in connection herewith.

Section 12.14 Expense Reimbursement and Break-Up Fee. Subject to entry of the Bidding Procedures Order or such other order of the Court applying stalking horse bid protections, Purchaser shall be entitled to receive from Sellers the Reimbursable Expenses and the Break-Up Fee in accordance with Section 4.5(b) and Section 4.5(c).

Section 12.15 Binding Effect; Assignment. This Agreement shall be binding solely upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any Person not a Party to this Agreement except to the extent provided in Section 12.3. No assignment of this Agreement or of any rights or obligations hereunder may be made by any Party (by operation of law or otherwise) without the prior written consent of the other Party and any attempted assignment without the required consents shall be void; provided, however, that (i) prior to the Closing, Purchaser may assign this Agreement and any or all rights or obligations hereunder (including Purchaser's right to purchase the Purchased Assets and assume the Assumed Liabilities) to any Affiliate of Purchaser and (ii) after the Closing, Purchaser (or its permitted assignee) shall have the right to assign its rights and/or delegate its obligations hereunder (A) to any Affiliates, (B) to any financing sources for collateral purposes or (C) to any subsequent purchaser of all or any portion of the stock or assets of Purchaser or the Business. Upon any such permitted assignment, the references in this Agreement to Purchaser shall also apply to any such assignee unless the context otherwise requires.

Section 12.16 Counterparts. This Agreement may be executed and delivered (including by electronic transmission) in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

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