

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

In re

Charlotte Russe Holding, Inc., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No.: 19-10210 (LSS)

(Jointly Administered)

Hearing Date: TBD

Obj. Deadline: TBD

**SUPPLEMENTAL MOTION OF THE DEBTORS FOR ENTRY OF AN  
ORDER(I) AUTHORIZING THE SALE OF CERTAIN INTELLECTUAL  
PROPERTY AND RELATED ASSETS FREE AND CLEAR OF ALL LIENS,  
CLAIMS, INTERESTS, AND ENCUMBRANCES, (II) AUTHORIZING THE  
SELLERS TO ASSUME AND ASSIGN CERTAIN EXECUTORY CONTRACTS,  
AND (III) GRANTING OTHER RELATED RELIEF**

Charlotte Russe Holding, Inc. and its affiliated debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), by their undersigned counsel, hereby move (the “Motion”) this Court for the entry of an order substantially in the form submitted herewith (the “Proposed Order”), pursuant to sections 105(a), 363 and 365 of Title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) (i) approving a private sale by the Debtors

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<sup>1</sup> The Debtors and the last four digits of their respective federal taxpayer identification numbers are as follows: 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.

of the Purchased Assets,<sup>2</sup> subject to any higher and better bids received prior to a hearing approving the sale (the “Sale Hearing”), as designated in that certain Purchase Agreement (the “Purchase Agreement”) among Charlotte Russe Holdings Corporation, as parent, and the Debtor affiliates party thereto (together with Charlotte Russe Holdings Corporation, the “Sellers”), and Mamiye Brothers, Inc., a New Jersey corporation, and Mamiye Brothers IP Holdings LLC, a New York limited liability company (together with Mamiye Brothers, Inc., the “Purchaser”), free and clear of Encumbrances (as defined in the Purchase Agreement) and interests (except as set forth in the Purchase Agreement), (ii) authorizing the Sellers to assume certain executory contracts (the “Assumed Contracts”) to which the Sellers are party, a list of which is included in Schedule 1.1(a) of the Schedules to the Purchase Agreement, and to assign the Assumed Contracts to the Purchaser pursuant to the Purchase Agreement, and (iii) granting other related relief. In support of the Motion, the Debtors rely on the *Declaration of Brian M. Cashman, Chief Restructuring Officer of Charlotte Russe Holding, Inc., in Support of Debtors’ Chapter 11 Petitions and First Day Motions* [D.I. 3] (the “First Day Declaration”) and the *Declaration of Stuart E. Erickson in Support of Supplemental Motion of the Debtors for Entry of An Order (I) Authorizing the Sale Of Certain Intellectual Property And Related Assets Free And Clear Of All Liens, Claims, Interests And Encumbrances, (II) Authorizing the Sellers To Assume And Assign Certain Executory Contracts, And (III) Granting Other Related Relief* attached hereto as **Exhibit B** (the “Supplemental Erickson Declaration”), both of which are incorporated herein by reference. In further support of the Motion, the Debtors respectfully represent:

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Purchase Agreement.

**PRELIMINARY STATEMENT**

1. The proposed sale of the Purchased Assets will result in the sale of the intellectual property related to the Debtors' Peek brand and related assets, which were initially marketed by the Debtors with the assistance of the Debtors' investment banker, Guggenheim Securities, LLC ("Guggenheim Securities"), as part of the Debtors' Assets (as defined in the Sale Motion (defined below)) subject to *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* filed on February 4, 2019 [D.I. 17] (the "Sale Motion"). As such, the Purchased Assets were subject to the same robust marketing efforts as described in the Sale Motion.

2. While the Debtors initially hoped to sell the Purchased Assets at auction as part of a going-concern transaction, no such bid materialized in advance of the Auction (as defined below) held on March 5, 2019. The Debtors thereafter re-solicited interest in the Purchased Assets on a stand-alone basis and the bid received from the Purchaser represents the highest or otherwise best offer received by the Debtors for the Purchased Assets. The Debtors believe that a sale of the Purchased Assets pursuant to the Purchase Agreement as a private sale is in the best interests of the Debtors and their estates. Furthermore, under the terms of the Purchase Agreement, the Debtors maintain the ability to consider any higher or other otherwise better bids received prior to the Sale Hearing.

3. As set forth in the Erickson Declaration and the First Day Declaration, in and around December 2018 and January 2019, the Debtors' management team began to actively explore a potential sale of the Debtors' business. The Debtors (with the assistance of

Guggenheim Securities) began testing the market for potential purchasers of substantially all of the Assets (as defined in the Sale Motion) on a going-concern basis. In so doing, the Debtors (with the assistance of Guggenheim Securities) cast a wide net in soliciting interest from potential purchasers. More than 25 potential buyers signed non-disclosure agreements and conducted various degrees of due diligence in order to evaluate of a potential acquisition of a material portion of the Debtors' business operations. In addition, an electronic data room was made available for potential bona fide bidders. Despite some interest, no party submitted a proposal that the Debtors deemed viable for a going-concern sale transaction prior to the Petition Date.

4. The Debtors (with the assistance of their advisors) continued to market their assets for sale after the Petition Date. In accordance with the milestones set forth in the Debtors' DIP facility, Guggenheim Securities (on behalf of the Debtors) alerted all interested bidders that the Debtors were required to select a stalking horse bidder for either a going-concern sale or full-chain liquidation by no later than February 17, 2019.

5. After review and analysis of all bids received, the Debtors determined, in consultation with their advisors, their secured lenders, and the Committee, that a contractual joint venture comprised of Gordon Brothers Retail Partners, LLC and Hilco Merchant Resources, LLC (the "Stalking Horse Bidder") had submitted the highest or otherwise best offer to acquire substantially all of the Assets (as defined in the Sale Motion). Promptly thereafter, the Debtors (with the assistance of their advisors) and the Stalking Horse Bidder commenced negotiations surrounding the terms of an asset purchase agreement (the "Stalking Horse Agreement"). On February 17, 2019, after robust negotiations, the Debtors and the Stalking Horse Bidder entered

into the Stalking Horse Agreement, which contemplated the sale of certain assets to the Stalking Horse Bidder, subject to any higher or better offers received at the Auction.

6. On February 21, 2019, the Court entered an order approving bidding procedures (the “Bidding Procedures”),<sup>3</sup> establishing a bid deadline (the “Bid Deadline”), and scheduling an auction (the “Auction”) in the event that the Debtors received multiple Qualified Bids (as defined in the Bidding Procedures) prior to the Bid Deadline.

7. The Debtors (with the assistance of their advisors) continued to market their assets for sale in the weeks leading up to the Bid Deadline, which was set to occur on March 3, 2019. In furtherance of these efforts, the Debtors provided additional due diligence materials to bidders and conducted management meetings with multiple parties interested in acquiring all or a portion of the Debtors’ assets. In accordance with the timeline established by the Bidding Procedures, Guggenheim Securities (on behalf of the Debtors) alerted all interested bidders that Qualified Bids for the Debtors’ assets were required to be submitted no later than March 3, 2019.

8. In addition to the bid submitted by the Stalking Horse Bidder, two nationally recognized inventory liquidators submitted bids to conduct inventory liquidation sales at the Debtors’ store locations and distribution center. On or prior to the Bid Deadline, the Debtors received one written indication of interest with respect to their intellectual property and lease designation rights. However, in consultation with the Consultation Parties (as defined in the Sale Motion), the Debtors determined that this proposal was (i) not a Qualified Bid; (ii) not actionable; or (iii) did not deliver sufficient value to the Debtors’ estates.

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<sup>3</sup> *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* entered on February 21, 2019 [D.I. 199].

9. Subsequently, the Debtors conducted an Auction on March 5, 2019, for the Debtors' inventory and related assets. The bid submitted by SB360 Capital Partners, LLC ("SB360") was determined by the Debtors (in consultation with the Consultation Parties) to be the Successful Bid (as defined in the Bidding Procedures). On March 7, 2019, the Court entered an order granting the Sale Motion and approving the Successful Bid as the highest and best bid for these assets pursuant to the terms of that certain Agency Agreement, dated as of March 6, 2019, between the Debtors and SB360. Going-out-of-business sales commenced at all of the Debtors' store locations on March 7, 2019.

10. During breaks of the Auction, the Debtors, in consultation with the Consultation Parties (as defined in the Sale Motion), continued to work diligently with the Purchaser to formulate an acceptable offer for the Debtors' Peek-related intellectual property and other assets related to the Peek brand. As a result of these efforts, the Debtors received two indications of interest for the Purchased Assets, including from the Purchaser, and commenced negotiations with the Purchaser on the Purchase Agreement. Purchaser's offer was significantly superior to the other expression of interest received. As a result of substantial arm's length negotiations between Purchaser and the Debtors, Purchaser agreed to purchase the Purchased Assets for \$425,000 plus specified cure amounts for the Purchaser Assumed Contracts.

11. Time is of the essence in consummating the Agreement. In order for the Purchaser to complete production of Peek-branded goods in time for the winter selling season, the Purchaser is looking to take ownership of the Purchased Assets and begin forming relationships with the necessary vendors as soon as possible. Therefore, the Purchase Agreement requires a closing date no later than March 29, 2019. In fact, the Debtors understand from discussions with the Purchaser that the purchase price offered reflects a price premium that is

intended to encourage an expeditious closing and is in excess of any other offer to purchase these same assets received to date. Therefore, the Debtors seek (and the Purchase Agreement requires) a closing date no later than March 29, 2019.

12. The Debtors believe, in their business judgment, and following consultation with the Consultation Parties (as defined in the Sale Motion), that a further auction is unlikely to lead to a higher or otherwise better bid for the Purchased Assets than will be achieved via a private sale process. Accordingly, the Debtors seek to sell the Purchased Assets to the Purchaser, pursuant to a private sale, free and clear of all Encumbrances and interests.

13. In short, giving consideration to the terms set forth in the Purchase Agreement, (a) the Purchase Agreement represents fair value and the highest or otherwise best transaction available to the Debtors, (b) the sale to Purchaser is in the best interests of the Debtors and their estates, as it provides a greater recovery for the Debtors' estates than would likely be available by any other alternative, (c) the Purchase Agreement will allow the Debtors to consider any higher and better bids received, and (d) proceeding expeditiously with the sale to Purchaser will ensure that the Debtors maximize the value of their estates for all of their stakeholders.

14. For these reasons and as set forth more fully below, the Debtors respectfully submit that the relief sought by this Motion should be granted.

#### **JURISDICTION AND VENUE**

15. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and, pursuant to Local Rule 9013-1(f), 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.

16. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **BACKGROUND**

17. On February 3, 2019 (the "Petition Date"), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Court has entered an order for joint administration of these Cases [D.I. 75].

18. On February 14, 2019, Region 3 of the Office of the United States Trustee (the "U.S. Trustee") appointed a seven-member Official Committee of Unsecured Creditors (the "Committee"). No trustee or examiner has been appointed.

19. Further information regarding the Debtors' business operations and the events leading up to the Petition Date and the facts and circumstances further supporting the relief requested herein are set forth in the First Day Declaration.

### **RELIEF REQUESTED**

20. By this Motion, the Debtors seek (i) approval of a private sale (the "Sale") of the Purchased Assets to the Purchaser for cash consideration equal to \$425,000 plus the Cure Amount (collectively, the "Purchase Price") as set forth in the Purchase Agreement, (ii) to assume and assign certain executory contracts pursuant to section 365 of the Bankruptcy Code, and (iii) other related relief.

**BASIS FOR RELIEF REQUESTED**

**I. The Purchase Agreement is Typical, Customary and Reasonable, and Entering into the Purchase Agreement is an Exercise of the Debtors' Business Judgment.**

21. The Debtors believe, and respectfully submit, that the terms of the Purchase Agreement are typical, customary and reasonable under the circumstances, and have been entered into in the proper exercise of their business judgment.

22. Pursuant to Bankruptcy Rule 6004(f)(1), sales of property outside the ordinary course of business may be by private sale or by public auction. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004) (noting that the debtor in possession “had a fiduciary duty to protect and maximize the estate’s assets”). *See also Commodity Futures Trading Comm’n v. Weintraub*, 471 U.S. 343, 352 (1985) (debtor in possession has the duty to maximize the value of the estate); *Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 263 (5th Cir. 2010) (same).

23. In accordance with Local Rule 6004-1, the Purchase Agreement, in summary fashion, provides as follows:<sup>4</sup>

- a) Sale of Purchased Assets. The Debtors are seeking approval for the Sale of the Purchased Assets to Purchaser by private sale for the Purchase Price and upon the terms and conditions set forth in the Purchase Agreement.
- b) Free of Any and All Encumbrances. The Sale will be free and clear of all Encumbrances and interests, with such Encumbrances to attach to the net proceeds of the Sale.
- c) Indemnification. The Purchase Agreement does not provide for indemnity by either party.

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<sup>4</sup> This summary is qualified in its entirety by reference to the provisions of the Purchase Agreement itself. In the event of any inconsistencies between this summary and the Purchase Agreement, the terms of the Purchase Agreement shall govern.

- d) Consent to Jurisdiction. Purchaser will be deemed to have consented to the core and exclusive jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any and all disputes relating to, arising from or connected with the purchase and sale of the Purchased Assets, and the construction and enforcement of the Purchase Agreement.

24. Pursuant to Local Rule 6004-1, a copy of the Proposed Order is attached to this Motion as **Exhibit A** and the executed Purchase Agreement is attached to the Proposed Order as

**Exhibit 1.** In compliance with Local Rule 6004-1(b)(iv), Debtors further show:

- a) Sale to Insider. The Purchaser is not an insider of the Debtors within the meaning of section 101(31) of the Bankruptcy Code.
- b) Agreements with Management. The Purchaser has not discussed or entered into any agreements with Debtors' management regarding future compensation or employment.
- c) Release. The Purchase Agreement does not include a release in favor of any entity.
- d) Private Sale. The Debtors are seeking approval for a proposed Sale of the Purchased Assets to Purchaser by private sale free and clear of all Encumbrances and interests for the Purchase Price and upon the terms and conditions set forth in the Purchase Agreement.
- e) Closing and Other Deadlines. The closing date of the Sale shall take place on the later of (i) the date that is two (2) Business Days following the satisfaction or waiver of the conditions set forth in the Purchase Agreement (other than those conditions which are to be satisfied at Closing, but subject to such conditions being satisfied at the Closing), or (ii) upon such other date as the Sellers' Parent and Purchaser's Parent may mutually agree to in writing; *provided, however*, that the Closing shall take place no later than March 29, 2019.
- f) Good Faith Deposit. The Purchase Agreement requires Purchaser to fund in good available funds a Deposit of \$42,500 (following the execution of the Purchase Agreement and within twenty-four (24) hours of receipt of written instruction from Sellers).
- g) Interim Arrangements with Proposed Purchaser. The Debtors do not currently have any interim management or other agreement with Purchaser.
- h) Use of Proceeds. The Purchase Agreement does not address the use of proceeds generated from the proposed Sale. All proceeds will be distributed pursuant to the Final DIP Order or as otherwise ordered by this Court.

- i) Tax Exemption. 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.
- j) Record Retention. The Debtors will retain, or have reasonable access to, all records needed to administer these Chapter 11 Cases.
- k) Sale of Avoidance Actions. The Debtors are not seeking to sell avoidance actions.
- l) Requested Findings as to Successor Liability. The Debtors are seeking to sell the Purchased Assets free and clear of successor liability claims that do not constitute Assumed Liabilities.
- m) Sale Free and Clear of Unexpired Leases. The Debtors do not seek to sell the Purchased Assets free and clear of any unexpired leasehold interests or other rights.
- n) Credit Bid. The Purchase Agreement does not contemplate a right to credit bid.
- o) Relief from Bankruptcy Rule 6004(h). The Debtors are seeking relief from the fourteen-day stay imposed by Bankruptcy Rule 6004(h) for any sale.

**II. A Sale of the Purchased Assets is Appropriate Under Section 363(b)(1) of the Bankruptcy Code.**

25. The Debtors respectfully submit that the Sale meets the standard set forth in section 363(b) for sales outside of the ordinary course of a debtor's business. Section 363(b)(1) of the Bankruptcy Code provides that "[t]he trustee, 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)(1).

26. This Court's power under section 363 is supplemented by section 105(a), which provides in relevant part that "[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title . . ." 11 U.S.C. § 105(a). As set forth below, the Debtors submit that they have satisfied the requirements of sections 105 and 363 as those sections have been construed by courts in the Third Circuit.

27. A debtor should be authorized to sell assets out of the ordinary course of business pursuant to section 363 of the Bankruptcy Code and prior to obtaining a confirmed plan of reorganization if it demonstrates a sound business purpose for doing so. *See In re Del. & Hudson*

*Ry. Co.*, 124 B.R. 169 (D. Del. 1991) (finding that the sale of substantially all of debtor's assets outside of a plan of reorganization is appropriate when a sound business reason justifies such a sale); *Myers v. Martin (In re Martin)*, 91 F.3d 389, 394–95 (3d Cir. 1996) (citing *Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513 (7th Cir. 1991)); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070–71 (2d Cir. 1983).

28. Courts have applied the following four factors in determining whether a sound business justification exists: (a) whether a sound business reason exists for the proposed transaction; (b) whether fair and reasonable consideration is provided; (c) whether the transaction has been proposed and negotiated in good faith; and (d) whether adequate and reasonable notice is provided. *See In re Del. & Hudson Ry. Co.*, 124 B.R. at 175–76 (adopting *Lionel* factors to consider in determining whether sound business purpose exists for sale outside ordinary course of business in this District); *Lionel Corp.*, 722 F.2d at 1071 (setting forth the “sound business” purpose test); *In re Abbotts Dairies of Penn., Inc.*, 788 F.2d 143, 147–49 (3d Cir. 1986) (implicitly adopting the articulated business justification test set forth in *Lionel* and adding the “good faith” requirement).

29. Once the Debtors articulate a valid business justification, their decision to sell property out of the ordinary course of business enjoys a strong “presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in an honest belief that the action taken was in the best interests of the company.” *In re Integrated Res. Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)). Therefore, any party objecting to a debtor's proposed asset sale must make a showing of “bad faith, self-interest, or gross negligence,” as courts are loath to interfere with corporate decisions absent such a showing. *See id.* at 656.

30. The Debtors have exercised their business judgment and set forth sound business justifications for pursuing a private sale of the Purchased Assets, pursuant to the factors discussed above. The Debtors have marketed the Purchased Assets for over three months and believe that the Purchase Agreement represents the highest or otherwise best bid for the Purchased Assets (a) received to date; and (b) likely to be received in the future. The Purchased Assets, as with substantially all of the Debtors' assets, are to be sold and liquidated and, therefore, are not integral to the Debtors' on-going business.

31. The Debtors believe that this proposed private sale of the Purchased Assets will allow for the greatest possible consideration for the Purchased Assets without unnecessary time and estate resources being expended on a further marketing process that the Debtors do not believe will yield a higher purchase price for the Purchased Assets. The Debtors believe that the Purchase Price is a fair and reasonable value for the Purchased Assets. Accordingly, the Debtors seek authority to consummate the Sale under the terms and conditions proposed.

**III. Any Sale Should be Approved Free and Clear of Liens, Claims, Interests and Encumbrances.**

32. Under section 363(f) of the Bankruptcy Code, a debtor in possession may sell property free and clear of any lien, claim, interest or encumbrance in such property if, among other things:

- (a) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- (b) such entity consents;
- (c) such interest is a lien and the price at which such property is 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).

33. Because section 363(f) is stated in the disjunctive, satisfaction of any one of its five requirements will suffice to warrant approval of the proposed sale. *See In re Collins*, 180 B.R. 447, 450 (Bankr. E.D. Va. 1995) (“Section 363(f) is phrased in the disjunctive, such that only one of the enumerated conditions must be met in order for the Court to approve the proposed sale”); *Scherer v. Fed. Nat’l Mortg. Ass’n (In re Terrace Chalet Apts., Ltd.)*, 159 B.R. 821, 827 (N.D. Ill. 1993) (sale extinguishes liens under section 363(f) as long as one of the five specified exceptions applies).

34. The Debtors will serve notice of the Motion on the Assumed Contracts Counterparties (defined below) and as required by the Local Rules. The Debtors have obtained the consent of the DIP Agent and the Prepetition Term Loan Agent such that section 363(f)(2) will apply. To the extent that any other party contends that it holds a valid lien on the Purchased Assets, such lien is subject to bona fide dispute, and the Debtors may sell the Purchased Assets free and clear of such purported lien, under section 363(f)(4) of the Bankruptcy Code. Therefore, the Debtors request that the Sale be approved free and clear of all Encumbrances and interests, with the proceeds of the Sale being distributed in accordance with the terms of the Final DIP Order or as otherwise ordered by the Court.

#### **IV. The Sale is Proposed in Good Faith.**

35. 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).

36. Section 363(m) “reflects the . . . ‘policy of not only affording finality to the judgment of the bankruptcy court, but particularly to give finality to those orders and judgments upon which third parties rely.’” *Abbotts Dairies of Penn., Inc.*, 788 F.2d at 147 (quoting *Hoese Corp. v. Vetter Corp. (In re Vetter Corp.)*, 724 F.2d 52, 55 (7th Cir. 1983)). See also *United States v. Salerno*, 932 F.2d 117, 123 (2d Cir. 1991) (noting that section 363(m) furthers the policy of finality in bankruptcy sales and “assists bankruptcy courts in maximizing the price for assets sold in such proceedings”); *In re Stein & Day, Inc.*, 113 B.R. 157, 162 (Bankr. S.D.N.Y. 1990) (same).

37. While the Bankruptcy Code does not define “good faith,” some courts have held that a good faith purchaser is one who “purchases the assets for value, in good faith, and without notice of adverse claims.” *Hardage v. Herring Nat’l Bank*, 837 F.2d 1319, 1323 (5th Cir. 1988) (quoting *Willemain v. Kivitz (In re Willemain)*, 764 F.2d 1019, 1023 (4th Cir. 1985)). Furthermore, the good faith status of a purchaser can be destroyed with evidence of “fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.” *TMT Procurement Corp. v. Vantage Drilling Co. (In re TMT Procurement Corp.)*, 764 F.3d 512, 521 (5th Cir. 2014).

38. The Sale has been proposed in good faith. The Purchase Agreement was the product of extensive good faith, arm’s length negotiations between the Debtors, on the one hand, and Purchaser, on the other, and was negotiated with the active involvement of the Debtors’ officers and professionals. The Debtors believe and submit that the sale of the Purchased Assets to the Purchaser pursuant to the terms and conditions of the Purchase Agreement is not the

product of collusion or bad faith. No evidence suggests that the Purchase Agreement is anything but the product of arm's length negotiations between the Debtors, Purchaser, and their respective professional advisors. In connection with approval of the proposed Sale, the Debtors request that the Court make a finding that the Purchaser is a good faith purchaser and entitled to the protections of section 363(m) of the Bankruptcy Code.

**V. Assumption and Assignment of the Assumed Contracts Is Warranted Under Section 365 of the Bankruptcy Code.**

*A. Assumption and Assignment of the Assumed Contracts Is Within Debtors' Business Judgment*

39. Pursuant to the Purchase Agreement, Debtors are required to seek to assume the Assumed Contracts and the obligations thereunder, and to subsequently assign the Assumed Contracts and the obligations thereunder to Purchaser. Section 365 of the Bankruptcy Code provides as follows:

(a) Except as provided in . . . subsections (b), (c), and (d) of this section, the trustee, 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), (b)(1). Accordingly, section 365 authorizes the proposed assumption of the Assumed Contracts by Debtors. The assumption of a contract by a debtor is subject to review under the business judgment standard. *In re Federated Dept. Stores, Inc.*, 131 B.R. 808, 811 (S.D. Ohio 1991) ("Courts traditionally have applied the business judgment standard in determining whether to authorize the rejection of executory contracts and unexpired leases"). If a debtor's business judgment has been reasonably exercised, a court should approve the assumption or rejection of the contracts. *See, e.g., NLRB v. Bildisco and Bildisco*, 465 U.S. 513, 523 (1984); *Grp. of Institutional Investors v. Chicago M. St. P. & P.R.R. Co.*, 318 U.S. 523 (1943); *In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992) (holding

that the “resolution of [the] issue of assumption or rejection will be a matter of business judgment”).

40. The business judgment rule shields a debtor’s management from judicial second-guessing. *Id.*; *In re Johns-Manville Corp.*, 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986) (“[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor’s management decisions.”). Once a debtor articulates a valid business justification, “[t]he business judgment rule ‘is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.’” *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)). Indeed, when applying the business judgment rule, courts show great deference to a debtor’s decision to assume a contract. *See Summit Land Co. v. Allen (In re Summit Land Co.)*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) (absent extraordinary circumstances, court approval of a debtor’s decision to assume an executory contract “should be granted as a matter of course”). Thus, this Court should approve the assumption of the Assumed Contracts, if the Debtors are able to demonstrate a sound business justification for doing so. *See In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983); *In re Delaware Hudson Ry. Co.*, 124 B.R. 169, 179 (Bankr. D. Del. 1991).

41. As previously noted, the assumption of the Assumed Contracts is required so that they may be assigned to the Purchaser pursuant to the Purchase Agreement. In addition, the Purchaser is responsible for any and all cure amounts associated with assuming the Assumed Contracts. The Debtors have carefully reviewed the economic benefits of assumption and assignment of the Assumed Contracts and believe that their decision to assume the Assumed

Contracts is within the Debtors' sound business judgment, as the assumption of the Assumed Contracts will permit the consummation of the Sale, thereby benefiting the Debtors and their estates, while avoiding any further liability under the Assumed Contracts. Accordingly, Debtors believe that assuming the Assumed Contracts is in the best interests of the Debtors, the Debtors' estates, their creditors, and all other parties in interest.

*B. Purchaser Will Pay Cure Amounts, If Any*

42. The Purchase Agreement provides that, to the extent that any cure payments are required, the Purchaser will pay all cure amounts. Section 365 of the Bankruptcy Code provides as follows:

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

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

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

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

11 U.S.C. § 365(b)(1).

43. Accordingly, section 365 authorizes the proposed assumption of the Assumed Contracts, provided that any defaults under the Assumed Contracts are cured, or adequate assurance is given by the debtor that the default will be promptly cured. The Debtors' proposed cure payments for the Assumed Contracts are set forth in Schedule 1.1(a) to the Purchase Agreement, with such amounts to be paid by Purchaser at Closing. The Assumed Contracts

Counterparties (as defined in Schedule 1.1(a) of the Schedules) are being served with this Motion.

C. *Debtors and Purchaser Can Demonstrate Adequate Assurance of Future Performance*

44. Section 365 of the Bankruptcy Code provides that the trustee may assign an executory contract or unexpired lease if (i) such contract or lease is assumed in accordance with the Bankruptcy Code and (ii) adequate assurance of future performance by the assignee is provided. 11 U.S.C. § 365(f)(2).

45. The words “adequate assurance of future performance” must be given a “practical, pragmatic construction” in “light of the proposed assumption.” *In re Fleming Cos.*, 499 F.3d 300, 307 (3d Cir. 2007) (quoting *Cinicola v. Scharffenberger*, 248 F.3d 110, 120 n. 10 (3d Cir. 2001)); see *Carlisle Homes, Inc. v. Arrari* (*In re Carlisle Homes, Inc.*), 103 B.R. 524, 538 (Bankr. D.N.J. 1989); *In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (“[A]lthough no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.”).

46. Among other things, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. See *In re Bygaph, Inc.*, 56 B.R. 596, 605–06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective assignee of a lease from debtor has financial resources and has expressed a willingness to devote sufficient funding to the business being acquired in order to give it strong likelihood of succeeding; chief determinant of adequate assurance is whether rent will be paid).

47. As set forth above, Debtors will be assigning the Assumed Contracts to the Purchaser, who has been selected in large part due to its financial condition and ability to consummate the Sale. Debtors submit that the Purchaser's financial condition provides sufficient adequate assurance of future performance, and that the assignment of the Assumed Contracts to the Purchaser as part of the Sale should be approved. Purchaser will provide information to Assumed Contracts Counterparties upon request.

**VI. Appointment of a Consumer Privacy Ombudsman is Not Required.**

48. The transactions contemplated by the Asset Purchase Agreement include the sale or lease of personally identifiable information, as defined in section 101(41A) of the Bankruptcy Code ("PII"), or assets containing personally identifiable information. The Debtors' privacy policies in effect on the Petition Date permit the transfer of PII in the event of a sale of all of some of the Debtors' assets and the Purchaser has agreed to abide by the Debtors' privacy policies with respect to the transferred PII. As a result, such transactions do not require the appointment of a consumer privacy ombudsman pursuant to section 363(b)(1) of the Bankruptcy Code.

**WAIVER OF BANKRUPTCY RULE 6004(h)**

49. The Debtors request that the Court waive the fourteen (14) day stay period under Bankruptcy Rule 6004(h). Timely consummation of the Sale is of critical importance to both the Debtors and the Purchaser and the Debtors' efforts to maximize the value of the estates. Accordingly, the Debtors hereby request that the Court waive the fourteen-day stay period under Bankruptcy Rules 6004(h).

**RESERVATION OF RIGHTS**

50. Nothing contained in this Motion or any actions taken by the Debtors pursuant to relief granted in the Order is intended or should be construed as: (a) an admission as to the

validity, priority, or amount of any particular claim against a Debtor entity; (b) a waiver of the Debtors' or any other party-in-interest's rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion; (e) an admission that any Assumed Contract is an executory contract within the purview of section 365 of the Bankruptcy Code or a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a waiver or limitation of the Debtors' or any other party-in-interest's right under the Bankruptcy Code or any other applicable law.

### **NOTICE**

51. The Debtors have provided notice of the filing of the Motion in accordance with Local Rule 2002-1(b) to: (i) the U.S. Trustee; (ii) counsel to the Committee; (iii) counsel to Bank of America, N.A., as administrative agent under the Debtors' prepetition revolving and debtor-in-possession credit facilities; (iv) counsel to Jefferies Finance LLC, as administrative agent under the Debtors' prepetition term facility; (v) the Internal Revenue Service; (vi) the United States Attorney for the District of Delaware; (vii) the United States Department of Justice; (viii) the Assumed Contracts Counterparties; (ix) all lienholders; (x) all parties who have expressed an interest in acquiring the Purchased Assets; and (xi) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties"). The Debtors respectfully submit that no further notice of this Motion is required.

### **NO PRIOR REQUEST**

52. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request entry of the Proposed Order, granting the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: March 18, 2019

**BAYARD, P.A.**

*/s/ Daniel N. Brogan*

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# **Exhibit A**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

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In re:	)	
	)	Chapter 11
	)	
Charlotte Russe Holding, Inc. et al.,	)	Case No. 19-10210 (LSS)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	<b>Related Docket Nos. [] &amp; []</b>

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**ORDER APPROVING MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER (I) AUTHORIZING THE SALE OF CERTAIN INTELLECTUAL PROPERTY AND RELATED ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, (II) AUTHORIZING THE SELLERS TO ASSUME CERTAIN EXECUTORY CONTRACTS, AND (III) GRANTING OTHER RELATED RELIEF**

Upon consideration of the *Motion of the Debtors for Entry of An Order (I) Authorizing the Sale Of Certain Intellectual Property And Related Assets Free And Clear Of All Liens, Claims, Interests And Encumbrances, (II) Authorizing the Sellers To Assume And Assign Certain Executory Contracts, And (III) Granting Other Related Relief*, [Docket No. \_\_\_] (the “Motion”);<sup>2</sup> and the Debtors having signed that certain Asset Purchase Agreement (as may be amended from time to time in accordance with the terms thereof and this Order, the “APA”) contemplating the sale of certain of the Debtors’ assets (specifically as defined in the APA, the “Purchased Assets”) to Mamiye Brothers, Inc. and Mamiye Brothers IP Holdings LLC or one or more designees thereof (collectively, the “Purchaser”) free and clear of any Claims, Liens, each as defined herein, encumbrances and other interests (the “Sale Transaction”); and a hearing to consider the Motion

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<sup>1</sup> 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.

<sup>2</sup> All capitalized terms not otherwise defined in this Order have the meaning ascribed to them in the Motion or in the APA (as defined herein).

having been held on March 25, 2019 (the “Sale Hearing”), at which hearing the Court approved the Purchaser as the highest and otherwise best bidder for the Purchased Assets; and the Court having reviewed and considered the relief sought in the Motion, the APA, all objections to the Motion, and the arguments of counsel made, and the evidence proffered or adduced, at the Sale Hearing; and all parties in interest having been heard or having had the opportunity to be heard regarding the Sale Transaction and the relief requested in this Order; and due and sufficient notice of the Sale Hearing and the relief sought therein having been given under the particular circumstances of these chapter 11 cases; and it appearing that no other or further notice need be provided; and upon the *Declaration of Stuart Erickson in Support of the Supplemental Motion of the Debtors for Entry of An Order (I) Authorizing the Sale Of Certain Intellectual Property And Related Assets Free And Clear Of All Liens, Claims, Interests And Encumbrances, (II) Authorizing the Sellers To Assume And Assign Certain Executory Contracts, And (III) Granting Other Related Relief* [Docket No. \_\_\_\_] (the “Erickson Declaration”); and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties in interest; and it appearing that the Court has jurisdiction over this matter; and it further appearing that the legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein; and after due deliberation thereon,

**THE COURT HEREBY FINDS THAT:<sup>3</sup>**

**Jurisdiction and Venue**

A. This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of

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<sup>3</sup> The findings and conclusions set forth herein constitute this Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any 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.

these cases and proceedings is proper in this District and this Court under 28 U.S.C. §§ 1408 and 1409.

**Statutory Predicates**

B. The statutory predicates for the relief requested in the Motion are Bankruptcy Code sections 105, 363, and 365. Such relief is also warranted pursuant to Bankruptcy Rules 2002, 6004, 6006, 9007, 9008.

**Final Order**

C. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a).

**Notice of the APA, Sale Transaction and Sale Hearing**

D. On February 3, 2019 (the "Petition Date"), the Debtors commenced these chapter 11 cases (the "Chapter 11 Cases") by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have continued to operate and manage their businesses as debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

E. As evidenced by the affidavits of service previously filed with this Court, and based on the representations of counsel at the Sale Hearing, due, proper, timely, adequate and sufficient notice of the Motion, the Sale Hearing, the APA and the Sale Transaction has been provided in accordance with Bankruptcy Code sections 102(1) and 363, Bankruptcy Rules 2002 and 9014, and Local Rules 2002-1 and 6004-1. The aforementioned notices are good, sufficient and appropriate under the circumstances, and no other or further notice of the Motion, the Sale Hearing, the APA or the Sale Transaction is or shall be required.

F. A reasonable opportunity to object or be heard regarding the relief requested in the Motion was afforded to all parties in interest.

G. The Debtors and their professionals have adequately and appropriately marketed the Purchased Assets in accordance with the Debtors' fiduciary duties. Based upon the record of these proceedings and the circumstances of these Chapter 11 Cases, creditors, other parties in interest and prospective purchasers were afforded a reasonable and fair opportunity to bid for the Purchased Assets.

H. The Debtors conducted the sale process without collusion.

I. The APA and the Sale Transaction comply with all applicable orders of this Court.

**Business Judgment**

J. The APA, including the form and total consideration to be realized by the Debtors under the APA, (i) constitutes the highest and best offer received by the Debtors for the Purchased Assets; (ii) is fair and reasonable; and (iii) is in the best interests of the Debtors, their estates, their creditors and all other parties in interest.

K. The Debtors' determination that the consideration provided by the Purchaser under the APA constitutes the highest and best offer for the Purchased Assets constitutes a valid and sound exercise of the Debtors' business judgment.

L. Consistent with their fiduciary duties, the Debtors have demonstrated good, sufficient and sound business reasons and justifications for entering into the Sale Transaction and the performance of their obligations under the APA, including, but not limited to, the fact that (i) the consideration provided by the Purchaser under the APA will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative, including a separate liquidation of the Purchased Assets; and (ii) unless the Sale Transaction is concluded expeditiously as provided for in the Motion and pursuant to the APA, recoveries of creditors will be diminished.

**Corporate Authority**

M. Subject to entry of this Order, each Debtor (i) has full corporate power and authority to execute and deliver the APA and all other documents contemplated thereby, (ii) has all of the necessary corporate power and authority to consummate the transactions contemplated by the APA, including, without limitation, the Sale Transaction and the assumption and assignment of the Purchaser Assumed Contracts (as defined in the APA), (iii) has taken all corporate action necessary to authorize and approve the APA and the consummation by the Debtors of the transactions contemplated thereby, including, without limitation, the Sale Transaction and the assumption and assignment of the Purchaser Assumed Contracts, and (iv) subject to entry of this Order, needs no consents or approvals, other than those expressly set forth in the APA or this Order, to consummate the transactions contemplated thereby, including, without limitation, the Sale Transaction and the assumption and assignment of the Purchaser Assumed Contracts.

**Good Faith**

N. The sales process engaged in by the Debtors and the Purchaser and the negotiation of the APA was at arm's length, non-collusive, in good faith, and substantively and procedurally fair to all parties in interest. Neither the Debtors nor the Purchaser has engaged in any conduct that would cause or permit the APA or the Sale Transaction to be avoided, or costs or damages to be imposed, under Bankruptcy Code section 363(n).

O. The Debtors and their management, board of directors, board of managers (or comparable governing authority), employees, agents, and representatives, and the Purchaser and its employees, agents, advisors and representatives, each actively participated in the bidding process, and each acted in good faith.

P. The Purchaser is a good faith buyer within the meaning of Bankruptcy Code section 363(m), and is therefore entitled to the full protection of that provision in respect of the Sale Transaction, each term of the APA (and any ancillary documents executed in connection therewith) and each term of this Order, and otherwise has proceeded in good faith in all respects in connection with this proceeding. None of the Debtors or the Purchaser has engaged in any conduct that would prevent the application of Bankruptcy Code section 363(m). The Debtors were free to deal with any other party interested in buying or selling some or all of the Purchased Assets on behalf of the Debtors' estates. The protections afforded by Bankruptcy Code section 363(m) are integral to the Sale Transaction and the Purchaser would not consummate the Sale Transaction without such protections.

Q. The form and total consideration to be realized by the Debtors under the APA constitutes fair value, fair, full and adequate consideration, reasonably equivalent value and reasonable market value for the Purchased Assets.

R. Neither the Purchaser nor any of its affiliates, officers, directors, managers, shareholders, members or any of their respective successors or assigns is an "insider" of any of the Debtors, as that term is defined under Bankruptcy Code section 101(31). No common identity of directors, managers, controlling shareholders, or members exists between the Debtors and the Purchaser.

**No Fraudulent Transfer**

S. The consideration provided by the Purchaser for the Purchased Assets pursuant to the APA (i) is fair and reasonable, (ii) is the highest and best offer for the Purchased Assets, (iii) will provide a greater recovery for the Debtors' creditors and estates than would be provided by any other practical available alternative, and (iv) constitutes reasonably equivalent value and

fair consideration under the Bankruptcy Code and under the laws of the United States, and each state, territory, possession and the District of Columbia.

T. The APA was not entered into, and none of the Debtors or the Purchaser has entered into the APA or proposes to consummate the Sale Transaction, for the purpose of (i) escaping liability for any of the Debtors' debts or (ii) hindering, delaying or defrauding the Debtors' present or future creditors, for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims whether under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing.

**Free and Clear**

U. The transfer of the Purchased Assets to the Purchaser will be legal, valid, and effective transfers of the Purchased Assets, and will vest the Purchaser with all right, title, and interest of the Sellers to the Purchased Assets free and clear of all claims, liens (including, without limitation, any statutory lien on real and personal property and any and all "liens" as that term is defined and used in the Bankruptcy Code, including section 101(37) thereof), liabilities, interests, rights and encumbrances, including, without limitation, the following: all mortgages, restrictions (including, without limitation, any restriction on the use, voting rights, transfer rights, claims for receipt of income or other exercise of any attributes of ownership), hypothecations, charges, indentures, loan agreements, instruments, leases, licenses, sublicenses, options, deeds of trust, security interests, equity interests, conditional sale rights or other title retention agreements, pledges, judgments, demands, rights of first refusal, consent rights, offsets, contract rights, rights of setoff, recoupment rights, rights of recovery, reimbursement rights, contribution claims, indemnity rights, exoneration rights, product liability claims, alter-ego claims, environmental

rights and claims (including, without limitation, toxic tort claims), labor rights and claims, employment rights and claims, pension rights and claims, tax claims, regulatory violations by any governmental entity, decrees of any court or foreign or domestic governmental entity, charges of any kind or nature, debts arising in any way in connection with any agreements, acts, or failures to act, reclamation claims, obligation claims, demands, guaranties, option rights or claims, rights, contractual or other commitment rights and claims, rights of tenants and subtenants (if any) under Bankruptcy Code section 365(h) or any similar statute, and all other matters of any kind and nature, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of the Chapter 11 Cases (but, for the avoidance of doubt, in each case arising from the ownership of the Purchased Assets or the operation of the Debtors prior to the Closing Date), and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under any theory, law or doctrine of successor or transferee liability or related theories (all of the foregoing, including, without limitation, liens and liabilities, collectively being referred to in this Order as “Claims” and, as used in this Order, the term “Claims” includes, without limitation, any and all “claims” as that term is defined and used in the Bankruptcy Code, including section 101(5) thereof).

V. The Sellers may transfer the Purchased Assets free and clear of all Claims including, without limitation, rights or claims based on any successor or transferee liability, because, in each case, one or more of the standards set forth in Bankruptcy Code section 363(f)(1)-(5) has been satisfied. Those (a) holders of Claims and (b) non-Debtor parties to the Purchaser

Assumed Contracts, who did not object or who withdrew their objections to the Motion, are deemed to have consented pursuant to Bankruptcy Code section 363(f)(2). Those (i) holders of Claims and (ii) non-Debtor parties to the Assumed Contracts who did object, fall within one or more of the other subsections of Bankruptcy Code section 363(f).

W. The Debtors have, to the extent necessary, satisfied the requirements of section 363(b)(1) of the Bankruptcy Code.

X. The Purchaser would not have entered into the APA and would not consummate the transactions contemplated thereby, including, without limitation, the Sale Transaction and the assumption and assignment of the Purchaser Assumed Contracts, (i) if the transfer of the Purchased Assets were not free and clear of all Claims, or (ii) if the Purchaser would, or in the future could, be liable for any such Claims. The Purchaser will not consummate the transactions contemplated by the APA, including, without limitation, the Sale Transaction and the assumption and assignment of the Assumed Contracts, unless this Court expressly orders that none of the Purchaser, their respective affiliates, their respective present or contemplated members or shareholders, or the Purchased Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any Claims.

Y. Not transferring the Purchased Assets free and clear of all Claims would adversely impact the Debtors' efforts to maximize the value of their estates, and the transfer of the Purchased Assets other than pursuant to a transfer that is free and clear of all Claims and other interests of any kind or nature whatsoever would be of substantially less benefit to the Debtors' estates.

Z. Neither the Purchaser nor any of its affiliates are a mere continuation of the Debtors or their estates, there is no continuity or common identity between the Purchaser, any of its

affiliates and any of the Debtors, and there is no continuity of enterprise between the Purchaser, any of its affiliates and any of the Debtors. Neither the Purchaser nor any of its affiliates are holding themselves out to the public as a continuation of any of the Debtors. Neither the Purchaser nor any of its affiliates are a successor to any of the Debtors or their estates, and none of the transactions contemplated by the APA, including, without limitation, the Sale Transaction and the assumption and assignment of the Purchaser Assumed Contracts amounts to a consolidation, merger, or *de facto* merger of the Purchaser or any of its affiliates with or into any of the Debtors.

AA. Without limiting the generality of the foregoing, none of the Purchaser, its affiliates, its and their respective present or contemplated members or shareholders, or the Purchased Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any Claims relating to any U.S. federal, state or local income tax liabilities, that the Debtors may incur in connection with consummation of the transactions contemplated by the APA, including, without limitation, the Sale Transaction and the assumption and assignment of the Purchaser Assumed Contracts, or that the Debtors have otherwise incurred prior to the consummation of the transactions contemplated by the APA.

#### **Validity of Transfer**

BB. The consummation of the transactions contemplated by the APA, including, without limitation, the Sale Transaction and the assumption and assignment of the Purchaser Assumed Contracts is legal, valid and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, Bankruptcy Code sections 105(a), 363(b), 363(f), 363(m), 365(b) and 365(f), and all of the applicable requirements of such sections have been complied with in respect of the transactions contemplated under the APA.

CC. The Purchased Assets constitute property of the Debtors' estates and good title thereto is vested in the Debtors' estates within the meaning of Bankruptcy Code section 541(a). The Debtors are the sole and lawful owners of the Purchased Assets, and no other person has any ownership right, title, or interest therein.

**Assumed Contracts**

DD. The assumption and assignment of the Purchaser Assumed Contracts pursuant to the terms of this Order and the APA is integral to the transactions contemplated by the APA and is in the best interests of the Debtors, their estates and creditors, and all other parties in interest, and represents a reasonable exercise of the Debtors' sound and prudent business judgment.

EE. Pursuant to the terms of the APA and this Order, on or after the Closing Date, as applicable pursuant to the terms of this Order and the APA, the Purchaser and/or the Seller shall have, except as otherwise provided in the APA or this Order, or as otherwise expressly agreed to between the Purchaser and such counterparty: (i) cured, or provided adequate assurance of cure of, any monetary default existing as of and including the Closing Date under any of the Assumed Contracts, within the meaning of Bankruptcy Code section 365(b)(1)(A), (ii) provided compensation, or adequate assurance of compensation, to any party for actual pecuniary loss to such party resulting from a monetary default existing as of and including the Closing Date under any of the Purchaser Assumed Contracts, within the meaning of Bankruptcy Code section 365(b)(1)(B), and (iii) provided adequate assurance of its future performance under the Assumed Contracts within the meaning of Bankruptcy Code sections 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B).

**Compelling Circumstances for an Immediate Sale**

FF. To maximize the value of the Purchased Assets and preserve the viability of the business to which the Purchased Assets relate, it is essential that the transactions contemplated by the APA, including, without limitation, the Sale Transaction and the assumption and assignment of the Purchaser Assumed Contracts occur within the time constraints set forth in the APA. Time is of the essence in consummating the transactions contemplated by the APA, including, without limitation, the Sale Transaction and the assumption and assignment of the Purchaser Assumed Contracts.

GG. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the immediate approval and consummation of the transactions contemplated by the APA, including, without limitation, the Sale Transaction and the assumption and assignment of the Purchaser Assumed Contracts prior to, and outside of, a chapter 11 plan because, among other things, consummation of the Sale Transaction pursuant to a chapter 11 plan is not feasible and the Debtors' estates will suffer irreparable harm if the relief requested in the Motion is not granted on an expedited basis. The transactions contemplated by the APA, including, without limitation, the Sale Transaction and the assumption and assignment of the Purchaser Assumed Contracts, neither impermissibly restructure the rights of the Debtors' creditors nor impermissibly dictate the terms of a chapter 11 plan for the Debtors, and therefore, do not constitute a *sub rosa* plan.

**Personally Identifiable Information**

HH. The Sale may include the transfer of "personally identifiable information," as defined in section 101(41 A) of the Bankruptcy Code. No "consumer privacy ombudsman" need be appointed under section 363(b)(1) of the Bankruptcy Code because (i) the Debtors do not have

or disclose and, did not have or disclose as of the Petition date, any policy prohibiting the transfer of personally identifiable information as defined by section 101(41A) of the Bankruptcy Code and (ii) Purchaser has agreed to adhere to any privacy policies applicable to the Debtors.

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

**General Provisions**

1. The Motion is granted as provided herein, and entry into and performance under, and in respect of, the APA attached hereto as **Exhibit 1** and the consummation of the transactions contemplated thereby, including, without limitation, the Sale Transaction and the assumption and assignment of the Purchaser Assumed Contracts is authorized and approved.

2. Any objections and responses to the Motion or the relief requested therein that have not been withdrawn, waived, settled, or resolved, and all reservation of rights included in such objections and responses, are overruled on the merits and denied with prejudice. All persons and entities given notice of the Motion that failed to timely object thereto are deemed to consent to the relief granted herein.

**Approval of the APA**

3. The APA, all ancillary documents, the transactions contemplated thereby, including, without limitation, the Sale Transaction and the assumption and assignment of the Purchaser Assumed Contracts and all the terms and conditions thereof, are approved. The failure specifically to include any particular provision of the APA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the APA be authorized and approved in its entirety.

4. The Debtors and their respective officers, employees and agents are authorized and directed to take any and all actions necessary, appropriate or requested by the Purchaser to perform,

consummate, implement and close the Sale Transaction, including, without limitation, (a) the sale to the Purchaser of all Purchased Assets, in accordance with the terms and conditions set forth in the APA and this Order; and (b) executing, acknowledging and delivering such deeds, assignments, conveyances and other assurance, documents and instruments of transfer and taking any action for purposes of assigning, transferring, granting, conveying and confirming to the Purchaser, or reducing to possession, the Purchased Assets. The Debtors are further authorized to pay, without further order of this Court, whether before, at or after the Closing Date, any expenses or costs that are required to be paid in order to consummate the Sale Transaction or perform their obligations under the APA.

5. All persons and entities are prohibited and enjoined from taking any action to prevent, adversely affect or interfere with, or which would be inconsistent with, the ability of the Debtors to transfer the Purchased Assets to the Purchaser in accordance with the APA and this Order.

6. The sale of the Purchased Assets to the Purchaser under the APA constitutes a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and laws of all applicable jurisdictions, including, without limitation, the laws of each jurisdiction in which the Purchased Assets are located, and the sale of the Purchased Assets to the Purchasers may not be avoided under any statutory or common law fraudulent conveyance and fraudulent transfer theories whether under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing.

**Transfer of the Purchased Assets Free and Clear**

7. Pursuant to Bankruptcy Code sections 105(a) and 363(f), the Purchased Assets shall be sold free and clear of all Claims, with all such Claims, including any outstanding DIP Obligations and Prepetition Secured Obligations,<sup>4</sup> to attach to the proceeds of the Sale Transaction to be received by the Debtors with the same validity, force, priority and effect which they now have as against the Purchased Assets, subject to any claims and defenses the Debtors may possess with respect thereto; provided, however, that setoff rights will be extinguished because there is no longer mutuality after the consummation of the Sale Transaction.

8. At Closing, all of the Debtors' right, title and interest in and to, and possession of, the Purchased Assets shall be immediately vested in the Purchaser pursuant to Bankruptcy Code sections 105(a), 363(b), and 363(f) free and clear of any and all Claims. Such transfer shall constitute a legal, valid, binding and effective transfer of, and shall vest the Purchaser with good and marketable title to, the Purchased Assets. All person or entities, presently or on or after the Closing Date, in possession of some or all of the Purchased Assets are directed to surrender possession of the Purchased Assets to the Purchaser or its designees on the Closing Date or at such time thereafter as the Purchaser may request.

9. This Order is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal and local officials and all other persons and entities who may be required by operation of

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<sup>4</sup> Each as defined in the *Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection to the Prepetition Secured Parties, (V) Modifying Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [D.I. 92] (the "DIP Order").

law, the duties of their office or contract, to accept, file, register or otherwise record or release any documents or instruments; and each of the foregoing persons and entities is hereby authorized to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the Sale Transaction contemplated by the APA. The Purchased Assets are sold free and clear of any reclamation rights.

10. Except as otherwise expressly provided in the APA or this Order, all persons and entities (and their respective successors and assigns), including, but not limited to, all debt security holders, equity security holders, affiliates, foreign, federal, state and local governmental, tax and regulatory authorities, lenders, customers, vendors, employees, trade creditors, litigation claimants and other creditors holding Claims against the Debtors or the Purchased Assets arising under or out of, in connection with, or in any way relating to, the Debtors, the Debtors' predecessors or affiliates, the Purchased Assets, the ownership, sale or operation of the Purchased Assets prior to Closing or the transfer of the Purchased Assets to the Purchaser, are hereby forever barred, estopped and permanently enjoined from asserting or prosecuting any cause of action or any process or other act or seeking to collect, offset, or recover on account of any Claims against the Purchaser, its successors or assigns, their property or the Purchased Assets. Following the Closing, except as expressly provided in the APA or this Order, no holder of any Claim shall interfere with the Purchaser's title to or use and enjoyment of the Purchased Assets based on or related to any such Claim, or based on any action the Debtors may take in the Chapter 11 Cases.

11. The Debtors are authorized to execute such documents as may be necessary to release any Claims of any kind against the Purchased Assets as such Claims may have been recorded or may otherwise exist. If any person or entity that has filed financing statements, *lis pendens* or other documents or agreements evidencing Claims against or in the Purchased Assets shall not

have delivered to the Debtors prior to the Closing of the Sale Transaction, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Claims that the person or entity has with respect to the Purchased Assets, (a) the Debtors are hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Purchased Assets; (b) the Purchaser is hereby authorized to file, register or otherwise record a certified copy of this Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all such Claims against the Purchaser and the applicable Purchased Assets; and (c) the Purchaser may seek in this Court or any other court to compel appropriate parties to execute termination statements, instruments of satisfaction and releases of all such Claims with respect to the Purchased Assets. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department or office. Notwithstanding the foregoing, the provisions of this Order authorizing the sale and assignment of the Purchased Assets free and clear of Claims shall be self-executing, and none of the Debtors nor the Purchaser shall be required to execute or file releases, termination statements, assignments, consents or other instruments in order to effectuate, consummate and implement the provisions of this Order.

12. To the maximum extent permitted under applicable law, the Purchaser shall be authorized, as of the Closing Date, to operate under any license, permit, registration and governmental authorization or approval of the Debtors with respect to the Purchased Assets, and all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been, and hereby are, directed to be transferred to the Purchaser with respect to the Purchased Assets as of the Closing Date.

13. If, on or after the Closing Date, any licensee of any of the Purchased Assets (including pursuant to any contract that may have been previously rejected by the Debtors) is required, by agreement, contract or applicable law, to make royalty or similar payments to the Sellers on account of any Purchased Asset, such licensee shall instead make any such payments to the Purchaser directly.

14. No governmental unit (as defined in Bankruptcy Code section 101(27)) or any representative thereof may deny, revoke, suspend or refuse to renew any permit, license or similar grant relating to the operation of the Purchased Assets on account of the filing or pendency of the Chapter 11 Cases or the consummation of the Sale Transaction to the extent that any such action by a governmental unit or any representative thereof would violate Bankruptcy Code section 525.

**No Successor or Transferee Liability**

15. Upon the Closing Date, except as provided in the APA, the entry of this Order and the APA shall mean that neither the Purchaser nor its affiliates, as a result of any action taken in connection with the APA, the consummation of the Sale Transaction, or the transfer or operation of the Purchased Assets, shall be deemed to: (a) be a legal successor or successor employer to the Debtors, or otherwise be deemed a successor to the Debtors, and shall instead be, and be deemed to be, a new employer with respect to all federal or state unemployment laws, including any unemployment compensation or tax laws, or any other similar federal or state laws; (b) have, *de facto*, or otherwise, merged or consolidated with or into the Debtors; or (c) be an alter ego or a mere continuation or substantial continuation of the Debtors or the enterprise(s) of the Debtors, including, in the case of each of (a)-(c), without limitation, (x) within the meaning of any foreign, federal, state or local revenue law, pension law, the Employee Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act (“COBRA”), the WARN Act (29 U.S.C.

§§ 2101 et seq.) (“WARN”), Comprehensive Environmental Response Compensation and Liability Act (“CERCLA”), the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964 (as amended), the Age Discrimination and Employment Act of 1967 (as amended), the Federal Rehabilitation Act of 1973 (as amended), the National Labor Relations Act, 29 U.S.C. § 151, et seq. (the “NLRA”) or (y) in respect of (i) any environmental liabilities, debts, claims or obligations arising from conditions first existing on or prior to the Closing Date (including, without limitation, the presence of hazardous, toxic, polluting, or contaminating substances or wastes), which may be asserted on any basis, including, without limitation, under CERCLA, (ii) any liabilities, debts or obligations of or required to be paid by the Debtors for any taxes of any kind for any period, labor, employment, or other law, rule or regulation (including, without limitation, filing requirements under any such laws, rules or regulations), or (iii) any products liability law or doctrine with respect to the Debtors’ liability under such law, rule or regulation or doctrine.

16. Without limiting the generality of the foregoing, and except as otherwise provided in the APA and this Order, neither the Purchaser nor any of its affiliates shall have any responsibility for (a) any liability or other obligation of the Debtors or related to the Purchased Assets or (b) any Claims against the Debtors or any of their predecessors or affiliates. By virtue of the Purchasers’ purchase of the Purchased Assets, neither the Purchaser nor any of its affiliates shall have any liability whatsoever with respect to the Debtors’ (or their predecessors’ or affiliates’) respective businesses or operations or any of the Debtors’ (or their predecessors’ or affiliates’) obligations based, in whole or part, directly or indirectly, on any theory of successor or vicarious liability of any kind or character, or based upon any theory of antitrust, environmental (including, but not limited to CERCLA), successor or transferee liability, *de facto* merger or substantial continuity, labor and employment (including, but not limited to, WARN) or

products liability law, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated, including liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Purchased Assets prior to the Closing. The Purchaser would not have acquired the Purchased Assets but for the foregoing protections against potential claims based upon “successor liability” theories.

17. None of the Purchaser or its affiliates, successors, assigns, equity holders, employees or professionals shall have or incur any liability to, or be subject to any action by any of the Debtors or any of their estates, predecessors, successors or assigns, arising out of the negotiation, investigation, preparation, execution, delivery of the APA and the entry into and consummation of the sale of the Purchased Assets, except as expressly provided in APA and this Order.

18. Nothing in this Order or the APA shall require the Purchaser or any of its affiliates to (a) continue or maintain in effect, or assume any liability in respect of any employee, collective bargaining agreement, pension, welfare, fringe benefit or any other benefit plan, trust arrangement or other agreements to which the Debtors are a party or have any responsibility therefor including, without limitation, medical, welfare and pension benefits payable after retirement or other termination of employment; or (b) assume any responsibility as a fiduciary, plan sponsor or otherwise, for making any contribution to, or in respect of the funding, investment or administration of any employee benefit plan, arrangement or agreement (including but not limited to pension plans) or the termination of any such plan, arrangement or agreement.

19. No bulk sales law or similar law of any state or other jurisdiction shall apply in any way to the transactions with the Debtors that are approved by this Order, including, without limitation, the APA and the Sale Transaction.

**Good Faith; Arm's Length Sale**

20. The APA has been negotiated and executed, and the Sale Transaction contemplated by the APA are and have been undertaken, by the Debtors, the Purchaser and their respective representatives at arm's length, without collusion and in "good faith," as that term is defined in Bankruptcy Code section 363(m). Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale Transaction shall not affect the validity of the Sale Transaction or any term of the APA, and shall not permit the unwinding of the Sale Transaction. The Purchaser is a good faith purchaser within the meaning of Bankruptcy Code section 363(m) and, as such, is entitled to the full protections of Bankruptcy Code section 363(m).

21. None of the Debtors or the Purchaser has engaged in any conduct that would cause or permit the APA or the Sale Transaction to be avoided or costs, or damages or costs, to be imposed, under Bankruptcy Code section 363(n). The consideration provided by the Purchaser for the Purchased Assets under the APA is fair and reasonable, and the Sale Transaction may not be avoided under Bankruptcy Code section 363(n).

**Assumption and Assignment of the Assumed Contracts**

22. Except as otherwise expressly provided in the APA or this Order, upon the Closing Date, pursuant to Bankruptcy Code sections 105(a), 363, and 365, the Debtors are authorized to (a) assume each of the Purchaser Assumed Contracts and assign the Purchaser Assumed Contracts to the Purchaser free and clear of all Claims and (b) execute and deliver to the Purchaser such documents or other instruments as may be reasonably requested by Purchaser to assign and transfer the Purchaser Assumed Contracts to the Purchaser.

23. Except as provided for herein, the Cure Amounts (as defined below) are the sole amounts necessary to be paid upon assumption of the Purchaser Assumed Contracts under

Bankruptcy Code sections 365(b)(1)(A) and (B) and 365(f)(2)(A). All Cure Amounts, if any, shall be paid by the Purchaser or Seller as set forth in the APA. Upon the payment of the Cure Amounts, if any, the Purchaser Assumed Contracts shall remain in full force and effect, and no default shall exist under the Purchaser Assumed Contracts nor shall there exist any event or condition which, with the passage of time or giving of notice, or both, would constitute such a default. Except as provided for herein, the Cure Amounts shall not be subject to further dispute or audit, including, without limitation, any based on performance prior to the Closing Date, irrespective of whether such Purchaser Assumed Contract contains an audit clause.

24. In the event of a dispute as of, or after, the Closing Date regarding assumption and assignment or cure of any contract or unexpired lease proposed to be an Assumed Contract, such contract or unexpired lease, any applicable cure payments shall be made following the entry of an order resolving any such dispute (or upon the consensual resolution of such dispute as may be agreed by the Purchaser and such counterparty). In the event that after the Closing Date any such dispute is not resolved to the Purchaser's satisfaction, the Purchaser may determine that such contract or unexpired lease subject to dispute is not an Assumed Contract and upon such determination, the Purchaser shall have no liability whatsoever to the counterparty to such contract or unexpired lease that may arise prior to or after the Closing Date.

25. Any provisions in any Purchaser Assumed Contract that prohibit or condition the Debtors' assignment of such Purchaser Assumed Contract or allow the party to such Purchaser Assumed Contract to terminate, recapture, impose any penalty, condition on renewal or extension or modify any term or condition upon the Debtors' assignment of such Purchaser Assumed Contract, constitute unenforceable anti-assignment provisions that are void and of no force and effect.

26. Each Purchaser Assumed Contract constitutes an executory contract or unexpired lease under Bankruptcy Code section 365 and all requirements and conditions under Bankruptcy Code sections 363 and 365 for the assumption by the Debtors and assignment to the Purchaser of the Purchaser Assumed Contracts have been, or will be, satisfied. Upon the Purchaser's assumption of the Purchaser Assumed Contracts in accordance with the terms hereof, in accordance with Bankruptcy Code sections 363 and 365, (a) the Purchaser shall be fully and irrevocably vested with all rights, title and interest of the Debtors under the Purchaser Assumed Contracts, (b) the Purchaser shall be deemed to be substituted for the Debtors as a party to the applicable Purchaser Assumed Contracts, and (c) the Debtors shall be relieved, pursuant to Bankruptcy Code section 365(k), from any further liability under the Assumed Contracts.

27. The Purchaser has demonstrated, or will demonstrate, adequate assurance of future performance under the relevant Purchaser Assumed Contracts within the meaning of Bankruptcy Code sections 365(b)(1)(C) and 365(f)(2)(B).

28. There shall be no rent accelerations, assignment fees, increases or any other fees charged to the Debtors or the Purchaser as a result of the assumption, assignment and sale of the Purchaser Assumed Contracts. The validity of the transactions contemplated by the APA, including, without limitation, the Sale Transaction and the assumption and assignment of the Purchaser Assumed Contracts shall not be affected by any dispute between any of the Debtors or their affiliates and another party to a Purchaser Assumed Contract regarding the payment of any amount. Upon assignment to the Purchaser, the Purchaser Assumed Contracts shall be valid and binding, in full force and effect and enforceable by the Purchaser in accordance with their respective terms.

29. Pursuant to Bankruptcy Code sections 105(a), 363, and 365, all counterparties to the Purchaser Assumed Contracts are forever barred and permanently enjoined from raising or asserting against the Debtors or the Purchaser any assignment fee, default, breach or claim of pecuniary loss, or condition to assignment, arising under or related to the Purchaser Assumed Contracts existing as of and including the Closing Date under the APA or arising by reason of the consummation of transactions contemplated by the APA, including, without limitation, the Sale Transaction, the assumption and assignment of the Purchaser Assumed Contracts, and any party that may have had the right to consent to the assignment of a Purchaser Assumed Contract is deemed to have consented to such assignment for purposes of Bankruptcy Code sections 365(c)(1)(B) and 365(e)(2)(A)(ii) and otherwise if such party failed to object to the assumption and assignment of such Purchaser Assumed Contract or to the cure amount reflected in *Notice of (I) Potential Assumption and Assignment of Executory Contracts and Unexpired Leases and (II) Cure Amounts* [Docket No. 204].

30. All counterparties to the Purchaser Assumed Contracts shall cooperate and expeditiously execute and deliver, upon the reasonable requests of the Purchaser, and shall not charge the Debtors or the Purchaser for any instruments, applications, consents or other documents which may be required or requested by any public or quasi-public authority or other party or entity to effectuate the applicable transfers in connection with the Sale of the Purchased Assets.

**Personally Identifiable Information**

31. Purchaser shall adopt the privacy policy maintained by Debtors regarding the Purchased Assets existing as of the Petition Date with respect to "personally identifiable information" as that term is defined in section 101(41A) of the Bankruptcy Code and used in section 363(b)(1)(B) of the Bankruptcy Code.

**Related Relief**

32. Each and every federal, state and governmental agency or department, and any other person or entity, is hereby authorized to accept any and all documents and instruments in connection with or necessary to consummate the Sale Transaction contemplated by the APA. For the avoidance of doubt Bankruptcy Code section 1146(a) shall not apply to the Sale Transaction.

33. Nothing in this Order or the APA releases, nullifies, or enjoins the enforcement of any liability (including, but not limited to, for reclamation and mitigation and any associated long-term protection requirements) by a governmental unit under police and regulatory statutes and regulations that any entity would be subject to as the owner or operator of property that is sold or transferred pursuant to this Order, provided, however, that the Purchaser shall not have any liability or penalties for days of violation for any period on or prior to the consummation of the Sale Transaction. Nothing in this Order or the APA authorizes the transfer or assignment of any governmental (a) license, (b) permit, (c) registration, (d) authorization or (e) approval, or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements and approvals under police or regulatory law.

34. No governmental unit may revoke or suspend any right, license, copyright, patent, trademark or other permission relating to the use of the Purchased Assets sold, transferred or conveyed to the Purchaser on account of the filing or pendency of these Chapter 11 Cases or the consummation of the sale of the Purchased Assets.

35. All entities that are presently, or on the Closing Date may be, in possession of some or all of the Purchased Assets are hereby directed to surrender possession of the Purchased Assets to the Purchaser on the Closing Date.

36. To the extent this Order is inconsistent with any prior order or pleading filed in these Chapter 11 Cases related to the Motion, the terms of this Order shall govern. To the extent there is any inconsistency between the terms of this Order and the terms of the APA, the terms of this Order shall govern.

37. This Order and the APA shall be binding in all respects upon all pre-petition and post-petition creditors of the Debtors, all interest holders of the Debtors, all non-debtor parties to the Assumed Contracts, the Committee, all successors and assigns of the Debtors and their affiliates and subsidiaries, and any trustees, examiners, “responsible persons” or other fiduciaries appointed in these Chapter 11 Cases or upon a conversion of the Debtors’ cases to those under chapter 7 of the Bankruptcy Code, including a chapter 7 trustee, and the APA and Sale Transaction shall not be subject to rejection or avoidance under any circumstances. If any order under Bankruptcy Code section 1112 is entered, such order shall provide (in accordance with Bankruptcy Code sections 105 and 349) that this Order and the rights granted to the Purchaser hereunder shall remain effective and, notwithstanding such dismissal, shall remain binding on parties in interest. For the avoidance of doubt, the Debtors’ inability to satisfy in full all administrative expense claims of the Debtors’ estates shall not be a basis for termination, rejection or avoidance (as applicable) of the APA or the Sale Transaction.

38. This Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order and the APA, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith to which the Debtors are a party or which has been assigned by the Debtors to the Purchaser, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale Transaction, including any and all disputes with any counterparty to any contract or lease of the

Debtors (including, without limitation, disputes with respect to assumption and assignment of any Assumed Contracts or any cure disputes) and any party that has, or asserts, possession, control or other rights in respect of any of the Debtors' assets; provided, however, that, in the event the Court abstains from exercising or declines to exercise such jurisdiction with respect to the APA or this Order, such abstention, refusal, or lack of jurisdiction shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter. This Court retains jurisdiction to compel delivery of the Purchased Assets, to protect the Debtors and their assets, including the Purchased Assets, against any Claims and successor and transferee liability and to enter orders, as appropriate, pursuant to Bankruptcy Code sections 105(a) or 363 (or other applicable provisions) necessary to transfer the Purchased Assets to the Purchaser.

39. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding any provision in the Bankruptcy Rules to the contrary, including but not limited to Bankruptcy Rule 6004(h), the Court expressly finds there is no reason for delay in the implementation of this Order and, accordingly: (a) the terms of this Order shall be immediately effective and enforceable upon its entry; (b) the Debtors are not subject to any stay of this Order or in the implementation, enforcement or realization of the relief granted in this Order; and (c) the Debtors may, in their discretion and without further delay, take any action and perform any act authorized under this Order.

40. The Purchaser shall not be required to seek or obtain relief from the automatic stay under Bankruptcy Code section 362, to give any notice permitted by the APA or to enforce any of its remedies under the APA or any other sale-related document. The automatic stay imposed by Bankruptcy Code section 362 is modified solely to the extent necessary to implement the preceding

sentence; provided however, that this Court shall retain exclusive jurisdiction over any and all disputes with respect thereto.

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

42. The requirements set forth in Bankruptcy Rule 6004 and 6006, and Local Bankruptcy Rule 6004-1 have been satisfied or otherwise deemed waived.

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

Wilmington, Delaware

Date: March \_\_, 2019

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THE HONORABLE LAURIE S. SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

**APA**

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**ASSET PURCHASE AND SALE AGREEMENT**

**BY AND AMONG**

**CHARLOTTE RUSSE HOLDINGS CORPORATION,**

**THE SUBSIDIARIES PARTY HERETO,**

**AS SELLERS**

**AND**

**MAMIYE BROTHERS, INC.**

**AND**

**MAMIYE BROTHERS IP HOLDINGS LLC,**

**AS PURCHASER**

**DATED AS OF MARCH 12, 2019**

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## ASSET PURCHASE AND SALE AGREEMENT

THIS ASSET PURCHASE AND SALE AGREEMENT, dated as of March 12, 2019 (this “Agreement”), is made and entered into by and among Charlotte Russe Holdings Corporation, a Delaware corporation (“Seller Parent”), each of the Subsidiaries of Seller Parent (together with Seller Parent, “Sellers,” and individually a “Seller”) and Mamiye Brothers, Inc., a New Jersey corporation (“Mamiye Brothers”), and Mamiye Brothers IP Holdings LLC, a New York limited liability company (“IP Holdings,” and together with Mamiye Brothers, “Purchaser”). Sellers and Purchaser are sometimes herein referred to collectively as the “Parties” and individually as a “Party.”

### WITNESSETH:

WHEREAS, Sellers and their Subsidiaries conduct the business of owning, distributing and selling clothing and apparel targeting children and babies under the “Peek” trademark or any variation thereof (the “Business”);

WHEREAS, on February 3, 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 hereby 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 February 3, 2019 jointly administered under Case No. 19-10210 (LSS).

“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.

“Charlotte Business” means the business of selling apparel, shoes, beauty and accessories targeting women, including under the trade and brand names “Charlotte Russe,” “Refuge” and derivations thereof.

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

“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.

“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.

“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.

“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 (collectively, “Patents”); (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 (collectively, “Trademarks”); (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 (collectively, “Copyrights”); 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) 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;

(b) 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

(c) 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.

“Purchased Intellectual Property” means all Intellectual Property owned by any Seller and used or held for use by Sellers in the conduct of the Business (excluding, for the avoidance of doubt, any Intellectual Property owned by any Seller and used or held for use by Sellers in the conduct of the Charlotte Business), including but not limited to:

(a) the copyright registrations set forth in Schedule 5.4(a) (the “Transferred Copyrights”);

(b) the internet domain name registrations, web addresses, web pages, websites and related content, and social media accounts set forth in Schedule 5.4(a), including, without limitation, peekkids.com, and the accounts used in connection with the Business on Instagram; Facebook; Pinterest; Google Analytics; and Google Adwords and the associated administrative accounts and passwords (the “Transferred Domain Names”);

(c) the Patents listed on Schedule 5.4(a) (the “Transferred Patents”), including any and all reissues, reexaminations, continuations, continuations in part (only with respect to subject matter disclosed in the Scheduled Patents), divisionals, requests for continuing examinations or continuing prosecution applications, or design registrations associated with any such Transferred Patent;

(d) the Trademarks set forth in Schedule 5.4(a) (the “Transferred Trademarks”), and goodwill associated therewith, including the historical trademark files;

(e) any and all of right, title and interest to the name “Peek” and any derivations thereof (including, but not limited to, “Little Peanuts” and “Peek, Aren’t You Curious”) in any form and all rights and marks associated therewith, together with the underlying goodwill of the business with which they are used, registrations and applications for registrations thereof;

(f) all clothing and product designs, samples, drawings, or diagrams, patterns, forms, tools, product libraries and archives, tech packs, models, assembly procedures, specifications and instructions, cost sheets and line sheets; advertising, promotional and marketing materials; images and photographs, artwork, product concepts and supplier contact information, and Trade Secrets exclusively related to the Business in the possession of any Seller;

(g) all rights of publicity and all similar rights, including all marketing photographs and videos, advertising and promotional copy and commercial merchandising rights, owned or controlled by Sellers, and used or held for use by Sellers exclusively in the conduct of the Business, in each case, to the extent permitted to be assigned by Sellers under any Contract or applicable Law;

(h) all customer data and information derived from customer purchase files and branded loyalty promotion programs and other similar information related to customer purchases, including personal information (such as name, address, telephone number, e-mail address, website,

and any other database information), customer relationship management data and customer purchase history at a transaction level (including dollar amounts, dates, and items purchased, but excluding from the foregoing any credit card numbers or related customer payment source, social security numbers, or other information prohibited by Law), in each case, relating to customers of the Business in retail stores and ecommerce sites operated or controlled by Sellers in the conduct of the Business;

(i) all current or former content displayed on or accessible through websites owned by Seller and used exclusively in connection with the Business, including, but not limited to, images, text, and Sellers' email addresses under the Transferred Domain Names, together with all passwords and administrative information related exclusively thereto;

(j) the right to enforce Purchased Intellectual Property, including claims for infringement thereof, and to represent to third parties that Purchaser is the successor to all rights with respect to the Purchased Intellectual Property;

(k) all originals and copies of all files and assignment documentation pertaining to existence, validity, availability, registrability, infringement, enforcement or ownership of any of the Purchased Intellectual Property and documentation of the development, conception or reduction to practice thereof, in each case, under any Seller's possession or control; provided that Sellers shall be entitled to retain copies thereof for legal record-keeping purposes; and

(l) all other Intellectual Property owned by Sellers, or in which Sellers have any interest or right, and used or held for use by them exclusively in the conduct of the Business.

“Purchaser Assumed Contracts” means, to the extent assignable pursuant to section 365 of the Bankruptcy Code, all Contracts set forth on Schedule 1.1(a) (as may be modified prior to the Closing pursuant to Section 2.5), which Schedule Purchaser shall deliver in writing to Sellers prior the Closing 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(a) at any time and from time to time in accordance with Section 2.5(b).

“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; (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 Dayna Quanbeck, Brian Cashman and Marie Satterfield, after reasonable inquiry of their direct reports.

“Store Closing Sales” means the store closing sales with respect to the Tangible Personal Property at the Stores and the Distribution Centers in accordance with the Store Closing Sales Order.

“Store Closing Sales Order” means that certain Order of the Bankruptcy Court Approving Sale of All or Substantially All of Debtors’ Assets and Granting Related Relief, entered by the Bankruptcy Court as of March 7, 2019 as Docket Number 319.

“Stores” means Sellers’ retail store locations.

“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 Bill of Sale, the Assignment Agreement, the IP Assignment Agreement and all other Contracts and agreements necessary to effectuate the Transactions.

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

“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:

<b>Term</b>	<b>Section</b>
Accounting Referee	Section 3.4
Agreement	Preamble
Asset Acquisition Statement	Section 3.4
Assignment Agreement	Section 4.2(b)
Assumed Liabilities	Section 2.3
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
Business	Recitals
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
Copyright	Section 1.1 (in Intellectual Property definition)
Deposit	Section 3.2(a)
Escrow Agent	Section 3.2(a)
Escrow Agreement	Section 3.2(a)
Excluded Assets	Section 2.2
Excluded Liabilities	Section 2.4
Nonassignable Assets	Section 2.6(c)
Outside Date	Section 4.4(b)
Parties	Preamble
Patents	Section 1.1 (in Intellectual Property definition)
Proposed Allocation	Section 3.4

<b>Term</b>	<b>Section</b>
Purchase Price	Section 3.1
Purchased Assets	Section 2.1
Purchaser	Preamble
Purchaser Documents	Section 6.2
Removed Contract	Section 2.5(b)
Revised Statements	Section 3.4
Seller or Sellers	Preamble
Seller Documents	Section 5.2
Seller Parent	Preamble
Taxable Consideration	Section 3.4
Trademarks	Section 1.1 (in Intellectual Property definition)
Trade Secrets	Section 1.1 (in Intellectual Property definition)
Transfer Taxes	Section 8.10(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 Claims and 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 following assets (such assets, properties, rights and claims to be acquired hereunder, collectively, the "Purchased Assets"):

- (a) the Purchased Intellectual Property;
- (b) 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 Intellectual Property License that is a Purchaser Assumed Contract;
- (c) all Documents that are used in, held for use in or intended to be used in, or that arise primarily out of, the Purchased Assets, including Documents relating to marketing, advertising, promotional materials, Purchased Intellectual Property, and all files, customer files and documents, supplier lists, records, literature and correspondence, but excluding (i) personnel files for employees or independent contractors of the Sellers, (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;
- (d) 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;
- (e) to the extent transferrable after giving effect to the Sale Order, 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); and
- (f) Seller's public-facing customer service phone number relating to Business: 1-(877)-887-7335; and

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

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 all of the assets of the Sellers other than the Purchased Assets, and such Excluded Assets include the following assets:

(a) all property and assets of the Sellers to be sold under the Store Closing Sales Order, including the apparel, shoe and accessory inventory, merchandise, supplies and samples owned by Sellers related to or held for use in the conduct of the Business;

(b) all rights, title and interest of Sellers under all material real property and interests in real property leased by Sellers, together with all improvements, fixtures and other appurtenances thereto and rights in respect thereof;

(c) all equipment, computers, hardware, electronics, file servers, scanners, printers, networks, copiers, cash registers, furniture, furnishings, fixtures, telephone lines, telecopy machines, telecommunication equipment, spare parts, shipping materials, packaging materials and raw materials (the “Tangible Personal Property”) owned by Sellers related to or held for use in the conduct of the Business;

(d) all equity interests in Sellers;

(e) all cash, cash equivalents, bank deposits or similar cash items of Sellers;

(f) 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;

(g) 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;

(h) each of the Contracts which are not designated as Purchaser Assumed Contracts (the “Excluded Contracts”), including any all right, title, interest, actions or claims arising out of or in connection with any Excluded Contract;

(i) 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;

(j) 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;

(k) any rights or recovery under any insurance policies held by any Seller;

(l) all claims, rights or recovery and proceeds arising from In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation, MDL No. 1720 (MKB) (JO);

(m) all rights and claims of Sellers under the Transaction Documents;

(n) all Employee Benefit Plans (and any trusts, 501(c)(9) organizations, insurance (including fiduciary insurance), administrative or other service contracts relating thereto); and

(o) any avoidance actions arising from or related to the Purchased Assets.

**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 solely to the extent such Liabilities arise from events or omissions occurring, or obligations arising, on or after the Closing;

(b) all Liabilities arising out of or relating to Purchaser’s ownership or operation of the Purchased Assets on or after the Closing Date; and

(c) 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;

(c) 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;

(d) all Liabilities for any Taxes of any Seller (other than Transfer Taxes);

(e) 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;

(f) 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;

(g) all Liabilities arising under any Indebtedness of Sellers and any obligations or Liabilities to equity holders of the Sellers;

(h) 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;

(i) 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;

(j) all Liabilities with respect to any customer programs or rights, including merchandise returns, exchanges, credits or refunds;

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

(l) 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. Purchaser shall assume and pay in full on or prior to the Closing Date all Cure Costs with respect

to the Purchaser Assumed Contracts (the “Assumed Cure Costs”) and Sellers shall have no liability for such Assumed Cure Costs.

(b) Removed Contracts. Purchaser may elect to remove any Contract(s) (each, a “Removed Contract”) from the list of Purchaser Assumed Contracts by giving written notice thereof to Sellers prior to the Closing. 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.

Section 2.6 Further Conveyances and Assumptions.

(a) 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.

(b) 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.

(c) 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.

### 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) Following the execution of this Agreement and within twenty-four (24) hours of receipt of written instruction from Sellers, Purchaser shall deposit with PNC Bank, as escrow agent (the “Escrow Agent”), pursuant to that certain Escrow Agreement among Seller Parent, Mamiye Brothers and the Escrow Agent (the “Escrow Agreement”), by certified check or wire transfer of immediately available funds, an amount equal to \$42,500 (the “Deposit”).

(b) The Parties agree that the Deposit shall (i) be applied as a deposit towards the Closing Date Payment and delivered to Seller 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 directly attributable to the Deposit) 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(g) 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 directly attributable to the Deposit) in the event that this Agreement is properly terminated by Sellers (A) pursuant to Section 4.4(g) 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 \$425,000; *minus*

(ii) an amount equal to the Deposit (with any accrued interest actually earned thereon and less the Escrow Agent's fees and expenses directly attributable to the Deposit).

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

(c) At the Closing, Seller Parent and Purchaser shall jointly instruct the Escrow Agent to transfer to Seller 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 Seller 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"), solely for purposes of preparing the relevant Tax Returns and filings. 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 Seller 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 7.1, Section 9.1, Section 9.2 and Section 9.3 (or the waiver thereof by the Party entitled to waive that condition), the closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities provided for in Article II (the “Closing”) 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 two (2) Business Days following the satisfaction or waiver of the conditions set forth in Article IX (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions); provided, however, that the Closing shall take place no later than March 29, 2019, 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 A hereto (the “Bill of Sale”);
- (b) a duly executed assignment and assumption agreement in the form attached as Exhibit B hereto (the “Assignment and Assumption Agreement”) and duly executed assignments reflecting the assumption of the Assumed Liabilities;
- (c) a duly executed assignment and assumption agreement in the form attached as Exhibit C hereto (the “IP 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;
- (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; and
- (f) a certificate signed by an authorized officer of each Seller (in form and substance reasonably satisfactory to Purchaser) pursuant to Sections 9.1(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 and Assumption Agreement

(c) a duly executed copy of the IP Assignment Agreement; and

(d) a certificate signed by an authorized officer of Purchaser (in form and substance reasonably satisfactory to Sellers) pursuant to Section 9.2(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 March 29, 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, subject to Section 7.1, 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; provided, however, Sellers may not terminate this Agreement pursuant to this Section 4.4(c) if Sellers are in breach in material respect of its obligations under Section 7.1;

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

(f) 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 9.1(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

(g) 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 9.2(a) or Section 9.2(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 XI of this Agreement shall survive any such termination and shall be enforceable hereunder.

(b) 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(g) as a result of a material breach by Purchaser, Sellers shall be entitled to retain the Deposit as provided in Section 11.2(a)(ii).

**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) 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, and (iii) other immaterial consents, waivers, approvals, Orders, Permits, authorizations, declarations, filings and notifications.

Section 5.4 Intellectual Property.

(a) Schedule 5.4(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 including:

(i) all registered and applied for Trademarks held by, owned or purported to be owned by Sellers and used or held for use in the Business, including for each the applicable trademark or service mark, application numbers, filing dates, trademark registration numbers and registration dates, as applicable;

(ii) all registered and applied for Copyrights held by, owned or purported to be owned by Sellers and used or held for use in the Business, including title, registration number and registration date;

(iii) issued and applications for patents held by, owned or purported to be owned by Sellers and used or held for use in the Business, including name, patent number and issuance date; and

(iv) internet domain name registrations, web addresses, web pages, websites and related content, and social media accounts held by, owned or purported to be owned by Sellers and used or held for use in the Business.

(b) Schedule 5.4(b) sets forth a true and complete list of all material written Intellectual Property Licenses used or held for use in the Business.

(c) Except as set forth on Schedule 5.4(c):

(i) A Seller or one of its Subsidiaries owns all Intellectual Property listed on Schedule 5.4(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) There are no Actions or Legal Proceedings, pending or to Sellers' Knowledge, 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 connection with the operation of the Business, in each case, except as would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

(iv) 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 5.5 Litigation. Except (a) as set forth on Schedule 5.5, (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 5.6 Financial Advisors. Except as set forth on Schedule 5.6, 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 5.7 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. Mamiye Brothers is a New Jersey corporation and IP Holdings is a New York limited liability company, each duly organized, validly existing, in good standing and duly qualified to transact business under their respective laws of organization and, each 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 action on behalf of Mamiye Brothers and all necessary limited liability company action on behalf of IP Holdings. 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 of IP Holdings, the certificate of incorporation of Mamiye Brothers and operating agreement or comparable organizational documents of Purchaser, as applicable, (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.

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 8.8), 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, the fiduciary duties of the Sellers 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”). Purchaser acknowledges and agrees that subject to the limitations set forth in this Section 7.1, Sellers shall have the responsibility and obligation to respond to any unsolicited 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 such 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 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 directly or indirectly solicit, initiate or encourage the submission of any offer or proposal concerning any Competing Bid; provided, that, in the event a third party makes a bona fide offer that constitutes a Competing Bid that the Sellers, in accordance with their fiduciary duties, reasonably determine would, if consummated in accordance with its terms, constitute a superior proposal relative to the transactions contemplated hereby, then the Sellers shall be permitted to participate in discussions or negotiations regarding, and furnish to the Person making such Competing Bid and their respective representatives information with respect to, and may take such other action to facilitate the entry into a definitive agreement with respect to, such Competing Bid; *provided, however*, if Sellers determine that any Competing Bid is superior to this Agreement, Sellers shall promptly after such determination disclose the terms thereof to Purchaser.

(d) Following the date of the approval of the Sale Order 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, (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, or (iii) enter into any agreement with respect to any Competing Bid.

## ARTICLE VIII

### COVENANTS

#### Section 8.1 Access to Information.

(a) Sellers agree that, prior to the first to occur of the Closing and the termination of this Agreement in accordance with its terms, Purchaser shall be entitled, through its officers, employees and Representatives, to (a) make such reasonable investigation of the properties, businesses and operations of the Business and (b) make reasonable 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.

(b) So long as the Bankruptcy Cases are pending, following the Closing, Purchaser shall provide Sellers and Sellers' counsel and other professionals employed in the Bankruptcy Cases with reasonable access to all documents relating to the Purchased Assets for the purpose of the continuing administration of the Bankruptcy Cases (including the pursuit of any avoidance, preference or similar actions), which access shall include (i) the right of Sellers' professionals to copy, at Sellers' expense, such documents and records as Sellers or Sellers' may request in furtherance of the purposes described above, and (ii) Purchaser's copying and delivering to Sellers or Sellers' professionals such documents or records as Sellers or Sellers' professionals may request, but only to the extent Sellers or Sellers' professionals furnish Purchaser with reasonably detailed written descriptions of the materials to be so copied and Sellers reimburse Purchaser for the reasonable and documented out-of-pocket costs and expenses in providing such information.

Section 8.2 Conduct of the Business Pending the Closing.

(a) During the period following the date hereof and until the first to occur of the Closing and the termination of this Agreement in accordance with its terms, except (1) as set forth on Schedule 8.2(a), (2) as required by Applicable Law or Order of the Bankruptcy Court, (3) as otherwise contemplated by this Agreement, or (4) with the prior written consent of Purchaser (which consent shall not be unreasonably withheld or delayed), Sellers shall:

(i) defend and protect the properties and assets included in the Purchased Assets from infringement or usurpation;

(ii) maintain the Books and Records in accordance with past practice;  
and

(iii) comply in all material respects with all Laws applicable to the ownership and use of the Purchased Assets.

(b) During the period following the date hereof and until the first to occur of the Closing and the termination of this Agreement in accordance with its terms, 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, or (4) 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) 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, which licenses shall expire no later than Closing;

(ii) 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;

(iii) shut down, discontinue or render inoperable the email platform, IP address or the e-commerce platform related to the Business;

(iv) 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, and (B) following the expiration of Purchaser's right to designate Purchaser Assumed Contracts, any Purchaser Assumed Contract; or

(v) 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 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, 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) 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 Seller Parent and Purchaser, dated as of the date hereof (the "Confidentiality Agreement"), the terms of which are incorporated herein by reference. 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 successor litigation trusts therefor and Sellers or their successor litigation trusts 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 Supplements to Schedules.** Sellers may in response to any changes or updates to Schedule 1.1(a) by Purchaser, supplement or amend the Schedules provided pursuant to Sections 5.3(b), and 5.4(b). 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 8.8 shall be deemed to be a reference to such Schedule as supplemented or amended.

**Section 8.9 Further Assurances.**

(a) 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.

(b) Effective upon the Closing and subject to the terms and conditions set forth in the Sales Order and the Store Closing Order, the Purchaser shall grant, and does hereby grant to the Sellers and any agents engaged by or on behalf of the Sellers with respect to the Store Closing Sales Order, a royalty free license of the Intellectual Property included in the Purchased Intellectual Property for the purposes of selling the Excluded Assets in the Store Closing Sales in accordance with the Store Closing Sales Order; provided that such license shall be deemed to expire no later than 6 months after Closing.

Section 8.10 Tax Matters.

(a) 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.

(b) 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.

**ARTICLE IX**

**CONDITIONS TO CLOSING**

Section 9.1 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 9.1(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; and

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

Section 9.2 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 9.2(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(a) 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 9.3 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 the Party for whose benefit the condition was made 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; and

(b) 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.

Section 9.4 Frustration of Closing Conditions. Neither Sellers nor Purchaser may rely on the failure of any condition set forth in Section 9.1, Section 9.2 or Section 9.3, as the case may be, if such failure was caused by such Party's failure to comply with any provision of this Agreement.

## ARTICLE X

### LIMITATIONS

#### Section 10.1 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 10.2 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 XI

### MISCELLANEOUS

Section 11.1 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 11.2 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 receive the return of 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(g), 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 the retention or delivery of the Deposit as provided in Section 3.2(b) and in the Escrow Agreement.

Section 11.3 Expenses. Except as otherwise set forth in this Agreement, 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.

Section 11.4 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 11.5 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 11.10; 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 11.10; provided, however, that such service shall not be effective until the actual receipt thereof by the Party being served.

Section 11.6 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 11.6.

Section 11.7 Authorization of Seller Parent as Representative of Sellers.

(a) By entering into and executing this Agreement, Sellers irrevocably make, constitute and appoint Seller Parent as their agent, effective as of the date hereof, and authorize and empower Seller Parent to fulfill the role of Sellers' representative hereunder, and each Seller appoints Seller 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 Seller 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 Seller Parent for the accomplishment of the foregoing. The dissolution, liquidation, insolvency or bankruptcy of any Seller shall not terminate the authority and agency of Seller Parent as each Seller's representative pursuant to this Section 11.7. The power of attorney granted in this Section 11.7 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 Seller 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 Seller Parent.

Section 11.8 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 11.9 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 11.10 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 11.11 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 11.10):

If to Sellers:

Charlotte Russe Holdings Corporation  
5910 Pacific Center Boulevard, Suite 120  
San Diego, CA 92121  
E-mail: Heather.Weinmann@charlotterusse.com  
Attention: Heather Weinmann, Controller

With a copy to:

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

If to Purchaser:

Mamiye Brothers, Inc.,  
1385 Broadway, 18th Floor  
New York, NY 10018  
E-mail: chuck@mambro.com  
gitta.kaplan@mambro.com  
Attention: Chuck M. Mamiye  
Gitta Kaplan

With a copy to:

Dorsey & Whitney LLP  
51 West 52nd Street  
New York, NY 10019-6119  
E-mail: weiss.janet@dorsey.com  
Attention: Janet M. Weiss

Section 11.12 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 11.13 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 (other than in accordance with Section 3.3).

Section 11.14 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 11.3. 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 11.15 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.

*[The Remainder of This Page Is Intentionally Left Blank.]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**PURCHASER:**

**MAMIYE BROTHERS, INC.**

By:   
\_\_\_\_\_  
Name: Charles M Mamiye  
Title: CEO

**MAMIYE BROTHERS IP HOLDINGS LLC**

By:   
\_\_\_\_\_  
Name: Charles M Mamiye  
Title: CEO

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

**SELLERS:**

**CHARLOTTE RUSSE HOLDINGS CORPORATION**

By:   
Name: **DAYNA QUANBECK**  
Title: **CEO**

**CHARLOTTE RUSSE HOLDING, INC.**

By:   
Name: **DAYNA QUANBECK**  
Title: **CEO**

**CHARLOTTE RUSSE INTERMEDIATE CORPORATION**

By:   
Name: **DAYNA QUANBECK**  
Title: **CEO**

**CHARLOTTE RUSSE ENTERPRISE, INC.**

By:   
Name: **DAYNA QUANBECK**  
Title: **CEO**

**CHARLOTTE RUSSE, INC.**

By:   
Name: **DAYNA QUANBECK**  
Title: **CEO**

**CHARLOTTE RUSSE MERCHANDISING, INC.**

By:   
Name: **DAYNA QUANBECK**  
Title: **CEO**

**CHARLOTTE RUSSE ADMINISTRATION, INC.**

By:   
Name: **DAYNA QUANBECK**  
Title: **CEO**

Schedule 1.1(a)

Purchaser Assumed Contracts

Magento, Inc. Peek Platform Enterprise Edition End User License Agreement;  
cure amount: \$0.00

Schedule 5.3(a)

No Violation

Second Amended and Restated Credit Agreement, dated as of May 22, 2013 by and among Charlotte Russe Holding, Inc., Charlotte Russe, Inc., as borrower, Charlotte Russe Merchandising, Inc. and Charlotte Russe Administration, Inc., as guarantors, Bank of America, N.A., as agent, and the lenders party thereto

Amended and Restated Credit Agreement dated as of May 22, 2013, which was amended and restated effective February 2, 2018 by and among by and among Charlotte Russe Holding, Inc., Charlotte Russe, Inc., as borrower, Charlotte Russe Merchandising, Inc. and Charlotte Russe Administration, Inc., as guarantors, and Jefferies Finance LLC as lead arranger, administrative agent, and collateral agent, and the lenders party thereto

Schedule 5.3(b)

Consents

None.

## Schedule 5.4(a)

## Intellectual Property Registrations

Country	Trademark	Appl. No.	Reg. No.	Goods
United States	LITTLE PEANUT	77516379	3630079	Children's clothing, namely, shirts, t-shirts, tops, woven shirts, knit tops, sweaters, skirts, jeans, blouses, dresses, jumpsuits, underwear, sleepwear, sweat shirts, sweat suits, sweat pants, socks, shorts, bathing suits, beachwear, jackets, coats.
United States	PEEK	86185372	5329940	Class 14: Watches; jewelry, namely, bracelets, charms, necklaces. Class 18: Tote bags. Class 26: Hair accessories, namely, hair bands, hair bows, hair ornaments, hair pins, hair ribbons, hair claw clips, and hair barrettes.
United States	PEEK	86185072	4951843	Class 25: Clothing and accessories for women, infants and children, namely, bathing suits, beachwear, baby bibs not of paper, bandanas, bloomers, blouses, bonnets, caps, coats, separates, namely, t-shirts, button-up shirts, pullovers, crew neck sweaters and sweat shirts, pants, corduroys, shorts, skirts, jumpers, rompers, tank tops, thermals in the nature of thermal underwear, leggings, skirts with built-in undershorts, polo shirts, dress pants, jackets, blazers, wraps, shawls, ponchos, tights, dresses, hats, knit tops, jeans, jumpsuits, leotards, loungewear, mittens, gloves, overalls, sport coats, suits, rain jackets, robes, scarves, shirts, ski jackets, ski pants, turtlenecks, sleepwear, smocks, snow suits, socks, sweaters, sweatpants, sweatshirts, tops, underwear, waist belts, woven shirts; footwear for infants and children, namely, athletic shoes, booties, boots, sandals, shoes, slippers, sneakers.

United States	PEEK	77764277	3868335	<p>Class 25: Children's clothing, namely, shirts, t-shirts, tops, woven shirts, knit tops, sweaters, sweatpants, sweat suits, jeans, blouses, dresses, jumpsuits, underwear, sleepwear, sweatshirts, socks, shorts, bathing suits, beachwear, sweaters, rain jacket, ski jacket, coats.</p> <p>Class 35: Mail order catalog services featuring children's apparel, namely, shirts, t-shirts, tops, woven shirts, knit tops, sweaters, sweatpants, sweat suits, jeans, blouses, dresses, jumpsuits, underwear, sleepwear, sweatshirts, socks, shorts, bathing suits, beachwear, sweaters, rain jacket, ski jacket, coats, books and accessories therefor; on-line retail store services featuring children's apparel, namely, shirts, t-shirts, tops, woven shirts, knit tops, sweaters, sweatpants, sweat suits, jeans, blouses, dresses, jumpsuits, underwear, sleepwear, sweatshirts, socks, shorts, bathing suits, beachwear, sweaters, rain jacket, ski jacket, coats, books and accessories.</p>
United States	PEEK... Stylized	86185080	4960686	<p>Class 25: Clothing and accessories for women, infants and children, namely, bathing suits, beachwear, baby bibs not of paper, bandanas, bloomers, blouses, bonnets, caps, coats, separates, namely, t-shirts, button-up shirts, pullovers, crew neck sweaters and sweat shirts, pants, corduroys, shorts, skirts, jumpers, rompers, tank tops, thermals in the nature of thermal underwear, leggings, skirts with built-in undershorts, polo shirts, dress pants, jackets, blazers, wraps, shawls, ponchos, tights, dresses, hats, knit tops, jeans, jumpsuits, leotards, loungewear, mittens, gloves, overalls, sport coats, suits, rain jackets, robes, scarves, shirts, ski jackets, ski pants, turtlenecks, sleepwear, smocks, snow suits, socks, sweaters, sweatpants, sweatshirts, tops, underwear, waist belts, woven shirts; footwear for infants and children, namely, athletic shoes, booties, boots, sandals, shoes, slippers, sneakers.</p>

United States	PEEK...AREN'T YOU CURIOUS	77687923	3717923	Class 25: Children's clothing, namely, shirts, t-shirts, tops, woven shirts, knit tops, sweaters, sweatpants, sweat suits, jeans, blouses, dresses, jumpsuits, underwear, sleepwear, sweatshirts, socks, shorts, bathing suits, beachwear, sweaters, rain jacket, ski jacket, jackets, coats.
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#### CUSTOMS TRADEMARK RECORDATION

Trademark	Appl. No.	Reg. No.	Goods
PEEK	86185072	4951843	Class 25: Clothing and accessories for women, infants and children, namely, bathing suits, beachwear, baby bibs not of paper, bandanas, bloomers, blouses, bonnets, caps, coats, separates, namely, t-shirts, button-up shirts, pullovers, crew neck sweaters and sweat shirts, pants, corduroys, shorts, skirts, jumpers, rompers, tank tops, thermals in the nature of thermal underwear, leggings, skirts with built-in undershorts, polo shirts, dress pants, jackets, blazers, wraps, shawls, ponchos, tights, dresses, hats, knit tops, jeans, jumpsuits, leotards, loungewear, mittens, gloves, overalls, sport coats, suits, rain jackets, robes, scarves, shirts, ski jackets, ski pants, turtlenecks, sleepwear, smocks, snow suits, socks, sweaters, sweatpants, sweatshirts, tops, underwear, waist belts, woven shirts; footwear for infants and children, namely, athletic shoes, booties, boots, sandals, shoes, slippers, sneakers.

#### DOMAIN NAMES

DOMAIN	WEB HOSTING
<b>mypeekkid.com</b>	Shared Hosting with PHP 5.6 <a href="#">(User: mypeekkid)</a>
<b>peekarentyoucurious.com</b>	redirect : <a href="http://peekkids.com/">http://peekkids.com/</a>
<b>aboutus.peekarentyoucurious.com</b>	redirect : <a href="http://peekkids.com/">http://peekkids.com/</a>
<b>blog.peekarentyoucurious.com</b>	redirect : <a href="http://blog.peekkids.com/">http://blog.peekkids.com/</a>
<b>corporate.peekarentyoucurious.com</b>	Shared Hosting with PHP 5.6 <a href="#">(User: oneclicks 184766)</a>
<b>photos.peekarentyoucurious.com</b>	Shared Hosting with PHP 5.6 <a href="#">(User: peek_eoaks)</a>

<b>private.peekarentyoucurious.com</b>	Shared Hosting with PHP 5.6 <a href="#">(User: benjaminpeek)</a>
<b>products.peekarentyoucurious.com</b>	Shared Hosting with PHP 5.6 <a href="#">(User: benjaminpeek)</a>
<b>svn.peekarentyoucurious.com</b>	Shared Hosting with PHP 5.6 <a href="#">(User: benjaminpeek)</a>
<b>trac.peekarentyoucurious.com</b>	Shared Hosting with PHP 5.6 <a href="#">(User: benjaminpeek)</a>
<b>wiki.peekarentyoucurious.com</b>	redirect : <a href="http://peekkids.com/">http://peekkids.com/</a>
<b>peekchildren.com</b>	redirect : <a href="http://peekkids.com/">http://peekkids.com/</a>
<b>peekclothes.com</b>	redirect : <a href="http://peekkids.com/">http://peekkids.com/</a>
<b>peekcurious.com</b>	redirect : <a href="http://peekkids.com/">http://peekkids.com/</a>
<b>peekforkids.com</b>	redirect : <a href="http://peekkids.com/">http://peekkids.com/</a>
<b>peekinc.com</b>	redirect : <a href="http://peekkids.com/">http://peekkids.com/</a>
<b>peekkids.co.nz</b>	redirect : <a href="http://peekkids.com/">http://peekkids.com/</a>
<b>peekkids.co.uk</b>	redirect : <a href="http://peekkids.com/">http://peekkids.com/</a>
<b>peekkids.com</b>	DNS Only
<b>ads.peekkids.com</b>	Shared Hosting with PHP 5.6 <a href="#">(User: benjaminpeek)</a>
<b>blog.peekkids.com</b>	Shared Hosting with PHP 5.6 <a href="#">(User: benjaminpeek)</a>
<b>webmail.peekkids.com</b>	redirect : <a href="https://peekkids.zmailcloud.com">https://peekkids.zmailcloud.com</a>
<b>peekkids.eu</b>	redirect : <a href="http://peekkids.com/">http://peekkids.com/</a>
<b>peekkids.jp</b>	redirect : <a href="http://peekkids.com/">http://peekkids.com/</a>
<b>peekkids.net</b>	redirect : <a href="http://peekkids.com/">http://peekkids.com/</a>
<b>peekkids.org</b>	redirect : <a href="http://peekkids.com/">http://peekkids.com/</a>

Schedule 5.4(b)

Intellectual Property Licenses

None.

Schedule 5.4(c)

Intellectual Property

None.

Schedule 5.6

Litigation

None.

Schedule 5.6

Sellers' Financial Advisors

Berkeley Research Group LLC

Guggenheim Securities, LLC

Malfitano Advisors, LLC

Schedule 6.7

Purchaser's Financial Advisors

None.

Schedule 8.2(a)

Conduct of Business Pending Closing

None.

Schedule 8.2(b)

Conduct of Business Pending Closing

None.

# **Exhibit B**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re

Charlotte Russe Holding, Inc., *et al.*,<sup>1</sup>  
Debtors.

Chapter 11

Case No.: 19-10210 (LSS)

(Jointly Administered)

**DECLARATION OF STUART E. ERICKSON IN SUPPORT OF  
SUPPLEMENTAL MOTION OF THE DEBTORS FOR ENTRY OF AN  
ORDER (I) AUTHORIZING THE SALE OF CERTAIN INTELLECTUAL  
PROPERTY AND RELATED ASSETS FREE AND CLEAR OF ALL LIENS,  
CLAIMS, INTERESTS, AND ENCUMBRANCES, (II) AUTHORIZING THE SELLERS  
TO ASSUME AND ASSIGN CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED  
LEASES, AND (III) GRANTING OTHER RELATED RELIEF**

I, Stuart E. Erickson, hereby declare as follows:

1. I am a Senior Managing Director at Guggenheim Securities, LLC (“Guggenheim Securities”), an investment banking and financial advisory firm with principal offices located at 330 Madison Avenue, New York, New York 10017, as well as at other locations worldwide.

2. I submit this Declaration in support of the *Supplemental Motion of the Debtors for Entry of An Order (I) Authorizing the Sale Of Certain Intellectual Property And Related Assets Free And Clear Of All Liens, Claims, Interests And Encumbrances, (II) Authorizing the Sellers To Assume And Assign Certain Executory Contracts, And (III) Granting Other Related Relief* (the “Supplemental Sale Motion”).<sup>2</sup>

<sup>1</sup> 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.

<sup>2</sup> Capitalized terms used but not defined herein have the meanings given to such terms in the Supplemental Sale Motion.

3. In particular, I submit this Declaration in support of my view that, for the reasons specified herein, the consummation of the Sale (as defined below) on the timeline proposed in the Supplemental Sale Motion is reasonable and appropriate under the circumstances.

4. The statements in this declaration are, except as otherwise indicated, based on my personal knowledge or views, on information that I have obtained from the Debtors and their other advisors, the Debtors' books and records and other relevant documents, and employees of Guggenheim Securities working directly with me or under my supervision. I am not being specifically compensated for this testimony other than through payments to be received by Guggenheim Securities as a professional retained by the Debtors pursuant to the *Order, Pursuant to 11 U.S.C. §§ 327(a) and 328(a), Bankruptcy Rules 2014 and 2016, and Local Rules 2014-1 and 2016(h), (I) Authorizing the Retention and Employment of Guggenheim Securities, LLC as Investment Banker for the Debtors and Debtors in Possession, Nunc Pro Tunc to the Petition Date, (II) Waiving Certain Information Requirements of Local Rule 2016-2(d), And (III) Granting Related Relief* (D.I. 310).

#### **Background and Qualifications**

5. Guggenheim Securities, a subsidiary of Guggenheim Partners, LLC, is a full-service investment banking firm providing financial advisory services, including with respect to mergers and acquisitions, capital raising, and restructuring advice, across a broad range of industries. Guggenheim Securities and its senior professionals have extensive experience with respect to the reorganization and restructuring of distressed companies, both out-of-court and in chapter 11 proceedings.

6. I have experience handling complex financial and other restructuring matters for a variety of companies (distressed or otherwise, both in- and out-of-court), across a wide spectrum of industries. My areas of expertise include, among other things, advising on financial

restructuring strategies and advising companies and other key stakeholders with respect to sale processes both out-of-court and in connection with chapter 11 processes. I have more than 20 years of restructuring-related investment banking experience across a wide range of transactions.

7. I have been employed at Guggenheim Securities since February 2016. Prior to joining Guggenheim Securities, I was a Managing Director at Miller Buckfire & Co. for ten years. Prior to joining Miller Buckfire & Co., I was a Vice President in the financial restructuring group at Dresdner Kleinwort Wasserstein and its predecessor, Wasserstein Perella. Prior to joining Wasserstein Perella, I worked at Houlihan Lokey Howard & Zukin. I graduated with an MS in Finance from the London School of Economics and a B.S.B.A from Georgetown University.

#### **Guggenheim Securities' Retention**

8. Guggenheim Securities was engaged by the Debtors in December 2018 to act as the Debtors' investment banker in connection with a going-concern sale transaction of the Debtors' business. Since being engaged, Guggenheim Securities has provided financial advisory and investment banking services to the Debtors in connection with the Debtors' evaluation of various strategic alternatives for refinancing or otherwise restructuring their debt obligations and improving their liquidity and overall financial condition. Additionally, Guggenheim Securities has worked closely with the Debtors' management and other professionals retained by the Debtors with respect to the Debtors' restructuring efforts and has become well-acquainted with the Debtors' capital structure, liquidity needs, and business operations.

#### **The Prepetition Sale Process**

9. As set forth in the *Declaration of Brian M. Cashman, Chief Restructuring Officer of Charlotte Russe, Inc., In Support of Debtors' Chapter 11 Petitions and First Day Motions* (the "First Day Declaration") (D.I. 3), the Debtors commenced these chapter 11 cases in order to

consummate the sale of their assets pursuant to an expedited timeline designed to maximize value and forestall any potential diminution in the value of their assets and the unnecessary incurrence of administrative expenses.

10. I understand that the Debtors' postpetition sale process is the culmination of a multi-year effort by the Debtors to restructure their balance sheet and recapitalize their operations. As more fully set forth in the First Day Declaration, I understand that the Debtors have been exploring possible strategic alternatives since 2017. These efforts led to the consummation of the Out-of-Court Restructuring (as defined in the First Day Declaration) in February 2018. Despite these efforts, as set forth in the First Day Declaration, the Debtors' poor business performance continued, and the Debtors determined that the sale of substantially all of their assets in a chapter 11 proceeding represented the best method for maximizing value and potentially maintaining the Debtors' business as a going concern.

11. Accordingly, in and around December 2018 and January 2019, the Debtors' management team began to actively explore a potential sale of the Debtors' business. The Debtors (with the assistance of Guggenheim Securities) began testing the market for potential purchasers of substantially all of the Assets (as defined in the Sale Motion (defined below)) on a going-concern basis. In so doing, the Debtors (with the assistance of Guggenheim Securities) cast a wide net in soliciting interest from potential purchasers. More than 25 potential buyers signed non-disclosure agreements and conducted various degrees of due diligence in order to evaluate of a potential acquisition of a material portion of the Debtors' business operations. In addition, an electronic data room was made available for potential bona fide bidders. As set forth in the Supplemental Sale Motion, despite some interest, no party submitted a proposal that the Debtors deemed viable for a going-concern sale transaction prior to the Petition Date.

### **The Postpetition Auction and Sale Process**

12. On the Petition Date, the Debtors filed the *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 Sale* (the "Sale Motion") [Docket No. 17].

13. The Debtors (with the assistance of their advisors) continued to market their assets for sale after the Petition Date. In accordance with the milestones set forth in the Debtors' DIP facility, Guggenheim Securities (on behalf of the Debtors) alerted all interested bidders that the Debtors were required to select a stalking horse bidder for either a going-concern sale or full-chain liquidation by no later than February 17, 2019.

14. As set forth in the Supplemental Sale Motion, after review and analysis of all bids received, the Debtors determined, in consultation with their advisors, their secured lenders, and the Committee, that a contractual joint venture comprised of Gordon Brothers Retail Partners, LLC and Hilco Merchant Resources, LLC (the "Stalking Horse Bidder") had submitted the highest or otherwise best offer to acquire substantially all of the Assets (as defined in the Sale Motion). Promptly thereafter, the Debtors (with the assistance of their advisors) and the Stalking Horse Bidder commenced negotiations surrounding the terms of an asset purchase agreement (the "Stalking Horse Agreement"). On February 17, 2019, after robust negotiations, the Debtors and the Stalking Horse Bidder entered into the Stalking Horse Agreement, which contemplated the sale of certain assets to the Stalking Horse Bidder, subject to any higher or better offers received at the Auction (as defined below).

15. As set forth in the Supplemental Sale Motion, on February 21, 2019, the Court entered an order approving bidding procedures (the “Bidding Procedures”), establishing a bid deadline (the “Bid Deadline”), and scheduling an auction (the “Auction”) in the event that the Debtors received multiple Qualified Bids (as defined in the Bidding Procedures) prior to the Bid Deadline.

16. The Debtors (with the assistance of their advisors) continued to market their assets for sale in the weeks leading up to the Bid Deadline, which was set to occur on March 3, 2019. In furtherance of these efforts, the Debtors provided additional due diligence materials to bidders and conducted management meetings with multiple parties interested in acquiring all or a portion of the Debtors’ assets. In accordance with the timeline established by the Bidding Procedures, Guggenheim Securities (on behalf of the Debtors) alerted all interested bidders that Qualified Bids for the Debtors’ assets were required to be submitted no later than March 3, 2019.

17. In addition to the bid submitted by the Stalking Horse Bidder, two nationally recognized inventory liquidators submitted bids to conduct inventory liquidation sales at the Debtors’ store locations and distribution center. On or prior to the Bid Deadline, the Debtors received several other bids and indications of interest with respect to their intellectual property and lease designation rights. As set forth in the Supplemental Sale Motion, after consultation with the Consultation Parties (as defined in the Bidding Procedures), the Debtors determined that this proposal was (i) not a Qualified Bid; (ii) not actionable; or (iii) did not deliver sufficient value to the Debtors’ estates.

18. The Debtors conducted the Auction on March 5, 2019. As set forth in the Supplemental Sale Motion, at the conclusion of the Auction, the Debtors (in consultation with the Consultation Parties) determined that the bid submitted by SB360 Capital Partners, LLC

(“SB360”) was the Successful Bid (as defined in the Bidding Procedures). As further set forth in the Supplemental Sale Motion, on March 7, 2019, the Court entered an order granting the Sale Motion and approving the Successful Bid as the highest and best bid for the Debtors’ inventory and related assets pursuant to the terms of that certain Agency Agreement, dated as of March 6, 2019, between the Debtors and SB360 (the “Agency Agreement”). I understand that going-out-of-business sales commenced at all of the Debtors’ store locations on March 7, 2019.

19. During breaks of the Auction, the Debtors, in consultation with the Consultation Parties, continued to work diligently with the Purchaser to formulate an acceptable offer for the Debtors’ Peek-related intellectual property and other assets related to the Peek brand. As set forth in the Supplemental Sale Motion, as a result of those efforts, the Debtors and the Purchaser reached an agreement in principle on the primary terms of a sale the Purchased Assets, and the parties subsequently memorialized this agreement in the Purchase Agreement.

**Consummating the Purchase Agreement**

20. As set forth in the Supplemental Sale Motion, in order for the Purchaser to complete production of Peek-branded goods in time for the winter selling season, I understand that the Purchaser is looking to take ownership of the Peek brand, and related proprietary designs, and begin forming relationships with the necessary vendors as soon as possible and that the Purchase Agreement requires a closing date no later than March 29, 2019. In fact, the purchase price offered by the Purchaser is intended to encourage an expeditious closing and is in excess of any other offer to purchase these same assets received to date.

21. Importantly, as set forth in the Supplemental Sale Motion, I understand that the Purchase Agreement permits the Debtors to consider any higher and better bids received for the Purchased Assets prior to the Sale Hearing.

22. Based on my experience, I believe that under these circumstances, and given the significant prepetition and postpetition marketing processes that have been performed to date, the consummation of the Sale on the timeline proposed in the Supplemental Sale Motion is reasonable and appropriate under the circumstances.

*[Remainder of Page Intentionally Left Blank]*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

New York, New York  
March 18, 2019

*/s/ Stuart E. Erickson*  
\_\_\_\_\_  
Stuart E. Erickson  
Senior Managing Director  
Guggenheim Securities, LLC  
*Investment Banker to the Debtors*