

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

PEEKAY ACQUISITION, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 17-11722 (BLS)

(Joint Administration Requested)

MOTION OF DEBTORS FOR ENTRY OF ORDERS: (A)(I) APPROVING BID PROCEDURES RELATING TO THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (II) SCHEDULING A HEARING TO CONSIDER THE SALE, (III) APPROVING THE FORM AND MANNER OF NOTICE OF SALE BY AUCTION, (IV) ESTABLISHING NOTICE AND CONTRACT PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND LEASES, AND (V) GRANTING RELATED RELIEF; AND (B)(I) APPROVING ASSET PURCHASE AGREEMENT AND AUTHORIZING THE SALE OF CERTAIN ASSETS OF THE DEBTORS OUTSIDE THE ORDINARY COURSE OF BUSINESS, (II) AUTHORIZING THE SALE OF ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS, (III) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF

The above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), by and through their undersigned proposed counsel, hereby file this motion (the "Motion") pursuant to sections 105(a), 363, 365, 503 and 507 of title 11 of the United States Code (as amended or modified, the "Bankruptcy Code"); rules 2002, 6003, 6004, 6006, 9007 and 9008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"); and rule 6004-1 of the Local Rules (the "Local Rules") of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), for entry of two orders: (a) the first order,

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are: Peekay, Inc. (3429); Peekay Boutiques, Inc. (7972); Christals Acquisition, LLC (0391); Peekay Acquisition, LLC (0923); Peekay SPA, LLC (2765); Conrev, Inc. (2441); Condom Revolution, Inc. (6019); Charter Smith Sanhueza Retail, Inc. (8963); ZJ Gifts F-2, L.L.C. (3565); ZJ Gifts F-3, L.L.C. (3562); ZJ Gifts F-4, L.L.C. (8006); ZJ Gifts F-5, L.L.C. (7062); ZJ Gifts F-6, L.L.C. (4381); ZJ Gifts I-1, L.L.C. (5099); ZJ Gifts M-3, L.L.C. (8925); ZJ Gifts M-1, L.L.C. (7202); and ZJ Gifts M-2, L.L.C. (6643). The Debtors' corporate headquarters and mailing address is 901 West Main Street, Suite A, Auburn, WA 98001.

substantially in the form attached hereto as Exhibit A (the “Bid Procedures Order”) (i) approving the procedures (the “Bid Procedures”) ² in connection with the solicitation and acceptance of higher and better bids, as set forth in the asset purchase agreement (the “Stalking Horse APA”) ³ by and among the Debtors and TLA Acquisition Corp. (the “Stalking Horse Bidder”) with respect to the proposed sale (the “Sale”) of substantially all of the Debtors’ assets (as defined in the Stalking Horse APA, the “Acquired Assets”), (ii) scheduling a hearing for approval of the Sale (the “Sale Hearing”) and setting objection deadlines with respect to the Sale, (iii) approving the form and manner of notice (the “Sale Notice”) ⁴ of the Sale and related auction (the “Auction”) for the Acquired Assets, (iv) establishing procedures to determine cure amounts and deadlines for objections to the potential assumption and assignment of executory contracts and unexpired leases, and (v) granting related relief; and (b) the second order, substantially in the form attached hereto as Exhibit C (the “Sale Order”) ⁵ (i) authorizing and approving the Stalking Horse APA, (ii) authorizing the Sale free and clear of Encumbrances ⁶ other than Permitted Encumbrances, with such Encumbrances to attach to the Sale Proceeds (if any) (iii) authorizing the assumption and assignment of certain executory contracts and unexpired leases, and (iv) granting related relief. In support of the Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The Bankruptcy Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District

² A copy of the proposed Bid Procedures is attached as Exhibit 1 to the Bid Procedures Order.

³ A copy of the Stalking Horse APA is attached hereto as Exhibit B.

⁴ A copy of the proposed notice of Auction is attached as Exhibit 2 to the Bid Procedures Order.

⁵ Exhibit C will be filed with the Bankruptcy Court prior to the objection deadline for the Motion.

⁶ Capitalized terms used but not defined herein shall have the same meanings given to such terms as in the Stalking Horse APA, the Bid Procedures, and/or the First Day Declaration (defined below), as applicable.

Court for the District of Delaware dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) and the Bankruptcy Court may enter a final order consistent with Article III of the United States Constitution.⁷ Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The predicates for the relief sought herein are Bankruptcy Code sections 105(a), 363, 365, 503 and 507, Bankruptcy Rules 2002, 6003, 6004, 6006, 9007 and 9008, and Local Rule 6004-1.

BACKGROUND

3. On August 10, 2017 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the Bankruptcy Court commencing the above-captioned cases (the "Chapter 11 Cases").

4. The Debtors continue to operate their business and manage their properties as debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

5. As of the date of this Motion, no trustee, examiner or statutory committee has been appointed in these Chapter 11 Cases.

6. Additional information regarding the circumstances leading to the commencement of the Chapter 11 Cases and information regarding the Debtors' business and capital structure is set forth in the *Declaration of Albert Altro in Support of First Day Pleadings* (the "First Day Declaration") filed contemporaneously with this Motion and incorporated herein by reference.

⁷ Pursuant to Local Rule 9013-1(f) the Debtors hereby confirm their consent to entry of a final order by the Bankruptcy Court in connection with this Motion if it is later determined that the Bankruptcy Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

A. The Debtors' Liquidity Constraints, Marketing Process and Lack of Alternatives to a Sale

7. As set forth in additional detail in the First Day Declaration, the Debtors have been actively marketing their assets since March 2016, the result of which is the proposed Stalking Horse APA. At the same time, the Debtors' liquidity has grown tighter and tighter, thereby necessitating these Chapter 11 Cases and approval of the Bid Procedures described herein.

8. Although the Debtors have been marketing their assets for more than 17 months, the proposed Bid Procedures contemplate a marketing process in the Chapter 11 Cases and a bid deadline of October 18, 2017 (the "Bid Deadline"). The Debtors believe that the marketing period, which will have spanned approximately 17 months prior to the Petition Date and approximately 9 weeks during the Chapter 11 Cases, is a reasonable and sufficient period to solicit bids on the Debtors' assets. These marketing efforts will be sufficient to ensure the highest and best offer, particularly in light of the Debtors' limited financing options, ongoing cash needs and extensive, multi-year prepetition marketing efforts. Further, the Debtors believe that a delayed process likely would lead to the deterioration of the operating performance of the business and the value of their assets.

9. The Debtors also believe, based on consultations with their professionals, that the Bid Procedures negotiated with the Stalking Horse Bidder will solicit the highest or otherwise best offer for the Debtors' assets under the circumstances of the Chapter 11 Cases.

10. In particular, the Bid Procedures set forth a "Credit Bid Cap" (as defined further below), which caps the amount of debt that the Stalking Horse Bidder can credit bid for the Debtors' assets. As a result, potential bidders will know, at the very outset of the Chapter 11 Cases, the price point at which the Stalking Horse Bidder and Term A Lenders are prepared to

walk away from the assets. By removing the possibility of a substantial overbid by the Stalking Horse Bidder, potential bidders will be far more incented to participate in the sale process. In addition, as a further incentive to induce potential bidders to participate in the sale process, the Bid Procedures do not grant *any* bid protections to the Stalking Horse Bidder, thereby lowering the bar of entry for potential bidders.

11. In sum, the proposed Sale to the Stalking Horse Bidder provides the best alternative for all of the Debtors' creditor constituencies and stakeholders. Given that the Debtors have no realistic restructuring option other than the transaction proposed in the Stalking Horse APA, the only alternative to the Sale would be a conversion to Chapter 7 and a piecemeal liquidation of the Debtors' assets, which surely would result in a loss of the Debtors' operating business, less value to the Debtors' stakeholders and the loss of hundreds of jobs.

12. To maintain the support of the Debtors' customers and vendors, and maintain the Debtors' employee base, it is in the best interests of the Debtors and their estates to move expeditiously with the sale process, as discussed herein. The Debtors' business is a customer service business, and maintaining customer confidence is crucial for its viability and maximizing value for the Debtors' estates.

B. The Stalking Horse APA

13. The following chart summarizes key provisions of the Stalking Horse APA and highlights certain provisions as required by Local Rule 6004-1(b)(iv), but are qualified in their entirety by reference to the terms set forth in the Stalking Horse APA:

<p><u>Purchase Price</u> (Stalking Horse APA, Section 3.1)</p> <p>Local Rule 6004-1(b)(iv)(N)</p>	<p>In consideration for the Acquired Assets, Buyer shall assume the Assumed Liabilities by executing the Assumption Agreement and Buyer shall credit bid an aggregate amount equal to the Term Loan A Claims held by Buyer in an amount equal to Thirty Million Dollars (\$30,000,000.00), such Purchase Price to be paid by Credit Bid pursuant to a dollar-for-dollar reduction of the Term Loan A Claims held by Buyer.</p>
<p><u>Purchase Price Allocation</u> (Stalking Horse APA, Sections 2.6)</p> <p>Local Rule 6004-1(b)(iv)(H)</p>	<p>No later than forty-five (45) days following the Closing, Buyer shall deliver to the Selling Entities an allocation of the Purchase Price (and the Assumed Liabilities) among the Acquired Assets (the "<u>Allocation</u>"). The Selling Entities agree to file all Tax Returns consistent with the Allocation unless otherwise required by applicable Law. The Bankruptcy Court shall not be required to apply the Allocation in determining the manner in which the Purchase Price should be allocated as between the Selling Entities and their respective estates.</p>
<p><u>Acquired Assets</u> (Stalking Horse APA, Section 2.1)</p>	<p>The Acquired Assets constitute substantially all of the Selling Entities' assets, including, without limitation: (i) all Cash, including all Store-Level Cash, other than Retained Cash; (ii) all Accounts Receivable; (iii) all Inventory, Merchandise, Display Merchandise, supplies and materials; (iv) all restricted cash deposits of the Selling Entities held by any party and relating to the Acquired Assets, all Credit Card Deposits, all royalties, advances, prepaid and deferred assets, security and other deposits, prepayments and other current assets; (v) Non-Real Property Contracts, the Real Property Leases and the Additional Assumed Contracts; (vi) all Seller IP; (vii) Assumed Purchase Orders; (viii) all items of machinery, equipment, supplies, furniture, fixtures, leasehold improvements and other tangible personal property and fixed assets; (ix) all books, records, information, files, data and plans, advertising and promotional materials and similar items; (x) all claims and causes of action (other than, in each case, to the extent related solely to the Excluded Assets), including all claims and causes of action that any of the Selling Entities may have (a) against the Selling Entities' Representatives; and (b) under Chapter 5 of the Bankruptcy Code; (xi) all goodwill associated with the Business or the Acquired Assets; (xii) all rights of the Selling Entities under non-disclosure or confidentiality, non-compete, or non-solicitation agreements; (xiii) all of the Permits related to the Acquired Assets; (xiv) amounts of, or rights to, any insurance claims made or proceeds received in respect of Acquired Assets or Assumed Liabilities; (xv) all rights under or arising out of insurance policies in respect of the Business or the Acquired Assets; (xvi) any rights, demands, claims, credits, allowances, rebates and rights of setoff arising out of or relating to any of the Acquired Assets; (xvii) all telephone and facsimile</p>

	<p>numbers, web sites, web domain names and addresses; (xviii) all rights of the Selling Entities' in and to the company headquarters location and all warehouse and distribution facilities; and (xix) all other assets related to, used in connection with, or necessary for the ownership, operation and management of the Acquired Assets, the Business, and the Stores.</p>
<p><u>Assumed Liabilities</u> (Stalking Horse APA, Section 2.3)</p>	<p>The Assumed Liabilities are limited to: (a) the Liabilities arising solely and directly under the Assumed Contracts from and after the date assumed and assigned to Buyer and which shall not include any Liability for any Cure Amounts or for any breach thereunder occurring prior to the date assumed and assigned to Buyer; (b) the Liabilities arising solely and directly under the Assumed Purchase Orders; (c) all Taxes to the extent expressly payable by Buyer pursuant to Section 7.8 of the Stalking Horse APA; (d) all Consumer Liabilities, other than Liabilities arising under any escheatment, abandoned property or similar Law; (e) the Allowed 503(b)(9) Claims, if any, up to the 503(b)(9) Claim Cap; and (f) Liabilities solely and directly with respect to Transferred Employees arising on and after the Closing Date, except for any Liabilities with respect to and/or claims of any Transferred Employee arising out of or related to their employment by any of the Selling Entities, any conduct of any of the Selling Entities and/or any of the Selling Entities' operation of the Business.</p>
<p><u>Excluded Assets</u> (Stalking Horse APA, Section 2.2)</p>	<p>Excluded Assets are defined as those items specifically enumerated in the Stalking Horse APA, including, without limitation: (a) Excluded Insurance Policies; (b) all intercompany obligations; (c) any confidential records, documents or other information relating to Excluded Employees, to the extent disclosure of which to Buyer would violate applicable Law; (d) the Selling Entities' minute books and other corporate books and records relating to their organization and existence and records which any of the Selling Entities are required to retain by applicable Law; (e) the Selling Entities' rights under the Stalking Horse APA and the other Transaction Documents; (f) any Contracts of any Selling Entities other than the Assumed Contracts and Additional Assumed Contracts; (g) any shares of capital stock or other equity interests of any of the Selling Entities; (h) any prepaid income Tax, Tax receivable, Tax refund or Tax rebate of a Selling Entity with respect to any period ending on or prior to the Closing; (i) any Seller Benefit Plan; (j) all rights, claims and causes of action, including rights of indemnity, warranty rights, rights of contribution, rights to refunds, rights of reimbursement and other rights of recovery, including rights to insurance proceeds, of the Selling Entities to the extent solely and specifically related to the Excluded Assets or Excluded Liabilities; (k) all prepaid charges and deposits in respect</p>

	<p>of telephone, electricity, water and sewer and other utilities that are required to be funded by the Selling Entities; and (l) all bank and deposit accounts, which for the avoidance of doubt, shall include no Cash other than Retained Cash. Buyer shall have the right in, its sole discretion, to (x) reject any of the Acquired Assets by providing written notice to the Selling Entities of its election to reject any such assets until the date that is two (2) Business Days prior to the Closing Date, in which event such assets shall be deemed Excluded Assets for purposes of the Stalking Horse APA, and (y) add any of the Excluded Assets to the list of Acquired Assets by providing written notice to the Selling Entities of its election to add any such assets until the date that is two (2) Business Days prior to the Auction (<u>provided</u> that if the Auction does not occur because there are no Qualified Bidders, then Buyer may provide written notice of its election to add any such assets until the date that is two (2) Business Days prior to the Closing Date), in which event such Excluded Assets shall be deemed Acquired Assets for purposes of the Stalking Horse APA .</p>
<p><u>Excluded Liabilities</u> (Stalking Horse APA, Section 2.4)</p>	<p>The Debtors shall retain all liabilities and obligations that are not Assumed Liabilities and the Sale Order shall include express findings of no successor liability and shall enjoin any person or entity from asserting any claim based on any liabilities or obligations of the Debtors against the Buyers.</p>
<p><u>Cure Payments</u> (Stalking Horse APA, Section 2.5)</p>	<p>Prior to the Auction, Buyer shall determine which executory contracts and unexpired leases from the Contracts Schedule will constitute Assumed Contracts to be assigned to Buyer (the agreements so assumed and assigned, the "<u>Assigned Contracts</u>"), subject to removal of Assigned Contracts by Buyer prior to Closing. The Selling Entities shall promptly pay all Cure Amounts in connection with such assumption and assignment of the Assigned Contracts. The Selling Entities shall also promptly pay all Cure Amounts in connection with the assumption and assignment of any Additional Assumed Contracts.</p>
<p><u>Closing</u> (Stalking Horse APA, Section 4.1)</p> <p>Local Rule 6004-1(b)(iv)(E)</p>	<p>The closing of the sale of the Acquired Assets and the assumption of the Assumed Liabilities contemplated by the Stalking Horse APA (the "<u>Closing</u>") shall take place remotely via the exchange of documents and signatures no later than the second (2nd) Business Day following the date on which the conditions set forth in <u>Article 8</u> of the Stalking Horse APA have been satisfied or, to the extent permitted, waived by the applicable Party in writing, or at such other place and time as Buyer and Seller may mutually agree in writing.</p>
<p><u>Termination</u></p>	<p>The Stalking Horse APA may be terminated at any time prior to the</p>

**(Stalking Horse APA,
Section 9.1)**

Closing by: (a) mutual written consent of Seller and Buyer; (b) Seller or Buyer if any of the conditions to each Party's obligations to effect the Closing set forth in Section 8.1 of the Stalking Horse APA are or become incapable of being satisfied on or prior to the Outside Date; (c) Buyer on written notice to any Selling Entity, if not cured within ten (10) days after notice, fails to perform or comply with the covenants or agreements to be performed prior to Closing, or any of the representations and warranties of any Selling Entity become inaccurate as of the date of the Stalking Horse APA or shall have become inaccurate as of a date subsequent to the date of the Stalking Horse APA and the Selling Entities fail to remedy such inaccuracy within twenty (20) days after notice such that the condition set forth in Section 8.2(f) of the Stalking Horse APA would not then be capable of satisfaction; (d) Seller on written notice to Buyer, if not cured within ten (10) days after receipt of notice shall have failed to perform or comply with any of the covenants or agreements contained in the Stalking Horse APA to be performed and complied with by Buyer prior to Closing such that the condition set forth in Section 8.3(a) of the Stalking Horse APA would not then be capable of satisfaction, or any of the representations and warranties of Buyer shall be inaccurate as of the date of the Stalking Horse APA, or shall have become inaccurate as of a date subsequent to the date of the Stalking Horse APA and Buyer fails to remedy such inaccuracy within twenty (20) days after notice thereof from Seller, such that the condition set forth in Section 8.3(b) of the Stalking Horse APA would not then be capable of satisfaction as of the date of the Stalking Horse APA or such subsequent date, as applicable; (e) Buyer if any of the Selling Entities enters into a definitive agreement with respect to a Third-Party Sale, or by either Buyer or Seller if the Bankruptcy Court approves a Third-Party Sale, or automatically if a Third-Party Sale is consummated, or by Buyer if any of the Selling Entities seeks to have any Third-Party Sale approved by the Bankruptcy Court; (f) Buyer if the Seller or any Selling Entity moves to dismiss any of the Bankruptcy Cases, moves for conversion of any of the Bankruptcy Case to a case under Chapter 7 of the Bankruptcy Code, or moves for appointment of an examiner; (g) Buyer if a trustee or an examiner is appointed in the Bankruptcy Cases or any of the Bankruptcy Cases are dismissed or converted to a case under Chapter 7 of the Bankruptcy Code; (h) Buyer if any court of competent jurisdiction shall enter a judgment or order declaring the Stalking Horse APA unenforceable; (i) Buyer or Seller if the Closing shall not have occurred by 5:00 p.m. (Eastern Time) on the date that is eighty (80) days after the Petition Date (the "Outside Date"), which date may be extended by Buyer in its sole discretion; (j) Buyer if any of the Selling Entities' conditions to Closing set

	<p>forth in <u>Section 8.2</u> of the Stalking Horse APA becomes incapable of satisfaction on or prior to the Outside Date; (k) Buyer if a Termination Date occurs under and as defined in any Order authorizing the use of cash collateral and/or debtor-in-possession financing in the Bankruptcy Case prior to the Closing Date; or (l) Buyer if in its reasonable determination, Buyer or the Term A Lenders are or could be unable to Credit Bid for the Acquired Assets in accordance with the Stalking Horse APA.</p>
<p><u>Cooperation</u> (Stalking Horse APA, Section 7.4)</p>	<p>As promptly as reasonably practicable after the date of the Stalking Horse APA, each of the Selling Entities and Buyer shall (and shall cause their respective Affiliates to) use its commercially reasonable efforts to make any filings and notifications, and to obtain any Consents from Governmental Authorities (other than the Bankruptcy Court), required to be made and obtained under applicable Law in connection with the transactions contemplated by the Stalking Horse APA as promptly as reasonably practicable.</p>
<p><u>Tax Exemption</u> (Stalking Horse APA, Section 10.14)</p> <p>Local Rule 6004-1(b)(iv)(I)</p>	<p>Buyer waives compliance by the Selling Entities with the requirements and provisions of any “bulk-transfer” Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Acquired Assets to Buyer. Pursuant to Section 363(f) of the Bankruptcy Code, the transfer of the Acquired Assets shall be free and clear of any security interests in the Acquired Assets, including any liens or claims arising out of the bulk transfer laws, and the parties shall take such steps as may be necessary or appropriate to so provide in the Sale Order.</p>
<p><u>Access to Records</u> (Stalking Horse APA, Section 7.2)</p> <p>Local Rule 6004-1(b)(iv)(J)</p>	<p>The Stalking Horse APA permits the Buyer and its representatives reasonable access to the Selling Entities’ records prior to the earlier of termination of the Stalking Horse APA and final dissolution of the Selling Entities and their estates. The Stalking Horse APA also permits the Selling Entities and their representatives reasonable access to the Selling Entities’ records sold pursuant to the Stalking Horse APA.</p>
<p><u>Good Faith Deposit</u> (Bid Procedures p. 5)</p> <p>Local Rule 6004-1(b)(iv)(F)</p>	<p>No deposit is required of the Stalking Horse Bidder. However, a good faith deposit is required for all other Qualified Bidders as set forth in the Bid Procedures.</p>
<p><u>Sale to Insider</u></p> <p>Local Rule 6004-1(b)(iv)(A)</p>	<p>The Stalking Horse Bidder is not an insider of any of the Debtors.</p>

<p><u>Agreements with Management</u></p> <p>Local Rule 6004(iv)(B)</p>	None.
<p><u>Sale of Avoidance Actions (Stalking Horse APA, Sections 2.1(j))</u></p> <p>Local Rule 6004-1(b)(iv)(K)</p>	The Acquired Assets include all claims and causes of action of the Selling Entities as of the Closing, including all claims and causes of action that any of the Selling Entities may have under Chapter 5 of the Bankruptcy Code.
<p><u>Releases (Stalking Horse APA, Sections 4.2(h), 4.3(c) & (d))</u></p>	<p>At or prior to the Closing, Selling Entities shall deliver to Buyer a release, in form and substance acceptable to Buyer and the Term A Lenders, pursuant to which the Selling Entities release any and all causes of action and Claims which they may have held against Buyer and the Term A Lenders and each of their respective Representatives.</p> <p>At or prior to the Closing, Buyer shall deliver to Selling Entities (i) a release, in form and substance acceptable to the Selling Entities, pursuant to which Buyer and the Term A Lenders release any and all causes of action and Claims which they may have held solely in their respective capacities as Term A Lenders (but not in any other capacity or for any other purpose), against the Selling Entities and each of their respective Representatives, solely in respect of the Term Loan A Claims that are being satisfied pursuant to the Credit Bid; and (ii) a release, in form and substance acceptable to the Selling Entities, pursuant to which Buyer and the Term A Lenders release any and all causes of action and Claims held by them against the Selling Entities' Representatives, including all causes of action and Claims which they may have acquired pursuant to <u>Section 2.1(j)</u> of the Stalking Horse APA.</p>
<p><u>Successor Liability</u></p> <p>Local Rule 6004-1(b)(iv)(L)</p>	The proposed Sale Order will contain limitations on successor liability, and Buyer will require that the order approving the Sale contain such limitations.
<p><u>Interim Arrangements with Buyer (Stalking Horse APA, Sections 7.7(h))</u></p> <p>Local Rule 6004-1(b)(iv)(G)</p>	The Stalking Horse APA may require, at Buyer's election, the Buyer and Selling Entities to negotiate in good faith a transition services agreement pursuant to which the Selling Entities would, on commercially reasonable terms, agree to continue to employ all employees who are to be Transferred Employees and to maintain its payroll processing systems, Seller Benefit Plans and other applicable insurance policies, and Buyer would pay the Selling Entities for all amounts owing in respect thereof when due, in each case for a period of not more than six (6) months following the

	Closing Date.
<u>Provisions Requested in the Bid Procedure Order</u>	The form of the proposed Bid Procedures Order approved by the Stalking Horse Bidder is attached hereto as <u>Exhibit A</u> and certain key provisions requested therein are further described below.
<u>Relief from Bankruptcy Rule 6004</u>	To preserve the value of the Acquired Assets and limit the costs of administering and preserving such assets, it is critical that the Debtors close the Sale as soon as possible after all closing conditions have been achieved or waived. Additionally, the Stalking Horse APA requires the Closing to within eighty (80) days following the Petition Date. Accordingly, the Debtors request that the Bankruptcy Court waive the fourteen (14) day stay period under Bankruptcy Rule 6004(h).

C. Proposed Bid Procedures

14. The Debtors seek to conduct an open, robust and transparent sale process pursuant to which the Successful Bidder (defined below) will enter into an asset purchase agreement, substantially in the form of the Stalking Horse APA, for the purchase of substantially all of the Debtors' assets free and clear of all Encumbrances, with such Encumbrances attaching to the proceeds (if any) of the Sale.

15. The Bid Procedures, as summarized below, were developed consistent with the Debtors' need to proceed with an expedited sale process to preserve the going-concern value of the Debtors' assets, and with the objective of promoting active bidding that will result in the highest or otherwise best offer for such assets. Moreover, the Bid Procedures reflect the Debtors' objective of conducting the Auction in a controlled, fair, and open, fashion that promotes interest in the Acquired Assets by financially-capable, motivated bidders who are likely to close the Sale.

16. The following paragraphs in this section summarize key provisions of the Bid Procedures, and are qualified in their entirety by reference to the actual Bid Procedures.

- a. Access to Due Diligence Materials. In order to access diligence materials and information related to the Debtors' assets, each Potential Bidder must first deliver (unless previously delivered) to the Debtors' investment banker and counsel the

following items prior to the Bid Deadline (collectively, the “Participation Requirements”): (i) an executed confidentiality agreement in form and substance reasonably acceptable to the Debtors; and (ii) identification of the Potential Bidder and any principals and representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated Sale.

- b. Participation Requirements. In order to be eligible to participate in the Auction for the Acquired Assets, each Potential Bidder, other than the Stalking Horse Bidder or its designee or assignee, must be determined by the Debtors, in consultation with the Term A Lenders and the official committee of unsecured creditors (the “Committee”), if any, to have submitted a Qualified Bid (defined below) (each a “Qualified Bidder”). The Debtors shall have the right, in consultation with the Term A Lenders and the Committee, if any, to determine whether a bidder is a Qualified Bidder. The Stalking Horse Bidder is a Qualified Bidder, and the Stalking Horse APA is a Qualified Bid. The Stalking Horse Bidder, or its designee or assignee, is entitled to credit bid all or a portion of its secured claims against the Debtors, without otherwise complying with the Bid Procedures, to the fullest extent permissible under Bankruptcy Code section 363(k). Notwithstanding anything contained herein or in any order of the Bankruptcy Court, the Stalking Horse Bidder’s Credit Bid shall not exceed \$31 million (the “Credit Bid Cap”).

- c. Qualified Bidder. In order for any Potential Bidder to be considered a Qualified Bidder (other than the Stalking Horse Bidder and its designee or assignee, who is already considered a Qualified Bidder), such Potential Bidder (or a combination of Potential Bidders whose bids for the assets of the Debtors do not overlap and who agree to have their bids combined for the purposes of the determination of whether such Potential Bidders together constitute a Qualified Bidder, and who shall also be referred to herein as a single Qualified Bidder) must submit a written offer (a “Qualified Bid”) such that it is received prior to the Bid Deadline and meets the following criteria:
 - i. The Same or Better Terms. A bid must be on terms that, in the Debtors’ business judgment, in consultation with the Term A Lenders and the Committee, if any, are substantially the same or better than the terms of the Stalking Horse APA; provided, that such bid must include a cash purchase price that, at a minimum, exceeds the aggregate sum of (a) the Stalking Horse bid, plus (b) the initial overbid amount of \$100,000 (i.e., \$30,100,000) (together, the “Minimum Initial Bid”); provided, further, that notwithstanding anything contained herein or the Bid Procedures Order, Potential Bidders are encouraged to contact the Debtors to discuss modifications and alternatives to the Minimum Initial Bid, including, without limitation, Minimum Initial Bids that consist of a combination of cash and secured “take back” notes.

 - ii. Executed and Marked Asset Purchase Agreement. A bid must

include fully executed Sale documents, pursuant to which the Qualified Bidder proposes to effectuate the contemplated Sale. A bid shall include a redlined copy of the Stalking Horse APA (the “Modified APA”) to show all changes requested by the Qualified Bidder, including those related to the purchase price in accordance with subsection (i) above, and identify each and every executory contract and unexpired lease, the assumption and assignment of which is a condition to closing.

- iii. No Contingencies. A bid may not be conditioned on obtaining internal approval, obtaining financing or on the outcome or review of due diligence, and a bid shall not contain any contingencies to the validity, effectiveness, and/or binding nature of the bid beyond those contained and that remain effective in the Stalking Horse APA.
- iv. Legal Capacity. A bid must be accompanied by documentation that, in the Debtors’ reasonable business judgment, in consultation with the Term A Lenders and the Committee, if any, demonstrates that the Potential Bidder has the legal capacity to fund a purchase price in the amount of the Minimum Initial Bid as set forth above, and otherwise consummate the proposed transaction.
- v. Authorization to Bid. Each bid, other than any bid by the Stalking Horse Bidder, must include evidence of authorization and approval from such Qualified Bidder’s board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Modified APA.
- vi. Back-Up Bidder. Each bid must contain an agreement for the Qualified Bidder to be a Back-Up Bidder (defined below).
- vii. No Fees Payable to Qualified Bidder. A bid may not request or entitle the Qualified Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment.
- viii. Financing Sources. A bid, other than any bid made by the Stalking Horse Bidder, must contain evidence of the ability to consummate the Sale satisfactory to the Debtors, in consultation with the Term A Lenders and the Committee, if any, with appropriate contact information for all such financing sources (whether cash or borrowings) and may not contain any financing contingency (or conditions to borrowings).
- ix. Other Evidence. Each bid, other than any bid made by the Stalking Horse Bidder, must contain evidence satisfactory to the Debtors, in their reasonable discretion, in consultation with the Term A

Lenders and the Committee, if any, that the Qualified Bidder (based on availability of financing, experience and other considerations or conditions) will be able to timely consummate the Sale to purchase the Acquired Assets if selected as the Successful Bidder.

- x. Representation of Non-Collusion. Pursuant to Local Rule 6004-1, each bidder participating at the Auction must confirm its Non-Collusion Representation.
 - xi. Proof of Ability to Close. Written evidence that enables the Debtors and their representatives to determine, in their reasonable discretion, in consultation with the Term A Lenders and the Committee, if any, that the Potential Bidder has the ability to close the contemplated Sale and provide adequate assurance of future performance under all contracts to be assumed in such contemplated Sale.
 - xii. Deposit. Before the Bid Deadline, each Potential Bidder must pay an earnest money cash deposit of ten percent (10%) of the Minimum Initial Bid and any other consideration contained in the relevant Qualified Bid (a “Qualified Bidder Deposit”) by cashier’s or certified check or wire transfer of immediately available funds (pursuant to instructions to be obtained from Debtors’ counsel), which deposit shall be held in escrow in Debtors’ counsel’s IOLTA trust account in accordance with the terms of an escrow agreement to be provided by the Debtors (in a form acceptable to Debtors’ counsel in its sole discretion). A Qualified Bidder Deposit will be refunded only if the bid corresponding with the Qualified Bidder Deposit is not approved by the Bankruptcy Court. The Debtors reserve the right to hold each Qualified Bidder Deposit until five (5) days after the closing of the sale of the Acquired Assets to, as the case may be, the Stalking Horse Bidder or the Successful Bidder.
- d. Bid Deadline. The Bid Deadline for a Potential Bidder to submit a bid (other than the Stalking Horse Bidder or its designee or assignee) shall be October 18, 2017 at 12:00 p.m. (ET). A bid received after the Bid Deadline shall not constitute a Qualified Bid. The Term A Lenders have the right to be provided with all bids upon receipt of such bids by the Debtors.

Prior to the Bid Deadline, a Potential Bidder, other than the Stalking Horse Bidder, that desires to make an offer, solicitation or proposal shall deliver a written copy of its bid to the Debtors’ proposed investment banker, SSG Advisors, LLC, Five Tower Bridge, Suite 420, 300 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428, Attn: J. Scott Victor (e-mail jsvictor@ssgca.com) and proposed counsel to the Debtors, Landis Rath & Cobb

LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801 (Attn: Adam G. Landis, Esq. and Matthew B. McGuire, Esq.). Counsel to the Debtors shall promptly provide email copies of such bids to (i) the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Juliet Sarkessian, Esq.), (ii) counsel to the Committee, if any, and (iii) counsel to the Term A Lenders, Curtis, Mallet-Prevost, Colt & Mosle LLP, 101 Park Avenue, New York, New York 10178 (Attn: Steven J. Reisman, Esq. and Shaya Rochester, Esq.) and Richards, Layton & Finger, P.A., 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq.).

- e. Auction. Only in the event that the Debtors receive at least one (1) Qualified Bid (other than that of the Stalking Horse Bidder) by the Bid Deadline, the Debtors shall conduct the Auction of the Acquired Assets to determine the highest or otherwise best bid with respect to the Acquired Assets. No later than 4:00 p.m. (ET) on the day that is one business day before the Auction, the Debtors will notify all Qualified Bidders and, if formed, counsel to the Committee, whether the Auction will occur and will provide each Qualified Bidder with a copy of all Qualified Bids. The Auction shall commence at 10:00 a.m. (ET) on October 25, 2017 at the offices of Landis Rath & Cobb, LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801.

The only persons or entities who will be permitted to bid at the Auction are the authorized representatives of each Qualified Bidder, including the Stalking Horse Bidder (collectively, the "Auction Participants"). Each Qualified Bidder must attend the Auction in person in order to bid at the Auction. While only the Auction Participants may bid at the Auction, the Auction may be attended and viewed also by the Debtors, their professionals, Auction Participants, the Committee, if any, and its professionals. Any creditor wishing to attend the Auction may do so by contacting, no later than three (3) business days prior to the start of the Auction, Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Joseph Wright (e-mail: wright@lrclaw.com).

The Debtors and their professional advisors shall direct and preside over the Auction. At the beginning of the Auction, the Debtors and their professional advisors will, in consultation with the Term A Lenders and the Committee, if any, announce the highest Qualified Bid received by the Bid Deadline which shall serve as the baseline bid at the Auction (the "Baseline Bid"). All bids made thereafter shall be Overbids (defined below), and shall be made and received on an open basis, and all material terms of each bid shall be fully disclosed to all other Qualified Bidders, including the Stalking Horse Bidder and the Term A Lenders. The Auction shall be transcribed and all bids shall be made on the record and announced at the Auction, including the Baseline Bid, all Overbids, and the Successful Bid (defined below).

- f. Overbids. An "Overbid" is any bid made at the Auction subsequent to the Debtors' announcement of the Baseline Bid. Any Qualified Bidder's initial Overbid shall be at least \$100,000 in cash (or cash equivalents) in excess of the

Baseline Bid, and each subsequent Overbid must be made in increments of at least \$100,000 in cash, cash equivalents or such other consideration that the Debtors deem equivalent, in consultation with the Term A Lenders and Committee, if any, over the previous highest or best bid (the “Minimum Overbid Increment”); provided, however, that the Stalking Horse Bidder’s Overbid may be in the form of an increase in its Credit Bid.

Any Overbid made by a Qualified Bidder (including with respect to any Back-Up Bid (defined below)) must remain open and binding on the Qualified Bidder until and unless the Debtors accept a higher Qualified Bid as an Overbid. The Debtors shall announce at the Auction the material terms of each Overbid and the basis for calculating the total consideration offered in each such Overbid.

- g. Sale Hearing. The Sale Hearing shall be conducted by the Bankruptcy Court on a date and time to be determined.
- h. Modifications. Except as otherwise provided in the Bid Procedures, the Debtors, after consultation with the Term A Lenders and the Committee, if any, may modify the Bid Procedures; provided that all such modifications are disclosed to all Potential Bidders or Qualified Bidders, as applicable, prior to or during the Auction.
- i. Determination and Rejection of Bids. The Debtors, in their reasonable business judgment and in a manner consistent with their fiduciary duties, after consultation with the Term A Lenders and the Committee, if any, may (a) determine which Qualified Bid, if any, is the highest or otherwise best offer; and (b) reject, at any time before entry of an order of the Bankruptcy Court approving a Qualified Bid, any bid that is (i) inadequate or insufficient; (ii) not in conformity with the requirements of the Bankruptcy Code, the Bid Procedures, or the terms and conditions of the Sale; or (iii) contrary to the best interests of the Debtors, their estates, their creditors and other stakeholders.
- j. Closing the Auction. Upon conclusion of the bidding process, the Auction shall be closed, and the Debtors, in consultation with the Term A Lenders and Committee, if any, shall (i) review each Qualified Bid on the basis of financial and contractual terms and the factors relevant to the Sale process, including those factors affecting the speed and certainty of consummating the Sale and the amount of the cash (or cash equivalents) consideration, and (ii) determine, the highest or otherwise best offer for the Acquired Assets (the “Successful Bid”), the entity submitting such Successful Bid (the “Successful Bidder”), the next highest or otherwise best offer after the Successful Bid (the “Back-Up Bid”) and the entity submitting such Back-Up Bid (the “Back-Up Bidder”); and advise the Qualified Bidders of such determinations. The Back-Up Bid shall remain open, and the Back-Up Bidder shall be required to fully perform under such Back-Up Bid, until the earlier of consummation of the Sale with the Successful Bidder or sixty (60) days following the closing date contemplated in the Successful Bid.

For the avoidance of doubt, the Stalking Horse Bidder shall not be required to serve as the Back-Up Bidder.

17. Pursuant to Local Rule 6004-1: (i) each bidder participating at the Auction will be required to make a non-collusion representation (a “Non-Collusion Representation”); (ii) the Auction will be conducted openly and may be attended by the Debtors, their professionals, the Committee, if any, and its professionals and the Auction Participants; (iii) the only persons or entities who will be permitted to bid at the Auction are the authorized representatives of each Qualified Bidder, including the Stalking Horse Bidder; and (iv) the Auction will be transcribed. The Bid Procedures are typical for asset sales of this size and nature and require a deposit from each Qualified Bidder, other than the Term A Lenders.

18. Other than as expressly set forth in the Bid Procedures, the Debtors, after consultation with the Term A Lenders, reserve the right to: (a) waive terms and conditions set forth herein with respect to any or all Potential Bidders, (b) impose additional terms and conditions with respect to any or all Potential Bidders, (c) extend the deadlines set forth herein or the date for the Auction, (d) cancel or extend the sale of the Acquired Assets and/or Sale Hearing in open court; and (e) amend the Bid Procedures, in each case, so long as the exercise of any such right is consistent with the Debtors’ fiduciary duties and the best interests of the Debtors’ estates; provided, however, that the Debtors may not modify the Bid Procedures in any way that would materially impair the rights of the Stalking Horse Bidder under the Stalking Horse APA or the Term A Lenders.

19. The Stalking Horse Bidder is a Qualified Bidder, and the Stalking Horse APA is a Qualified Bid. The Stalking Horse Bidder, or its designee or assignee, is entitled to credit bid all or a portion of its secured claims against the Debtors, without otherwise complying with the Bid Procedures, to the fullest extent permissible under Bankruptcy Code section 363(k); provided,

that such credit bid shall be subject only to any challenge filed in accordance with and subject to the requirements of the Financing Orders. If no such challenge is so commenced, no person or entity shall have any right to challenge any credit bid submitted by the Stalking Horse Bidder. If any such challenge is commenced, the Stalking Horse Bidder may, in its sole discretion, withdraw the Stalking Horse Bid or seek other appropriate relief, including on an emergency basis. Notwithstanding anything contained herein or in any order of the Bankruptcy Court, the Stalking Horse Bidder's Credit Bid shall not exceed the Credit Bid Cap.

D. Notice of Auction and Sale

20. The Debtors seek to have the Auction scheduled to commence at 10:00 a.m. (ET) on October 25, 2017 at the offices of Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801. Within two (2) days of the entry of the Bid Procedures Order, the Debtors will serve by first class mail, postage prepaid, copies of: (i) the Bid Procedures Order; and (ii) the Sale Notice upon the following entities: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the Stalking Horse Bidder and Term A Lenders; (c) counsel to the Committee, if any, or, if none formed, the creditors holding the thirty (30) largest unsecured claims as set forth on the list filed with the Debtors' petitions; (d) all taxing authorities having jurisdiction over any of the Acquired Assets subject to the Sale, including the Internal Revenue Service; (e) the Environmental Protection Agency; (f) the Securities Exchange Commission; (g) the state/local environmental agencies in the jurisdictions where the Debtors own or lease real property; (h) all of the Debtors' known creditors; (i) all parties that have requested notice pursuant to Bankruptcy Rule 2002 as of the date prior to the date of entry of the Bid Procedures Order; (j) all persons or entities known to the Debtors that have or have asserted a lien on, or security interest in, all or any portion of the Acquired Assets; and (k) any Potential Bidders previously identified or otherwise known to the Debtors (collectively, the "Sale Notice

Parties”). In addition, the Debtors will publish notice of the Sale in the national edition of either the *Wall Street Journal National Edition* or *USA Today* or similar publication.

21. The Debtors further request, pursuant to Bankruptcy Rule 9014, that objections, if any, to the proposed Sale: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) be filed with the Clerk of the Bankruptcy Court, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801; and (d) be served on: (i) counsel to the Debtors, Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801 (Attn: Adam G. Landis, Esq. and Matthew B. McGuire, Esq.); (ii) counsel to the Stalking Horse Bidder and the Term A Lenders, Curtis, Mallet-Prevost, Colt & Mosle LLP, 101 Park Avenue, New York, New York 10178 (Attn: Steven J. Reisman, Esq. and Shaya Rochester, Esq.) and Richards, Layton & Finger, P.A., 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq.); (iii) counsel to the Committee, if any; and (iv) the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Juliet Sarkessian, Esq.) in accordance with Local Rule 2002-1(b) on or before 4:00 p.m. (ET) on the date that is seven (7) days prior to the Sale Hearing (the “Sale Objection Deadline”).

E. Additional Provisions

Name Change

22. The Debtors hereby request the authority, upon and in connection with the Closing, to change their corporate names and the caption of these Chapter 11 Cases, consistent with applicable law. The Debtors shall file a notice of change of case caption, containing the new caption and the proposed new corporate names of the Debtors, within ten (10) business days of the Closing, and the change of case caption for these Chapter 11 Cases shall be deemed effective as of the Closing.

F. Procedures Relating to Executory Contracts and Unexpired Leases, Including Determination of Cure Amounts and Deadlines for Objection to Assumption and Assignment of All Contracts

23. Given the number of executory contracts and unexpired leases to which the Debtors are a party, the Debtors seek to establish (a) procedures for determining the Cure Amounts and (b) the deadline for objections to the Cure Amounts and/or the proposed assumption and assignment of executory contracts and unexpired leases (collectively, the “Contract Procedures”).

24. Pursuant to Section 2.5 of the Stalking Horse APA, within five (5) business days of the Petition Date, the Debtors will provide the Stalking Horse Bidder a schedule (such schedule is referred to herein as the “Contracts Schedule”) setting forth (x) each Contract to which any of the Debtors is a party or by which any Debtor is bound, and (y) all Cure Amounts (if any) for each such Contract, and (z) a detailed description of each such Contract. The Debtors shall update the Contracts Schedule to the extent any new Contract is entered into postpetition or to include any revised Cure Amount with respect to any Contract listed on the Contracts Schedule.

25. On or before the date that is fifteen (15) days prior to the Sale Hearing, the Debtors shall serve by mail a notice, substantially in the form annexed as Exhibit 3 to the Bid Procedures Order (a “Cure Notice”) on the non-Debtor counterparties to all Contracts on the Contracts Schedule (collectively, the “Contract Parties”). To the extent the Contracts Schedule is amended after the Sale Order, the Debtors shall promptly file and serve by mail a supplemental Cure Notice (the “Additional Cure Notice”) on the affected non-Debtor counterparties, substantially in the form attached as Exhibit 4 to the Bid Procedures Order.

Contract Objections

26. To facilitate a prompt resolution of (i) disputes relating to the Cure Amounts and (ii) any other objections relating to the assumption and assignment of the Contracts, the Debtors propose the following deadlines and procedures:

The Contract Parties shall have until 4:00 p.m. (ET) on the date that is seven (7) days prior to the Sale Hearing (the "Contract Objection Deadline"), which deadline may be extended in the sole discretion of the Debtors and the Stalking Horse Bidder, to object (a "Contract Objection") to (i) the Cure Amounts listed by the Debtors and to propose alternative Cure Amounts, and/or (ii) the proposed assumption and assignment of the Contracts in connection with the Sale, including, without limitation, the Debtors' ability to assign the Contracts without the Contract Parties' consent or the adequate assurance of future performance to be provided by the Successful Bidder (or any designee thereof);

- provided, however, if the Debtors amend the Cure Notice after the Contract Objection Deadline to add a contract or lease, the non-Debtor party to the added contract or lease shall have until the Sale Hearing to submit a Contract Objection with respect to the contract or lease added by the Debtors' amendment (the "Amended Contract Objection Deadline");
 - provided further, that if the Debtors amend the Cure Notice after the Contract Objection Deadline to reduce the Cure Amount of a Contract, except where such reduction was upon mutual agreement of the parties, the non-Debtor party to the reduced Cure Amount contract or lease shall have until the Amended Contract Objection Deadline to object to the Cure Amount with respect to the contract or lease with the Cure Amount that has been reduced by the Debtors' amendment; and
 - provided further, that in the event the Auction results in a Successful Bid other than the Stalking Horse APA, the Contract Parties shall have until the Amended Contract Objection Deadline to object to the assignment of Contracts to such Successful Bidder, other than to the Cure Amount which shall be subject to the Contract Objection Deadline, with any such objection being heard at the Sale Hearing or at a later-scheduled hearing as the Bankruptcy Court deems appropriate.
- b. The Debtors, the Contract Party, and the Successful Bidder may consensually resolve the Contract Objection prior to, or after, the Sale Hearing. In the event the Contract Objection is not resolved, such Contract Objection will be heard at the Sale Hearing or thereafter. To the extent it is determined that the Cure Amount exceeds the amount set forth in the Contract Schedule, the Successful Bidder may determine to not have assumed and assigned to it such Assigned Contract.

- c. Unless a Contract Objection is filed and served before the Contract Objection Deadline or the Amended Contract Objection Deadline, as applicable, all Contract Parties shall be:
- forever barred from objecting to the proposed Cure Amounts and from asserting any additional cure or other amounts (other than as may be asserted in an Additional Cure Notice), and the Debtors and the Successful Bidder shall be entitled to rely solely upon the proposed Cure Amounts set forth in the Cure Notice or the Additional Cure Notice, as applicable;
 - deemed to have consented to the assumption or assumption and assignment of the Contracts;
 - forever barred and estopped from asserting or claiming against the Debtors or the Successful Bidder that any additional amounts are due or other defaults exist (other than as may be asserted in an Additional Cure Notice), that conditions to assignment must be satisfied under such Contracts, including, without limitation, any consent rights, or that there is any objection or defense to the assumption and assignment of such Contracts, including without limitation, adequate assurance of future performance;
 - precluded from objecting to the Cure Amounts (if any) and the assumption and assignment; and
 - barred and estopped from asserting or claiming that an Assigned Contract contains an enforceable consent right.

Designation by the Stalking Horse or Other Qualified Bidder

27. Prior to the Bid Deadline, the Stalking Horse Bidder shall, by delivering written notice to the Debtors, designate each Contract on the Contracts Schedule it wishes to become an Assigned Contract. The Stalking Horse Bidder may remove any Assigned Contract from such schedule prior to the Closing.

28. Each Qualified Bidder, other than the Stalking Horse Bidder, shall, by delivering written notice to the Debtors on or before the Bid Deadline, designate each Contract on the Contracts Schedule it wishes to be an Assigned Contract.

29. Immediately prior to the Sale Hearing, the Debtors shall file the list of Assigned Contracts as of such date.

30. The Debtors request that the Sale Order, among other things:

- a. authorize and approve the assumption and assignment of the Assigned Contracts upon the Closing, without the need for any further action by any party, pursuant to Bankruptcy Code section 365;
- b. provide that where the Debtors are unable to establish that a default exists under a Contract, the Cure Amount relating to such Assigned Contract shall be set at \$0.00; and
- c. find that the Successful Bidder has established adequate assurance of future performance necessary to satisfy the requirements of Bankruptcy Code section 365 in respect of the assignment to the Successful Bidder of the Assigned Contracts.

RELIEF REQUESTED

31. By this Motion, the Debtors seek the entry of two orders of this Bankruptcy Court: (a) the Bid Procedures Order (i) approving the Bid Procedures in connection with the solicitation and acceptance of higher and better bids with respect to the Sale of the Acquired Assets, (ii) scheduling the Sale Hearing and setting objection deadlines with respect to the Sale, (iii) approving the form and manner of notice of the Sale and related Auction, (iv) establishing procedures to determine Cure Amounts and deadlines for objections to the potential assumption and assignment of executory contracts and unexpired leases, and (v) granting related relief; and (b) the Sale Order (i) authorizing and approving the Stalking Horse APA, (ii) authorizing the Sale free and clear of Encumbrances pursuant to the Stalking Horse APA, (iii) authorizing the assumption and assignment of the Assigned Contracts, and (iv) granting related relief.

32. The Debtors believe that the proposed Sale will maximize the value of the Debtors' assets for all stakeholders. The Debtors and the Stalking Horse Bidder negotiated the terms of the Stalking Horse APA at arm's length, subject to higher or otherwise better offers.

BASIS FOR RELIEF REQUESTED

**A. The Bid Procedures Are Fair and Reasonable
And Are Designed to Not Chill Bidding**

33. Maximization of proceeds received by the estate is one of the dominant goals of any proposed sale of estate property. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004) (debtor-in-possession “had a fiduciary duty to protect and maximize the estate’s assets”). In the hope of maximizing the value received by the estates, courts typically establish procedures that are intended to enhance competitive bidding by, among other things, setting forth the rules that will govern the auction process. *See, e.g., In re Fin. News Network, Inc.*, 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991) (“court-imposed rules for the disposition of assets ... [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates”); *In re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998) (bid procedures should allow for “an open and fair public sale designed to maximize value for the estate”).

34. Here, the Debtors believe that the Bid Procedures are designed to maximize the value received for the Acquired Assets and prevent any chilling of potential bids by establishing a competitive and fair bidding process. In particular, the Credit Bid Cap, combined with the absence of *any* bid protections in favor of the Stalking Horse Bidder, will ensure that potential bidders are not deterred from participating in the sale process because they will know, at the very outset of the Chapter 11 Cases, the price point at which the Stalking Horse Bidder will walk away from the assets. Further, the process set forth in the Bid Procedures allows for a timely and efficient auction process given the circumstances facing the Debtors, while providing Potential Bidders with ample time and information to submit a timely bid and perform diligence. The Bid Procedures are designed to ensure that the Acquired Assets will be sold for the highest or

otherwise best possible purchase price by subjecting the value of the Acquired Assets to market testing and permitting prospective buyers to bid on the Acquired Assets. Accordingly, the Debtors and all parties in interest can be assured that the consideration received for the Acquired Assets will be fair and reasonable and that the proposed Bid Procedures will not chill bidding by any Potential Bidders. Moreover, the proposed Bid Procedures are fair and appropriate in light of the robust prepetition marketing process undertaken by the Debtors and their professionals.

35. Procedures to dispose of assets, similar to the proposed Bid Procedures have been approved in other large, complex chapter 11 cases in this district. *See, e.g., In re City Sports, Inc.*, Case No. 15-12054 (KG) (Bankr. D. Del. Oct. 23, 2015); *Saladworks*, Case No. 15-10327 (LSS) (Bankr. D. Del. Mar. 11, 2015); *In re iGPS Co. LLC*, Case No. 13-11459 (KG) (Bankr. D. Del. July 31, 2013); *Tri-Valley Corp.*, Case No. 12-12291 (MFW) (Bankr. D. Del. Sep. 5, 2012); *WP Steel Venture LLC*, Case No. 12-11661 (KJC) (Bankr. D. Del. June 21, 2012) *Capitol Infrastructure, LLC*, Case No. 12-11362 (KG) (Bankr. D. Del. May 15, 2012); *Traffic Control And Safety Corp.*, Case No. 12-11287 (KJC) (Bankr. D. Del. May 14, 2012); *Contract Research Solutions, Inc.*, Case No. 12-11004 (KJC) (Bankr. D. Del. April 12, 2012); *Delta Petroleum Corp.*, Case No. 11-14006 (KJC) (Bankr. D. Del. January 11, 2012); *Dallas Stars, L.P.*, Case No. 11-12935 (PJW) (Bankr. D. Del. September 22, 2011). In sum, the Debtors believe that the proposed Bid Procedures provide an appropriate framework for expeditiously establishing that the Debtors are receiving the best and highest offer for the Acquired Assets. Accordingly, the proposed Bid Procedures are reasonable, appropriate and within the Debtors' sound business judgment under the circumstances.

B. The Overbid Protections Are Appropriate Under the Circumstances

36. The Minimum Overbid Increment is appropriate under the circumstances and will enable the Debtors to simultaneously maximize value while limiting the chilling effect in the

marketing process. This provision also is consistent with the overbid increments previously approved by courts in this district. *See, e.g., Saladworks*, Case No. 15-10327 (LSS) (Bankr. D. Del. Mar. 11, 2015); *Tri-Valley Corp.*, Case No. 12-12291 (MFW) (Bankr. D. Del. Sep. 5, 2012); *WP Steel Venture LLC*, Case No. 12-11661 (KJC) (Bankr. D. Del. June 21, 2012); *Solar Trust of Am., LLC*, Case No. 12-11136 (KG) (Bankr. D. Del. May 11, 2012); *Contract Research Solutions, Inc.*, Case No. 12-11004 (KJC) (Bankr. D. Del. April 12, 2012); *Delta Petroleum Corp.*, Case No. 11-14006 (KJC) (Bankr. D. Del. January 11, 2012).

C. The Proposed Sale Notice, the Proposed Date for the Sale Objection Deadline, the Cure Objection Deadline and the Sale Hearing Are Appropriate

37. The Debtors submit that the Sale Objection Deadline is reasonable and appropriate under the circumstances. Pursuant to Local Rule 9006-1(c)(ii), “[w]here a motion is filed and served in accordance with Local Rule 9006-1(c)(i), the deadline for objection(s) shall be no later than seven (7) days before the hearing date.” Del. Bankr. L.R. 9006-1(c)(ii). As noted above, the Sale Hearing is more than twenty-one (21) days from notice of this Motion and the Sale Objection Deadline has been scheduled seven (7) days in advance thereof. As such, the Debtors submit that the proposed Sale Objection Deadline meets the requirements of the Bankruptcy Rules and the Local Rules.

38. The Debtors submit that the notice to be provided through the Sale Notice and the method of service proposed herein fully complies with the requirements set forth in Bankruptcy Rule 2002 and constitutes good and adequate notice of the Bid Procedures and the subsequent proceedings related thereto, including the proposed dates for (a) the Bid Deadline; (b) the Sale Objection Deadline; (c) the Contract Objection Deadline; and (d) the Sale Hearing. Therefore, the Debtors respectfully request that the Bankruptcy Court to approve the proposed notice procedures.

D. The Contract Procedures Provide Adequate Notice and Opportunity to Object and Should be Approved

39. Bankruptcy Code section 365(a) provides, in pertinent part, that a debtor-in-possession “subject to the court’s approval, may assume or reject any executory contract or [unexpired] lease of the debtor.” 11 U.S.C. § 365(a). As discussed in greater detail below, the standard governing bankruptcy court approval of a debtor’s decision to assume or reject an executory contract or unexpired lease is whether the debtor’s reasonable business judgment supports assumption or rejection. *See, e.g., In re Stable Mews Assoc., Inc.*, 41 B.R. 594, 596 (Bankr. S.D.N.Y. 1984).

40. The Debtors respectfully submit that the proposed Contract Procedures are appropriate and reasonably tailored to provide the Contract Parties with adequate notice of the proposed assumption and assignment of the applicable Contract, as well as proposed Cure Amounts, if applicable. Such Contract Parties will then be given an opportunity to object to such notice. The Contract Procedures further provide that, in the event an objection is not resolved, the Bankruptcy Court will determine related disputed issues (including any adequate assurance of future performance issues). Accordingly, the Debtors submit that implementation of the proposed Contract Procedures is appropriate in these Chapter 11 Cases.

41. The Contract Procedures comport with the requirements of Bankruptcy Code section 365 (as described fully below) and Bankruptcy Rule 6006, and the non-Debtor contract counterparties’ rights to adequate assurance are unaffected and fully preserved. The Debtors respectfully submit that the notices required by the Contract Procedures are sufficient to assume and assign the Assigned Contracts because they are reasonably tailored to provide notice and an opportunity to object to the proposed assumption and assignment. Thus, the Debtors submit that the Contract Procedures should be approved.

E. The Sale is Within the Sound Business Judgment of the Debtors and Should Be Approved

42. The Debtors submit that ample authority exists for approval of the proposed Sale to the Successful Bidder. Bankruptcy Code section 363(b)(1) provides, in relevant part, that a debtor-in-possession, “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). Bankruptcy Code section 363 does not set forth a standard for determining when it is appropriate for a court to authorize the sale or disposition of a debtor’s assets prior to confirmation of a plan. However, courts in the Third Circuit and others have required that the decision to sell assets outside the ordinary course of business be based upon the sound business judgment of the debtor. *See In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986); *see also Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1071 (2d Cir. 1983); *Dai-Ichi Kangyo Bank, Ltd v. Montgomery Ward Holding Corp., (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D.D.C. 1991).

43. The “sound business judgment” test requires a debtor to establish four elements in order to justify the sale or lease of property outside the ordinary course of business, namely, (a) that a “sound business purpose” justifies the sale of assets outside the ordinary course of business; (b) that adequate and reasonable notice has been provided to interested persons; (c) that the debtor has obtained a fair and reasonable price; and (d) good faith. *Abbotts Dairies*, 788 F.2d 143; *Titusville Country Club v. Pennbank (In re Titusville Country Club)*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); *In re Sovereign Estates, Ltd*, 104 B.R. 702, 704 (Bankr. E.D. Pa. 1989). A debtor’s showing of a sound business purpose need not be unduly exhaustive but, rather, a debtor is “simply required to justify the proposed disposition with sound business reasons.” *In re*

Baldwin United Corp., 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984). Whether or not there are sufficient business reasons to justify a transaction depends upon the facts and circumstances of each case. *Lionel*, 722 F.2d at 1071; *Montgomery Ward*, 242 B.R. at 155 (approving funding of employee incentive and severance program and holding that the business purpose requirement was fulfilled, because stabilizing turnover rate and increasing morale were necessary to successful reorganization).

44. Additionally, Bankruptcy Code section 105(a) provides a bankruptcy court with broad powers in the administration of a case under the Bankruptcy Code. Section 105(a) provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). Provided that a bankruptcy court does not employ its equitable powers to achieve a result not contemplated by the Bankruptcy Code, the exercise of its section 105(a) power is proper. *In re Fesco Plastics Corp.*, 996 F.2d 152, 154 (7th Cir. 1993); *Pincus v. Graduate Loan Ctr. (In re Pincus)*, 280 B.R. 303, 312 (Bankr. S.D.N.Y. 2002). Pursuant to section 105(a), a court may fashion any order or decree that helps preserve or protect the value of a debtor’s assets. *See, e.g., Chinichian v. Campolongo (In re Chinichian)*, 784 F.2d 1440, 1443 (9th Cir. 1986) (“Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code.”); *In re Cooper Props. Liquidating Trust, Inc.*, 61 B.R. 531, 537 (Bankr. W.D. Tenn. 1986) (noting that a bankruptcy court is “one of equity and as such it has a duty to protect whatever equities a debtor may have in property for the benefit of its creditors as long as that protection is implemented in a manner consistent with the bankruptcy laws.”).

A “Sound Business Purpose” Supports the Sale

45. As set forth in the First Day Declaration, prior to the Petition Date, the Debtors were in default of their obligations under the Prepetition Financing Agreement. In light of their deteriorating cash position and lack of realistic stand-alone restructuring options, the Debtors have determined, in the exercise of their reasonable business judgment, that the most effective way to maximize the value of their estates for the benefit of their constituents is to sell the Acquired Assets pursuant to Bankruptcy Code section 363 to the highest or otherwise best bid.

46. The Stalking Horse APA establishes a floor price for what the Debtors anticipate will be a robust Auction. The Stalking Horse APA and the Bid Procedures permit the Debtors to seek out higher or otherwise better offers at the Auction. At the same time, the Credit Bid Cap set forth in the Bid Procedures will encourage potential bidders to participate in the sale process because they will know, at the outset of the Chapter 11 Cases, the price point at which the Stalking Horse Bidder will walk away from the assets, even though it would otherwise have the right to submit a substantial overbid in the form of a subsequent credit bid. This will ensure that the market sets the value for the Acquired Assets and that the Sale will maximize value of the Debtors’ business for the benefit of all of the Debtors’ stakeholders. Accordingly, the Debtors have provided a sound business purpose in pursuing the approval of the Sale.

Sufficient Notice of the Proposed Sale Has Been Provided to Interested Parties

47. Pursuant to the Bid Procedures and the notice procedures set forth herein, the Debtors will employ various methods of notification to ensure that all interested and potentially affected parties will be informed of the Sale. In order to generate the greatest number of bidders possible for the Sale and to satisfy the requirements of Bankruptcy Rule 2002, the Debtors will serve the Sale Notice upon the Sale Notice Parties.

48. Additionally, the Debtors will file and serve the Cure Notice on all non-Debtor counterparties to the Contracts providing them with notice of this Motion, the potential assumption and assignment of Contracts and the Debtors' proposed Cure Amount.

49. Finally, as explained above, the Debtors and their professionals also have reached out to over one hundred twenty (120) potential purchasers regarding a potential transaction after and in the months leading up to the Petition Date. The Debtors submit that more than ample notice of the Sale has been provided to interested parties under the facts and circumstances of these Chapter 11 Cases.

The Proposed Sale is for a Fair and Reasonable Price

50. The Debtors submit that the Purchase Price – in particular, the Credit Bid Cap component of the Purchase Price – is fair and reasonable for the Acquired Assets. The Purchase Price set forth in the Stalking Horse APA is the result of numerous rounds of arms' length, good faith negotiations with the Stalking Horse Bidder. As explained above, the Purchase Price in the Stalking Horse APA will serve as the floor price for competing bids.

51. The Bid Procedures have been designed to ensure that the highest or otherwise best offer for the Acquired Assets will be attained. With the assistance of SSG, the Debtors continue to (i) conduct a comprehensive marketing process in order to maximize value, (ii) solicit the interest of various potential strategic and financial buyers and (iii) entertain offers for an alternative sale transaction that will maximize the value of the Debtors' business. The Debtors expect that their continued marketing efforts will result in the submission of one or more competing bids prior to the proposed Bid Deadline of October 18, 2017. In the event that a Qualified Bid other than that of the Stalking Horse Bidder is received, the Bid Procedures provide that an Auction will be held to determine the highest or otherwise best bid.

52. Because the ultimate purchase price for the Acquired Assets will be determined in accordance with the Bankruptcy Court-approved Bid Procedures at an Auction, it will be fair and reasonable as contemplated by Bankruptcy Code section 363. *See, e.g., In re Abbotts Dairies of Pa., Inc.*, 788 F.2d at 149 (finding that “[g]enerally speaking, an auction may be sufficient to establish that one has paid ‘value’ for the assets of a bankrupt”); *In re Nat’l Health & Safety Corp.*, 1999 Bankr. LEXIS 1126 (Bankr. E.D. Pa. Sept. 2, 1999) (citing *Abbotts Dairies* for the proposition that an auction may be sufficient to establish that one has paid value for the assets of a debtor, and relying upon auction results to verify that the purchase price represented value).

The Proposed Sale Has Been Negotiated at Arm’s Length and in Good Faith

53. The “good faith” prong of the *Abbotts Dairies* standard is also satisfied. The Debtors request that the Bankruptcy Court find that the Successful Bidder is entitled to the benefits and protections provided by Bankruptcy Code section 363(m) in connection with the Sale. Bankruptcy Code section 363(m) provides, in pertinent part:

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

11 U.S.C. § 363(m).

54. Bankruptcy Code section 363(m) thus protects the buyer of assets sold pursuant to Bankruptcy Code section 363 from the risk that it will lose its interest in the Acquired Assets if the order allowing the sale is reversed on appeal. By its terms, Bankruptcy Code section 363(m) applies to sales of interests in tangible assets, such as the Acquired Assets.

55. The Debtors submit, and will present evidence at the Sale Hearing, if necessary, that as set forth above, the Successful Bidder’s purchase agreement was an arm’s-length

transaction, in which the Successful Bidder acted in good faith. The Debtors and the Successful Bidder negotiated the Successful Bidder's purchase agreement in good faith and without collusion or fraud of any kind. The Successful Bidder has not engaged in collusion or any conduct that would otherwise control or tend to control the sale price as between or among Potential Bidders. The Bid Procedures are designed to maximize rather than chill competitive bidding and the Auction promotes an open and competitive sale process. The Debtors have had their own legal counsel in negotiations over the Stalking Horse APA or the Successful Bid and will have their own legal counsel to negotiate on their behalf throughout the Auction and the Sale. Accordingly, the Debtors request that the Bankruptcy Court make the finding at the Sale Hearing that the Successful Bidder, including, if applicable, the Stalking Horse Bidder, has purchased the Acquired Assets in good faith within the meaning of Bankruptcy Code section 363(m).

All Pertinent Information Regarding the Proposed Sale Has Been Fully Disclosed

56. The Debtors have presented the proposed asset sale openly and in good faith. The Stalking Horse Bidder's identity and any connection with the Debtors has been fully disclosed in this and other pleadings filed with the Bankruptcy Court. The Debtors have fully disclosed and requested the Bankruptcy Court's approval of all of the terms and conditions of the proposed Sale. Sufficient and adequate notice of this Motion has been provided to interested parties and such parties will receive further notice of the Sale and all relevant dates and deadlines related thereto through the Bankruptcy Court-approved Sale Notice.

57. The Debtors will be prepared to introduce evidence at the Sale Hearing regarding the arm's-length, good faith nature of the Auction and the negotiation of the Stalking Horse APA. Indeed, the Debtors will be able to demonstrate that the Stalking Horse APA with the Stalking Horse Bidder or the Successful Bidder, as applicable, represents the highest or

otherwise best bid available to the Debtors for the Acquired Assets following a robust marketing and competitive bidding process. Accordingly, the Sale pursuant to the Stalking Horse APA has been proposed and fully disclosed in good faith and represents the sound business judgment of the Debtors; and, as such, is entitled to Bankruptcy Court approval.

F. The Sale Satisfies the Requirements of Bankruptcy Code Section 363(f)

58. Under Bankruptcy Code section 363(f), a debtor-in-possession may sell all or any part of its property free and clear of any and all liens, claims or interests in such property if: (i) such a sale is permitted under applicable non-bankruptcy law; (ii) the party asserting such a lien, claim or interest consents to such sale; (iii) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property; (iv) the interest is the subject of a *bona fide* dispute; or (v) the party asserting the lien, claim or interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest. 11 U.S.C. § 363(f); *Citicorp Homeowners Serv., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (noting that Bankruptcy Code section 363(f) is written in the disjunctive; therefore, a court may approve a sale “free and clear” provided at least one of the subsections is met).

59. Here, the Sale satisfies the criteria set forth in Bankruptcy Code section 363(f). The Debtors believe that, at a minimum, they satisfy the fifth prong of section 363(f) because the holders of any liens, claims, encumbrances, or interests could be compelled, in a legal or equitable proceeding, to accept a monetary satisfaction equal to the amount of their lien, claim, encumbrance, or interest.

G. The Assumption and Assignment of Executory Contracts and Unexpired Leases Should Be Authorized.

60. As explained above, Bankruptcy Code section 365(a) provides, in pertinent part, that a debtor-in-possession “subject to the court’s approval, may assume or reject any executory contract or [unexpired] lease of the debtor.” 11 U.S.C. § 365(a). The standard governing bankruptcy court approval of a debtor’s decision to assume or reject an executory contract or unexpired lease is whether the debtor’s reasonable business judgment supports assumption or rejection. *See, e.g., Stable Mews*, 41 B.R. at 596. If the debtor’s business judgment has been reasonably exercised, a court should approve the assumption or rejection of an unexpired lease or executory contract. *See Group of Institutional Investors v. Chicago M St. P. & P.R.R. Co.*, 318 U.S. 523 (1943); *Sharon Steel Corp.*, 872 F.2d 36, 39-40 (3d Cir. 1989). The business judgment test “requires only that the trustee [or debtor-in-possession] demonstrate that [assumption or] rejection of the contract will benefit the estate.” *Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co. (In re Wheeling-Pittsburgh Steel Corp.)*, 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987) (quoting *Stable Mews Assoc.*, 41 B.R. at 596). Any more exacting scrutiny would slow the administration of a debtor’s estate and increase costs, interfere with the Bankruptcy Code’s provision for private control of administration of the estate, and threaten the court’s ability to control a case impartially. *See Richmond Leasing Co. v. Capital Bank, NA.*, 762 F.2d 1303, 1311 (5th Cir. 1985). Moreover, pursuant to Bankruptcy Code section 365(b)(1), for a debtor to assume an executory contract, it must “cure, or provide adequate assurance that the debtor will promptly cure,” any default, including compensation for any “actual pecuniary loss” relating to such default. 11 U.S.C. § 365(b)(1).

61. Once an executory contract is assumed, the trustee or debtor-in-possession may elect to assign such contract. *See In re Rickel Home Centers, Inc.*, 209 F.3d 291, 299 (3d Cir.

2000) (“[t]he Code generally favors free assignability as a means to maximize the value of the debtor’s estate”); *see also In re Headquarters Dodge, Inc.*, 13 F.3d 674, 682 (3d Cir. 1994) (noting purpose of section 365(f) is to assist trustee in realizing the full value of the debtor’s assets).

62. Bankruptcy Code section 365(f) provides, in pertinent part, that a trustee may assign an executory contract or unexpired lease of a debtor only if:

- (A) the trustee assumes such contract or lease in accordance with the provisions of this section; and
- (B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2).

63. Bankruptcy Code section 365(a) provides that a debtor, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). Moreover, Bankruptcy Code section 365(b) codifies the requirements for assuming an executory contract of a debtor. This provision provides that:

- (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).

64. The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given “practical, pragmatic construction.” *See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1989); *see also 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). 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. *Accord 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 lease from debtors has financial resources and has expressed willingness to devote sufficient funding to business in order to give it strong likelihood of succeeding).

65. As set forth in the Stalking Horse APA, to the extent any defaults exist under any Assigned Contract sought to be assumed by the Debtors and assigned to the Successful Bidder such defaults are required to be cured as required under Bankruptcy Code section 365(b)(1).

66. The Debtors believe that the Successful Bidder has the financial capability to satisfy any and all obligations they will incur in connection with the Assigned Contracts. In addition, to be a Qualified Bid, any Qualified Bidder must establish it has the financial capability to satisfy any and all obligations it will incur in connection with the Assigned Contracts. Additionally, facts will be further adduced at the Sale Hearing to show the financial credibility of the Successful Bidder, its experience in the industry and its willingness and ability to perform under the Assigned Contracts. Because the Sale Hearing will provide the Bankruptcy Court with an opportunity to evaluate the ability of the Successful Bidder to provide adequate assurance of future performance under the Assigned Contracts, as required by Bankruptcy Code section

365(b)(1)(C), the Debtors submit that the Bankruptcy Court should authorize the assumption and assignment of the Assigned Contracts by the Debtors, effective upon the Closing of the proposed Sale.

67. Additionally, the contract procedures set forth herein provide that all of the counterparties to Contracts with the Debtors will be given notice of this Sale Motion and through the Cure Notice and any Additional Cure Notice have been provided with notice of the potential assumption and assignment of their Contract and the Debtors' proposed Cure Amounts associated therewith. Based on the foregoing, the Debtors respectfully submit that its assumption and assignment of the Assigned Contracts satisfies the requirements under Bankruptcy Code section 365(f)(2)(A) and (B).

H. Relief from the Fourteen Day Waiting Period Under Bankruptcy Rules 6004(h) and 6006(d) Is Appropriate

68. The Debtors seek a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), "[an] order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of fourteen (14) days after entry of the order, unless the court orders otherwise." As set forth above, the relief requested herein is essential to maximize the value of the Debtors' business for the benefit of all stakeholders.

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

70. Similarly, Bankruptcy Rule 6006(d) stays all orders authorizing a debtor to assign an executory contract or unexpired lease pursuant to Bankruptcy Code section 365(f) for fourteen (14) days, unless the court orders otherwise. *See* Fed. R. Bankr. P. 6006(d).

71. To preserve the value of the Acquired Assets and limit the costs of administering and preserving such assets, it is critical that the Debtors close the Sale as soon as possible after all closing conditions have been achieved or waived. Additionally, the Stalking Horse APA requires the Closing to occur within eighty (80) days following the Petition Date. Accordingly, the Debtors hereby request that the Bankruptcy Court waive the fourteen (14) day stay periods under Bankruptcy Rules 6004(h) and 6006(d).

72. Based upon the foregoing, the Debtors submit that the relief requested herein is necessary and appropriate, is in the best interests of the Debtors and their estates, and should be granted in all respects.

NOTICE AND NO PRIOR REQUEST

73. No prior Motion for the relief requested herein has been made to this or any other court.

74. Notice of this Motion as it relates to approval of the Bid Procedures has been given to the Sale Notice Parties, but excluding the Debtors' known creditors. Notice of the Motion as it relates to the approval of the Sale and related requests will be given to the Sale Notice Parties. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

WHEREFORE, the Debtors respectfully request (i) entry of the proposed Bid Procedures Order; (ii) entry of the proposed Sale Order; and (iii) such other and further relief as the Bankruptcy Court deems just and proper.

Dated: August 10, 2017
Wilmington, Delaware

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EXHIBIT A

BID PROCEDURES ORDER

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

In re:

PEEKAY ACQUISITION, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 17-11722 (BLS)

(Joint Administration Requested)

Ref. No. _____

**ORDER (A) APPROVING BID PROCEDURES RELATING TO THE SALE OF
SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS; (B) SCHEDULING A HEARING
TO CONSIDER THE SALE; (C) APPROVING THE FORM AND MANNER OF
NOTICE OF SALE BY AUCTION; (D) ESTABLISHING NOTICE AND CONTRACT
PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND
LEASES; AND (E) GRANTING RELATED RELIEF**

Upon the Motion² filed by the above-captioned debtors and debtors-in-possession (the "Debtors"), pursuant to sections 105(a), 363, 365, 503 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), and Rules 2002, 6003, 6004, 6006, 9007 and 9008 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"), for entry of an order (the "Order"), (i) approving the procedures (the "Bid Procedures") substantially in the form annexed hereto as Exhibit 1 relating to that certain Asset Purchase Agreement (the "Stalking Horse APA") by and among the Debtors and TLA Acquisition Corp. (the "Stalking Horse Bidder"), with respect to the

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are: Peekay, Inc. (3429); Peekay Boutiques, Inc. (7972); Christals Acquisition, LLC (0391); Peekay Acquisition, LLC (0923); Peekay SPA, LLC (2765); Conrev, Inc. (2441); Condom Revolution, Inc. (6019); Charter Smith Sanhueza Retail, Inc. (8963); ZJ Gifts F-2, L.L.C. (3565); ZJ Gifts F-3, L.L.C. (3562); ZJ Gifts F-4, L.L.C. (8006); ZJ Gifts F-5, L.L.C. (7062); ZJ Gifts F-6, L.L.C. (4381); ZJ Gifts I-1, L.L.C. (5099); ZJ Gifts M-3, L.L.C. (8925); ZJ Gifts M-1, L.L.C. (7202); and ZJ Gifts M-2, L.L.C. (6643). The Debtors' corporate headquarters and mailing address is 901 West Main Street, Suite A, Auburn, WA 98001.

² Capitalized terms used but not defined herein shall have the same meanings given to such terms as in the Motion or the Stalking Horse APA, as applicable.

proposed sale (the “Sale”) of substantially all of the assets (as defined in the Stalking Horse APA, the “Acquired Assets”), (ii) scheduling a hearing on the Sale (the “Sale Hearing”) and setting objection and bidding deadlines with respect to the Sale, (iii) approving the form and manner of notice of the Sale and the auction (the “Auction”) for the Acquired Assets, a copy of which notice is attached hereto as Exhibit 2 (the “Sale Notice”), (iv) establishing procedures to determine cure amounts and deadlines for objections to the assumption and assignment of executory contracts and unexpired leases as set forth in the Motion (the “Contract Procedures”); and (v) granting related relief; and it appearing that the notice of the Motion provided is appropriate and sufficient under the circumstances and that no other or further notice need be given; and it appearing that the relief requested is in the best interests of the Debtors’ estates, their creditors and other parties in interest; and after due deliberation and good and sufficient cause appearing therefor;

THE COURT HEREBY FINDS AND CONCLUDES THAT:³

A. This Court has jurisdiction over this matter and over the properties of the Debtors and their estates pursuant to 28 U.S.C. §§ 157 and 1334. This proceeding is a core proceeding pursuant to 28 U.S.C. § 157. Venue is proper in this district and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The statutory and rule based predicates for the relief requested in the Motion are Bankruptcy Code sections 105(a), 363, 365, 503 and 507, Bankruptcy Rules 2002, 6003, 6004, 6006, 9007, 9008 and Local Rule 6004-1.

³ The findings and conclusions set forth herein constitute the Bankruptcy Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. Notice of the Motion having been given as set forth in the Motion is sufficient in light of the circumstances and the nature of the relief requested in the Motion and no other or further notice is necessary or required, except as otherwise set forth herein.

D. The Debtors have articulated good and sufficient reasons for this Court to grant the relief requested in the Motion regarding the Sale process, including, without limitation: (i) approving the Bid Procedures; (ii) scheduling the Auction and the Sale Hearing; (iii) approving the Sale Notice; and (iv) approving the Cure Notice and Contract Procedures.

E. The Bid Procedures were proposed and negotiated in good faith by the Debtors, and are fair, reasonable and appropriate under the circumstances, and are properly designed to maximize the recovery from any sale of the Acquired Assets.

F. The form and scope of the Sale Notice attached hereto as Exhibit 2 is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Sale, the Sale Hearing and the Auction and no other and further notice is required.

G. The Contract Procedures and the notices related thereto, including the Cure Notice attached hereto as Exhibit 3 and the Additional Cure Notice attached as Exhibit 4 are appropriate and reasonably calculated to provide all Contract Parties with proper notice of the potential assumption and assignment of Contracts or unexpired leases and any Cure Amounts relating thereto and no further or other notice is required.

H. The entry of this Order is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and it is therefor

ORDERED, ADJUDGED AND DECREED THAT:

1. The relief requested in the Motion is GRANTED as set forth herein.

2. The Bid Procedures and Contract Procedures are approved in all respects and the relief requested in the Motion as it pertains to the Bid Procedures and Contract Procedures, is granted.

3. All objections to the relief requested in the Motion with respect to the Bid Procedures or the Contract Procedures that have not been withdrawn, waived, or settled as announced to the Bankruptcy Court at the hearing on the Motion or as reflected in this Order or by stipulation or withdrawal filed with the Bankruptcy Court, are overruled.

4. The Debtors are hereby authorized to enter into and execute the Stalking Horse APA and to perform such obligations under the Stalking Horse APA which may arise prior to the Sale Hearing.

5. The Bid Procedures attached hereto as Exhibit 1 are hereby approved and fully incorporated into this Order, and shall apply with respect to the Auction and the proposed Sale of the Acquired Assets.

6. The Debtors are authorized to take any and all actions necessary or appropriate, consistent with the terms of this Order, to implement the Bid Procedures.

7. The Stalking Horse Bidder is hereby deemed a Qualified Bidder, whose bid as set forth in the Stalking Horse APA shall be deemed a Qualified Bid.

8. The Stalking Horse Bidder, or its designee or assignee, is entitled to credit bid its secured claims against the Debtors up to a maximum amount not to exceed \$31 million (the "Credit Bid Cap"), without otherwise complying with the Bid Procedures, to the fullest extent permissible under Bankruptcy Code section 363(k); provided, that such credit bid shall be subject only to any challenge filed in accordance with and subject to the requirements of the Financing Orders. If no such challenge is so commenced, no person or entity shall have any

right to challenge any credit bid submitted by the Stalking Horse Bidder. If any such challenge is commenced, the Stalking Horse Bidder may, in its sole discretion, withdraw the Stalking Horse Bid or seek other appropriate relief, including on an emergency basis.

9. Upon the closing of any Sale to any party other than the Stalking Horse Bidder, all consideration provided in connection with such Sale shall be paid directly to the Term A Lenders until all claims of the Term A Lenders have been paid in full in cash; provided, that if a timely challenge to the Debtors' obligations to the Term A Lenders is commenced in accordance with the Financing Orders, such consideration shall be held in escrow by the Debtors until such challenge is resolved or as otherwise ordered by this Court.

10. The Debtors shall have the right to determine at the Auction that any Qualified Bid other than the Stalking Horse Bid and Successful Bid shall be the Back-Up Bid.

11. Pursuant to the Bid Procedures, a Potential Bidder that desires to make a bid shall deliver written copies of its bid to the parties identified in the Bid Procedures no later than 12:00 p.m. (ET) on October 18, 2017 (the "Bid Deadline") and shall comply with all other requirements set forth in the Bid Procedures in making such a bid for the Acquired Assets.

12. To the extent the Debtors receive at least one Qualified Bid, other than that of the Stalking Horse Bidder, the Debtors shall conduct the Auction commencing at 10:00 a.m. (ET) on October 25, 2017 at the offices of Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801.

13. If the Debtors do not receive a Qualified Bid other than that of the Stalking Horse Bidder, the Debtors will not hold the Auction, and the Stalking Horse Bidder will be named the Successful Bidder. No later than 4:00 p.m. (ET) on the day that is one business day before the

Auction, the Debtors shall notify all Qualified Bidders (including the Stalking Horse Bidder) and counsel to the Committee, if any, whether the Auction will occur.

14. Upon conclusion of the bidding at any Auction, the Auction shall be closed, and the Debtors, in consultation with the Term A Lenders and the Committee, if any, shall (i) review each Qualified Bid and Overbid on the basis of financial and contractual terms and the factors relevant to the Sale process and the contract assumption process, including, without limitation, those factors affecting the speed and certainty of consummating the proposed Sale and the amount of the cash (or cash equivalents) consideration and (ii) identify the highest or otherwise best offer for the Acquired Assets (the "Successful Bid") and the entity submitting such Successful Bid, the "Successful Bidder"), the Back-Up Bid and the Back-Up Bidder and advise the Qualified Bidders of such determinations.

15. The Debtors, in their reasonable business judgment, in consultation with the Term A Lenders and the Committee, if any, may (a) determine which Qualified Bid, if any, is the highest or otherwise best offer; and (b) reject, at any time before entry of an order of the Bankruptcy Court approving a Qualified Bid, any bid that is (i) inadequate or insufficient; (ii) not in conformity with the requirements of the Bankruptcy Code, the Bid Procedures, or the terms and conditions of the Sale; or (iii) contrary to the best interests of the Debtors, their estates, their creditors, or other stakeholders; provided, however, that notwithstanding anything contained herein or in any other related pleading, the Debtors may not modify the Bid Procedures in any way that would materially impair the rights of the Stalking Horse Bidder under the Stalking Horse APA or the Term A Lenders. All bids, including the Successful Bid, must comply with the Minimum Initial Bid requirements (as defined in the Motion), unless otherwise agreed by the Debtors, in consultation with the Term A Lenders and the Committee, if any.

16. The Debtors' presentation of a particular Qualified Bid other, than the Stalking Horse Bid, to the Bankruptcy Court for approval does not constitute the Debtors' acceptance of such Qualified Bid. Other than as expressly set forth in the Bid Procedures Order, the Debtors will be deemed to have accepted a bid only when the bid has been approved by the Bankruptcy Court at the Sale Hearing.

17. After the Successful Bid, the next highest or otherwise best offer, as determined by the Debtors, in consultation with the Term A Lenders and Committee, if any, (the "Back-Up Bid") shall remain open, and the entity submitting such Back-Up Bid (the "Back-Up Bidder") shall be required to fully perform under such Back-Up Bid, until the earlier of consummation of the Sale with the Successful Bidder or sixty (60) days following the closing date contemplated in the Successful Bid. For the avoidance of doubt, the Stalking Horse Bidder shall not be required to serve as the Back-Up Bidder. In the event the Successful Bidder fails to consummate the Sale as a result of the Successful Bidder's default or breach under the applicable purchase agreement in accordance with the terms of such purchase agreement by the closing date contemplated in such purchase agreement, the Debtors shall be, among other things, free to enter into a new purchase agreement with the Back-Up Bidder at the purchase price contemplated in the Back-Up Bid. Following the approval of the Sale of the Acquired Assets to the Successful Bidder at the Sale Hearing, if such Successful Bidder fails to consummate the approved Sale within sixty (60) days after entry of an Order approving such Sale, the Debtors shall be authorized, in consultation with the Term A Lenders and the Committee, if any, but not required, to deem the Back-Up Bid, as disclosed at the Sale Hearing, the Successful Bid, and the Debtors may consummate the Sale to the Back-Up Bidder without further order of the Bankruptcy Court.

18. The Contract Procedures, setting forth, among other things, the procedures for determining the Cure Amounts and the deadline for objecting to the Cure Amounts and/or the proposed assumption and assignment of executory contracts and unexpired leases, as provided in the Motion, are hereby approved in their entirety. Notice of the Contract Procedures in the form attached hereto as Exhibit 3 and service of such notice of the Contract Procedures to the Contract Parties, are appropriate and sufficient under the circumstances, and no other or further notice of the Contract Procedures need to be given.

19. The Bankruptcy Court shall conduct the Sale Hearing commencing on October ____, 2017 at __:__.m. (ET), at which time the Bankruptcy Court will consider approval of the Sale to the Successful Bidder and entry of the Sale Order.

20. Objections to (i) approval of the Sale and entry of the Sale Order, including the sale of the Acquired Assets free and clear of all Encumbrances pursuant to Bankruptcy Code section 363(f), with such Encumbrances to attach to the Sale Proceeds (if any) (a "Sale Objection") or (ii) proposed Cure Amounts and/or the proposed assumption and assignment of Contracts on the Contracts Schedule, including, but not limited to, objections related to adequate assurance of future performance by the Successful Bidder (a "Contract Objection"), must be in writing and filed with the Bankruptcy Court and served on (i) counsel to the Debtors, Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801 (Attn: Adam G. Landis, Esq. and Matthew B. McGuire, Esq.); (ii) counsel to the Stalking Horse Bidder and the Term A Lenders, Curtis, Mallet-Prevost, Colt & Mosle LLP, 101 Park Avenue, New York, New York 10178 (Attn: Steven J. Reisman, Esq. and Shaya Rochester, Esq.) and Richards, Layton & Finger, P.A., 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq.); (iii) counsel to the Committee, if any; and (iv) the Office of the United States Trustee, 844 King

Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Juliet Sarkessian, Esq.), so as to be received by such parties prior to 4:00 p.m. (ET) on the date that is seven (7) days prior to the Sale Hearing (the “Sale Objection Deadline” and “Contract Objection Deadline”); provided, however, that if the Debtors amend the Cure Notice to add a contract or lease, the non-Debtor party to the added contract or lease shall have until the Sale Hearing to submit a Contract Objection (the “Amended Contract Objection Deadline”); provided further, that if the Debtors amend the Cure Notice to reduce the Cure Amount of a Contract or lease, except where such reduction was upon mutual agreement of the parties, the non-Debtor party to the Contract or lease with the reduced Cure Amount shall have until the Amended Contract Objection Deadline to object to the Cure Amount; and provided further, that in the event the Auction results in a Successful Bidder other than the Stalking Horse Bidder, Contract Parties shall have until the Amended Contract Objection Deadline to object to the assignment of executory contracts and unexpired leases to such Successful Bidder, other than to the Cure Amount which shall be subject to the Contract Objection Deadline, with any such objection being heard at the Sale Hearing or at a later-scheduled hearing as the Bankruptcy Court deems appropriate.

21. Unless a Contract Objection is filed and served before the Contract Objection Deadline or the Amended Contract Objection Deadline, as applicable, all Contract Parties shall be (i) forever barred from objecting to the proposed Cure Amounts and from asserting any additional cure or other amounts (other than as may be asserted in an Additional Cure Notice), and the Debtors and the Successful Bidder shall be entitled to rely solely upon the proposed Cure Amounts set forth in the Cure Notices; (ii) deemed to have consented to the assumption and assignment, (iii) forever barred and estopped from asserting or claiming against the Debtors or the Stalking Horse Bidder, or the Successful Bidder, as applicable, that any additional amounts

are due or other defaults exist (other than as may be asserted in an Additional Cure Notice), that conditions to assignment must be satisfied under such Contracts, including without limitation adequate assurance of future performance; (iv) precluded from objecting to the Cure Amount (if any) and the assumption and assignment; and (v) barred and estopped from asserting or claiming that their Contract contains an enforceable consent right.

22. The Debtors, the Contract Party, and the Successful Bidder may consensually resolve any Contract Objection prior to the Sale Hearing. In the event a Contract Objection is not resolved, such Contract Objection will be heard at the Sale Hearing or thereafter, or the Successful Bidder may designate such Contract as a Contract that will not be assumed and assigned to the Successful Bidder, in which case such Contract shall not be assumed and shall remain property of the Debtors' estates, subject to any designation rights set forth in the Stalking Horse APA and further orders of the Bankruptcy Court.

23. The Debtors are hereby authorized to share certain of the Contracts that contain confidentiality restrictions with Qualified Bidders, including the Stalking Horse Bidder, subject to the terms of the non-disclosure agreement by and between the Debtors and each Qualified Bidder, provided that each such Qualified Bidder requesting access to such confidential contracts enters into a non-disclosure agreement with the Debtors, in a form acceptable to the Debtors.

24. The requirement that a consumer privacy ombudsman be appointed, to the extent applicable, is hereby waived.

25. All Qualified Bidders are deemed to have submitted to the exclusive jurisdiction of the Bankruptcy Court with respect to all matters between and among any Qualified Bidder and the Debtors related to the Auction and the Sale.

26. The Sale Notice attached hereto as Exhibit 2 is approved. The Sale Notice provides all parties in interest good and sufficient notice of the relief sought in the Motion, including, but not limited to, the Auction, the Bid Deadline, the Bid Procedures, the Sale Hearing and the Sale.

27. Within two (2) days of the entry of the Bid Procedures Order, the Debtors shall serve by first class mail, postage prepaid, copies of: (i) this Order and (ii) the Sale Notice upon the following entities: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the Stalking Horse Bidder; (c) counsel to the Committee, if any, or if none is formed, the creditors holding the thirty (30) largest unsecured claims as set forth on the list filed with the Debtors' petitions; (d) all taxing authorities having jurisdiction over any of the Acquired Assets subject to the Sale, including the Internal Revenue Service; (e) the Environmental Protection Agency; (f) the U.S. Securities Exchange Commission; (g) the state/local environmental agencies in the jurisdictions where the Debtors own or lease real property; (h) all parties that have requested notice pursuant to Bankruptcy Rule 2002 as of the date prior to the date of entry of the Bid Procedures Order; (i) all persons or entities known to the Debtors that have or have asserted a lien on, or security interest in, all or any portion of the Acquired Assets; (j) all of the Debtors' known creditors; and (k) all potential bidders previously identified or otherwise known to the Debtors (collectively, the "Sale Notice Parties"). The Debtors are also authorized and directed to publish the Sale Notice in the national edition of either the *Wall Street Journal National Edition* or *USA Today* or similar publication once within seven (7) business days after entry of this Order.

28. The Cure Notice attached hereto as Exhibit 3 provides proper notice to all parties in interest and is approved. The Debtors shall serve the Cure Notice on all Contract Parties by first class mail on or before _____, 2017.

29. The Additional Cure Notice attached hereto as Exhibit 4 provides proper notice to all parties in interest and is approved. The Debtors shall serve the Additional Cure Notice pursuant to the additional assumption procedures as provided in the Motion.

30. This Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon execution hereof.

31. Notwithstanding the possible applicability of Bankruptcy Rule 6003 or 6004(h) or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry, and no automatic stay of execution shall apply to this Order.

32. This Court shall retain jurisdiction over any matters related to or arising from the implementation of this Order and the Bid Procedures.

Dated: _____, 2017
Wilmington, Delaware

United States Bankruptcy Judge

EXHIBIT 1

BID PROCEDURES

Peekay Acquisition, LLC and its affiliated debtors and debtors-in-possession (the “Debtors”) filed chapter 11 cases (the “Chapter 11 Cases”), which are pending in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) and are being jointly administered under Case No. 17-11722 (BLS). By motion dated August 10, 2017 (the “Motion”), the Debtors seek, among other things, approval of the processes and procedures set forth below (the “Bid Procedures”) to effectuate the sale of the Acquired Assets (the “Sale”).¹ The Bid Procedures are designed to facilitate a full, open and fair bidding process to maximize the value of the Acquired Assets for the benefit of the Debtors’ creditors, stakeholders, and the bankruptcy estates.

On October __, 2017, at __: __.m. (ET), as further described below, the Bankruptcy Court shall conduct a hearing (the “Sale Hearing”) at which time the Debtors shall seek entry of an order (the “Sale Order”) authorizing and approving the sale of the Acquired Assets to the Stalking Horse Bidder (defined below) or the Successful Bidder (defined below), as applicable.

Asset Purchase Agreement and Credit Bid Cap

The Debtors and TLA Acquisition Corp., for itself or for its assignee or designee (the “Stalking Horse Bidder”) have entered into an asset purchase agreement (the “Stalking Horse APA”), pursuant to which the Stalking Horse Bidder will acquire the Acquired Assets and assume the Assumed Contracts, subject to higher or otherwise better offers. The Acquired Assets do not include the Excluded Assets. The Sale contemplated by the Stalking Horse APA is subject to competitive bidding, as set forth herein, and approval by the Bankruptcy Court pursuant to sections 363 and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”).

Notwithstanding anything contained herein or in any other order of the Bankruptcy Court, the Stalking Horse Bidder’s Credit Bid (defined below) shall not exceed \$31 million (the “Credit Bid Cap”).

Assets for Sale

Subject to the terms herein, the Debtors are offering for sale, in one or more sales, all or substantially all of the assets of the Debtors. A bid for less than all of the Acquired Assets may be submitted but shall not be considered to be a Qualified Bid (defined below) unless coupled with bid(s) for other Acquired Assets, such that the value of the combined bids exceeds the value provided under the Stalking Horse APA.

Access to Due Diligence Materials

In order to access diligence materials and information related to the Debtors’ assets, each potential bidder (a “Potential Bidder”) must first deliver (unless previously delivered) to the

¹ Capitalized terms used but otherwise not defined herein shall have the meanings ascribed to them in the Stalking Horse APA (defined herein) or the Motion, as applicable.

Debtors' investment banker and counsel (as identified below) the following items prior to the Bid Deadline (defined below) (collectively, the "Participation Requirements"):

- (a) Confidentiality Agreement. An executed confidentiality agreement in form and substance reasonably acceptable to the Debtors; and
- (b) Identification of Potential Bidder. Identification of the Potential Bidder and any principals and representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated Sale.

Upon satisfaction of the Participation Requirements, the Debtors will afford each Potential Bidder due diligence access to the Debtors' assets; provided, however, that (i) the Debtors shall have the right, in consultation with the Term A Lenders and any official committee of unsecured creditors formed in the Chapter 11 Cases (the "Committee"), to reasonably limit the due diligence provided to competitors; and (ii) the Debtors will have no obligation to provide due diligence access after the Bid Deadline. If the Debtors determine, in consultation with the Term A Lenders and the Committee, if any, that a Potential Bidder does not constitute a Qualified Bidder (defined below), then such Potential Bidder's access to due diligence materials or additional non-public information shall terminate. The Debtors have designated and employed SSG Advisors, LLC, Five Tower Bridge, Suite 420, 300 Barr Harbor Drive, West Conshohocken, PA 19428, Attn: J. Scott Victor (e-mail jsvictor@ssgca.com), the proposed investment banker to the Debtors, to coordinate all reasonable requests from Potential Bidders for additional information and due diligence access. The Debtors and their representatives are not responsible for, and will bear no liability with respect to, any information obtained by any Qualified Bidder in connection with the Sale of the Acquired Assets.

BIDDING PROCESS

The Debtors and their advisors shall (i) determine, in consultation with the Term A Lenders and the Committee, if any, whether a Potential Bidder is a Qualified Bidder; (ii) coordinate efforts of the Potential Bidders in conducting their due diligence investigation; (iii) receive offers from the Qualified Bidders; and (iv) negotiate the offers made to purchase the Acquired Assets (collectively, the "Bidding Process"). Except as otherwise provided herein, the Debtors shall have the right, after consultation with each Qualified Bidder, the Term A Lenders, and the Committee, if any, to adopt such other rules for the Bidding Process (including rules that may depart from those set forth herein) that will better promote the goals of the Bidding Process, that are consistent with the Debtors' fiduciary duties, and that are not inconsistent with any of the other provisions hereof or of any Bankruptcy Court order; provided, however, that notwithstanding anything contained herein or in any other related pleading, the Debtors may not modify the Bid Procedures in any way that would materially impair the rights of the Stalking Horse Bidder under the Stalking Horse APA or the Term A Lenders.

Designation as Qualified Bidder

In order to be eligible to participate in the Auction (defined below) for the Acquired Assets, each Potential Bidder, other than the Stalking Horse Bidder or its designee or assignee, must be determined by the Debtors, in consultation with the Term A Lenders and the Committee,

if any, to have submitted a Qualified Bid (each, a “Qualified Bidder”). The Debtors shall have the right, in consultation with the Term A Lenders and the Committee, if any, to determine whether a bidder is a Qualified Bidder.

The Stalking Horse Bidder is a Qualified Bidder, and the Stalking Horse Bidder’s bid is a Qualified Bid. The Stalking Horse Bidder, or its designee or assignee, is entitled to credit bid (the “Credit Bid”) all or a portion of its secured claims against the Debtors, without otherwise complying with the Bid Procedures, to the fullest extent permissible under Bankruptcy Code section 363(k).

In order for any Potential Bidder to be considered a Qualified Bidder (other than the Stalking Horse Bidder and its designee or assignee, who are already considered Qualified Bidders), such Potential Bidder (or a combination of Potential Bidders whose bids for the assets of the Debtors do not overlap and who agree to have their bids combined for the purposes of the determination of whether such Potential Bidders together constitute a Qualified Bidder, and who shall also be referred to herein as a single Qualified Bidder) must submit a written offer (a “Qualified Bid”) such that it is received prior to the Bid Deadline and meets the following criteria:

- i. The Same or Better Terms. A bid must be on terms that, in the Debtors’ business judgment, in consultation with the Term A Lenders and the Committee, if any, are substantially the same or better than the terms of the Stalking Horse APA; provided, that such bid must include a cash purchase price that, at a minimum, exceeds the aggregate sum of (a) the Stalking Horse Bid, plus (b) the initial overbid amount of \$100,000 (i.e., \$30,100,000) (together, the “Minimum Initial Bid”); provided, further, that notwithstanding anything contained herein or the Bid Procedures Order, Potential Bidders are encouraged to contact the Debtors to discuss modifications and alternatives to the Minimum Initial Bid, including without limitation, Minimum Initial Bids that consist of a combination of cash and secured “take back” notes.
- ii. Executed and Marked Asset Purchase Agreement. A bid must include fully executed Sale documents, pursuant to which the Qualified Bidder proposes to effectuate the contemplated Sale. A bid shall include a redlined copy of the Stalking Horse APA (the “Modified APA”) to show all changes requested by the Qualified Bidder, including those related to the purchase price in accordance with subsection (i) above, and identify each and every executory contract and unexpired lease, the assumption and assignment of which is a condition to closing.
- iii. No Contingencies. A bid may not be conditioned on obtaining internal approval, obtaining financing or on the outcome or review of due diligence, and a bid shall not contain any contingencies to the validity, effectiveness, and/or binding nature of the bid beyond

those contained and that remain effective in the Stalking Horse APA.

- iv. Legal Capacity. A bid must be accompanied by documentation that, in the Debtors' reasonable business judgment, in consultation with the Term A Lenders and the Committee, if any, demonstrates that the Potential Bidder has the legal capacity to fund a purchase price in the amount of the Minimum Initial Bid as set forth above, and otherwise consummate the proposed transaction.
- v. Authorization to Bid. Each bid, other than any bid by the Stalking Horse Bidder, must include evidence of authorization and approval from such Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Modified APA.
- vi. Back-Up Bidder. Each bid must contain an agreement for the Qualified Bidder to be a Back-Up Bidder (defined below).
- vii. No Fees Payable to Qualified Bidder. A bid may not request or entitle the Qualified Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment.
- viii. Financing Sources. A bid, other than any bid made by the Stalking Horse Bidder, must contain evidence of the ability to consummate the Sale satisfactory to the Debtors, in consultation with the Term A Lenders and the Committee, if any, with appropriate contact information for all such financing sources (whether cash or borrowings) and may not contain any financing contingency (or conditions to borrowings).
- ix. Other Evidence. Each bid, other than any bid made by the Stalking Horse Bidder, must contain evidence satisfactory to the Debtors, in their reasonable discretion, in consultation with the Term A Lenders and the Committee, if any, that the Qualified Bidder (based on availability of financing, experience and other considerations or conditions) will be able to timely consummate the Sale to purchase the Acquired Assets if selected as the Successful Bidder.
- x. Representation of Non-Collusion. Pursuant to Local Rule 6004-1, each bidder participating at the Auction must confirm its Non-Collusion Representation.
- xi. Proof of Ability to Close. Written evidence that enables the Debtors and their representatives to determine, in their reasonable discretion, in consultation with the Term A Lenders and the Committee, if any, that the Potential Bidder has the ability to close

the contemplated Sale and provide adequate assurance of future performance under all contracts to be assumed in such contemplated Sale.

- xii. Deposit. Before the Bid Deadline, each Potential Bidder must pay an earnest money cash deposit of ten percent (10%) of the Minimum Initial Bid and any other consideration contained in the relevant Qualified Bid (a “Qualified Bidder Deposit”) by cashier’s or certified check or wire transfer of immediately available funds (pursuant to instructions to be obtained from Debtors’ counsel), which deposit shall be held in escrow in Debtors’ counsel’s IOLTA trust account in accordance with the terms of an escrow agreement to be provided by the Debtors (in a form acceptable to Debtors’ counsel in its sole discretion). A Qualified Bidder Deposit will be refunded only if the bid corresponding with the Qualified Bidder Deposit is not approved by the Bankruptcy Court. The Debtors reserve the right to hold each Qualified Bidder Deposit until five (5) days after the closing of the sale of the Acquired Assets to, as the case may be, the Stalking Horse Bidder or the Successful Bidder.

Bid Deadline

The deadline for a Potential Bidder to submit a bid (other than the Stalking Horse Bidder or its designee or assignee) shall be October 18, 2017 at 12:00 p.m. (ET) (the “Bid Deadline”). A bid received after the Bid Deadline shall not constitute a Qualified Bid. The Term A Lenders have the right to be provided with all bids upon receipt of such bids by the Debtors.

Prior to the Bid Deadline, a Potential Bidder, other than the Stalking Horse Bidder, that desires to make an offer, solicitation or proposal shall deliver written copies of its bid to the Debtors’ proposed investment banker, SSG Advisors, LLC, Five Tower Bridge, Suite 420, 300 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428, Attn: J. Scott Victor (e-mail jsvictor@ssgca.com) and proposed counsel to the Debtors, Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801 (Attn: Adam G. Landis, Esq. and Matthew B. McGuire, Esq.). Counsel to the Debtors shall promptly provide email copies of such bids to (i) the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Juliet M. Sarkessian, Esq.), (ii) counsel to the Committee, if any, and (iii) counsel to the Term A Lenders, Curtis, Mallet-Prevost, Colt & Mosle LLP, 101 Park Avenue, New York, New York 10178 (Attn: Steven J. Reisman, Esq. and Shaya Rochester, Esq.) and Richards, Layton & Finger, P.A., 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq.).

AUCTION

Only in the event that the Debtors receive: at least one (1) Qualified Bid (other than that of the Stalking Horse Bidder) by the Bid Deadline, the Debtors shall conduct an auction (the “Auction”) of the Acquired Assets to determine the highest or otherwise best bid with respect to

the Acquired Assets. No later than 4:00 p.m. (ET) on the day that is one business day before the Auction, the Debtors will notify all Qualified Bidders and, if formed, counsel to the Committee, whether the Auction will occur and will provide each Qualified Bidder with a copy of all Qualified Bids. The Auction shall commence at 10:00 a.m. (ET) on October 25, 2017 at the offices of Landis Rath & Cobb, LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801.

Participation in the Auction

The only persons or entities who will be permitted to bid at the Auction are the authorized representatives of each Qualified Bidder, including the Stalking Horse Bidder (collectively, the "Auction Participants"). Each Qualified Bidder must attend the Auction in person in order to bid at the Auction. While only the Auction Participants may bid at the Auction, the Auction may be attended and viewed also by the Debtors, their professionals, Auction Participants, the Committee, if any, and its professionals. Any creditor wishing to attend the Auction may do so by contacting, no later than three (3) business days prior to the start of the Auction, Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Joseph Wright (e-mail: wright@lrclaw.com).

The Debtors and their professional advisors shall direct and preside over the Auction. At the beginning of the Auction, the Debtors and their professional advisors will, in consultation with the Term A Lenders and the Committee, if any, announce the highest Qualified Bid received by the Bid Deadline which shall serve as the baseline bid at the Auction (the "Baseline Bid"). All bids made thereafter shall be Overbids (defined below), and shall be made and received on an open basis, and all material terms of each bid shall be fully disclosed to all other Qualified Bidders, including the Stalking Horse Bidder and the Term A Lenders. The Auction shall be transcribed and all bids shall be made on the record and announced at the Auction, including the Baseline Bid, all Overbids, and the Successful Bid (defined below).

Terms of Overbids

An "Overbid" is any bid made at the Auction subsequent to the Debtors' announcement of the Baseline Bid. Any Qualified Bidder's initial Overbid shall be at least \$100,000 in cash (or cash equivalents) in excess of the Baseline Bid, and each subsequent Overbid must be made in increments of at least \$100,000 in cash, cash equivalents or such other consideration that the Debtors deem equivalent, in consultation with the Term A Lenders and Committee, if any, over the previous highest or best bid (the "Minimum Overbid Increment"); provided, however, that the Stalking Horse Bidder's Overbid may be in the form of an increase in its Credit Bid.

Any Overbid made by a Qualified Bidder (including with respect to any Back-Up Bid (defined below)) must remain open and binding on the Qualified Bidder until and unless the Debtors accept a higher Qualified Bid as an Overbid. The Debtors shall announce at the Auction the material terms of each Overbid and the basis for calculating the total consideration offered in each such Overbid.

Determination and Rejection of Bids.

The Debtors, in their reasonable business judgment, after consultation with the Term A Lenders and the Committee, if any, may (a) determine which Qualified Bid, if any, is the highest or otherwise best offer; and (b) reject, at any time before entry of an order of the Bankruptcy Court approving a Qualified Bid, any bid that is (i) inadequate or insufficient; (ii) not in conformity with the requirements of the Bankruptcy Code, the Bid Procedures, or the terms and conditions of the Sale; or (iii) contrary to the best interests of the Debtors, their estates, their creditors and other stakeholders.

Closing the Auction

Upon conclusion of the bidding process, the Auction shall be closed, and the Debtors, in consultation with the Term A Lenders and Committee, if any, shall (i) review each Qualified Bid on the basis of financial and contractual terms and the factors relevant to the Sale process, including those factors affecting the speed and certainty of consummating the Sale and the amount of the cash (or cash equivalents) consideration, and (ii) determine, the highest or otherwise best offer for the Acquired Assets (the "Successful Bid"), the entity submitting such Successful Bid (the "Successful Bidder"), the next highest or otherwise best offer after the Successful Bid (the "Back-Up Bid") and the entity submitting such Back-Up Bid (the "Back-Up Bidder"); and advise the Qualified Bidders of such determinations. The Back-Up Bid shall remain open, and the Back-Up Bidder shall be required to fully perform under such Back-Up Bid, until the earlier of consummation of the Sale with the Successful Bidder or sixty (60) days following the closing date contemplated in the Successful Bid. For the avoidance of doubt, the Stalking Horse Bidder shall not be required to serve as the Back-Up Bidder.

Failure to Close

In the event the Successful Bidder fails to consummate the Sale as a result of the Successful Bidder's default or breach under the applicable purchase agreement in accordance with the terms of such purchase agreement by the closing date contemplated in such purchase agreement, the Debtors shall be: (i) entitled to, among other things, retain the Successful Bidder's Qualified Bidder Deposit as part of the Debtors' damages resulting from the breach or failure to perform by the Successful Bidder (along with any other rights available under such purchase agreement or applicable law); and (ii) be free to enter into a new purchase agreement with the Back-Up Bidder at the purchase price contemplated in the Back-Up Bid.

Following the approval of the Sale of the Acquired Assets to the Successful Bidder at the Sale Hearing, if such Successful Bidder fails to consummate the approved Sale within sixty (60) days after entry of the Sale Order approving the Sale, the Debtors shall be authorized, in consultation with the Term A Lenders and the Committee, if any, but not required, to deem the Back-Up Bid, as disclosed at the Sale Hearing, the Successful Bid, and the Debtors shall be required, to consummate the Sale with the Back-Up Bidder without further order of the Bankruptcy Court.

Consent to Jurisdiction as Condition to Bidding

All Qualified Bidders, including the Stalking Horse Bidder, at the Auction shall be deemed to have consented to the exclusive jurisdiction of the Bankruptcy Court and to have waived any right to a jury trial in connection with any disputes among any Qualified Bidder and the Debtors relating to the Auction and the construction and enforcement of the Qualified Bidder's contemplated Sale documents, as applicable.

Acceptance of Successful Bid

The Debtors' presentation of a particular Qualified Bid to the Bankruptcy Court for approval does not constitute the Debtors' acceptance of such Qualified Bid. Other than as expressly set forth in the Bid Procedures Order, the Debtors will be deemed to have accepted a bid only when the bid has been approved by the Bankruptcy Court at the Sale Hearing. The Debtors shall seek approval by the Bankruptcy Court to consummate the Back-Up Bid, solely in the event the Successful Bidder fails to close the transaction as required and with all rights reserved against the Successful Bidder.

Free of Any and All Encumbrances

As set forth in the Stalking Horse APA, except as otherwise provided for therein or in another Successful Bidder's purchase agreement, all rights, titles and interests in and to the Acquired Assets subject thereto shall be sold free and clear of all Encumbrances, in accordance with Bankruptcy Code section 363(f), with such Encumbrances to attach to the net proceeds (if any) received by the Debtors from the Sale of the Acquired Assets in accordance with the Bankruptcy Code, applicable non-bankruptcy law, any prior orders of the Bankruptcy Court and, as applicable, the Prepetition Financing Agreement.

Sale Hearing

The Sale Hearing shall be conducted by the Bankruptcy Court on October __, 2017 at __: __.m. (ET).

Return of Qualified Bidder Deposit

The Qualified Bidder Deposit of the Successful Bidder shall be applied to the purchase price of such Sale at Closing. The Qualified Bidder Deposits of all other Qualified Bidders, other than the Back-Up Bidder, shall be held in a non-interest bearing escrow account until five (5) business days after the closing of the Auction, and thereafter returned to the respective bidders. The Qualified Bidder Deposit of the Back-Up Bidder shall be held in an escrow account and shall be (i) applied to the Purchase Price in the event the Successful Bidder fails to close and the Debtors, in consultation with the Committee, if any, opt to consummate the Sale with the Back-Up Bidder; or (ii) returned to the Back-Up Bidder on the earlier of the date of the Closing with the Successful Bidder or the sixtieth (60th) day following the closing date contemplated in the Successful Bid. In the event of a breach or failure to consummate a Sale with the Successful Bidder, or with the Back-Up Bidder in the event the Successful Bidder fails to consummate a Sale and the Debtors, in consultation with the Committee, if any, determine to consummate the Sale with the Back-Up Bidder, the Debtors shall be entitled to retain the Qualified Bidder

Deposit as part of their damages resulting from the breach or failure to perform by the Successful Bidder or Back-Up Bidder, as applicable (along with any other rights available under their respective purchase agreements or applicable law).

Modifications

Except as otherwise provided herein, the Bid Procedures may be modified by the Debtors after consultation with the Term A Lenders and the Committee, if any; provided that all such modifications are disclosed to all Potential Bidders or Qualified Bidders, as applicable, prior to or during the Auction.

The Debtors, in their reasonable business judgment and in a manner consistent with their fiduciary duties, after consultation with the Term A Lenders and the Committee, if any, may (a) determine which Qualified Bid, if any, is the highest or otherwise best offer; and (b) reject, at any time before entry of an order of the Bankruptcy Court approving a Qualified Bid, any bid that is (i) inadequate or insufficient; (ii) not in conformity with the requirements of the Bankruptcy Code, the Bid Procedures, or the terms and conditions of the Sale; or (iii) contrary to the best interests of the Debtors, their estates, their creditors and other stakeholders; provided, however, that notwithstanding anything contained herein or in any other related pleading, the Debtors may not modify the Bid Procedures in any way that would materially impair the rights of the Stalking Horse Bidder under the Stalking Horse APA or the Term A Lenders.

* * * * *

EXHIBIT 2

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

PEEKAY ACQUISITION, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 17-11722 (BLS)

(Joint Administration Requested)

Ref. Nos. _____

**NOTICE OF BID DEADLINE, AUCTION, AND SALE HEARING IN CONNECTION
WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS²**

NOTICE IS HEREBY GIVEN, as follows:

1. On August 10, 2017, the above-captioned debtors and debtors-in-possession (the "Debtors") filed a motion (the "Bid Procedures Motion") with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") seeking approval of among other things (i) bid procedures (the "Bid Procedures") in connection with the sale (the "Sale") of substantially all of the Debtors' assets (the "Acquired Assets"), (ii) procedures to determine cure amounts and deadlines for objections to certain contracts and leases to be assumed and assigned by the Debtors (the "Cure Procedures"), (iii) the date, time, and place for a sale hearing (the "Sale Hearing") and for objections to the Sale, and (iv) related relief. On _____, 2017, the Bankruptcy Court entered an order approving the Bid Procedures Motion, the Bid Procedures and the Contract Procedures (the "Bid Procedures Order").³

2. The Debtors have entered into an asset purchase agreement (the "Stalking Horse APA") with TLA Acquisition Corp. (the "Stalking Horse Bidder"), for the Sale of the Acquired Assets free and clear of all liens, claims, encumbrances, defenses (including, without limitation, rights of setoff and recoupment) and interests, including, without limitation, security interests of whatever kind or nature, mortgages, conditional sales or title retention agreements, pledges, deeds of trust, hypothecations, liens, encumbrances, assignments, preferences, debts, easements,

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are: Peekay, Inc. (3429); Peekay Boutiques, Inc. (7972); Christals Acquisition, LLC (0391); Peekay Acquisition, LLC (0923); Peekay SPA, LLC (2765); Conrev, Inc. (2441); Condom Revolution, Inc. (6019); Charter Smith Sanhueza Retail, Inc. (8963); ZJ Gifts F-2, L.L.C. (3565); ZJ Gifts F-3, L.L.C. (3562); ZJ Gifts F-4, L.L.C. (8006); ZJ Gifts F-5, L.L.C. (7062); ZJ Gifts F-6, L.L.C. (4381); ZJ Gifts I-1, L.L.C. (5099); ZJ Gifts M-3, L.L.C. (8925); ZJ Gifts M-1, L.L.C. (7202); and ZJ Gifts M-2, L.L.C. (6643). The Debtors' corporate headquarters and mailing address is 901 West Main Street, Suite A, Auburn, WA 98001.

² This Notice is subject to the full terms and conditions of the Bid Procedures Motion, the Bid Procedures and the Bid Procedures Order (each as defined below), which shall control in the event of any conflict. The Debtors encourage parties in interest to review such documents in their entirety and consult an attorney if they have questions or want advice.

³ Capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Bid Procedures Order.

charges, suits, licenses, options, rights-of-recovery, judgments, orders and decrees of any court or foreign or domestic governmental entity, taxes (including foreign, state and local taxes), licenses, covenants, restrictions, indentures, instruments, leases, options, off-sets, claims for reimbursement, contribution, indemnity or exoneration, successor, product, environmental, tax, labor, ERISA, CERCLA, alter ego and other liabilities, causes of action, contract rights and claims, to the fullest extent of the law, in each case, of any kind or nature (including, without limitation, all "claims" as defined in section 101(5) of the Bankruptcy Code), known or unknown, whether pre-petition or post-petition, secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, perfected or unperfected, liquidated or unliquidated, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, statutory or non-statutory, matured or unmatured, legal or equitable to the maximum extent permitted by Bankruptcy Code section 363; but as set forth in the Bid Procedures, the sale of the Acquired Assets remains subject to competing offers from any prospective bidder that submits a Qualified Bid.

3. All interested parties are invited to submit a Qualified Bid and to make offers to purchase the Acquired Assets in accordance with the terms of the Bid Procedures and the Bid Procedures Order. Potential Bidders are encouraged to review the Bid Procedures attached to the Bid Procedures Order carefully and, for further information, are invited to contact the Debtors' proposed investment banker, SSG Advisors, LLC, Five Tower Bridge, Suite 420, 300 Barr Harbor Drive, West Conshohocken, Pennsylvania 19428, Attn: J. Scott Victor (e-mail jsvictor@ssgca.com). The Bid Deadline is **October 18, 2017**.

4. Consistent with the Bid Procedures Order, in the event the Debtors receive one or more Qualified Bids in addition to the bid of the Stalking Horse Bidder on or before the Bid Deadline, the Debtors shall conduct the Auction for the purpose of determining the highest or otherwise best bid for the Acquired Assets. The Auction shall be organized by the Debtors' professionals and conducted at the offices of Landis Rath & Cobb LLP, Wilmington, Delaware beginning at 10:00 a.m. (ET) on October 25, 2017 or such other location and time as may be announced prior to the Auction to all Qualified Bidders, the U.S. Trustee and any official committee of unsecured creditors formed in the Chapter 11 Cases (the "Committee"). The Auction will be recorded and transcribed by an authorized court reporter. If only the Stalking Horse Bidder is a Qualified Bidder as of the Bid Deadline, the Auction will be deemed canceled and the Stalking Horse Bidder shall be deemed the Successful Bidder, and the Debtors will seek authority to consummate the Sale as contemplated in the Stalking Horse APA. The Debtors, their professionals, the Term A Lenders, the Committee, Qualified Bidders and their respective professionals, and creditors and their respective counsel, financial advisors, and/or other authorized representatives may attend the Auction, the time and place of which may change with notice. The only persons or entities who will be permitted to bid at the Auction are the authorized representatives of each Qualified Bidder, including the Stalking Horse Bidder.

5. At the Sale Hearing on _____, 2017 (ET) or such other time as the Bankruptcy Court shall determine, the Debtors intend to seek the Bankruptcy Court's approval of the sale of the Acquired Assets to the Stalking Horse Bidder pursuant to the terms of the Stalking Horse APA, or to the Successful Bidder at the Auction. In determining the Successful Bidder, in addition to the amount of cash or cash equivalent consideration offered, the Debtors will consider, among other factors, the assumption of liabilities contemplated by each Qualified Bid,

certainty of closing, and other factors relating to the value and certainty of the bid. The Sale Hearing will be held before the Honorable Kevin J. Carey, Judge at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Courtroom No. 5, Wilmington, Delaware 19801. The Sale Hearing and the other deadlines contained herein may be adjourned from time-to-time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court or on the Bankruptcy Court's docket.

6. At the Sale Hearing, the Bankruptcy Court may enter such orders as it deems appropriate under applicable law and as required by the circumstances and equities of this Chapter 11 Case, and the Debtors, subject to the terms of the Successful Bidder's asset purchase agreement, may seek entry of an order which provides, except with respect to any Assumed Liabilities, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, trade creditors, litigation claimants and other creditors, holding liens, claims, encumbrances or interests of any kind or nature whatsoever against or in all or any portion of the Acquired Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, liquidated or unliquidated or subordinate), arising under or out of, in connection with, or in any way relating to the Debtors, the Acquired Assets, the operation of the Debtors' business prior to the Closing Date or the transfer of the Acquired Assets to the Buyer, except as expressly set forth in the Stalking Horse APA with respect to the Assumed Liabilities and Permitted Encumbrances (as defined in the Stalking Horse APA), all such persons are forever prohibited and permanently enjoined from (i) commencing or continuing in any manner any action or other proceeding, the employment of process, or any act (whether in law or equity, in any judicial, administrative, arbitral, or other proceeding) to collect or recover any interest; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order with respect to an interest, (iii) creating, perfecting, or enforcing any interest, or (iv) asserting any right of subrogation of any kind with respect to an interest, in each case as against the Successful Bidder or its designee, any of their respective affiliates or subsidiaries, or any of their respective representatives, or any of their respective property or assets, including the Acquired Assets.

7. The Debtors propose that, to be timely and otherwise eligible for consideration by the Bankruptcy Court, objections, if any, to the Sale of the Acquired Assets ("Sale Objections") or the assumption and assignment of executory contracts and unexpired leases pursuant to the terms of the agreement reached between the Debtors and the Stalking Horse Bidder ("Contract Objections") shall be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court for the District of Delaware, shall set forth the name of the objecting party, the nature and amount of any claims or interests held or asserted against the Debtors' estates or properties, the basis for the objection and the specific grounds therefore, and shall be filed with the Bankruptcy Court and be served upon: (i) counsel for the Debtors, Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801 (Attn: Adam G. Landis, Esq. and Matthew B. McGuire, Esq.); (ii) counsel to the Term A Lenders, Curtis, Mallet-Prevost, Colt & Mosle LLP, 101 Park Avenue, New York, New York 10178 (Attn: Steven J. Reisman, Esq. and Shaya Rochester, Esq.) and Richards, Layton & Finger, P.A., 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq.); (iii) counsel to the Committee, if any; and (iv) the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Juliet Sarkessian, Esq.) (collectively, the "Bid Notice

Parties”) so that such Sale Objections and/or Contract Objections are received no later than 4:00 p.m. (ET) on the date that is seven (7) days prior to the Sale Hearing.

8. In the event (a) an Auction is conducted, the deadline for filing any objections related to the conduct of the Auction itself shall be the commencement of the Sale Hearing and (b) in the event the Auction results in a Successful Bidder other than the Stalking Horse Bidder, the deadline for filing objections relating to (i) the form of Sale Order approving such Successful Bidder’s asset purchase agreement, and (ii) the proposed asset purchase agreement between the Debtors and such Successful Bidder shall be the commencement of the Sale Hearing.

9. In the event the Auction results in a Successful Bidder other than the Stalking Horse Bidder, Contract Parties shall have until the commencement of the Sale Hearing to object to the assignment of executory contracts and unexpired leases to such Successful Bidder, other than any objections to the Cure Amounts which shall be subject to the Contract Objection Deadline, with any such objection being heard at the Sale Hearing or at a later-scheduled hearing as the Bankruptcy Court deems appropriate.

10. You may obtain a copy of the Motion, the Bid Procedures and the Bid Procedures Order, including all exhibits thereto, free of charge by accessing the website maintained by the Debtor’s claims and noticing agent, Rust Consulting/Omni Bankruptcy, at <http://omnimgt.com/peekay> (the “Case Website”). Alternatively, you may obtain copies of these documents by sending a written request to the Debtors’ undersigned counsel. Please note that the Case Website is updated regularly and provides access to all pleadings in the Debtors’ Chapter 11 Cases.

Dated: _____, 2017
Wilmington, Delaware

LANDIS RATH & COBB LLP

Adam G. Landis (No. 3407)
Matthew B. McGuire (No. 4366)
Joseph D. Wright (No. 5669)
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Proposed Counsel to the Debtors and Debtors-In-Possession

EXHIBIT 3

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

PEEKAY ACQUISITION, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 17-11722 (BLS)

(Joint Administration Requested)

Ref. Nos. _____

**NOTICE OF DEBTORS' INTENT TO ASSUME AND ASSIGN CERTAIN UNEXPIRED
LEASES AND EXECUTORY CONTRACTS AND FIXING OF CURE AMOUNTS**

NOTICE IS HEREBY GIVEN, as follows:

1. On _____, 2017, the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") entered an order (the "Bid Procedures Order")² approving among other things (i) bid procedures (the "Bid Procedures") in connection with the sale of substantially all of the Debtors' assets (the "Acquired Assets") and (ii) procedures to determine cure amounts and deadlines for objections to certain contracts and leases to be assumed and assigned by the Debtors (the "Contract Procedures").³

2. At a hearing on October __, 2017 at __:__.m. (ET) or such other time as the Bankruptcy Court shall determine (the "Sale Hearing"), the Debtors intend to seek approval of the sale of the Acquired Assets free and clear of all liens, claims, encumbrances, defenses (including, without limitation, rights of setoff and recoupment) and interests, including, without limitation, security interests of whatever kind or nature, mortgages, conditional sales or title retention agreements, pledges, deeds of trust, hypothecations, liens, encumbrances, assignments, preferences, debts, easements, charges, suits, licenses, options, rights-of-recovery, judgments, orders and decrees of any court or foreign or domestic governmental entity, taxes (including

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are: Peekay, Inc. (3429); Peekay Boutiques, Inc. (7972); Christals Acquisition, LLC (0391); Peekay Acquisition, LLC (0923); Peekay SPA, LLC (2765); Conrev, Inc. (2441); Condom Revolution, Inc. (6019); Charter Smith Sanhueza Retail, Inc. (8963); ZJ Gifts F-2, L.L.C. (3565); ZJ Gifts F-3, L.L.C. (3562); ZJ Gifts F-4, L.L.C. (8006); ZJ Gifts F-5, L.L.C. (7062); ZJ Gifts F-6, L.L.C. (4381); ZJ Gifts I-1, L.L.C. (5099); ZJ Gifts M-3, L.L.C. (8925); ZJ Gifts M-1, L.L.C. (7202); and ZJ Gifts M-2, L.L.C. (6643). The Debtors' corporate headquarters and mailing address is 901 West Main Street, Suite A, Auburn, WA 98001.

² Capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Bid Procedures Order and/or the Bid Procedures Motion.

³ You may obtain a copy of the Bid Procedures Motion, the Bid Procedures and the Bid Procedures Order, including all exhibits thereto, free of charge by accessing the website maintained by the Debtors' claims and noticing agent, Rust Consulting/Omni Bankruptcy at <http://omnimgt.com/peekay> (the "Case Website"). Alternatively, you may obtain copies of these documents by sending a written request to the Debtors' undersigned counsel. Please note that the Case Website is updated regularly and provides access to all pleadings in the Debtors' Chapter 11 Cases.

foreign, state and local taxes), licenses, covenants, restrictions, indentures, instruments, leases, options, off-sets, claims for reimbursement, contribution, indemnity or exoneration, successor, product, environmental, tax, labor, ERISA, CERCLA, alter ego and other liabilities, causes of action, contract rights and claims, to the fullest extent of the law, in each case, of any kind or nature (including, without limitation, all “claims” as defined in section 101(5) of the Bankruptcy Code), known or unknown, whether pre-petition or post-petition, secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, perfected or unperfected, liquidated or unliquidated, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, statutory or non-statutory, matured or unmatured, legal or equitable to the maximum extent permitted by Bankruptcy Code section 363 (the “Sale”) to TLA Acquisition, Inc. (the “Stalking Horse Bidder”), pursuant to the terms of an asset purchase agreement between the Debtors and the Stalking Horse Bidder, or to such other party as is determined pursuant to the Bid Procedures to have submitted the highest or otherwise best bid for the Acquired Assets (the “Successful Bidder”). The Sale Hearing may be adjourned, from time to time, without further notice to creditors or parties in interest other than by announcement of the adjournment in open court or on the Bankruptcy Court’s docket.

3. At the Sale Hearing, the Bankruptcy Court may enter such orders as it deems appropriate under applicable law and as required by the circumstances and equities of this Chapter 11 Cases, and the Debtors, subject to the terms of the Successful Bidders’ asset purchase agreement, may seek entry of an order which provides, except with respect to any Assumed Liabilities, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, trade creditors, litigation claimants and other creditors, holding liens, claims, encumbrances or interests of any kind or nature whatsoever against or in all or any portion of the Acquired Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, liquidated or unliquidated or subordinate), arising under or out of, in connection with, or in any way relating to the Debtors, the Acquired Assets, the operation of the Debtors’ business prior to the Closing Date or the transfer of the Acquired Assets to the Successful Bidder, except as expressly set forth in the Stalking Horse APA with respect to the Assumed Liabilities and Permitted Encumbrances (as defined in the Stalking Horse APA), all such persons are forever prohibited and permanently enjoined from (i) commencing or continuing in any manner any action or other proceeding, the employment of process, or any act (whether in law or equity, in any judicial, administrative, arbitral, or other proceeding) to collect or recover any interest; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order with respect to an interest, (iii) creating, perfecting, or enforcing any interest, or (iv) asserting any right of subrogation of any kind with respect to an interest, in each case as against the Successful Bidder or its designee, any of their respective affiliates or subsidiaries, or any of their respective representatives, or any of their respective property or assets, including the Acquired Assets.

4. Pursuant to the Bid Procedures Order and the Contract Procedures approved therein, the Debtors intend to seek approval to assume and assign certain unexpired leases and executory contracts, pursuant to Bankruptcy Code section 365 (collectively, the “Contracts”) to the Stalking Horse Bidder (or any designee thereof) or other Successful Bidder. You have been identified as a party to a Contract (a “Non-Debtor Counterparty”) that the Debtors *may* seek to assume and assign. The Contract with respect to which you have been identified as a non-Debtor party is set forth on Exhibit 1 annexed hereto.

5. The Debtors believe that any and all defaults (other than the filing of this Chapter 11 Case), actual pecuniary losses and any amounts due under the Contract can be cured and satisfied in full by the payment of the cure amounts (the “Cure Amounts”), which are also set forth on **Exhibit 1**. **The inclusion of a Contract on Exhibit 1 hereto is not, and should not be deemed to be, an agreement or acknowledgement by the Debtors that such Contract is an executory contract or unexpired lease under Bankruptcy Code section 365 or that such Contract will be assumed and assigned by the Debtors; the Stalking Horse Bidder has the right up to the Closing to determine whether or not to have your Contract assigned.**

6. Any party objecting to (i) any of the Cure Amounts relating to and/or (ii) the proposed assumption and assignment of any Contract in connection with the Sale, including, without limitation, the Debtors’ ability to assign the Contract without the Non-Debtor Counterparty’s consent or the adequate assurance of future performance to be provided by the Stalking Horse Bidder (or any designee thereof) or the Successful Bidder, as applicable, must file with the Bankruptcy Court and serve an objection (a “Contract Objection”), in writing, setting forth with specificity any and all obligations that the objecting party asserts must be cured or satisfied in respect to the Contract, and/or any and all objections to the potential assumption and assignment of such Contract, together with all documentation supporting such cure claim or objection, upon: (i) counsel for the Debtors, Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801 (Attn: Adam G. Landis, Esq. and Matthew B. McGuire, Esq.); (ii) counsel to the Term A Lenders, Curtis, Mallet-Prevost, Colt & Mosle LLP, 101 Park Avenue, New York, New York 10178 (Attn: Steven J. Reisman, Esq. and Shaya Rochester, Esq.) and Richards, Layton & Finger, P.A., 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq.); (iii) counsel to the Committee, if any; and (iv) the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Juliet Sarkessian, Esq.); **so as to be received before 4:00 p.m. (ET) on the date that is seven (7) days prior to the Sale Hearing** (the “Contract Objection Deadline”); provided, however, if the Debtors amend the Cure Notice to add a contract or lease, the Non-Debtor Counterparty to the added contract or lease shall have until the Sale Hearing to submit a Contract Objection with respect to the contract or lease added by the Debtors (the “Amended Contract Objection Deadline”); provided further, that if the Debtors amend the Cure Notice to reduce the Cure Amount of a Contract, except where such reduction was upon mutual agreement of the parties, the Non-Debtor Counterparty to the reduced Cure Amount contract or lease has until the Amended Contract Objection Deadline to object to the Cure Amount; and provided further, that in the event the Auction results in a Successful Bidder other than the Stalking Horse Bidder, the Non-Debtor Counterparties shall have until the Amended Contract Objection Deadline to object to the assignment of the Contract to such Successful Bidder, other than to the Cure Amount which shall be subject to the Contract Objection Deadline, with any such objection being heard at the Sale Hearing or at a later-scheduled hearing as the Bankruptcy Court deems appropriate.

7. Where a Non-Debtor Counterparty to a Contract files an objection meeting the requirements of paragraph 6 herein, objecting to the assumption by the Debtors and assignment to the Successful Bidder of such Contract and/or asserting a cure amount higher than the proposed Cure Amount listed on this notice, the Debtors, the Non-Debtor Counterparty and the Successful Bidder shall meet and confer in good faith to attempt to resolve any such objection without Bankruptcy Court intervention. In the extent the Contract Objection is not resolved, such Contract Objection will be heard at the Sale Hearing or thereafter. To the extent it is

determined that the Cure Amount exceeds the amount set forth on Exhibit 1 hereto, the Successful Bidder may determine to not have assumed and assigned to it such Contract.

8. If no Cure Amount is due, or no other amount is due or owing under the Contract, and the Non-Debtor Counterparty to such agreement does not otherwise object to the Debtors' assumption, sale and assignment of such agreement, no further action needs to be taken on the part of that Non-Debtor Counterparty.

9. **Unless an objection to the assumption and assignment of a Contract is filed and served before the Objection Deadline or the Amended Contract Objection Deadline, as applicable, all Contract Parties shall be (i) forever barred from objecting to the proposed Cure Amounts and from asserting any additional cure or other amounts (other than as may be asserted in an Additional Cure Notice), and the Debtors and the Successful Bidder shall be entitled to rely solely upon the proposed Cure Amounts set forth in the Cure Notices; (ii) deemed to have consented to the assumption and assignment of the Contracts; (iii) forever barred and estopped from asserting or claiming against the Debtors or the Successful Bidder that any additional amounts are due or other defaults exist (other than as may be asserted in an Additional Cure Notice), that conditions to assignment must be satisfied under such Contracts, including, without limitation, any consent rights, or that there is any objection or defense to the assumption and assignment of such Contracts, including without limitation adequate assurance of future performance; (iv) precluded from objecting to the Cure Amount (if any) and the assumption and assignment; and (v) barred and estopped from asserting or claiming that their Contract contains an enforceable consent right.**

10. The Debtors' decision to assume and assign a Contract is subject to the Stalking Horse Bidder's, or the Successful Bidder's, as applicable, designation in accordance with the Contract Procedures and the Bankruptcy Court's approval of and consummation of the Sale. Absent consummation of the Sale, a Contract shall not be deemed assumed and assigned and shall in all respects be subject to further administration under the Bankruptcy Code. The designation of any agreement as a Contract shall not constitute or be deemed to be a determination or admission by the Debtors or the Successful Bidder that such document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code (all rights with respect thereto being expressly reserved).

Dated: _____, 2017
Wilmington, Delaware

LANDIS RATH & COBB LLP

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Proposed Counsel to the Debtors and Debtors-In-Possession

EXHIBIT 4

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

In re:

PEEKAY ACQUISITION, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 17-11722 (BLS)

(Joint Administration Requested)

Ref. Nos. _____

**NOTICE OF DEBTORS' INTENT TO ASSUME
AND ASSIGN CERTAIN ADDITIONAL LEASES AND EXECUTORY
CONTRACTS AND FIXING OF ADDITIONAL CURE AMOUNTS**

NOTICE IS HEREBY GIVEN, as follows:

1. On _____, 2017, the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") entered an order (the "Bid Procedures Order")² approving among other things (i) bid procedures (the "Bid Procedures") in connection with the sale of substantially all of the Debtors' assets (the "Acquired Assets") and (ii) procedures to determine cure amounts and deadlines for objections to certain contracts and leases to be assumed and assigned by the Debtors (the "Contract Procedures").³

2. Pursuant to the Bid Procedures Order and the Contract Procedures approved therein, the non-Debtor parties to the Contracts (the "Non-Debtor Counterparties") had until 4:00 p.m. (ET) seven (7) days prior to the Sale Hearing to object (a "Contract Objection") to (i) the Cure Amounts listed by the Debtors (other than the Additional Cure Amounts (defined below)) and to propose alternative cure amounts; and/or (ii) the proposed assumption and assignment of the Contracts in connection with the Sale, including, without limitation, the Debtors' ability to

¹ The Debtors, along with the last four digits of each Debtor's tax identification number, are: Peekay, Inc. (3429); Peekay Boutiques, Inc. (7972); Christals Acquisition, LLC (0391); Peekay Acquisition, LLC (0923); Peekay SPA, LLC (2765); Conrev, Inc. (2441); Condom Revolution, Inc. (6019); Charter Smith Sanhueza Retail, Inc. (8963); ZJ Gifts F-2, L.L.C. (3565); ZJ Gifts F-3, L.L.C. (3562); ZJ Gifts F-4, L.L.C. (8006); ZJ Gifts F-5, L.L.C. (7062); ZJ Gifts F-6, L.L.C. (4381); ZJ Gifts I-1, L.L.C. (5099); ZJ Gifts M-3, L.L.C. (8925); ZJ Gifts M-1, L.L.C. (7202); and ZJ Gifts M-2, L.L.C. (6643). The Debtors' corporate headquarters and mailing address is 901 West Main Street, Suite A, Auburn, WA 98001.

² Capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Bid Procedures Order and/or the Bid Procedures Motion.

³ You may obtain a copy of the Bid Procedures Motion, the Bid Procedures and the Bid Procedures Order, including all exhibits thereto, free of charge by accessing the website maintained by the Debtors' claims and noticing agent, Rust Consulting/Omni Bankruptcy at <http://omnimgt.com/peekay> (the "Case Website"). Alternatively, you may obtain copies of these documents by sending a written request to the Debtors' undersigned counsel. Please note that the Case Website is updated regularly and provides access to all pleadings in the Debtors' Chapter 11 Cases.

assign the Contracts without the Non-Debtor Counterparties' consent or the adequate assurance of future performance to be provided.

3. On October __, 2017, the Bankruptcy Court entered an order (the "Sale Order") approving the sale of substantially all of the assets of the Debtors free and clear of all liens, claims, encumbrances, defenses (including, without limitation, rights of setoff and recoupment) and interests, including, without limitation, security interests of whatever kind or nature, mortgages, conditional sales or title retention agreements, pledges, deeds of trust, hypothecations, liens, encumbrances, assignments, preferences, debts, easements, charges, suits, licenses, options, rights-of-recovery, judgments, orders and decrees of any court or foreign or domestic governmental entity, taxes (including foreign, state and local taxes), licenses, covenants, restrictions, indentures, instruments, leases, options, off-sets, claims for reimbursement, contribution, indemnity or exoneration, successor, product, environmental, tax, labor, ERISA, CERCLA, alter ego and other liabilities, causes of action, contract rights and claims, to the fullest extent of the law, in each case, of any kind or nature (including, without limitation, all "claims" as defined in section 101(5) of the Bankruptcy Code), known or unknown, whether pre-petition or post-petition, secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, perfected or unperfected, liquidated or unliquidated, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, statutory or non-statutory, matured or unmatured, legal or equitable to the maximum extent permitted by Bankruptcy Code section 363 (the "Sale") to the Successful Bidder (the "Buyer"), pursuant to the terms of a purchase agreement with the Buyer.

4. On _____, 2017, the Debtors filed the *Notice of Debtors' Intent to Assume and Assign Certain Unexpired Leases and Executory Contracts and Fixing of Cure Amounts* (the "Initial Cure Notice"). Through this notice, the Debtors hereby supplement the Initial Cure Notice to either add Contract(s) inadvertently omitted from the Initial Cure Notice or to list the additional Cure Amounts (the "Additional Cure Amounts") the Debtors believe are owed with respect to such Contract(s). You have been identified as a party to a Contract (a "Non-Debtor Counterparty") the Debtors *may* seek to assume and assign that is listed on the supplemental Contract list attached hereto as Exhibit 1 (each an "Additional Assumed Contract").

5. Any objections to the Additional Cure Amounts (such objection being the only permissible grounds for objection) must be filed with the Bankruptcy Court and served on: (i) counsel for the Debtors, Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801 (Attn: Adam G. Landis, Esq. and Matthew B. McGuire, Esq.); (ii) counsel to the Term A Lenders, Curtis, Mallet-Prevost, Colt & Mosle LLP, 101 Park Avenue, New York, New York 10178 (Attn: Steven J. Reisman, Esq. and Shaya Rochester, Esq.) and Richards, Layton & Finger, P.A., 920 North King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq.); (iii) counsel to the Committee, if any; and (iv) the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, Delaware 19801 (Attn: Juliet Sarkessian, Esq.) so as to actually be received by 4:00 p.m. (ET) on or before _____, 2017 (the "Additional Cure Deadline"), which deadline may be extended in the sole discretion of the Debtors and the Buyer.

6. If no objection to the Additional Cure Amounts is filed by the Additional Cure Deadline, the Bankruptcy Court will enter an order (an "Additional Assumption Order")

authorizing the assumption and assignment of the Additional Assumed Contract effective as of the date of this notice. In the event an objection is filed by the Additional Cure Deadline, and the parties cannot consensually agree on the Additional Cure Amounts, the Debtors will seek expedited determination of the objection by the Bankruptcy Court on the first available hearing date.

7. If no Additional Cure Amount is due or you agree with the Additional Cure Amount set forth on **Exhibit 1**, no further action needs to be taken and the Bankruptcy Court will enter an order authorizing the assumption by the Debtors and assignment to the Buyer of the contracts listed on **Exhibit 1**.

Dated: _____, 2017
Wilmington, Delaware

LANDIS RATH & COBB LLP

Adam G. Landis (No. 3407)
Matthew B. McGuire (No. 4366)
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wright@lrclaw.com

Proposed Counsel to the Debtors and Debtors-In-Possession

EXHIBIT B

ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT

BY AND AMONG

PEEKAY BOUTIQUES, INC.,

EACH OF THE SUBSIDIARIES OF PEEKAY BOUTIQUES, INC.

LISTED ON SCHEDULE 1

AND

TLA ACQUISITION CORP.

DATED AS OF AUGUST 9, 2017

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SCHEDULES

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “Agreement”) is made and entered into as of August 9, 2017, by and among Peekay Boutiques, Inc., a Nevada corporation (the “Seller”) and each of the subsidiaries of Seller listed on Schedule 1 (together with Seller, the “Selling Entities” and each a “Selling Entity”), and TLA Acquisition Corp., a Delaware corporation (the “Buyer”). Each of the Selling Entities and Buyer are referred to herein as a “Party” and together as the “Parties.” Unless otherwise defined herein, capitalized terms used herein are defined in Section 1.1 of this Agreement.

RECITALS

WHEREAS, the Selling Entities are currently engaged in the Business;

WHEREAS, consistent with and subject to the terms and conditions of this Agreement, the Selling Entities intend to file voluntary petitions for relief (collectively, the “Bankruptcy Case”) pursuant to Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”), and in concert with such filing, seek the entry of orders by the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) approving this Agreement and authorizing the Selling Entities to consummate the transactions contemplated herein and hereby and by the other Transaction Documents (as defined herein);

WHEREAS, Buyer desires to purchase from the Selling Entities and the Selling Entities desire to sell to Buyer substantially all of the Selling Entities’ assets, and Buyer desires to assume from the Selling Entities certain specified liabilities, in each case pursuant to the terms and subject to the conditions set forth herein, and further subject to the Final Order in the Bankruptcy Case (collectively, the “Sale Transaction”);

WHEREAS, at Closing, Buyer will be the assignee of certain Term Loan A Claims pursuant to the Claim Assumption Agreement and desires to credit bid such Term Loan A Claims for the Acquired Assets (the “Credit Bid”) in connection with the Sale Transaction;

WHEREAS, prior and subsequent to the Parties’ execution of this Agreement, Buyer has expended substantial time and energy, and incurred substantial costs, in connection with its due diligence review of the Acquired Assets and the Business;

WHEREAS, the board of directors, board of managers, or applicable governing body of each of the Selling Entities has determined, in the exercise of their business judgment, that it is advisable and in the best interests of all of the stakeholders of the Selling Entities to consummate the transactions provided for herein pursuant to the Bidding Procedures Order and the Sale Order and has approved this Agreement; and

WHEREAS, the Sale Transaction contemplated by the terms of this Agreement is subject to approval by the Bankruptcy Court and will be consummated only pursuant to the Final Order to be entered in the Bankruptcy Case, and the Parties will not be bound to consummate the transactions contemplated hereby until such approval is obtained.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1 DEFINITIONS

Section 1.1 Definitions. A defined term has its defined meaning throughout this Agreement and in each Exhibit and Schedule to this Agreement, regardless of whether it appears before or after the place where it is defined. As used in this Agreement, the following terms have the meanings specified below:

“503(b)(9) Claim Cap” means Allowed 503(b)(9) Claims of up to a maximum aggregate amount of \$600,000.00.

“Accounts Receivable” means any and all (i) accounts receivable, notes receivable and other amounts receivable owed, or that may become owed, to the Selling Entities (whether current or non-current), including all Credit Card Receivables, together with all security or collateral therefor and any interest or unpaid financing charges accrued thereon, including all Actions pertaining to the collection of amounts payable, or that may become payable, to the Selling Entities with respect to products sold or services performed on or prior to the Closing Date, (ii) construction allowances and other amounts due from landlords (including in respect of prior overcharges) under Assumed Contracts, (iii) rebate receivables from suppliers, (iv) insurance claims receivables (other than claims receivable under the Excluded Insurance Policies), (v) other amounts due to the Selling Entities which the Selling Entities have historically classified as accounts receivable in the consolidated balance sheet of Seller, and (vi) any claim, remedy or other right of the Selling Entities related to any of the foregoing, provided, however, that “Accounts Receivable” shall not include any intercompany receivable by and among the Selling Entities themselves.

“Acquired Assets” has the meaning given to such term in Section 2.1.

“Action” means any claim, as defined in the Bankruptcy Code, action, complaint, suit, litigation, arbitration, appeal, petition, inquiry, hearing, Legal Proceeding, investigation or other legal dispute, whether civil, criminal, administrative or otherwise, at law or in equity, by or before any Governmental Authority.

“Additional Assumed Contract” has the meaning given to such term in Section 2.5(b)(i).

“Additional Cure Notice” has the meaning given to such term in Section 2.5(b)(ii).

“Additional Designation Date” has the meaning given to such term in Section 2.5(b)(ii).

“Additional Designation Notice” has the meaning given to such term in Section 2.5(b)(i).

“Additional Rejected Contract” has the meaning given to such term in Section 2.5(b)(i).

“Affiliate” means, with respect to any specified Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with, such specified Person. For purposes of this definition, “control” (and any similar term) means the power of one or more Persons to direct, or cause the direction of, the affairs of another Person by reason of ownership of voting stock or by contract or otherwise.

“Agreement” has the meaning given to such term in the Preamble hereto.

“Allocation” has the meaning given to such term in Section 2.6.

“Allowed 503(b)(9) Claims” means any claims allowed, pursuant to final non-appealable order of the Bankruptcy Court, arising under section 503(b)(9) of the Bankruptcy Code.

“Annual Financial Statements” has the meaning given to such term in Section 5.9(a).

“Approved Budget” has the meaning given to such term in the Cash Collateral Order.

“Assumed Contracts” has the meaning given to such term in Section 2.1(e).

“Assumed Liabilities” has the meaning given to such term in Section 2.3.

“Assumed Purchase Orders” has the meaning given to such term in Section 2.1(g).

“Assumption Agreement” means one or more Assumption and Assignment Agreements, in a form reasonably acceptable to Buyer, and to be executed and delivered by Buyer and the Selling Entities at the Closing.

“Auction” has the meaning given to such term in Section 7.10(a).

“Bankruptcy Case” has the meaning given to such term in the Recitals.

“Bankruptcy Code” has the meaning given to such term in the Recitals.

“Bankruptcy Court” has the meaning given to such term in the Recitals.

“Bidding Procedures” has the meaning given to such term in Section 7.10(a).

“Bidding Procedures Order” means the order of the Bankruptcy Court, in a form acceptable to Buyer in all respects, approving, among other matters, implementation in all material respects of the Bidding Procedures.

“Bill of Sale” means one or more Bill of Sale and Assignment Agreements, in a form reasonably acceptable to Buyer, and to be executed and delivered by the Selling Entities to Buyer at the Closing.

“Business” means the business conducted by Seller and the other Selling Entities prior to the date of this Agreement.

“Business Day” means any day that is not a Saturday, Sunday or other day on which banks are required or authorized by Law to be closed in New York, New York or Wilmington, Delaware.

“Buyer” has the meaning given to such term in the Preamble.

“Cash” means cash and cash equivalents and restricted cash of the Selling Entities, including all petty cash, register cash, undeposited checks, cash in transit and marketable securities, as determined in accordance with GAAP.

“Cash Collateral” has the meaning given to such term in the Cash Collateral Order.

“Cash Collateral Order” means the Order of the Bankruptcy Court to be entered on or about the Petition Date, authorizing the Selling Entities to, among other things, use Cash Collateral.

“Claim” shall have the meaning set forth in Section 101(5) of the Bankruptcy Code.

“Claim Assumption Agreement” means the Assignment and Assumption Agreement to be executed and delivered by Buyer and the Term A Lenders at the Closing.

“Closing” has the meaning given to such term in Section 4.1.

“Closing Date” has the meaning given to such term in Section 4.1.

“COBRA” means the federal Consolidated Omnibus Budget Reconciliation Act of 1985, and similar state, local and foreign laws related to group health plan continuation coverage for an individual who might otherwise lose coverage under a group health plan.

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

“Consent” means any approval, consent, ratification, permission, waiver or authorization, or an order of the Bankruptcy Court that deems, or renders unnecessary, the same.

“Consumer Liabilities” means all Liabilities of the Selling Entities to the extent directly attributable to the returns of goods or merchandise, store or customer credits, gift cards and certificates, customer prepayments, layaway, customer loyalty programs, coupons, and customer refunds, in each case to the extent incurred in the ordinary course of business consistent with the customary policies and past practice of the Selling Entities, but shall not include any other liability to or in respect of customers, including any personal injury or tort or product liability.

“Continuing Facility” means a Store, warehouse, distribution center, corporate office, e-commerce-related facility or other facility of the Selling Entities that is located at the property that is the subject of a Real Property Lease that is an Assumed Contract or an Additional Assumed Contract.

“Contract” means any lease, contract, deed, mortgage, license or other legally enforceable agreement or instrument, written or oral.

“Contracts Schedule” has the meaning given to such term in Section 2.5(a)(i).

“Contributor” has the meaning given to such term in Section 5.13(c).

“Cure Amounts” means all amounts, costs and expenses required by the Bankruptcy Court to cure all defaults and other amounts outstanding under the Assumed Contracts and Additional Assumed Contracts to the extent required so that they may be assumed by the applicable Selling Entities and assigned to Buyer pursuant to Bankruptcy Code Sections 363 and 365 and the Sale Order.

“Credit Card Deposits” means all deposits and holdbacks to secure chargebacks, offsets or otherwise, and all Cash and other property on deposit at the credit card processors to the Selling Entities.

“Credit Card Receivables” means all accounts receivables and other amounts owed to any of the Selling Entities (whether current or non-current) in connection with any customer purchases, returns or exchanges from any of the Selling Entities or Stores operated thereby that are made with credit cards or any other amounts owing (including all Credit Card Deposits) from the credit card processors to the Selling Entities, in each case which are not subject to offset, chargeback or other reduction, and any claim, remedy or other right of the Selling Entities related to any of the foregoing.

“Current Employees” means all employees of the Selling Entities employed as of immediately prior to the Closing, whether active or not (including those on short-term disability, leave of absence, paid or unpaid, or long-term disability).

“Damage or Destruction Loss” has the meaning given to such term in Section 7.13.

“Designation Period” has the meaning given to such term in Section 2.5(b)(i).

“Display Merchandise” means any item of Inventory that is removed from its packaging, or installed, affixed or modified for purposes of a sample, display or demonstration of its function or design.

“Documentary Materials” has the meaning given to such term in Section 2.1(i).

“Encumbrances” means any mortgage, deed of trust, pledge, assignment, security interest, encumbrance, lien, mechanics lien, charge, hypothecation, deemed trust, Action, easement, charge or otherwise, or claim of any kind or nature whatsoever in respect of any property, other than any license of Intellectual Property, including any of the foregoing created by, arising under, or evidenced by any conditional sale or other title retention agreement, the interest of a lessor under a capital lease, any financing lease having substantially the same economic effect as any of the foregoing, or the filing of a financing statement naming the owner of the property as to which such lien relates as the debtor under the Uniform Commercial Code or any comparable Law in any other jurisdiction.

“Environmental Laws” means all Laws, including federal, state, local, foreign and international Laws, relating in any way to pollution, the environment (including ambient air,

surface water, groundwater, land surface or subsurface strata), preservation or reclamation of natural resources, the climate, the presence, management or release of or exposure to hazardous materials, or to human health and safety in respect of the foregoing, or the protection of endangered or threatened species.

“Environmental Liabilities” means all liabilities, obligations, responsibilities, remedial actions, losses, damages, punitive damages, consequential damages, treble damages, costs and expenses (including any amounts paid in settlement, all reasonable fees, disbursements and expenses of counsel, experts and consultants and costs of investigation and feasibility studies), fines, penalties, sanctions and interest incurred as a result of any claim or demand by any other Person or in response to any violation of Environmental Law, whether known or unknown, accrued or contingent, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute, to the extent based upon, related to, or arising under or pursuant to any Environmental Law, environmental permit, Order or agreement with any Governmental Authority or other Person, which relates to any environmental, health or safety condition, violation of Environmental Law or a release or threatened release of hazardous materials.

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

“ERISA Affiliate” means any Person that, together with Seller or any of its Subsidiaries, would be treated as a single employer under Section 414 of the Code or Section 4001 of ERISA.

“Excluded Assets” has the meaning given to such term in Section 2.2.

“Excluded Claims” has the meaning given to such term in Section 2.2(j).

“Excluded Employees” has the meaning given to such term in Section 7.7(b).

“Excluded Insurance Policies” means those insurance policies of the Selling Entities listed on Schedule 1.1(a), all director and officer, fiduciary, employment practices and similar insurance policies maintained by or on behalf of any Selling Entity, all insurance policies to the extent sponsored, maintained by, contributed to or required to be contributed to as a Seller Benefit Plan by any Selling Entity, any Subsidiary of any Selling Entity or any of its or their ERISA Affiliates, and any other insurance policies of the Selling Entities that are not designated as Assumed Contracts pursuant to Section 2.5.

“Excluded Liabilities” has the meaning given to such term in Section 2.4.

“Final Order” means the final unappealable Sale Order and all other final unappealable Orders and approvals of the Bankruptcy Court necessary or advisable for (i) the performance of this Agreement and (ii) the consummation of the transactions contemplated hereby, that, in each case, have been finally entered or given, as applicable, and with respect to which, the applicable periods for the filing of a notice of appeal therefrom or motion to amend, modify, or reconsider has passed without the timely filing of such a notice or motion, or such appeal or motion has been finally resolved.

“Former Employees” means all individuals who have been employed by the Selling Entities (or any of their predecessors) who are not Current Employees.

“GAAP” means generally accepted accounting principles currently in effect in the United States, consistently applied.

“Governmental Authority” means any federal, municipal, state, provincial, local or foreign governmental, administrative or regulatory authority, department, agency, commission or body (including any court or similar tribunal).

“Governmental Authorization” means any permit, license, certificate, approval, consent, permission, clearance, designation, qualification or authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Authority or pursuant to any Law.

“Held Contract” has the meaning given to such term in Section 2.5(a)(ii).

“Indebtedness” of any Person means liabilities or obligations of such Person, whether contingent or otherwise (including penalties, interest and premiums), including any of the following, (i) the principal of and premium (if any) in respect of (A) indebtedness of such Person for money borrowed or with respect to advances of any kind (including penalties, interest and premiums) and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable, (ii) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable for goods and services and other accrued current liabilities arising in the ordinary course of business), (iii) all obligations of such Person under leases required to be capitalized in accordance with GAAP, (iv) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker’s acceptance or similar credit transaction, (v) the liquidation value of all redeemable preferred stock of such Person, (vi) all obligations of the type referred to in clauses (i) through (v) of any Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations, and (vii) all obligations of the type referred to in clauses (i) through (vi) of other Persons secured by any lien on any property or asset of such Person (whether or not such obligation is assumed by such Person).

“Intellectual Property” means all rights, title and interest in or relating to intellectual property of any type, which may exist or be created under the Laws of any jurisdiction in the world, including: (i) rights associated with works of authorship, including exclusive exploitation rights, mask work rights, all copyrighted and copyrightable works, copyrights, database and design rights, whether or not registered or published, all registrations and recordings thereof and applications in connection therewith, along with all extensions and renewals thereof, (ii) trademark rights, trademarks, service marks, trade names, service names, brand names, trade dress rights, logos, corporate names, trade styles, logos and other source or business identifiers and general intangibles of a like nature, along with applications, registrations, renewals and extensions thereof, (iii) trade secrets, (iv) patents, patent rights and applications therefore, including all continuations, divisionals, and continuations-in-part thereof and patents issuing thereon, along with all reissues, reexaminations and extensions thereof, (v) all internet domain names, and all rights therein throughout the world, and accounts with Twitter, Facebook,

Snapchat and other social media companies and the content found thereon and related thereto, and (vi) all other intellectual property rights arising from or relating to Technology.

“Inventory” means all inventory (including raw materials, products in-process and finished products) owned by any of the Selling Entities, whether in transit to or from the Selling Entities and whether in the possession or under the control of any of the Selling Entities or any third party bailees, including all Merchandise and Display Merchandise.

“IP Assignment Agreement” means one or more Intellectual Property Assignment Agreements, in a form reasonably acceptable to Buyer, and to be executed and delivered by the applicable Selling Entities to Buyer at the Closing.

“Knowledge” means, with respect to any Selling Entity, as to a particular matter, the actual or constructive knowledge, after due inquiry and reasonable investigation, of Lisa Berman, solely in her capacity as Chief Executive Officer of any of the Selling Entities, and Albert Altro, solely in his capacity as Chief Restructuring Officer of Peekay Boutiques, Inc.

“Law” means any federal, state, provincial, local, municipal, foreign or other law, statute, legislation, constitution, principle of common law, resolution, ordinance, code, edict, decree, proclamation, treaty, convention, rule, regulation, ruling, directive, pronouncement, requirement, determination, decision or opinion of any Governmental Authority.

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

“Liability” means any debt, obligation or liability of any nature, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due.

“Material Adverse Effect” means any state of facts, change, development, event, effect, condition, occurrence, action or omission that, individually or in the aggregate, is or, with the passage of time, could reasonably be expected to result in a material adverse effect on the business, prospects, assets, properties, financial condition, results of operations or prospects of the Selling Entities, taken as a whole, the value of the Acquired Assets, taken as a whole, or the ability of the Selling Entities to consummate the transactions contemplated hereby.

“Material Contract” has the meaning given to such term in Section 5.12(a).

“Merchandise” means Inventory that is salable in the ordinary course of business.

“Moral Rights” means moral rights in any works of authorship, including the right to the integrity of the work, the right to be associated with the work as its author by name or under a pseudonym and the right to remain anonymous.

“Motions” has the meaning given to such term in Section 7.9(a).

“Necessary Consent” has the meaning given to such term in Section 2.7.

“Non-Real Property Contracts” means the Contracts to which any Selling Entity is a party other than the Real Property Leases.

“Obligations” has the meaning given to such term in the Prepetition Financing Agreement.

“Offeree” has the meaning given to such term in Section 7.7(a).

“Omitted Contract Order” has the meaning given to such term in Section 2.5(c)(i).

“Open Source Materials” means all Software which is distributed under (a) a license approved by the Open Source Initiative on the date hereof or (b) any “copyleft” or other licensing or distribution model, which requires, as a condition of use, modification, and/or distribution of such Software that such Software or other Software incorporated into, derived from, or distributed with such Software (i) be disclosed or distributed in source code form, (ii) be licensed for the purpose of making derivative works or (iii) be redistributed at no or minimal charge.

“Operational Expenses” means to the extent incurred in the ordinary course of business, the following operating costs and expenses of the Selling Entities: occupancy expenses, employee wage and salary expenses and Liabilities arising under Seller Benefit Plans (subject to Section 7.7(d)), costs and expenses associated with any Real Property Lease, including, but not limited to, rent, ground lease rent, common area maintenance, utilities, real estate taxes, insurance, security, and other actual out-of-pocket costs.

“Order” means any order, writ, judgment, injunction, decree, rule, ruling, directive, determination or award made, issued or entered by or with any Governmental Authority, whether preliminary, interlocutory or final, including any Order entered by the Bankruptcy Court in the Bankruptcy Case (including the Sale Order).

“Outside Date” has the meaning given to such term in Section 9.1(i).

“Party” or “Parties” has the meaning given to such term in the Preamble hereto.

“PBGC” has the meaning given to such term in Section 5.11(c).

“Permits” means all franchises, permits, certificates, clearances, approvals, exceptions, variances and authorizations of or with any Governmental Authority held, used by, or made by any of the Selling Entities in connection with the ownership, operation and/or management of the Acquired Assets, and all pending applications therefor.

“Permitted Encumbrances” means: (i) immaterial statutory liens, including carriers, warehousemen, mechanics, repairmen, workmen and materialmen liens, in each case, incurred in the ordinary course of business, (ii) easements, rights of way, zoning ordinances and other similar Encumbrances affecting real property, and (iii) Encumbrances solely affecting the landlords’ or ground lessors’ underlying interest in any of the Real Property Leases and/or the underlying interests in land from time to time; provided that each of the foregoing do not, individually or in the aggregate, result in a Material Adverse Effect.

“Person” means any individual, corporation, partnership, limited partnership, limited liability company, syndicate, group, trust, association or other organization or entity or Governmental Authority. References to any Person include such Person’s successors and permitted assigns.

“Petitions” means the voluntary petition or petitions under Chapter 11 of the Bankruptcy Code that may be filed by the Selling Entities with the Bankruptcy Court.

“Petition Date” means the date on which any of the Selling Entities first file a Petition, or, if such date is not a Business Day, the first Business Day following such date.

“Prepetition Financing Agreement” means that certain Financing Agreement, dated as of December 31, 2012 (as has been or may be further amended, restated, supplemented or otherwise modified from time to time), by and among Christals Acquisition, LLC, a Delaware limited liability company, Peekay Acquisition, LLC, a Delaware limited liability company, the subsidiaries of Peekay Acquisition, LLC listed as Borrowers on the signature pages thereto, each subsidiary of Christals Acquisition, LLC listed as a “Guarantor” on the signature pages thereto, the Lenders (as defined therein) from time to time party thereto, Cortland Capital Market Services LLC, as collateral agent for the Lenders, and as administrative agent for the Lenders, and CB Agency Services, LLC, as origination agent for the Lenders.

“Previously Omitted Contract” has the meaning given to such term in Section 2.5(c)(i).

“Professional” has the meaning given to such term in the Cash Collateral Order.

“Professional Services” has the meaning given to such term in Section 2.4(b).

“PTO” means the United States Patent and Trademark Office.

“Purchase Price” has the meaning given to such term in Section 3.1.

“Real Property Leases” means all leases, subleases and other occupancy Contracts with respect to real property to which any Selling Entity is a party, all of which are described on Section 5.12(a) of the Seller Disclosure Schedule, including all tenant improvements to the real property that is the subject thereof.

“Registered IP” means all Seller IP that, as of the date of this Agreement, is registered, filed or issued under the authority of, with or by any Governmental Authority, including all patents, registered copyrights, registered mask works and registered trademarks and all applications for any of the foregoing.

“Rejected Contract” has the meaning given to such term in Section 2.5(a)(ii).

“Rejection Effective Date” means, with respect to each rejected Contract, the date designated by the Bankruptcy Court as the effective date for the rejection of such Contract.

“Representatives” means, with respect to a particular Person, any director, officer, employee or other authorized representative of such Person or its Subsidiaries, including such Person’s attorneys, accountants, financial advisors and restructuring advisors.

“Retained Cash” means Cash in the amount of (i) \$877,628.00 plus (ii) subject in all respects to the Approved Budget, any accrued but unpaid fees and expenses, as of Closing, owed to a Professional pursuant to such Professional’s engagement letter; provided, however, that the amount of Cash in clause (i) shall be reduced, on a dollar for dollar basis, by the amount of “Priority and Administrative Claims, including Estate Wind Down Costs” (as defined in the Approved Budget) that are paid prior to the Closing; provided, further, that if and to the extent the allowed amount of Priority and Administrative Claims, including Estate Wind Down Costs, is less than \$877,628.00, such resulting excess Cash shall, notwithstanding anything to the contrary contained in this Agreement, constitute an Acquired Asset and be transferred to Buyer.

“Sale Motion” means one or more motions and notices that may be filed by the Selling Entities and served on creditors and parties in interest, in accordance with the Bidding Procedures Order, other Orders of the Bankruptcy Court, the Federal Rules of Bankruptcy Procedures and Local Rules, which motion(s) would seek authority from the Bankruptcy Court for the Selling Entities to enter into this Agreement and consummate the transactions contemplated by this Agreement, which shall be acceptable to Buyer in all respects.

“Sale Order” has the meaning given to such term in Section 8.1(b).

“Sale Transaction” has the meaning given to such term in the Recitals hereto.

“Seller” has the meaning given to such term in the Preamble hereto.

“Seller Benefit Plan” means any employment, consulting, severance, termination, retirement, profit sharing, bonus, incentive or deferred compensation, retention or change in control agreement, equity or equity-based compensation, stock purchase, severance pay, defined benefit pension, defined contribution pension, savings, retirement, individual account-based savings, supplemental executive retirement, sick or other leave, life, health, salary continuation, disability, hospitalization, accident, medical, insurance, vacation, paid time off, long term care, or other employee compensation or benefit plan, program, arrangement, policy, agreement, fund or commitment (including any “employee benefit plan” as defined in Section 3(3) of ERISA), sponsored, entered into, maintained by, contributed to or required to be contributed to by any Selling Entity, any Subsidiary of any Selling Entity or any of its or their ERISA Affiliates, or with respect to which any Selling Entity, any Subsidiary of any Selling Entity or any of its or their ERISA Affiliates has or may in the future have any liability (contingent or otherwise).

“Seller Disclosure Schedule” means the disclosure schedule delivered by the Selling Entities to Buyer concurrently with the execution and delivery of this Agreement.

“Seller Financial Statements” has the meaning given to such term in Section 5.9(a).

“Seller IP” means all rights, title and interest in and to the Intellectual Property and the Technology owned by or licensed to any Selling Entity in connection with the ownership,

operation and/or management of the Business and any and all corresponding rights that, now or hereafter, may be secured throughout the world, including as listed on Schedule 1.1(c).

“Seller Properties” has the meaning given to such term in Section 5.16(b).

“Seller Registered IP” has the meaning given to such term in Section 5.13(a).

“Selling Entities” has the meaning given to such term in the Preamble hereto.

“Significant Supplier” means, for any Selling Entity, any supplier which, for each of the twelve (12) months ended December 31, 2015 and December 31, 2016, was one of the twenty (20) largest suppliers of goods and services to such Selling Entity.

“Software” means proprietary computer software and code, including assemblers, applets, compilers, source code, object code, data (including image and sound data), development tools, design tools and user interfaces, in any form or format, however fixed. Software shall include source code listings and documentation.

“Store” means a store operated by the Selling Entities.

“Store-Level Cash” means all cash located at the Stores as of the Closing and not in any bank and/or deposit account, other than such cash located at the Rejected Stores in the ordinary course of the Selling Entities’ Business.

“Store Closing Sales” means any “going out of business”, “store closing” or similar theme sales conducted at any Stores or other facilities of the Selling Entities, pursuant to which any Selling Entity or its designated agents may sell all or any portion of the Inventory.

“Subsidiary” means, with respect to any Person, (a) any corporation or similar entity of which at least 50% of the securities or interests having, by their terms, ordinary voting power to elect members of the board of directors, or other persons performing similar functions with respect to such corporation or similar entity, is held, directly or indirectly by such Person, and (b) any partnership, limited liability company or similar entity of which (i) such Person is a general partner or managing member or (ii) such Person possesses a 50% or greater interest in the total capitalization or total income of such partnership, limited liability company or similar entity.

“Tax” means all federal, state, provincial, local or foreign taxes (including any income tax, franchise tax, service tax, capital gains tax, capital tax, gross receipts tax, value-added tax, surtax, excise tax, ad valorem tax, transfer tax, stamp tax, sales tax, use tax, property tax, business tax, profits tax, inventory tax, capital stock tax, license tax, withholding tax, payroll tax, employment tax, social security tax, unemployment tax, employer health tax, severance tax or occupation tax), escheat and abandoned property tax, levies, assessments, tariffs, duties (including any customs duties), deficiencies or fees (including any fine, addition, penalty or interest), imposed, assessed or collected by or under the authority of any Governmental Authority, including any liability for the foregoing as a transferee or successor under applicable Law.

“Tax Return” means any return, report, information return or other document (including any related or supporting information) supplied or required to be supplied to any Governmental Authority with respect to Taxes.

“Technology” means, collectively, all algorithms, APIs, designs, net lists, data, databases, data collections, diagrams, inventions (whether or not patentable), know-how, methods, processes, proprietary information, protocols, schematics, specifications, tools, systems, servers, hardware, computers, point of sale equipment, inventory management equipment, Software, software code (in any form, including source code and executable or object code), subroutines, techniques, user interfaces, URLs, networks and systems, web sites, works of authorship and other similar materials, including all documentation related to any of the foregoing, including instruction manuals, laboratory notebooks, prototypes, samples, studies and summaries, whether or not embodied in any tangible form and whether or not specifically listed herein, and all related technology, that are used in, incorporated in, embodied in, displayed by or relate to, or are used in connection with the foregoing and rights therein throughout the world.

“Term Loan A Claims” means all Obligations in respect of the Term A Loans or otherwise owing under the Prepetition Financing Agreement to or in respect of the Term A Lenders. For the avoidance of doubt, the Term Loan A Claims include the following Claims under the Prepetition Financing Agreement: (i) the aggregate principal amount of \$27,000,000.00 and (ii) accrued but unpaid fees and interest as of the date hereof in an amount no less than \$8,494,500.00.

“Term A Lender” has the meaning given to such term in the Prepetition Financing Agreement.

“Term A Loans” has the meaning given to such term in the Prepetition Financing Agreement.

“Termination Date” has the meaning given to such term in the Cash Collateral Order.

“Third Party Intellectual Property Rights” means all Intellectual Property not owned by any Selling Entity, including Technology in the public domain and (to the extent not owned by any Selling Entity) any Open Source Materials or any modification or Software derived from, based upon, containing or functionally integrated in whole or in part with any Open Source Materials.

“Third-Party Sale” means a sale, transfer, change of control, liquidation or other disposition, directly or indirectly (including based on a Qualified Bid and/or through an asset sale, stock sale, merger or other transaction) of all or any material portion of the Acquired Assets in a single transaction or a series of transactions to one or more Persons other than Buyer or an Affiliate of Buyer, whether at an Auction, pursuant to a plan of reorganization or otherwise.

“Transaction Documents” means this Agreement (including the Seller Disclosure Schedule delivered herewith), the Assumption Agreement, the Bill of Sale and Assignment Agreement, the IP Assignment Agreement and any other Contract to be entered into by the Parties in connection with the Closing.

“Transfer Taxes” has the meaning given to such term in Section 7.8(a).

“Transferred Employee” has the meaning given to such term in Section 7.7(a).

“Transition Services Agreement” has the meaning given to such term in Section 7.7(h).

“Uniform Commercial Code” means the Uniform Commercial Code as in effect from time to time in the State of Delaware.

“WARN Act” means the federal Worker Adjustment and Retraining Notification Act, 29 U.S.C. § 2101, *et seq.* (1988) and any similar Laws, including Laws of any state, country or other locality that is applicable to a termination of employees.

Section 1.2 Construction. The terms “hereby,” “hereto,” “hereunder” and any similar terms as used in this Agreement refer to this Agreement in its entirety and not only to the particular portion of this Agreement where the term is used. The terms “including,” “includes” or similar terms when used herein shall mean “including, without limitation.” The meaning of defined terms shall be equally applicable to the singular and plural forms of the defined terms, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. Any reference to any federal, state, provincial, local or foreign statute or Law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. Unless otherwise indicated, references to (a) Articles, Sections, Schedules and Exhibits refer to Articles, Sections, Schedules and Exhibits of and to this Agreement and (b) references to \$ (dollars) are to United States Dollars. If any action under this Agreement is required to be done or taken on or to have been performed by a day that is not a Business Day, then such action shall be required to be done or taken or performed by not on such day but on the first succeeding Business Day thereafter.

ARTICLE 2 PURCHASE AND SALE

Section 2.1 Purchase and Sale of Assets. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, at the Closing, the Selling Entities shall sell, assign, convey, transfer and deliver to Buyer, and Buyer shall, by Buyer’s payment of the Purchase Price, purchase and acquire from the Selling Entities, all of the Selling Entities’ right, title and interest, free and clear of all Encumbrances (other than Permitted Encumbrances), in and to all of the properties, rights, interests and other tangible and intangible assets of the Selling Entities (wherever located and whether or not required to be reflected on a balance sheet prepared in accordance with GAAP), including any assets acquired by the Selling Entities after the date hereof but prior to the Closing (collectively, the “Acquired Assets”); *provided, however*, that the Acquired Assets shall not include any Excluded Assets. Without limiting the generality of the foregoing, the Acquired Assets shall include the following (except to the extent expressly listed or otherwise included as an Excluded Asset):

(a) all Cash, including all Store-Level Cash, other than Retained Cash, of the Selling Entities as of the Closing;

(b) all Accounts Receivable of the Selling Entities as of the Closing;

(c) all Inventory, Merchandise, Display Merchandise, supplies and materials of the Selling Entities as of the Closing, including all rights of the Selling Entities to receive such Inventory, Merchandise, Display Merchandise, supplies and materials which are on order as of the Closing;

(d) without duplication of the above, and subject to the allocation and reimbursement provisions set forth in Section 7.17, all restricted cash deposits of the Selling Entities held by any party and relating to the Acquired Assets, all Credit Card Deposits, all royalties, advances, prepaid and deferred assets (including prepaid Taxes but excluding prepaid income Taxes or Taxes that the Selling Entities are responsible for hereunder), security and other deposits, prepayments and other current assets of the Selling Entities as of the Closing relating to the Acquired Assets (but excluding all interests in the Excluded Insurance Policies and all of the foregoing relating to the Excluded Assets, including Contracts that are not Assumed Contracts, including but not limited to (i) prepaid expenses and deposits attributable to any open purchase orders and Inventory, (ii) subject to Section 2.2(k), prepaid charges and deposits in respect of telephone, electricity, water and sewer and other utilities provided to the real property leased under the Assumed Contracts, (iii) prepaid common area maintenance expenses relating to the real property leased under the Assumed Contracts, to the extent in respect of periods on or after the Closing Date, and (iv) ordinary holdbacks (including ordinary credit card holdback payments or protection reserves);

(e) the Non-Real Property Contracts, the Real Property Leases and the Additional Assumed Contracts to be assumed by the Selling Entities and assigned to Buyer pursuant to the Sale Order and Section 2.5 (collectively, the "Assumed Contracts");

(f) all Seller IP;

(g) the purchase orders, identified by Buyer in a written notice to Seller not later than two (2) Business Days prior to the Closing Date, entered into in the ordinary course of business consistent with past practice with suppliers that are open as of the Closing Date for delivery of goods and services for materials, supplies or other items used in connection with the ownership, operation and/or management of the Business at the Stores subject to the Assumed Contracts (the "Assumed Purchase Orders");

(h) all items of machinery, equipment, supplies, furniture, fixtures, leasehold improvements (to the extent of the Selling Entities' rights to any leasehold improvements under the Assumed Contracts) and other tangible personal property and fixed assets owned by the Selling Entities as of the Closing, together with all rights of the Selling Entities under warranties and licenses received in connection therewith;

(i) all books, records, information, files, data and plans (whether written, electronic or in any other medium), advertising and promotional materials and similar items of the Selling Entities as of the Closing, including customer and supplier lists, mailing lists, sales and promotional literature, other sales-related materials related to the Acquired Assets, and, to the extent not prohibited under applicable Law, all files and data related to the Transferred Employees (collectively, the "Documentary Materials");

(j) all claims (including claims for past infringement or misappropriation of Seller IP) and causes of action (other than, in each case, to the extent related solely to the Excluded Assets) of the Selling Entities as of the Closing (regardless of whether or not such claims and causes of action have been asserted by the Selling Entities), including all claims and causes of action that any of the Selling Entities may have (1) against the Selling Entities' Representatives and; (2) under Chapter 5 of the Bankruptcy Code;

(k) all goodwill associated with the Business or the Acquired Assets, including all goodwill associated with Seller IP and all rights under any confidentiality agreements executed by any third party for the benefit of any of the Selling Entities to the extent relating to the Acquired Assets;

(l) all rights of the Selling Entities under non-disclosure or confidentiality, non-compete, or non-solicitation agreements with Current Employees, Former Employees, Excluded Employees, Transferred Employees or current or former directors, consultants, independent contractors and agents of any of the Selling Entities or any of their Affiliates or with third parties to the extent primarily relating to the Acquired Assets (or any portion thereof);

(m) all of the Permits related to the Acquired Assets, to the extent such Permits may be assigned to Buyer;

(n) the amount of, and all rights to any, insurance claims made, or insurance proceeds received, by or on behalf of any of the Selling Entities in respect of (i) the loss, destruction or condemnation of any Acquired Assets or (ii) any Assumed Liabilities in each case for events and claims occurring prior to the Closing;

(o) pursuant and subject to Section 2.1(n) herein, all rights under or arising out of insurance policies held by the Selling Entities in respect of the Business or the Acquired Assets;

(p) any rights, demands, claims, credits, allowances, rebates (including any vendor or supplier rebates), and rights of setoff (other than against the Selling Entities) arising out of or relating to any of the Acquired Assets as of the Closing (but excluding all interests in the Excluded Insurance Policies);

(q) all telephone and facsimile numbers, web sites, web domain names and addresses;

(r) all rights of the Selling Entities' in and to (i) the company headquarters location located at the address of the Selling Entities provided in Section 10.3(a) and (ii) all warehouse and distribution facilities of the Selling Entities; and

(s) all other assets to which the Selling Entities have any right, title or interest that are related to, used in connection with or are necessary for the ownership, operation and/or management of the Acquired Assets, the Business and the Stores governed under the Assumed Contracts.

Notwithstanding anything herein, including in Section 2.1, Section 2.2 or in any Schedule that lists Acquired Assets, Excluded Assets, Assumed Liabilities or Excluded Liabilities, to the contrary, Buyer shall have the right in, its sole discretion, to (x) reject any of the Acquired Assets by providing written notice to the Selling Entities of its election to reject any such assets until the date that is two (2) Business Days prior to the Closing Date, in which event such assets shall be deemed Excluded Assets for purposes of this Agreement, and (y) add any of the Excluded Assets to the list of Acquired Assets by providing written notice to the Selling Entities of its election to add any such assets until the date that is two (2) Business Days prior to the Auction (provided that if the Auction does not occur because there are no Qualified Bidders, then Buyer may provide written notice of its election to add any such assets until the date that is two (2) Business Days prior to the Closing Date), in which event such Excluded Assets shall be deemed Acquired Assets for purposes of this Agreement.

Section 2.2 Excluded Assets. Notwithstanding any provision herein to the contrary, the Acquired Assets shall not include the following (collectively, the "Excluded Assets"):

(a) all Excluded Insurance Policies and all interests therein and all deposits, prepayments, advances and security relating solely thereto, and all rights and benefits of any of the Selling Entities of any nature with respect solely thereto, including all interests in any bonds maintained under Section 412 of ERISA and in any insurance policies relating to Seller Benefit Plans, and all royalties, advances, prepaid assets, security and other deposits, prepayments and other current assets of the Selling Entities as of the Closing relating solely to Contracts that are not Assumed Contracts;

(b) all intercompany obligations and other amounts receivable of any Selling Entity owed to it by any other Selling Entity;

(c) any confidential records, documents or other information relating to Excluded Employees, and any materials containing information about any Excluded Employee or Transferred Employee, to the extent disclosure of which to Buyer would violate applicable Law;

(d) the Selling Entities' (i) minute books and other corporate books and records relating to their organization and existence, including the Selling Entities' stock records and corporate seal, and the Selling Entities' books and records relating to Taxes of the Selling Entities, including Tax Returns filed by or with respect to the Selling Entities, (ii) records which any of the Selling Entities are required to retain by applicable Law and (iii) books, records, information, files, data and plans (whether written, electronic or in any other medium), advertising and promotional materials and similar items relating to any Excluded Assets or Excluded Liabilities; *provided, however*, that Buyer shall have the right to make copies of any portions of such books and records related to the Acquired Assets;

(e) the Selling Entities' rights under this Agreement and the other Transaction Documents, and all consideration payable or deliverable to the Selling Entities pursuant to the terms and provisions hereof;

(f) any Contracts of any Selling Entities (including employment Contracts and purchase orders that are not Assumed Purchase Orders), other than the Assumed Contracts and Additional Assumed Contracts, together with all prepaid assets relating solely to Contracts other than the Assumed Contracts;

(g) any shares of capital stock or other equity interests of any of the Selling Entities, or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interests of any of the Selling Entities;

(h) any prepaid income Tax, Tax receivable, Tax refund or Tax rebate of a Selling Entity with respect to any period ending on or prior to the Closing, other than those relating to any Acquired Asset;

(i) any Seller Benefit Plan or any right, title or interest in any assets of or relating thereto;

(j) all rights, claims and causes of action, including rights of indemnity, warranty rights, rights of contribution, rights to refunds, rights of reimbursement and other rights of recovery, including rights to insurance proceeds, of the Selling Entities (regardless of whether such rights are currently exercisable), to the extent solely and specifically related to the Excluded Assets or Excluded Liabilities (collectively, the "Excluded Claims");

(k) all prepaid charges and deposits in respect of telephone, electricity, water and sewer and other utilities that are required to be funded by the Selling Entities pursuant to the Selling Entities' motion filed in the Bankruptcy Case pursuant to Section 366 of the Bankruptcy Code, to be filed by the Selling Entities on the Petition Date; and

(l) all bank and deposit accounts, which for the avoidance of doubt, shall include no Cash other than Retained Cash.

Section 2.3 Assumed Liabilities. At the Closing, Buyer shall execute and deliver to the Selling Entities the Assumption Agreement pursuant to which Buyer shall assume and agree to pay, perform and discharge when due the Assumed Liabilities. For purposes of this Agreement, "Assumed Liabilities" means only the following Liabilities (to the extent not paid prior to the Closing):

(a) the Liabilities arising solely and directly under the Assumed Contracts from and after the date assumed and assigned to Buyer pursuant to Section 2.5 and the Sale Order and which shall not include any Liability for any Cure Amounts or for any breach thereunder occurring prior to the date assumed and assigned to Buyer pursuant to Section 2.5 and the Sale Order;

(b) the Liabilities arising solely and directly under the Assumed Purchase Orders;

(c) all Taxes to the extent expressly payable by Buyer pursuant to Section 7.8;

(d) all Consumer Liabilities, other than Liabilities arising under any escheatment, abandoned property or similar Law;

(e) the Allowed 503(b)(9) Claims, if any, up to the 503(b)(9) Claim Cap;

(f) subject to the terms of Sections 2.4(c), 2.4(d) and 7.7 herein, the Liabilities solely and directly with respect to Transferred Employees arising on and after the Closing Date, except for any Liabilities with respect to and/or claims of any Transferred Employee arising out of or related to their employment by any of the Selling Entities, any conduct of any of the Selling Entities and/or any of the Selling Entities' operation of the Business;

(g) an amount of federal and state Tax Liability actually due and payable by the Selling Entities that is owing by the Selling Entities directly and exclusively as a result of the transactions contemplated by this Agreement and the other Transaction Documents, as verified by Buyer in its reasonable discretion, subject to an aggregate maximum amount of \$180,000; and

(h) such additional Liabilities of the Selling Entities, if any, that Buyer, in its sole and absolute discretion, may identify by written notice to the Selling Entities at least two (2) Business Days prior to the Closing, which shall be listed on Schedule 2.3(h).

Buyer's assumption of the Assumed Liabilities shall in no way expand the rights or remedies of third parties against Buyer as compared to the rights and remedies which such parties would have had against any of the Selling Entities had this Agreement not been consummated.

Section 2.4 Excluded Liabilities. Notwithstanding anything to the contrary in this Agreement, the Parties expressly acknowledge and agree that Buyer shall not assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for any Liabilities of the Selling Entities, whether existing on the Closing Date or arising thereafter as a result of any act, omission or circumstances taking place prior to the Closing, other than the Assumed Liabilities (all such Liabilities that Buyer is not expressly assuming under Section 2.3 being referred to collectively as the "Excluded Liabilities"). Without limiting the foregoing, Buyer shall not be obligated to assume, does not assume, and hereby disclaims all the Excluded Liabilities, including the following Liabilities of any of the Selling Entities or of any predecessor of any of the Selling Entities, whether incurred or accrued before or after the Petition Date or the Closing:

(a) Except as provided in Section 2.3(g) of this Agreement, all Taxes of any of the Selling Entities, including (i) Taxes imposed on any of the Selling Entities for any period and/or in connection with the sale of the Acquired Assets (including, for the avoidance of doubt, the Transfer Taxes), (ii) all taxes imposed on any of the Selling Entities under Treasury Regulations Section 1.1502-6 and similar provisions of state, local or foreign Tax Law, including all sales Taxes collected by the Selling Entities in connection with the pre-Closing operation of the Business and (iii) all Taxes arising out of or related to the Business or to the Acquired Assets for all periods ending prior to the Closing;

(b) all Liabilities of any of the Selling Entities incurred in connection with or related to the Bankruptcy Case and/or its administration, including any of the Selling Entities'

Liabilities relating to the purchase of goods or services before or after the Petition Date (including the Allowed 503(b)(9) Claims that are in excess of the 503(b)(9) Claim Cap, and excluding Liabilities under Assumed Purchase Orders and the Allowed 503(b)(9) Claims up to the 503(b)(9) Claim Cap) and Liabilities relating to legal services, accounting services, financial advisory services, investment banking services or any other professional services (“Professional Services”) performed in connection with the Bankruptcy Case, this Agreement and/or any of the transactions contemplated, hereby, and any pre-Petition Date or post-Petition Date Claims or other Liabilities, including for such Professional Services;

(c) except to the extent expressly assumed by Buyer pursuant to Section 7.7, all Liabilities or claims arising out of, relating to or with respect to (i) the employment or performance of services for, or termination of employment or services for, or potential employment or engagement for the performance of services for, any of the Selling Entities (or any predecessor) of any individual Person (including the Transferred Employees) or any Person acting as a professional employer organization, employee leasing company or providing similar services on or prior to the Closing (including as a result of the transactions contemplated by this Agreement), including Liabilities or claims for or relating to any non-compliance of the Selling Entities or the Business with (and claims that have been or may be made under any pending Action in connection with) any Laws relating to wages, hours, pay equity, employment equity, conditions of employment, employment standards, human rights, employee privacy, collective bargaining, discrimination, civil rights, safety and health, workers’ compensation, the collection and payment of withholding Taxes and/or social security Taxes and contributions and any similar Tax or contribution, severance (including statutory severance), separation, or notice pay or benefits (including under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended and Section 4980B of the Code), Liabilities of the Selling Entities pursuant to the WARN Act, including in connection with the Selling Entities’ termination of employment of any Current Employees (and the Selling Entities shall cause to be filed and delivered all notices in respect thereof) as a result of any transaction contemplated by this Agreement, or any form of accrued or contingent compensation (including leave entitlements), or (ii) any Seller Benefit Plan, subject to ERISA or otherwise (including any Liabilities related to any Seller Benefit Plan which is an “employee pension benefit plan” (as defined in Section 3(2) of ERISA) that is subject to Section 302 or Title IV of ERISA or Code Section 412), irrespective of whether such Liabilities are incurred, recognized, paid or made, as applicable, on, before or after Closing;

(d) except as expressly assumed by Buyer under this Agreement, all Liabilities of any of the Selling Entities with respect to and/or claims of any Current Employees, Excluded Employees, Former Employees or Transferred Employees with respect to any period, including any Liabilities with respect to and/or claims of any Transferred Employees arising out of such Transferred Employees’ employment by any of the Selling Entities;

(e) all Liabilities relating to Excluded Assets;

(f) all Liabilities of any of the Selling Entities in respect of the Business or the Acquired Assets arising as a result of any Action initiated at any time, to the extent in any way related to matters or circumstances occurring or existing prior to the Closing;

(g) all Liabilities of any of the Selling Entities arising from and/or based on, directly or indirectly, infringement or misappropriation of any Intellectual Property arising out of or related to any conduct of any of the Selling Entities or any of the Selling Entities' operation of the Business;

(h) all Liabilities of the Selling Entities in respect of Indebtedness, other than any Indebtedness assumed pursuant to Section 3.2;

(i) all Liabilities arising in connection with any violation of any applicable Law or Order relating to the period prior to the Closing by any of the Selling Entities;

(j) any Liabilities arising under any escheatment, abandoned property or similar Law with respect to the Assumed Liabilities or which otherwise remain with any Selling Entity;

(k) any Claim arising prior to the Closing and not assumed by Buyer pursuant to Section 2.3, including all accounts payable and other amounts payable of any Selling Entity, including any such accounts payable or other amounts owed by any of the Selling Entities to any of the other Selling Entities;

(l) all Cure Payments in respect of any Contract, Real Property Lease or Assumed Contract;

(m) any Liabilities to any shareholder or other equity holder of any of the Selling Entities or any predecessor of any of the Selling Entities;

(n) any Liabilities arising out of or related to any Legal Proceeding commenced or threatened against any of the Selling Entities or any predecessor thereof; and

(o) any other Liability of the Selling Entities that is not expressly included among the Assumed Liabilities.

Section 2.5 Assignment and Assumption of Contracts.

(a) Assignment and Assumption at Closing.

(i) No later than five (5) Business Days following the Petition Date, the Selling Entities shall provide to Buyer a schedule setting forth (x) each Contract to which any of the Selling Entities is a party or by which any Selling Entity is bound, (y) all Cure Amounts (if any) for each such Contract and (z) a detailed description of each such Contract and, if not previously provided to Buyer, a copy of each such Contract provided to Buyer no later than three (3) Business Days thereafter (such schedule is referred to herein as the "Contracts Schedule").

(ii) No later than one (1) day prior to the date on which the Auction occurs, Buyer shall, by delivering written notice to the Selling Entities, designate each Contract on the Contracts Schedule as "Assumed," "Rejected" or "Held." Each Contract so designated as "Assumed" is referred to herein as an "Assumed Contract"; each

Contract so designated as “Rejected” is referred to herein as a “Rejected Contract”; and each Contract designated as “Held” is referred to herein as a “Held Contract.” Notwithstanding the foregoing, Buyer shall have the right (in its sole and absolute discretion) to change any such designation and to notify the Selling Entities in writing of any such change until Closing in which case such Contract shall become an Assumed Contract, a Rejected Contract or a Held Contract as indicated by such changed designation.

(iii) The Selling Entities shall provide timely and proper written notice of the procedures for the assumption and assignment of Contracts to parties to all Contracts and take all other actions necessary to cause all Assumed Contracts to be assumed by the Selling Entities and assigned to Buyer, and all Rejected Contracts to be rejected by the Selling Entities, pursuant to Bankruptcy Code section 365, provided that (x) the only Contracts to be actually assumed and assigned to Buyer at Closing will be the Assumed Contracts and (y) the only Contracts to be actually assumed and assigned to Buyer after Closing will be the Additional Assumed Contracts, including approving the Selling Entities’ assumption and assignment of the Assumed Contracts to Buyer under the terms of the Sale Order. The parties shall, at or prior to Closing, comply with all requirements under Bankruptcy Code section 365 necessary to assign to Buyer the Assumed Contracts. From and after the Petition Date, the Selling Entities shall not assume or seek to assume, or reject or seek to reject, any Contract except as provided in this Section 2.5 or otherwise with the prior written consent of Buyer. Buyer shall promptly respond to any such request for consent from the Selling Entities (which response may be that Buyer is continuing to evaluate the Contract in question).

(iv) At Closing, (x) the Selling Entities shall, pursuant to the Sale Order and the Assignment and Assumption Agreement(s) and other transfer and assignment documents requested by Buyer, assume and assign to Buyer (the consideration for which is included in the Purchase Price) each of the Assumed Contracts and (y) the Selling Entities shall pay promptly all Cure Amounts (if any) in connection with such assumption and assignment (either as determined by the Bankruptcy Court, or as agreed to among the Selling Entities and the third party to the applicable Assumed Contract) and Buyer shall assume and agree to perform and discharge the Assumed Liabilities (if any) under the Assumed Contracts, pursuant to the Sale Order and the Assignment and Assumption Agreement(s).

(b) Assignment and Assumption During the Designation Period.

(i) During the forty-five (45) day period following the Closing Date with respect to all Held Contracts, or such later date as may be agreed to by the Selling Entities and Buyer (the “Designation Period”; provided that Buyer may, by written notice to the Selling Entities, extend the Designation Period for up to an additional thirty (30) days), Buyer may from time to time, by delivering one or more written notices to the Selling Entities (each such written notice is referred to herein as an “Additional Designation Notice”), designate, in its sole and absolute discretion, any Held Contract as either “Assumed” or “Rejected.” Each such Held Contract so designated as “Assumed” during the Designation Period is referred to herein as an “Additional Assumed Contract”;

and each Held Contract so designated as “Rejected” is referred to herein as an “Additional Rejected Contract.”

(ii) No later than the third (3rd) Business Day following the receipt by the Selling Entities of each Additional Designation Notice, the Seller shall file a motion (such date of a filing of an Additional Designation Notice, an “Additional Designation Date”) with the Bankruptcy Court, on notice, and with an opportunity to object, to all non-Seller parties to Contracts designated as Additional Assumed Contracts and Additional Rejected Contracts (as applicable) in such Additional Designation Notice, a notice (an “Additional Cure Notice”) providing that such Additional Assumed Contract and Additional Rejected Contract (as applicable) has been designated by Buyer as “Assumed” or “Rejected” (as applicable) and establishing any additional Cure Amount due for an applicable Additional Assumed Contract for the period between Closing and the filing of such Additional Cure Notice. The Additional Cure Notice shall provide that the non-Seller parties to the Additional Assumed Contracts may only object to the additional Cure Amount due for an applicable Additional Assumed Contract for the period between Closing and the filing of such Additional Cure Notice.

(iii) Upon approval by the Bankruptcy Court of the assumption and assignment of such Additional Assume Contract, (x) Selling Entities shall assume and assign to Buyer (the consideration for which is included in the Purchase Price) the applicable Additional Assumed Contracts and (y) the Selling Entities shall pay all Cure Amounts (if any) in connection with such assumption and assignment (either as determined by the Bankruptcy Court, or as agreed to among the Selling Entities and the third party to the applicable Additional Assumed Contract) and Buyer shall assume and agree to perform and discharge the Assumed Liabilities (if any) under the applicable Additional Assumed Contracts, pursuant to the applicable Assignment and Assumption Agreement.

(iv) Each Additional Rejected Contract shall be deemed, for all purposes of this Agreement, rejected as of the applicable Additional Designation Date. Each Additional Assumed Contract shall be deemed, for all purposes of this Agreement, as assigned and assumed as of the applicable Additional Designation Date.

(c) Previously Omitted Contracts.

(i) In the event that it is discovered that a Contract should have been listed on the Contracts Schedule but was not listed on the Contracts Schedule (any such Contract, a “Previously Omitted Contract”), the Selling Entities shall, immediately following the discovery thereof (but in no event later than two (2) Business Days following the discovery thereof), (x) notify Buyer of such Previously Omitted Contract and all Cure Amounts (if any) for such Previously Omitted Contract, and (y) file a motion with the Bankruptcy Court on notice to the counterparties to such Previously Omitted Contract seeking entry of an order (the “Omitted Contract Order”) fixing the Cure Amounts and approving the assumption and assignment of such Previously Omitted Contract in accordance with this Section 2.5 (provided that no Previously Omitted Contract shall be assumed and assigned unless such Previously Omitted Contract is

designated by Buyer as “Assumed” in accordance with Section 2.5(b) and Section 2.5(c)(ii).

(ii) Within fifteen (15) Business Days following the filing of the motion seeking approval of the Omitted Contract Order, Buyer shall deliver written notice to Selling Entities (such written notice shall be an “Additional Designation Notice”) to Seller, designating such Previously Omitted Contract set forth in such Omitted Contract Order as “Assumed,” “Rejected” or “Held.” For purposes of the application of this Section 2.5, each Previously Omitted Contract so designated as “Assumed” shall be an Additional Assumed Contract, each Previously Omitted Contract so designated as “Rejected” shall be an Additional Rejected Contract; and each Previously Omitted Contract so designated as “Held” shall be a Held Contract for purposes of this Section 2.5. Each Previously Omitted Contract shall then be treated in accordance with the provisions of this Section 2.5 with respect to Additional Assumed Contracts, Additional Rejected Contracts and Held Contracts.

(d) Held Contracts, Assumed Contracts and Additional Assumed Contracts.

(i) Subject to Buyer’s obligations under Section 2.5(f) below, during the Designation Period, (x) each Held Contract shall be held by Selling Entities, (y) no Selling Entities shall reject or seek to reject (pursuant to Section 365 of the Bankruptcy Code or otherwise) any Held Contract and (z) no Selling Entities shall terminate, amend, supplement or modify, or waive any rights under, any Held Contract or take any affirmative action not required by the terms thereof by any Seller, without the prior written consent of Buyer. Following the end of the Designation Period, Selling Entities shall promptly cause all Held Contracts not designated as either “Assumed” or “Rejected” by Buyer during the Designation Period to be rejected pursuant to Bankruptcy Code section 365.

(ii) On each date that each Assumed Contract or Additional Assumed Contract (as applicable) is assumed and assigned to Buyer pursuant to this Section 2.5 (including, without limitation, the approval of the assumption and assignment thereof by the Bankruptcy Court), such Assumed Contract or Additional Assumed Contract (as applicable) shall constitute an “Assigned Contract” and shall be an Assigned Contract for all purposes under this Agreement, provided that no Assumed Contract or Additional Assumed Contract shall be assigned or transferred pursuant to this Agreement unless the Bankruptcy Court has previously approved the assumption and assignment thereof to Buyer.

(e) Inventory. With respect to any Rejected Contract or Additional Rejected Contract that is a Real Property Lease, the Inventory and other Acquired Assets located thereat shall be transferred by the Selling Entities as designated by Buyer, at Buyer’s expense (and for the avoidance of doubt, solely as to the expense of removal, transport and/or delivery thereof to Buyer’s designated location(s)), or otherwise disposed or of sold as may be determined by Buyer. The Selling Entities shall not take any action with respect to such Inventory or other Acquired Assets without the express written consent of Buyer.

(f) Held Contracts. Following the Closing Date and through the date that such Held Contract becomes an Assigned Contract or an Additional Rejected Contract, with respect to the Held Contracts, Buyer shall pay any and shall be solely responsible for, all actual and direct costs incurred by the Selling Entities associated with each Held Contract, including, with respect to any Held Contract that is a Real Property Lease, the Operational Expenses (including costs relating to procuring Inventory) of the Store located thereat, and the direct and reasonable out-of-pocket legal costs, incurred by the Selling Entities in connection with the filings and hearings which are required for Held Contracts to become Assigned Contracts or Additional Rejected Contracts. Buyer shall be entitled to all revenue associated with any Held Contract, including, with respect to any Held Contract that is a Real Property Lease, all revenue earned at the Store located thereat. The Selling Entities shall be obligated to satisfy any Cure Amounts with respect to each Held Contract that becomes an Assumed Contract. Notwithstanding the foregoing, Buyer shall not be responsible for any liabilities or obligations relating to or arising out of such Held Contracts as a result of (A) any breach by Selling Entities of such Contracts (provided that such breach is not caused by the breach of Buyer of its obligations under this Section 2.5(f)), (B) any violation of Law, breach of warranty, tort or infringement, in each case by a Selling Entity (provided that such violation is not directly caused by any act or omission of Buyer after the Closing), (C) any charge, complaint, action, suit, proceeding, hearing, investigation, claim or demand against the Selling Entities prior to the date that such Held Contract becomes an Assigned Contract or an Additional Rejected Contract (provided that such matters do not directly arise out of the act or omission of Buyer after the Closing); or (D) any other obligation or liability which is enumerated herein as an Excluded Liability. In addition, Buyer shall perform, or shall cause to be performed, any and all obligations of the Selling Entities under each such Held Contract relating to the period from and after the Closing until such each such Held Contract has been, in accordance with this Section 2.5, (i) assumed and assigned to Buyer or (ii) designated as an Additional Rejected Contract. From and after the Closing, the Selling Entities shall cooperate, without further consideration, with Buyer in any reasonable arrangement Buyer may request to provide Buyer with all of the benefits of, or under, the applicable Held Contracts, including enforcement for the benefit of Buyer of any and all rights of Seller against any Person party to the applicable Held Contract arising out of the breach or cancellation thereof by such Person.

(g) Adequate Assurance. Buyer shall provide adequate assurance as required under the Bankruptcy Code of the future performance by Buyer of each Assumed Contract. Buyer agrees that it shall, and shall cause its Affiliates to, promptly take all actions reasonably required to assist the Selling Entities in obtaining a Bankruptcy Court finding that there has been an adequate demonstration of adequate assurance of future performance under the Assumed Contracts, such as furnishing affidavits, non-confidential financial information and other documents or information for filing with the Bankruptcy Court and making Buyer's Representatives reasonably available to testify before the Bankruptcy Court.

Section 2.6 Allocation. Buyer shall, no later than forty-five (45) days following the Closing, deliver to the Selling Entities an allocation of the Purchase Price (and the Assumed Liabilities, to the extent properly taken into account under the Code) among the Acquired Assets (the "Allocation") in accordance with Section 1060 of the Code and the Treasury regulations promulgated thereunder. The Selling Entities agree to file all Tax Returns (including the filing of Form 8594 with their United States federal income Tax Return for the taxable year that includes

the date of the Closing) consistent with the Allocation unless otherwise required by applicable Law. In administering the Bankruptcy Case, the Bankruptcy Court shall not be required to apply the Allocation in determining the manner in which the Purchase Price should be allocated as between the Selling Entities and their respective estates.

Section 2.7 Non-Assignment of Acquired Assets. Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer and shall not affect the assignment or transfer of any Contract, Permit or Acquired Asset if notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code, (a) an attempted assignment thereof, without the approval, authorization or consent of, or granting or issuance of any license or permit by, any party thereto other than any Selling Entity (each such action, a “Necessary Consent”), would constitute a breach thereof (after giving effect to any elimination of such approval, authorization or consent requirement by operation of the Sale Order) or in any way adversely affect the rights or obligations of Buyer thereunder (unless the restrictions on assignment or transfer thereunder would be rendered ineffective pursuant to Sections 9-406 through 9-409, inclusive, of the Uniform Commercial Code, as amended) and such Necessary Consent is not obtained and (b) the Bankruptcy Court shall not have entered an Order providing that such Necessary Consent is not required. If, notwithstanding the provisions of Sections 363 and 365 of the Bankruptcy Code and the efforts of the Selling Entities in seeking to obtain a necessary Consent, such consent or approval is required but not obtained with respect to an Assumed Contract or an Additional Assumed Contract (as applicable) or a Permit, neither Selling Entities nor Buyer shall be in breach of this Agreement nor shall the Purchase Price be adjusted nor shall the Closing be delayed in respect of the Assumed Contracts or the Permits. In such event, the Selling Entities and Buyer will use their commercially reasonable efforts to obtain the Necessary Consents with respect to any such Acquired Asset or any claim or right or any benefit arising thereunder for the assignment thereof to Buyer as Buyer may reasonably request, at the Selling Entities’ sole cost and expense, to the extent the Selling Entities have access to sufficient funds to satisfy such costs and expenses (as reasonably determined by the Selling Entities and agreed to by Buyer); *provided, however*, that the Selling Entities shall use their commercially reasonable efforts to request that the Sale Order indicates that to the fullest extent permitted under applicable law, no Necessary Consents will be required from any party in connection with the transactions contemplated hereby or by any of the other Transaction Documents. If such Necessary Consent is not obtained, or if such Acquired Asset or an attempted assignment thereof would otherwise be ineffective or would adversely affect the rights of any Selling Entity thereunder so that Buyer would not in fact receive all such rights, the Selling Entities and Buyer will cooperate in a mutually agreeable and commercially reasonable arrangement under which Buyer would obtain the benefits and assume the obligations (to the extent otherwise constituting Assumed Liabilities hereunder) thereunder in accordance with this Agreement, including subcontracting, sublicensing or subleasing to Buyer, or under which one or more Selling Entities would enforce for the benefit of, and at the direction of, Buyer, with Buyer assuming the Selling Entities’ obligations (to the extent not otherwise constituting Assumed Liabilities hereunder), any and all rights of the Selling Entities thereunder, at the Selling Entities’ sole cost and expense, to the extent the Selling Entities have access to sufficient funds to satisfy such costs and expenses (as reasonably determined by the Selling Entities and agreed to by Buyer).

Section 2.8 Further Conveyances and Assumptions. The Selling Entities shall deliver to Buyer at the Closing such employee and personnel files and records, subject to and consistent with applicable Law, as is reasonably necessary for Buyer to transition the Transferred Employees into Buyer's records, as well as all other books, records and files included in the Acquired Assets.

ARTICLE 3 PURCHASE PRICE

Section 3.1 Purchase Price. In consideration for the Acquired Assets, and subject to the terms and conditions of this Agreement and the entry and effectiveness of the Sale Order, at the Closing, Buyer shall assume the Assumed Liabilities by executing the Assumption Agreement and Buyer shall credit bid, in accordance with Section 3.2 and subject to adjustment as set forth therein, an aggregate amount equal to the Term Loan A Claims held by Buyer in an amount equal to Thirty Million Dollars (\$30,000,000.00), such Purchase Price to be paid by Credit Bid pursuant to a dollar-for-dollar reduction of the Term Loan A Claims held by Buyer (the "Purchase Price").

Section 3.2 Closing Payment. Subject to the terms and conditions of this Agreement and the entry and effectiveness of the Sale Order, at the Closing, Buyer shall pay or cause to be paid by Credit Bid, pursuant to a dollar-for-dollar reduction of the Term Loan A Claims held by Buyer, an amount equal to the Purchase Price; *provided, however*, that on or prior to the Closing, Buyer may, at its sole and absolute discretion, reduce the amount of the Purchase Price and assume the corresponding amount of the Selling Entities' Obligations in respect of such Term Loan A Claims pursuant to a credit agreement (or similar document) entered into at Closing, in which case the Purchase Price shall be reduced on a dollar-for-dollar basis by the amount of such Indebtedness assumed (such that, as a result of such reduction of the Purchase Price and assumption of Indebtedness, Thirty Million Dollars (\$30,000,000.00) of the Selling Entities' Obligations in respect of the Term A Loans shall have been either satisfied by the Credit Bid or have been assumed by Buyer); *provided, further*, that the rights of Buyer set forth in the foregoing proviso shall only be available to TLA Acquisition Corp. or a permitted assignee thereof and shall not be available to any other Person. For the avoidance of doubt, Buyer shall not be obligated to make any cash payment at Closing in respect of the Acquired Assets. For the further avoidance of doubt, to the extent that Buyer makes such an election to reduce the Purchase Price on a dollar-for-dollar basis as set forth in this Section 3.2, the Selling Entities' Obligations constituting the Term Loan A Claims shall be deemed an "Assumed Liability" pursuant to Section 2.3 of this Agreement. It is agreed and acknowledged that all Term Loan A Claims that are not Credit Bid or that are not Assumed Liabilities hereunder, whether held by Buyer or by the Term A Lenders, shall remain outstanding Liabilities of the Selling Entities.

ARTICLE 4 THE CLOSING

Section 4.1 Time and Place of the Closing. Upon the terms and subject to the satisfaction of the conditions contained in Article 8 of this Agreement, the closing of the sale of the Acquired Assets and the assumption of the Assumed Liabilities contemplated by this Agreement (the "Closing") shall take place remotely via the exchange of documents and

signatures no later than the second (2nd) Business Day following the date on which the conditions set forth in Article 8 have been satisfied or, to the extent permitted, waived by the applicable Party in writing (other than conditions which by their nature are to be satisfied at the Closing, but subject to the satisfaction or, to the extent permitted, waiver of such conditions at or prior to the Closing), or at such other place and time as Buyer and Seller may mutually agree in writing. The date on which the Closing actually occurs is herein referred to as the “Closing Date” and the Closing shall be deemed to be effective as of 12:01 a.m. (Eastern Time) on the Closing Date.

Section 4.2 Deliveries by Seller. At or prior to the Closing, Seller shall deliver the following to Buyer:

- (a) the Bill of Sale, duly executed by the Selling Entities;
- (b) the Assumption Agreement, duly executed by the Selling Entities;
- (c) the IP Assignment Agreement, duly executed by the applicable Selling Entities;
- (d) such other instruments of assignment, assumption, conveyance and transfer of any and all of the Acquired Assets and Assumed Liabilities, duly executed by the applicable Selling Entities, together with any transfer tax declarations or other filings, in form and substance reasonably acceptable to Buyer, as shall be necessary or advisable to transfer good and marketable title to the Acquired Assets to Buyer in accordance with this Agreement;
- (e) a certificate from the Selling Entities, dated the Closing Date, executed by an authorized officer thereof, as contemplated under and meeting the requirements of sections 1.1445-2(b)(2)(i) and 1.1445-2(b)(2)(iv)(B) of the Treasury Regulations, to the effect that none of the Selling Entities is not a foreign person for U.S. federal income Tax purposes;
- (f) a copy of the Sale Order as entered by the Bankruptcy Court;
- (g) the certificate contemplated by Section 8.2(g);
- (h) a release, in form and substance acceptable to Buyer and the Term A Lenders, pursuant to which the Selling Entities release any and all causes of action and Claims which they may have held against Buyer and the Term A Lenders and each of their respective Representatives;
- (i) to the extent that any Encumbrances (other than Permitted Encumbrances) against the Acquired Assets, including arising under the Prepetition Financing Agreement, are not released pursuant to the Sale Order, executed termination statements, in form and substance reasonably satisfactory to Buyer, on Form UCC-3 or such other appropriate form that, when filed or recorded, as the case may be, will be sufficient to release any and all such Encumbrances, provided that Buyer may record the Sale Order with the appropriate Governmental Authority wherein any UCC financing statements are recorded against any of the Selling Entities; and
- (j) all other documents, instruments and writings reasonably required by Buyer to be delivered by the Selling Entities at or prior to the Closing Date pursuant to this

Agreement or otherwise reasonably required in connection herewith or as, in the opinion of Buyer's counsel, are necessary to transfer to Buyer good, valid and marketable title to the Acquired Assets pursuant to this Agreement, free and clear of all Claims and Encumbrances (other than Permitted Encumbrances), except to the extent as otherwise provided in this Agreement and the Sale Order.

Section 4.3 Deliveries by Buyer. At or prior to the Closing, Buyer shall deliver the following to Seller:

(a) an executed letter from Buyer stating that all of its Term Loan A Claims that are the subject of the Credit Bid have been satisfied in full pursuant to the Credit Bid or have been assumed by Buyer;

(b) the Assumption Agreement and the IP Assignment Agreement, duly executed by Buyer;

(c) a release, in form and substance acceptable to the Selling Entities, pursuant to which Buyer and the Term A Lenders release any and all causes of action and Claims which they may have held solely in their respective capacities as Term A Lenders (but not in any other capacity or for any other purpose), against the Selling Entities and each of their respective Representatives, solely in respect of the Term Loan A Claims that are being satisfied pursuant to the Credit Bid;

(d) a release, in form and substance acceptable to the Selling Entities, pursuant to which Buyer and the Term A Lenders release any and all causes of action and Claims held by them against the Selling Entities' Representatives, including all causes of action and Claims which they may have acquired pursuant to Section 2.1(j) hereof;

(e) a sales tax exemption certificate for each jurisdiction identified in Section 4.3(e) of the Seller Disclosure Letter, effective as of the Closing Date;

(f) the certificate contemplated by Section 8.3(d); and

(g) all other documents, instruments and writings reasonably required by the Selling Entities to be delivered by Buyer at or prior to the Closing Date pursuant to this Agreement or otherwise reasonably required in connection herewith.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE SELLING ENTITIES

The Selling Entities represent and warrant to Buyer as follows, as of the date hereof and as of the Closing Date:

Section 5.1 Organization, Standing and Corporate Power. Each Selling Entity is a corporation or other entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, formation or organization. Subject to any necessary authority from the Bankruptcy Court, each Selling Entity has the requisite power and authority to conduct the Business as now being conducted. Each Selling Entity 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, other than in such jurisdictions where the failure to be so qualified or licensed would not reasonably be expected to result in a Material Adverse Effect.

Section 5.2 Subsidiaries. Section 5.2 of the Seller Disclosure Schedule identifies each direct and indirect Subsidiary of Seller and its jurisdiction of formation. All of the outstanding capital stock of, or other ownership interests in, each Selling Entity (other than Seller) are owned beneficially and of record by Seller, directly or indirectly.

Section 5.3 Authority Relative to this Agreement. Subject to the applicable provisions of the Bankruptcy Code, each of the Selling Entities has all necessary corporate or similar authority to execute and deliver this Agreement and the other Transaction Documents to which it is a party and, upon entry and effectiveness of the Sale Order in accordance with the terms hereof, will have all necessary corporate or similar authority to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the other Transaction Documents to which any Selling Entity is party and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by the board of directors or equivalent governing body of each Selling Entity, and no other corporate or similar proceeding on the part of such Selling Entity is necessary to authorize this Agreement or the other Transaction Documents to which it is party or to consummate the transactions contemplated hereby or thereby. This Agreement has been duly and validly executed and delivered by each Selling Entity, and, upon their execution and delivery in accordance with the terms of this Agreement, each of the other Transaction Documents to which any Selling Entity is party will have been duly and validly executed and delivered by each Selling Entity, and assuming that this Agreement and the other Transaction Documents to which it is party constitute valid and binding agreements of Buyer to the extent that it is a party thereto, and, subject to the entry and effectiveness of the Sale Order, and the execution and delivery of such other Transaction Documents in accordance with the terms hereof, this Agreement and the other Transaction Documents constitute valid and binding agreements of each Selling Entity party thereto, enforceable against such Selling Entity in accordance with their terms.

Section 5.4 No Violation; Consents.

(a) Except as described in Section 5.4(a) of the Seller Disclosure Schedule, except to the extent excused by or rendered unenforceable against Buyer as a result of the Bankruptcy Case and except for the entry and effectiveness of the Sale Order, neither the execution and delivery of this Agreement nor the sale by any Selling Entity of any Acquired Assets pursuant to this Agreement will (with or without notice or lapse of time) (i) conflict with or result in any breach of any provision of any Selling Entity's Certificate of Incorporation or Bylaws (or similar organizational documents), (ii) conflict with or result in any breach of any Law applicable to any Selling Entity, the Business, or the Acquired Assets, or (iii) violate, conflict with, result in any breach of, constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, require any consent under, or give to others any rights of termination, amendment, acceleration, suspension, revocation or cancellation of, any note, bond, mortgage or indenture, Contract, agreement, lease, sublease, license, Permit, franchise or other instrument or arrangement to which any of the Selling Entities

is a party as of the Closing, or result in the creation of any Encumbrance (other than a Permitted Encumbrance) as of the Closing on any of the assets of the Selling Entities, except to the extent that any such rights of termination, amendment, acceleration, suspension, revocation or cancellation as a result of such Encumbrance will not be enforceable against such Acquired Asset or Assumed Liability following the Closing in accordance with the Sale Order.

(b) No Consent of any Governmental Authority is required to be obtained by or with respect to any Selling Entity in connection with the execution and delivery of this Agreement, or the consummation by the Selling Entities of the transactions contemplated by this Agreement, except for (i) the Consents set forth in Section 5.4(b) of the Seller Disclosure Schedule, (ii) the entry of the Sale Order by the Bankruptcy Court and (iii) Consents to the transfer or assignment of Permits that constitute Acquired Assets.

Section 5.5 Legal Proceedings and Orders. Except as described in Section 5.5 of the Seller Disclosure Schedule, other than in connection with the Bankruptcy Case, there is no Legal Proceeding pending before any Governmental Authority and no Person has threatened to commence any such Legal Proceeding, (a) that relates to any of the Acquired Assets or Assumed Liabilities, (b) that would reasonably be expected to have the effect of preventing, making illegal, delaying, frustrating or conditioning any of the transactions contemplated by this Agreement, or (c) that would reasonably be expected to materially affect the ownership, operation or management of the Acquired Assets and the Business by Buyer from and after the Closing or materially impair Buyer's rights in and to, or use of, the Acquired Assets from and after the Closing. As of the date of this Agreement and except as described in Section 5.5 of the Seller Disclosure Schedule, there is no Order to which any of the Selling Entities are subject, other than Orders issued by the Bankruptcy Court in the Bankruptcy Case.

Section 5.6 Compliance with Law. Each of the Selling Entities (a) is in compliance with all Laws, Orders and material Permits in their possession relating to the Acquired Assets (including the ownership, operation, management or use thereof), the Assumed Liabilities and the conduct of the Business as currently conducted, and (b) has not received any written notice from, and has no Knowledge of any allegation or assertion made by, any Governmental Authority that any violation of any such Law, Order or material Permit exists, or that any audit, inquiry or investigation by any Governmental Authority in respect of any alleged violation of such Law, Order or material Permit is threatened or pending.

Section 5.7 Anticorruption; Antiboycott Laws. Each Selling Entity, including its employees, directors, agents or other Persons acting on its behalf, has not, directly or indirectly, (a) taken any action that would cause such Selling Entity to be in violation of the Foreign Corrupt Practices Act of 1977, as amended (the "FCPA"), or any other anticorruption or anti-bribery Laws (collectively with the FCPA, the "Anticorruption Laws"), (b) corruptly given, loaned, paid, promised, offered or authorized payment of money or anything of value to any "foreign official" as defined in the FCPA or, in violation of Law, to any other government official, to secure any improper advantage or to obtain or retain business for any Person or to achieve any other purpose prohibited by the Anticorruption Laws, and (c) taken any action that would cause such Selling Entity to be in violation of Law applicable to export control or trade embargoes.

Section 5.8 Environmental Matters. Each of the Selling Entities (a) is and has been in compliance with all applicable Environmental Laws, (b) agrees that there is no action relating to or arising under Environmental Laws that is pending or threatened against or affecting such Selling Entity, (c) has not received any notice of or entered into or assumed, by contract or operation of Law or otherwise, any obligation, liability, Order or settlement relating to or arising under any Environmental Laws, and (d) agrees that no facts, circumstances or conditions exist that would reasonably be expected to result in any Selling Entity incurring Environmental Liabilities.

Section 5.9 Financial Statements.

(a) (i) The consolidated financial statements of the Selling Entities for the fiscal year ending December 31, 2016 (the “Annual Financial Statements”) and (ii) the unaudited consolidated financial statements of the Selling Entities for the six-month period ended June 30, 2017 (together with the item described in clause (i) above, the “Seller Financial Statements”) have been prepared in conformity with GAAP and the Selling Entities’ accounting principles consistently applied, present fairly, in all material respects, the consolidated financial position and results of operations of the Selling Entities as of the date thereof and the consolidated statements of operations, stockholder’s equity and cash flows of the Selling Entities for the periods indicated therein (subject to normal and recurring year-end adjustments, the effect of which would not be materially adverse, and the absence of notes with respect to the item described in clause (ii) above) that, if presented, would not differ materially from those presented in the financial statements described in (i) above, are based on and solely reflect bona fide performance of services or other bona fide business transactions and, with respect to receivables, represent valid, actual, bona fide obligations owing to one or more of the Selling Entities in the ordinary course of business consistent with past practice.

(b) The Selling Entities maintain a standard system of accounting established and administered in accordance with GAAP. Each Selling Entity’s system of internal controls over financial reporting is designed to provide reasonable assurance (i) that transactions are recorded as necessary to permit preparation of financial statements that present fairly the financial condition and the results of operations and cash flows of such Selling Entity, (ii) that receipts and expenditures are executed in accordance with the authorization of management, and (iii) that any unauthorized use, acquisition or disposition of such Selling Entity’s assets that would materially affect such Selling Entity’s financial statements would be detected or prevented in a timely manner. There were no significant deficiencies or material weaknesses in such Selling Entity’s internal controls as of and for the year ended December 31, 2016 (nor has any such deficiency or weakness nor any fact, circumstance or change reasonably likely to result in any such deficiency or weakness been identified since such date).

(c) The Selling Entities do not have any Indebtedness or other Liabilities that are not expressly disclosed or reserved against in Seller Financial Statements (including the notes thereto), except for indebtedness or other Liabilities (i) of an immaterial nature that were incurred after December 31, 2016, or in the ordinary course of business, consistent with past practice, (ii) that arise directly under this Agreement or in connection with the transactions contemplated hereby, or (iii) that are or will become Excluded Liabilities of the Selling Entities as debtors in the Bankruptcy Case and that will not result in any Encumbrance on the Acquired

Assets following the entry of the Sale Order (other than Permitted Encumbrances that do not materially impair Buyer's rights therein and thereto, or use thereof, from and after the Closing).

Section 5.10 Absence of Certain Changes. Except as described in Section 5.10 of the Seller Disclosure Schedule, during the period beginning on the date of the most recent Annual Financial Statements and ending on the Closing Date, (w) there has not been any event, change, occurrence or circumstance that has had or would reasonably be expected to have a Material Adverse Effect, (x) the Business has been conducted in the ordinary course substantially consistent with past practices, (y) the Selling Entities have preserved intact their business organization and relationships with third parties (including lessors, licensors, suppliers, distributors and customers) and employees and, without limiting the generality of the foregoing, (z) the Selling Entities have not:

(a) implemented or adopted any material change in the accounting principles, practices or methods of the Selling Entities, other than as may be required by Law or applicable accounting requirements;

(b) sold, licensed, leased, assigned, abandoned or imposed an Encumbrance (other than Permitted Encumbrances) on any of the Acquired Assets or incurred Indebtedness for borrowed money which impact the Acquired Assets in any way;

(c) entered into, amended or terminated any lease or sublease of real or personal property or any renewals thereof;

(d) except for as may be required by applicable Law, or by any Seller Benefit Plan, employment agreements or other Contracts existing as of the date hereof so long as such Seller Benefit Plan, employment agreements or other contracts have been disclosed as of the date of this Agreement to Buyer in the Seller Disclosure Schedule, materially increased the rate of compensation, benefits, bonus, severance entitlement or incentive arrangement payable to any of the directors, officers, employees, consultants or independent contractors of the Business;

(e) made any new commitment or increased any previous commitment for capital expenditures for the Business in an amount exceeding \$10,000 per any such capital expenditure, and \$50,000 in the aggregate;

(f) sold, assigned, transferred, leased, exchanged or disposed of any material assets except for sales of inventory in the ordinary course of business consistent with past practice;

(g) acquired by merging or consolidating with, or by purchasing a substantial portion of the assets or equity securities of, or by any other manner, any corporation, partnership, joint venture, or other entity;

(h) failed to exercise any rights of renewal with respect to any Real Property Lease that by its terms would otherwise expire;

(i) made any change in Tax elections or accounting methods, or entered into any closing agreement, settlement or compromise of any claim or assessment, in each case in

respect of Taxes relating to the Acquired Assets or the Business, or consented to any extension or waiver of any limitation period with respect to any claim or assessment for Taxes of the Acquired Assets or the Business;

(j) entered into, amended, cancelled, not renewed or terminated any Assigned Contract;

(k) made or declared any dividend or distribution in respect of its equity interests;

(l) made any change in the policies of the Selling Entities with respect to the payment of accounts payable or accrued expenses or the collection of the accounts receivable or other receivables, other than in the ordinary course of business;

(m) made any change in its cash management practices or in the accounting methods, principles or practices used by the Selling Entities, except as required by Law or GAAP;

(n) hired or engaged or agreed to hire or engage any director, officer, employee, consultant, independent contractor or other service provider with annualized compensation in excess of \$50,000;

(o) amended, modified in any material respect, or terminated or established any Seller Benefit Plan, except as required by applicable Law;

(p) negotiated, entered into, adopted, amended, extended or terminated any collective bargaining agreement or other agreement with any U.S. or foreign labor union, works council or other employee representative body or similar organization;

(q) waived or released any material rights or material claims;

(r) opened any new facility or entered into any new line of business or closed any facility or discontinued any line of business or any material business operations;

(s) instituted or settled any claim or lawsuit involving equitable or injunctive relief or the payment to, by or on behalf of the Selling Entities of more than \$25,000 in the aggregate;

(t) extinguished any Excluded Liabilities or acquired any Excluded Assets;

(u) written up, down or off any of its material assets;

(v) failed to file any Tax Return or to pay any Taxes (including estimated Taxes) when due;

(w) loaned or advanced any money or other property to any Affiliate, or to any director, officer, employee, consultant, independent contractor or other service provider (other

than routine travel, salary and vacation advances in the ordinary course of the Business consistent with past practice); or

- (x) entered into any Contract with respect to any of the foregoing.

Section 5.11 Benefit Plans; Employees and Employment Practices.

(a) Section 5.11(a) of Seller Disclosure Schedule sets forth a complete and correct list of each Seller Benefit Plan (or other such arrangement). No plan currently or ever in the past maintained, sponsored, contributed to or required to be contributed to by any Selling Entity, any of their Subsidiaries, or any of their respective current or former ERISA Affiliates is or ever in the past was (i) a “multiemployer plan” as defined in Section 3(37) of ERISA, (ii) a plan described in Section 413 of the Code, (iii) a plan subject to Title IV of ERISA, (iv) a plan subject to the minimum funding standards of Section 412 of the Code or Section 302 of ERISA, or (v) a plan maintained in connection with any trust described in Section 501(c)(9) of the Code. No Seller Benefit Plan provides, or reflects or represents any liability to provide, benefits (including death or medical benefits), whether or not insured, with respect to any former or current employee, or any spouse or dependent of any such employee, beyond the employee’s retirement or other termination of employment with Seller and its Subsidiaries other than (1) coverage mandated by Part 6 of Title I of ERISA or Section 4980B of the Code, (2) retirement or death benefits under any plan intended to be qualified under Section 401(a) of the Code, (3) disability benefits that have been fully provided for by insurance under a Seller Benefit Plan that constitutes an “employee welfare benefit plan” within the meaning of Section (3)(1) of ERISA, or (4) except as set forth in Section 5.11(a) of the Seller Disclosure Schedule.

(b) Except as set forth in Section 5.11(b) of the Seller Disclosure Schedule, and except for such exceptions that would not reasonably be expected to result in a Material Adverse Effect, (i) each Seller Benefit Plan has been maintained and administered in accordance with its terms and with all applicable provisions of ERISA, the Code and other applicable Laws, and (ii) there are no audits, inquiries or proceedings pending or threatened by the U.S. Internal Revenue Service or any other Governmental Authority with respect to any Seller Benefit Plan (other than routine claims for benefits in the ordinary course of business).

(c) (i) The Pension Benefit Guaranty Corporation (“PBGC”) has not initiated any proceeding, or asserted any rights, under Section 4041 or 4042 of ERISA and (ii) neither the Selling Entities nor any of their Affiliates have received an inquiry, whether written or oral, from the PBGC, under its so-called “Early Warning Program” or otherwise, regarding the funded status of any pension plan of the Selling Entities or any of their Affiliates.

(d) None of the Selling Entities is a party to, or otherwise bound by or subject to, any collective bargaining or other labor union contracts and no Current Employees are represented by any labor organization, trade union, works council, employee representative, employee congress or other form of employee association or representative. No labor organization (or representative thereof) or Current Employee or group of Current Employees has made a pending demand for recognition, and there are no representation proceedings or Petitions seeking a representation proceeding presently pending or threatened to be brought or filed, with the National Labor Relations Board or other labor relations tribunal, or provincial or foreign or

other Governmental Authority. There is no organizing activity involving the Selling Entities or any of their Affiliates pending or threatened by any labor organization (or representative thereof) or employee or group of employees to organize Current Employees. There are no material lockouts, or strikes pending, or threatened between the Selling Entities or any of their Affiliates, on the one hand, and their respective Current Employees, on the other hand, and there have been no such material lockouts or strikes for the past three (3) years.

(e) As of the date of this Agreement and except as set forth in Section 5.11(e) of the Seller Disclosure Schedule, each of the Selling Entities and their Affiliates is in compliance with all Laws relating to the employment of labor, including all such Laws relating to wages, hours, pay equity, employment equity, conditions of employment, employment standards, human rights, employee privacy, the WARN Act, collective bargaining, discrimination, civil rights, safety and health, workers' compensation and the collection and payment of withholding Taxes and/or social security Taxes and contributions and any similar Tax or contribution. Except as set forth in Section 5.11(e) of the Seller Disclosure Schedule, there has been no "mass layoff" or "plant closing" (as defined by the WARN Act), or "collective redundancy" or similar process, with respect to the Selling Entities or any of their Affiliates within the six (6) months prior to Closing.

(f) There are no notices of assessment, provisional assessment, reassessment, supplementary assessment, penalty assessment or increased assessment or any other communications related thereto which any Selling Entity has received from any workers' compensation or workplace safety and insurance board or similar authorities in any jurisdictions where the Business is carried on which are unpaid on the date hereof or which will be unpaid at the Closing Date, and there are no facts or circumstances which may result in an increase in liability to Buyer under any applicable workers' compensation or workplace safety and insurance Law after the Closing Date.

Section 5.12 Contracts.

(a) Section 5.12(a) of the Seller Disclosure Schedule lists as of the date hereof, and the Selling Entities have made available to Buyer true, correct and complete copies of each of the following contracts (each, a "Material Contract") to which any Selling Entity is a party or which binds or affects the Business, the Acquired Assets or the Assumed Liabilities (excluding Seller Benefit Plans disclosed in Section 5.11(a)):

(i) any Contract relating to any incurrence, assumption or guarantee of Indebtedness;

(ii) any joint venture agreement, limited liability company agreement or partnership agreement or other similar Contract or arrangements;

(iii) any Contract or series of related Contracts, including any option agreement, relating to the acquisition or disposition of any business, capital stock or other equity interests, or assets of, from, to or with any other Person (whether by merger, sale of stock, sale of assets or otherwise);

(iv) any Contract that contains exclusivity obligations, non-competition obligations or other restrictions binding on the Selling Entities or their respective Affiliates in respect of the Business or the Acquired Assets, or otherwise restricts or limits in any material respect the ability of the Selling Entities or their respective Affiliates in respect of the Acquired Assets or the Business to compete in any line of business with any other Person or in any geographic area that is material to the Acquired Assets or the Business (including, in each case, any co-existence or other Contract that restricts the use of any assigned Intellectual Property), or that restricts the ability of the Selling Entities or their respective Affiliates in respect of the Business to solicit, hire or engage any Person;

(v) Real Property Leases;

(vi) the top 25 supplier Contracts (based on aggregate total purchases in U.S. dollars by the Business for the twelve (12) month period ended December 31, 2016);

(vii) any inbound or outbound license or royalty Contracts or other Contracts to which any of the Selling Entities or their respective Affiliates is a party with respect to any material Intellectual Property rights or Technology used in or licensed by the Business;

(viii) any Contract involving a remaining commitment by the Business to pay capital expenditures in excess of \$25,000 that is not, without material penalty, terminable for convenience by Seller;

(ix) pledges or security Contracts or similar arrangements constituting a lien upon the Acquired Assets;

(x) any Contract providing for the employment or engagement of any Person on a full-time, part-time, independent contractor, temporary or other basis or otherwise providing compensation or other benefits, including transaction bonuses, severance or change of control benefits, to any current or former officer, director, employee or individual independent contractor (other than a Benefit Plan);

(xi) any collective bargaining Contract;

(xii) any Contracts with Affiliates of the Selling Entities (including any intercompany indebtedness, guaranty, receivables or payables);

(xiii) any Contracts for the sale or purchase of personal property having a value individually, with respect to all sales or purchases thereunder, in excess of \$25,000, other than agreements with respect to the sale of Inventory entered into in the ordinary course of the Business;

(xiv) any Contracts requiring the Business to purchase all of its requirements for a product or service from any Person or setting a specified volume commitment for a product or service;

(xv) any Contract relating to the marketing, advertising or promotion of the products of the Business or the Acquired Assets;

(xvi) any Contracts under which Seller has any Liabilities to insure, indemnify or defend any other Person relating to the Business or the Acquired Assets; and

(xvii) any Contracts pursuant to which the Selling Entities have agreed to settle, waive or otherwise compromise any litigation under which the Selling Entities have any continuing Liabilities of any kind.

(b) As of the date hereof, (i) each Material Contract (including all modifications and amendments) is valid and binding on the applicable Selling Entities and, each other party thereto, and is in full force and effect and enforceable in accordance with its terms; (ii) the Selling Entities and each other party thereto, have performed and complied with all obligations required to be performed or complied with by them under each Material Contract; and (iii) there is no default under any Material Contract by the Selling Entities or by any other party, and no event has occurred that with the lapse of time or the giving of notice or both would constitute a default thereunder by any Selling Entity or by any other party thereto.

(c) Except as set forth on Section 5.12(c) of the Seller Disclosure Schedule, there is no Material Contract that is material to or necessary for the ownership, management and operation of the Business as currently conducted or as contemplated by this Agreement, or the absence of which would reasonably be expected to result in a Material Adverse Effect.

(d) None of the Selling Entities, or the other parties thereto, (i) are in breach of any Material Contract, (ii) has commenced any Action against any of the parties to any Material Contract or (iii) given or received any written notice of any breach, default or violation under any Material Contract, except, in each case, (x) solely by virtue of the Selling Entities' initiation of the Bankruptcy Case (including any resulting restriction on payment of prepetition obligations), (y) as set forth in Section 5.12(d) of the Seller Disclosure Schedule, or (z) in respect of any such breach, default or violation thereunder, or any such Action in respect thereof, as will be cured or dismissed upon entry of the Sale Order and payment of the Cure Payments and, subject to Buyer's acquisition and assumption thereof, all Non-Real Property Contracts and Real Property Leases assumed and assigned to Buyer as Assumed Contracts pursuant to the Sale Order and this Agreement will be from and after Closing, valid, binding and in full force and effect against Buyer and the other parties thereto. No Real Property Lease is for more than one Store location.

Section 5.13 Intellectual Property.

(a) Section 5.13(a) of the Seller Disclosure Schedule lists (i) all Registered IP in which any Selling Entity has an ownership interest of any nature (whether exclusively, jointly with another Person or otherwise) ("Seller Registered IP"), (ii) any proceedings or actions before any court, tribunal (including the PTO or equivalent authority anywhere in the world) involving any Selling Entity and/or related to any of the Seller Registered IP and (iii) any actions that must be taken by any Selling Entity within ninety (90) days of the Closing Date with respect to Seller

Registered IP, including the payment of any registration, maintenance or renewal fees or the filing of any documents, applications or certificates. Each item of Seller Registered IP is currently in compliance with all applicable requirements (including the payment of any registration, maintenance or renewal fees or the filing of any documents, applications or certificates) and is valid and subsisting. The Selling Entities have provided Buyer with access to true and complete copies of file histories, documents, certificates, office actions, correspondence and other materials related to all Seller Registered IP.

(b) Section 5.13(b) of the Seller Disclosure Schedule contains a complete and accurate list and description of all Seller IP owned or purported to be owned by the Selling Entities, other than Seller Registered IP.

(c) The Selling Entities own and have good title to all Seller IP, and no other Person has any ownership interest therein or thereto. All current and former employees, officers, directors, board members, and managers of the Selling Entities, and all other individuals who have been involved in the creation, invention or development of Intellectual Property for or on behalf of the Selling Entities (each, a "Contributor"), have assigned to the Selling Entities all Intellectual Property created or developed pursuant to their employment or consulting with, or otherwise on behalf, of the Selling Entities. Without limiting the foregoing, no Contributor owns or has any right, including the right to assert any Moral Rights, to any Seller IP, nor has any Contributor made any assertions with respect to any alleged ownership or rights. All current and former employees, officers, directors, board members, managers or consultants of the Selling Entities that are or were, at the time of employment or other engagement, residents of countries (i) where applicable Law does not vest the ownership of Intellectual Property created by employees with their employers or (ii) that recognize Moral Rights (or, in each case, whose employment relationships are or were governed by applicable Laws of such countries) have executed written Contracts with such Selling Entities that to the fullest extent permitted under applicable Law, waive for the benefit of such Selling Entities all ownership and Moral Rights in any Seller IP.

(d) No Selling Entity has transferred ownership of, or granted any exclusive license of or exclusive right to use, or authorized the retention of any exclusive rights to use, or granted any exercisable option to acquire, any Intellectual Property to any other Person that would be infringed by the operation of the Business as conducted or proposed to be conducted by such Selling Entity or as contemplated by this Agreement (with respect to the jurisdictions in which such Selling Entity has conducted the Business, and any other jurisdictions).

(e) No Selling Entity has abandoned any Intellectual Property within the past two years.

(f) (i) Section 5.13(f) of the Seller Disclosure Schedule contains a complete and accurate list and description of all Third Party Intellectual Property Rights that are used in the Business; and (ii) the Selling Entities have sufficient rights to use all Third Party Intellectual Property Rights that are used in the Business as currently conducted or proposed to be conducted by the Selling Entities or as contemplated by this Agreement.

(g) The Seller IP, together with all Third Party Intellectual Property Rights granted to the Selling Entities, collectively constitute all Intellectual Property used by the Selling Entities in the current operation of the Business, or that are necessary to or that would be infringed in the absence of such rights by the operation of the Business as currently conducted by the Selling Entities, and are collectively sufficient to conduct the Business as currently conducted or proposed to be conducted.

(h) No Selling Entity has violated, infringed or misappropriated, is currently violating, infringing or misappropriating, or by the conduct of its business as presently conducted will violate, infringe or misappropriate any Intellectual Property of any Person. No Selling Entity has received written or oral notice from any Person claiming that any Selling Entity or the Business violates, infringes or misappropriates the Intellectual Property of any Person or constitutes unfair competition or trade practices under the Laws of any jurisdiction (nor does any Selling Entity have Knowledge of any basis therefor).

(i) No prior art or other information exists that would adversely affect the patentability, registration, validity, enforceability, term or scope of any Seller IP.

(j) Each of the Selling Entities has taken commercially reasonable steps to protect its Technology, and the Technology of third parties provided under written agreements obligating the Selling Entities to protect the same, according to the Laws of the applicable jurisdictions where such Technology is developed, practiced or disclosed, and (ii) there has been no unauthorized disclosure of any confidential information of the Selling Entities, or any confidential information of any third party by any of the Selling Entities to whom the Selling Entities are bound by a confidentiality agreement within the past five years.

(k) Each of the Selling Entities has taken commercially reasonable steps to protect its rights in such Selling Entity's proprietary and/or confidential information and trade secrets or any trade secrets or confidential information of third parties provided to Selling Entities used or useful in the Business. The Selling Entities are not making unlawful use of any confidential information or trade secrets of any person or entity.

(l) No Selling Entity is required to make or accrue any royalty or other payment to any third party in connection with any of such Selling Entity's use of any Third Party Intellectual Property Rights, including in connection with the sale or distribution of any product of such Selling Entity.

(m) Each of the Selling Entities has taken commercially reasonable steps and implemented commercially reasonable procedures, customary for companies of the type and size of such Selling Entity, to keep the information technology systems used in connection with the Business free from any disabling codes or instructions or any "back door," "time bomb," "Trojan horse," "worm," "drop dead device," "virus" or other Software routines or hardware components that permit unauthorized access or the unauthorized disablement or erasure of such product or data or other Software of users. Each of the Selling Entities has utilized appropriate disaster recovery plans, procedures and facilities for the Business and has taken reasonable steps to safeguard the information technology systems utilized in the operation of the Business as it is currently conducted, in each case as are customary and commercially reasonable for companies

of the type and size of such Selling Entity. There have been no material unauthorized intrusions or breaches of the security of the information technology systems of such Selling Entity. Each Selling Entity has implemented any and all security patches or upgrades that are generally available for the information technology systems of the Selling Entities.

(n) Except as set forth in Section 5.13(n) of the Seller Disclosure Schedule, no Selling Entity has collected, and no third party has collected on any Selling Entity's behalf, any personally identifiable information from any third parties. Each of the Selling Entities has complied with all applicable Laws and its internal privacy policies relating thereto. True and correct copies of all current privacy policies of all of the Selling Entities are identified in Section 5.13(n) of the Seller Disclosure Schedule and the Selling Entities have provided Buyer with access to such privacy policies, and each Selling Entity has at all times made all disclosures to users or customers required by applicable Laws and none of such disclosures made or contained in any such privacy policy or in any such materials have been inaccurate, misleading or deceptive or in violation of any applicable Laws.

Section 5.14 Taxes.

(a) Except as set forth on Section 5.14(a) of the Seller Disclosure Schedule, all Tax Returns required to be filed by or with respect to any Selling Entity have been timely filed (taking into account any extension of time within which to file) and all such Tax Returns are true, correct, and complete in all material respects.

(b) Except as set forth on Section 5.14(b) of the Seller Disclosure Schedule, all Taxes of the Selling Entities that are due and payable have been timely paid. No Tax Encumbrances are currently in effect against any of the Acquired Assets.

(c) No claims have been asserted in writing with respect to any Taxes with respect to the Selling Entities. Except as set forth in Section 5.14(c) of the Seller Disclosure Schedule, no Tax Return of any Selling Entity is under audit or other administrative or court proceeding by any Governmental Authority relating to the payment of any amount of Taxes. Any past audits of any Selling Entity have been completed and fully resolved to the satisfaction of the applicable Governmental Authority conducting such audit and all Taxes determined by such audit to be due from such Selling Entity have been timely paid in full.

(d) All Taxes that any Selling Entity is or was required by applicable Law to withhold or collect have been duly withheld or collected and, to the extent required, have been paid to the proper Governmental Authority or other Person.

(e) No written claim has been made by a Tax authority in a jurisdiction where any Selling Entity does not file Tax Returns that such Selling Entity is or may be subject to taxation by that jurisdiction.

(f) None of the Selling Entities is a party to or bound by any tax allocation or sharing agreement.

Section 5.15 Insurance. All casualty and property insurance policies of the Selling Entities or covering the Acquired Assets, the Assumed Liabilities, the Current Employees or the

Business are identified on Section 5.15 of the Seller Disclosure Schedule and complete and correct copies thereof (including all material modifications, amendments, qualification and riders) have been provided or made available to Buyer. All such casualty and property insurance policies (a) are in full force and effect and all premiums thereon have been paid, and the Selling Entities are otherwise in compliance in all material respects with the terms and provisions of such policies, (b) such policies provide insurance in such amounts and against such risks as is sufficient to comply with applicable Law and which reflect coverages and policy terms that are customary and adequate for the industry in which the Selling Entities operate, (c) the Selling Entities are not in breach or default, and none of the Selling Entities has taken any action or failed to take any action which, with notice, the lapse of time or the happening of any other event or condition, would constitute such a breach or default, or permit termination or modification of, any of such insurance policies, and (d) are “occurrence” based policies. There are no pending written notices of cancellation or nonrenewal of any insurance policy referred to in this Section 5.15, nor has the termination of any such insurance policy been threatened and there exists no event, occurrence, condition or act (including the purchase of the Acquired Assets hereunder) that, with the giving of notice, the lapse of time or the happening of any other event or condition, could entitle any insurer to terminate or cancel any such insurance policies.

Section 5.16 Title to Assets; Real Property.

(a) The Selling Entities have good and valid title to, or, in the case of leased assets have good and valid leasehold interests in, all tangible personal property that is used in or necessary for the operation of the Business as currently conducted (other than the Excluded Assets) and as anticipated to be conducted as of the Closing, free and clear of all Encumbrances (other than Permitted Encumbrances that do not materially impair Buyer’s rights therein and thereto, or use thereof, from and after the Closing, or Encumbrances that will be released and discharged as of, and that will not be enforceable from and after, the Closing by virtue of the Sale Order, or Encumbrances solely affecting the Excluded Assets).

(b) Each Selling Entity has valid leasehold interests in the Real Property Leases to which it is a party (such leasehold interests, the “Seller Properties”), free and clear, as of the Closing, of all Encumbrances (other than Permitted Encumbrances that do not materially impair Buyer’s rights therein and thereto, or use or occupancy thereof, from and after the Closing, or Encumbrances that will be released and discharged as of, and that will not be enforceable from and after, the Closing by virtue of the Sale Order, or Encumbrances solely affecting Real Property Leases included among the Excluded Assets), assuming the entry of the Sale Order and timely discharge of all Cure Payments and other obligations of the Selling Entities owing under or related to Seller Properties.

(c) All tangible Acquired Assets (i) are in good operating condition and in a state of good maintenance and repair, ordinary wear and tear excepted, (ii) are being operated and maintained in accordance with prescribed operating instructions necessary to ensure the effectiveness of warranties and/or service plans, and (iii) were acquired and are adequate for use in the ordinary course of business. There are no defects or problems with any such tangible Acquired Assets, other than ordinary wear and tear. No Person other than the Selling Entities owns any equipment or assets used in the Business or situated on the premises of such Selling Entity. The Selling Entities are in possession of all tangible Acquired Assets.

(d) The Acquired Assets constitute all of the property and assets necessary and sufficient to conduct, or used in, the operations of the Business in accordance with the Selling Entities' past practices.

Section 5.17 Permits. Set forth on Section 5.17 of the Seller Disclosure Schedule is a list of all Permits necessary for the lawful conduct of the Business as presently conducted and operated and as such is anticipated to be conducted and operated from and after the Closing, or which are necessary for the lawful ownership of the Stores or the operation of the Business thereat as presently conducted and operated and as such is anticipated to be conducted and operated from and after the Closing. Each such Permit is valid and in full force and effect and none of such material Permits will be terminated or impaired or become terminable, in whole or in part, as a result of the occurrence of the transactions contemplated hereby.

Section 5.18 Inventory. The consolidated Inventory of the Selling Entities set forth in Seller Financial Statements was stated therein in accordance with GAAP applied on a consistent basis throughout the periods indicated (except as may be indicated in the notes thereto) and presents fairly, in all material respects, the consolidated Inventory of the Selling Entities as of the respective dates thereof. All Inventories of the Selling Entities consist of a quality and quantity usable or saleable in the ordinary course of business of the Selling Entities, except for obsolete items and items of below-standard quality, all of which have been written off or written down to net realizable value in the Seller Financial Statements. All of the Inventories are owned by the Selling Entities free and clear of Liens, other than the Permitted Liens, and no inventory is held on a consignment basis. All Inventories were purchased in the ordinary course of business of the Selling Entities at a cost not exceeding market prices prevailing at the time of purchase. The consolidated Inventory of the Selling Entities (whether in transit to or from the Selling Entities or in the possession or under the control of any of the Selling Entities or any third party bailees) is in such quantities as are reasonable and appropriate, consistent with the Selling Entities' past practices in the ordinary course of business and consists of items of a quality useable, saleable (in the case of finished goods) and merchantable in the ordinary course of business in all material respects.

Section 5.19 Accounts Receivable. All accounts and notes receivable of the Selling Entities, including the Accounts Receivable, have arisen from sales actually made or services actually performed by the Selling Entities in the ordinary course of business and represent valid, actual, bona fide obligations owing to one or more of the Selling Entities. The consolidated accounts receivable of the Selling Entities set forth in the Seller Financial Statements were stated therein in accordance with GAAP applied on a consistent basis throughout the periods indicated and presents fairly, in all material respects, the consolidated accounts receivable of the Selling Entities as of the respective dates thereof (subject, in the case of unaudited financial statements, to normal period end adjustments), and there has been no material and adverse change in respect of such consolidated accounts receivable of the Selling Entities since the respective dates of the Seller Financial Statements. Except as set forth in Section 5.19 of the Seller Disclosure Schedule, there is no material contest, defense, claim or right of set-off relating to the amount or validity of any Accounts Receivable of the Selling Entities, and no such Accounts Receivable are more than ninety (90) days past due.

Section 5.20 Suppliers. No Selling Entity has any outstanding disputes concerning goods or services provided by any Significant Supplier of such Selling Entity. Except as set forth on Section 5.20 of the Seller Disclosure Schedule, no Significant Supplier of any Selling Entity has terminated or modified its Contracts or arrangements with such Selling Entity since January 1, 2016, and no Significant Supplier of any Selling Entity has notified such Selling Entity that it does not intend to continue as a supplier of such Selling Entity after the Closing or that such supplier intends to terminate or modify existing Contracts or arrangements with such Selling Entity, or naturally limit or decrease its provision of goods or services to such Selling Entity. Section 5.20 of the Seller Disclosure Schedule lists each Significant Supplier.

Section 5.21 Banks. Section 5.21 of the Seller Disclosure Schedule contains a complete and correct list of the names and locations of all banks in which any Selling Entity has accounts or safe deposit boxes and the names of all persons authorized to draw thereon or to have access thereto. Except as set forth in Section 5.21 of the Seller Disclosure Schedule, no Person holds a power of attorney to act on behalf of any Selling Entity with respect to any such accounts or safe deposit boxes.

Section 5.22 Brokers. Except for fees payable to SSG Advisors, LLC and Lake Street Capital Markets pursuant to that certain engagement letter dated November 7, 2016 by and between Peekay Boutiques, Inc., SSG Advisors, LLC and Lake Street Capital Markets, no Person is entitled to any brokerage, financial advisory, finder's or similar fee or commission payable by any Selling Entity in connection with the transactions contemplated by this Agreement or the other Transaction Documents.

Section 5.23 Disclosure. No representation or warranty or other statement made by the Selling Entities in this Agreement, the Seller Disclosure Schedule or otherwise in connection with the transactions contemplated herein or therein contains any untrue statement or omits to state a material fact necessary to make any of them, in light of the circumstances in which it was made, not misleading. The Selling Entities do not have Knowledge of any fact that may adversely affect the Acquired Assets or the Assumed Liabilities that has not been set forth in this Agreement or the Seller Disclosure Schedule.

Section 5.24 Cash Collateral. Effective as of the Petition Date, the Selling Entities shall have requested and the Bankruptcy Court shall have approved agreement(s) between the Selling Entities and the Term A Lenders permitting the Selling Entities' post-Petition Date use of Cash Collateral necessary to sustain the Acquired Assets and the Business as conducted as of the date of the Parties' execution of this Agreement and continuing through the Closing Date and to the extent necessary, for the Selling Entities to perform their obligations under this Agreement.

ARTICLE 6
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to the Selling Entities as follows as of the date hereof and as of the Closing Date:

Section 6.1 Organization and Good Standing. Buyer is a corporation or other entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, formation or organization.

Section 6.2 Authority Relative to this Agreement. Buyer has all necessary power and authority to execute and deliver this Agreement and the other Transaction Documents to which it is party and to consummate the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and the other Transaction Documents to which Buyer is party and the consummation of the transactions contemplated hereby and thereby have been duly and validly authorized by the board of directors or equivalent governing body of Buyer, and no other corporate proceedings on the part of Buyer are necessary to authorize this Agreement or the other Transaction Documents to which it is party or to consummate the transactions contemplated hereby or thereby. This Agreement has been duly and validly executed and delivered by Buyer, and, upon their execution and delivery in accordance with the terms of this Agreement, each of the other Transaction Documents to which Buyer is a party will have been duly and validly executed and delivered by Buyer, and, assuming that this Agreement and such other Transaction Documents constitute valid and binding agreements of the Selling Entities party thereto, constitute valid and binding agreements of Buyer, enforceable against Buyer in accordance with their terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium or other similar Laws affecting or relating to enforcement of creditors' rights generally or general principles of equity.

Section 6.3 No Violation; Consents.

(a) Neither the execution and delivery of this Agreement by Buyer nor the purchase by Buyer of the Acquired Assets and the assumption by Buyer of the Assumed Liabilities pursuant to this Agreement will (with or without notice or lapse of time) conflict with or result in any breach of (i) any provision of Buyer's Certificate of Incorporation or Bylaws (or similar organizational documents) or (ii) subject to the matters referred to in Section 6.3(b), any Law applicable to Buyer or its properties or assets, except as would not prevent or materially delay the consummation of the transactions contemplated by this Agreement.

(b) No Consent of any Governmental Authority or any third party is required to be obtained by or with respect to Buyer in connection with the execution and delivery of this Agreement, or the consummation by Buyer of the transactions contemplated by this Agreement, except for (i) the entry of the Sale Order by the Bankruptcy Court, and (ii) such other Consents where the failure to obtain such Consents would not prevent or materially delay the consummation of the transactions contemplated by this Agreement.

Section 6.4 Consents and Approvals. Except with respect to the issuance of the Sale Order or as otherwise as set forth on Schedule 6.4, no consent, waiver, authorization or approval

of any Person and no declaration to or filing or registration with any Governmental Authority is required in connection with the execution and delivery by Buyer of this Agreement and each ancillary agreement to which Buyer is or will become a party or the performance by Buyer of its obligations hereunder or thereunder.

Section 6.5 Litigation. There is no action, suit, proceeding or claim that is pending or, to Buyer's knowledge, threatened in any court or by or before any Governmental Authority that would adversely affect Buyer's ability to perform its obligations under this Agreement on a timely basis.

Section 6.6 Financing. On the Closing Date, Buyer will have readily available funds (which may be in the form of Term Loan A Claims) in such amount as is required to consummate the transactions contemplated herein and otherwise to perform all of Buyer's obligations under this Agreement.

Section 6.7 Brokers. No Person is entitled to any brokerage, financial advisory, finder's or similar fee or commission payable by Buyer or any of its Affiliates in connection with the transactions contemplated by this Agreement.

ARTICLE 7 COVENANTS OF THE PARTIES

Section 7.1 Conduct of Business of Selling Entities. Except (v) as set forth on Schedule 7.1, (w) as required by any Order of the Bankruptcy Court (it being understood that the Selling Entities shall refrain from seeking any authorization from the Bankruptcy Court to take any actions outside the ordinary course of business consistent with past practice or otherwise in noncompliance with this Article 7, without the prior consent of Buyer, which shall not be unreasonably withheld, conditioned or delayed), (x) as required by applicable Law, (y) as contemplated or required by the terms of any Transaction Document, or (z) as otherwise consented to in writing by Buyer (such consent not to be unreasonably withheld, conditioned or delayed), during the period commencing on the date of this Agreement and continuing through the Closing or the earlier termination of this Agreement in accordance with its terms:

(a) each of the Selling Entities shall use its commercially reasonable efforts to: (i) operate the Business in the ordinary course of business, including ordering and purchasing Inventory, making capital and sales and marketing expenditures each in the ordinary course of business, consistent with past practice, (ii) preserve in all material respects the Acquired Assets (excluding sales of Inventory in the ordinary course of business and Store Closing Sales permitted under Section 7.1(b)(ii)), and (iii) preserve its current relationships with the suppliers, vendors, customers, clients, contractors and others having business dealings with the Business; *provided* that each of clauses (i) through (iii) above shall take into account, in each case, the commencement of the Bankruptcy Case and the fact that the Business is operating while in bankruptcy; and

(b) without limiting the generality of the foregoing, the Selling Entities shall not:

(i) sell, lease (as lessor), transfer or otherwise dispose of, or permit to become subject to any Encumbrance (other than Permitted Encumbrances, Encumbrances arising under any Bankruptcy Court orders relating to the use of cash collateral (as defined in the Bankruptcy Code)), any Acquired Assets, other than in connection with the sale of Inventory in the ordinary course of business;

(ii) initiate any Store Closing Sales or closures on or after the date hereof, other than in respect of which Buyer has given its consent and on terms satisfactory to Buyer;

(iii) increase the compensation payable or benefits provided to any director of any Selling Entity or any of their Affiliates or to any Current Employee, or adopt, modify or amend any Seller Benefit Plan (which for purposes of this section shall include any non-competition or similar agreement), other than (A) as required by the terms of any Contract or Seller Benefit Plan in effect on the date of this Agreement and that is disclosed in the Seller Disclosure Schedule, (B) as provided in any incentive or retention program or similar arrangement approved by the Bankruptcy Court with the written consent of Buyer, (C) increases for nonexecutive management Current Employees that are not material in the aggregate, or (D) any termination of, or reduction in benefits payable under, a Seller Benefit Plan prior to the Closing with the written consent of Buyer;

(iv) solely with respect to any action which could have an adverse effect on Buyer or any of its Affiliates, or any their operation, management or ownership of the Business and the Acquired Assets following the Closing, make or rescind any material election relating to Taxes, settle or compromise any material claim, action, suit, litigation, Legal Proceeding, arbitration, investigation, audit or controversy relating to Taxes, or, except as required by applicable Law or GAAP, make any material change to any of its methods of Tax accounting, methods of reporting income or deductions for Tax or Tax accounting practice or policy from those employed in the preparation of its most recent Tax Returns;

(v) acquire any material assets or properties or make any other material investment in any such event outside the ordinary course of business, except as may otherwise be required under any Order entered by the Bankruptcy Court in the Bankruptcy Case;

(vi) enter into or agree to enter into any merger or consolidation with any corporation or other entity;

(vii) except in the ordinary course of the operation of the Business, cancel or compromise any material debt or claim or waive or release any material right, in each case, that is a debt, claim or right that is an Acquired Asset or Assumed Liability;

(viii) introduce any material change with respect to the operation of the Business, including any material change in the types, nature, composition or quality of products or services sold in the Business;

(ix) enter into, amend or terminate any Contract that Buyer has the right hereunder to designate as an Assumed Contract;

(x) materially alter the Inventory allocation, quality and mix from that maintained by the Business in the ordinary course of business consistent with past practice prior to the commencement of the Bankruptcy Case; or

(xi) agree or commit to do any of the foregoing.

Section 7.2 Access to and Delivery of Information and Assets; Maintenance of Records.

(a) Between the date of this Agreement and the earlier of (x) the termination of this Agreement (other than as a result of the Closing), and (y) the final dissolution and liquidation of the Selling Entities and their estates, and/or, unless prohibited by applicable Law, the Selling Entities shall, during ordinary business hours and upon reasonable prior notice, and at Buyer's sole cost and expense (i) give Buyer and Buyer's Representatives reasonable access to the Selling Entities' accountants, counsel, financial advisors and other authorized outside Representatives, officers and senior management in their respective principal places of business, all books, records and other documents and data in the locations in which they are normally maintained or otherwise in the Selling Entities or their Representatives possession or control, and all offices and other facilities of the Selling Entities; *provided* that, in connection with such access, Buyer and Buyer's Representatives shall use their commercially reasonable efforts to minimize disruption to the Business, the Bankruptcy Case, and the Auction; *provided further* that in connection with Buyer's and/or Buyer's Representatives' access of such offices and other facilities, Buyer and/or Buyer's Representatives shall use their commercially reasonable efforts not to materially interfere with the ordinary course use and operation of such offices and other facilities, and shall comply with all posted, reasonable safety and security rules and regulations for such offices and other facilities, (ii) permit Buyer and Buyer's Representatives to make such reasonable inspections and copies of all books, records and other documents of the Selling Entities as Buyer may reasonably request, and (iii) furnish Buyer with such reasonably available financial and operating data and other information as Buyer and Buyer's Representatives may from time to time reasonably request. Notwithstanding anything to the contrary set forth in this Section 7.2(a), no access to, or examination of, any information or other investigation shall be permitted to the extent that it would require disclosure of information subject to attorney-client or other privilege prior to the entry by Buyer or Buyer's Representatives (as applicable) and the Selling Entities into a customary and mutually agreeable confidentiality, non-disclosure or joint defense agreement. For the avoidance of doubt, for purposes of this Section 7.2(a), upon any conversion of the Bankruptcy Cases to case(s) under chapter 7 of the Bankruptcy Code, the rights and obligations of the Selling Entities shall be vested in the duly appointed chapter 7 trustee.

(b) Between the Closing Date and the earlier of (y) confirmation of a plan of reorganization or liquidation pursuant to section 1129 of the Bankruptcy Code or (z) conversion or dismissal of the Bankruptcy Case pursuant to section 1112 of the Bankruptcy Code, the Selling Entities and their Representatives shall, during ordinary business hours and upon reasonable prior notice, and at the Selling Entities' sole cost and expense, have reasonable access

to all of the books and records of the Selling Entities delivered to Buyer at Closing and which are in Buyer's or its Representatives' possession or control, including all Documentary Materials and all other information pertaining to the Assumed Contracts to the extent that (i) such books, records and information relate to any period prior to the Closing Date and (ii) such access is reasonably required by the Selling Entities in connection with the Bankruptcy Case, the Excluded Liabilities, the Excluded Assets or similar matters relating to or affected by the operation of the Business for periods prior to the Closing. Such access shall be afforded by Buyer upon receipt of reasonable advance notice and during normal business hours, and Buyer shall permit the Selling Entities and their Representatives to make such reasonable copies of such books, records and information as they may reasonably request and at the Selling Entities' sole cost and expense; *provided, however*, that the foregoing activities of the Selling Entities and their Representatives shall be subject to restrictions and conditions commensurate with those restrictions and conditions set forth in Section 7.2(a). For a period of one (1) year after the Closing Date, if Buyer desires to dispose of any such records, Buyer shall, prior to such disposal, provide the Selling Entities with a reasonable opportunity to remove such records to be disposed of at the Selling Entities' expense. For the avoidance of doubt, for purposes of this Section 7.2(b), upon any conversion of the Bankruptcy Cases to case(s) under chapter 7 of the Bankruptcy Code, the rights and obligations of the Selling Entities shall be vested in the duly appointed chapter 7 trustee.

(c) From and after the Closing Date, the Selling Entities shall provide or cause to be provided to Buyer full, complete and unfettered access to the Acquired Assets.

Section 7.3 Expenses.

(a) All costs and expenses payable in connection with obtaining any Consents necessary to transfer, convey and assign to Buyer the Acquired Assets and the Assumed Liabilities shall be paid by the Selling Entities, to the extent the Selling Entities have access to sufficient funds to satisfy such costs and expenses (as reasonably determined by the Selling Entities and agreed to by Buyer); *provided*, for the avoidance of doubt, Buyer shall have no obligation to pay any such costs and expenses. Promptly following the date hereof, the Selling Entities shall use their commercially reasonable efforts to obtain, and Buyer shall reasonably cooperate in obtaining, prior to the Closing Date, all Consents and Governmental Authorizations from Governmental Authorities and third parties necessary to transfer, convey and assign to Buyer the Acquired Assets and the Assumed Liabilities; *provided*, that Buyer's reasonable cooperation shall not require Buyer to (i) pay or reimburse any fees, costs, expenses requested or required by any third party or Governmental Authority in connection with obtaining such Consents and Governmental Authorizations, or (ii) consent to or approve any material changes to the Assumed Contracts that are requested or required by any third party or Governmental Authority in connection with obtaining such Consents and Governmental Authorizations.

(b) Except to the extent otherwise specifically provided herein (including in Section 7.7), whether or not the transactions contemplated hereby are consummated, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by the Party incurring such costs and expenses.

Section 7.4 Further Assurances.

(a) Subject to the terms and conditions of this Agreement, at all times prior to the earlier of the Closing and the termination of this Agreement in accordance with its terms, each of the Parties shall use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable Laws to consummate and make effective the transactions contemplated by this Agreement, including executing and delivering such documents and other papers as are reasonably required to carry out the provisions of this Agreement and consummate the transaction contemplated hereby as promptly as practicable.

(b) On and after the Closing until the final dissolution and liquidation of the Selling Entities and their estates, the Selling Entities and Buyer shall use their commercially reasonable efforts to take, or cause to be taken, all appropriate action, to do or cause to be done all things necessary, proper or advisable under applicable Law, and to execute and deliver such documents and other papers as may be required to carry out the provisions of this Agreement and consummate and make effective the transactions contemplated hereby as promptly as practicable, including in order to more effectively vest in Buyer all of the Selling Entities' right, title and interest to the Acquired Assets, free and clear of all Encumbrances (other than Permitted Encumbrances that do not materially impair Buyer's rights therein and thereto, or use thereof, from and after the Closing).

Section 7.5 Public Statements. Unless otherwise required by or reasonably necessary to comply with applicable Law or the rules or regulations of any applicable securities exchange, and except for disclosure of matters that become a matter of public record as a result of the Bankruptcy Case and any filings or notices related thereto, the Selling Entities shall not issue any press release or otherwise make any public statement with respect to this Agreement or the transactions contemplated hereby without the prior written consent of Buyer.

Section 7.6 Governmental Authority Approvals and Cooperation.

(a) As promptly as reasonably practicable after the date of this Agreement, each of the Selling Entities and Buyer shall (and shall cause their respective Affiliates to) use its commercially reasonable efforts to make any filings and notifications, and to obtain any Consents from Governmental Authorities (other than the Bankruptcy Court), required to be made and obtained under applicable Law in connection with the transactions contemplated by this Agreement as promptly as reasonably practicable.

(b) Each Party (i) shall cooperate with each other Party in connection with the filings and Consents contemplated by this Section 7.6, (ii) shall promptly inform each other Party of any material communication received by such Party from any Governmental Authority (other than the Bankruptcy Court) concerning this Agreement, the transactions contemplated hereby and any filing, notification or request for Consent related thereto, and (iii) shall permit each other Party to review in advance any proposed written communication or information submitted to any such Governmental Authority (other than the Bankruptcy Court) in response thereto (in each case, excluding communications or information which are subject to preexisting confidentiality agreements or to the attorney-client privilege or work product doctrine or the disclosure of which

of is prohibited under applicable Law or Order). In addition, none of the Selling Entities or Buyer shall (and shall ensure that their respective Affiliates do not) agree to participate in any meeting with any Governmental Authority (other than the Bankruptcy Court) in respect of any filings, investigation or other inquiry with respect to this Agreement, the transactions contemplated hereby or any such filing, notification or request for Consent related thereto unless, to the extent not prohibited under applicable Law or Order, it consults with the other Parties in advance and, to the extent permitted by any such Governmental Authority and applicable Law, gives the other Parties the opportunity to attend and participate thereat, in each case to the extent practicable. The Selling Entities and Buyer shall, and shall cause their respective Affiliates to, furnish Buyer or the Selling Entities (and Buyer's Representatives and the Selling Entities' Representatives, as applicable), as the case may be, copies of all material correspondence, filings and communications between it and its Affiliates (and Buyer's Representatives and the Selling Entities' Representatives, as applicable) on the one hand, and the Governmental Authority (other than the Bankruptcy Court) or members of its staff on the other hand, with respect to this Agreement, the transactions contemplated hereby or any such filing, notification or request for Consent related thereto (in each case, excluding filings, notifications or requests which are subject to preexisting confidentiality agreements or to the attorney-client privilege or work product doctrine or the disclosure of which of is prohibited under applicable Law or Order). Each of the Selling Entities and Buyer shall (and shall cause their respective Affiliates to) furnish each other Party with such necessary information and assistance as such other Party and its Affiliates may reasonably request in connection with its preparation of necessary filings, registrations or submissions of information to any Governmental Authority in connection with and as each of the Parties is obligated to seek under the terms of this Agreement, the transactions contemplated hereby and any such filing, notification or request for Consent related thereto (in each case, excluding such materials which are subject to preexisting confidentiality agreements or to the attorney-client privilege or work product doctrine or the disclosure of which of is prohibited under applicable Law or Order).

Section 7.7 Employee Matters.

(a) Prior to the Closing, Buyer shall offer to employ those Current Employees necessary or appropriate, in Buyer's sole and absolute discretion, to own, operate and manage the Business and those Continuing Facilities and other Acquired Assets that are identified and acquired by Buyer as of the Closing, with such employment to commence on the Closing Date. For purposes of this Agreement, each Current Employee who receives such an offer of employment shall be referred to as an "Offeree". At least two (2) Business Days prior to the Closing Date, Buyer will provide Seller with a schedule setting forth a list of the names of all Offerees. Each Offeree who accepts such offer prior to the Closing shall be referred to herein as a "Transferred Employee". The Selling Entities shall not enforce against any Transferred Employee any confidentiality, non-compete, non-solicit or similar contractual obligations, or otherwise assert with respect to any such Transferred Employee or Buyer or any of its Affiliates claims that would otherwise prohibit or place conditions on any such Transferred Employee's acceptance of an offer of employment by Buyer or any of its Affiliates, any such Transferred Employee's employment by Buyer or any of its Affiliates, or any actions taken by any such Transferred Employee as an employee of Buyer or any of its Affiliates. In furtherance of the foregoing, the Selling Entities shall terminate effective immediately prior to the Closing all employment agreements and other arrangements with all Transferred Employees; *provided*

however, that (i) Buyer may designate any such employment contract as an Assumed Contract and (ii) the Selling Entities may take appropriate measures to ensure the Transferred Employees' ongoing compliance with the Selling Entities' confidentiality requirements, if any, *provided* that any such compliance does not inhibit or impair such Transferred Employees' performance of his duties and obligations as an employee of Buyer and thereby Buyer's realization of the benefits such Transferred Employees' services to Buyer.

(b) Each Current Employee of the Selling Entities or any of their Affiliates who is not a Transferred Employee shall be referred to herein as an "Excluded Employee"; *provided* that if such Excluded Employee accepts an offer of employment by Buyer during the Designation Period, such Excluded Employee shall be deemed to be a Transferred Employee.

(c) Following the date of this Agreement,

(i) the Selling Entities shall designate a member of management who shall coordinate with Buyer to arrange mutually agreed periods of time during which Buyer may meet with and interview the Current Employees who are members of management and other employees reasonably requested by Buyer; *provided, however*, that such access shall not unduly interfere with the operation of the Business prior to the Closing;

(ii) the Selling Entities shall not, nor shall any Selling Entity authorize or direct or give express permission to any Affiliate, officer, director or employee of any Selling Entity or any Affiliate of any Selling Entity to (A) interfere with Buyer's rights under Section 7.7(a) to make offers of employment to any Offeree, or (B) solicit or encourage any Offeree not to accept, or to reject, any such offer of employment; and

(iii) the Selling Entities shall provide reasonable cooperation and information to Buyer as reasonably requested by Buyer with respect to its determination of appropriate terms and conditions of employment for any Offeree.

(d) Employee/Employment Related Liabilities. Notwithstanding anything in this Agreement to the contrary,

(i) the Selling Entities shall process the payroll and shall be liable for, and shall pay, or cause to be paid, all base wages and base salary and employee/employment related Liabilities, including arising under Seller Benefit Plans, that accrued through the Closing Date with respect to all employees of the Selling Entities;

(ii) the Selling Entities shall cause to be filed in a timely fashion all notices required under COBRA and the WARN Act in respect of all employees of the Selling Entities who work at Stores or other facilities of the Selling Entities that are located at sites governed by a Rejected Contract or an Additional Rejected Contract and shall be liable for all Liabilities and claims arising under or in connection therewith, whether or not incurred, recognized, paid or made on, prior to or after the Closing, and shall further retain and be responsible for all Liabilities in connection with any pre-Closing non-compliance of the Selling Entities or the Business with (and claims that have

been or may be made under any pending Action in connection with) any Laws relating to wages, hours, pay equity, employment equity, conditions of employment, employment standards, human rights, employee privacy, collective bargaining, discrimination, civil rights, safety and health, workers' compensation and the collection and payment of withholding Taxes and/or social security Taxes and contributions and any similar Tax or contribution;

(iii) with respect to employees employed at any Store, the Real Property Lease for which is a Held Contract, the Selling Entities shall process the payroll for and shall pay, or cause to be paid, all base wages and base salary and employee/employment related Liabilities with respect thereto, and Buyer shall reimburse such costs to the extent that they constitute Operational Expenses and are subject to payment or reimbursement by Buyer pursuant to Section 2.5(f);

(iv) subject to Section 7.7(a), with respect to any Transferred Employees employed at any Continuing Facility by Buyer on or after the Closing, Buyer shall process the payroll for and shall pay, or cause to be paid, the base wages and base salary that accrue in respect of such Transferred Employee following the Closing Date; and

(v) the Selling Entities shall be liable for all Liabilities and claims arising under or in connection with any Seller Benefit Plans that arise out of or relate, directly or indirectly, to any set of facts or circumstances existing prior to the Closing Date (whether or not reported to or otherwise known by the Selling Entities or any Representative thereof or incurred, recognized, paid or made on, prior to or after the Closing).

(e) On or prior to Closing, the Selling Entities shall make a cash payment to each Transferred Employee of an amount sufficient to cash out all unused and outstanding vacation, sick days, personal days, leave earned and paid time off of such Transferred Employee under the vacation, sick and paid time off policies of the Selling Entities, only as required under applicable non-bankruptcy law.

(f) Each of Buyer and the Selling Entities agrees that it will not apply the alternative procedure contained in Section 5 of IRS Revenue Procedure 2004-53, 2004-2 C.B. 320. Accordingly, the Selling Entities acknowledge that they will be responsible for the furnishing of a Form W-2 to each Transferred Employee which discloses all wages and other compensation paid through the period ending on the Closing Date, and applicable taxes withheld thereon. Buyer acknowledges that it (or its Affiliates) will be responsible for the furnishing of a Form W-2 to each Transferred Employee who is an employee of Buyer, and not a consultant of Buyer, which discloses all wages and other compensation paid for the period beginning on the day following the Closing Date and ending on the last day of the year in which the Closing Date occurs, and applicable taxes withheld thereon.

(g) Nothing contained herein shall be construed as requiring, and neither the Selling Entities nor any of their Affiliates shall take any affirmative action that would have the effect of requiring Buyer to continue any specific employee benefit plan or to continue the

employment of any specific person. Nothing in this Agreement is intended to establish, create or amend, nor shall anything in this Agreement be construed as establishing, creating or amending, any employee benefit plan, practice or program of Buyer, any of its Affiliates or any Seller Benefit Plan, nor shall anything in this Agreement create or be construed as creating any contract of employment or as conferring upon any Transferred Employee or upon any other person, other than the Parties to this Agreement in accordance with its terms, any rights to enforce any provisions of this Agreement under ERISA or otherwise. No provision of this Agreement shall create any third party beneficiary rights in any Transferred Employee, any beneficiary or dependents thereof, or any collective bargaining representative thereof, with respect to the compensation, terms and conditions of employment and benefits that may be provided to any Transferred Employee by Buyer or under any benefit plan which Buyer may maintain, or otherwise.

(h) Transition Services. In the event that Buyer reasonably determines in advance of the Closing Date that it requires additional time in order to establish services and insurance policies necessary for the operation of the Acquired Assets and the employment of the Transferred Employees following the Closing, including to process payroll and to provide employee benefits and insurance coverage, Buyer and the Selling Entities shall negotiate in good faith a transition services agreement reasonably acceptable to all Parties (the "Transition Services Agreement"), pursuant to which the Selling Entities would, on commercially reasonable terms, agree to continue to employ all employees who are to be Transferred Employees and to maintain its payroll processing systems, Seller Benefit Plans and other applicable insurance policies, and Buyer would pay the Selling Entities for all amounts owing in respect thereof when due, in each case for a period of not more than six (6) months following the Closing Date.

Section 7.8 Tax Matters.

(a) Any sales, use, value added, property transfer, documentary, stamp, registration, recording or similar Tax payable in connection with the sale or transfer of the Acquired Assets to, and the assumption of the Assumed Liabilities, by Buyer ("Transfer Taxes") shall be borne by the Selling Entities (and the Selling Entities shall use their commercially reasonable efforts to request that the Sale Order indicates that to the fullest extent permitted under applicable law, no Transfer Taxes will be owed by any party in connection with the transactions contemplated hereby or by any of the other Transaction Documents). The Selling Entities shall prepare and file all necessary Tax Returns or other documents with respect to all such Transfer Taxes to the extent permitted under applicable Tax Law.

(b) All real property, personal property, other ad valorem Taxes, and sales and use Taxes levied with respect to the Acquired Assets for any taxable period that includes the Closing Date and ends after the Closing Date, whether imposed or assessed before or after the Closing Date, shall be prorated between Selling Entities and Buyer as of 12:01 a.m. (Eastern Time) on the Closing Date. If the exact amount of any real property, personal property, other ad valorem Taxes, and sales and use Taxes is not known on the Closing Date, the apportionment shall be based upon a reasonable amount, without subsequent adjustment; it being understood that all sales Taxes collected by the Selling Entities in connection with the pre-Closing operation of the Business shall be the sole and exclusive responsibility of the Selling Entities. To the extent the amount of such Taxes for the period ending on Closing Date is greater than the

amount of such Taxes previously paid by the Selling Entities, then the Selling Entities shall be responsible to Buyer for such excess, and to the extent the amount of such Taxes for the period ending on the Closing Date is less than the amount of such Taxes previously paid by the Selling Entities then Buyer shall be responsible to the Selling Entities for such excess.

(c) Each of the Selling Entities, their Representatives and Buyer shall reasonably cooperate, and shall cause their respective affiliates, officers, employees, agents, auditors and representatives reasonably to cooperate, in preparing and filing all Tax Returns, including maintaining and making available to each other all records necessary in connection with Taxes and in resolving all disputes and audits with respect to all taxable periods relating to Taxes. Such cooperation shall include providing reasonable access to all of the books and records of the Selling Entities that are held by such party, and shall include providing reasonable access to, and the reasonable assistance of, the employees of the Selling Entities and Buyer.

Section 7.9 Submission for Bankruptcy Court Approval.

(a) The Selling Entities will file Petitions commencing their Bankruptcy Case within two (2) Business Days after the date of the Parties' execution of this Agreement or by such other date as mutually agreed to among Buyer and the Selling Entities. On the Petition Date or no later than two (2) Business Days following the Petition Date, the Selling Entities shall file with the Bankruptcy Court the Sale Motion and such other motions and supporting papers in form and substance acceptable to Buyer (the "Motions") as required to seek approval of the Sale Transaction, including Motions seeking (i) approval of the Bid Procedures and the entry of the Bidding Procedures Order, which shall include the scheduling of the Auction, (ii) the Bankruptcy Court's approval of this Agreement, each Selling Entity's performance under this Agreement and the Selling Entities' assumption and their assignment to Buyer of the Assumed Contracts pursuant to this Agreement and Section 365 of the Bankruptcy Code, and (C) the entry of the Sale Order, which shall provide that the Acquired Assets are sold to Buyer free and clear of any and all Claims and Encumbrances (other than Permitted Encumbrances), including any interest in such property of any other Person pursuant to Section 363(f) of the Bankruptcy Code, and that Buyer and its Affiliates have acted in "good faith" (as such term is used Section 363(m) of the Bankruptcy Code) and are thereby entitled to the protections afforded by Bankruptcy Code Section 363(m). The Selling Entities shall use reasonable best efforts to provide Buyer with a copy of such Motions and related documents at least two (2) days prior to the filing thereof. The Selling Entities shall use commercially reasonable efforts to (i) prosecute such Motions, (ii) ensure that the Bidding Procedures Order is entered not later than twenty-five (25) days after the date the Bankruptcy Court holds a hearing on the Selling Entities' "first-day" Motions in the Bankruptcy Case, (iii) ensure that the hearing before the Bankruptcy Court to consider the entry of the Sale Order is held no later than three (3) Business Days after the Auction and (iv) ensure that the Sale Order is entered no later than the date that is eighty (80) days after the Petition Date, that the Sale Order becomes effective immediately upon entry and that the provisions of Federal Rules of Bankruptcy Procedure 6004(g) and 6006(d) be waived for cause.

(b) The Selling Entities shall give notice under the Bankruptcy Code of the request for the relief specified in the Motions to all Persons entitled to notice pursuant to the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the local rules of the Bankruptcy Court, and orders of the Bankruptcy Court, including all Persons that have asserted

Encumbrances in the Acquired Assets, and all non-debtor parties to the Assumed Contracts and the Assumed Real Property Leases, and if directed by Buyer, to employees of the Selling Entities, and other appropriate notice, including such additional notice as the Bankruptcy Court shall direct or as Buyer may reasonably request, and provide appropriate opportunity for hearing, to all parties entitled thereto, of all motions, orders, hearings, or other Legal Proceedings in the Bankruptcy Court relating to this Agreement or the transactions contemplated hereby.

(c) Each Selling Entity and Buyer shall consult with one another regarding pleadings which any of them intends to file with the Bankruptcy Court in connection with, or which might reasonably affect the Bankruptcy Court's approval of, as applicable, the Bidding Procedures Order and the Sale Order, (ii) all such filings shall be in form and substance acceptable to Buyer, and (iii) the Selling Entities shall use reasonable best efforts to provide Buyer with a copy of such documents at least two (2) days prior to the filing thereof.

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

Section 7.10 Overbid Procedures; Adequate Assurance.

(a) This Agreement and the sale of the Acquired Assets are subject to higher and better bids in accordance with the Bidding Procedures and Bankruptcy Court approval. In such event, the Selling Entities must take reasonable steps to demonstrate that they have sought to obtain the highest or otherwise best price for the Acquired Assets, including giving notice thereof to the creditors of the Selling Entities and other interested parties, providing information about the Selling Entities' business to prospective bidders, entertaining higher and better offers from such prospective bidders, and, in the event that a Qualified Bidder (as defined in the Bidding Procedures Order) desires to bid for the Acquired Assets, conducting an auction (the "Auction") in accordance with the Bidding Procedures Order and the bidding procedures as set forth therein (the "Bidding Procedures").

(b) Buyer agrees and acknowledges that the Selling Entities and their Affiliates and the Selling Entities' Representatives may continue soliciting inquiries, proposals or offers for the Acquired Assets in connection with any alternative transaction after the entry, and pursuant to the terms, of the Bidding Procedures Order. Buyer further agrees and acknowledges that the Bidding Procedures may be supplemented by other customary procedures not inconsistent with the matters otherwise set forth therein and the terms of this Agreement. The Selling Entities shall provide Buyer with copies of all Qualified Bids.

Section 7.11 [Intentionally Omitted].

Section 7.12 Post-Closing Operation of the Selling Entities; Name Changes. The Selling Entities hereby acknowledge and agree that upon the consummation of the transactions contemplated hereby, Buyer shall have the sole right to the Seller IP and the use thereof. After the Closing Date, none of the Selling Entities nor any of their respective Affiliates shall use any Seller IP for commercial purposes and shall only use the same for administrative purposes while subject to the jurisdiction of the Bankruptcy Court. The Sale Order shall provide for the modification of the caption in the proceedings before the Bankruptcy Court to reflect the change in the name of the Selling Entities, except that during the pendency of such proceedings, the Selling Entities shall be permitted to use the name “Peekay Boutiques, Inc.” solely in connection with matters relating to the Bankruptcy Case and as former names for legal and noticing purposes, but for no other commercial purpose. Within five (5) Business Days after the Closing, the Selling Entities and their Affiliates shall (a) file with the applicable Governmental Authorities all documents reasonably necessary to transfer all Seller IP to Buyer, (b) do or cause to be done all other acts, including the payment of any fees required in connection therewith, to cause such documents to become effective as promptly as reasonably practicable, and (c) cause the names of all Seller Entities to be changed.

Section 7.13 Damage or Destruction. Until the Closing, the Acquired Assets shall remain at the risk of the Selling Entities. In the event of any material damage to or destruction of any of the Acquired Assets after the date hereof and prior to the Closing (in any such case, a “Damage or Destruction Loss”), the Selling Entities shall give notice thereof to Buyer. If any such Damage or Destruction Loss is covered by policies of insurance, all right and claim of the Selling Entities to any proceeds of insurance for such Damage or Destruction Loss, unless previously received by the Selling Entities and used prior to the Closing Date to repair any damage or destruction, shall be assigned and paid to Buyer at Closing in accordance with Section 2.1.

Section 7.14 Permits. Commencing on the date of this Agreement, the Parties, cooperating in good faith and, at the Selling Entities’ cost and expense for out-of-pocket expenses, to the extent the Selling Entities have access to sufficient funds to satisfy such costs and expenses (as reasonably determined by the Selling Entities and agreed to by Buyer), shall use commercially reasonable efforts to take such steps, including the filing of any required applications with Governmental Authorities, as may be necessary to effect the transfer of Permits that are Acquired Assets to Buyer on or as soon as practicable after the Closing Date, to the extent such transfer is permissible under applicable Law.

Section 7.15 Policies Regarding Personally Identifiable Information. Buyer shall honor and observe any and all policies of the Selling Entities in effect on the Petition Date prohibiting the transfer of personally identifiable information about individuals consistent with the requirements of Section 363(b)(1)(A) of the Bankruptcy Code, *provided* that for the avoidance of doubt, the Selling Entities shall take all actions reasonably necessary to assure the sale and transfer to Buyer pursuant to the Sale Order of all customer lists and related customer information included in the Acquired Assets as provided in Section 2.1(i) herein, *provided further*, that the Buyer shall have policies in place as of the Closing Date prohibiting the transfer of personally identifiable information about individuals consistent with the requirements of Section 363(b)(1)(A) of the Bankruptcy Code.

Section 7.16 Notification of Certain Matters. Except with respect to the actions required by this Agreement, the Selling Entities shall give prompt notice to Buyer, on the one hand, and Buyer shall give prompt notice to the Selling Entities, on the other hand, of (a) the occurrence or nonoccurrence of any event, the occurrence or nonoccurrence of which would cause any of its respective representations or warranties in this Agreement to be untrue or inaccurate in any material respect at or prior to the Closing Date or (b) any material failure of any of the Selling Entities or Buyer, respectively, to comply with or satisfy any of its covenants, conditions or agreements to be complied with or satisfied by it under this Agreement in any material respect; *provided, however*, that the delivery of any notice pursuant to this Section 7.16 shall not limit or otherwise affect the remedies available to the party receiving such notice under this Agreement.

Section 7.17 Apportionment of Prepaid Items. With respect to all payments made by the Selling Entities with respect to the Acquired Assets, including rent payments for Assumed Contracts, deposits and insurance premiums, for any period that includes the Closing Date and ends after the Closing Date, the Selling Entities shall provide Buyer evidence of such payments and such payments shall be prorated between Selling Entities and Buyer as of 12:01 a.m. (Eastern Time) on the Closing Date, and Buyer shall, within thirty (30) days following the Closing Date, reimburse the Selling Entities for the proportionate amount of all such payments relating to the period commencing as of 12:01 a.m. (Eastern Time) on the Closing Date.

Section 7.18 Collection of Accounts Receivable.

(a) As of the Closing Date, each Selling Entity hereby (i) authorizes Buyer to open any and all mail addressed to any Selling Entity relating to the Business or the Acquired Assets and delivered to the offices of the Business or otherwise to Buyer if received on or after the Closing Date and (ii) appoints Buyer or its attorney-in-fact to endorse, cash and deposit any monies, checks or negotiable instruments received by Buyer after the Closing Date with respect to Accounts Receivable that are Acquired Assets or accounts receivable relating to work performed by Buyer after the Closing, as the case may be, made payable or endorsed to any Selling Entity or Selling Entity's order, for Buyer's own account.

(b) As of the Closing Date, each Selling Entity agrees that any monies, checks or negotiable instruments received by any Selling Entity after the Closing Date with respect to Accounts Receivable (including Credit Card Receivables) that are Acquired Assets or accounts receivable relating to work performed by Buyer after the Closing, as the case may be, shall be held in trust by such Selling Entity for Buyer's benefits and accounts, and promptly upon receipt by a Selling Entity of any such payment (but in any event within five (5) Business Days of such receipt), such Selling Entity shall pay over to Buyer or its designee the amount of such payments. In addition, Buyer agrees that, after the Closing, it will hold and will promptly transfer and deliver to Seller, from time to time as and when received by Buyer or its Affiliates, any Cash, checks with appropriate endorsements, or other property that Buyer or its Affiliates may receive on or after the Closing which are not Acquired Assets and which properly belongs to the Selling Entities hereunder, including any Excluded Assets.

(c) As of the Closing Date, Buyer shall have the sole authority to bill and collect Accounts Receivable that are Acquired Assets and accounts receivable relating to work performed by Buyer after the Closing.

Section 7.19 Suppliers; Certain Avoidance Actions; Insurance Policies.

(a) The Selling Entities shall, following the request thereof by Buyer, seek and use their respective commercially reasonable efforts to arrange meetings and telephone conferences with material suppliers of the Selling Entities as may be reasonably requested by Buyer and necessary and appropriate for Buyer to coordinate transition of such suppliers with the Acquired Assets following the Closing.

(b) Pending the Closing, the Selling Entities shall not pursue any litigation claims and causes of action (including causes of action under Chapter 5 of the Bankruptcy Code) against landlords, vendors or other counterparties without the express prior written consent of Buyer.

(c) (i) To the extent that any current or prior insurance policy of any of the Selling Entities relate to the Acquired Assets or Assumed Liabilities (other than the Excluded Insurance Policies) and such insurance policy is not transferable to Buyer at the Closing in accordance with the terms hereof, the Selling Entities shall hold such insurance policy for the benefit of Buyer, shall reasonably cooperate with Buyer (at Buyer's cost and expense) in pursuing any claims thereunder, and shall pay over to Buyer promptly any insurance proceeds paid or recovered thereunder with respect to the Acquired Assets or the Assumed Liabilities. In the event Buyer determines to purchase replacement coverage with respect to any such insurance policy, the Selling Entities shall reasonably cooperate with Buyer to terminate such insurance policy and shall, at the option of Buyer, promptly pay over to Buyer any refunded or returned insurance premiums received by any Selling Entities in connection therewith or cause such premiums to be applied by the applicable carrier to the replacement coverage arranged by Buyer.

(ii) To the extent that any current or prior insurance policy of any of the Selling Entities is or becomes an Acquired Asset transferred to Buyer, and such policy relates to the Excluded Assets or the Excluded Liabilities, Buyer shall hold such insurance policy with respect to the Excluded Assets or Excluded Liabilities, as applicable, for the benefit of the Selling Entities, shall reasonably cooperate with Seller in pursuing any claims thereunder, and shall pay over to Seller promptly any insurance proceeds paid or recovered thereunder with respect to the Excluded Assets or the Excluded Liabilities.

ARTICLE 8 CONDITIONS TO CLOSING

Section 8.1 Conditions to Each Party's Obligations to Effect the Closing. The respective obligations of each Party to effect the sale and purchase of the Acquired Assets and to consummate the other transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing of the following conditions:

(a) consummation of the transactions contemplated hereby would not violate any nonappealable Final Order, decree or judgment of the Bankruptcy Court or any other Governmental Authority having competent jurisdiction and there shall not be any Law that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited, and no preliminary or permanent injunction or other Order of any Governmental Authority having competent jurisdiction that declares this Agreement invalid or unenforceable in any respect or which prevents the consummation of the transactions contemplated hereby shall be in effect; and

(b) the Bankruptcy Court shall have entered an Order in a form and substance acceptable to Buyer in its sole discretion, approving the Sale Transaction, this Agreement and the sale, assignment and transfer of the Acquired Assets, Assumed Contracts and Additional Assumed Contracts to Buyer free and clear of all Liens, Encumbrances and Claims of any nature (other than Permitted Encumbrances and as provided in this Agreement) (the "Sale Order"), and no Order staying, reversing, modifying or amending the Sale Order shall be in effect on the Closing Date.

Section 8.2 Conditions to Obligations of Buyer. The obligation of Buyer to effect the purchase of the Acquired Assets and the assumption of the Assumed Liabilities and to consummate the other transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing of the following additional conditions:

(a) the Selling Entities shall have filed the Sale Motion, including therein seeking entry of the Bidding Procedures Order as provided in Section 7.9, and the Bankruptcy Court shall have entered the Bidding Procedures Order, satisfactory in form and content to Buyer, approving (i) the Selling Entities' designation of Buyer as the stalking horse bidder and (ii) the Bidding Procedures, in each such case within the time periods set forth in Section 7.9;

(b) each of the Selling Entities shall have been operated from the date hereof until the Closing Date in a manner consistent, in all material respects, with the Selling Entities' covenants contained in Sections 7.1(a) and 7.1(b);

(c) Buyer shall have been the successful Prevailing Bidder (as defined in the Bidding Procedures) at the Auction (if an Auction is held) and the Bankruptcy Court shall have entered the Sale Order approving the Sale of the Acquired Assets and assignment of the Assumed Contracts to Buyer, and the Sale Order shall be a Final Order;

(d) (i) the Bankruptcy Court has entered the Bidding Procedures Order approving the Bidding Procedures no later than the date twenty-five (25) days after the date the Bankruptcy Court holds a hearing on the Selling Entities' "first-day" Motions in the Bankruptcy

Case, (ii) the Bankruptcy Court has entered the Sale Order approving the Sale of the Acquired Assets and assignment of the Assumed Contracts to Buyer no later than the date that is eighty (80) days after the Petition Date and (iii) the Closing Date under this Agreement and pursuant to a Sale Order shall occur no later than the date eighty (80) days after the Petition Date, unless in any of the foregoing subsections (d)(i), (d)(ii) or (d)(iii) Buyer agrees, in its sole discretion, to extend the applicable date;

(e) the Selling Entities shall have performed and complied in all material respects with the covenants and agreements contained in this Agreement or any of the other Transaction Documents which are required to be performed and complied with by it on or prior to the Closing Date;

(f) the representations and warranties of the Selling Entities set forth in this Agreement or any of the other Transaction Documents shall be true and correct in all material respects (except for such representations and warranties that contain qualifications as to Material Adverse Effect, materiality or similar standards or qualifiers, which shall be true and correct as so qualified) as of the dates of the Transaction Documents in which such representations or warranties are made, and as of the Closing Date as though made at and as of the Closing Date (except for those representations and warranties which address matters only as of an earlier date in which case such representation or warranty shall have been so true and correct as of such earlier date);

(g) Buyer shall have received a certificate from an officer of Seller certifying that the conditions set forth in Section 8.2(e) and Section 8.2(f) have been satisfied;

(h) Buyer shall have received the Claim Assumption Agreement duly executed by the Term A Lenders;

(i) no Action shall be pending against Buyer, any Term A Lender or the Selling Entities which would prevent the Closing or otherwise challenges the consummation of the transactions contemplated hereby;

(j) Buyer shall have received the other items required to be delivered to it pursuant to this Agreement; and

(k) since the date of the most recent Seller Financial Statements, other than the commencement of the Bankruptcy Case, there shall not have occurred, nor shall there be any event, occurrence, fact, condition or change in effect that is or, with the passage of time, could reasonably be expected to result in, a Material Adverse Effect.

Any condition specified in this Section 8.2 may be waived by Buyer in its sole and absolute discretion; *provided* that no such waiver shall be effective against Buyer unless it is set forth in a writing executed by Buyer.

Section 8.3 Conditions to Obligations of the Selling Entities. The obligation of the Selling Entities to effect the sale of the Acquired Assets and to consummate the other transactions contemplated by this Agreement shall be subject to the fulfillment at or prior to the Closing of the following additional conditions:

(a) Buyer shall have performed and complied in all material respects with the covenants and agreements contained in this Agreement or any of the other Transaction Documents which are required to be performed and complied with by Buyer on or prior to the Closing Date;

(b) the representations and warranties of Buyer set forth in this Agreement or any of the other Transaction Documents shall be true and correct in all material respects (except for such representations and warranties that contain qualifications as to material adverse effect, materiality or similar standards or qualifiers, which shall be true and correct as so qualified) as of the dates of the Transaction Documents in which such representations or warranties are made, and as of the Closing Date as though made at and as of the Closing Date (except for those representations and warranties which address matters only as of an earlier date in which case such representation or warranty shall have been so true and correct as of such earlier date);

(c) the Buyer shall have been the successful prevailing bidder at the Auction (if an Auction is held) and the Bankruptcy Court shall have entered the Sale Order approving the Sale of the Acquired Assets and assignment of the Assumed Leases to Buyer, and the Sale Order shall be a Final Order;

(d) the Selling Entities shall have received a certificate from an officer of Buyer certifying that the conditions set forth in Section 8.3(a) and (b) have been satisfied;

(e) the Selling Entities shall have received the Claim Assumption Agreement duly executed by Buyer and the Term A Lenders;

(f) The Selling Entities and the Required Term A Lenders (as defined in the Prepetition Financing Agreement) shall have agreed to a Cash Collateral budget through the later of the (i) Closing Date; and (ii) end of the Designation Period; and

(g) the Selling Entities shall have received the other items required to be delivered to it pursuant to this Agreement.

Any condition specified in this Section 8.3 may be waived by the Selling Entities in their sole and absolute discretion; *provided* that no such waiver shall be effective against the Selling Entities unless it is set forth in a writing executed by the Selling Entities.

Section 8.4 Frustration of Closing Conditions. None of the Selling Entities or Buyer may rely on or assert the failure of any condition set forth in Article 8 to be satisfied if such failure was proximately caused by such Party's failure to comply with this Agreement in all material respects.

ARTICLE 9 TERMINATION; WAIVER

Section 9.1 Termination. This Agreement may be terminated at any time prior to the Closing by:

(a) mutual written consent of Seller and Buyer;

(b) Seller or Buyer upon written notice to the other, if any of the conditions to each Party's obligations to effect the Closing set forth in Section 8.1 are or become incapable of being satisfied on or prior to the Outside Date;

(c) Buyer upon written notice to Seller if:

(i) any Selling Entity, if not cured within ten (10) days after notice thereof from Buyer, shall have failed to perform or comply with any of the covenants or agreements contained in this Agreement to be performed and complied with by such Selling Entity prior to Closing such that the condition set forth in Section 8.2(e) would not then be capable of satisfaction; or

(ii) any of the representations and warranties of any Selling Entity contained in this Agreement shall be inaccurate as of the date of this Agreement, or shall have become inaccurate as of a date subsequent to the date of this Agreement (as if made on and as of such subsequent date) and the Selling Entities fail to remedy such inaccuracy within twenty (20) days after notice thereof from Buyer, such that the condition set forth in Section 8.2(f) would not then be capable of satisfaction as of the date of this Agreement or such subsequent date, as applicable;

(d) Seller upon written notice to Buyer if:

(i) Buyer, if not cured within ten (10) days after receipt of notice thereof from Seller, shall have failed to perform or comply with any of the covenants or agreements contained in this Agreement to be performed and complied with by Buyer prior to Closing such that the condition set forth in Section 8.3(a) would not then be capable of satisfaction; or

(ii) any of the representations and warranties of Buyer contained in this Agreement shall be inaccurate as of the date of this Agreement, or shall have become inaccurate as of a date subsequent to the date of this Agreement (as if made on and as of such subsequent date) and Buyer fails to remedy such inaccuracy within twenty (20) days after notice thereof from Seller, such that the condition set forth in Section 8.3(b) would not then be capable of satisfaction as of the date of this Agreement or such subsequent date, as applicable;

(e) (i) by Buyer, by written notice to Seller, if any of the Selling Entities enters into a definitive agreement with respect to a Third-Party Sale, (ii) by either Buyer or Seller, by written notice to the other, if the Bankruptcy Court approves a Third-Party Sale, or automatically if a Third-Party Sale is consummated; or (iii) by Buyer, by written notice to Seller, if any of the Selling Entities seeks to have any Third-Party Sale approved by the Bankruptcy Court, which for the avoidance of doubt may include the filing of a chapter 11 plan of reorganization or liquidation that proposes a Third-Party Sale or retention of all or any material portion of the Acquired Assets, or the sale of all or substantially all of the assets of the Selling Entities or of the Acquired Assets to a Person (or group of Persons) other than Buyer or an Affiliate of Buyer;

(f) Buyer, upon written notice to Seller, if the Seller or any Selling Entity (A) moves to dismiss any of the Bankruptcy Case, (B) moves for conversion of any of the Bankruptcy Case to a case under Chapter 7 of the Bankruptcy Code, or (C) moves for appointment of an examiner with expanded powers pursuant to Section 1104 of the Bankruptcy Code;

(g) Buyer, upon written notice to Seller, if (i) a trustee or an examiner with expanded powers is appointed in the Bankruptcy Case or (ii) any of the Bankruptcy Cases are dismissed or converted to a case under Chapter 7 of the Bankruptcy Code;

(h) Buyer, upon written notice to Seller, if any court of competent jurisdiction shall enter a judgment or order declaring this Agreement to be unenforceable;

(i) Buyer or Seller upon written notice to the other, if the Closing shall not have occurred by 5:00 p.m. (Eastern Time) on the date that is eighty (80) days after the Petition Date (the "Outside Date"), which date may be extended by Buyer in its sole discretion upon written notice to Seller; *provided* that (i) Seller shall not be entitled to terminate this Agreement pursuant to this Section 9.1(i) if, at the time of such termination, Buyer would then be entitled to terminate this Agreement pursuant to Section 9.1(c) or Section 9.1(e), and (ii) Buyer shall not be entitled to terminate this Agreement pursuant to this Section 9.1(i) if, at the time of such termination, Seller would then be entitled to terminate this Agreement pursuant to Section 9.1(d);

(j) Buyer, upon written notice to Seller, if any of the conditions set forth in Section 8.2 becomes incapable of satisfaction on or prior to the Outside Date;

(k) Buyer, upon written notice to Seller, if a Termination Date occurs under and as defined in any Order authorizing the use of cash collateral and/or debtor-in-possession financing in the Bankruptcy Case prior to the Closing Date; or

(l) Buyer, upon written notice to Seller, if in Buyer's reasonable determination, Buyer or the Term A Lenders are or could be unable to Credit Bid for the Acquired Assets in accordance with this Agreement.

Section 9.2 Procedure and Effect of Termination. In the event of the valid termination of this Agreement by either Seller or Buyer pursuant to Section 9.1, written notice thereof shall forthwith be given by the terminating Party to the other Party and this Agreement shall terminate and the transactions contemplated hereby shall be abandoned, without further action by any of the Parties; *provided, however*, that (a) no Party shall be relieved of or released from any Liability arising from any intentional breach by such Party of any provision of this Agreement and (b) this Section 9.2, Section 7.3, Article 10 and the other covenants and agreements contained in this Agreement that by their terms are intended to be performed or observed partially or in whole following the termination or expiration of this Agreement shall remain in full force and effect and survive any termination of this Agreement.

Section 9.3 Extension; Waiver. At any time prior to the Closing, Seller, on the one hand, or Buyer, on the other hand, may, to the extent permitted by applicable Law (a) extend the time for the performance of any of the obligations or other acts of Buyer (in the case of an agreed extension by Seller) or the Selling Entities (in the case of an agreed extension by Buyer), (b)

waive any inaccuracies in the representations and warranties of Buyer (in the case of a waiver by Seller) or the Selling Entities (in the case of a waiver by Buyer) contained herein or in any document delivered pursuant hereto, (c) waive compliance with any of the agreements of Buyer (in the case of a waiver by Seller) or the Selling Entities (in the case of a waiver by Buyer) contained herein, or (d) waive any condition to its obligations hereunder. Any agreement on the part of Seller, on the one hand, or Buyer, on the other hand, to any such extension or waiver shall be valid only if set forth in a written instrument signed on behalf of Seller or Buyer, as applicable. The failure or delay of any Party to assert any of its rights under this Agreement or otherwise shall not constitute a waiver of those rights, nor shall any single or partial exercise of any right under this Agreement preclude any other or further exercise of any rights hereunder.

ARTICLE 10 MISCELLANEOUS PROVISIONS

Section 10.1 Amendment and Modification. This Agreement may be amended, modified or supplemented only by a written instrument signed on behalf of each of the Selling Entities and Buyer making specific reference to this Agreement.

Section 10.2 Survival. None of the representations and warranties of the Parties in this Agreement, in any instrument delivered pursuant to this Agreement, or in the Schedules or Exhibits attached hereto shall survive the Closing, and no Party hereto shall, or shall be entitled to, make any claim or initiate any action against any other Party with respect to any such representation or warranty from or after the Closing. All covenants and agreements contained herein which by their terms contemplate actions or impose obligations following the Closing shall survive the Closing Date and remain in full force and effect in accordance with their respective terms.

Section 10.3 Notices. Any notice, request, instruction or other communication herein required or permitted to be given shall be in writing and may be personally served or sent by facsimile, e-mail or recognized international courier to the addresses set forth below, and shall be deemed to have been given (a), if personally served, when delivered in person, (b) if by e-mail, if on a Business Day during regular business hours, or, if not on a Business Day, on the next Business Day, and (c) in the case of the case of a recognized international courier, when delivered. Any Party may change the address to which notices, requests, demands, claims and other communications hereunder are to be delivered by giving the other Parties notice in the manner herein set forth.

(a) If to any Selling Entity or the Selling Entities, to:

Peekay Boutiques, Inc.
901 W. Main Street, Suite A
Auburn, WA 98001
Attention: Lisa Berman, Chief Executive Officer
Telephone: (253) 351-5001 x118 *
Email: lisa@peekay.com

with a mandated copy (which shall not constitute notice) to:

Landis Rath & Cobb LLP
919 N. Market Street
Suite 1800
Wilmington, Delaware 19801
Attention: Adam G. Landis, Esq.
Matthew B. McGuire, Esq.
Telephone: 302-467-4400
Telecopier: 302-467-4450
Email: landis@lrclaw.com
mcguire@lrclaw.com

(b) If to Buyer, to:

TLA Acquisition Co.
c/o Chatham Capital
1230 Peachtree Street NE, Suite 1750
Atlanta, GA 30309
Attention: Jeffrey Hagar
Telephone: 770-618-2115
Email: jh@chathamcapital.com

with a mandated copy (which shall not constitute notice) to:

Curtis, Mallet-Prevost, Colt & Mosle LLP
101 Park Avenue, 35th Floor
New York, NY 10178
Attention: Steven J. Reisman, Esq.
Shaya Rochester, Esq.
Joshua Geller, Esq.
Telephone: 212-696-6065
212-696-6037
212-696-6953
Telecopier: 212-697-1559
Email: sreisman@curtis.com
srochester@curtis.com
jgeller@curtis.com

Section 10.4 Assignment. Except as set forth in this Section 10.4, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any Party (whether by operation of law or otherwise) without the prior written consent of the other Parties, and any such assignment shall be null and void; *provided* that the rights of Buyer under this Agreement may be assigned by Buyer, without the prior written consent of any Selling Entity, to any Affiliate thereof under common control with Buyer. Subject to the foregoing, this

Agreement and all of the provisions hereof shall be binding upon, inure to the benefit of and be enforceable by the Parties and their respective successors and permitted assigns, including, in the case of Selling Entities, the trustee in the Bankruptcy Case.

Section 10.5 Severability. If any non-material term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other terms, conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon a determination that any term or other provision of this Agreement 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 a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible; *provided, however*, that in doing so, no Party shall be obligated to waive or forego any material right or benefit available to it hereunder.

Section 10.6 Governing Law. Except to the extent that mandatory provisions of the Bankruptcy Code apply, this Agreement, and all claims and causes of action arising out of, based upon, or related to this Agreement or the negotiation, execution or performance hereof, shall be governed by, and construed, interpreted and enforced in accordance with, the Laws of the State of Delaware, without regard to choice or conflict of law principles that would result in the application of any Laws other than the Laws of the State of Delaware.

Section 10.7 SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.

(a) Any action, claim, suit or Legal Proceeding arising out of, based upon or relating to this Agreement or the transactions contemplated hereby shall be brought solely in the Bankruptcy Court (or any court exercising appellate jurisdiction over the Bankruptcy Court). Each Party hereby irrevocably submits to the exclusive jurisdiction of the Bankruptcy Court (or any court exercising appellate jurisdiction, over the Bankruptcy Court) in respect of any action, claim, suit or Legal Proceeding arising out of, based upon or relating to this Agreement or any of the rights and obligations arising hereunder, and agrees that it will not bring any action arising out of, based upon or related thereto in any other court; *provided, however*, that, if the Bankruptcy Case is not brought or is dismissed, any action, claim, suit or Legal Proceeding arising out of, based upon or relating to this Agreement or the transactions contemplated hereby shall be heard and determined exclusively in any state or federal court located in the County of New Castle, in the State of Delaware. Each Party hereby irrevocably waives, and agrees not to assert as a defense, counterclaim or otherwise, in any such action, claim, suit or Legal Proceeding, (a) any claim that it is not personally subject to the jurisdiction of the above named courts for any reason other than the failure to serve process in accordance with Section 10.3, (b) any claim that it or its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise) and (c) to the fullest extent permitted by applicable Law, any claim that (i) the suit, action or Legal Proceeding in such court is brought in an inconvenient forum, (ii) the venue of such suit, action or Legal Proceeding is improper or (iii) this Agreement or any other agreement or instrument contemplated hereby or entered into in connection herewith, or the subject matter

hereof or thereof, may not be enforced in or by such courts. Each Party agrees that notice or the service of process in any action, claim, suit or Legal Proceeding arising out of, based upon or relating to this Agreement or any of the rights and obligations arising hereunder or thereunder, shall be properly served or delivered if delivered in the manner contemplated by Section 10.3.

(b) EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY AND ALL RIGHT SUCH PARTY MAY HAVE TO TRIAL BY JURY IN ANY ACTION, CLAIM, SUIT OR LEGAL PROCEEDING BETWEEN THE PARTIES HERETO ARISING OUT OF, BASED UPON OR RELATING TO THIS AGREEMENT OR THE NEGOTIATION, EXECUTION OR PERFORMANCE HEREOF.

Section 10.8 Counterparts. This Agreement may be executed in one or more counterparts, and by the different Parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement, and which shall become effective when one or more counterparts have been signed by each of the Parties and delivered (by facsimile, .pdf or otherwise) to the other Parties.

Section 10.9 Incorporation of Schedules and Exhibits. All Schedules and all Exhibits attached hereto and referred to herein are hereby incorporated herein by reference and made a part of this Agreement for all purposes as if fully set forth herein.

Section 10.10 Entire Agreement. This Agreement (including all Schedules and all Exhibits) constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings among the Parties with respect thereto.

Section 10.11 Remedies. The Parties agree that irreparable damage may occur in the event that any provision of this Agreement were not performed in accordance with its specific terms or was otherwise breached and that monetary damages may not be an adequate remedy for any breach or threatened breach of any of the provisions of this Agreement. It is accordingly agreed that the Parties shall be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement, and any such injunction shall be in addition to any other remedy to which any Party is entitled, at law or in equity.

Section 10.12 Mutual Drafting; Headings. The Parties participated jointly in the negotiation and drafting of this Agreement and the language used in this Agreement shall be deemed to be the language chosen by the Parties to express their mutual intent. If an ambiguity or question of intent or interpretation arises, then this Agreement will accordingly be construed as drafted jointly by the Parties, and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. The descriptive headings and table of contents contained in this Agreement are included for convenience of reference only and shall not affect in any way the meaning or interpretation of this Agreement.

Section 10.13 No Third Party Beneficiaries.

Except as expressly provided in Section 7.18, this Agreement shall be binding upon and inure solely to the benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever, including any rights of employment for any specified period, under or by reason of this Agreement.

Section 10.14 Bulk Sales Law.

Buyer hereby waives compliance by the Selling Entities with the requirements and provisions of any “bulk-transfer” Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Acquired Assets to Buyer. The Parties intend that pursuant to Section 363(f) of the Bankruptcy Code, the transfer of the Acquired Assets shall be free and clear of any security interests in the Acquired Assets, including any liens or claims arising out of the bulk transfer laws, and the parties shall take such steps as may be necessary or appropriate to so provide in the Sale Order.

* * * * *

IN WITNESS WHEREOF, the Parties hereto have caused this Asset Purchase Agreement to be executed as of the date first written above.

SELLER

PEEKAY BOUTIQUES, INC.



By: _____

Name: Albert Altro

Title: Chief Restructuring Officer

**OTHER SELLING ENTITIES
as set forth on Schedule I**



By: _____

Name: Albert Altro

Title: Chief Restructuring Officer

BUYER

TLA ACQUISITION CORP.

By:  _____
Name: Jeffrey Hagar
Title: President and Secretary

Signature Page to Asset Purchase Agreement

APA SCHEDULES AND EXHIBITS

SCHEDULES

Schedule 1	Selling Entities
Schedule 1.1(a)	Excluded Insurance Policies
Schedule 1.1(b)	Seller Disclosure Schedule
Schedule 1.1(c)	Seller IP
Contracts Schedule	[Delivered to Buyer under Section 2.5(a)(i), no later than five (5) Business Days following the Petition Date]

Schedule 1**Subsidiaries of Seller which are Selling Entities**

Entity	State of Organization
Christals Acquisition, LLC	Delaware
Peekay Acquisition, LLC	Delaware
Peekay SPA, LLC	Delaware
Peekay, Inc.	Washington
Conrev, Inc.	Washington
Condom Revolution, Inc.	California
Charter Smith Sanhueza Retail, Inc.	California
ZJ Gifts F-2, L.L.C.	Texas
ZJ Gifts F-3, L.L.C.	Texas
ZJ Gifts F-4, L.L.C.	Texas
ZJ Gifts F-5, L.L.C.	Texas
ZJ Gifts F-6, L.L.C.	Texas
ZJ Gifts I-1, L.L.C.	Colorado
ZJ Gifts M-1, L.L.C.	Oklahoma
ZJ Gifts M-2, L.L.C.	Oklahoma
ZJ Gifts M-3, L.L.C.	Colorado

Schedule 1.1(a)

Excluded Insurance Policies¹

1. Argonaut Insurance Company Public Company Directors & Officers Insurance (Policy Number ML 7601232-02) (Policy Period: 3-31-17 to 3-31-18).
2. Chubb Commercial Liability Policy (Policy Number M00578253004) (Policy Period: 10-1-16 to 10-1-17).
3. National Union Fire Insurance Company Fiduciary Liability Policy (Policy Number 01-334-81-95) (Policy Period: 3-31-17 to 3-31-18).

¹ Schedule 1.1(a) is subject to adjustment based on final agreement on between the Selling Entities and Buyer prior to Closing.

Schedule 1.1(b)

Seller Disclosure Schedule

Section 4.3(e)	Sales Tax Exemptions
Section 5.2	Subsidiaries
Section 5.4(a)	Consents
Section 5.4(b)	Governmental Authority
Section 5.5	Legal Proceedings
Section 5.10	Absence of Certain Changes
Section 5.11(a)	Employee Benefit Plans
Section 5.11(b)	Defaults in Seller Benefit Plans
Section 5.11(e)	Employment Laws
Section 5.12(a)	Material Contracts
Section 5.13(a)	Seller Registered Intellectual Property
Section 5.13(b)	Other Intellectual Property
Section 5.13(f)	Third Party Intellectual Property Rights
Section 5.13(m)	Personally Identifiable Information
Section 5.14(a)	Tax Returns
Section 5.14(b)	Delinquent Taxes
Section 5.14(c)	Audits
Section 5.15	Insurance
Section 5.17	Permits
Section 5.20	Significant Suppliers
Section 5.21	Bank Accounts
Section 7.1	Conduct of Business

Schedule 1.1(c)**Seller IP**

1. Seller Registered IP under Schedule 5.13(a) is incorporated herein by reference.
- 2.

System	MFG	Software	Version
ERP - GL, AP, Purchase Orders, Perpetual Inventory	Microsoft	Dynamics GP 2010	11.00.2351
ERP	Microsoft	RMS Headquarters Manager	2.0.0128
Store POS	Microsoft	RMS POS	2.0.0128
RMS to GP Integration – Legacy	Professional Advantage	RMS Connectpro	Custom
RMS to GP Integration – Current	eOne Solutions Paylocity	SmartConnect Premesis	2017
Payroll, Time & Attendance	Paylocity	WebPay, Webtime	SaaS
Store Replenishment	Custom	SQL Server 2008 R2	
Gift Card Processor		Givex	SaaS
Loyalty Program	Custom	SQL Server 2008 R2	10.50.1600.1
Merchant Bank – In Store	Chase Bank	Paymentech Merchant Services	
Merchant Bank – Online	PayPal	PayPal Payflow Pro	
EMV/Chip Readers	Elite Data Corp	First Data FD-130	
Ecommerce Web Site	ASPDotNet	AspDotNetStorefront MultiStore	10.0.2.0
Voice Phone System	ShorTel	VOIP	21.82.2128.0
BI: Data Warehouse /	Microsoft	SQL Server 2008 R2	10.50.1600.1

Cubes		+ Analysis Services	
Intranet - PKI	Microsoft	IIS - Internet Information Server	IIS 8.5
Learning Management System - Sales Associate Training	Immersion Technology	LMS365	2017
Help Desk / Ticket Tracking	Spiceworks	Spiceworks Help Desk	SaaS
Virtualization Platform	VMWare	Vsphere	5.5

Personal Productivity Systems	MFG	CALs
Visual Studio Professional w/MSDN L&SA	Microsoft	1
Exchange Server Standard L&SA	Microsoft	1
Exchange CALs- user L&SA	Microsoft	33
SharePoint CALs- user L&SA	Microsoft	10
SQL Server CALs- user L&SA	Microsoft	2
SQL Server Standard L&SA	Microsoft	1
Windows Server CALs - user L&SA	Microsoft	83
Visio Standard License Only	Microsoft	2

Part Number	Product Description	Quantity Ordered	Coverage Period
269-09061	MicrosoftOfficeProfessionalPlus Sngl SoftwareAssurance OLV 1License NoLevel	40	2017-05-01 – 2018-04-30

Part Number	Product Description	Quantity Ordered	Coverage Period
	AdditionalProduct 1Year Acquiredyear1		
77D-00043	MicrosoftVisualStudioProSubMSDN AllLng SoftwareAssurance OLV 1License NoLevel AdditionalProduct 1Year Acquiredyear1	3	2017-05-01 – 2018-04-30
MX3-00133	MicrosoftVisualStudioEnterprisesSubMSDN AllLng SoftwareAssurance OLV 1License NoLevel AdditionalProduct 1Year Acquiredyear1	1	2017-05-01 – 2018-04-30
228-04685	MicrosoftSQLServerStandardEdition Sngl SoftwareAssurance OLV 1License NoLevel Additional Product 1Year Acquiredyear1	1	2017-05-01 – 2018-04-30
359-01479	MicrosoftSQLCAL Sngl SoftwareAssurance OLV 1License NoLevel AdditionalProduct UsrCAL 1Year Acquiredyear1	15	2017-05-01 – 2018-04-30
381-02265	MicrosoftExchangeStandardCAL Sngl SoftwareAssurance OLV 1License NoLevel AdditionalProduct UsrCAL 1Year Acquiredyear1	100	2017-05-01 – 2018-04-30
395-03284	MicrosoftExchangeServerEnterprise Sngl SoftwareAssurance OLV 1License NoLevel AdditionalProduct 1Year Acquiredyear1	1	2017-05-01 – 2018-04-30
7NQ-00071	MicrosoftSQLSSvrStandardCore Sngl SoftwareAssurance OLV 2Licenses NoLevel AdditionalProduct Core Lic 1Year Acquiredyear1	4	2017-05-01 – 2018-04-30
P73-05601	MicrosoftWindowsServerStandard Sngl SoftwareAssuranceOLV 1License NoLevel AdditionalProduct 2Proc 1Year Acquiredyear1	14	2017-05-01 – 2018-04-30
R18-01863	MicrosoftWindowsServerCAL Sngl	30	2017-05-01 – 2018-04-30

Part Number	Product Description	Quantity Ordered	Coverage Period
	SoftwareAssurance OLV 1License NoLevel AdditionalProduct UsrCAL 1Year Acquiredyear1		
R18-01858	MicrosoftWindowsServerCAL Sngl SoftwareAssurance OLV 1License NoLevel AdditionalProduct DvcCAL 1Year Acquiredyear1	50	2017-05-01 – 2018-04-30
KV3-00369	MicrosoftWINE3perDVC Sngl SoftwareAssurance OLV 1License NoLevel Additional Product 1Year Acquiredyear1	60	2017-05-01 – 2018-04-30

Domain Name	Registrar	Registrant	Expiration Date
www.christals.com	Network Solutions, LLC	Condom Revolution, Inc.	8/20/2018
www.atouchofromance.com	Domain.com LLC	Peekay, Inc. (Phy Abramson)	1/27/2018
www.loverspackage.com	Domain.com LLC	Peekay, Inc. (Phy Abramson)	6/7/2018
www.peekay.com	Domain.com LLC	Peekay, Inc. (Phy Abramson)	4/30/2018
www.conrev.com	Network Solutions, LLC	Condom Revolution, Inc.	2/15/2019
www.loversonlinestore.com	Domain.com LLC	Peekay, Inc. (Phy Abramson)	1/24/2018
www.suteratoys.com	Domain.com LLC	Peekay, Inc. (Phy Abramson)	12/22/2017
www.touchofromance.com	Domain.com LLC	Peekay, Inc. (Phy Abramson)	6/15/2018
www.adulttoychest.com	Domain.com LLC	Peekay, Inc. (Phy Abramson)	8/27/2017
www.kinkycards.com	Domain.com LLC	Peekay, Inc. (Phy Abramson)	1/27/2018
www.naughtycards.com	Domain.com LLC	Peekay, Inc. (Phy Abramson)	3/16/2018
www.peekaywholesale.com	Domain.com LLC	Peekay, Inc. (Phy Abramson)	4/10/2018
www.peekaywholesalers.com	Domain.com LLC	Peekay, Inc. (Phy Abramson)	7/6/2018
www.pkwholesale.com	Domain.com LLC	Peekay, Inc. (Phy Abramson)	4/10/2018
www.pkwholesalers.com	Domain.com LLC	Peekay, Inc. (Phy Abramson)	7/6/2018
www.suteralingerie.com	Domain.com LLC	Peekay, Inc. (Phy Abramson)	3/9/2018
www.suteralingerie.info	Domain.com LLC	Peekay, Inc. (Phy Abramson)	3/9/2018
www.suteralingerie.net	Domain.com LLC	Peekay, Inc. (Phy Abramson)	3/9/2018

Domain Name	Registrar	Registrant	Expiration Date
www.suteralingerie.org	Domain.com LLC	Peekay, Inc. (Phy Abramson)	3/9/2018
www.loveinabucket.com	Network Solutions, LLC	Condom Revolution, Inc.	5/6/2019
www.kinkinabucket.com	Network Solutions, LLC	Condom Revolution, Inc.	5/11/2019
www.condomrevolution.com	Network Solutions, LLC	Condom Revolution, Inc.	3/8/2018
www.sexinabucket.com	Network Solutions, LLC	Condom Revolution, Inc.	5/6/2020
www.discountadultdvds.com	Domain.com LLC		9/28/2017
www.loversstores.biz	Domain.com LLC		1/7/2018
www.loversstores.com	Domain.com LLC		1/8/2018
www.loversstores.net	Domain.com LLC		1/8/2018
www.loverstores.com	Domain.com LLC		1/12/2018
www.peekayboutiques.com	Domain.com LLC		2/9/2018
www.peekayboutiques.net	Domain.com LLC		2/9/2018

SECTION 4.3(e)

SALES TAX EXEMPTIONS

1. Washington State Department of Revenue – Reseller Permit
2. California State Board of Equalization – Sales and Use Tax Permit
3. Texas – Sales and Use Tax Permit
4. State of Tennessee Department of Revenue – Resale Authorization

SECTION 5.2**SUBSIDIARIES**

Entity	State of Organization
Christals Acquisition, LLC	Delaware
Peekay Acquisition, LLC	Delaware
Peekay SPA, LLC	Delaware
Peekay, Inc.	Washington
Conrev, Inc.	Washington
Condom Revolution, Inc.	California
Charter Smith Sanhueza Retail, Inc.	California
ZJ Gifts F-2, L.L.C.	Texas
ZJ Gifts F-3, L.L.C.	Texas
ZJ Gifts F-4, L.L.C.	Texas
ZJ Gifts F-5, L.L.C.	Texas
ZJ Gifts F-6, L.L.C.	Texas
ZJ Gifts I-1, L.L.C.	Colorado
ZJ Gifts M-1, L.L.C.	Oklahoma
ZJ Gifts M-2, L.L.C.	Oklahoma
ZJ Gifts M-3, L.L.C.	Colorado

SECTION 5.4(a)

CONSENTS

1. None.

SECTION 5.4(b)

GOVERNMENTAL AUTHORITY

1. None.

SECTION 5.5**LEGAL PROCEEDINGS**

1. *Ross Jackson and the Gary A. Zebrowski Living Trust v. Harvest Capital Credit Corp. and Christals Acquisition, LLC*, Case No. 17-cv-05276 (JFK) (S.D.N.Y. 2017) (the “Christals Action”) – The complaint alleges breach of contract against Christals Acquisition, LLC in connection with failure to pay amounts due under certain unsecured subordinated promissory notes issued to Ross Jackson and the Gary A. Zebrowski Living Trust.
2. Notice of request for indemnification from Harvest Capital Credit, LLC to Christals Acquisition, *et al.* dated July 28, 2017. Harvest seeks indemnification for costs and any liabilities related to the Christals Action. Harvest asserts that it is entitled to indemnification under Article XII of that certain Securities Purchase Agreement dated as of October 9, 2012.
3. The Selling Entities have received default notices from the following unsecured lenders:

Lender	Amount	Note	Date of Default Notice
Rick Barnett	\$1,713,350	Peekay Seller Notes	2/9/17
Brian Barnett	\$1,713,350	Peekay Seller Notes	1/26/17
Trish Don Francesco	\$942,342.50	Peekay Seller Notes	2/9/17
Dale Rasmussen	\$1,973,365	Peekay Seller Notes	1/30/17
Kristy E. Butt	\$2,573,300	Peekay Seller Notes	1/30/17
Gary Zebrowski	\$1,550,000	Christals Unsecured Note	1/10/17
Gary Zebrowski	\$150,000	Christals Contingent Note	1/10/17
Ross Jackson	\$1,550,000	Christals Unsecured Note	1/10/17
Ross Jackson	\$150,000	Christals Contingent Note	1/10/17

Other than the Christals Action identified above, the Selling Entities are unaware of any additional actions taken by the above listed parties to enforce such parties’ rights, if any, under the applicable note for which the default notice was provided.

SECTION 5.10

ABSENCE OF CERTAIN CHANGES

1. The Selling Entities committed \$264,000 related to the relocation of their retail store located in Puyallup, Washington. The term of the existing Real Property Lease for the store location at 305 39TH Ave SW, Puyallup, Washington (the "Existing Store"), expired on June 30, 2017 and the landlord, PK Properties, LLC has refused to extend the existing Real Property Lease agreement for that location. The Selling Entities relocated the business operation from the existing store to a new retail location at 4009 S. Meridian, Puyallup, WA 98373, as evidenced by that certain Retail Lease, dated March 15, 2017, by and between R&J-Puyallup, LLC and Peekay, Inc.

SECTION 5.11(a)

EMPLOYEE BENEFIT PLANS

1. Medical and Prescription Drug Insurance Plan, administered by Regence BlueShield.
2. Dental Insurance Plan, administered by Delta Dental.
3. Vision Insurance Plan, administered by Regence BlueShield.
4. Life, Accident, Death and Dismemberment Insurance Plan, administered by LifeMap Life Insurance.
5. Long Term and Short Disability Insurance Plan, administered by Aflac.
6. Flexible Spending Account (Health & Dependent Care) Plan, administered by WageWorks.
7. 401(k) Plan (Volume Submitter Profit Sharing Plan with CODA), administered by Panagiotu Pension Advisors.
8. Stretch Bonus for Part Time and Full Time Sales Employees.
9. Store Manager Bonus Program for FY 2016.
10. Assistant Manager Bonus Program for FY 2014.
11. Peekay Recruitment Bonus.
12. Pacesetters Club 2014.

SECTION 5.11(b)

DEFAULTS IN SELLER BENEFIT PLANS

1. None.

SECTION 5.11(e)

EMPLOYMENT LAWS

1. None.

SECTION 5.12(a)

MATERIAL CONTRACTS

- **Section 5.12(a)(i)** – any Contract relating to any incurrence, assumption or guarantee of Indebtedness:
 - Financing Agreement, dated as of December 31, 2012, by and among, Christals Acquisition, LLC, as Parent, Peekay Acquisition, LLC, the various Lenders parties thereto, Cortland Capital Market Services, LL, as Collateral Agent and Administrative Agent and CB Agency Services, LLC, as origination Agent (the “**Financing Agreement**”).
 - First Amendment to Financing Agreement, dated March 31, 2014.
 - Second Amendment to Financing Agreement, dated September 10, 2014.
 - Third Amendment to Financing Agreement, dated December 31, 2014.
 - Fourth Amendment to Financing Agreement, dated June 20, 2015.
 - Fifth Amendment to Financing Agreement, dated October 31, 2015.
 - Sixth Amendment to Financing Agreement, dated November 19, 2015.
 - Seventh Amendment to Financing Agreement, dated November 30, 2015.
 - Eighth Amendment to Financing Agreement, dated December 9, 2015.
 - Forbearance and Ninth Amendment to Financing Agreement, dated February 22, 2016.
 - Items 2 and 11-22, as set forth in Schedule 6.01(w) of the Financing Agreement.

- **Section 5.12(a)(ii)** – any joint venture agreement, limited liability company agreement or partnership agreement or other similar Contract or arrangements:
 - None.

- **Section 5.12(a)(iii)** – any Contract or series of related Contracts, including any option agreement, relating to the acquisition or disposition of any business, capital stock or other equity interests, or assets of, from, to or with any other Person (whether by merger, sale of stock, sale of assets or otherwise):
 - None.

- **Section 5.12(a)(iv)** – any Contract that contains exclusivity obligations, non-competition obligations or other restrictions binding on the Selling Entities or their respective Affiliates in respect of the Business or the Acquired Assets, or otherwise restricts or limits in any material respect the ability of the Selling Entities or their respective Affiliates in respect of the Acquired Assets or the Business to compete in any line of business with any other Person or in any geographic area that is material to the Acquired Assets or the Business (including, in each case, any co-existence or other Contract that restricts

the use of any assigned Intellectual Property), or that restricts the ability of the Selling Entities or their respective Affiliates in respect of the Business to solicit, hire or engage any Person:

- None.

• **Section 5.12(a)(v) – Real Property Leases:**

Name	Lease Expires Dt	Extend Thru Dt	SqFt	Address	City	State	Zip	Division
AUBURN	6/30/19	6/30/19	1800	221 AUBURN WAY N	AUBURN	WA	98002	LOVERS
BEAVERTON	4/30/23	4/30/28	4373	3300 SW CEDAR HILLS BLVD	BEAVERTON	OR	97005	LOVERS
BREA	3/31/22	3/31/22	4373	690 E IMPERIAL HWY	BREA	CA	92821	ATOR
BURLINGTON	3/31/19	3/31/24	4500	100 GILKEY RD	BURLINGTON	WA	98233	LOVERS
CABANA	1/31/22	1/31/32	1976	2796 S PERKINS	MEMPHIS	TN	38118	CHRISTALS
COSTA MESA	4/30/21	4/30/21	4200	1777 NEWPORT BLVD #B	COSTA MESA	CA	92627	CONREV
CERRITOS	3/31/18	3/31/23	2800	11332 E SOUTH STREET	CERRITOS	CA	90703	ATOR
HUNTINGTON BEACH	9/30/19	9/30/19	3300	17855 BEACH BLVD	HUNTINGTON BEACH	CA	92647	CONREV
CLACKAMAS	5/31/22	5/31/22	4800	11481 SE 82nd AVE	PORTLAND	OR	97086	LOVERS
LONG BEACH	7/31/20	7/31/20	3615	3316 EAST BROADWAY	LONG BEACH	CA	90803	CONREV
CORDOVA	11/30/17	11/30/22	4040	975 N GERMANTOWN	CORDOVA	TN	38018	CHRISTALS
SAN CLEMENTE	9/30/20	9/30/25	1472	401 S EL CAMINO REAL #D	SAN CLEMENTE	CA	92672	CONREV
CULVER	3/31/18	3/31/18	4576	5901 S SEPULVEDA BLVD	CULVER CITY	CA	90230	ATOR
EVERETT BROADWAY	5/31/19	5/31/19	2880	3402 BROADWAY	EVERETT	WA	98201	LOVERS
EVERETT SOUTH	5/31/21	5/31/21	5840	112 SE EVERETT MALL WAY	EVERETT	WA	98208	LOVERS
FEDERAL WAY	12/31/22	12/31/32	5250	1420 S 348TH ST	FEDERAL WAY	WA	98003	LOVERS
FOREST HILL	9/30/21	9/30/31	2800	3300 S.E. LOOP 820	FOREST HILL	TX	76140	CHRISTALS
HALTOM	8/31/20	8/31/25	3500	6380 N BEACH STREET	HALTOM CITY	TX	76137	CHRISTALS
ISSAQUAH	5/31/22	5/31/22	2000	5614 E LAKE SAMMAMISH PKWY SE	ISSAQUAH	WA	98029	LOVERS

Name	Lease Expires Dt	Extend Thru Dt	SqFt	Address	City	State	Zip	Division
KENT	10/14/18	10/14/23	2560	25801 104TH AVE SE	KENT	WA	98030	LOVERS
LAKE WORTH	2/28/19	2/28/29	5000	7600 JACKSBORO HIGHWAY	FORT WORTH	TX	76135	CHRISTALS
LYNWOOD	5/31/21	5/31/21	5756	19505 44th AVE WEST #N	LYNNWOOD	WA	98036	LOVERS
MEMPHIS	10/31/20	10/31/25	2000	2814 COLEMAN ROAD	MEMPHIS	TN	38128	CHRISTALS
MERIDIAN-BELLINGHAM	3/31/18	3/31/28	5272	4719 MERIDIAN ST	BELLINGHAM	WA	98226	LOVERS
NORTH HOLLYWOOD	2/23/19	2/23/24	2574	12512 VICTORY BLVD	NORTH HOLLYWOOD	CA	91606	ATOR
NORTHRIDGE	9/30/19	9/30/24	2280	8974 TAMPA AVE	NORTHRIDGE	CA	91324	ATOR
OLYMPIA	5/31/22	5/31/22	2651	3959 MARTIN WAY EAST	OLYMPIA	WA	98506	LOVERS
ORANGE	3/31/20	3/31/25	3450	1225 TUSTIN AVE	ORANGE	CA	92867	ATOR
PALMDALE	1/31/20	1/31/25	2124	40125 10TH ST WEST, UNIT K	PALMDALE	CA	93551	ATOR
PUYALLUP	6/30/22	6/30/27	3104	4009 S. MERIDIAN	PUYALLUP	WA	98373	LOVERS
RANDOL MILL	2/28/22	2/28/27	4452	6701 RANDOL MILL ROAD	FORT WORTH	TX	76112	CHRISTALS
REDMOND	7/31/21	7/31/21	4190	15015 NE 24TH STREET	REDMOND	WA	98052	LOVERS
RENTON	mo/mo		2134	538 RAINIER AVE S	RENTON	WA	98055	LOVERS
RIDGLEA	1/31/18	1/31/21	3150	3012 ALTA MERE DRIVE	FORT WORTH	TX	76116	CHRISTALS
RIVERSIDE	12/31/20	12/31/20	2400	10281 MAGNOLIA AVE	RIVERSIDE	CA	92503	ATOR
ROSEHILL	10/31/17	10/31/27	5316	12021 NE 85TH STREET	KIRKLAND	WA	98033	LOVERS
SAN BERNARDINO	4/17/19	4/17/24	2653	495 W ORANGE SHOW ROAD	SAN BERNARDINO	CA	92408	ATOR
SHORELINE	6/30/18	6/30/18	3590	20019 AURORA AVE N	SHORELINE	WA	98133	LOVERS
SILVERDALE	7/31/21	7/31/31	5400	9129 RIDGETOP BOULEVARD NW	SILVERDALE	WA	98383	LOVERS
SPOKANE	3/31/18	3/31/28	4240	3411 N. DIVISION STREET	SPOKANE	WA	99205	LOVERS
SPOKANE VALLEY	10/31/21	10/31/31	4240	13917 E SPRAGUE AVE	SPOKANE VALLEY	WA	99216	LOVERS
TARZANA	8/30/17	8/30/17	2400	19212 VENTURA BLVD	TARZANA	CA	91356	ATOR

Name	Lease Expires Dt	Extend Thru Dt	SqFt	Address	City	State	Zip	Division
T15	3/31/25	3/31/25	5025	7002 TACOMA MALL BLVD #F	TACOMA	WA	98409	LOVERS
TUKWILA	6/30/19	6/30/19	15000	5301 SOUTHCENTER BLVD	TUKWILA	WA	98188	LOVERS
VALENCIA	2/28/20	2/28/25	2124	26230 BOUQUET CANYON RD	SANTA CLARITA	CA	91350	ATOR
WEST DES MOINES	12/31/20	12/31/25	5620	840 1ST ST	WEST DES MOINES	IA	50265	CHRISTALS
WESTMINSTER	3/31/20	3/31/20	2000	15086 GOLDENWEST STREET	WESTMINSTER	CA	92683	ATOR

- **Section 5.12(a)(vi)** – the top 25 supplier Contracts (based on aggregate total purchases in U.S. dollars by the Business for the twelve (12) month period ended September 30, 2016):
 - None.
- **Section 5.12(a)(vii)** – any inbound or outbound license or royalty Contracts or other Contracts to which any of the Selling Entities or their respective Affiliates is a party with respect to any material Intellectual Property rights or Technology used in or licensed by the Business:
 - None.
- **Section 5.12(a)(viii)** – any Contract involving a remaining commitment by the Business to pay capital expenditures in excess of \$25,000 that is not, without material penalty, terminable for convenience by Seller:
 - None.
- **Section 5.12(a)(ix)** – pledges or security Contracts or similar arrangements constituting a lien upon the Acquired Assets:
 - None.
- **Section 5.12(a)(x)** – any Contract providing for the employment or engagement of any Person on a full-time, part-time, independent contractor, temporary or other basis or otherwise providing compensation or other benefits, including transaction bonuses, severance or change of control benefits, to any current or former officer, director, employee or individual independent contractor:
 - Service Agreement, dated June 12, 2017, by and among Peekay and Terra Services (d/b/a Terra Staffing Group).

- **Section 5.12(a)(xi) – any collective bargaining Contract:**
 - None.
- **Section 5.12(a)(xii) – any Contracts with Affiliates of the Selling Entities (including any intercompany indebtedness, guaranty, receivables or payables):**
 - None.
- **Section 5.12(a)(xiii) – any Contracts for the sale or purchase of personal property having a value individually, with respect to all sales or purchases thereunder, in excess of \$25,000, other than agreements with respect to the sale of Inventory entered into in the ordinary course of the Business:**
 - None.
- **Section 5.12(a)(xiv) – any Contracts requiring the Business to purchase all of its requirements for a product or service from any Person or setting a specified volume commitment for a product or service:**
 - None.
- **Section 5.12(a)(xv) – any Contract relating to the marketing, advertising or promotion of the products of the Business or the Acquired Assets:**
 - Advertising Agreement, dated as of January 1, 2011, by and between Peekay, Inc. and Yelp, Inc.
 - USA Merchant Agreement, dated as of March 1, 2014. by and between Peekay, Inc. and Givex USA Corporation.
- **Section 5.12(a)(xvi) – any Contracts under which Seller has any Liabilities to insure, indemnify or defend any other Person relating to the Business or the Acquired Assets:**
 - Second Amended and Restated Limited Liability Company Agreement of Christals Acquisition, LLC dated December 31, 2014.
 - Amended and Restated Limited Liability Company Agreement of Peekay Acquisition, LLC dated December 20, 2012.
 - Amended and Restated Bylaws of Dico, Inc. (n/k/a Peekay Boutiques, Inc.) dated December 31, 2014.
 - Amended and Restated Articles of Incorporation of Dico, Inc. (n/k/a Peekay Boutiques, Inc.) dated January 23, 2015.
 - Limited Liability Company Agreement of Peekay SPA, LLC dated December 20, 2012.
 - By-Laws of Peekay, Inc dated January 12, 1983.
 - Amended and Restated Limited Liability Company Agreement of ZJ Gifts F-2, L.L.C. dated December 31, 2012.
 - Amended and Restated Limited Liability Company Agreement of ZJ Gifts F-3, L.L.C. dated December 31, 2012.

- Amended and Restated Limited Liability Company Agreement of ZJ Gifts F-4, L.L.C. dated December 31, 2012.
 - Amended and Restated Limited Liability Company Agreement of ZJ Gifts F-5, L.L.C. dated December 31, 2012.
 - Amended and Restated Limited Liability Company Agreement of ZJ Gifts F-6, L.L.C. dated December 31, 2012.
 - Amended and Restated Operating Agreement of ZJ Gifts I-1, L.L.C. dated December 31, 2012.
 - Amended and Restated Limited Liability Company Agreement of ZJ Gifts M-1, L.L.C. dated December 31, 2012.
 - Amended and Restated Limited Liability Company Agreement of ZJ Gifts M-2, L.L.C. dated December 31, 2012.
 - Amended and Restated Operating Agreement of ZJ Gifts M-3, L.L.C. dated December 31, 2012.
- **Section 5.12(a)(xvii) – any Contracts pursuant to which the Selling Entities have agreed to settle, waive or otherwise compromise any litigation under which the Selling Entities have any continuing Liabilities of any kind:**
 - None.

SECTION 5.12(c)

**MATERIAL CONTRACTS NECESSARY FOR THE OWNERSHIP, MANAGEMENT
AND OPERATION OF THE BUSINESS**

1. All contracts listed on Schedule 5.12(a).


SECTION 5.12(d)

BREACHES OF MATERIAL CONTRACTS

1. Section 5.5 of this Seller Disclosure Statement is incorporated herein by reference.
2. Due to existing defaults under the Prepetition Financing Agreement, the Term A Lenders have the right to exercise remedies under the Prepetition Financing Agreement and the Forbearance and Ninth Amendment Agreement, dated February 22, 2016 upon 24 hours' written notice to the Company.


SECTION 5.13(a)**SELLER REGISTERED INTELLECTUAL PROPERTY**

1.

Mark	Status	Owner	Filing Date Reg. Date	Serial No. Reg. No.	Stoel Ref. No.
CHRISTAL'S	Registered	Christals Acquisition, LLC	7/20/2011 2/28/2012	85/376,410 4105586	0053855-00007:021
		Class 035	Goods/Services Retail store services in the field of adult novelty items and sexual aids.		
		Due Date 2/28/2022	Activity DEADLINE – Section 8 Declaration and 9 Renewal Application		
CHRISTAL'S AND DESIGN	Registered	Christals Acquisition, LLC	7/20/2011 2/28/2012	85/376,156 4105574	0053855-00007:017
		Class 035	Goods/Services Retail store services in the field of adult novelty items and sexual aids.		
		Due Date 2/28/2022	Activity DEADLINE – Section 8 Declaration and 9 Renewal Application		

Mark	Status	Owner	Filing Date Reg. Date	Serial No. Reg. No.	Stoel Ref. No.
CHRISTAL'S THE FUN STARTS HERE AND DESIGN	Registered	Christals Acquisition, LLC	7/20/2011	85/376,175	0053855-00007:019
			2/28/2012	4105576	
		Class 035	Goods/Services Retail store services in the field of adult novelty items and sexual aids.		
		Due Date 2/28/2022	Activity DEADLINE – Section 8 Declaration and 9 Renewal Application		
MISC DESIGN (HEART)	Registered	Christals Acquisition, LLC	7/20/2011	85/376,167	0053855-00007:020
			12/11/2012	4259401	
		Class 035	Goods/Services Retail store services in the field of adult novelty items and sexual aids.		
		Due Date 12/11/2018	Activity DEADLINE – Section 8 Affidavit Deadline		
THE FUN STARTS HERE	Registered	Christals Acquisition, LLC	7/20/2011	85/376,172	0053855-00007:018
			2/28/2012	4105575	
		Class	Goods/Services		



Mark	Status	Owner	Filing Date Reg. Date	Serial No. Reg. No.	Stoel Ref. No.
		035	Retail store services in the field of adult novelty items and sexual aids.		
		Due Date 2/28/2022	Activity DEADLINE – Section 8 Declaration and 9 Renewal Application		
CONDOM REVOLUTION	Registered	Condom Revolution, Inc.	8/4/2004 11/15/2005	78/461,722 3015334	0053855-00007:012
		Class 035	Goods/Services Retail store services in the field of condoms, and erotic games, gifts, novelties, and clothing, namely lingerie and intimate apparel.		
		Due Date 11/15/2025	Activity DEADLINE – Section 8 Declaration and 9 Renewal Application		
CONREV	Registered	Conrev, Inc.	6/10/2005 6/12/2007	78/648,550 3250550	0053855-00007:011
		Class 035	Goods/Services Retail store services in the field of condoms, and erotic games, gifts, novelties, and clothing, namely lingerie and intimate apparel.		
		Due Date 6/12/2027	Activity DEADLINE – Section 8 Declaration and 9 Renewal Application		
LOVERS AND DESIGN	Registered	Peekay Acquisition, LLC	2/27/2015 12/29/2015	86/548,154 4,876,971	0053855-00007:025
		Class 035	Goods/Services Retail store and online retail store services in the field of condoms, erotic games, gifts, novelties, prerecorded media, clothing, namely, lingerie and intimate apparel, and adult sexual stimulation aids.		
		Due Date	Activity		

Mark	Status	Owner	Filing Date Reg. Date	Serial No. Reg. No.	Stoel Ref. No.
			12/29/2021	DEADLINE – Section 8/15 Filing	
A TOUCH OF ROMANCE	Registered	Peekay, Inc.	12/26/1997 3/2/1999	75/411,003 2228130	0053855-00007:001
		Class 035	Goods/Services Retail store services in the area of lingerie, gifts and novelties.		
		Due Date 3/2/2019	Activity DEADLINE – Section 8 Declaration and 9 Renewal Application		
LOVERS	Registered	Peekay, Inc.	2/29/2012 4/2/2013	85/556,573 4311817	0053855-00007:014
		Class 035	Goods/Services Retail store and online retail store services in the field of condoms, erotic games, gifts, novelties, pre-recorded media, clothing, namely, lingerie and intimate apparel, and adult sexual stimulation aids.		
		Due Date 4/2/2019	Activity DEADLINE – Section 8/15 Filing		
LOVERS AND DESIGN	Registered	Peekay, Inc.	2/29/2012 2/12/2013	85/556,564 4288044	0053855-00007:015

LOVERS


Class
035

Goods/Services

Retail store and online retail services in the field of condoms, erotic games, gifts, novelties, pre-recorded media, clothing, namely lingerie and intimate apparel, and adult sexual stimulation aids.

Due Date

Activity

Mark	Status	Owner	Filing Date Reg. Date	Serial No. Reg. No.	Stoel Ref. No.
			2/12/2019	DEADLINE – Section 8/15 Filing	
LOVERS PACKAGE	Registered	Peekay, Inc.	10/31/1994 9/26/1995	74/592,509 1922743	0053855-00007:002
		Class 042	Goods/Services Retail services, namely retail department store services of lingerie, lotions, gift items, cards and novelty items.		
		Due Date 9/26/2025	Activity DEADLINE – Section 8 Declaration and 9 Renewal Application		
MISC DESIGN (LOVERS LOGO)	Registered	Peekay, Inc.	6/19/2006 10/23/2007	78/911,650 3317935	0053855-00007:005
		Class 010	Goods/Services Adult sexual stimulation devices, namely, vibrators, anal toys and eggs, bullets and missiles for sexual stimulation purposes; and condoms.		
		Due Date 10/23/2027	Activity DEADLINE – Section 8 Declaration and 9 Renewal Application		
SUTERA	Registered	Peekay, Inc.	4/13/2005 8/21/2007	78/608,055 3283605	0053855-00007:009
		Class 010	Goods/Services Adult sexual stimulation devices, namely, vibrators, anal toys and eggs, bullets and missiles for sexual stimulation purposes.		
		Due Date 8/21/2027	Activity DEADLINE – Section 8 Declaration and 9 Renewal Application		

Mark	Status	Owner	Filing Date Reg. Date	Serial No. Reg. No.	Stoel Ref. No.
SUTERA	Registered	Peekay, Inc.	10/2/2007 9/9/2008	77/293,736 3498172	0053855-00007:010
		Class 003	Goods/Services Cleaning liquid for adult sexual stimulation devices and incense.		
		Due Date 9/9/2018	Activity DEADLINE – Section 8 Declaration and 9 Renewal Application		

2. None.

3. None.

SECTION 5.13(b)

OTHER INTELLECTUAL PROPERTY

1. None.

SECTION 5.13(f)

THIRD PARTY INTELLECTUAL PROPERTY RIGHTS

1. Item 2 of Schedule 1.1(c) is hereby incorporated by reference.

SECTION 5.13(n)

PERSONALLY IDENTIFIABLE INFORMATION

1. No Selling Entity has collected and no third party has collected on any Selling Entity's behalf, any personally identifiable information from any third parties.
2. See applicable privacy policy below.

Privacy Policy

General Matters

Loverspackage.com takes your privacy seriously. Please read the following to learn more about our privacy policy.

1. This Policy applies to all Loverspackage.com -branded Web Sites, including toy stores, erotic gallery, Card Web Sites and affiliate card Web Sites ("Web Sites"). This Policy does not apply to other companies' or organizations' Web Sites to which we link. You should carefully review the privacy policies of those Web Sites in order to determine how they treat your personal information.

2. This policy describes what types of information we gather about you, how we use it, under what circumstances we disclose it to third-parties, and your rights to update or correct it.

3. This policy does not apply to the practices of companies or Web Sites that Loverspackage.com does not own or control or to people that Loverspackage.com does not employ or manage.

Information About You

Information Gathered From All Visitors

Aggregate Data

We gather certain generic information with respect to customers' use of our Web Sites. Information may include number of unique visitors, the frequency with which they visit, and the areas on the Web Sites that they favor. These statistics are very much like television ratings that tell the networks how many people tuned in to a program. We only use this type of data in the aggregate, on a collective basis, in summary form, rather than on an individual basis. This data helps us determine the extent to which our customers use certain parts of our Web Sites, which, in turn, enables us to make it as appealing as possible. We may also share aggregate data of customers' collective use of our Web Sites with advertisers, sponsors, and other companies with which we do business ("Affiliates" or "Business Partners"). We do this so they, too, can improve functionality and offer services and materials that users want.

Cookies

We use "cookies" on our Web Sites. Cookies are pieces of information or data sent to your browser from a web server and stored on your computer's hard drive for record-keeping purposes. Cookies tell our computer that you've visited before and can help to make your visit more personal so you don't have to re-enter info on a return visit. Cookies also allow us to count the number of unique and return visitors who use our Web Sites.

Most browsers are initially set up to accept cookies. If you prefer, you can reset your browser to notify you when you've received a cookie or, alternatively, to refuse to accept

cookies. It is important to note that you may not be able to use certain features like checking out (and participate in certain offerings) on our Web Sites if you choose not to accept cookies. Cookies can also enable us to track and target the interests of our users to enhance their experience on our Web Sites.

Third Party Advertiser Cookies

We use third-party advertising companies who use cookies to serve our ads on the Internet. To do so, these companies may use anonymous information about your visits to our Web Sites and other Web Sites. This information can include: date/time of banner ad shown, the banner ad that was shown, their cookie, the IP address. This information can also be used for online preference marketing purposes. Loverspackage.com does not use or have access to this information. If you want to prevent a third-party advertiser from setting and/or reading cookies on your computer, currently you may either visit each ad network's Web Sites individually and opt out or visit the Web Sites of the National Advertising Initiative ("NAI") to opt-out of all network advertising cookies at <http://www.networkadvertising.org/>

IP Addresses

We collect and analyze traffic on our Web Sites by keeping track of the IP addresses of our visitors. An IP address is a unique number assigned to your computer when you are using your browser on the Internet. We log this information so that we can monitor things like the number of visitors visiting the Web Sites; however, we do not link your IP address to any personally identifying information.

Personalizing Your Experience on the Web Sites

We try to personalize your experience on our Web Sites by tracking greetings and other content you have sent and gifts you have purchased in order to shape our recommendations about the greetings, cards, games, and gifts that might be of interest to you. We also examine customer traffic patterns and Web Sites usage to help us enhance the design and layout of the Web Sites and make it easier to navigate.

From time to time, we may send you surveys or solicit your feedback. We use surveys to gauge user interest in new products and premiums we may offer. We will ask for your feedback on greetings and other site features. We will use the information we gather to improve our Web Sites and provide a more meaningful experience for our users. We may also use the information to alert you to offers and products in which you may be interested in.

Subscribing to our Newsletter

We send email notifications and information to users who have opted in. Those notifications may be, but not limited to, our exclusive Newsletter, information on new features, new content, other products and services. These communications are sent to you directly by Loverspackage.com. In order to receive the emailed information you must have subscribed via one of our Web Sites or other sources such as our mailing/customer list.

It is our intention to always allow you to opt out of any of our lists. When you receive any Newsletter or email and you want to unsubscribe, you can simply follow the "unsubscribe" links at the bottom of each edition.

Offers from Our Business Partners

Loverspackage.com may also offer you the opportunity to receive money-saving offers, discounts, and promotions from our Business Partners. These communications may come from Loverspackage.com or directly from the partners themselves. We may also share with them certain demographic, geographic, preference, and other personally identifiable information we have gathered about you. This will help them in directing to you offers that are more likely to be of interest.

This program is conducted on an opt-in basis. In order to receive the offers, you must affirmatively check to receive information from us. If you leave the box unchecked, you will not receive any offers. If you do sign up for the program but later change your mind, you are free at any time to opt-out by following the procedures outlined in Opt-Out/Changing Your Status, below.

Information Gathered From Members

If you elect to purchase a product on a Loverspackage.com owned web site, you will be required to provide us with certain personal information, including your name, e-mail address, credit card number, expiration date, and billing address (this required information is subject to change from time to time). There may also be opportunities for you to provide us with additional information regarding your preferences and interests. This information, however, is not required and is completely optional on your part. Additional data may be collected from you based upon certain services you elect to utilize on our Web Sites, email addresses for example or used to store and send electronic greeting cards. By obtaining this information, we can provide our Members with specific content and advertising in which they might be interested. None of this information is required to use our service or to become a user; however, the omission of certain types of data will limit the value of your use of these features. If you become a user of our Web Sites or from one of our co-branded Web Sites, we may share your registration information with the co-branded partner.

Uses of Personal Information

If you have provided us your consent via opt-in subscription, we may use the information we have collected about you in five ways:

To send personalized, targeted information that we think our users will find relevant, either from Loverspackage.com or directly from its Business Partners;

- To support any of your requests like order processing;
- To send promotions and coupons based on user interests;
- To contact the user for feedback and surveys; and
- To send the user other information about Loverspackage.com or its Business Partners.

These communications include but are not limited to e-mail, postal mail.

On-Site Advertising

Loverspackage.com may also use information about you to target advertising while you are visiting our Web Sites. We may use cookie files to assure that you will not be served the same ads repeatedly.

Order Fulfillment

From time to time, you may be given the opportunity to order products and services directly from one of our Web Sites, the Newsletters, or in other communications you may receive from Loverspackage.com To process your order, Loverspackage.com may provide these partners with your name, street address, e-mail address, phone number, and credit card information. Loverspackage.com will limit the types of information shared to the minimum necessary to efficiently process your order. In some cases you are ordering products from a business partner and in accepting these offers, you become subject to its privacy policy. We encourage you to review these companies' privacy policies and only do business with those who adhere to personal information practices with which you are comfortable.

Privacy of Greeting Card Information

This policy applies to all aspects of our greetings, including your personalized messages, attached photos or graphics, or paper cards. We do not monitor or edit the contents of the online greetings you send. On occasion, however, we may need to view your messages in connection with the technical processing of your greeting or the maintenance of our network.

Disclosure Exceptions

Notwithstanding the above policies, we reserve the right to disclose your personal information to appropriate third-parties if we are required to do so by law or we believe that such action is necessary:

- To comply with legal process such as a search warrant, subpoena or court order;
- To protect the company's rights and property;
- To investigate reports of users sending material using a false e-mail address or users sending harassing, threatening, or abusive messages;
- To protect Loverspackage.com against misuse or unauthorized use of our Web Sites and/or the Loverspackage.com service; or
- During emergencies, such as when we believe someone's physical safety is at risk.

Your Control Over Your Personal Information

Opt-Out/Changing Your Status

For text club frequently asked questions and opt-out instructions, please click [here](#).

Any time you receive an email from us you can change your status. Every communication Loverspackage.com sends you will contain a clearly worded "Opt-Out" or "Unsubscribe" link allowing you to withdraw your permission for future mailings. This system is automated and must be contacted from the email address you wish to have removed. Permission changes will be honored as soon as possible after receipt. Please allow five to seven days for processing. Permission changes will however not affect any information which you provided to us and which we previously shared with our Business Partners.

Sale of Assets

In the event that Loverspackage.com and/or its units or subsidiaries are ever sold, acquired, merged, liquidated, reorganized, or otherwise transferred, we reserve the right to transfer our user databases together with any personally identifiable information contained therein, to a third-party acquiring Loverspackage.com's assets.

Data Security

When you place orders for purchased products or access your payment information, we use an advanced encryption technology known as Secure Socket Layer (SSL) to protect the storage and transfer of your data from unauthorized parties. While on a secure page, such as our registration form, a lock or key icon appears on the bottom of your web browser. In addition to our online security efforts, we take reasonable steps to protect your personal data offline, as well. All of your information, not just the sensitive information mentioned above, is restricted in our offices. Loverspackage.com's main servers are operated from a dedicated Internet hosting facility with state-of-the-art physical security features, including smoke detection and fire suppression systems, motion sensors, and 24x7 secured access, as well as video camera surveillance and security breach alarms. If you have any questions about the security at our websites, you can send an email to sales@loverspackage.com.

Changes to the Privacy Policy

Loverspackage.com will occasionally update this Privacy Policy in response to changing business circumstances and legal developments. When Loverspackage.com posts changes to this Policy, you will see a date depicting the last update of the policy on the top of this page. If there are material changes to this Policy or in how Loverspackage.com uses your personally identifiable information, Loverspackage.com will prominently post such changes prior to implementing the change. Loverspackage.com encourages you to periodically review this Policy to be informed of how we are protecting your information. You may review our policy anytime as it will always be linked to our web sites.

Use Common Sense in All Online Activities

Even the best policy can't protect your online privacy and security in all circumstances. Unscrupulous advertisers, hackers, and scam artists are constantly searching the Internet looking for new targets. Your best protection is to understand the limits to privacy on the Internet and use common sense in all of your on-line activities.

Be aware that e-mail is an inherently insecure form of communication. Remember that third parties are sometimes able to illegally intercept your unencrypted messages, including online greetings.

Anytime you visit a chat room or post a message to an on-line bulletin board, your e-mail address can be accessed by advertisers looking to compile lists for unsolicited commercial e-mail (also known as spam). Be sure that you only disclose your e-mail address in circumstances in which it is safe to do so. Beware of scams in which persons unknown to you request your screen name, password, or credit card information. Make sure you verify the identity of anyone asking for personal information. Always monitor your children's on-line activities and educate them as to the rules for safe Internet use.

Contact Information

If you have questions or concerns regarding this Policy, you should first email Loverspackage.com Customer Service at sales@loverspackage.com or contact us by mail at Peekay, 901 West Main Street, Auburn, WA 98001.

SECTION 5.14(a)

TAX RETURNS

1. None.

SECTION 5.14(b)

DELINQUENT TAXES

1. None.

SECTION 5.14(c)

AUDITS

1. None.

SECTION 5.15**INSURANCE**

<u>Policy Type</u>	<u>Purpose</u>	<u>Carrier</u>	<u>Policy #</u>	<u>Effective Date</u>	<u>End Date</u>
Blanket Property Coverage	Catastrophe Building Personal property Business Income Equipment Breakdown	Alaska National Ins Company	16JOP06271	10/01/16	10/01/17
Non-Blanket Property Coverage	Personal property Tenant Improvements Business Income Equipment Breakdown	Seneca Ins Co.	CMP4502977	10/01/16	10/01/17
General Liability	General Aggregate Products & Operations Personal Advertising Injury Fire Damage Liability	Seneca Ins Co.	CMP4502977	10/01/16	10/01/17
Commercial Auto	Standard Auto Coverage	Sentinel Insurance Company	52UECVK6699	10/01/16	10/01/17
Excess Liability	General Aggregate Products & Operations Personal Advertising Injury Fire Damage Liability	ACE Property & Causality Insurance	M00578253-004	10/01/16	10/01/17
Crime	ERISA Bond	Travelers Insurance Company	104526978	08/14/16	08/14/17

<u>Policy Type</u>	<u>Purpose</u>	<u>Carrier</u>	<u>Policy #</u>	<u>Effective Date</u>	<u>End Date</u>
Management Liability	Commercial Umbrella Liability Policy	Chubb	M00578253 004	10/1/16	10/1/17
Cyber Security Liability	Cyber Liability Privacy Liability System Damage Cyber Threats and Extortion Reputational Harm System Damage	Lloyds's of London	ESE01149092	10/01/16	10/01/17
Business Insurance Policy	Special Multi Flex Policy	The Hartford	52UECVK6699	10/1/16	10/1/17
Crime	Commercial Crime Policy	Liberty Mutual	FI4NAA82J6002	3/31/17	3/31/18
Directors & Officers Liability	Directors & Officers Liability	Argonaut Insurance Company	ML 7601232-02	3/31/17	3/31/18
Employment Practices Liability	Employment Practices Liability	Argonaut Insurance Company	ML 7601766-01	3/31/17	3/31/18
Fiduciary Liability Insurance	Fiduciary Liability Insurance	National Union Fire Insurance Company	01-334-81-95	3/31/17	3/31/18

SECTION 5.17

PERMITS

1. Washington State Department of Revenue – Reseller Permit
Permit Number A01 9426 17
Effective Date: 1-1-2014
Expiration Date 12-31-2017
2. California State Board of Equalization – Sales and Use Tax Permit
Permit Number: 97781812
Start Date: 11/21/2000
3. Texas – Sales and Use Tax Permit
Issued to ZJ Gifts F-3, L.L.C.
Start Date: 6/1/2007
4. Texas – Sales and Use Tax Permit
Issued to ZJ Gifts F-2, L.L.C.
Start Date: 5/1/2003
5. Texas – Sales and Use Tax Permit
Issued to ZJ Gifts F-4, L.L.C.
Start Date: 10/1/2008
6. Texas – Sales and Use Tax Permit
Issued to ZJ Gifts F-5, L.L.C.
Start Date: 9/1/2010
7. Texas – Sales and Use Tax Permit
Issued to ZJ Gifts F-6, L.L.C.
Start Date: 10/1/2011
8. State of Tennessee Department of Revenue – Resale Authorization
Letter ID: L0128817152
Account ID: 1000029772-SLC
Effective Date: 11/5/1994
9. State of Tennessee Department of Revenue – Resale Authorization
Letter ID: L1666783232
Account ID: 1000313266-SLC
Effective Date: 12/1/2001

10. State of Tennessee Department of Revenue – Resale Authorization
Letter ID: L0026613760
Account ID: 1000197787-SLC
Effective Date: 11/1/1995

SECTION 5.20

SIGNIFICANT SUPPLIERS

1. UNITED CONSORTIUM, INC.
2. LELO INC.
3. CALIFORNIA EXOTIC NOVELTIES
4. STANDARD INNOVATION
5. FUN FACTORY
6. DREAMGIRL
7. EVOLVED NOVELTIES, INC.
8. PIPEDREAM PRODUCTS, PD PRODUCT
9. DOC JOHNSON
10. EPI24 USA LLC
11. SPORTSHEETS INT'L INC.
12. EIGHTY ONE ENTERPRISES INC
13. ADVENTURE INDUSTRIES/WHIPSMART
14. INTERACTIVE LIFE FORMS
15. XGEN PRODUCTS
16. BUSHMAN PRODUCTS
17. COQUETTE INTERNATIONAL INC. US
18. VALENCIA NATURALS LLC DBA SENS
19. TANTUS INC.
20. JIMMYJANE INC

No Significant Supplier of any Selling Entity has terminated or modified its Contracts or arrangements with such Selling Entity since January 1, 2016, and no Significant Supplier of any Selling Entity has notified such Selling Entity that it does not intend to continue as a supplier of such Selling Entity after the Closing or that such supplier intends to terminate or modify existing Contracts or arrangements with such Selling Entity, or naturally limit or decrease its provision of goods or services to such Selling Entity.

SECTION 5.21**BANK ACCOUNTS**

Company	Bank	Account Number	Type
Peekay, Inc.	Wells Fargo	*1473	Depository
Peekay, Inc.	Wells Fargo	*0409	Credit Card Sales
Peekay, Inc.	Wells Fargo	*2531	Internet Sales
Christals Acquisition, LLC	California Republic Bank	*1525	Inactive
Christals Acquisition, LLC	California Republic Bank	*1529	Inactive

SECTION 7.1

CONDUCT OF BUSINESS

1. None.