IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
	)	
Robbins Bros. Corporation,	)	Case No. 09 – 10708 ( )
	)	
Debtor. [1]	)	
	)	

DEBTOR'S MOTION FOR ENTRY OF AN ORDER (A) APPROVING BID PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF DEBTOR'S ASSETS OTHER THAN CERTAIN OF ITS ILLINOIS AND TEXAS STORE RELATED ASSETS; (B) SCHEDULING AN AUCTION AND HEARING TO CONSIDER THE SALE AND APPROVING THE FORM AND MANNER OF NOTICE RELATED THERETO; (C) ESTABLISHING PROCEDURES RELATING TO THE ASSUMPTION AND ASSIGNMENT OF CERTAIN CONTRACTS, INCLUDING NOTICE OF PROPOSED CURE AMOUNTS; (D) PROVIDING CERTAIN BID PROTECTIONS; AND (E) GRANTING RELATED RELIEF

The captioned debtor and debtor in possession (the "Debtor") hereby moves this Court for the entry of an order: (a) approving bid procedures and certain overbid protections, including a break-up fee and reimbursement of certain transaction expenses, in connection with the sale of substantially all of the Debtor's assets other than certain assets related to certain of its Illinois and Texas stores and operations (described more fully below); (b) scheduling an auction and hearing to consider the sale of and approving the form and manner of notices related thereto; (c) establishing procedures for the assumption and assignment of certain contacts and/or leases that will be assumed and assigned as part of the sale; and (d) granting related relief (this "Motion"). In support of this Motion, the Debtor respectfully states as follows:

[1] The last four digits of the Debtor's federal tax identification number are: Robbins Bros. Corporation (8887). The Debtor's address is 1300 W. Optical Drive, Suite 200, Azusa, CA 91702.

Jurisdiction and Venue

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

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

3. The statutory predicates for the relief sought herein are sections 105, 363, 365, 503, 1107 and 1108 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002(a)(2), 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 2002-1(b) and 9006-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules").

Background

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

5. The Debtor has continued in the possession of its property and has continued to operate and manage its business as debtor and debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner or committee has been appointed in the Debtor's chapter 11 case.

6. The general factual background relating to the Debtor's commencement of this chapter 11 case is set forth in detail in the *Declaration of Bruce Ross, Chief Financial Officer of the Debtor, in Support of First Day Motions* (the "Ross Declaration") filed contemporaneously with this Motion and incorporated herein by reference.

7. In order to maximize the value of its business and assets, the Debtor has determined to market and sell substantially all of its assets, including certain assets (the "Illinois and Texas Store Related Assets") related to the Debtor's retail engagement and bridal jewelry stores located at (a) 2184 North Elston Avenue, Chicago, Illinois, (b) 3031 Butterfield Road, Oak Brook, Illinois, (c) 1985 East Golf Road, Schaumburg, Illinois, (d) 1251 West Bay Area Blvd., Webster, Texas, (e) 2101 West Loop South, Houston, Texas, and (f) 6944 FM 1960 West, Houston, Texas, and certain other assets, to the highest or otherwise best bidder(s) during the bankruptcy case, for the benefit of the estate and its creditors. The Debtor has concurrently filed herewith a separate motion to sell the Illinois and Texas Store Related Assets to another stalking horse bidder (the "Other Asset Stalking Horse Purchaser"). This Motion relates to the Debtor's proposed sale of substantially all of its assets other than the Illinois and Texas Store Related Assets (the "Purchased Assets").

The Sale Process

8. The proposed asset purchase agreements with the Buyer (as defined below) and the Other Asset Stalking Horse Purchaser are the culmination of an approximately three month process, during which process the Debtor's assets were extensively marketed for sale or other disposition for approximately two months.

9. As discussed in the Ross Declaration, prepetition, in November 2008, the Debtor retained William Blair & Company ("Blair") as its investment banker to, among other things, advise and assist the Debtor in connection with obtaining new financing, an asset or stock sale, or a restructuring of its current debt. On or about December 1, 2008, Blair began contacting approximately 150 potential strategic and financial buyers through telephone calls, emails and/or

other correspondence. The list of potential buyers was compiled by Blair using Blair's internal database and based on discussions with the Debtor. Of the approximately 150 parties contacted, 39 parties signed confidentiality agreements and were provided varying levels of additional information, including a detailed confidential information memorandum. Of the 39 parties who received the confidential information memorandum, 12 parties engaged in more extensive due diligence, which in some cases started in early December 2008 and in some cases continued through January 2009. The due diligence ranged from requests for additional information from the Debtor to in-person meetings with the Debtor's management.

10. Ultimately, five parties submitted letters of interest ("LOIs"). Since the submission of the LOIs, two of the parties who had submitted an LOI eventually determined to cease pursuing any potential transaction with the Debtor. With the advice and assistance of Blair and the Debtor's other advisors, and after reviewing the LOIs, engaging in discussions with the parties who had submitted LOIs throughout January 2009 and considering a myriad of factors, the Debtor determined in early February 2009 that a combination of the proposed acquisition of the Illinois and Texas Store Related Assets by Spence Diamonds, Inc. ("Spence") and the proposed acquisition of substantially all of the Debtor's other assets by Robbins Bros. Jewelry, Inc. (the "Buyer" or "Robbins Bros. Jewelry" and together with Spence, the "Stalking Horse Purchasers") was the best available option for the Debtor in order to maximize the value of its assets and business. The Debtor understands that Robbins Bros. Jewelry is an affiliate of WPC Entrepreneur Fund II, LP ("WPCEF II") and Weston Presidio Capital IV, LP ("WPC IV" and collectively "Weston"), prepetition secured lenders of, and minority equity holders in, the Debtor, and Dorset Capital L.P., another minority equity holder in the Debtor. The Debtor

understands that Robbins Bros. Jewelry is an affiliate of Weston, a prepetition secured lender of, and minority equity holder in, the Debtor, and Dorset Capital L.P., another minority equity holder in the Debtor. During February and early March 2009, the Debtor, with its investment banker and counsel, engaged in further negotiations with the Stalking Horse Purchasers. Further, the Debtor engaged in discussions with the last of the five parties who had submitted an LOI (the "Potential Investment Party") about the possibility of entering into an investment or similar related transaction with the Debtor.

11. With respect to Robbins Bros. Jewelry, on or about February 7, 2009, in order to induce Weston and/or its affiliates to continue to incur significant expenses related to a potential transaction with the Debtor, the Debtor entered into a letter agreement with Weston (the "Weston Exclusivity Agreement"), pursuant to which, among other things, the Debtor provided Weston with a $100,000 retainer to be applied by Weston against all reasonable out-of-pocket expenses incurred by it in pursuing the potential sale, and agreed to refrain from soliciting, initiating or encouraging, until February 17, 2009, the submission of any competing proposals or offers, or furnish any information with respect to such proposal or offer, to acquire all or a substantial portion of the Debtor; provided, however, the Debtor could continue to pursue a sale transaction with Spence and pursue any potential investment by the Potential Investment Party subject to certain limitations. After consideration of all relevant factors, including the fact that an extensive marketing process had already been undertaken, the Debtor determined it would be in the company's best interest to enter into the Weston Exclusivity Agreement in order to adequately incentivize Weston and/or its affiliates to complete a sale transaction with the Debtor.

The exclusivity period under the Weston Exclusivity Agreement was subsequently extended by the parties to February 23, 2009.

12. On March 3, 2009, after negotiations between the parties, the Debtor entered into an Asset Purchase Agreement (the "Agreement") with the Buyer, subject to higher and better offers, for the sale and purchase of substantially all of the Debtor's assets other than the Illinois and Texas Store Related Assets. Pursuant to the terms of the Agreement, the Debtor, subject to a Court approved auction and sale process and any higher and better offers, intends to sell the applicable assets to Robbins Bros. Jewelry (or a designated affiliate) and in connection therewith, assign to it certain contracts and leases. The Buyer will acquire these assets free and clear of all liens, claims and encumbrances pursuant to section 363 of the Bankruptcy Code, on the terms set forth in the parties' agreement.

13. On March 3, 2009, after extensive negotiations, the Debtor entered into a separate Asset Purchase Agreement (the "Spence Agreement") with Spence, for the sale and purchase of the Illinois and Texas Store Related Assets. Pursuant to the terms of the Spence Agreement, the Debtor, subject to an auction and sale process, intends to sell the Illinois and Texas Store Related Assets to Spence (or a designated affiliate) and in connection therewith, assign to Spence certain leases, with such sale to be free and clear of all liens, claims and encumbrances pursuant to Bankruptcy Code section 363(f). The Debtor has filed concurrently herewith a separate sale motion and sale procedures motion with respect to the proposed Spence transaction.

14. The Debtor believes that the consummation of the proposed sales to the Stalking Horse Purchasers or to any successful overbidder(s) will provide the Debtor and its

creditors and other stakeholders with the best opportunity possible for maximizing value by realizing upon the Debtor's assets through going concern sales.

Relief Requested

15. By this Motion, the Debtor seeks approval of the Bid Procedures (hereinafter defined), under which Robbins Bros. Jewelry is the stalking horse bidder for the Purchased Assets. The terms of the Buyer's stalking horse bid are summarized below.

16. The Debtor, with the assistance of its investment banker and other professionals, intends to seek higher and better bids for the Purchased Assets and, pursuant to the Bid Procedures, to hold the Auction of such assets on or about May 5, 2009 or such other date specified by the Court. Because the Debtor extensively marketed the potential sale of its assets prepetition, the Debtor believes that this timeframe contemplated by the Bid Procedures is reasonable and appropriate and will result in the highest or otherwise best price for the Purchased Assets.

The Agreement with the Buyer

17. A copy of the Agreement with Robbins Bros. Jewelry is attached hereto as Exhibit A.[2] Pursuant to the terms of the Agreement, the Buyer, subject to a Court approved auction and sale process, approval of which is sought by this Motion, and the submission of higher and better offers, will purchase the Purchased Assets, including, through assignment by the Debtor, certain contracts and leases.

18. The Debtor, subject to a Court approved auction and sale process and higher and better offers, intends to sell (the "Sale" or the "Transaction") the Purchased Assets to

[2] Capitalized terms not otherwise defined herein shall have the meanings set forth in the Agreement.

the Buyer pursuant to the Agreement or to a higher bidder. The Debtor has filed a motion for approval of the Sale of the Purchased Assets to the Buyer, subject to higher and better offers (the "Sale Motion"), contemporaneously with the filing of this Motion.

19. The terms of the Buyer's offer to purchase the Purchased Assets are set forth in the Agreement, and are summarized below. The description below only summarizes certain provisions of the Agreement, and the terms of the Agreement control in the event of any inconsistency.

a. **Purchase Price**. The purchase price under the Agreement (the "Purchase Price") shall be the sum of (a) (i) all outstanding obligations under the Wells Fargo Facility as of the Closing Date minus (ii) all Net Cash as of the Closing Date and (b) $100,000 (which shall be allocable to the Intellectual Property that is collateral under the Paradox Security Agreement), and (c) the assumption by Buyer of the Assumed Liabilities. Agreement § 2.

b. **Purchased Assets**. On the Closing Date and on the terms and conditions hereinafter set forth, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase, acquire, accept and receive from Seller, free and clear of all Encumbrances, the Seller's right, title and interest as of the Closing Date in and to substantially all assets and properties of the Seller other than the Illinois and Texas Store Related Assets (such assets and properties, the "Property"). Agreement § 1.1.

c. **Excluded Assets.** The "Property" in § 1.1 of the Agreement does not include the "Excluded Assets," as set forth in §1.2 of the Agreement, all of which shall remain the exclusive property of Debtor, free and clear of any claim of the Buyer. Agreement § 1.2.

d. **Assumed Liabilities**. At the Closing, the Buyer will assume the Assumed Liabilities of the Debtor set forth in § 2.3 of the Agreement.

e. **Excluded Liabilities**. The Buyer is not assuming, and shall be deemed not to have assumed, any Liabilities of the Debtor other than the Assumed Liabilities, as set forth in § 2.4 of the Agreement. Assumed Liabilities include (i) certain of Seller's customer obligations, (ii) certain of Seller's obligations employees, (iii) certain of Seller's obligations for rent, current taxes, prepaid

advertising, utilities and other items of expense related to the Property first arising after Closing, and (iv) certain other scheduled liabilities and obligations.

f. **Contracts to be Assumed and Assigned**. The Agreement provides for the Debtor to assume and assign the Leases and Contracts to the Buyer; provided, however, that the Buyer shall have the right in its sole and absolute discretion to notify the Seller in writing no later than the April 29, 2009 Specified Conditions End Date of any Leases and Contracts that Buyer does not wish to assume, in which case such Leases and Contracts shall be deemed part of the Excluded Assets; provided, further, however, that no more than three (3) Real Property Leases related to the retail stores included on Schedule 1.1.1-(iii) may be so rejected.. Agreement § 1.1.1.

g. **Break-Up Fee and Transaction Expense**. The Break-Up Fee is in the amount of $300,000 and Transaction Expenses are in an amount not to exceed $150,000 for the amounts constituting the Transaction Expenses pursuant to § 11.3 of the Agreement to be paid to Buyer in accordance with and subject to the conditions provided for in the Agreement. The Break-Up Fee and Transaction Expense shall be entitled to superpriority under section 364(c)(1) of the United States Bankruptcy Code with priority over any and all expenses of the kind specified in Bankruptcy Code sections 503(b) and 507(b) other than claims of Wells Fargo Bank, National Association, for itself or as agent for any of the Debtor's secured lenders. Agreement § 11.

h. **Closing.** The Closing of the transactions under the Agreement shall take place on or before the third day following the satisfaction or waiver by the appropriate Party of all the conditions contained in § 4, or on such other date or at such other place and time as may be agreed to by the Parties; provided, however, that the date of the Closing shall be automatically extended if any of the conditions set forth in § 4 shall not be satisfied or waived, subject, however, to the termination provisions of § 14. Agreement § 3.2.

i. **Representations and Warranties**. The Agreement contains representations and warranties of the parties including as set forth in §§ 5 and 6 of the Agreement.

j. **Termination Rights.** § 14 of the Agreement provides that the Agreement may be terminated on several grounds, including, but not limited to: (a) by the Debtor, if the Closing shall not have occurred by May 13, 2009, subject to certain conditions; and (b) by

the Buyer, if the Procedures Order shall not have been entered by March 25, 2009, and the Approval Order is not entered on or before May 6, 2009. Agreement §§ 14.3 and 14.4.

20. The Debtor believes that the sale of the Purchased Assets as a going concern to the Buyer or a higher and better bidder determined in accordance with the Bid Procedures is far preferable to a piecemeal liquidation of such Purchased Assets, including because it will result in a higher price for those assets and, to the extent that the Debtor's employees are rehired by the Buyer, will preserve jobs. The Debtor further believes that its obtaining the Buyer as a stalking horse bidder, further marketing the Purchased Assets with the assistance of Blair and the Debtor's other professionals over the time period contemplated by the Bid Procedures, which period the Debtor furthers submit is reasonable and consistent with the marketing periods approved by this Court in similar cases under similar circumstances, and holding the Auction of such Purchased Assets on the date specified by the Court, in early May 2009, will result in the highest or otherwise best price for the Purchased Assets. The Debtor has examined the alternatives to a going concern sale of the Purchased Assets and has determined that, in light of its financial situation and liquidity needs, a viable alternative to such a sale is not available.

21. For the reasons stated above, and in light of the obvious benefits to the estate, the Debtor's board of directors has determined, in the exercise of its business judgment, to consummate the proposal submitted by the Buyer under the Agreement or, if applicable, another bidder in the event that the Debtor receives a higher and better bid for the Purchased Assets to the one proposed by the Buyer.

Relief Requested

22. Pursuant to this Motion, the Debtor requests that the Court, among other things:

a. approve the Buyer's status as the stalking horse purchaser pursuant to the terms of the Agreement;

b. approve the proposed bid procedures (the "Bid Procedures"), including the overbid provisions and provisions related to the Debtor's payment of a break-up fee and transaction fees to the Buyer in certain circumstances, attached hereto as Exhibit B;

c. approve the procedures set forth herein for the assumption and assignment of certain executory contracts and unexpired leases in connection with the Sale (the "Cure Procedures");

d. establish a date for holding the auction (the "Auction") and approve certain procedures in connection therewith;

e. schedule the hearing to approve any sale transaction(s) to the Buyer or to such other party that makes the higher and best offer for the Purchased Assets (the "Successful Bidder") and establishing deadlines for objections and responses to the relief requested in the Sale Motion; and

f. approve the form and manner of notice to be served upon certain parties, including: (i) the form of notice, substantially in the form attached hereto as Exhibit C, to be served on the Sale and Bid Procedures Notice Parties (defined below); (ii) the form of notice, substantially in the form attached hereto as Exhibit D, to be served on all known creditors of the Debtor (the "Creditor Notice"); and (iii) the form of notice to nondebtor parties

to Designated Executory Contracts and Potential Assumed Contracts (if any) in conjunction with the proposed Sale, in substantially the form attached hereto as Exhibit E (the "Cure Notice").

Bid Procedures

23. The Bid Procedures are attached hereto as Exhibit B. The Bid Procedures are summarized as follows:

a. Assets to be Sold: The Debtor proposes to sell the Purchased Assets as described herein and in the Agreement.

b. Potential Bidders; Confidentiality Agreement: Any person interested in participating in the bidding process for all or a portion of the Purchased Assets (each a "Potential Bidder") must deliver (unless previously delivered) to the Debtor and its counsel an executed confidentiality agreement in form and substance acceptable to the Debtor and its counsel, and satisfy the other requirements set forth in the Bid Procedures.

c. Qualified Bidders. A "Qualified Bidder" is a Potential Bidder (or combination of Potential Bidders whose bids for the assets of the Debtor do not overlap and who also are referred to in the Bid Procedures as a single Qualified Bidder) that delivers the confidentiality agreement and the documents described the Bid Procedures with respect to its proof of financial ability to perform, and that the Debtor in its discretion and with assistance from its advisors, in consultation with the Lender and any official committee of unsecured creditors in this case (the "Committee"), determine is reasonably likely to submit a *bona fide* offer that would result in greater value being received for the benefit of the Debtor's creditors than under the Agreement and to be able to consummate a sale if selected as a Successful Bidder

(defined below). The Buyer (together with any assigns) is a Qualified Bidder and is deemed to satisfy all Bid Requirements (hereinafter defined).

d. Bidding Process. The Debtor and its advisors shall: (i) determine whether a Potential Bidder is a Qualified Bidder; (ii) coordinate the efforts of Bidders in conducting their due diligence investigations, as permitted by the provisions of the Bidding Procedures; (iii) receive offers from Qualified Bidders; and (iv) negotiate any offers made to purchase the Purchased Assets (collectively, the "Bidding Process"). The Debtor shall have the right 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 and that are not inconsistent with any of the other provisions hereof or of any Bankruptcy Court order.

e. Bid Deadline. The Debtor proposes that the deadline for submitting bids by a Qualified Bidder shall be May 1, 2009, at 4:00 p.m. (Eastern Time) (the "Bid Deadline"). Prior to the Bid Deadline, a Qualified Bidder that desires to make an offer, solicitation or proposal (a "Bid") shall deliver written copies of its Bid to: (i) the Debtor, (ii) Debtor's counsel, (iii) Debtor's investment banker, Blair, (iv) the Buyer and its counsel, and (v) counsel for the Committee, if any (collectively, the "Notice Parties"), by the Bid Deadline, provided, however, that any confidential financial information may be delivered to the Debtor and its counsel only. A Bid received after the Bid Deadline shall not constitute a Qualified Bid.

f. Bid Requirements. To be eligible to participate in the Auction, each Bid and each Qualified Bidder submitting such a Bid must be determined by the Debtor to satisfy each of the following conditions:

Good Faith Deposit. Each Bid, other than a Bid submitted by the Buyer must be accompanied by a deposit in the form of a certified check or cash payable to the order of the Debtor in the amount of $250,000.

Minimum Overbid. The consideration proposed by the Bid may include only cash and/or other consideration acceptable to the Debtor. The aggregate consideration must equal or exceed the sum of the Purchase Price (including, without limitation, the assumption of Assumed Liabilities, and the payment of the Cure Amounts) plus the Break-Up Fee plus $100,000 (the "Minimum Overbid"). The consideration must also include sufficient cash to pay in full at the closing all obligations owed by the Debtor to Wells Fargo Bank, National Association pursuant to that certain Amended and Restated Credit Agreement dated as of January 19, 2007 (as amended or supplemented) or otherwise (the "Wells Fargo Obligations").

Irrevocable. A Bid must be irrevocable until the earlier of (a) closing of the transaction with the Successful Bidder, or (b) ten (10) days after the Sale Order has become final and non-appealable (the "Termination Date").

The Same or Better Terms. The Bid must be on terms that, in the Debtor's business judgment, is substantially the same or better than the terms of the Agreement. A Bid must include an executed agreement pursuant to which the Qualified Bidder proposes to effectuate the contemplated transaction (the "Contemplated Transaction Documents"). A Bid shall include a copy of the Agreement marked to show all changes requested by the Bidder (including those related to the Purchase Price). The Contemplated Transaction Documents must include a commitment to close by the date on which the Sale Order becomes final and non-appealable. A Bid should propose a contemplated transaction involving all or substantially of the Purchased Assets, provided, however, that the Debtor in its discretion may consider proposals for less (or more) than substantially all the Purchased Assets, provided further that the Debtor will evaluate all Bids, in its sole discretion, to determine whether such Bid or combination of Bids maximizes the value of the Debtor's estate as a whole.

Contingencies. A Bid may not be conditioned on obtaining financing or any internal approval or otherwise be subject to contingencies more burdensome than those in the Agreement.

Financing Sources. A Bid must contain written evidence of a commitment for financing or other evidence of the ability to consummate the sale satisfactory to the Debtor with appropriate contact information for such financing sources.

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. Moreover, by submitting a Bid, a Bidder shall be deemed to waive the right to pursue a substantial contribution claim under

Bankruptcy Code § 503 related in any way to the submission of its Bid or the Bidding Procedures.

A Bid received from a Qualified Bidder before the Bid Deadline that meets the above requirements and that satisfies the Bid Deadline requirement above will constitute a "Qualified Bid," if the Debtor believes, in its reasonable discretion, that such Bid would be consummated if selected as the Successful Bid. The Debtor will have the right to reject any and all bids that it believes, in its reasonable discretion and in consultation with the Committee, do not comply with the Bidding Procedures.

g. Auction. The Debtor will conduct an auction (the "Auction") to determine the highest and best bid with respect to the Purchased Assets.

(1) Only if a Qualified Bid (other than Buyer's) is received by the Bid Deadline, shall the Debtor conduct an auction (the "Auction") to determine the highest and best bid with respect to the Assets. The Debtor shall provide the Buyer and all Qualified Bidders with copies of all Qualified Bids by no later than noon on the business day following the Bid Deadline, which may exclude any Bidder Confidential Information, as determined by the Debtor in its reasonable discretion or which has been so designated by the Qualified Bidder. The Auction shall commence at 9:00 a.m. (Eastern Time) on May 5, 2009, at the offices of Pachulski, Stang, Ziehl & Jones LLP, 919 N. Market St., 17th Floor, Wilmington, DE 19801.

(2) No later than May 4, 2009, the Debtor will notify all Qualified Bidders of (i) the highest and best Qualified Bid, as determined by the Debtor in its discretion (the "Baseline Bid") and (ii) the time and place of the Auction, and provide copies of all submitted bids to all Qualified Bidders.

(3) If no higher and better offer is obtained at the Auction, then the Buyer will be deemed the Successful Bidder, the Agreement will be the Successful Bid, and, at the May 6, 2009 Sale Hearing, the Debtor will seek approval of and authority to consummate the Transaction contemplated by the Agreement.

(4) Only a Qualified Bidder that has submitted a Qualified Bid is eligible to participate at the Auction. Only the authorized representative of each of the Qualified Bidders, the Debtor, the Lenders, and the Committee shall be permitted to attend.

(5) During the Auction, bidding shall begin initially with the highest Baseline Bid and subsequently continue in minimum increments of at least $100,000 of cash consideration or other equivalent value acceptable to the Debtor. Except as otherwise set

forth herein, the Debtor may conduct the Auction in the manner it determines will result in the highest and best offer for the Assets.

(6) Additional provisions regarding the conduct of the Auction are set forth in the Bid Procedures.

(7) Upon conclusion of the bidding, the Auction shall be closed, and the Debtor shall immediately identify the highest and best offer for the Assets (which may be an aggregate of bids for less than all of the Assets) (the "Successful Bid") and the entity submitting such Successful Bid (the "Successful Bidder"), which highest and best offer will provide the greatest amount of net value to the Debtor, and the next highest or otherwise best offer after the Successful Bid (the "Back-up Bid") and the entity submitting the Back-up Bid (the "Back-up Bidder"), and advise the Qualified Bidders of such determination. Upon five business days prior notice by the Debtor, the Back-up Bidder selected by the Debtor must immediately proceed with the closing of the transaction contemplated by the Back-up Bid in the event that the transaction with the Successful Bidder is not consummated for any reason. If the Buyer's final bid is deemed to be highest and best at the conclusion of the Auction, the Buyer will be the Successful Bidder, and such bid, the Successful Bid.

h. Acceptance of Successful Bid. The Debtor shall sell the Purchased Assets to the Successful Bidder upon the approval of the Successful Bid by the Bankruptcy Court after the Sale Hearing. The Debtor's presentation of a particular Qualified Bid to the Bankruptcy Court for approval does not constitute the Debtor's acceptance of such Qualified Bid. The Debtor will be deemed to have accepted a Qualified Bid only when the Qualified Bid has been approved by the Bankruptcy Court at the Sale Hearing. The right of each interested party to object to the Debtor's selection of the Successful Bidder is reserved, including the right of a counterparty to any contract or lease designated by the Successful Bidder for assignment (each a "Designated Executory Contract") to object to the assignment of such Designated Executory Contract to which it is a counterparty, and the Debtor reserves the right to contest any such objection, including on the ground that the objector lacks standing, provided, however, that any objection to such assignment on the basis of amounts necessary, pursuant to

Section 365 of the Bankruptcy Code, to cure all defaults under the objector's Designated Executory Contract proposed to be assumed by the Debtor and assigned to the Successful Bidder must be made and/or reserved in accordance with the procedures set forth in the order approving this Motion and the Bid Procedures.

Notice of Sale Hearing

24. The Debtor requests that the Court approve the manner of notice of the Sale Motion, the Bid Procedures, the Auction, and the Sale Hearing, substantially in the form attached hereto as Exhibit C (the "Sale and Bid Procedures Notice"), which the Debtor will serve on the following parties: (a) the U.S. Trustee; (b) counsel to the official committee of unsecured creditors (the "Committee") or prior to the appointment of any Committee, the Debtor's thirty largest unsecured creditors as set forth in the list of largest unsecured creditors submitted with the Debtor's voluntary petition pursuant to Bankruptcy Rule 1007(d); (c) all parties known to be asserting a lien on any of the Debtor's assets; (d) all nondebtor counterparties to the Designated Executory Contracts (e) all entities known to have expressed an interest in acquiring any of the Assets; (f) the United States Attorney's office; (e) all entities known to have expressed an interest in acquiring any of the Purchased Assets; (f) the United States Attorney's office; (g) all state attorney generals in states in which the Debtor does business; (h) various federal and state agencies and authorities asserting jurisdiction over the Purchased Assets, including the Internal Revenue Service; (i) the Buyer and its counsel; and (j) all other parties that have filed a notice of appearance and demand for service of papers in the Debtor's chapter 11 case under Bankruptcy Rule 2002 as of the date of filing the Motion (collectively, the "Sale and Bid Procedures Notice Parties").

25. Additionally, the Debtor proposes to serve the Creditor Notice substantially in the form attached hereto as Exhibit D to all known creditors of the Debtor.

26. The Debtor proposes to serve the Sale and Bid Procedures Notice and the Creditor Notice within three (3) Business Days from the date of entry of an order granting the Bid Procedures Motion (the "Bid Procedures Order"), by first-class mail, postage prepaid, on the appropriate parties. Both the Sale and Bid Procedures Notice and the Creditor Notice will provide that any party that has not received a copy of the Sale Motion or the Bid Procedures Order that wishes to obtain a copy of such documents may make such a request, in writing, to Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, P.O. Box, 8705, Wilmington, Delaware, 19899-8705 (Courier 19801) (Attn: Bruce Grohsgal, Esquire).

Sale Hearing

27. At the Sale Hearing, the Debtor will seek Bankruptcy Court approval of the Sale of the Purchased Assets to the Successful Bidder, free and clear of all liens, claims and encumbrances pursuant to Bankruptcy Code section 363(f), to the extent permissible under Bankruptcy Code sections 363 and 365, other than any permitted exceptions, if any, as set forth in the Agreement, and except as otherwise provided in the Sale Motion, with all such liens, claims and interests to attach to the proceeds of the Sale, with the same validity and in the same order of priority as they attached to the Purchased Assets prior to the Sale, including the assumption by the Debtor and assignment to the Successful Bidder of the Designated Executory Contracts pursuant to Bankruptcy Code section 365. The Debtor will present additional evidence, as necessary, at the Sale Hearing and submits that the Sale is fair, reasonable and in the best interest of its estate.

28. If the Successful Bidder fails to consummate an approved sale by the date that is ten (10) days after the Sale Order has become final and non-appealable (the "Termination Date"), the Debtor shall be authorized, but not required, to deem the Back-up Bid, as disclosed at the Sale Hearing, the Successful Bid, and the Debtor shall be authorized, but not required, to consummate the sale with the Qualified Bidder submitting such Bid without further order of the Bankruptcy Court.

Closing

29. The closing of the Sale (the "Closing") shall take place in accordance with terms of the Agreement, or in accordance with the terms of such other agreement approved by the Bankruptcy Court at the Sale Hearing.

Procedures for the Assumption and Assignment of Designated Executory Contracts

30. At Closing, the Debtor intends to assume and assign to the Successful Bidder, certain executory contracts and unexpired leases, to be identified on certain schedules to the Agreement (i.e., the "Designated Executory Contracts").[3] The list of the Designated Executory Contracts proposed to be assumed by the Debtor and assigned to the Buyer is attached as schedules to the Agreement.

31. The Debtor will attach to the Cure Notice its calculation of the undisputed cure amounts that the Debtor believes must be paid to cure all prepetition defaults under all Designated Executory Contracts (the "Cure Amounts"). If no amount is listed on the Cure

[3] The inclusion of any agreement in the list of Designated Executory Contracts or Potential Assumed Contracts does not constitute an admission by the Debtor that such agreement actually constitutes an executory contract or unexpired lease under section 365 of the Bankruptcy Code, and the Debtor expressly reserves the right to challenge the status of any agreement up until the time of the Sale Hearing.

Notice, or the amount owed is shown as "0", the Debtor believes that there is no Cure Amount owing. Unless the Counterparty to a Designated Executory Contract files and serves an objection (the "Cure Amount Objection") to such Cure Amount no later than fifteen (15) days after the Debtor's service of the Cure Notice and serves the objection upon (a) counsel to the Debtor, (i) Jeffrey Pomerantz, Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Boulevard, Eleventh Floor, Los Angeles, California 90067, and (ii) Bruce Grohsgal, Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, P.O. Box 8705, Wilmington, Delaware 19899-8705 (Courier 19801), (b) counsel to the Buyer, Latham & Watkins LLP, 355 South Grand Avenue, Los Angeles, California 90071, Attn: Robert Klyman, (c) counsel for any official committee of unsecured creditors appointed in this case, and (d) the United States Trustee (together with the foregoing parties set forth in (a)-(c), the "Notice Parties"), with a courtesy copy for the Court, such Counterparty shall (i) be forever barred from objecting to the Cure Amounts and from asserting any additional cure or other amounts with respect to such Designated Executory Contract and the Debtor shall be entitled to rely solely upon the Cure Amount and (ii) shall be forever barred and estopped from asserting any additional cure or other amounts against the Debtor, its estate, and/or the Buyer with respect to the Designated Executory Contract to which it is a Counterparty. Notwithstanding anything to the contrary, no executory contract or unexpired lease will be assumed until the occurrence of the Closing Date and in accordance with the terms of the Agreement, including, without limitation, that the Buyer may remove any executory contract or lease from the list of Designated Executory Contracts prior to April 29, 2009 pursuant to Section 1.1.1 of the Agreement.

32. In the event that a Cure Amount Objection is timely filed, the Cure Amount Objection must set forth (i) the basis for the objection, (ii) with specificity, the amount the party asserts as the Cure Amount and (iii) appropriate documentation in support of the Cure Amount.

33. If any Counterparty objects for any reason to the assumption and assignment of a Designated Executory Contract or Potential Assumed Contract (other than with respect to the Cure Amount, as set forth above), the Counterparty will be required to file and serve any such objection with the Court before April 27, 2009. Further, any other objections to the relief requested at the Sale Hearing or to the proposed form of order (the "Sale Order") must be filed and served on or before April 27, 2009. Except to the extent otherwise provided in the Agreement or the agreement entered into with the Successful Bidder(s), subject to the payment of any Cure Amounts pursuant to the Agreement, the assignee of a Designated Executory Contract will not be subject to any liability to the assigned contract Counterparty that accrued or arose before the closing date of the sale of the Purchased Assets and the Debtor shall be relieved of all liability accruing or arising thereafter pursuant to Bankruptcy Code section 365(k).

Approval of the Bid Procedures is Appropriate

34. The Bid Procedures described herein, including those with respect to the assignment and assumption of the Designated Executory Contracts, are reasonably calculated to encourage a buyer to submit a final bid within the range of reasonably anticipated values. The Buyer will be the stalking horse for competitive bids, potentially leading to further competition and establishing a baseline against which higher and otherwise better offers can be measured.

35. As indicated above, the Debtor hereby requests that the Court approve the overbid requirements and Bid Procedures as are customary in similar circumstances, including (a) the minimum overbid amount of at least the sum of the Purchase Price (including without limitation the assumption of Assumed Liabilities, and the payment of the Cure Amounts) plus the Break-Up Fee and Transaction Expense plus $100,000; (b) bidding increments of $100,000 for all or substantially all of the Purchased Assets after the minimum overbid amount; and (c) the other Bid Procedures summarized in this Motion annexed hereto as Exhibit B. The Debtor submits that cause exists to approve such procedures because they are fair and reasonable under the circumstances and will encourage competitive bidding and the highest and best price for the Purchased Assets.

36. The Debtor believes that the establishment of the Bid Procedures and the procedures with respect to the assignment and assumption of the Designated Executory Contracts are reasonable and necessary to induce a purchaser to enter into the transactions encompassed by the Agreement and thus to enable the Debtor to obtain the highest and best price possible for the Purchased Assets.

37. Historically, bankruptcy courts have approved bidding procedures similar to the Bid Procedures under the "business judgment rule," which proscribes judicial second-guessing of the actions of a corporation's board of directors taken in good faith and in the exercise of honest judgment. *See, e.g., In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989). The courts are "directed to rely heavily on the business judgment of a debtor's management in determining whether to grant relief respecting the use, sale or lease of estate

property," including approval of bidding procedures. *In re The Bombay Company, Inc.*, 2007 WL 2826071 at 4 (Bankr.N.D.Tex. 2007).

38. The Bid Procedures are fair procedures reasonably intended to encourage competitive bidding, which is a clear benefit to the Debtor and its estate.

39. For the reasons set forth above, the Debtor respectfully requests approval of: (a) the Bid Procedures for the conduct of overbidding, the Auction and selection of the Successful Bidder(s); (b) the procedures set forth herein for notice to counterparties under executory contracts and leases proposed to be assumed and assigned in connection with the proposed sale, and the determination and payment of Cure Costs to those counterparties; (c) the scheduling of the Sale Hearing and other matters for which scheduling is requested herein; and (e) the related relief sought hereby.

Approval of the Break-Up Fee and Transaction Expenses is Appropriate

40. The Debtor requests that the Court approve the Buyer protections as are customary in similar circumstances, including the payment of the Break-Up Fee and Transaction Expenses, as well as the minimum overbid amount and bidding increment requirements discussed above. The Debtor submits that cause exists to approve such payments and procedures because they are fair and reasonable under the circumstances and will encourage competitive bidding and the highest and best price for the Purchased Assets.

41. Specifically, the Debtor believes that the payment of the Break-Up Fee and Transaction Expenses under the terms of the Agreement are reasonable and necessary to induce a purchaser to enter into the transactions encompassed by the Agreement and thus to enable the Debtor to obtain the highest and best price possible for the Purchased Assets.

42. Further, to compensate the Buyer for serving as the stalking horse bidder whose bid will be subject to higher or better offers, the Debtor seeks approval of the Break-Up Fee and Transaction Expenses. The Debtor and Buyer believe that the Break-Up Fee and Transaction Expenses are reasonable, given the benefits to the Debtor's estate of having a "stalking horse" bidder by virtue of the definitive asset purchase agreement with the Buyer and the risk to the Buyer that a third-party offer may ultimately be accepted, and that approval of the Break-Up Fee and Transaction Expenses under the terms of the Agreement is necessary to preserve and enhance the value of the estate.

43. Bidding incentives encourage a potential purchaser to invest the requisite time, money and effort to negotiate and perform the necessary due diligence attendant to the acquisition of the Debtor's assets, despite the inherent risks and uncertainties of the chapter 11 process. Historically, bankruptcy courts have approved bidding incentives similar to the Break-Up Fee and Transaction Fees under the "business judgment rule," which proscribes judicial second-guessing of the actions of a corporation's board of directors taken in good faith and in the exercise of honest judgment. *See, e.g., In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (bidding incentives may "be legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking") (internal quotation marks and citation omitted).

44. The Third Circuit has established standards for determining the appropriateness of bidding incentives in the bankruptcy context. In *Calpine Corp. v. O'Brien Envtl. Energy, Inc.*, 181 F.3d 527 (3d Cir. 1999), the court held that even though bidding incentives are measured against a business judgment standard in nonbankruptcy transactions, the

administrative expense provisions of Bankruptcy Code § 503(b) govern in the bankruptcy context. Accordingly, to be approved, bidding incentives must provide some benefit to the Debtor's estate. *See id.* at 533.

45. The *O'Brien* court identified at least two instances in which bidding incentives may provide benefit to the estate. First, benefit may be found if "assurance of a break-up fee promoted more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited." *Id.* at 537. Second, where the availability of bidding incentives induces a bidder to research the value of the Debtor and submit a bid that serves as a minimum or floor bid on which other bidders can rely, "the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth." *Id.*

46. Whether evaluated under the "business judgment rule" or the Third Circuit's "administrative expense" standard, the Break-Up Fee and Transaction Expenses pass muster. The Agreement and the Debtor's agreement to pay the Break-Up Fee and Transaction Expenses pursuant to the terms thereunder are the product of good faith, arm's-length negotiations between the Debtor and Buyer. The Break-Up Fee and Transaction Expenses are fair and reasonable in amount, and are reasonably intended to compensate for the risk to the Buyer of being used as a stalking horse bidder.

47. Further, the Break-Up Fee and Transaction Expense provisions have already encouraged competitive bidding in that the Buyer would not have entered into the Agreement without these provisions. The Break-Up Fee and Transaction Expense requirements thus have "induc[ed] a bid that otherwise would not have been made and without which bidding

would [be] limited." *O'Brien*, 181 F.3d at 537. Similarly, the Buyer's offer provides a minimum bid on which other bidders can rely, thereby "increasing the likelihood that the price at which the [Purchased Assets will be] sold will reflect [their] true worth." *Id.*

48. Finally, the Break-Up Fee and Transaction Expenses are fair and reasonable provisions reasonably intended to encourage competitive bidding, and the Break-Up Fee and Transaction Expense provisions will permit the Debtor to insist that competing bids for the Purchased Assets made in accordance with the Bidding Procedures be materially higher or otherwise better than the Agreement (or competing agreement), which is a clear benefit to the Debtor's estate.

49. The Break-Up Fee, which would total 3% of the Purchase Price under the Agreement,[4] is within the spectrum of termination fees approved by bankruptcy courts in chapter 11 cases. *See e.g., In re Global Motorsport Group, Inc., et al.*, (Case No. 08-10192 (KJC) (Bankr. D. Del. February 14, 2008) (court approved a break up fee of approximately 4%, or $ 500,000, in connection with sale); *In re Global Home Products,* Case No. 06-10340 (KG) (Bankr. D. Del. July 14, 2006) (court approved a break-up fee of 3.3%, or $700,000, in connection with sale); *In re Ameriserve*, Case No. 00-0358 (PJW) (Bankr. D. Del., September 27, 2000) (court approved a break-up fee of 3.64%, or $4,000,000, in connection with $110,000,000 sale); *In re Montgomery Ward Holding Corp., et al.*, Case No. 97-1409 (PJW) (Bankr. D. Del., June 15, 1998) (court approved termination fee of 2.7%, or $3,000,000, in connection with $110,000,000 sale of real estate assets); *In re Medlab, Inc.*, Case No, 97-1893

[4] The Break-Up Fee plus the maximum amount of the Transaction Expense would total approximately 4.5% of the Purchase Price.

(PJW) (Bankr. D. Del. April 28, 1998) (court approved termination fee of 3.12%, or $250,000, in connection with $8,000,000 sale transaction); *In re Anchor Container Corp. et, al.*, Case Nos. 96-1434 and 96-1516 (PJW) (Bankr. D. Del. Dec. 20, 1996) (court approved termination fee of 2.43%, or $8,000,000, in connection with $327,900,000 sale of substantially all of debtors' assets); *In re FoxMeyer Corp. et al.*, Case No. 96-1329 (HSB) through 96-1334 (HSB) (Bankr. D. Del., Oct. 9, 1996) (court approved termination fee of 7.47%, or $6,500,000, in connection with $87,000,000 sale of substantially all of debtors' assets); *In re Edison Bros. Stores. Inc. et al.*, Case No. 95-1354 (PJW) (Bankr. D. Del., Dec. 29, 1995) (court approved termination fee of 3.5%, or $600,000, in connection with $17,000,000 sale of debtors' entertainment division).

50. For the reasons set forth above, the Debtor believes that the proposed provisions relating to the payment of the Break-Up Fee and Transaction Expenses are necessary to maximize the value of the Debtor's estate, and approval thereof is in the best interests of the Debtor, its estate, creditors and all parties in interest.

No Prior Request

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

Notice

52. Notice of this Motion either has been or will be given to the following parties or, in lieu thereof, to their counsel, if known: (i) the Office of the United States Trustee and (ii) the Debtor's prepetition secured lenders. Following the first day hearing in this case, this Motion will be served on (a) creditors holding the thirty largest unsecured claims against the Debtor as identified in the Debtor's petition, or their legal counsel (if known); and (b) those

persons who have requested notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtor respectfully requests that the Court enter an order, substantially in the form filed contemporaneously with this Motion, granting the relief requested herein and such other and further relief as this Court deems appropriate.

Dated: March 3, 2009

PACHULSKI STANG ZIEHL & JONES LLP

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[Proposed] Counsel for the Debtor and
Debtor in Possession

EXHIBIT A

- Agreement -

ASSET PURCHASE AGREEMENT

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the "**Agreement**") is made and entered into as of March 3, 2009 (the "**Effective Date**") by and between Robbins Bros. Jewelry, Inc., a Delaware corporation ("**Buyer**"), and Robbins Bros. Corporation, a Delaware corporation, as Chapter 11 debtor in possession ("**Seller**" and, collectively with Buyer, the "**Parties**").

RECITALS

The Parties hereby acknowledge that:

A. Seller is engaged in the retail sale of engagement and bridal jewelry (the "**Business**").

B. On the Effective Date, Seller has filed a voluntary petition (the "**Petition**") for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. Sections 101 et seq. (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**"), commencing a federal bankruptcy case in respect of Seller (such case, the "**Chapter 11 Case**").

C. On the terms and conditions of this Agreement, and pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, Seller wishes to sell to Buyer, and Buyer wishes to purchase from Seller, substantially all assets of the Seller (the "**Acquisition**").

AGREEMENT

In consideration of their respective covenants set forth herein, the Parties agree as follows:

1. Transfer of Assets.

1.1 Purchase and Sale of Assets. On the Closing Date and on the terms and conditions hereinafter set forth, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase, acquire, accept and receive from Seller, free and clear of all Encumbrances, the Seller's right, title and interest as of the Closing Date in and to substantially all assets and properties of the Seller (such assets and properties, the **"Property"**), including but not limited to:

1.1.1 Leases and Contracts. Seller's right, title and interest (i) as lessee in and to those real property leases described on **Schedule 1.1.1-(i)** (collectively, the "**Real Property Leases**"), (ii) as lessee in and to those equipment, personal property and intangible property leases, rental agreements, licenses, permits, contracts, agreements and similar arrangements, if any, described on **Schedule 1.1.1-(ii)** (collectively, the "**Other Leases**"), and (iii) in and to those other contracts, leases, orders, purchase orders, licenses, permits, contracts, agreements and similar arrangements described on **Schedule 1.1.1-(iii)** (collectively, the "**Other Contracts**" and together with the Real Property Leases and Other Leases, the "**Leases and Contracts**"); provided, however, that Buyer shall have the right in its sole and absolute discretion to notify the

Seller in writing no later than Specified Conditions End Date of any Leases and Contracts that Buyer does not wish to assume, in which case such Leases and Contracts shall be deemed part of the Excluded Assets; provided, further, however, that no more than three (3) Real Property Leases related to the retail stores included on **Schedule 1.1.1-(iii)** may be so rejected after the date hereof.

1.1.2 Personal Property. All of those items of equipment and tangible personal property owned by Seller, including, without limitation, all such furniture, vehicles, machinery, equipment, tools, spare parts, computers, hardware, fixtures and furnishings and other items of tangible personal property listed or described in **Schedule 1.1.2** (collectively, the "**Personal Property**"). For the avoidance of doubt, the "Personal Property" shall include all of the following personal property, to the extent located at or used exclusively in connection with the operation of Seller's retail locations identified on **Schedule 1.1.2** (such property, the "**Chicago and Houston Assets**"): (i) any in-store, interior signage; (ii) any supplies, materials, work in process, inventory, or stock in trade; (iii) any servers, desktops, laptops, computers, software, software licenses, modems, cables, mouses, printers, hard drives, surge protectors, personal digital devices, or other IT equipment; and (iv) any equipment or other tangible property held by any Seller pursuant to a lease, rental agreement, contract, license or similar arrangement, to the extent Buyer elects to have Seller assume and assign such contract to Buyer. As used herein, the Personal Property does not include the Consigned Inventory. The Personal Property shall also expressly exclude any equipment or other tangible property held by Seller pursuant to a lease, rental agreement, contract, license or similar arrangement (a "**Contract**") where Buyer does not assume the underlying Contract relating to such personal property at the Closing.

1.1.3 Intangible Property. All Intellectual Property and Other Intangible Personal Property owned or held by Seller, including, without limitation, (a) all Intellectual Property that is collateral under the Paradox IP Security Agreement; and (b) all Copyrights and other rights to Intellectual Property granted (or otherwise available) to the Seller as of the date hereof under the Commercial Spokesperson Agreement (collectively, the "**Intangible Property**"). As used in this Agreement, Intangible Property shall in all events exclude: (i) any materials containing information about employees (other than Transferred Employees), disclosure of which would violate such employee's reasonable expectation of privacy, and (ii) any software or other item of intangible property held by Seller pursuant to a license or other Contract where Buyer does not assume the underlying Contract relating to such intangible personal property at the Closing.

(a) As used in this Agreement, "**Copyrights**" means all copyrightable works, and all United States and foreign registered copyrights and applications, registrations and renewals therefor owned by the Seller, and any past, present or future claims or causes of actions arising out of or related to any infringement or misappropriation of any of the foregoing. The Copyrights include those listed on **Schedule 1.1.3-(a)**.

(b) As used in this Agreement, "**Domain Names**" means the internet domain names owned by Seller, including those that are listed or described on **Schedule 1.1.3-(b)**, and all registrations, applications and renewals related to the foregoing.

(c) As used in this Agreement, "**Intellectual Property**" means intellectual property or other proprietary rights of every kind throughout the world, both domestic and foreign, which, in each case, are related to the Business, including all inventions and improvements thereon, Patents, Trademarks, Domain Names, Trademark Rights, Copyrights, Technology and trade secrets.

(d) As used in this Agreement, "**Other Intangible Personal Property**" means all intangible personal property (other than the Intellectual Property) owned or held by Seller, including, without limitation, (A) all cash and cash equivalents (including checking account balances, certificates of deposit and other time deposits and petty cash) and marketable securities of Seller after giving effect to the transactions contemplated hereby, but excluding the Retained Cash (collectively, **"Net Cash"**); (B) the books and records pertaining to the Business; (C) proprietary information relating to the Business, including but not limited to catalogues, customer lists and other customer data bases, correspondence with present or prospective customers and suppliers, advertising materials, software programs, and telephone exchange numbers identified with the Business; (D) all goodwill of the Business; (E) all rights and claims in or to any refunds, rebates or credits of or with respect to any taxes, assessments or similar charges paid by or on behalf of Seller; and (F) all customer, merchandise or other insurance policies and all proceeds, claims and causes of action with respect thereto or arising in connection therewith.

(e) As used in this Agreement, "**Patents**" means the United States patents and patent applications owned by the Seller, including, any continuations, divisionals, continuations in part, or reissues of patent applications and patents issuing thereon and any past, present or future claims or causes of action arising out of or related to any infringement or misappropriation of any of the foregoing. The Patents include those listed on **Schedule 1.1.3-(e)**.

(f) As used in this Agreement, "**Technology**" means, collectively, all designs, formulae, algorithms, procedures, methods, techniques, know how, research and development, technical data, programs, subroutines, tools, materials, specifications, processes, inventions (whether patentable or unpatentable and whether or not reduced to practice), apparatus, creations, improvements, works of authorship and other similar materials, and all recordings, graphs, drawings, reports, analyses, and other writings, and other tangible embodiments of the foregoing, in any form whether or not specifically listed herein, and all related technology.

(g) As used in this Agreement, "**Trademarks**" means the trademarks or service marks "Robbins Bros.," and "World's Biggest Engagement Ring Store®" and all other trademark registrations and applications for trademark registration owned by the Seller, together with the goodwill associated with any of the foregoing, and all applications, registrations and renewals thereof, and any past, present or future claims or causes of action arising out of or related to any infringement or misappropriation of any of the foregoing. The Trademarks include those listed on **Schedule 1.1.3-(g)**.

(h) As used in this Agreement, "**Trademark Rights**" means all common law rights in the United States in "Robbins Bros." and all other trade names, corporate names, logos, slogans, designs, trade dress, and unregistered trademarks and service marks,

together with all translations, adaptations, derivations and combinations thereof, and the goodwill associated with any of the foregoing. The Trademark Rights include those listed on **Schedule 1.1.3-(h)**.

1.1.4 Governmental Permits. To the extent transferable and assignable, all of Seller's interest in all licenses, certificates of occupancy, permits, registrations, certificates of public convenience and necessity, approvals, licenses, easements, authorizations and operating rights issued or granted by any Governmental Body having jurisdiction over the Business, including, without limitation, those described on **Schedule 1.1.4** (collectively, the "**Permits and Licenses**").

1.1.5 Deposits, Etc. All cash deposits and prepaid items related to the Business (collectively, the "**Deposits**").

1.1.6 Accounts Receivable. All accounts and notes receivable (whether current or non-current) and all causes of action specifically pertaining to the collection of the foregoing (collectively, the "**Accounts Receivable**").

1.1.7 Inventory. All supplies, goods, materials, work in process, inventory and stock in trade owned and held by Seller, but excluding Consigned Inventory (collectively, the "**Transferred Inventory**").

1.1.8 Vendor Items. All promotional allowances and vendor rebates and similar items related to the Business (collectively, the "**Vendor-Related Assets**").

1.1.9 Claims, Etc. All claims of Seller that are not Excluded Assets, including but not limited to prepayments, warranties, guarantees, refunds, reimbursements, causes of action, rights of recovery, rights of set-off and rights of recoupment of every kind and nature (collectively, the "**Claims**" and, together with the Permits and Licenses, Deposits, Accounts Receivable, Inventory and the Vendor-Related Assets, the "**Assignment Property**")

1.2 Excluded Assets. The Property shall exclude all of the following (collectively, the "**Excluded Assets**"): (i) those items excluded pursuant to the provisions of Section 1.1 above; (ii) any assets or properties of Seller (other than the Chicago and Houston Assets); (iii) Seller's rights under this Agreement; (iv) insurance proceeds, claims and causes of action with respect to or arising in connection with (A) any Contract which is not assigned to Buyer at the Closing, or (B) any item of tangible or intangible property not acquired by Buyer at the Closing; (v) any Real Property Lease, Other Lease, or Other Contract to which Seller is a party which is not listed or required to be listed on **Schedule 1.1.1-(i)**, **Schedule 1.1.1-(ii)**, or **Schedule 1.1.1-(iii)**, including, without limitation, the Excluded Employment Agreement, and any Real Property Lease, Other Lease, or Other Contract which is not assumable and assignable as a matter of applicable law (including, without limitation, any with respect to which any consent requirement in favor of the counter-party thereto may not be overridden pursuant to Section 365 of the Bankruptcy Code) identified on **Schedule 1.2 –(v)** (collectively, "**Excluded Contracts**"), (vi) all securities, whether capital stock or debt, issued by Seller; (vii) tax records relating to any pre-Closing period, minute books, stock transfer books and corporate seal of Seller; (viii) all bank accounts, safety deposit boxes, lock boxes and the like relating to the operation of the Business

(but not the funds or other property contained therein), (ix) all preference or avoidance claims and actions of the Seller, including, without limitation, any such claims and actions arising under Sections 544, 547, 548, 549, and 550 of the Bankruptcy Code (the "**Avoidance Actions**"); provided, however, that no such Avoidance Actions shall be permitted to be brought by Seller against (a) the Buyer or its Affiliates in any capacity, (b) any current officer or director of the Debtor in such capacity and (c) any trade creditors of the Debtor that (1) are not insiders within the meaning of Bankruptcy Code section 101(31) or (2) supply the Debtor in the ordinary course of its business with goods and services; (x) all assets of any Section 401(k) or other employee pension or benefit plan; (xi) the Retained Cash; and (xii) those additional assets, if any, listed on **Schedule 1.2-(xi)**; provided, however, that Buyer shall have the right in its sole and absolute discretion to notify the Seller not later than the Business Day immediately preceding the Closing of any Property listed as an Assumed Asset that Buyer does not wish to acquire, in which case such Property shall be deemed part of the Excluded Assets.

1.3 Instruments of Transfer. The sale, assignment, transfer, conveyance and delivery of the Property to Buyer shall be made by deeds, assignments, bill of sale, and other instruments of assignment, transfer and conveyance provided for in Section 3 below and such other instruments as may reasonably be requested by Buyer to transfer, convey, assign and deliver the Property to Buyer, but in all events only to the extent that the same do not impose any monetary obligations upon Seller not reimbursed by Buyer, or in any other respect increase in any material way the burdens imposed by the other provisions of this Agreement upon Seller.

1.4 Inventory Statements. Seller shall deliver to Buyer (a) not later than two Business Days prior to the Specified Conditions End Date, a statement of the Transferred Inventory as of such date (the "**Interim Inventory Amount**") and (b) not later than three Business Days prior to the Closing Date (or such shorter period as shall be consented to by Buyer in writing), a statement of the Transferred Inventory to be delivered to Buyer at the Closing (the "**Closing Inventory Amount**"), in each case, together with reasonable documentation supporting the calculations therein. Each such statement (an "**Inventory Statement**") shall present fairly the amount of Transferred Inventory as of its respective date (valued consistent with Seller's historical practices) that is non-obsolete and saleable or usable in the ordinary course of business. After it has been delivered, each Inventory Statement shall thereafter be adjusted for transactions from the date of its initial preparation until the amount of Transferred Inventory set forth thereon has become final as provided below. If requested by Buyer, prior to the Closing Date, Buyer and its representatives shall have the right, during normal business hours and upon reasonable notice to Seller, to conduct a physical count of some or all of the Transferred Inventory. Buyer shall promptly notify Seller of any objections it has to an Inventory Statement. If Buyer raises such an objection, Buyer and Seller shall, together with their respective representatives, promptly consult with each other in good faith and exercise reasonable efforts to attempt to resolve such objections prior to the Specified Conditions End Date (in the case of the Interim Inventory Amount) and Closing (in the case of the Closing Inventory Amount). The Inventory Statements shall become final and binding upon the parties on the date that Buyer and Seller mutually agree upon the Interim Inventory Amount or Closing Inventory Amount, as the case may be.

1.5 Closing Date Balance Sheet. Seller shall deliver to Buyer (a) not later than two Business Days prior to the Specified Conditions End Date, a balance sheet of the Seller as of such date, which shall include, in reasonable detail, Seller's calculation of the estimated Net

Debt Amount as of the Specified Conditions End Date (the "**Interim Net Debt Amount**"), Retained Cash of the Seller as of the Specified Conditions End Date (the "**Interim Retained Cash Amount**") and Accounts Receivable of the Seller as of the Specified Conditions End Date (the "**Interim Accounts Receivable Amount**") and (b) not later than three Business Days prior to the Closing Date (or such shorter period as shall be consented to by Buyer in writing), a balance sheet of the Seller, which shall include, in reasonable detail, Seller's calculation of the estimated Net Debt Amount as of the Closing Date (the "**Closing Net Debt Amount**"), Retained Cash of the Seller as of the Closing Date (the "**Closing Retained Cash Amount**") and Accounts Receivable of the Seller as of the Closing Date (the "**Closing Accounts Receivable Amount**"), in each case, together with reasonable documentation supporting the calculations therein. Each such balance sheet (a "**Balance Sheet**") shall be prepared in accordance with Seller's historical practices for interim balance sheets. After it has been delivered, each Balance Sheet shall thereafter be adjusted for transactions from the date of its initial preparation through the date that it become final as provided below. Buyer shall promptly notify Seller of any objections it has to a Balance Sheet. If Buyer raises such an objection, Buyer and Seller shall, together with their respective representatives, promptly consult with each other in good faith and exercise reasonable efforts to attempt to resolve such objections prior to the Specified Conditions End Date (in the case of the Interim Net Debt Amount, Interim Retained Cash Amount and Interim Accounts Receivable Amount) and Closing (in the case of the Closing Net Debt Amount, Closing Retained Cash Amount and Closing Accounts Receivable Amount). The Balance Sheets shall become final and binding upon the parties on the date that Buyer and Seller mutually agree upon the Interim Net Debt Amount, Interim Retain Cash Amount and Interim Accounts Receivable Amount or Closing Net Debt Amount, Closing Retained Cash Amount and Closing Accounts Receivable Amount, as the case may be.

2. Consideration.

2.1 Purchase Price. The consideration to be paid by Buyer to Seller for the Property (the "**Purchase Price**") shall be the dollar amount equal to the sum of (a) (i) all outstanding obligations under the Wells Fargo Facility as of the Closing Date minus (ii) all Net Cash as of the Closing Date and (b) $100,000 (which shall be allocable to the Intellectual Property that is collateral under the Paradox Security Agreement) (the sum of clauses (a) and (b), the "**Cash Purchase Price**"), and (c) the assumption by Buyer of the Assumed Liabilities. The Parties acknowledge and agree that the amount of the Cash Purchase Price assumes that (x) all outstanding obligations under the Wells Fargo Facility as of the Closing Date will be $14,600,000 and (y) Net Cash as of the Closing Date is $4,915,000 (in each case, prior to giving effect to the application of net proceeds from the transactions contemplated under the Spence Asset Purchase Agreement, the Net Cash and the Retained Cash as described in Section 13).

2.2 Escrow Deposit. Concurrently with the mutual execution and delivery of this Agreement (the date of such mutual execution and delivery is sometimes referred to herein as the "**Execution Date**"), Buyer shall deposit into the client trust account (segregated from the operating account) of Pachulski Stang Ziehl & Jones LLP (the "**Escrow Holder**") an amount equal to $250,000 (the "**Escrow Deposit**") in immediately available, good funds (funds delivered in this manner are referred to herein as "**Good Funds**"); provided, however, that prior to such deposit Buyer shall have received a letter from Escrow Holder in form and substance reasonably satisfactory to Buyer stating that the Escrow Deposit shall be held in accordance with this

Agreement and applicable professional rules of conduct. The Escrow Deposit shall become nonrefundable upon the termination of the transaction contemplated by this Agreement by the Seller pursuant to Section 14.3.1, it being agreed that Seller shall not have the right to so terminate this Agreement unless Buyer has failed to cure the applicable default within five (5) days following its receipt of written notice thereof from Seller. At Closing, the Escrow Deposit (and any interest accrued thereon) shall be credited and applied toward the Cash Purchase Price. In the event the Escrow Deposit becomes nonrefundable pursuant to this Section 2.2, Escrow Holder shall immediately disburse the Escrow Deposit and all interest accrued thereon to Seller to be retained by Seller for its own account. If the transactions contemplated herein terminate by reason of (A) Seller's material default under this Agreement, it being agreed that Buyer shall not have the right to so terminate this Agreement unless Seller has failed to cure the applicable default within five (5) days following their receipt of written notice thereof from Buyer, or (B) the failure of a condition to Buyer's obligations hereunder, the Escrow Holder shall return to Buyer the Escrow Deposit (together with all interest accrued thereon).

2.3 Assumed Liabilities. Effective as of the Closing Date, Buyer shall assume only the following Liabilities of Seller: (i) all of Seller's obligations as of the Closing to customers arising under, out of, or in connection with and incurred in the ordinary course of business, for gift certificates, merchandise or service guaranties or insurance policies, warranties, customer deposits, layaways, refunds, rebates, returns, discounts, special orders and the like and existing as of the Closing Date, (ii) to Transferred Employees for Accrued PTO, to the extent assumed by Buyer in accordance with Section 12 hereof, (iii) all rent, current taxes, prepaid advertising, utilities and other items of expense (including, without limitation, any prepaid insurance, maintenance, tax or common area or like payments under the Real Property Leases or Other Leases and Contracts, or any of them) related to the Property first arising after Closing, and (iv) any such additional liabilities and obligations, if any, as may be set forth or described on **Schedule 2.3-(iv)** (collectively, the "**Assumed Liabilities**").

2.4 Excluded Liabilities. Notwithstanding anything to the contrary contained in this Agreement, Buyer shall not be obligated to assume or to perform or discharge any Liability of Seller or its Affiliates (such other Liabilities being referred to as "**Excluded Liabilities**") other than the Assumed Liabilities. Without limiting the foregoing, Buyer shall not be obligated to assume or to perform or discharge, and does not assume or perform or discharge, any Liability of Seller or its Affiliates at any time arising from or otherwise attributable to: (i) any Liability of Seller that arises on or before the Closing Date and is not specifically assumed by Buyer; (ii) any Liability of Seller relating to real property leases not specifically assumed by Buyer; (iii) any Liability relating to the Excluded Assets; (iv) any Liability of Seller relating to Seller's execution, delivery or performance of this Agreement or any document contemplated by this Agreement; (v) any and all environmental liabilities of any sort whatsoever (whether now existing or hereafter arising) under, federal, state and local law relating to or arising out of or in connection with the Business (including, without limitation, administrative or civil fines or penalties for violations of environmental laws, or remediation or response costs for contamination); (vi) any brokerage fees of Seller; (vii) any Liability of Seller with respect to the WARN Act, or any similar federal, state or other law, rule or regulation; (viii) any Liability to employees not assumed by Buyer pursuant to Section 12; (ix) all cure obligations required to be paid pursuant to the Approval Order as a condition to Seller's assumption of the Leases and Contracts solely to the extent specified on **Schedule 4.2.17** (the "**Cure Costs**"); (x) any

compensation and reimbursement of expenses to Seller's legal counsel and other advisors (the "**Professional Fees**"); and (xi) any accrued but unpaid sales tax as of the Closing Date arising from the sales of Inventory in the ordinary course of business (the "**Accrued Sales Taxes**").

2.5 Purchase Price Allocation. Buyer shall use its commercially reasonable efforts to deliver to Seller, within ninety (90) days following the Closing Date, a schedule (the "**Allocation Schedule**") allocating the Purchase Price among the various assets comprising the Property in accordance with Treasury Regulation 1.1060-1 (or any comparable provisions of state or local Tax law) or any successor provision. Buyer will prepare the Allocation Schedule in good faith. Buyer and Seller shall report and file all Tax Returns (including any amended Tax Returns and claims for refund) consistent with the Allocation Schedule and shall take no position contrary thereto or inconsistent therewith (including in any audits or examinations by any taxing authority or any other proceedings). Buyer and Seller shall file or cause to be filed any and all forms (including U.S. Internal Revenue Service Form 8594), statements and schedules with respect to such allocation, including any required amendments to such forms. Not later than thirty (30) days prior to the filing of their respective Forms 8594 (and analogous state law forms) relating to the transaction contemplated by this Agreement, each Party shall deliver to the other Party a copy of its Form 8594 (and such analogous state law forms).

3. Closing Transactions.

3.1 Closing. The Closing of the transactions provided for herein (the "**Closing**") shall take place at such place or places as the Parties may mutually agree upon.

3.2 Closing Date. The consummation of the transactions contemplated hereby shall take place at the offices of Latham & Watkins LLP, 355 South Grand Avenue, Los Angeles, California 90071 at 10:00 a.m. on or before the third day following the satisfaction or waiver by the appropriate Party of all the conditions contained in Section 4, or on such other date or at such other place and time as may be agreed to by the Parties hereto; provided, however, that the date of the Closing shall be automatically extended if any of the conditions set forth in Section 4 shall not be satisfied or waived, subject, however, to the provisions of Section 14 (the date on which the Closing occurs, hereinafter the "**Closing Date**").

3.3 Seller's Deliveries to Buyer at Closing. On the Closing Date, Seller shall make the following deliveries to Buyer:

3.3.1 An Assignment and Assumption of Leases and Contracts substantially in the form and content attached as **Exhibit "A"** hereto, duly executed by Seller pursuant to which Seller shall assign to Buyer Seller's interest, if any, in the Leases and Contracts (the "**Assignment of Leases**").

3.3.2 A Bill of Sale and Assignment, duly executed by Seller in the form and on the terms of the bill of sale attached as **Exhibit "B"** hereto, pursuant to which Seller transfers and assigns to Buyer Seller's right, title and interest in and to the Personal Property and the Assignment Property (the "**Bill of Sale**").

3.3.3 A counterpart Assignment of Intangible Property, duly executed by Seller, in the form and content of the assignment of intangible property attached as **Exhibit "C"**

hereto, pursuant to which Seller assigns to Buyer Seller's interest, if any, in and to the Intangible Property (the "**Assignment of Intangible Property**").

3.3.4 Certificates of title, duly executed by Seller, required to convey ownership of any motor vehicles or similar equipment owned by Seller.

3.3.5 Any such other documents, funds or other things reasonably requested by Buyer or contemplated by this Agreement to be delivered by Seller to Buyer at the Closing.

3.4 Buyer's Deliveries to Seller at Closing. On the Closing Date, Buyer shall make or cause the following deliveries to Seller:

3.4.1 A counterpart of the Assignment of Leases, duly-executed by Buyer.

3.4.2 An Assumption of Liabilities with respect to the Assumed Liabilities, in the form and content attached as **Exhibit "D"** hereto, duly-executed by Buyer (the "**Assumption of Liabilities**").

3.4.3 Certificates of title, if endorsement thereof is required by Buyer, required to convey ownership of any motor vehicles or similar equipment owned by Seller.

3.4.4 Evidence that Buyer has obtained a California seller's permit, which covers, without limitation, the sale or use of the Chicago and Houston Assets in California and any corresponding permit required under Texas law.

3.4.5 Evidence that Buyer has obtained the appropriate resale/exemption certificates in California and Texas so that the Seller will not be required to collect and remit sales tax on the sale of inventory.

3.4.6 Any such other documents, funds or other things reasonably requested by Seller or contemplated by this Agreement to be delivered by Buyer to Seller at the Closing.

3.5 [Intentionally Omitted].

3.6 Sales, Use and Other Taxes. To the extent not exempt under the Bankruptcy Code, any sales, purchase, transfer, stamp, documentary stamp, use or similar taxes under the laws of the states in which any portion of the Property is located, or any subdivision of any such state, or under any federal law or the laws or regulations of any federal agency or authority, which may be payable by reason of the sale or transfer of the Property under this Agreement or the transactions contemplated herein (the "**Transfer Taxes**"), if any, shall be borne and paid by Buyer. Buyer shall be solely responsible for the preparation and filing of all relevant Tax Returns required to be filed in respect of such Transfer Taxes and shall pay all such Transfer Taxes.

3.7 Possession. Right to possession of the Property shall transfer to Buyer on the Closing Date. Seller shall transfer and deliver to Buyer on the Closing Date such keys, locks and safe combinations and other similar items as Buyer may reasonably require to obtain occupation and control of the Property, and shall also make available to Buyer at their then existing

locations the originals of all documents in Seller's actual possession that are required to be transferred to Buyer by this Agreement.

4. Conditions Precedent to Closing.

4.1 Conditions to Seller's Obligations. Seller's obligation to make the deliveries required of Seller at the Closing Date and otherwise consummate the transaction contemplated herein shall be subject to the satisfaction or waiver by Seller of each of the following conditions:

4.1.1 All of the representations and warranties of Buyer contained herein shall continue to be true and correct at the Closing in all material respects.

4.1.2 Buyer shall have executed and delivered to Seller the Assignment of Leases and the Assumption of Liabilities.

4.1.3 Buyer shall have delivered, or shall be prepared to deliver to Seller at the Closing, all cash and other documents required of Buyer to be delivered at the Closing.

4.1.4 Buyer shall have delivered to Seller appropriate evidence of all necessary entity action by Buyer in connection with the transactions contemplated hereby, including, without limitation: (i) certified copies of resolutions duly adopted by Buyer's board of directors approving the transactions contemplated by this Agreement and authorizing the execution, delivery, and performance by Buyer of this Agreement; and (ii) a certificate as to the incumbency of those officers of Buyer executing this Agreement and any instrument or other document delivered in connection with the transactions contemplated by this Agreement.

4.1.5 No action, suit or other proceedings that is not stayed by the Bankruptcy Court shall be pending before any court, tribunal or governmental authority seeking or threatening to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain substantial damages in respect thereof, or involving a claim that consummation thereof would result in the violation of any law, decree or regulation of any governmental authority having appropriate jurisdiction.

4.1.6 Buyer shall have substantially performed or tendered performance of each and every material covenant on Buyer's part to be performed which, by its terms, is required to be performed at or before the Closing.

4.1.7 The Bankruptcy Court shall have entered the Approval Order and Procedures Order in accordance with Sections 8.1 and 8.2 below and the Approval Order shall not have been stayed as of the Closing Date.

4.1.8 The cure obligations required to be paid pursuant to the Approval Order as a condition to Seller's assumption and assignment of the Leases and Contracts shall not exceed the cure obligations expressly set forth on **Schedule 4.2.17**, unless Buyer in its sole discretion agrees in writing that the Retained Cash is increased to account for any overage

4.2 Conditions to Buyer's Obligations. Buyer's obligation to make the deliveries required of Buyer at the Closing and otherwise consummate the transaction contemplated herein shall be subject to the satisfaction or waiver by Buyer of each of the following conditions:

4.2.1 Seller shall have substantially performed or tendered performance of each and every covenant on Seller's part to be performed which, by its terms, is required to be performed at or before the Closing; provided, however, that Seller shall have performed in all respects its obligations under (i) Section 1.1. to sell, assign, transfer, convey and deliver to Buyer all of the Seller's right, title and interest in and to all Property free and clear of all Encumbrances (including, without limitation, all Intellectual Property that is collateral under the Paradox Security Agreement) and (ii) Section 13 to apply the net proceeds from the transactions contemplated under the Spence Asset Purchase Agreement, the Net Cash and the Retained Cash as described therein.

4.2.2 All of the representations and warranties of Seller contained herein shall continue to be true and correct at the Closing in all material respects.

4.2.3 Seller shall have executed and delivered to Buyer the Assignment of Leases, the Assumption of Liabilities, the Bill of Sale and the Assignment of Intangible Property.

4.2.4 Seller shall have delivered all other documents required of Seller to be delivered at the Closing.

4.2.5 Seller shall have delivered to Buyer appropriate evidence of all necessary corporate action by Seller in connection with the transactions contemplated hereby, including, without limitation: (i) certified copies of resolutions duly adopted by Seller's directors approving the transactions contemplated by this Agreement and authorizing the execution, delivery, and performance by Seller of this Agreement; and (ii) a certificate as to the incumbency of officers of Seller executing this Agreement and any instrument or other document delivered in connection with the transactions contemplated by this Agreement.

4.2.6 No action, suit or other proceedings that is not stayed by the Bankruptcy Court shall be pending before any court, tribunal or governmental authority seeking or threatening to restrain or prohibit the consummation of the transactions contemplated by this Agreement, or seeking to obtain substantial damages in respect thereof, or involving a claim that consummation thereof would result in the violation of any law, decree or regulation of any governmental authority having appropriate jurisdiction.

4.2.7 Buyer shall have entered into an asset-based lending facility with Wells Fargo Bank providing debt financing on the terms and conditions set forth on **Exhibit "E"** hereto (as such terms and conditions shall be updated prior to Closing to include covenants, restrictions and baskets that are satisfactory to Buyer), which facility shall (i) provide an amount of funding available to Buyer at Closing of at least $5,300,000 and (ii) have funded proceeds to Buyer at Closing in amount (up to the amount specified in clause (i)) sufficient to consummate the transactions contemplated hereby.

4.2.8 Buyer shall have entered into (i) employment agreements with Messrs. Heyneman, Ross and Gomperts and (ii) agreements providing for a cash investment into Buyer

by management of at least $500,000 in the aggregate, in each case in form and substance reasonably satisfactory to Buyer.

4.2.9 Buyer shall have entered into modifications to Real Property Leases relating to retail stores which provide that any two of the five Real Property Leases for the Mission Viejo, California, Canoga Park, California, Montclair, California, Riverside, California and Arlington, Texas retail stores may, at the sole election of Buyer, be terminated without cost to Buyer commencing on or after the first anniversary of the Closing Date.

4.2.10 Since the date of this Agreement, there shall not have been any theft, damage or destruction of a material portion of the Property and, as of the Closing Date, all retail stores of Seller (other than the Chicago, Illinois stores and the Houston, Texas stores) shall be open and operating in the ordinary course of business.

4.2.11 Since the date of this Agreement there shall have been no event, condition, change, development or other matter, or any worsening of any existing event, condition, change, development or other matter that, individually or in combination with any other event, condition, change, development or other matter or worsening thereof, has had or could reasonably be expected to have a Material Adverse Effect.

4.2.12 Buyer shall have been furnished with evidence satisfactory to Buyer of the consent or approval of those persons whose consent or approval shall be required in order to permit the assignment and assumption of all Intellectual Property and the assignment and assumption of the Leases and Contracts listed in **Schedule 4.2.12** (the "**Required Consent Contracts**"); provided, however, in no event shall Seller be required to obtain the consent of any counterparty to a Required Consent Contract with respect to which the Approval Order obviates the need for such consent.

4.2.13 The Bankruptcy Court shall have entered the Approval Order and Procedures Order in accordance with Sections 8.1 and 8.2 below and the Approval Order and Procedures Order shall have become a "Final Order." A Final Order is an order entered by the Bankruptcy Court, the implementation or operation or effect of which has not been stayed, and as to which the time to appeal, petition for certiorari, or move for reargument, rehearing or reconsideration has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument, rehearing or reconsideration thereof has been sought, such order of the Bankruptcy Court shall have been determined by the highest court to which such order was appealed, or certiorari, reargument, rehearing or reconsideration shall have been denied and the time to take any further appeal, petition for certiorari, or move for reargument, rehearing or reconsideration shall have expired.

4.2.14 Buyer shall have entered into agreements or arrangements with vendors in form and substance reasonably satisfactory to Buyer (a) providing trade credit to Buyer for asset purchases of inventory for the Business which results in aggregate accounts payable of at least $2,000,000 by the end of the second full month following the Closing Date and (b) which shall otherwise be on standard purchase terms.

4.2.15 There shall not be in effect, at the Closing, any injunction or other binding order of any court or other tribunal having jurisdiction over the Buyer that prohibits the purchase of the Property by Buyer. The Approval Order shall not have been reversed or vacated.

4.2.16 (a) the Closing Net Debt Amount shall not be greater than $9,685,000; (b) the Closing Inventory Amount shall not be less than $16,500,000 and (c) the Closing Accounts Receivable Amount shall not be less than $1,500,000.

4.2.17 Buyer shall have reasonably determined that there are no cure obligations required to be paid pursuant to the Approval Order as a condition to Seller's assumption and assignment of the Leases and Contracts (other than the cure obligations expressly set forth on **Schedule 4.2.17**).

4.2.18 Seller, Steve Robbins and Emerson Robbins shall have entered into an Amendment to the Commercial Spokesperson Agreement in form and substance reasonably satisfactory to Buyer providing that, from and after the Closing Date (a) each of Steve Robbins and Emerson Robbins shall have no further obligation to provide services under the Commercial Spokesperson Agreement, (b) each of Messrs. Robbins shall waive any amounts due to them under the Commercial Spokesperson Agreement, and (c) Messrs. Robbins shall not be entitled to any other consideration or benefits under Sections 7A, 7C and 7D of the Commercial Spokespersons Agreement.

4.2.19 (a) From the date hereof through the Closing Date, no salary, including Accrued PTO, shall have been remitted to Steve Robbins or, if remitted, such funds shall have been returned to the Seller, and (b) Buyer shall have received an acknowledgment and agreement from each of Steve Robbins and Emerson Robbins in form and substance reasonably satisfactory to Buyer providing that, from and after the Closing Date, Seller shall have no further obligations to Steve Robbins, Emerson Robbins or their respective Affiliates, except for obligations for retail store leases in the form made available to Buyer on or prior to the Effective Date.

4.2.20 Buyer and the landlord of the Mission Viejo, California, retail store shall have entered into an agreement in form and substance reasonably satisfactory to Buyer providing that, from and after the Closing Date (a) all amounts payable by Wells Fargo Bank under the agreement or other arrangements relating to the automated teller machine it maintains at or near such store shall be treated as a credit to rent payable by Buyer and (b) such agreement and arrangements shall be terminated at the earliest date permitted thereunder.

4.2.21 The amount of Accrued PTO required to be paid by Buyer to Transferred Employees in cash at or in connection with the Closing as provided under Section 12.5 shall not exceed $50,000.

4.2.22 Buyer shall have received an acknowledgment and agreement from Steve Robbins in form and substance reasonably satisfactory to Buyer providing that, from and after the Closing Date, Sections 5, 6 and 7 of the Excluded Employment Agreement shall run to the benefit of Buyer and shall be enforceable by Buyer in accordance with their terms.

With respect to the agreements or arrangements referenced in Sections 4.2.8, 4.2.9 and 4.2.14, Buyer agrees that it shall not require any vendor, employee, manager or landlord of Seller

as of the Effective Date to obligate themselves under such agreements or arrangements to refrain from negotiating, or entering into similar agreements or arrangements, with any party seeking to propose or consummate an Alternative Transaction. For the avoidance of doubt, this paragraph shall not restrict Buyer from entering into any agreement or arrangement with any person that is not a vendor, employee, manager or landlord for the Business as of the Effective Date, requiring such vendor to refrain from negotiating, or entering into any agreement or arrangement, with any party seeking to propose or consummate an Alternative Transaction. Buyer may also require any such existing or new vendors, employees, managers or landlords to keep confidential any agreement or arrangement Buyer enters into with them.

5. Seller's Representations and Warranties.

Seller hereby makes the following representations and warranties to Buyer:

5.1 Organization, Standing and Power. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Seller has all requisite entity power and authority to own, lease and, subject to the provisions of the Bankruptcy Code applicable to debtors in possession, operate its properties, to carry on Seller's business as now being conducted. Subject to entry of the Approval Order, Seller has the power and authority to execute, deliver and perform this Agreement and all writings relating hereto.

5.2 Validity and Execution. This Agreement has been duly executed and delivered by Seller and, upon entry of the Approval Order, will constitute the valid and binding obligation of Seller enforceable against it in accordance with its terms, except as may be limited by any bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other laws (whether statutory, regulatory or decisional), now or hereafter in effect, relating to or affecting the rights of creditors generally or by equitable principles (regardless of whether considered in a proceeding at law or in equity).

5.3 No Conflict. Subject to the entry of the Approval Order, the consummation of the transactions herein contemplated, and the performance of, fulfillment of and compliance with the terms and conditions hereof by Seller do not and will not: (i) conflict with or result in a breach of the articles of incorporation or by-laws of Seller; (ii) violate any statute, law, rule or regulation, or any order, writ, injunction or decree of any court or governmental authority, or (iii) violate or conflict with or constitute a default under any agreement, instrument or writing of any nature to which Buyer is a party or by which Buyer or its assets or properties may be bound.

5.4 ERISA; Employees; Seller Benefit Plans.

5.4.1 No Seller Benefit Plan or comparable benefit plan maintained, sponsored or contributed to by any ERISA Affiliate is, and neither the Company nor any ERISA Affiliate has any liability, whether absolute or contingent, with respect to: (i) any "multiemployer plan" (as defined in Section 3(37) of the Employee Retirement Income Security Act of 1974, as amended, "**ERISA**"), or (ii) any other pension plan subject to Title IV of ERISA, Part 3 of Title I of ERISA or Section 412 of the Code. For purposes of this Agreement, "**ERISA Affiliate**" means any entity (whether or not incorporated) that is required to be treated as a single employer with the Company under Section 414(b), (c), (m) or (o) of the Code.

5.4.2 Except as required by applicable law, the Company has no obligation, whether absolute or contingent and whether under a Seller Benefit Plan or otherwise, to provide any of the following retiree or post-employment benefits to any Person: medical, prescription, dental, disability or life insurance benefits. Seller and each of its ERISA Affiliates are in compliance in all material respects with the applicable requirements of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, the regulations thereunder and any similar state law.

5.4.3 None of the Property or other assets of Seller or any ERISA Affiliate is, or could reasonably be expected to become, the subject of any lien arising under ERISA or the Code. There are no liens arising under ERISA or the Code with respect to the operation, termination, restoration or funding of any Seller Benefit Plan or arising in connection with any excise tax or penalty tax with respect to any Seller Benefit Plan. With respect to the Seller Benefit Plans, no event has occurred and, to the knowledge of Seller, there exists no condition or set of circumstances in connection with which Buyer could be subject to any liability under the terms of, or with respect to, such Seller Benefit Plans, or under ERISA, the Code or any other applicable Law with respect to such Seller Benefit Plans.

5.4.4 Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, either alone or in combination with another event (whether contingent or otherwise), including without limitation any termination of employment, will: (i) entitle any current or former employee, consultant or director of Seller to any payment; (ii) increase the amount of compensation or benefits due to any such employee, consultant or director; (iii) accelerate the vesting, funding or time of payment of any compensation, equity award or other benefit; or (iv) result in any "parachute payment" under Section 280G of the Code.

5.4.5 Seller is not and has not been a party to any collective bargaining or similar agreement and there are no labor unions or other organizations representing, purporting to represent or, to Seller's knowledge, attempting to represent, any employee of Seller. There are no unfair labor practice complaints pending against Seller before the National Labor Relations Board or any other governmental authority nor, to Seller's knowledge, are any such complaints threatened. Seller has not experienced any strike, slowdown or work stoppage nor, to Seller's knowledge, are any such strikes, slowdowns, work stoppages or lockouts threatened.

5.4.6 In the three years prior to the date hereof, Seller has not effectuated: (i) a "plant closing" (as defined in the WARN Act or any similar state, local or foreign law) affecting any site of employment or one or more Facilities or operating units within any site of employment or facility of Seller; or (ii) a "mass layoff" (as defined in the WARN Act, or any similar state, local or foreign law) affecting any site of employment or facility of Seller.

5.4.7 For purposes of this Agreement, "**Seller Benefit Plan**" means each "employee benefit plan" as defined in Section 3(3) of ERISA and each other plan, policy, program, agreement, understanding and arrangement (whether written or oral) providing compensation or other benefits to any current or former director, officer, employee or consultant (or to any dependent or beneficiary thereof) of Seller which is now or has been maintained, sponsored or contributed to by Seller or under the terms of which Seller has or is reasonably

likely to have any obligation or liability, whether actual or contingent, including, without limitation, all employment, consulting, severance, termination, incentive, bonus, deferred compensation, retirement, pension, savings, profit sharing, retention, change in control, vacation, holiday, cafeteria, medical, disability, life, accident, fringe benefit, welfare and stock-based compensation plans, policies, programs, agreements, understandings or arrangements.

5.5 Title to Assets. Seller has good, valid and marketable title to the Property and subject to entry of the Approval Order, Buyer will be vested with good title to the Property, free and clear of all Encumbrances other than Assumed Liabilities.

5.6 Material Contracts. To Seller's knowledge, the materials heretofore provided or made available to Buyer by Seller collectively include and set forth a list of all of the material contracts to which Seller is a party or by which it is bound and that are related to the Seller's Business. All of such material contracts are listed on **Schedule 1.1.1-(i)**, **Schedule 1.1.1-(ii)** or **Schedule 1.1.1-(iii)**.

5.7 Notice to Holders of Interest. All counterparties to the Leases and Contracts, equity holders, claimholders and other parties in interest in Seller have been duly notified by the Seller of Seller's intent to enter into this Agreement and consummate the sale and transfer of Assumed Property and Liabilities to Buyer contemplated herein.

5.8 Financial Statements. To Seller's knowledge, with respect to the financial statements prepared for the fiscal year ending December 28, 2008 and interim periods thereafter, the balance sheets and statements of income, and cash flow (including the notes thereto) of Seller provided to Buyer have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods covered thereby, present fairly the financial condition of Seller as of such dates, and are correct and complete in all material respects. Each Inventory Statement and Balance Sheet delivered by Seller pursuant to this Agreement shall be correct and complete in all material respects as of its respective date.

5.9 Intangible Property. To Seller's knowledge, **Schedule 5.9** hereto lists all pending or threatened claims against Seller with respect to the Intangible Property or any other Intellectual Property.

5.10 Real Property. Seller does not own any real property used in the Business or included in the Property. Each of the Real Property Leases are in full force and effect.

5.11 Inventory. There are no material Inventory items that are subject to written or oral commitments from customers of Seller to purchase outside of the ordinary course of business. Seller has no knowledge of any fact or circumstance which may cause such customers to demand any price markdowns or adjustments on such Inventory.

5.12 Litigation. Except as to Intangible Property (addressed in Section 5.9 above), to Seller's knowledge, **Schedule 5.12** sets forth a complete list of all pending litigation with respect to the Business.

5.13 Labor Matters. To Seller's knowledge, Seller is not bound by any collective bargaining agreement nor has Seller experienced any strikes, claims of unfair labor practices, or

other collective bargaining disputes. Seller has not received written notice of any organizational effort presently being made or threatened by or on behalf of any labor union with respect to Seller's employees.

5.14 Environmental, Health and Safety Matters. To Seller's knowledge, Seller has complied and is in compliance with all environmental laws in all material respects.

5.15 Complete Copies of Materials. To Seller's knowledge, Seller has delivered or made available true and complete copies in all material respects of each document listed on the Schedules attached hereto (other than the Unavailable Information, which to Seller's knowledge shall be true and complete copies in all material respects when delivered in accordance with Section 17).

5.16 No Subsidiaries. Seller does not have any Subsidiaries.

5.17 Assets Necessary to Continue to Conduct Business. The Property (a) constitutes all of the assets, properties and rights (i) used in the Business as presently conducted other than the Excluded Assets, and (ii) necessary to conduct the Business as presently conducted, and (b) upon consummation of the transactions contemplated by this Agreement, Buyer will obtain the resources necessary to conduct the Business as currently conducted by Seller. Except as set forth in **Schedule 5.17**, no Affiliate of Seller has any direct or indirect interest in any asset, property or right used in, or necessary to conduct, the Business as currently conducted by Seller.

5.18 Transactions with Related Parties. Except for arrangements or agreements disclosed in **Schedule 5.18**, no officer, director or shareholder of Seller, or officer, director, partner, manager or relative of such officers, directors and shareholders has, with respect to the Business or the Property, (a) borrowed or loaned money or other property to Seller that has not been repaid or returned, (b) any contractual relationship or other claims, express or implied, of any kind whatsoever against Seller or (c) any interest in any of the Property.

5.19 Employees. Seller has provided Buyer with a schedule which lists the name, place of employment, annual salary rates, bonuses, deferred or contingent compensation, accrued vacation, and other like benefits paid or payable (in cash or otherwise) in 2008 and 2009 to each employee of Seller. No pension benefits, and no severance, "golden parachute" or similar benefits or commitments have been granted to any current employee.

5.20 Spence Asset Purchase Agreement. The executed copy of the Spence Purchase Agreement shall be in all material respects the same in form and substance as the draft of such agreement dated March 3, 2009 provided to Buyer.

6. Buyer's Warranties and Representations.

In addition to the representations and warranties contained elsewhere in this Agreement, Buyer hereby makes the following representations and warranties to Seller:

6.1 Organization, Standing and Power. Buyer is a corporation duly organized, validly existing and in good standing under the laws of Delaware. Buyer has all requisite entity power

and authority to own, lease and operate its properties, to carry on its business as now being conducted and to execute, deliver and perform this Agreement and all writings relating hereto.

6.2 Validity and Execution. This Agreement has been duly executed and delivered by Buyer and constitutes the valid and binding obligation of Buyer enforceable against it in accordance with its terms, except as may be limited by any bankruptcy, insolvency, reorganization, moratorium, fraudulent transfer or other laws (whether statutory, regulatory or decisional), now or hereafter in effect, relating to or affecting the rights of creditors generally or by equitable principles (regardless of whether considered in a proceeding at law or in equity).

6.3 No Conflict. The execution, delivery and performance of this Agreement and all writings relating hereto by Buyer have been duly and validly authorized. The execution and delivery of this Agreement, the consummation of the transactions herein contemplated, and the performance of, fulfillment of and compliance with the terms and conditions hereof by Buyer do not and will not: (i) conflict with or result in a breach of the articles of incorporation or by-laws of Buyer or, if applicable, other organizational documents or agreements of Buyer; (ii) violate any statute, law, rule or regulation, or any order, writ, injunction or decree of any court or governmental authority; or (iii) violate or conflict with or constitute a default under any agreement, instrument or writing of any nature to which Buyer is a party or by which Buyer or its assets or properties may be bound.

7. "AS IS" Transaction.

Buyer hereby acknowledges and agrees that, except only as provided in Section 5 above, Seller makes no representations or warranties whatsoever, express or implied, with respect to any matter relating to the Property (including, without limitation, income to be derived or expenses to be incurred in connection with the Property, the physical condition of any tangible Property, the environmental condition or other matter relating to the physical condition of any real property or improvements which are the subject of any Real Property Lease, the zoning of any real property or improvements which are the subject of any Real Property Lease, the value of the Property (or any portion thereof), the transferability of the Property or any portion thereof, the terms, amount, validity, collectability or enforceability of the Accounts Receivable or any Assumed Liabilities or Lease or Contract, the merchantability or fitness of the Personal Property, the Inventory or any other portion of the Property for any particular purpose, or any other matter or thing relating to the Property or any portion thereof). Without in any way limiting the foregoing, Seller hereby disclaims any warranty (express or implied) of merchantability or fitness for any particular purpose as to any portion of the Property. Buyer further acknowledges that Buyer has conducted an independent inspection and investigation of the physical condition of all portions the Property and all such other matters relating to or affecting or comprising the Property and/or the Assumed Liabilities (including, without limitation, those matters, if any, disclosed to Buyer pursuant to **Schedule 7**) as Buyer deemed necessary or appropriate and that in proceeding with the Acquisition, Buyer is doing so based solely upon such independent inspections and investigations. Accordingly, except only for the representations set forth in Section 5 above, Buyer will accept the Property at the Closing "AS IS," "WHERE IS," and "WITH ALL FAULTS."