IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
RUPARI HOLDING CORP., *et al.*,[1]	:	Case No. 17-10793 (KJC)
Debtors.	:	(Joint Administration Requested)

MOTION OF DEBTORS FOR ENTRY OF ORDERS (I) (A) APPROVING AND AUTHORIZING BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL ASSETS, (B) APPROVING STALKING HORSE PROTECTIONS, (C) APPROVING PROCEDURES RELATED TO ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (D) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (II) (A) APPROVING AND AUTHORIZING SALE OF SUBSTANTIALLY ALL DEBTOR ASSETS TO SUCCESSFUL BIDDER FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS, (B) APPROVING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES RELATED THERETO, AND (C) GRANTING RELATED RELIEF

The above-captioned debtors (collectively, the "Debtors"), by and through their proposed undersigned counsel, DLA Piper LLP (US), hereby submit this motion (the "Motion") for entry of orders pursuant to sections 105(a), 363, and 365 of title 11 of the United States Code (as amended, the "Bankruptcy Code"), Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"): (i)(a) approving procedures applicable to the sale of substantially all of the Debtors' assets, (b) approving Stalking Horse Protections (as defined

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Rupari Holding Corp. (4943) and Rupari Food Services, Inc. (7933). The mailing address for the Debtors is 15600 Wentworth Avenue, South Holland, Illinois 60473.

below), (c) approving procedures related to the assumption and assignment of certain executory contracts and unexpired leases, (d) approving the form and manner of notice thereof, and (ii)(a) authorizing the sale of assets free and clear of all liens, claims, encumbrances and other interests, except as provided in an Asset Purchase Agreement (as defined below), (b) approving the assumption and assignment of certain of the Debtors' executory contracts and unexpired leases related thereto, and (c) granting related relief. In support of the Motion, the Debtors incorporate the statements contained in the *Declaration of Jack Kelly in Support of First Day Pleadings* (the "First Day Declaration"), filed with the Court contemporaneously herewith. In further support of the Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over the Debtors, their estates, and this matter under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b).

2. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

3. The Debtors consent to the entry of a final order on this Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

4. The statutory predicates for the relief requested in this Motion are sections 105(a), 363, and 365 of the Bankruptcy Code, Rules 6004, 6006 and 9007 of the Bankruptcy Rules, and Local Rules 2002-1 and 6004-1.

BACKGROUND

5. On April 10, 2017 (the "Petition Date"), each Debtor filed with this Court a voluntary petition for relief under the Bankruptcy Code.

6. The Debtors continue in possession of their properties and to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or official committee of unsecured creditors has been appointed in the Debtors' chapter 11 cases.

7. Debtor, Rupari Food Services, Inc. ("Rupari Food" or the "Company"), is a leading culinary supplier of uncooked and ready-to-eat sauced and unsauced ribs, barbeque ("BBQ") pork, and BBQ chicken. Since 1978, Rupari Food has been producing and distributing the finest, restaurant-quality, pre-cooked, sauced, bone-in proteins, and related barbeque products. With a focus primarily on the manufacture and sale of pork ribs, the Company operates four core businesses: (a) prepackaged retail; (b) food service; (c) deli; and (d) private label. The Company offers a full line of meats under the Rupari brand name, as well as a variety of products under the retail names of Tony Roma's® and Butcher's Prime®. The Company's products are available fresh, frozen, and in the hot and cold deli sections at large and mid-sized retailers throughout the United States and Canada.

8. A variety of both external and operational challenges resulted in a decline in historical performance, including a rise in the price of pork due to the Chinese pork epidemic and the livestock virus that affected pork in the United States in 2014 and 2015. These macroeconomic and natural forces caused the Company to experience liquidity issues, which exacerbated the Debtors' capital structure and debt load.

9. These issues led the Debtors and their financial and legal advisors to explore actions to address the rapid changes in the competitive economic environment and to manage their prepetition liabilities. Commencing in mid-2016, Rupari Food began exploring potential sales of substantially all of its business assets. But, it became clear that the sale process could

not be completed in sufficient time to offset the continued deterioration in the Debtors' liquidity or at a value that would permit the Debtors to address in full their debt maturities and liquidity needs.

10. After carefully exploring and exhausting almost all possibilities, the Debtors have determined, in their business judgment, that commencement of these chapter 11 cases and undertaking a sale of substantially all of the Debtors' assets represents the best available alternative for the Debtors to meet their immediate and ongoing liquidity needs, while continuing to operate in the ordinary course of business during this process for the benefit of the Debtors' customers, employees, vendors, and other stakeholders.

11. In doing so, and after careful evaluation, it was determined that the filing of these chapter 11 cases would provide the Debtors with the oversight and respite to operate their businesses and ensure the highest possible recovery to creditors, while protecting jobs and minimizing the impact to the substantial majority of the Debtors' vendors and customers.

12. As it stands the Debtors are currently party to the following prepetition secured debt obligations: (i) a revolving loan facility (the "Credit Facility") with Antares Holdings LP, Antares Capital LP (together "Antares"); Fifth Third Bank, Sun Trust Bank; and certain other lenders (the "Prepetition Senior Secured Lenders") secured by substantially all of the Debtors' assets[2] with an outstanding amount due of approximately $23,300,000, which matures on July 1, 2017; (ii) numerous promissory notes (the "Secured Notes") issued in favor of Rupari Bridge Co., (the "Subordinated Creditor"), with an outstanding amount of approximately $35,390,000 and due to mature in June 2019 and secured by substantially all of the Debtors' assets. On September 9, 2016, a UCC-1 financing statement on account of the liens granted under the

[2] Rupari Food was the original party to the Credit Facility but through amendments Rupari Holding was added as a "Credit Party" as that term is defined in the Credit Facility.

Subordinated Secured Facility was filed in the Delaware Secretary of State's Office with respect to Rupari Holding. No UCC-1 financing statement was filed with respect to Rupari Food. The Subordinated Creditor is an affiliate of the Debtors' majority owner, private equity funds Wind Point Partners VII-A L.P., Wind Point Partners VII-B, L.P., Wind Point VII Affiliates, L.P. (collectively, the "WPP Group"). The Subordinated Notes are subordinated to the Prepetition Senior Secured Lenders and other secured claims incurred during routine business transactions.

13. The Debtors' unsecured obligations include unsecured mezzanine debt (the "Subordinated Indebtedness"), represented by a series of individual promissory notes to the WPP Group and other affiliates of the WPP Group with an outstanding amount of approximately $94,633,626.64, due to mature in 2018 or 2019.

14. The Debtors and their financial and legal advisors recently have explored actions to address the rapid changes in the competitive economic environment and to manage their prepetition liabilities. Commencing in mid-2016, the Debtors began exploring potential sales of substantially all of their business assets.

15. To that end, in February 2017, the Debtors retained Kinetic Advisors ("Kinetic") to commence a strategic alternative process to seek additional investment including through the sale of the company to a third party.

16. Shortly after the Debtors hired Kinetic, Kinetic commenced a process to solicit interest from potential investors or third party buyers. Kinetic identified and approached 21 potential investors (15 strategic buyers and 6 financial buyers) and distributed the confidential information memorandum to solicit interest in the Debtors. Strategic buyers consisted of mid to large sized companies operating in the protein or packaged meats sectors with a compelling strategic fit, history of acquisitions and financial wherewithal to complete an acquisition.

Financial investors consisted of private equity groups with portfolio companies in the packaged foods and meats sector and were selected based upon perceived strategic fit or portfolio companies as well as experience with turnaround/distress acquisitions.

17. Throughout February 2017 Kinetic distributed "teasers" to the targeted prospective buyer list. Of the 21 parties contacted, fourteen parties executed non-disclosure agreements. Six parties attended management presentations, and three parties submitted letters of interest. Through March and early April, Rupari and Kinetic negotiated with the parties over a form of transaction.

18. But, it became clear that the sale process could not be completed in sufficient time to offset the continued deterioration in the Debtors' liquidity or at a value that would permit the Debtors to address in full their debt maturities and liquidity needs.

19. After exploring and exhausting almost all possibilities, the Debtors engaged in careful evaluation and further negotiations with the Prepetition Senior Secured Lenders, Subordinated Creditors, and the Debtors' primary stakeholders, including the holders of Subordinated Indebtedness. The Debtors then determined, in their business judgment that commencement of these chapter 11 cases and undertaking a sale of substantially all of the Debtors' assets under section 363 of the Bankruptcy Code represents the best available alternative for the Debtors to meet their immediate and ongoing liquidity needs, while continuing to operate in the ordinary course of business during this process for the benefit of the Debtors' customers, employees, vendors, and other stakeholders.

PRELIMINARY STATEMENT

20. The Debtors have determined, after extensive diligence and in consultation with their advisors and key stakeholders that maximizing the value of the Debtors' estates is best

accomplished through the sale of substantially all of their assets free and clear of liabilities (as described more fully herein, the "Purchased Assets").

21. The Debtors (in this capacity, the "Sellers" or the Debtors) agreed to that certain asset purchase agreement, dated April 10, 2017 (together with the schedules and related documents, the "Stalking Horse Agreement," a copy of which is attached hereto as **Exhibit B**) with CBQ, LLC (the "Stalking Horse Purchaser"). Pursuant to the terms of the Stalking Horse Agreement, and upon approval of the Stalking Horse Agreement by the Court, the Stalking Horse Purchaser has agreed to purchase the Purchased Assets in exchange for a bid in the amount of $26,000,000 to be paid at closing, which price shall be subject to further adjustment based on a final determination of the Seller's Net Working Capital as of the closing date, and the assumption of certain liabilities (the "Stalking Horse Purchase Price"). The Stalking Horse Purchaser, in making this offer, has relied upon the agreement by the Debtors to seek the Court's approval of reimbursement of the Stalking Horse Purchaser's reasonable fees, costs, and expenses incurred in connection with the negotiation of the Stalking Horse Agreement and the transactions contemplated thereby through the date of termination (the "Expense Reimbursement") and a break-up fee of 4.0% of the Stalking Horse Purchase Price (the "Break-Up Fee," and together with the Expense Reimbursement subject to a cap of $325,000 the "Stalking Horse Protections"). The Debtors, in the exercise of their business judgment, believe that the Stalking Horse Protections are a necessary inducement for the Stalking Horse Purchaser, and will establish a "floor" for the sale of the Purchased Assets that will ultimately encourage competitive bidding and realization of the highest value for the Purchased Assets.

22. The sale of the Purchased Assets pursuant to the procedures and on the timeline proposed herein represents the best opportunity to maximize the value of the Purchased Assets

for all interested parties.

Relief Requested

23. By this Motion, the Debtors request entry of an order, attached hereto as **Exhibit C** (the "Bidding Procedures Order"):

a) approving procedures for the sale of the Purchased Assets (the "Bidding Procedures") in the form attached to the Bidding Procedures Order as **Exhibit 1**);

b) approving the Stalking Horse Protections;

c) scheduling a hearing to approve the sale of the Purchased Assets on or before June 7, 2017 (the "Sale Hearing");

d) approving procedures (the "Cure Procedures"), as set forth below, for the assumption and assignment of certain executory contracts (the "Contracts") and unexpired leases (the "Leases") of the Debtors to the purchaser(s) of the Purchased Assets, and to resolve any objections thereto; and

e) approving the form of (i) notice (the "Procedures Notice") of the Auction and Sale (each, as defined below), attached hereto as **Exhibit D**, to be served on the Procedures Notice Parties (as defined below); and (ii) notice to be served on the counterparties to the Contracts and Leases likely to be assumed and assigned in connection with the sale of the Purchased Assets, in the form attached hereto as **Exhibit E** (the "Cure Notice").

24. The Debtors also request entry of an order, attached hereto as **Exhibit F** (the "Sale Order"), pursuant to sections 105, 363 and 365 of the Bankruptcy Code: (i) approving the sale of the Purchased Assets, free and clear of all liens, claims, encumbrances and liabilities, except as provided in the applicable Asset Purchase Agreement (as defined below); and (ii) authorizing the Debtors to consummate the Sale and all documents, agreements and contracts executed in conjunction therewith.

Assets To Be Sold[3]

25. As noted above, the Debtors seek to complete a sale (the "Sale") of the Purchased Assets, which comprise, among other things:

(a) all Accounts Receivable;

(b) all Inventory;

(c) Fixed Assets, including, without limitation, the Equipment and other Fixed Assets listed or described in Schedule 1.1(c) of the Stalking Horse Agreement;

(d) all Seller's leasehold interests in Existing Real Property Leases and leased personal property, including without limitation, such items that are listed or referenced in Schedule 1.1(d) of the Stalking Horse Agreement;

(e) to the extent transferable, all prepaid expenses, prepaid insurance, prepaid Taxes relating to the Business or any of the Acquired Assets or Assumed Liabilities, and Purchased Deposits;

(f) any and all transferable warranties in favor of a Seller in respect of the Acquired Assets or assets leased to a Seller;

(g) all Permits, including the Permits listed or described in Schedule 1.1(g) of the Stalking Horse Agreement, in each case, to the extent such Permits and pending applications therefore are transferrable;

(h) all Intellectual Property held, licensed, used or held for use in the Business as currently conducted, including the Intellectual Property listed or described on Schedule 1.1(h) of the Stalking Horse Agreement;

(i) all documentation and media embodying, describing or relating to Intellectual Property, including memoranda, research, manuals, technical specifications and other records, wherever created throughout the world;

(j) all telephone and telephone facsimile numbers and other directory listings used in connection with the Business, to the extent assignable;

(k) all other intangible assets;

(l) all rights, claims, causes of action, refunds, rebates, credits and similar items of Seller to the extent related or pertaining directly to any Acquired Assets or any Contract that is an Assigned Contract, existing or arising

[3] Capitalized terms in this section that are not otherwise defined in this section shall have the meanings ascribed to such terms in the Stalking Horse Agreement.

prior to or on the Closing Date, other than any causes of action arising under chapter 5 of the Bankruptcy Code;

(m) all goodwill associated with the Business or the Acquired Assets, other than any goodwill related solely to Excluded Assets;

(n) except as excluded in Section 1.2 of the Stalking Horse Agreement hereof, all other or additional privileges, rights and interests associated with the Acquired Assets of every kind and description and wherever located that are used or intended for use in connection with, or that are necessary or helpful to the continued operation of, the Business as presently being operated

(o) to the extent assignable pursuant to Section 365 of the Bankruptcy Code, and subject to the terms and conditions of Section 7.5 of the Stalking Horse Agreement, the Assigned Contracts; and

(p) all documents that relate to any Acquired Assets or the Business and copies of all documents that are Excluded Assets under Section 1.2(b) or 1.2(i) of the Stalking Horse Agreement; *provided, however*, that Seller has the right to retain copies (at Seller's expense), to the extent required by Law.

26. The Purchased Assets shall not include the assets set forth in Section 1.2 of the Stalking Horse Agreement (the "Excluded Assets"):

(a) all cash on hand and in banks (provided that for the avoidance of doubt the foregoing exclude the Purchased Deposits);

(b) the Seller's financial accounting books and records, corporate charter, minute and stock record books, income Tax Returns, corporate seal, checkbooks and canceled checks that do not constitute Acquired Assets, and any Consolidated Tax Returns (the "Company Records");

(c) any Contract that is not an Assigned Contract;

(d) all Employee Benefit Plans (including for the avoidance of doubt, any employee pension benefit plan or multi-employer plan) and any assets of such plans;

(e) all rights, claims, causes of action, refunds, rebates, credits and similar items of Seller against any Person to the extent exclusively related or pertaining to Excluded Assets or Excluded Liabilities;

(f) any avoidance claims or causes of action under the Bankruptcy Code or applicable Law (including, without limitation, any preference or fraudulent conveyance), and all other claims or causes of action under any

other provision of the Bankruptcy Code or applicable laws related to the Excluded Assets and/or the Assumed Liabilities;

(g) Seller's rights under the Stalking Horse Agreement, the Purchase Price hereunder, any agreement, certificate, instrument or other document executed and delivered by Buyer to Seller in connection with the transactions contemplated hereby, or any side agreement between Seller and Buyer entered into on or after the Stalking Horse Agreement Date;

(h) all current and prior director and officer insurance policies of the Seller and all rights of any nature with respect thereto running in favor of Seller, including all insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries, in each case as the same may run in favor of Seller and arising out of actions taking place prior to the Closing Date;

(i) all personnel records or other records of the Seller that are required by Law to retain and which Seller is prohibited by Law from providing a copy thereof to Buyer;

(j) all assets listed on Schedule 1.2(j) to the Stalking Horse Agreement;

(k) all of the Seller's Labor Agreements, unless otherwise agreed to in writing by the Parties; and

(l) except to the extent set forth on Schedule 1.2(l), any and all claims, deposits, prepayments, refunds, rebates, causes of action, rights of recovery, rights of set-off and rights of recoupment relating exclusively to an Excluded Asset.

27. The Debtors will entertain either cash bids, or to the extent applicable as described further below, credit bids for the Purchased Assets. Except as otherwise provided in the applicable Asset Purchase Agreement (as defined below), all of the Debtors' rights, title and interest in the Purchased Assets will be sold free and clear of any liens, security interests, claims, charges, or encumbrances in accordance with section 363 of the Bankruptcy Code (collectively, the "Encumbrances").

Summary of Proposed Bidding Procedures

28. In order to ensure that the Debtors receive the maximum value for the Purchased Assets, the Stalking Horse Agreement is subject to higher or better offers, and, as such, the Stalking Horse Agreement will serve as the "stalking-horse" bid for the Purchased Assets.

A. Proposed Dates and Deadlines:

a) Entry of Bidding Procedures Order: April 24, 2017

b) Bid Deadline: May 30, 2017 (the "Bid Deadline")

c) Assumption/Assignment and Cure Objection Deadline: May 31, 2017

d) Sale Objection Deadline: May 31, 2017

e) Auction Date: June 5, 2017 (the "Auction Date")

f) Sale Hearing: June 9, 2017.

B. Provisions Governing Qualifications of Bidders

29. Unless otherwise ordered by the Court, in order to participate in the bidding process, prior to the Bid Deadline, each person other than the Stalking Horse Purchaser who wishes to participate in the bidding process (a "Potential Bidder") must deliver the following to the Notice Parties (as defined below):

a. a written disclosure of the identity of each entity that will be bidding for the Purchased Assets or otherwise participating in connection with such bid; and

b. an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Sellers to a Potential Bidder) in form and substance satisfactory to (i) the Debtors, (ii) counsel to the Agent for the Prepetition Senior Secured Lenders; counsel to the lenders under the Subordinated Credit Facility; and (iii) the official committee of unsecured creditors (the "Committee") appointed in these chapter 11 cases (collectively, the "Consultation Parties"), in substantially the same form as, or a form more favorable to the Debtors than, that signed by the Stalking Horse Purchaser; without limiting the foregoing, each confidentiality agreement executed by a Potential Bidder shall contain standard non-solicitation provisions.

30. A Potential Bidder that delivers the documents and information described above or that the Debtors determine, in consultation with the Consultation Parties, is likely (based on availability of financing, experience and other considerations) to be able to consummate the Sale, will be deemed a "Qualified Bidder." As promptly as practicable after a Potential Bidder delivers all of the materials required above, the Debtors will determine, in consultation with the Consultation Parties, and will notify the Potential Bidder if such Potential Bidder is a Qualified Bidder.

C. Due Diligence

31. The Debtors will provide any Potential Bidder such due diligence access or additional information as the Debtors, in consultation with the Consultation Parties, deem appropriate, which may include differentiations between the diligence provided to strategic and financial bidders, as appropriate, and contractual obligations to limit access to certain proprietary information; provided, however, that with respect to any strategic bidders, the Debtors may make reasonable commercial efforts to provide such strategic bidders with the same information provided to the Stalking Horse Purchaser. The Debtors must promptly advise the Stalking Horse Purchaser in the event any other Potential Bidder receives diligence the Stalking Horse Purchaser has not previously received and the Stalking Horse Purchaser will promptly be provided with access to such diligence materials. The due diligence period will extend through and include the Bid Deadline. Additional due diligence will not be provided after the Bid Deadline, unless otherwise deemed reasonably appropriate by the Debtors after consultation with the Consultation Parties.

D. Provisions Governing Qualified Bids

32. To be eligible to participate in the Auction (as defined below), each offer, solicitation, or proposal (each, a "Bid"), must be submitted by a Qualified Bidder and

received by Seller no later than seven (7) days prior to the Auction and must satisfy each of the conditions set forth below (each a "Qualified Bid"), as determined by the Debtors, in their reasonable discretion, after consultation with the Consultation Parties:

a. it states that the applicable Qualified Bidder offers to purchase, in cash or, if applicable, through a credit bid, or any combination of the two, all of the Purchased Assets upon the terms and conditions that the Debtors, in consultation with the Consultation Parties, reasonably determine are no less favorable to the Debtors than those set forth in the Stalking Horse Agreement;

b. it offers to purchase all or substantially all of the Purchased Assets or only a portion of the Purchased Assets; provided, however, that a Bid that offers to purchase only a portion of the Purchased Assets may only be a Qualified Bid to the extent that the value of such Bid, in combination with the value of other Bids for other Purchased Assets, exceeds the Minimum Initial Overbid Amount (as defined below) applicable to Qualified Bids for all or substantially all the Purchased Assets. The Debtors, in consultation with the Consultation Parties, may waive or modify the application of the Qualified Bid conditions in respect of Bids for a portion of the Purchased Assets, including, *inter alia*, the amount of the Good Faith Deposit (as defined below);

c. it includes a signed writing stating that the Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder, provided that if such bidder is selected as the Successful Bidder or the Backup Bidder (each, as defined below) its offer shall remain irrevocable until the later of (i) the closing of the Sale to the Successful Bidder or the Backup Bidder, and (ii) the date that is twenty (20) days after the Sale Hearing;

d. it includes confirmation that there are no conditions precedent to the Qualified Bidder's ability to enter into a definitive agreement and that all necessary internal and shareholder approvals have been obtained prior to the submission of the Bid;

e. it includes a duly authorized and executed copy of an asset purchase agreement, including the purchase price for the Purchased Assets expressed in U.S. Dollars (the "Purchase Price"), together with all exhibits and schedules thereto, together with copies marked to show any amendments and modifications to the Stalking Horse Agreement (an "Asset Purchase Agreement") and the proposed order for approval of the Sale by the Bankruptcy Court;

f. it includes financial statements or other written evidence, including (if applicable) a firm, irrevocable commitment for financing, establishing the ability of the Qualified Bidder to consummate the proposed Sale and pay the

Purchase Price in cash, such as will allow the Debtors to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the Asset Purchase Agreement;

g. it provides for the repayment of all other costs, simultaneously with the closing of the Sale contemplated under the Asset Purchase Agreement;

h. it has a value to the Debtors, determined in the Debtors' reasonable business judgment, in consultation with the Committee, that is greater than or equal to the sum of the value offered under the Stalking Horse Agreement, plus (i) the aggregate amount of the Break-Up Fee and Expense Reimbursement, plus (ii) $500,000 (the "Minimum Initial Overbid Amount");

i. it identifies with particularity which Contracts and Leases the Qualified Bidder wishes to assume and provides details of the Qualified Bidder's proposal for the treatment of related cure costs and the provision of adequate assurance of future performance to the counterparties to such Contracts and Leases;

j. it includes an acknowledgement and representation that the Qualified Bidder: (i) has had an opportunity to conduct any and all required due diligence regarding the Purchased Assets prior to making its offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets in making its bid; (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Purchased Assets or the completeness of any information provided in connection therewith or with the Auction, except as expressly stated in the Asset Purchase Agreement; and (iv) is not entitled to any expense reimbursement, break-up fee, or similar type of payment in connection with its bid;

k. it includes evidence, in form and substance reasonably satisfactory to the Sellers, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Asset Purchase Agreement;

l. it is accompanied by a good faith deposit (the "Good Faith Deposit") in the form of a wire transfer (to a bank account specified by the Debtors), certified check or such other form acceptable to the Debtors, payable to the order of the Debtors (or such other party as the Debtors may determine) in an amount equal to 10% of the Purchase Price;

m. it contains a detailed description of how the Qualified Bidder intends to treat current employees of the Sellers;

n. it contains such other information as may be reasonably requested by the Debtors, and

o. it is received prior to the Bid Deadline.

33. The Stalking Horse Purchaser will be deemed a Qualified Bidder without compliance with any of the foregoing requirements, and, correspondingly, the Stalking Horse Agreement will be deemed, without more, a Qualified Bid, for all purposes in connection with the bidding process, the Auction, and the Sale.

34. The Debtors shall notify the Stalking Horse Purchaser and all Qualified Bidders in writing as to whether or not any bids (other than the Stalking Horse Agreement) constitute Qualified Bids and identify any such bid(s) within forty-eight (48) hours after making such determination; provided, however, that such notification shall not be given later than one (1) business day following the expiration of the Bid Deadline.

E. Bid Deadline

35. A Qualified Bidder that desires to make a bid will deliver written copies of its bid to the following parties (collectively, the "Notice Parties"): (i) counsel to the Debtors: DLA Piper LLP (US), 444 W. Lake Street, Suite 900, Chicago, Illinois 60606 (Attn: Richard A. Chesley, Esq. (richard.chesley@dlapiper.com) and John Lyons, Esq. (john.lyons@dlapiper.com)); (ii) counsel to the Stalking Horse Purchaser: Katten Muchin Rosenman LLP, 525 West Monroe, Chicago, IL 60661 (Attn: Matthew Brown (matthew.brown@kattenlaw.com); counsel to the Agent to the Prepetition Senior Secured Lenders, Katten Muchin Rosenman LLP, 525 West Monroe Street, Chicago, Illinois 60661 (Attn: John Sieger (john.sieger@kattenlaw.com)); (iii) counsel to the lenders under the Subordinated Credit Facility, Kirkland & Ellis LLP, 300 North LaSalle, Chicago, IL 60654 (Attn: James Stempel (james.stempel@kirkland.com)); (iv) the Committee, to the extent appointed in these cases: so as to be received by the foregoing parties **no later than 4:00 p.m.**

on May 30, 2017 (the "Bid Deadline"). The Bid Deadline may be extended by the Debtors in consultation with the Consultation Parties.

F. Credit Bidding

36. In connection with the Sale of the Purchased Assets, secured credit parties, which hold perfected security interests in the Purchased Assets, may seek to submit credit bids for such Purchased Assets. For this reason, the Debtors request that the Court (i) authorize credit bidding in connection with the Sale to the fullest extent permitted by Bankruptcy Code section 363(k); and (ii) for purposes of valuing credit bids, deem (A) the full face amount of a credit bid to have the same value as the equivalent amount of cash; and (B) the amount of any funding for administrative expense and other wind down expense claims of the Debtors (a "Wind Down Contribution") to be part of the Purchase Price ascribed to such credit bid.

G. Evaluation of Competing Bids

37. A Qualified Bid will be valued based upon several factors including, without limitation, (1) the amount of the Purchase Price provided by such bid, (2) the risks and timing associated with consummating such bid, (3) any proposed revisions to the Stalking Horse Agreement and the Proposed Sale Order, (4) the amount of any Wind Down Contribution made by such bid, (5) the ability of the Qualified Bidder to obtain appropriate regulatory approvals, and (6) any other factors deemed relevant by the Debtors, in consultation with the Committee. For purposes of such valuation, the full face amount of a credit bid shall be deemed to have the same value as the equivalent amount of cash. The Debtors shall treat comparable credit bids and cash bids as equivalent and no credit bid shall be considered inferior to a comparable cash bid because it is a credit bid.

A. **Right to Increase Stalking Horse Bid**

38. The Stalking Horse Purchaser shall have the opportunity to increase the Stalking Horse Bid to a level at least $250,000 in excess of any Qualified Bid to be eligible to become the Starting Auction Bid; and Stalking Horse Purchaser shall be entitled to credit its Break Up Fee against the purchase price reflected in such Qualified Bid and any subsequent Qualified Bid submitted by the Stalking Horse Purchaser.

H. No Qualified Bids

39. If the Debtors do not receive any Qualified Bids other than the Stalking Horse Agreement, the Debtors will not hold an auction and the Stalking Horse Purchaser will be named the Successful Bidder upon the expiration of the Bid Deadline.

I. Auction Process

40. If the Debtors receive one or more Qualified Bids in addition to the Stalking Horse Agreement, the Debtors will conduct an auction of the Purchased Assets (the "Auction"), which shall take place at 10:00 a.m. (CDT) on June 5, 2017, at the offices of DLA Piper LLP (US), 444 W. Lake Street, Suite 900, Chicago, Illinois 60606, or such other location as shall be timely communicated to all entities entitled to attend the Auction. The Auction, which shall be recorded and transcribed, shall run in accordance with the following procedures:

a. only the Debtors, the Stalking Horse Purchaser, any other Qualified Bidder that has timely submitted a Qualified Bid, the Prepetition Senior Secured Lenders, and a Committee representative, and the advisors to each of the foregoing shall attend the Auction in person;

b. only the Stalking Horse Purchaser and such other Qualified Bidders who have timely submitted Qualified Bids will be entitled to make any subsequent bids at the Auction;

c. the Stalking Horse Bidder will, notwithstanding the elements of the Stalking Horse Purchase Price, be entitled to make subsequent bids for all or substantially all or any combination of the Purchased Assets comprised of

further credit bids, cash, additional or different consideration of any type, or any combination of the foregoing;

d. each Qualified Bidder shall be required to confirm that it has not engaged in any collusion, within the meaning of section 363(n) of the Bankruptcy Code with respect to any Bids submitted or not submitted in connection with the Sale;

e. at least one (1) business day prior to the Auction, each Qualified Bidder who has timely submitted a Qualified Bid must inform the Debtors whether it intends to attend the Auction and all Qualified Bidders wishing to attend the Auction must have at least one individual representative with authority to bind such Qualified Bidder in attendance at the Auction in person; provided that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder until the selection of the Successful Bidder and Back-Up Bidder at the conclusion of the Auction. At least one (1) business day prior to the Auction, the Debtors will provide copies of the Qualified Bid, or combination of Qualified Bids, which the Debtors believe, after consultation with the Committee, is the highest or otherwise best offer for the Purchased Assets (the "Starting Bid") to the Stalking Horse Purchaser, and all other Qualified Bidders who have timely submitted Qualified Bids;

f. all Qualified Bidders who have timely submitted Qualified Bids will be entitled to be present for all Subsequent Bids (as defined below) at the Auction and the actual identity of each Qualified Bidder will be disclosed on the record at the Auction;

g. the Debtors, after consultation with the Consultation Parties, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction, provided that such rules (i) are not inconsistent with the Bidding Procedures, the Bankruptcy Code, or any order of the Court entered in connection herewith; and (ii) do not, in any way, materially alter or impair the rights the Prepetition Senior Secured Lenders; and (iii) are disclosed to each Qualified Bidder attending the Auction;

h. bidding at the Auction will begin with the Starting Bid and continue in bidding increments (each, a "Subsequent Bid") providing a net value to the Debtors' estates of at least $500,000 above the prior bid. After the first round of bidding and between each subsequent round of bidding, the Debtors, after consultation with the Committee, and the Prepetition Senior Secured Lenders shall announce the bid (and the value of such bid) that they believe to be the highest or otherwise best bid (each, the "Leading Bid");

i. a round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid;

j. except as specifically set forth herein, for the purpose of evaluating the value of the Purchase Price provided by each Subsequent Bid (including any Subsequent Bid by the Stalking Horse Purchaser), the Debtors will give effect to the Stalking Horse Protections as well as any additional liabilities to be assumed by a Qualified Bidder and any additional costs which may be imposed on the Debtors; and

k. the Debtors may accept bids for any portion of the Purchased Assets, as well as bids for substantially all of the Purchased Assets; provided, however, that such a Qualified Bid that offers to purchase only a portion of the Purchased Assets may only be part of Successful Bid to the extent that the value of such Qualified Bid, in combination with the value of other Qualified Bids for other Purchased Assets, exceeds the value of any then-pending Leading Bid for all or substantially all the Purchased Assets.

l. Any additional Auction procedural rules announced at the auction shall not be contrary to the agreement for bid procedures set forth in the Stalking Horse Agreement.

J. Selection of Successful Bid and Back-Up Bid

a. Prior to the conclusion of the Auction, the Debtors, in consultation with the Committee and the Prepetition Senior Secured Lenders, will review and evaluate each Qualified Bid submitted at the Auction (including by the Stalking Horse Purchaser) in accordance with the procedures set forth herein and determine which offer is the highest or otherwise best offer (one or more such bids, collectively the "Successful Bid" and the bidder(s) making such bid(s), collectively, the "Successful Bidder"), and communicate to the Stalking Horse Purchaser and the other Auction participants the identity of the Successful Bidder and the details of the Successful Bid. The determination of the Successful Bid by the Debtors at the conclusion of the Auction shall be final, subject only to approval by the Bankruptcy Court.

b. The Qualified Bidder(s) with the next highest or otherwise best Qualified Bid, as determined by the Debtors in consultation with the Committee (and to the extent that the Stalking Horse Bidder does not have a Subsequent Bid pending), will be required to serve as a back-up bidder (the "Back-Up Bidder") and keep its bid open and irrevocable until the later to occur of twenty (20) days after the Sale Hearing and the closing on the Successful Bid with the Successful Bidder. If the Successful Bidder fails to consummate the Sale, the Back-Up Bidder will be deemed to be the new Successful Bidder, and the Debtors will be authorized, but not required, to consummate the Sale with the Back-Up Bidder without further order of the Bankruptcy Court.

c. Within two (2) business days after conclusion of the Auction, the Successful Bidder shall complete and execute all agreements, contracts, instruments and other documents necessary to consummate the Successful Bid. Within two (2)

business days after conclusion of the Auction, the Debtors shall file a notice with the Bankruptcy Court identifying the Successful Bidder and the Back-Up Bidder.

d. The Debtors will sell the Purchased Assets to the Successful Bidder pursuant to the terms of the Successful Bid upon the approval of such Successful Bid by the Bankruptcy Court at the Sale Hearing.

K. Return of Deposits

a. All Good Faith Deposits shall be returned to each bidder not selected by the Debtors as the Successful Bidder or the Back-Up Bidder no later than five (5) business days following the conclusion of the Auction.

L. The Stalking Horse Protections

a. In recognition of the expenditure of time, energy, and resources, the Debtors have agreed that if the Stalking Horse Purchaser is not the Successful Bidder, the Debtors will pay the Stalking Horse Purchaser (i) the Break-Up Fee; and (ii) the Expense Reimbursement. The Stalking Horse Purchaser shall provide reasonable documentation to the Debtors of the expenses for which it seeks reimbursement. The Break-Up Fee and Expense Reimbursement shall be payable as provided for pursuant to the terms of the Stalking Horse Agreement.

b. The Debtors have agreed that their obligation to pay the Stalking Horse Protections shall survive termination of the Stalking Horse Agreement, and, to the extent owed by the Debtors, constitute an administrative expense claim under section 503(b) of the Bankruptcy Code against each Debtor and, notwithstanding section 507(a) of the Bankruptcy Code, shall be payable in accordance with the terms and conditions of the Stalking Horse Agreement and the Bidding Procedures Order.

M. Sale Hearing

a. The Debtors will seek entry of an order from the Bankruptcy Court at a hearing (the "Sale Hearing") to begin on or before June 9, 2017 by 4:00 p.m (prevailing Eastern Time), subject to the availability of the Bankruptcy Court, to approve and authorize the Sale to the Successful Bidder on the terms and conditions memorialized in the Successful Bidder's Asset Purchase Agreement and proposed sale order.

Notice of Sale Hearing

41. As stated above, the Debtors request that this Court schedule the Sale Hearing for June 9, 2017. The Debtors propose that any objections to the Sale be filed by 4:00 p.m. (prevailing Eastern Time) on May 31, 2017.

42. The Debtors also request that the Court approve the form of the Procedures Notice, substantially in the form of **Exhibit D** hereto. The Debtors will serve a copy of the Procedures Notice on the following parties: (a) the United States Trustee, (b) the Committee, (c) any parties requesting notices in these cases pursuant to Bankruptcy Rule 2002, (d) all known creditors of the Debtors, (e) counsel to the Stalking Horse Purchaser, (e) counsel to the Agent for the Prepetition Senior Secured Lenders, and (f) all known Potential Bidders (collectively with the parties specified in this paragraph, the "Procedures Notice Parties").

43. The Debtors propose to serve the Procedures Notice within three (3) business days following entry of the Bidding Procedures Order, by first-class mail, postage prepaid on the Procedures Notice Parties. The Procedures Notice provides that any party that has not received a copy of the Motion or the Bidding Procedures Order that wishes to obtain a copy of the Motion or the Bidding Procedures Order, including all exhibits thereto, may make such a request in writing to Donlin Recano & Co. Inc., by calling the following toll-free number: 800-591-8268, or by visiting www.donlinrecano.com/rupari.

44. The Debtors submit that the foregoing notice procedures comply fully with Bankruptcy Rule 2002 and are reasonably calculated to provide timely and adequate notice of the Bidding Procedures, the Auction, the Sale Hearing and the Sale to the Debtors' creditors and other parties in interests as well as to those who have expressed an interest or are likely to express an interest in bidding for the Purchased Assets. Based on the foregoing, the Debtors respectfully request that this Court approve these proposed notice procedures.

Sale Hearing and Sale Order

45. At the Sale Hearing, the Debtors will seek approval of (i) the sale of the Purchased Assets to the Successful Bidder, free and clear of all Encumbrances, pursuant to section 363 of the Bankruptcy Code, with all Encumbrances to attach to the Net Sale Proceeds with the same validity and in the same order of priority as they attached to the Purchased Assets prior to the Sale; and (ii) the assumption by the Debtors and assignment to the Successful Bidder of the assumed Contracts and Leases pursuant to section 365 of the Bankruptcy Code. The Debtors will submit and present additional evidence, as necessary, at the Sale Hearing demonstrating that the Sale is fair, reasonable and in the best interest of the Debtors' estates and all interested parties.

46. As a condition to closing of the Stalking Horse Agreement, the Debtors shall obtain entry by the Bankruptcy Court of the Sale Order by the later of (i) sixty (60) days after the Petition Date, and (ii) forty-five (45) days after entry of the Bid Procedures Order (but in no event later than ninety (90) days after the Petition Date).

47. In the event that the Stalking Horse Purchaser is the Successful Bidder , the Sale Order remains subject to approval by the Stalking Horse Purchaser and shall conform to the requirements set forth in the Stalking Horse Agreement, unless agreed to by buyer otherwise.

Procedures for the Assumption and Assignment of Assumed Contracts and Leases

48. As noted above, the Debtors will seek to assume and assign certain Contracts and Leases to be identified on the schedules to the Stalking Horse Agreement, as they may be modified or supplemented by the Successful Bidder's Asset Purchase Agreement to exclude Contracts and Leases included, or include contracts that were excluded from the Stalking Horse Agreement's schedules (collectively, the "Assumed Executory Contracts").

49. At least initially, the Assumed Executory Contracts will be those Contracts and Leases that the Debtors, in consultation with the Stalking Horse Purchaser, believe may be assumed and assigned as part of the orderly transfer of the Purchased Assets. The Successful Bidder, whether the Stalking Horse Purchaser or another Qualified Bidder, may choose to exclude (or to add) Contracts or Leases to the list of the Assumed Executory Contracts at any time prior to the closing of the Sale.

50. In the interim, the Debtors will serve, by first-class mail, postage prepaid, the Motion and the Cure Notice, substantially in the form of Exhibit E hereto, upon each counterparty to the Assumed Executory Contracts by no later than five business (5) days following entry of the Bidding Procedures Order. The Cure Notice will state the date, time and place of the Sale Hearing as well as the date by which any objection to the assumption and assignment of the Assumed Executory Contracts must be filed and served. The Cure Notice also will identify the amounts, if any, that the Debtors believe are owed to each counterparty to the Assumed Executory Contracts in order to cure any monetary defaults that exist thereunder (the "Cure Amounts").

51. If a Contract or Lease is assumed and assigned pursuant to court order, then unless the Assumed Executory Contract counterparty properly files and serves an objection to the Cure Amount contained in the Cure Notice or to adequate assurance of future performance by the Successful Bidder, the Assumed Executory Contract counterparty will receive at the time of the closing of the Sale (or as soon as reasonably practicable thereafter), the Cure Amount set forth in the Cure Notice, if any, with payment to be made pursuant to the terms of the Successful Bidder's Asset Purchase Agreement. An Assumed Executory Contract counterparty is encouraged to contact Debtors' counsel, DLA Piper LLP (US), prior to the deadline to file

and serve an objection to the Cure Amount in an attempt to reach consensus on the Cure Amount based upon reasonable and supportable documentation provided by such counterparty.

52. At the closing, Buyer shall pay the portion of the Closing Date Cash Payment (as defined in the Stalking Horse Agreement) equal to the amount of Real Estate Taxes (as defined in the Stalking Horse Agreement) into an escrow account maintained by Seller's counsel at the Closing and Seller shall use such proceeds to pay all Real Estate Taxes (as defined in the Stalking Horse Agreement) to the Landlord (as defined in the Stalking Horse Agreement) or to the applicable tax authorities, as directed by the Buyer, within five (5) Business Days after closing.

53. If an objection is filed by a counterparty to an Assumed Executory Contract (each, an "Assumed Executory Contract Objection"), the Debtors propose that such objection must set forth a specific default in the Assumed Executory Contract and claim a specific monetary amount that differs from the amount, if any, specified by the Debtors in the Cure Notice. To the extent there are any additional Contracts or Leases to be assumed pursuant to the Successful Bidder's Asset Purchase Agreement, this Motion constitutes a separate motion to assume and assign all such additional Contracts or Leases to the Successful Bidder pursuant to section 365 of the Bankruptcy Code; each such Contract or Lease will be listed on an exhibit to the Successful Bidder's Asset Purchase Agreement, and the relevant counterparty will be given a separate Cure Notice (each, a "Supplemental Cure Notice").

54. If any counterparty files an Assumed Executory Contract Objection to the assumption and assignment of its Assumed Executory Contract, the Debtors propose that the counterparty must file the objection by no later than (i) 4:00 p.m. (prevailing Eastern Time) on May 31, 2017 or (ii) the date otherwise specified in the Cure Notice or the Supplemental Cure

Notice, as applicable. Any Assumed Executory Contract Objection must state whether the counterparty objects to the Cure Amount (each, a "Cure Objection") and/or the Successful Bidder's ability to provide adequate assurance of future performance under the Assumed Executory Contract (each, an "Adequate Assurance Objection"). With respect to any Assumed Executory Contract listed in a Supplemental Cure Notice, the Debtors propose that the deadline to file an Assumed Executory Contract Objection shall be fourteen (14) days after the service of such Supplemental Cure Notice on the relevant counterparty.

55. After receipt of a Cure Objection (either formal or informal), the Debtors will attempt to reconcile any differences in the Cure Amounts proposed by the Debtors and sought by the counterparty. In the event that the Debtors and the non-debtor counterparty cannot resolve a Cure Objection, and the Court does not otherwise make a determination at the Sale Hearing, the Debtors may, in consultation with the Consultation Parties, segregate any disputed Cure Amounts pending the resolution of any such dispute by the Court or mutual agreement of the parties. Cure Amounts disputed by any counterparty will be resolved by the Court at the Sale Hearing or such later date as may be agreed to or otherwise ordered by the Court.

56. The Debtors shall work with the Successful Bidder to address any Adequate Assurance Objections and satisfy any requirements regarding adequate assurance of future performance under section 365(b) of the Bankruptcy Code in connection with the proposed assignment of any Assumed Executory Contract, and the failure to provide adequate assurance of future performance to any counterparty to an Assumed Executory Contract shall not excuse the Successful Bidder from performance of any and all of its obligations pursuant to the Successful Bidder's Asset Purchase Agreement. The Debtors propose that the Court rule on any outstanding Adequate Assurance Objections at the Sale Hearing.

57. At the closing, Stalking Horse Purchaser shall pay the portion of the Closing Date Cash Payment (as defined in the Stalking Horse Agreement) equal to the aggregate amount of the Cure Costs (as defined in the Stalking Horse Agreement) for the Assigned Contracts (as defined in the Stalking Horse Agreement) into an escrow account maintained by Seller's counsel at the closing and Seller shall use such proceeds to pay all Cure Costs (as defined in the Stalking Horse Agreement) for the Assigned Contracts (as defined in the Stalking Horse Agreement) within five (5) business days after the closing.

58. Except to the extent otherwise provided in the Successful Bidder's Asset Purchase Agreement or the Sale Order, the Debtors and the Debtors' estates shall be relieved of all liability accruing or arising under the Assumed Executory Contracts after the assumption and assignment thereof pursuant to section 365(k) of the Bankruptcy Code.

APPLICABLE AUTHORITY

A. The Sale of the Purchased Assets is Authorized by Section 363 as a Sound Exercise of the Debtors' Business Judgment

59. In accordance with Bankruptcy Rule 6004, sales of estate assets outside the ordinary course of business may be by private sale or public auction. The Debtors have determined that the Sale of the Purchased Assets by public auction will enable it to obtain the highest or otherwise best offer for these assets (thereby maximizing the value to the estates) and is in the best interests of the Debtors' creditors. In particular, the Stalking Horse Agreement is the result of comprehensive, arms' length negotiations for the Sale of the Purchased Assets, and the Sale pursuant to the terms of the Stalking Horse Agreement, subject to higher or otherwise better offers at the Auction, will provide a greater recovery for the Debtors' creditors than would be provided by any other existing alternative.

60. Section 363 of the Bankruptcy Code provides that a trustee, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b). Although section 363 of the Bankruptcy Code does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, a sale of a debtor's assets should be authorized if a sound business purpose exists for doing so. See, e.g., Meyers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996); In re Titusville Country Club, 128 B.R. 396, 399 (W.D. Pa. 1991); In re Delaware & Hudson Ry. Co., 124 BR. 169, 176 D. Del. 1991); see also Official Committee of Unsecured Creditors v. LTV Corp. (In re Chateauguay Corp.), 973 F.2d 141, 143 (2d Cir. 1992); Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); Committee of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.), 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

61. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. See, e.g., In re Food Barn Stores, Inc., 107 F.3d 558, 564-65 (8th Cir. 1997) (finding that in bankruptcy sales, "a primary objective of the Code [is] to enhance the value of the estate at hand"); In re Integrated Resources, Inc., 147 B.R. 650, 659 (Bankr. S.D.N.Y. 1992) ("It is a well-established principle of bankruptcy law that the . . . [trustee's] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.") (quoting In re Atlanta Packaging Prods., Inc., 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988)). "As long as the sale appears to enhance a debtor's estate, court approval of a Trustee's decision to sell should only be withheld if the Trustee's judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code. GBL Holding Co., Inc. v. Blackburn/Travis/Cole, Ltd., 331 B.R. 251, 255 (N.D. Tex. 2005) (internal citations omitted).

62. Applying section 363, the proposed Sale of the Purchased Assets should be approved. As set forth above, the Debtors have determined that the best method of maximizing the recovery of the Debtors' creditors would be through the Sale of the Purchased Assets. In order to ensure a fair auction process, the Debtors and their advisors have and will continue to solicit interest from numerous potential purchasers.

63. Further, the Debtors believe that the value the Debtors' estates—and, thus, the Debtors' creditors—will receive for the Sale of the Purchased Assets as a going concern exceeds any value the Debtors' estates could get for the Purchased Assets if the Debtors were required to liquidate their assets piecemeal. The Debtors also believe that the value of the consideration likely to be received for the Purchased Assets under an Asset Purchase Agreement is fair and reasonable (as it will have to be higher than the Stalking Horse Purchase Price). As further assurance of value, however, bids will be tested through the Auction consistent with the requirements of the Bankruptcy Code, the Bankruptcy Rules, and pursuant to the Bidding Procedures approved by the Court. Consequently, the fairness and reasonableness of the consideration to be paid by the Successful Bidder ultimately will be demonstrated by adequate "market exposure" and an open and fair auction process — the best means, under the circumstances, for establishing whether a fair and reasonable price is being paid.

64. The Debtors and their advisors, after consultation with the Consultation Parties, believe that the timeline for the marketing and sale of the Purchased Assets is adequate, and balances the need to fully market the Purchased Assets and maintain continuity in the operation of the business for vendors, customers and employees. There is a limited universe of potential acquirers of the Purchased Assets and the Debtors' investment banker is prepared to contact

potential interested parties quickly and determine the level of interest in a potential acquisition and provide them access to a confidential business overview management presentation and access to a data room that has been assembled upon the execution of an appropriate confidentiality agreement.

B. The Bidding Procedures Are Appropriate and Will Maximize the Value Received for the Purchased Assets.

65. As noted above, the paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy sales. See, e.g., In re Financial News Network, Inc., 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991) ("Court-imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates").

66. Procedures to dispose of assets, similar to the proposed Bidding Procedures, have been approved in other large, complex bankruptcy cases in this District. See, e.g., In re Endeavour Operating Corp., No. 14-12308 (KJC) (Bankr. D. Del. May 20, 2015) [D.I. 668]; In re Old FOH Inc. (f/k/a/ Frederick's of Hollywood, Inc.), No. 15-10836 (KG) (May 6, 2015) [D.I. 120]; In re RS Legacy Corp. (f/k/a RadioShack Corp.), No. 15-10197 (BLS) (Bankr. D. Del. Feb. 20, 2015) [D.I. 457]; In re Orchard Supply Hardware Stores Corporation, Case No. 13-11565 (CSS) (Bankr. D. Del. July 8, 2013) [D.I. 155].

67. The Debtors believe that the Bidding Procedures will establish the parameters under which the value of the Purchased Assets may be tested at an auction and through the ensuing Sale Hearing. Such procedures will increase the likelihood that the Debtors' creditors

will receive the greatest possible consideration for their assets because they will ensure a competitive and fair bidding process. They also allow the Debtors to undertake an auction in as expeditious and efficient manner as possible, which the Debtors believe is essential to maximizing the value of the Debtors' estates for their creditors.

68. The Debtors also believe that the proposed Bidding Procedures will promote active bidding from seriously interested parties and will dispel any doubt as to the best and highest offer reasonably available for the Debtors' assets. In particular, the proposed Bidding Procedures will allow the Debtors to conduct an auction in a controlled, fair, and open fashion that will encourage participation by financially capable bidders who demonstrate the ability to close a transaction.

69. In sum, the Debtors believe that the Bidding Procedures will encourage bidding for the Purchased Assets and are consistent with the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings. Accordingly, the proposed Bidding Procedures are reasonable, appropriate and within the Debtors' sound business judgment.

C. Credit Bidding Should be Authorized

70. A secured creditor is allowed to "credit bid" the amount of its allowed claim in a sale under Section 363 of the Bankruptcy Code. Section 363(k) of the Bankruptcy Code provides, in relevant part, that, unless the court for cause orders otherwise, the holder of an allowed claim secured by property that is the subject of the sale "may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property." 11 U.S.C. § 363(k). Even if a secured creditor is undersecured, as determined in accordance with section 506(a) of the Bankruptcy Code, section 363(k) allows such creditor to bid the full face value of its claim for its collateral and does not

limit the credit bid to the claim's secured portion. See Cohen v. KB Mezzanine Fund II, LP (In re Submicron Sys. Corp.), 432 F.3d 448, 459-60 (3d Cir. 2006) (explaining that "[i]t is well settled among district and bankruptcy courts that creditors can bid the full face value of their secured claims under § 363(k)").

71. Pursuant to the Bidding Procedures, the Debtors' secured lenders, including the Prepetition Senior Secured Lenders and the Subordinated Creditors are entitled to credit bid some or all of their claims for their respective collateral pursuant to section 363(k) of the Bankruptcy Code. Because the Prepetition Senior Secured Lenders and the Subordinated Creditors hold claims that are secured by certain of the Purchased Assets, such lenders should be allowed to credit bid the face value of their secured claims, either directly or through a direction to the Agent of either, in order to purchase such assets and to have such credit bids be deemed to have the same value as the equivalent amount of cash.

D. The Sale of the Purchased Assets Free and Clear of Encumbrances is Authorized by Section 363(f)

72. The Debtors further submit that it is appropriate to sell the Purchased Assets free and clear of liens and other Encumbrances pursuant to section 363(f) of the Bankruptcy Code, with any such liens and Encumbrances attaching to the Net Sale Proceeds of the Purchased Assets. Section 363(f) of the Bankruptcy Code authorizes a trustee to sell assets free and clear of Encumbrances if:

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interests;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. 11 U.S.C. § 363(f).

73. This provision is supplemented by section 105(a) of the Bankruptcy Code, which provides that "[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a).

74. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Purchased Assets "free and clear" of Encumbrances. In re Dundee Equity Corp., 1992 WL 53743, at *4 (Bankr. S.D.N.Y. March 6, 1992) ("[s]ection 363(f) is in the disjunctive, such that the sale free of the interest concerned may occur if any one of the conditions of § 363(f) have been met."); In re Bygaph, Inc., 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986) (same); Michigan Employment Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.), 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (stating that Bankruptcy Code section 363(f) is written in the disjunctive; holding that the court may approve the sale "free and clear" provided at least one of the subsections of Bankruptcy Code section 363(f) is met).

75. The Debtors believe that one or more of the tests of section 363(f) are satisfied with respect to the Sale of the Purchased Assets pursuant to the Stalking Horse Agreement. In particular, the Debtors believe that the Debtors' existing prepetition secured lenders will consent to the sale free and clear under section 363(f)(2). Where that may not be the case, a sale free and clear can proceed pursuant to section 363(f)(5) of the Bankruptcy Code because the relevant Encumbrances will attach to the proceeds of the sale and the Debtors will establish at the Sale Hearing that the relevant creditors can be compelled to accept a monetary satisfaction of their respective claims. Accordingly, section 363(f) authorizes the Sale of the Purchased Assets free and clear of any Encumbrances.

76. Although section 363(f) of the Bankruptcy Code provides for the sale of assets "free and clear of any interests," the term "any interests" is not defined anywhere in the Bankruptcy Code. Folger Adam Security v. DeMatteis/MacGregor JV, 209 F.3d 252, 257 (3d Cir. 2000). In the case of In re Trans World Airlines, Inc., 322 F.3d 283, 288-89 (3d Cir. 2003), the Third Circuit specifically addressed the scope of the term "any interests." The Third Circuit observed that while some courts have "narrowly interpreted that phrase to mean only in rem interests in property," the trend in modern cases is toward "a more expansive reading of 'interests in property' which 'encompasses other obligations that may flow from ownership of the property.'" Id. at 289 (citing 3 Collier on Bankruptcy 15th Ed. Rev., ¶ 363.06[1] (L. King, 15th rev. ed. 1988)). As determined by the Fourth Circuit in In re Leckie Smokeless Coal Co., 99 F.3d 573, 581-582 (4th Cir. 1996), a case cited with approval and extensively by the Third Circuit in Folger, supra, the scope of section 363(f) is not limited to *in rem* interests. Thus, the Third Circuit in Folger stated that Leckie held that the debtors "could sell their assets under § 363(f) free and clear of successor liability that otherwise would have arisen under federal statute." Folger, 209 F.3d at 258.

77. Courts have consistently held that a buyer of a debtor's assets pursuant to a section 363 sale takes such assets free from successor liability resulting from pre-existing claims. See The Ninth Avenue Remedial Group v. Allis-Chalmers Corp., 195 B.R. 716, 732 (Bankr. N.D. Ind. 1996) (stating that a bankruptcy court has the power to sell assets free and clear of any interest that could be brought against the bankruptcy estate during the bankruptcy); MacArthur Company v. Johns-Manville Corp. (In re Johns-Manville Corp.), 837 F.2d 89, 93-94 (2d Cir. 1988) (channeling of claims to proceeds consistent with intent of sale free and clear under section 363(f) of the Bankruptcy Code); In re New England Fish Co., 19 B.R. 323, 329

(Bankr. W.D. Wash. 1982) (transfer of property in free and clear sale included free and clear of Title VII employment discrimination and civil rights claims of debtor's employees); In re Hoffman, 53 B.R. 874, 876 (Bankr. D.R.I. 1985) (transfer of liquor license free and clear of any interest permissible even though the estate had unpaid taxes); American Living Systems v. Bonapfel (In re All Am. Of Ashburn, Inc.), 56 B.R. 186, 190 (Bankr. N.D. Ga. 1986) (product liability claims precluded on successor doctrine in a sale of assets free and clear); WBO Partnership v. Virginia Dept. of Medical Assistance Servs. (In re WBO Partnership), 189 B.R. 97, 104-05 (Bankr. E.D. Va. 1995) (Commonwealth of Virginia's right to recapture depreciation is an "interest" as used in section 363(f)).[4] The purpose of an order purporting to authorize the transfer of assets free and clear of all "interests" would be frustrated if claimants could thereafter use the transfer as a basis to assert claims against the purchaser arising from the Debtors' pre-sale conduct. Under section 363(f) of the Bankruptcy Code, the purchaser is entitled to know that the Debtors' assets are not infected with latent claims that will be asserted against the purchaser after the proposed transaction is completed. Accordingly, consistent with the above-cited case law, the Debtors request that the order approving the Sale state that the Successful Bidder is not liable as a successor under any theory of successor liability, for claims that encumber or relate to the Purchased Assets.

E. The Proposed Notice of Bidding Procedures and Auction Is Appropriate

78. The Debtors believe that they will obtain the maximum recovery for their creditors if the Purchased Assets are sold in accordance with the proposed Bidding Procedures.

4 Some courts, concluding that section 363(f) of the Bankruptcy Code does not empower them to convey assets free and clear of claims, have nevertheless found that section 105(a) of the Bankruptcy Code provides such authority. See, e.g., Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.), 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (stating that the absence of specific authority to sell assets free and clear of claims poses no impediment to such a sale, as such authority is implicit in the court's equitable powers when necessary to carry out the provisions of title 11).

The Debtors have already taken significant steps to identify potential purchasers, but intend to provide all potentially interested parties with as much notice as possible.

79. Under Bankruptcy Rules 2002(a) and (c), the Debtors are required to notify creditors of the proposed sale of the Debtors' assets, including a disclosure of the time and place of an auction, the terms and conditions of a sale, and the deadline for filing any objections. The Debtors submit that the Notice Procedures comply fully with Bankruptcy Rule 2002 and are reasonably calculated to provide timely and adequate notice of the sale by auction to the Debtors' creditors and other interested parties, as well as to those parties who have expressed an interest, or may express an interest, in bidding for the Purchased Assets. The proposed time frame between the filing of this Motion, the commencement of the bidding process and the Auction should provide interested purchasers ample time to participate in the sale process.

F. The Stalking Horse Protections Are Appropriate Under the Circumstances

80. As noted above, the Stalking Horse Purchaser has proceeded in reliance upon the agreement by the Debtors to seek the Stalking Horse Protections and in reasonable expectation that this Court would enter an order providing such relief. The Debtors submit that the Stalking Horse Protections are a normal and oftentimes necessary component of sales outside the ordinary course of business under section 363 of the Bankruptcy Code. In particular, such protections encourage a potential purchaser to invest the requisite time, money, and effort to conduct due diligence and negotiations with a debtor despite the inherent risks and uncertainties of the chapter 11 process. See, e.g., In re Hupp Indus., 140 B.R. 191, 194 (Bankr. N.D. Ohio 1997) (without any reimbursement, "bidders would be reluctant to make an initial bid for fear that their first bid will be shopped around for a higher bid from another bidder who would capitalize on the initial bidder's. . . due diligence"); In re Marrose Corp., 1992 WL 33848, at *5 (Bankr. S.D.N.Y. 1992) (stating that "agreements to provide reimbursement of fees and

expenses are meant to compensate the potential acquirer who serves as a catalyst or 'stalking horse' which attracts more favorable offers").

81. Moreover, bid protections, similar to the Stalking Horse Protections sought to be approved by this Motion, have been approved in other chapter 11 cases in this Court. See, e.g., In re Zloop, Inc., Case No. 15-11660 (KJC) (Bankr. D. Del. May 16, 2016) (approving break-up fee of 3% and expense reimbursement of $75,000 in connection with $1.4 million sale of assets); In re Cal Dive Int'l, Inc., No. 15-10458 (CSS) (Bankr. D. Del. July 7, 2015) (authorizing expense reimbursements of $100,000 in connection with $12 million sale of assets and $82,000 in connection with $4.1 million sale of assets); In re Old FOH Inc. (f/k/a/ Frederick's of Hollywood, Inc.), No. 15-10836 (KG) (May 6, 2015) (authorizing a termination fee of $775,00 and expense reimbursement $300,000 in connection with $22.5 million sale of assets); In re Caché Inc., No. 15-10172 (MFW) (Bankr. D. Del. Feb. 25, 2015) (authorizing expense reimbursement of $100,000 and break-up fee of $225,000); In re Coldwater Creek, Inc., No. 14-10867 (BLS) (Bankr. D. Del. Apr. 29, 2014) (approving signage expense reimbursement of $800,000 and break-up fee of 1.5% in connection with approximately $90 million sale of assets); In re Vertis Holdings, Inc., Case No. 12-12821 (CSS) (Bankr. D. Del. Nov. 2, 2012) (approving break-up fee of 3.0% in connection with a $258 million sale of assets); In re Solyndra LLC, Case No. 11-12799 (MFW) (Bankr. D. Del. Sept. 28, 2012) (approving break-up fee of 2.6% in connection with $90 million sale of assets); In re Conex Holdings, LLC, Case No. 11-10501 (CSS) (Bankr. D. Del. Sept. 14, 2011) (approving break-up fee of 3% of final purchase price).

82. A proposed bidding incentive, such as the Break-Up Fee and Expense Reimbursement, should be approved when it is in the best interests of the estate. In re Hupp

Indus., Inc., 140 B.R. 191 (Bankr. N.D. Ohio 1992). Typically, this requires that the bidding incentive provide some benefit to the debtor's estate. Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.), 181 F.3d 527, 533 (3d Cir. 1999) (holding even though bidding incentives are measured against a business judgment standard in non-bankruptcy transactions the administrative expense provisions of Bankruptcy Code section 503(b) govern in the bankruptcy context).

83. In Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy), the Third Circuit found that whether break-up fees and expenses could be paid to Calpine Corp. ("Calpine") as a "stalking horse" depended on whether such fees were necessary to preserve the value of the estate. O'Brien Envtl. Energy, 181 F.3d at 536. There, the court determined that Calpine's right to break-up fees and expenses depended on whether it provided a benefit to the debtor's estate by promoting competitive bidding or researching the value of the assets at issue to increase the likelihood that the selling price reflected the true value of the company. Id. at 537. In the instant matter, the Debtors believe that approval of the Stalking Horse Protections will create such a competitive bidding process.

84. *First*, the Break-Up Fee induced the Stalking Horse Purchaser to submit a bid that will serve as a minimum floor bid upon which other bidders may rely. Therefore, the Stalking Horse Purchaser has provided a material benefit to the Debtors, their estates and their creditors by encouraging bidding and increasing the likelihood that the best possible price for the Purchased Assets will be received. See Integrated Resources, 147 B.R. at 659 (noting that termination payment is an "important tool to encourage bidding and to maximize the value of the debtor's assets").

85. *Second*, the Debtors believe that the Stalking Horse Protections are fair and reasonably compensate the Stalking Horse Purchaser for taking actions that will benefit the Debtors' estates. The Expense Reimbursement compensates the Stalking Horse Purchaser for diligence and professional fees incurred in negotiating the terms of the Stalking Horse Agreement on an expedited timeline.

86. *Third*, the proposed Stalking Horse Protections are the result of an arms'-length negotiated agreement between the Debtors and the Stalking Horse Purchaser. There is no evidence or reason to believe that the relationship between the Debtors and the Stalking Horse Purchaser has been tainted by self-dealing or manipulation.

87. *Fourth*, the Debtors do not believe that the Stalking Horse Protections will have a chilling effect on the sale process. Rather, the Stalking Horse Purchaser has increased the likelihood that the best possible price for the Purchased Assets will be received, by permitting other Qualified Bidders to rely on the diligence performed by the Stalking Horse Purchaser, and moreover, by allowing Qualified Bidders to utilize the Stalking Horse Agreement as a platform for negotiations in the context of a competitive bidding process.

88. *Finally*, the Break-Up Fee will be paid only if, among other things, the Debtors enter into an alternative transaction with a Successful Bidder other than the Stalking Horse Purchaser, whose bid will compensate the Debtors for the payment of the Stalking Horse Protections. Accordingly, no Stalking Horse Protections will be paid unless a higher or better offer is achieved and consummated.

89. The Debtors believe that the proposed Stalking Horse Protections are fair and reasonably compensate the Stalking Horse Purchaser for taking actions that will benefit the

Debtors' estates. The Break-Up Fee in the amount of 4% of the Stalking Horse Purchase Price is within the range of break-up fees that have been approved by this Court in other cases.

90. In sum, the Stalking Horse Protections are reasonable under the circumstances and will enable the Debtors to maximize the value received for the Purchased Assets while limiting any chilling effect on the sale process. The Stalking Horse Protections not only compensate the Debtors for the risk that they assume in foregoing a known, willing and able purchaser for a new potential acquirer, but also ensure that there is an increase in the net proceeds received by their estates, after deducting the Stalking Horse Protections to be paid to the Stalking Horse Purchaser in the event of a prevailing overbid.

G. Assumption and Assignment of Contracts and Leases

91. Section 365(a) of the Bankruptcy Code provides that, subject to the court's approval, a trustee "may assume or reject any executory contracts or unexpired leases of the debtor." 11 U.S.C. § 365(a). Upon finding that a trustee has exercised its sound business judgment in determining to assume an executory contract or unexpired lease, courts will approve the assumption under section 365(a) of the Bankruptcy Code. See Nostas Assocs. v. Costich (In re Klein Sleep Prods., Inc.), 78 F.3d 18, 25 (2d Cir. 1996); Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.), 4 F.3d 1095, 1099 (2d Cir. 1993).

92. Pursuant to section 365(f)(2) of the Bankruptcy Code, a trustee may assign an executory contract or unexpired lease of nonresidential real property if:

a. the trustee assumes such contract or lease in accordance with the provisions of this section; and

b. adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2).

93. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1989) (internal citations omitted); see also In re Natco Indus., Inc., 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent); In re Bon Ton Rest. & Pastry Shop, Inc., 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) ("Although no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.").

94. Among other things, adequate assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. In re Bygaph, Inc., 56 B.R. at 605-06 (adequate assurance of future performance is present when prospective assignee of lease has financial resources and expressed willingness to devote sufficient funding to business to give it strong likelihood of succeeding; chief determinant of adequate assurance is whether rent will be paid).

95. The Debtors and the Successful Bidder will present evidence at the Sale Hearing to demonstrate the financial credibility, willingness, and ability of the Successful Bidder to perform under the Assumed Executory Contracts. The Court and other interested parties therefore will have the opportunity to evaluate the ability of any Successful Bidder to provide adequate assurance of future performance under the Assumed Executory Contracts, as required by section 365(b)(1)(C) of the Bankruptcy Code.

96. In addition, the Cure Procedures are appropriate and consistent with section 365 of the Bankruptcy Code. To the extent that any defaults exist under any Assumed Executory Contracts, any such defaults will be cured. Any provision in any Assumed Executory Contract

that would restrict, condition, or prohibit an assignment of such Assumed Executory Contract will be deemed unenforceable pursuant to section 365(f)(1) of the Bankruptcy Code.

97. Accordingly, the Debtors submit that the Cure Procedures for effectuating the assumption and assignment of the Assumed Executory Contracts as set forth herein are appropriate and should be approved.

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

98. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property . . . is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Similarly, Bankruptcy Rule 6006(d) provides that an "order authorizing the trustee to assign an executory contract or unexpired lease . . . is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise." The Debtors request that the Bidding Procedures Order and the Sale Order, as applicable, be effective immediately by providing that the 14 day stays under Bankruptcy Rules 6004(h) and 6006(d) are waived.

99. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to appeal before an order can be implemented. See Advisory Committee Notes to Fed. R. Bankr. P. 6004(h) and 6006(d). Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should "order otherwise" and eliminate or reduce the fourteen (14) day stay period, Collier suggests that the fourteen (14) day stay period should be eliminated to allow a sale or other transaction to close immediately "where there has been no objection to the procedure." Collier on Bankruptcy P 6004.11 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Furthermore, Collier provides that if an objection is filed and overruled, and the objecting party informs the court of its intent

to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. Id.

100. The Debtors hereby request that the Court waive the fourteen-day stay period under Bankruptcy Rules 6004(h) and 6006(d) or, in the alternative, if an objection to the Sale is filed, reduce the stay period to the minimum amount of time needed by the objecting party to file its appeal.

Notice

101. Notice of this Motion shall be provided to: (a) the Office of the United States Trustee for the District of Delaware, (b) each Debtor's twenty largest unsecured creditors as identified on their respective voluntary petitions, (c) counsel to the agent for the prepetition secured lenders; (d) counsel to the agent for the subordinated creditors; (e) counsel to the subordinated indebtedness agent; (f) all applicable banks and other financial institutions; (g) the United States Attorney's Office for the District of Delaware; (h) the Securities and Exchange Commission; and (i) the Internal Revenue Service. As this Motion is seeking first-day relief, notice of this Motion and any order entered hereon will be served on all parties required by Local Rule 9013-1(m). Due to the urgency of the circumstances surrounding this Motion and the nature of the relief herein, the Debtors respectfully submit that no further notice of this Motion is required.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request that the Court enter orders substantially in the form attached hereto as **Exhibit C** and **Exhibit F**: (a) granting the relief requested herein and (b) granting to the Debtors such other and further relief as the Court may deem proper.[5]

Dated: April 11, 2017
Wilmington, Delaware

Respectfully submitted,

DLA PIPER LLP (US)

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Proposed Attorneys for Debtors and Debtors in Possession

[5] In the event the Stalking Horse Purchaser is the Successful Bidder, the Sale Order remains subject to approval by the Stalking Horse Purchaser and shall conform to the requirements set forth in the Stalking Horse Agreement, unless agreed to by the Stalking Horse Purchaser otherwise.

Exhibit A

(Highlighted Provisions Pursuant to Del. Bankr. L.R. 6004-1)

In accordance with Local Rule 6004-1, the Debtors respectfully represent the following:

1. **Sale to an Insider**: The Debtors are not aware of a prospective buyer that is an insider (as defined in the Bankruptcy Code) of the Debtors.

2. **Agreements with Management**: No agreements with management have been entered into in connection with the Sale.

3. **Releases**: Any releases to be provided to the Stalking Horse Purchaser will be included in the Sale Order

4. **Private Sale/No Competitive Bidding**: The Sale is being conducted pursuant to the competitive bidding process detailed in the Motion.

5. **Closing and Other Deadlines**: The consummation of the transactions contemplated by the Successful Bidder's Asset Purchase Agreement[1] shall take place at a closing to be held at the offices of DLA Piper LLP (US), 444 W. Lake Street, Suite 900, Chicago, Illinois 60606, or at such other location as shall be timely communicated to all entities entitled to attend the Auction.

6. **Good Faith Deposit**: All bidders will be required to post a cash earnest deposit with the Debtors equal to ten percent 10% of the Purchase Price at the time such bidder submits an initial bid for the Purchased Assets.

7. **Use of Proceeds**: If the Stalking Horse Purchaser is not the Successful Bidder, the proceeds of the Sale shall be paid to the Debtors at the closing for distribution as follows: (a) *first*, on the first (1st) Business Day after the closing of the Sale, for the payment of the Stalking Horse Protections to the Stalking Horse Purchaser on that same day, and (b) *second*, the remaining cash proceeds of the Sale shall be paid over at Closing to the Prepetition Senior Secured Lenders in satisfaction of their secured claims and, including, without limitation, all accrued prepetition and postpetition interest at the default rate. In the event the Stalking Horse Purchaser is the Successful Bidder, the proceeds will be applied per the Stalking Horse Agreement.

8. **Tax Exemption**: No tax exemptions under section 1146(a) of the Bankruptcy Code are contemplated in connection with the Sale.

9. **Record Retention**: The Debtors will continue to have access to their books and records related to the Purchased Assets pursuant to section 8.9 of the Stalking Horse Agreement.

10. **Sale of Avoidance Actions**: The Successful Bidder would purchase certain avoidance claims or causes of action under the Bankruptcy Code or applicable state law (including, without limitation, any preference or fraudulent conveyance actions), and all other claims or causes of action under any other provision of the Bankruptcy Code or applicable laws

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

relating to the Purchased Assets and/or Assumed Liabilities, including all actions against vendors and service providers used in the Debtors' business and counterparties to the Assumed Executory Contracts.

11. **Requested Findings as to Successor Liability**: The Successful Bidder is assuming only the Assumed Liabilities, as defined the Successful Bidder's Asset Purchase Agreement, and all other liabilities, including successor liability, whether or not incurred or accrued on or after the date on which the Sale is closed, shall be retained by the Debtors. Further, the Court will be requested to enjoin the assertion of successor liability claims arising from or relating to the Debtors and their operations against the Successful Bidder and to make findings supporting such injunctive relief.

12. **Sale Free and Clear of Unexpired Leases**: The Debtors are seeking to sell the Purchased Assets free and clear of Encumbrances pursuant to Section 363(f) of the Bankruptcy Code, unless otherwise provided in the Successful Bidder's Asset Purchase Agreement. The Stalking Horse Purchaser is not willing to enter into the Stalking Horse Agreement or close the Sale if it does not receive the Purchased Assets, including all real property, free and clear of all Encumbrances.

13. **Credit Bid**: Credit bids shall be accepted in accordance with section 363(k) of the Bankruptcy Code.

14. **Relief from Bankruptcy Rule 6004(h)**: As noted in the Motion, the Debtors are requesting relief from the 14-day stay imposed by Rules 6004(h) and 6006(d).

Exhibit B

(Stalking Horse Agreement)

STALKING HORSE

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "***Agreement***"), dated as of April 10, 2017 (the "***Agreement Date***"), is made by and between Rupari Food Services, Inc. ("***Seller***") and CBQ, LLC, a Delaware limited liability company ("***Buyer***"). Seller and Buyer are each referred to herein as a "***Party***" and collectively as the "***Parties***." Capitalized terms used in this Agreement are defined in ARTICLE 12.

WITNESSETH

WHEREAS, Seller has been in the business of supplying uncooked and ready-to-eat sauced and unsauced ribs, BBQ pork and BBQ chicken, including such items sold under the Tony Roma's and Butcher's Prime brands (the "***Business***");

WHEREAS, on the terms and subject to the conditions set forth in this Agreement, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, the Acquired Assets (as defined below);

WHEREAS, on April 10, 2017 (the "***Petition Date***"), Seller filed a voluntary petition (the "***Petition***") for relief under chapter 11 of title 11 of the United States Code (as amended, the "***Bankruptcy Code***" and the case resulting from such filing, the "***Bankruptcy Case***") in the United States Bankruptcy Court for the District of Delaware (the "***Bankruptcy Court***");

WHEREAS, on the terms and subject to the conditions set forth in this Agreement, Buyer desires to purchase the Acquired Assets and assume the Assumed Liabilities from the Seller and the Seller desires to sell, convey, assign and transfer to Buyer the Acquired Assets together with the Assumed Liabilities;

WHEREAS, the sale, conveyance, assignment and transfer of (i) the Acquired Assets, free and clear of any and all Liens or Claims, and (ii) the Assumed Liabilities, in each case, by Seller to Buyer shall be accomplished pursuant to Sections 105, 363, 365 and other applicable provisions of the Bankruptcy Code, upon the terms and subject to the conditions of this Agreement;

WHEREAS, the board of directors of the Seller believes, following consultation with its financial and other advisors and consideration of available alternatives, that, in light of the current circumstances, a sale of its assets is necessary to maximize value and is in the best interest of Seller, its shareholders, creditors and other constituencies; and

WHEREAS, the transactions contemplated by this Agreement will be subject to the approval of the Bankruptcy Court and will be consummated only pursuant to the Sale Order to be entered in the Bankruptcy Case and the applicable provisions of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the foregoing and their respective representations, warranties, covenants and undertakings herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby agree as follows:

ARTICLE 1

PURCHASE AND SALE OF THE ACQUIRED ASSETS

1.1 Purchase, Sale and Transfer of Acquired Assets. At the Closing, and upon the terms and conditions herein set forth, and pursuant to Sections 105, 363, and 365 of the Bankruptcy Code, Seller shall sell, transfer, assign, convey and deliver to Buyer, and Buyer shall acquire from Seller, all of Seller's right, title, and interest in, to and under all of the properties and assets of the Seller (other than the Excluded Assets) of every kind and description, wherever located, whether real, personal or mixed, tangible or intangible, owned, leased, licensed, used or held for use in or relating to the Business (collectively, the "***Acquired Assets***"), in each case free and clear of any and all Liens or Claims, other than Assumed Liabilities. The Acquired Assets shall include, but not be limited to:

(a) all Accounts Receivable;

(b) all Inventory;

(c) all Fixed Assets, including, without limitation, the Equipment and other Fixed Assets listed or described in Schedule 1.1(c);

(d) all Seller's leasehold interests in Existing Real Property Leases and leased personal property, including without limitation, such items that are listed or referenced in Schedule 1.1(d);

(e) to the extent transferable, all prepaid expenses, prepaid insurance, prepaid Taxes relating to the Business or any of the Acquired Assets or Assumed Liabilities, and Purchased Deposits;

(f) any and all transferable warranties in favor of a Seller in respect of the Acquired Assets or assets leased to a Seller;

(g) all Permits, including the Permits listed or described in Schedule 1.1(g), in each case, to the extent such Permits and pending applications therefore are transferrable;

(h) all Intellectual Property held, licensed, used or held for use in the Business as currently conducted, including the Intellectual Property listed or described on Schedule 1.1(h);

(i) all documentation and media embodying, describing or relating to Intellectual Property, including memoranda, research, manuals, technical specifications and other records, wherever created throughout the world;

(j) all telephone and telephone facsimile numbers and other directory listings used in connection with the Business, to the extent assignable;

(k) all other intangible assets;

(l) all rights, claims, causes of action, refunds, rebates, credits and similar items of Seller to the extent related or pertaining directly to any Acquired Assets or any Contract that is an Assigned Contract, existing or arising prior to or on the Closing Date, other than any causes of action arising under chapter 5 of the Bankruptcy Code;

(m) all goodwill associated with the Business or the Acquired Assets, other than any goodwill related solely to Excluded Assets;

(n) except as excluded in Section 1.2 hereof, all other or additional privileges, rights and interests associated with the Acquired Assets of every kind and description and wherever located that are used or intended for use in connection with, or that are necessary or helpful to the continued operation of, the Business as presently being operated

(o) to the extent assignable pursuant to Section 365 of the Bankruptcy Code, and subject to the terms and conditions of Section 7.5, the Assigned Contracts; and

(p) all documents that relate to any Acquired Assets or the Business and copies of all documents that are Excluded Assets under Section 1.2(b) or 1.2(i); provided, however, that Seller has the right to retain copies (at Seller's expense), to the extent required by Law.

1.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, in no event shall Seller be deemed to sell, transfer, assign or convey, and Seller shall retain all right, title and interest to, in and under only the following assets, properties, interests and rights of (collectively, the "***Excluded Assets***"):

(a) all cash on hand and in banks (provided that for the avoidance of doubt the foregoing exclude the Purchased Deposits);

(b) the Seller's financial accounting books and records, corporate charter, minute and stock record books, income Tax Returns, corporate seal, checkbooks and canceled checks that do not constitute Acquired Assets, and any Consolidated Tax Returns (the "***Company Records***");

(c) any Contract that is not an Assigned Contract;

(d) all Employee Benefit Plans (including for the avoidance of doubt, any employee pension benefit plan or multi-employer plan) and any assets of such plans;

(e) all rights, claims, causes of action, refunds, rebates, credits and similar items of Seller against any Person to the extent exclusively related or pertaining to Excluded Assets or Excluded Liabilities;

(f) any avoidance claims or causes of action under the Bankruptcy Code or applicable Law (including, without limitation, any preference or fraudulent conveyance), and all other claims or causes of action under any other provision of the Bankruptcy Code or applicable laws related to the Excluded Assets and/or the Assumed Liabilities

(g) Seller's rights under this Agreement, the Purchase Price hereunder, any agreement, certificate, instrument or other document executed and delivered by Buyer to Seller in connection with the transactions contemplated hereby, or any side agreement between Seller and Buyer entered into on or after the Agreement Date;

(h) all current and prior director and officer insurance policies of the Seller and all rights of any nature with respect thereto running in favor of Seller, including all insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries, in each case as the same may run in favor of Seller and arising out of actions taking place prior to the Closing Date;

(i) all personnel records or other records of the Seller that are required by Law to retain and which Seller is prohibited by Law from providing a copy thereof to Buyer;

(j) all assets listed on Schedule 1.2(j);

(k) all of the Seller's Labor Agreements, unless otherwise agreed to in writing by the Parties; and

(l) except to the extent set forth on Schedule 1.2(l), any and all claims, deposits, prepayments, refunds, rebates, causes of action, rights of recovery, rights of set-off and rights of recoupment relating exclusively to an Excluded Asset.

1.3 Assumption of Liabilities. Subject to the terms and conditions set forth in this Agreement and the Sale Order, at the Closing, in consideration for the sale, assignment, conveyance, transfer and delivery of the Acquired Assets to Buyer, Buyer will assume from the Seller (and pay, perform and discharge when due), and the Seller shall irrevocably convey, transfer and assign to Buyer, in accordance with the terms of this Agreement, only the following Liabilities of Seller (collectively, the "***Assumed Liabilities***"):

(a) all Liabilities of Seller arising from the ownership of the Acquired Assets, arising after the Closing Date;

(b) all Liabilities with respect to 503(b)(9) Claims in connection with any Contract that is an Assigned Contract up to a maximum dollar amount in the aggregate set forth on Schedule 1.3(b) hereto;

(c) all Liabilities of Seller under the Contracts designated by Buyer as Contracts that it desires to assume and have assigned to it, in accordance with Section 7.5 (the "***Assigned Contracts***"), relating to or arising from the period commencing on or after the Closing Date;

(d) any Liabilities for trade and non-trade payables arising out of the conduct of the Business in the Ordinary Course of Business and incurred (i) on or after the Petition Date and (ii) on or before the Closing Date; provided, in each case, that such Liabilities are included as current liabilities in the calculation of Net Working Capital;

(e) all open purchase orders set forth on Schedule 1.3(e) arising out of the conduct of the Business and Liabilities arising under drafts or checks outstanding at the Closing, in all cases incurred in the Ordinary Course of Business; provided, in each case, that such Liabilities are included as current liabilities in the calculation of Net Working Capital;

(f) all Liabilities directly relating to or arising from the operation of the Business (including the Acquired Assets) from the period commencing on or after the Closing Date;

(g) the Liabilities underlying the Employee Related Costs; and

(h) all Taxes related to the operation of the Business by Buyer attributable to taxable periods, or portions thereof, beginning on or after the Closing Date, including Liabilities for Taxes attributable to the ownership of the Acquired Assets from and after the Closing Date.

1.4 Excluded Liabilities. Except for the Assumed Liabilities, Buyer shall not assume or be liable for or bound by any Liabilities of Seller, including the following (herein referred to as the "***Excluded Liabilities***"):

(a) any and all Liabilities relating to or arising from or with respect to the sale or use of any of the Acquired Assets, including any product liability claims whether or not already instituted or alleged from or by any consumer, in each case, arising prior to the Closing, other than the Assumed Liabilities;

(b) any and all Liabilities for Taxes arising from or with respect to the Acquired Assets or the Business for any taxable periods, or portions thereof, ending prior to the Closing, other than as set forth in ARTICLE 8;

(c) any and all Liabilities of Seller under any Employee Benefit Plan, other than the Liabilities underlying the Employee Related Costs;

(d) any and all Environmental Liabilities or other Liabilities arising under any other Law in connection with any environmental, health, or safety matters relating to the storage, use, or operation of the Acquired Assets on or before the Closing;

(e) any and all Liability for: (i) costs and expenses incurred by Seller or owed in connection with the administration of the Bankruptcy Case (including the U.S. Trustee fees, the fees and expenses of attorneys, accountants, financial advisors, consultants, and other professionals retained by Seller, and any official or unofficial creditors' committee, the fees and expenses of the post-Petition lenders or the pre-Petition lenders incurred or owed in connection with the administration of the Bankruptcy Case); and (ii) all costs and expenses of Seller incurred in connection with the negotiation, execution, and consummation of the transactions contemplated under this Agreement;

(f) any and all Liabilities related to the employment of the Newco Employees arising out of or relating to events or conditions occurring prior to the Closing Date (including, for the avoidance of doubt, any severance obligations related to the termination of employment of any Newco Employee), other than those Liabilities underlying the Employee Related Costs;

(g) any Real Estate Taxes;

(h) all Liabilities under any of Seller's Labor Agreements;

(i) any Liability by any theory of Buyer becoming a participating employer in, or assuming any Liability or contribution history with respect to, any multiemployer pension plan, or any assumption by Buyer, or Buyer otherwise become a participating employer, in any of Employee Benefit Plan;

(j) all Liabilities deemed to be Excluded Liabilities in accordance with Section 6.10(b); and

(k) all Cure Costs.

1.5 Assignment of Acquired Contracts. The Assigned Contracts shall be assumed by and assigned to Buyer pursuant to Section 365 of the Bankruptcy Code as of the Closing Date. Notwithstanding anything herein to the contrary, the Seller and the Buyer agree that the Seller shall satisfy all Cure Costs and Real Estate Taxes from the Closing Payment.

1.6 Post-Closing Liabilities. Except as provided in Section 1.3(h), Buyer acknowledges that Buyer shall be responsible for all Liabilities and obligations relating to Buyer's ownership or use of, or right to use, the Acquired Assets and the Assumed Liabilities after the Closing Date, including Taxes arising out of or related to the Acquired Assets or the operation or conduct of the Business acquired pursuant to this Agreement for all Tax periods beginning on the day after the Closing Date.

ARTICLE 2

CONSIDERATION

2.1 Purchase Price. Subject to the adjustment pursuant to Section 2.4 and the prorations set forth in Section 8.2, the aggregate purchase price (the "***Purchase Price***") for the

Acquired Assets shall be an amount equal to (i) Twenty-Six Million Dollars ($26,000,000.00) (the "***Base Purchase Price***"), minus (ii) the amount, if any, by which the Net Working Capital (as defined below) as of the Closing is less than the NWC Target, but only if the aggregate amount of such shortfall exceeds the Working Capital Collar, plus (iii) the amount, if any, by which the Net Working Capital as of the Closing exceeds the NWC Target, but only if the aggregate amount of such excess is greater than the Working Capital Collar.

2.2 Deposit. Upon the entry of an order by the Bankruptcy Court declaring the Buyer as the stalking horse bidder in connection with the sale of assets by Seller, Buyer will deliver to the Escrow Agent, by wire transfer of immediately available funds, the amount of One Million Forty Thousand Dollars ($1,040,000.00) (the "***Deposit***"), to be held in an escrow account subject to the terms of the Escrow Agreement, substantially in the form of Exhibit B attached hereto, with such changes as may be required by the Escrow Agent (the "***Escrow Agreement***"). The Deposit and any interest thereon shall be (i) credited against the Closing Date Cash Payment in accordance with Section 2.3 and paid to Seller at Closing; (ii) returned to Buyer if this Agreement is terminated pursuant to Section 10.2(a), Section 10.2(b), Section 10.2(c); or (iii) forfeited and delivered to Seller as liquidated damages if this Agreement is terminated pursuant to Section 10.2(d). The Deposit shall be held by the Escrow Agent and released in accordance with the terms of the Escrow Agreement.

2.3 Closing Date Cash Payment

On the Closing Date, the Buyer shall pay to the Seller an aggregate amount (the "***Closing Date Cash Payment***") equal to (i) the Base Purchase Price, minus (ii) the Deposit, minus (iii) the NWC Escrow Amount, minus (iv) the amount, if any, by which the Estimated Net Working Capital is less than the difference of the NWC Target minus the Working Capital Collar (the absolute value of such difference, the "***Estimated NWC Deficit***"), plus (v) the amount, if any, by which Estimated Net Working Capital exceeds the sum of the NWC Target plus the Working Capital Collar (such excess, the "***Estimated NWC Surplus***"). Buyer shall pay the Closing Date Cash Payment by wire transfer of immediately available funds to the bank account(s) specified by the Seller.

2.4 Purchase Price Adjustment.

(a) No less than three (3) Business Days prior to the Closing Date, Seller and Buyer shall jointly complete an estimate and prepare a statement of the Net Working Capital of the Seller as of the Closing Date (the "***Estimated Net Working Capital Statement***") setting forth a good faith estimate of the Net Working Capital as of the Closing Date (as so estimated, the "***Estimated Net Working Capital***"). The Estimated Net Working Capital Statement (and calculation of the value thereof) shall be prepared in a manner and in substantially the same form as that attached hereto as Exhibit A and consistent with the principles set forth thereon.

(b) Commencing on the Closing Date, all Inventory shall be counted (the "***Inventory Count***") by the Buyer, together with a representative of the Seller, should Seller wish to participate in such process. Following the Inventory Count, the Buyer's calculation of

Inventory shall be determinative and used in the calculation of Final Net Working Capital unless the Seller objects thereto within five (5) Business Days following the Inventory Count. If the Parties cannot resolve any such disagreement with five (5) Business Days following timely delivery of the Seller's objection, then the Inventory Count shall be submitted to the Accounting Firm for final resolution. The determination of the Accounting Firm shall be final and binding on the Parties. Notwithstanding the foregoing, any item of Inventory included in the Inventory Count or determination of the Accounting Firm, as contemplated by this Section 2.4(b) may be excluded pursuant to Section 2.4(c) due to such items of Inventory being not of a wholesome quality, fit for further processing or consumption, and marketable (collectively, "***Sellable Inventory***").

(c) Within sixty (60) days following the Closing Date, Buyer shall prepare and deliver to Seller a statement (the "***Final Net Working Capital Statement***") setting forth in reasonable detail Buyer's calculation of the Net Working Capital as of the Closing (the "***Final Net Working Capital***"), which shall take into account any Inventory that Buyer reasonably determines is not Sellable Inventory or otherwise does not meet the qualifications set forth on Exhibit A, as reasonably determined by the Buyer. The Final Net Working Capital Statement (and calculation of the value thereof) shall be prepared in a manner and in substantially the same form as that attached hereto as Exhibit A and consistent with the principles set forth thereon.

(d) Seller shall have thirty (30) days following its receipt of the Final Net Working Capital Statement (the "***Review Period***") to review the same. On or before the expiration of the Review Period, Seller shall deliver to Buyer a written statement accepting or objecting to the Final Net Working Capital Statement (the "***Working Capital Statement Response Notice***"). Buyer shall permit the Seller and its representatives to have full access to the books, records and other documents pertaining to or used in connection with the preparation of the Final Net Working Capital Statement and calculation of the Final Net Working Capital and provide Seller with copies thereof (as reasonably requested by Seller). If the Seller does not deliver the Working Capital Statement Response Notice to Buyer on or before the expiration of the Review Period, the Seller shall be deemed to have accepted the Final Net Working Capital Statement and the calculations therein in full.

(e) In the event that Seller delivers a Working Capital Statement Response Notice objecting to all or any portion of the Final Net Working Capital Statement within the Review Period, Buyer and Seller shall promptly meet and in good faith attempt to resolve such objections. Any such objections which cannot be resolved between Buyer and Seller within fifteen (15) days following Buyer's receipt of the Working Capital Statement Response Notice shall be resolved in accordance with this Section 2.4(e). Should Seller and Buyer not be able to resolve such objections set forth in the Working Capital Statement Response Notice within the fifteen (15) day period described above, either Party may submit the matter to a mutually agreed, nationally recognized accounting firm (the "***Accounting Firm***") for review and resolution, with instructions to complete the same as promptly as practicable, but in any event within thirty (30) days of its engagement, and to resolve any objections consistent with the terms of this Agreement. The Accounting Firm shall only have authority to make determinations in respect of those specific items for which an objection has been raised in the Working Capital Statement

Response Notice and has not been resolved by Buyer and Seller pursuant to the first sentence of this Section 2.4(e), and all determinations shall be based solely on the presentations of Buyer and Seller and their respective representatives, and not by independent review. In resolving any disputed item, the Accounting Firm shall not assign a value to any item greater than the greatest value for such item claimed by either Party or less than the smallest value for such item claimed by either Party. The Parties shall instruct the Accounting Firm to deliver a statement (the "***Disputed Items Decision***") setting forth its resolution of the dispute within thirty (30) days of the submission of the dispute to the Accounting Firm, which resolution, absent manifest error, shall be binding and conclusive on the Parties and not subject to appeal or further review. The Closing Working Capital Statement shall be modified if necessary to reflect such determination by the Accounting Firm, as well as any objection resolved pursuant to the first sentence of this Section 2.4(e). The fees and costs of the Accounting Firm, if one is required, shall be payable by Buyer, on the one hand, and Seller, on the other hand, based upon the percentage which the portion of the contested amount not awarded to each Party bears to the amounts actually contested by Buyer and Seller, as determined by the Accounting Firm.

(f) At such time as (x) the Seller and Buyer agree upon the Final Net Working Capital or (y) the Disputed Items Decision is made by the Accounting Firm:

(i) If the Final Net Working Capital, as finally determined, exceeds an amount equal to the sum of (i) the NWC Target plus (ii) the Working Capital Collar (such excess, the "***True-Up Surplus***"):

(A) and no Estimated NWC Surplus or Estimated NWC Deficit was included in the calculation of the Closing Date Cash Payment, Buyer and Seller shall direct the Escrow Agent to deliver the entirety of the NWC Escrow Account to the Seller and Buyer shall pay the amount of the True-Up Surplus by wire transfer of immediately available funds to an account or accounts designated by Seller;

(B) and an Estimated NWC Deficit was included in the calculation of the Closing Date Cash Payment, Buyer and Seller shall direct the Escrow Agent to deliver the entirety of the NWC Escrow Account to the Seller and Buyer shall pay (1) the amount of the True-Up Surplus and (2) the amount of the Estimated NWC Deficit, by wire transfer of immediately available funds to an account or accounts designated by Seller;

(C) and an Estimated NWC Surplus was included in the calculation of the Closing Date Cash Payment, Buyer and Seller shall (1) if the True-Up Surplus exceeds the Estimated NWC Surplus, direct the Escrow Agent to deliver the entirety of the NWC Escrow Account to the Seller and Buyer shall pay the amount of such excess by wire transfer of immediately available funds to an account or accounts designated by Seller, (2) if the True-Up Surplus is less than the Estimated NWC Surplus, direct the Escrow Agent to deliver to the Seller the lesser of such difference and the entirety of the NWC Escrow Account to the Buyer (with the balance, if any, to Seller) and if the entirety of the NWC Escrow Amount is less than such difference, Seller shall pay the amount of such deficit to Buyer by wire transfer of immediately available funds to an account or accounts designated by Buyer.

(ii) If Final Net Working Capital, as finally determined, is less than an amount equal to the sum of (i) the NWC Target minus (ii) the Working Capital Collar (the absolute value of such deficit, the "***True-Up Deficit***"):

(A) and no Estimated NWC Surplus or Estimated NWC Deficit was included in the calculation of the Closing Date Cash Payment, Buyer and Seller shall direct the Escrow Agent to deliver an amount equal to the lesser of the True-Up Deficit and the entirety of the NWC Escrow Account to the Buyer (with the balance, if any, as directed by the Seller) and if the entirety of the NWC Escrow Amount is less than the True-Up Deficit, Seller shall pay the amount of such deficit to Buyer by wire transfer of immediately available funds to an account or accounts designated by Buyer;

(B) and an Estimated NWC Deficit was included in the calculation of the Closing Date Cash Payment, Buyer and Seller shall (1) if the True-Up Deficit is larger than the Estimated NWC Deficit, Buyer and Seller shall direct the Escrow Agent to deliver an amount equal to the lesser of the difference between the True-Up Deficit and the Estimated NWC Deficit and the entirety of the NWC Escrow Account to the Buyer (with the balance, if any, as directed by the Seller) and if the entirety of the NWC Escrow Amount is less than such difference, Seller shall pay the amount of such difference to Buyer by wire transfer of immediately available funds to an account or accounts designated by Buyer, (2) if the Estimated NWC Deficit is larger than the True-Up Deficit, direct the Escrow Agent to deliver to the Seller the entirety of the NWC Escrow Account and Buyer shall pay the amount of such difference to Seller by wire transfer of immediately available funds to an account or accounts designated by Seller;

(C) and an Estimated NWC Surplus was included in the calculation of the Closing Date Cash Payment, Buyer and Seller shall direct the Escrow Agent to deliver an amount equal to the lesser of the sum of the Estimated NWC Surplus and the True-Up Deficit and the entirety of the NWC Escrow Account to the Buyer (with the balance, if any, as directed by the Seller) and if the entirety of the NWC Escrow Amount is less than the such sum, Seller shall pay the amount of such deficit to Buyer by wire transfer of immediately available funds to an account or accounts designated by Buyer.

(iii) If the Final Net Working Capital, as finally determined, is within an amount equal to (i) the NWC Target plus or minus (ii) the Working Capital Collar:

(A) and no Estimated NWC Surplus or Estimated NWC Deficit was included in the calculation of the Closing Date Cash Payment, Buyer and Seller shall direct the Escrow Agent to deliver the entirety of the NWC Escrow Account to the Seller;

(B) and an Estimated NWC Deficit was included in the calculation of the Closing Date Cash Payment, Buyer and Seller shall direct the Escrow Agent to deliver an amount equal to entirety of the NWC Escrow Account to the Seller, and Buyer shall pay an amount equal to the Estimated NWC Deficit to Seller by wire transfer of immediately available funds to an account or accounts designated by Seller;

(C) and an Estimated NWC Surplus was included in the calculation of the Closing Date Cash Payment, Buyer and Seller shall direct the Escrow Agent to deliver an amount equal to the lesser of the Estimated NWC Surplus and the entirety of the Escrow Account to the Buyer (with the balance, if any, as directed by the Seller) and if the entirety of the NWC Escrow Amount is less than the Estimated NWC Surplus, Seller shall pay the amount of such deficit to Buyer by wire transfer of immediately available funds to an account or accounts designated by Buyer.

2.5 Discharge of Real Property Lease Obligations. In addition to the Purchase Price, the Buyer shall use good faith efforts to purchase the Real Property on terms acceptable to the Buyer, in its sole discretion.

ARTICLE 3

CLOSING AND DELIVERIES

3.1 Closing. The consummation of the transactions contemplated hereby (the "***Closing***") shall take place at the offices of Katten Muchin Rosenman, LLP, located at 525 West Monroe, Chicago, Illinois 60661, or by exchange of signed documents sent as "pdf" or similar files attached to emails, on or before the second Business Day following the satisfaction or waiver by the appropriate Party of all the conditions contained in ARTICLE 9 (other than those to be satisfied at the Closing) or on such other date or at such other place and time as may be mutually agreed to by the Parties in writing (the date on which the Closing occurs, hereinafter, the "***Closing Date***"). Unless otherwise agreed by the Parties in writing, the Closing shall be deemed effective and all right, title, and interest of Seller to be acquired by Buyer hereunder shall be considered to have passed to Buyer as of 12:01 a.m. (Central Time) on the Closing Date.

3.2 Seller's Deliveries. At or prior to the Closing, Seller will deliver or cause to be delivered to Buyer:

(a) a bill of sale in a form that is reasonably acceptable to both the Buyer and Seller (the "***Bill of Sale***"), duly executed by the Seller, pursuant to which Seller shall transfer its right, title and interests in and to the Acquired Assets;

(b) Intellectual Property assignments in forms that are reasonably acceptable to both the Buyer and Seller (the "***IP Assignments***"), duly executed by the Seller, pursuant to which Seller shall transfer its right, title and interests in and to the Intellectual Property included among the Acquired Assets, and duly executed powers of attorney and/or related documents reasonably necessary to facilitate transfer of the Intellectual Property in any foreign jurisdiction;

(c) an assignment and assumption agreement (and other similar customary transfer instruments), duly executed by the Seller, in a form that is reasonably acceptable to both the Buyer and Seller (the "***Assignment and Assumption Agreement***"), which shall provide for, among other things, the assignment to Buyer and assumption by Buyer of all of Seller's rights, title, and interests in and to the Acquired Assets (including the Assigned Contracts) and all of Seller's obligations with respect to the Assumed Liabilities;

(d) a certificate of non-foreign status pursuant to Section 1445 of the Code and Treasury Regulations Section 1.1445-2(b) for Seller;

(e) a certified copy of the Sale Order;

(f) a certificate dated as of the Closing Date and signed by a senior officer of Seller in the officer's capacity as such, certifying the matters set forth in Sections 9.2(a), 9.2(b) and 9.2(c) of this Agreement; and

(g) all other certificates, agreements and other documents required by this Agreement (or as the Buyer may reasonably request that are customary for a transaction of this nature and necessary to evidence or consummate the transactions contemplated by this Agreement) to be delivered by the Seller at or prior to the Closing in connection with the transactions contemplated by this Agreement.

3.3 Buyer's Deliveries. At or prior to the Closing, Buyer shall pay, deliver, or cause to be delivered to Seller, as applicable:

(a) an Assignment and Assumption Agreement, duly executed by the Buyer;

(b) evidence of good standing from the applicable Governmental Authority that Buyer is existing and in good standing under the Laws of such authority;

(c) a certificate dated as of the Closing Date and signed by a senior officer of Buyer in the officer's capacity as such, certifying the matters set forth in Sections 9.1(a) and Section 9.1(b) of this Agreement.

(d) the Closing Date Cash Payment pursuant to Section 2.3;

(e) all other certificates, agreements and other documents required by this Agreement (or as the Seller may reasonably request that are customary for a transaction of this nature and necessary to evidence or consummate the transactions contemplated by this Agreement) to be delivered by Buyer at or prior to the Closing in connection with the transactions contemplated by this Agreement.

ARTICLE 4

REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth on the disclosure schedules attached hereto, which schedules shall be deemed to be part of the representations and warranties made hereunder; provided, that such disclosure schedules shall be finalized pursuant to Section 6.10, Seller hereby represents and warrants to Buyer as follows:

4.1 Organization, Standing and Power

The Seller is a corporation validly existing and in good standing under the laws of the jurisdiction of its formation, and in each of the jurisdictions in which the ownership or leasing of its properties or the conduct of its Business requires such qualification, except for any jurisdiction where the failure to be qualified would not, individually or in the aggregate, have a Material Adverse Effect on the Business. The Seller has all requisite corporate power and authority to own or lease and operate its properties and assets now owned or leased and operated by it, including the Acquired Assets, and to carry on its business in all respects as currently conducted by it, subject to the provisions of the Bankruptcy Code. All equity interests of other entities held by the Seller are listed on Schedule 4.1.

4.2 Authority Relative to this Agreement

Subject to the entry of the Sale Order, the applicable provisions of the Bankruptcy Code, and the contemplated orders of the Bankruptcy Court, and except as provided in Section 4.4, the Seller has all necessary corporate authority to execute and deliver this Agreement and, upon entry and effectiveness of the Sale Order in accordance with the terms hereof, assuming the due authorization, execution and delivery in each case by the other Party hereto and thereto, will have all necessary corporate authority to consummate the transactions contemplated by this Agreement. This Agreement has been duly executed and delivered by the Seller, subject to the effectiveness of the Sale Order in accordance with the terms hereof (subject to bankruptcy, insolvency, reorganization, and other laws of general applicability relating to or effecting creditors' rights and to general principles of equity).

4.3 Acquired Assets; Transfer of Title to Acquired Assets.

(a) The Acquired Assets (i) include all of the assets, properties and rights of every type and description, real, personal and mixed, tangible and intangible, that are owned, leased or licensed by the Seller and are used or held for use in the conduct of the Business (other than the Excluded Assets); and (ii) constitute all of the assets, except for the Excluded Assets, necessary for the continued operation of the Business in the Ordinary Course of Business in all material respects. For the sake of clarity, the right to use any assets included in the Acquired Assets in which Seller has leasehold or non-ownership rights to use shall be assigned to Buyer only through the assumption and assignment of the Assigned Contracts in accordance with and subject to this Agreement. The Seller has valid title to or a valid leasehold interest in all of the Acquired Assets, free and clear of all Liens, except Permitted Encumbrances. Assuming entry of the Sale Order and receipt of all of the Necessary Consents prior to the Closing, upon delivery to the Buyer at the Closing by the Seller of the agreements, documents and instruments set forth in Section 3.2, valid title to, or, in the case of property leased or licensed by the Seller, a valid leasehold interests in, the Acquired Assets will pass to the Buyer, free and clear of any Liens, except Permitted Encumbrances, to the fullest extent permissible under Section 363 of the Bankruptcy Code. No Affiliate of Seller owns, leases or licenses any assets, of any nature whatsoever, that currently are or ever have been, used in the conduct of the Business

(b) The tangible Acquired Assets are in reasonable operating condition and repair for the purposes for which they are used (subject to ordinary wear and tear).

(c) The Acquired Assets are sufficient to permit the Buyer or its permitted designees to operate the Business from and after the Closing Date in substantially the same manner as the Business is currently conducted by the Seller.

4.4 Consents, Approvals, and Notifications. Subject to the applicable provisions of the Bankruptcy Code and the entry and effectiveness of the contemplated orders of the Bankruptcy Court (including the Sale Order), except as set forth on Schedule 4.4, the execution, delivery, and performance of this Agreement by Seller do not require the Consent of, or filing with, any Governmental Authority or any other Person (other than those which have been obtained), other than such filings, notices or Consents, the failure of which to make or obtain would not have a Material Adverse Effect.

4.5 No Options. Other than the Buyer, no Person has any written or oral agreement or option for the purchase or acquisition of all or any of the Acquired Assets.

4.6 Real Property

The Seller owns no real property. The Existing Real Property Leases (including any amendments, modifications or supplements thereto) listed on Schedule 4.6 are all of the Real Property held or used for, or necessary to the operation of the Business. Seller has a good and valid leasehold interest in the Existing Real Property Leases, in each case free and clear of all Liens other than Permitted Encumbrances. Each Existing Real Property Lease (i) is the legal, valid, binding and enforceable obligation of the Seller, (ii) to the Knowledge of Seller, is in full force and effect and the binding obligation of the other parties thereto and (iii) will, if designated as an Assigned Contract, continue to be the legal, valid, binding, and enforceable obligation of the Buyer following the consummation of the transactions contemplated hereby. To the Knowledge of the Seller, there are no conditions that currently exist or with the passage of time will result in a material default in the performance and/or observance of the obligations on the part of Seller under any of the Existing Real Property Leases. To the Knowledge of Seller, Seller has not subleased or granted to any Person any right to the use, occupancy or enjoyment of the Real Property or any portion thereof. Seller has maintained the Real Property in good and operable condition in all material respects.

4.7 Contracts. Schedule 4.7 lists all Contracts (including any amendments, modifications or supplements thereto) which are material to the ownership and/or operation of the Seller's Business (the "***Existing Contracts***"). Seller has not received written notice of any default with respect to the Existing Contracts. Seller is not in any default under any of the Existing Contracts other than a default that may be cured in its entirety through payment of the applicable Cure Costs. Assuming payment of the Cure Costs, each of the Existing Contracts is a valid and binding obligation as to the applicable Seller, and, to the Knowledge of the Seller, the other parties thereto, and is in full force and effect in accordance with its terms.

4.8 Financial Statements. Attached as Schedule 4.8 are (A) the audited balance sheet of Seller as of December 31, 2014 and December 31, 2015, and the audited related income statement, statements of operations, changes in stockholders' equity and cash flows for the years

ended December 31, 2014 and December 31, 2015, and (B) the unaudited consolidated balance sheet of Seller as of December 31, 2016 and February 28, 2017 (the "***Interim Balance Sheet***") and the unaudited related income statement, statements of operations, changes in stockholders' equity and cash flows for the 12-month period ended December 31, 2016 and the two (2) month period ended February 28, 2017 (the financial statements referenced in (A) and (B), together, the "***Financial Statements***").

4.9 Absence of Changes. Except as required by Law or GAAP, and except as set forth in Schedule 4.9, since December 31, 2015 through and including the date hereof: (i) the Seller has conducted the Business in the Ordinary Course of Business; (ii) there have not occurred any facts, conditions, changes, violations, inaccuracies, circumstances, effects or events that have constituted, or which would be reasonably likely to result in a Material Adverse Effect; and (iii) no Seller has taken any action described in Section 6.2.

4.10 No Undisclosed Liabilities. The Seller has no material Liabilities, except Liabilities (i) in the aggregate adequately provided for in the Financial Statements; (ii) incurred in the Ordinary Course of Business and not required under GAAP to be reflected on the Financial Statements; (iii) incurred since December 31, 2016 in the Ordinary Course of Business or as required by applicable Law; or (iv) incurred in connection with this Agreement or the transactions contemplated hereby.

4.11 Environmental Matters.

(a) Seller is currently and has been in compliance in all material respects with all Environmental Laws and has not received from any Person any: (i) Environmental Notice or Environmental Claim; or (ii) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date.

(b) Seller has obtained and is in compliance in all material respects with all Environmental Permits (each of which is disclosed in Schedule 4.11(b)) necessary for the ownership, lease, operation or use of the Business or assets of Seller and all such Environmental Permits are in full force and effect and shall be maintained in full force and effect by Seller through the Closing Date.

(c) Schedule 4.11(c) contains a complete and accurate list of all active or abandoned aboveground or underground storage tanks owned or operated by Seller.

(d) Seller has provided to Buyer and listed in Schedule 4.11(d) all environmental reports and studies and other similar documents with respect to the Acquired Assets in the possession of Seller.

4.12 Intellectual Property Matters.

(a) The Seller owns or has valid rights to use all of the Intellectual Property necessary to conduct, or used by it in the operation of, the Business as currently conducted.

Schedule 4.12 lists all (i) registrations for such Intellectual Property owned by the Seller, (ii) pending applications to register any such Intellectual Property owned by the Seller, (iii) domain names owned by the Seller, and (iv) material contracts, licenses and agreements (including settlements and covenants not to sue) pursuant to which the Seller has been granted the right to use Intellectual Property by any Person. Except as set forth on Schedule 4.12, Seller owns all right, title and interest to, or are licensees with respect to, all Intellectual Property held, licensed, used or held for use in the Business as currently conducted (the "***Acquired IP***") and can convey such Intellectual Property free and clear of Liens pursuant to the Sale Order. To the Knowledge of Seller, (a) no Person is engaging in any activity that infringes any Acquired IP and (b) no claim has been asserted to Seller that the use of any Acquired IP or the operation of the Business infringes or violates the Intellectual Property of any third party. The Acquired IP and the rights under the Assigned Contracts necessarily include the rights to use all Intellectual Property required to operate the Business as currently conducted.

(b) There is no Action, suit, proceeding, claim, investigation or complaint pending, or, to the Knowledge of the Seller, threatened against Seller that (A) challenges (y) the validity or ownership of any Intellectual Property owned by the Seller or (z) a Seller's use of any Intellectual Property or (B) alleges infringement, dilution, misappropriation or other violation of the Intellectual Property of any Person by Seller. To the Knowledge of the Seller, no third Person's operations or products infringe any Intellectual Property owned by or exclusively licensed to the Seller in any material respect. To the Knowledge of the Seller, Seller's operations and products do not infringe, dilute, misappropriate or otherwise violate the Intellectual Property of any third Person and there is no valid basis for such a claim. Seller has not received during the two (2) year period preceding the date hereof any written claim of infringement, dilution, misappropriation or other violation with respect to any Intellectual Property owned by any third Person.

(c) The Intellectual Property, including rights to use the Intellectual Property of any Person under a license, included in the Acquired Assets constitutes all material Intellectual Property owned, used or held for use by the Seller in the conduct of the Business. No current or former Affiliate, partner, director, stockholder, officer or Employee of Seller will, after giving effect to the transactions contemplated hereby, own or retain any rights to use any of the Intellectual Property owned, used or held for use by the Seller in the conduct of the Business.

4.13 Insurance. Schedule 4.13 sets forth a complete list of all insurance policies with respect to which Seller is a party, a named insured or otherwise the beneficiary of coverage.

4.14 Litigation. Except as set forth on Schedule 4.14 and other than in connection with the Bankruptcy Case, there is no Action pending, or to the Knowledge of the Seller, threatened (a) against the Seller or any of its officers, directors, shareholders or Employees (in their capacities as such); or (b) that questions the validity of any of the Ancillary Agreements or that involves or relates to any of the transactions contemplated hereby which, in either case, might adversely affect the ability of Seller to enter into this Agreement or to consummate the transactions contemplated hereby and Seller has no Knowledge of any existing ground on which

any such Action, suit or proceeding may be commenced with any reasonable likelihood of success.

4.15 Permits; Compliance with Laws.

(a) Schedule 4.15(a) sets forth a correct and complete list of all material Permits used by Seller in the Business, necessary to entitle or permit the Seller to carry on and conduct the Business (such Permits being the "***Required Permits***"). The Seller owns, holds or possesses all Required Permits and all such Required Permits are validly held and are in full force and effect. No notice has been received with respect to any failure by the Seller to have any Required Permit.

(b) The Seller, its operations and the Business are, and since January 1, 2015, have been, in compliance in all material respects with each Required Permit and each Law applicable to the Seller.

(c) The Seller has not received any written notice (a) concerning the revocation, suspension, modification, limitation, cancellation or non-renewal of any Required Permit; or (b) of a material violation of or default with respect to, any Required Permit or Law applicable to the Seller, its operations, the Business, the Acquired Assets or the Assumed Liabilities.

4.16 Tax Matters.

(a) All material sales or use tax returns of Seller have been timely filed in material compliance with applicable Laws, and all such Tax Returns are true, complete and accurate in all material respects. Each Seller has timely paid, or caused to be paid, all Taxes for which it is liable with respect to the Acquired Assets and the Business.

(b) No federal, state, local or foreign audits or other proceedings have been asserted against the Seller in writing, nor has Seller received in the last three (3) years any (A) notice in writing from any Governmental Authority that any such audit or other proceeding is pending, threatened or contemplated or (B) notice of deficiency or proposed adjustment for any Tax proposed, asserted or assessed by any Governmental Authority against Seller with respect to any material Taxes or any material Tax Return filed by or with respect to Seller. In the last three (3) years, Seller has not engaged in any administrative audit, administrative appeal or judicial contest of any Tax matter.

(c) Except as set forth on Schedule 4.16, there are no liens for Taxes upon any of the Acquired Assets, other than liens for Taxes not yet due and payable.

(d) Seller has withheld and paid all material Taxes required to have been withheld and paid in connection with amounts paid or owing to any Employee, independent contractor, creditor, stockholder or other third party, and all Tax Returns required with respect thereto have been properly complete and timely filed in all material respects.

(e) Seller has not received written notice of any claim by any Governmental Authority in a jurisdiction where a Seller has not filed Tax Returns that the Business or Seller may be subject to taxation by that jurisdiction.

(f) Seller is not a "foreign corporation", "foreign partnership", "foreign trust", "foreign estate", "foreign person", "Affiliate" of a "foreign person" or a "United States intermediary" of a "foreign person" within the meaning of the Code Sections 897 and 1445.

4.17 Key Customers and Suppliers. Except as disclosed on Schedule 4.17, since December 31, 2016, no Key Customer has cancelled or otherwise terminated or, whether or not an automatic renewal provision exists in a Contract with such Key Customer, refused or purported to refuse to renew the term of its relationship with the Seller or materially reduced or otherwise adversely changed the pricing or other terms of the business it conducts with the Seller and no such Key Customer has notified the Seller in writing that it intends to cancel, terminate or, whether or not an automatic renewal provision exists in a Contract with such Key Customer, refuse to renew the term or materially reduce or change the pricing or other terms of its business or Contract with the Seller. Except as disclosed on Schedule 4.17, since December 31, 2016, no Key Supplier has cancelled or otherwise terminated or, whether or not an automatic renewal provision exists in any Contract with such Key Supplier, refused or purported to refuse to renew the term of such Contract or materially reduced or changed the pricing or other terms of such Contract and no such Key Supplier has notified the Seller in writing that it intends to cancel, terminate or, whether or not an automatic renewal provision exists in such Contract, refuse to renew the term or materially reduce or change the pricing or other terms of such Contract.

4.18 Accounts Receivable. Except as set forth in Schedule 4.18, to the Knowledge of the Seller, the debtors to which the accounts receivable reflected in the Interim Balance Sheet (and all accounts receivable arising since the Interim Balance Sheet) (collectively, the "***Receivables***") relate are not in or subject to a bankruptcy or insolvency proceeding, and none of the Receivables has been made subject to an assignment for the benefit of creditors. Except as set forth in Schedule 4.18, all outstanding Receivables (net of any reserves shown thereon) (a) are valid, existing and fully collectible in a manner consistent with the Seller's past practice without resort to legal proceedings or collection agencies; (b) represent monies due for goods sold and delivered or services rendered in the Ordinary Course of Business; and (c) are not subject to any refunds or adjustments or any defenses, rights of set-off, assignment, restrictions, security interests or other Liens. Except as set forth in Schedule 4.18, all such Receivables are current, and there are no disputes regarding the collectability of any such Receivables. The Seller has not factored any of the Receivables.

4.19 Employees; ERISA.

(a) Schedule 4.19(a) sets forth a correct and complete list of all of the Employees of, and consultants and independent contractors to, the Seller and each Employee's place of employment, compensation, bonuses and accrued vacation, in effect as of the date of this Agreement.

(b) Except as set forth on Schedule 4.19(b), the Seller has not entered into and is not bound by any (i) employment, consulting or severance Contract with any of its directors, officers or Employees or (ii) collective bargaining agreement with its Employees.

(c) Schedule 4.19(c) sets forth a correct and complete list of all Employee Benefit Plans of the Seller, true, correct and complete copies of which have been made available to the Buyer or its Representatives prior to the date of this Agreement.

(d) Each of Seller's Employee Benefit Plans which is an "employee pension benefit plan" (as defined in Section 3(2) of ERISA) and intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service that such Employee Benefit Plan is qualified and that its related trust has been determined to be exempt from taxation under Section 501(a) of the Code. To the Knowledge of the Seller, no events or circumstances have occurred (other than changes for which the remedial amendment period under Section 401(b) of the Code has not expired) since the date of such letters that will materially adversely affect the qualification or exemption of such Employee Benefit Plan.

(e) If, as of the Closing Date, the Seller were to terminate any Employee Benefit Plans subject to Title IV of ERISA and withdraw from all multiemployer plans to which the Seller has contributed or been obligated to contribute or for which the Seller could reasonably be expected to have or for which it has liability, including as an "ERISA affiliate" or controlled group under Code Section 414, the Seller would incur no liabilities to, or on account of, such plans under Title IV of ERISA or otherwise.

(f) Schedule 4.19(f) sets forth a true and complete list as of the Closing Date of all Labor Agreements. Seller has delivered or made available to Buyer true and correct copies of each Labor Agreement.

(g) To the Knowledge of the Seller, no labor strike, work stoppage, slowdown or dispute is pending or threatened with respect to the Business or by any Newco Employees.

(h) The consummation of the transactions contemplated hereby will not entitle any third party (including any labor union or labor organization) to any payments under any of the Labor Agreements. The Seller has not committed any unfair labor practice in connection with the Business, and there is no charge or complaint against the Seller by the National Labor Relations Board pending or, to the Knowledge of the Seller, threatened. There is no charge of discrimination in employment or employment practices that has been asserted or is now pending or, to the Knowledge of the Seller, threatened before the United States Equal Employment Opportunity Commission, or any other Governmental Authority against the Seller.

(i) During the last 12 months before the Closing Date there has been no mass layoff, plant closing, or shutdown that could implicate the Worker Adjustment Retraining and Notification Act of 1988, as amended, or any similar Law.

(j) To the Knowledge of the Seller, the Seller is in material compliance with all applicable provisions of ERISA. Schedule 4.19(j) sets forth (i) the number of employees terminated by the Seller within the six (6) months preceding the Closing Date, (ii) the dates of such terminations, (iii) whether each such elimination was a full-time or part-time (for these purposes, which shall mean fewer than twenty (20) hours per week), and (iv) the number of full-time employees sixty (60) days prior to the first elimination.

4.20 Sale Order. Immediately prior to Closing, the Seller will have the instruments of transfer contemplated by Section 3.2, and, upon delivery to the Buyer on the Closing Date of such instruments of transfer, assuming the due authorization, execution and delivery in each case by the other parties hereto and thereto, and subject to the terms of the Sale Order, the Seller will thereby transfer to the Buyer, good title to all of the Acquired Assets, free and clear of all Liens pursuant to Section 363 of the Bankruptcy Code, except for the Assumed Liabilities and for Permitted Encumbrances.

4.21 Financing. Other than debtor-in-possession financing which shall be approved by the Bankruptcy Court, the Seller has incurred no indebtedness for borrowed money following the commencement of the Bankruptcy Case other than as set forth in Schedule 4.21 that could constitute a Lien (other than a Permitted Encumbrance) on the Acquired Assets.

4.22 Products.

(a) Schedule 4.22(a) sets forth a true and complete list of all products of the Seller, including all products (i) currently being sold, manufactured or distributed or (ii) developed, manufactured, sold or distributed in the past three (3) years ("***Products***").

(b) There are no products liabilities, warranty or similar claims currently pending against the Seller and to the Knowledge of the Seller, there are no facts and/or circumstances which are likely to give rise to any such claims.

(c) Each Product manufactured, sold, leased or delivered by the Seller has been in conformity with all material contractual commitments and all warranties and Seller has no material Liability (and there is no basis for any present or future suit against Seller, giving rise to any material Liability) to replace or recall any product or other damages in connection therewith. Since January 1, 2013, there has been no large scale recall of any Product manufactured by or sold by the Seller. To the Knowledge of Seller, Seller has no Liability (and there is no basis for any present or future Action against or giving rise to any Liability) arising out of any injury to individuals or property as a result of the ownership, possession or use of any Product manufactured, sold, leased or delivered by the Seller.

4.23 Slotting Fees. Seller has not (i) been a party to any arrangement in the past three years, or (ii) is currently a party to any arrangement whereby Seller is paying or has agreed to

pay in the future any fees to place or stock any of the products sold by the Business on the shelves or in the warehouses or stores of any Person.

4.24 No Brokers or Finders

Other than Kinetic Advisors LLC, no agent, broker, finder, or investment or commercial banker, or other Person or firm engaged by, or acting on behalf of, Seller in connection with the negotiation, execution, or performance of this Agreement or the transactions contemplated by this Agreement, is or will be entitled to any brokerage or finder's or similar fees or other commissions as a result of this Agreement or such transactions.

4.25 No Other Representations or Warranties; Disclosure Schedules

Except for the representations and warranties contained in this ARTICLE 4 (as modified or supplemented by the disclosure schedules), neither Seller nor any other Person makes any express or implied representation or warranty with respect to Seller, the Business, the Acquired Assets, the Assumed Liabilities or the transactions contemplated by this Agreement, including, without limitation, (a) the probable success or profitability of ownership, use or operation of the Acquired Assets by Buyer after the Closing, (b) the probable success or results in connection with the Bankruptcy Court and the Sale Order, (c) the value, use or condition of the Acquired Assets and Seller hereby disclaims any other representations or warranties, whether made by Seller, any Affiliate of Seller or any of their respective officers, directors, managers, employees, attorneys, investment bankers, consultants, accountants, trustees, or other agents or representatives. Except for the representations and warranties contained in this ARTICLE 4 (as modified or supplemented by the disclosure schedules hereto), Buyer is acquiring the Acquired Assets "AS IS, WHERE IS," "WITH ALL FAULTS" and Seller hereby expressly disclaims and negates any representation or warranty, expressed or implied, at common law, by statute, or otherwise, relating to the condition of the Acquired Assets (including any implied or express warranty of merchantability or fitness for a particular purpose).

ARTICLE 5

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller as follows:

5.1 Organization, Standing and Power. Buyer is a limited liability company validly existing and in good standing under the Laws of the jurisdiction of its formation Buyer has all requisite limited liability company power and authority to own, lease, and operate its properties, to carry on its business as now conducted, and to perform its obligations hereunder and under any Ancillary Agreement to which it is or will be party and to engage in the Business after the Closing. Buyer is in good standing under the Laws of the jurisdiction of its formation and each other jurisdiction in which the conduct of its businesses or the ownership of its properties requires such qualification or authorization, except where failure to be so qualified would not materially delay or impair the ability of Buyer to perform its obligations under this Agreement or any of the Ancillary Agreements.

5.2 Authorization and Validity. Buyer has all requisite limited liability company power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the performance of Buyer's obligations hereunder have been duly authorized by all necessary company action on behalf of Buyer, and no other proceedings on the part of Buyer are necessary to authorize such execution, delivery, and performance. This Agreement has been duly executed by Buyer and constitutes its valid and binding obligation, enforceable against it in accordance with the terms herein (subject to bankruptcy, insolvency, reorganization, and other laws of general applicability relating to or effecting creditors' rights and to general principles of equity).

5.3 Consents, Approvals, and Notifications. The execution, delivery, and performance of this Agreement by Buyer do not require the Consent of, or filing with or notification of any Governmental Authority or any other Person, the failure of which to obtain, file, or notify would materially delay or impair the ability of Buyer to perform its obligations under this Agreement.

5.4 Financial Ability. At all times between the Agreement Date and the Closing Date, Buyer has, and will have, the financial ability, including sufficient available funds or immediate access to sufficient funds, to (a) consummate the transactions contemplated by this Agreement and (b) establish its ability to provide "adequate assurance," as such term is used in Section 365 of the Bankruptcy Code, necessary to obtain Bankruptcy Court approval for the assignment of the Assigned Contracts from Buyer to Seller, and Buyer will provide to Seller such information as Seller reasonably believes necessary to establish such "adequate assurance" and cooperate with Seller as reasonably necessary to obtain entry of the Sale Order.

5.5 Solvency. As of the Closing and immediately after consummating the transactions contemplated by this Agreement and the other transactions contemplated by this Agreement, Buyer reasonably believes it will not (a) be insolvent (either because its financial condition is such that the sum of its debts is greater than the fair value of its assets or because the present fair value of its assets will be less than the amount required to pay its probable Liability on its debts as they become absolute and matured), (b) have unreasonably small capital with which to engage in its business, including the Business (it being understood that nothing herein requires Buyer to operate the Business for any specified period of time), or (c) have incurred or planned to incur debts beyond its ability to repay such debts as they become absolute and matured.

5.6 Law and Legal Proceedings. There are no Legal Proceedings pending or, to Buyer's knowledge, threatened against Buyer before any Governmental Authority, which, if adversely determined, would reasonably be expected to prohibit the consummation of the transactions contemplated by this Agreement or materially delay or impair the ability of Buyer to perform its obligations under this Agreement or any of the Ancillary Agreements it is party to.

5.7 No Inconsistent Obligations

Neither the execution and delivery of this Agreement or any other documents contemplated hereby, nor the consummation of the transactions contemplated herein or therein in accordance with the Sale Order, will, to Buyer's knowledge, result in a violation or breach of, or constitute a default under, (a) the certificate of incorporation, as amended, the bylaws, or other organizational instruments of Buyer, (b) any applicable ruling or Order of any Governmental Authority, (c) any term or provision of any Contract or agreement, (d) any writ, Order, judgment, decree, Law, rule, regulation or ordinance, or (e) any other commitment or restriction to which Buyer is a party.

5.8 No Brokers or Finders

No agent, broker, finder, or investment or commercial banker, or other Person or firm engaged by, or acting on behalf of, Buyer in connection with the negotiation, execution, or performance of this Agreement or the transactions contemplated by this Agreement, is or will be entitled to any brokerage or finder's or similar fees or other commissions as a result of this Agreement or such transaction.

5.9 Adequate Assurance Regarding Assigned Contracts

As of the Closing, Buyer will be capable of satisfying the conditions contained in Sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Assigned Contracts.

5.10 Due Diligence

(a) AS-IS WHERE-IS SALE; DISCLAIMERS; RELEASE. EXCEPT AS OTHERWISE PROVIDED IN ARTICLE IV, IT IS UNDERSTOOD AND AGREED THAT, UNLESS EXPRESSLY STATED HEREIN, SELLERS ARE NOT MAKING AND HAVE NOT AT ANY TIME MADE ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE ACQUIRED ASSETS, INCLUDING BUT NOT LIMITED TO, ANY WARRANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(b) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, BUYER ACKNOWLEDGES AND AGREES THAT, UPON THE CLOSING, SELLERS SHALL SELL AND CONVEY TO BUYER, AND BUYER SHALL ACCEPT, THE ACQUIRED ASSETS "AS IS, WHERE IS, WITH ALL FAULTS." BUYER HAS NOT RELIED AND WILL NOT RELY ON, AND SELLERS ARE NOT LIABLE FOR OR BOUND BY, ANY EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE ACQUIRED ASSETS OR RELATING THERETO MADE OR FURNISHED BY SELLERS OR THEIR REPRESENTATIVES, TO WHOMEVER MADE OR GIVEN, DIRECTLY OR INDIRECTLY, ORALLY OR IN WRITING, EXCEPT AS EXPRESSLY STATED HEREIN. BUYER ALSO ACKNOWLEDGES THAT THE TOTAL PURCHASE PRICE REFLECTS AND TAKES INTO ACCOUNT THAT THE ACQUIRED ASSETS ARE BEING SOLD "AS IS, WHERE IS, WITH ALL FAULTS."

(c) BUYER ACKNOWLEDGES TO SELLERS THAT BUYER HAS HAD THE OPPORTUNITY TO CONDUCT AND DID CONDUCT SUCH INSPECTIONS AND INVESTIGATIONS OF THE ACQUIRED ASSETS AS BUYER DEEMS NECESSARY OR DESIRABLE TO SATISFY ITSELF AS TO THE ACQUIRED ASSETS AND ITS ACQUISITION THEREOF. BUYER HEREBY ASSUMES THE RISK THAT ADVERSE MATTERS INCLUDING, BUT NOT LIMITED TO, LATENT OR PATENT DEFECTS, ADVERSE PHYSICAL OR OTHER ADVERSE MATTERS, MAY NOT HAVE BEEN REVEALED BY BUYER'S REVIEW AND INSPECTIONS AND INVESTIGATIONS.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SUBJECT TO OBTAINING THE SALE ORDER, BUYER WAIVES ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THE VALIDITY AND CONDITION OF THE ACQUIRED ASSETS AS OF THE CLOSING..

ARTICLE 6

COVENANTS OF THE PARTIES

The Parties hereby covenant as follows:

6.1 Access to Information Prior to Closing. Seller agrees that, prior to the Closing Date (or the earlier termination of this Agreement), Buyer shall be entitled, through its officers, employees and representatives (including, without limitation, its legal advisors and accountants) (collectively, the "***Representatives***"), to make such reasonable investigation of the Acquired Assets of Seller and such reasonable examination of the books and records of Seller relating to the operations of the Business, as Buyer reasonably requests and to make extracts and copies thereof, all at Buyer's sole expense. Any such investigation and examination shall be conducted during regular business hours and under reasonable circumstances upon reasonable advance notice, Seller shall cooperate fully therein, and Buyer shall use its commercially reasonable efforts to minimize any disruption to the Business. No investigation by Buyer prior to or after the Agreement Date shall diminish or obviate any of the representations, warranties, covenants or agreements of Seller contained in this Agreement or the Ancillary Agreements. Each Party shall cause its officers, employees, consultants, agents, accountants, attorneys and other representatives to cooperate fully with the representatives of the other Party in connection with such review and examination. Seller shall promptly deliver to Buyer copies of all pleadings, motions, notices, statements, schedules, applications, reports and other papers filed by Seller in the Bankruptcy Case. Seller shall promptly provide to Buyer all documents and materials relating to the proposed sale of the Acquired Assets, or any portion thereof, including, without limitation, with respect to competing bids, and otherwise cooperate with Buyer, to the extent reasonably necessary in connection with Buyer's preparation for or participation in any part of the Bankruptcy Case in which Buyer's participation is necessary, required or reasonably appropriate. Additionally, Seller agrees that it will use commercially reasonable efforts to facilitate communications between Buyer and the Landlord.

6.2 Conduct of the Business Pending the Closing.

(a) During the pre-Closing period, Seller shall use commercially reasonable efforts, except as otherwise required, authorized or restricted pursuant to the Bankruptcy Code or an Order of the Bankruptcy Court, to operate the Business in the Ordinary Course of Business (among other things, Seller will not incur unreasonable liabilities, including, without limitation, inappropriate increases in Inventory or factoring of Accounts Receivable). Except (A) as otherwise expressly provided in or contemplated by this Agreement, (B) required, authorized or restricted pursuant to the Bankruptcy Code or an Order of the Bankruptcy Court, on or prior to the Closing Date, or (C) with the prior written consent of Buyer, between the Agreement Date and the Closing (or earlier termination of this Agreement) Seller shall use commercially reasonable efforts to:

(i) conduct the Business only in a manner materially consistent with the manner in which it is being conducted on the Agreement Date, and not materially reduce the level of the Business' operations from the level of operations on the Agreement Date;

(ii) maintain (A) the tangible assets and properties of Seller constituting Acquired Assets in their current condition, ordinary wear and tear excepted, and (B) insurance upon such assets and properties of Seller in such amounts and of such kinds substantially comparable to that in effect on the Agreement Date;

(iii) subject to the limitation on the Seller's operations as a result of the commencement of the Bankruptcy Case, fulfill obligations to trade creditors and Employees in a timely manner consistent with past practice;

(iv) not alter or otherwise amend or terminate any Contract without the prior written consent of Buyer;

(v) enter into any Contract without the prior written consent of Buyer which would result in an obligation of Seller in excess of Fifty Thousand Dollars ($50,000.00)

(vi) assume any material Liability without the prior written consent of Buyer (other than any Liability that is excluded from the Assumed Liabilities and would not otherwise lead to any Liability on the part of the Buyer);

(vii) comply in all material respects with applicable Laws; and

(viii) not take any action which would adversely affect the ability of the Parties to consummate the transactions contemplated by this Agreement, other than accept a Qualified Bid.

(b) Except as otherwise expressly contemplated by this Agreement or with the prior written consent of Buyer, or as otherwise required, authorized or restricted pursuant to the Bankruptcy Code or an Order of the Bankruptcy Court, so long as any such required action does not result in a Material Adverse Effect, and only to the extent that such action would affect the

Acquired Assets or Assumed Liabilities, between the Agreement Date and the Closing (or earlier termination of this Agreement) Seller shall not (i) effect, or agree to effect, any material change in the operation of the Business as conducted on the Agreement Date, (ii) modify or renew any material Assigned Contract, or (iii) take any action that would render any of the representations or warranties of Seller in this Agreement untrue or incorrect in any material respect.Consents. Each Party shall use reasonable efforts, and reasonably cooperate with the other Party, to obtain at the earliest practicable date all Consents and approvals required to consummate the transactions contemplated by this Agreement.

6.4 Further Assurances. Each Party shall, and shall cause its respective affiliates to, use its commercially reasonable efforts to (a) take all actions necessary or appropriate to consummate the transactions contemplated by this Agreement, and (b) cause the fulfillment at the earliest practicable date of all of the conditions to their respective obligations to consummate the transactions contemplated by this Agreement.

6.5 Confidentiality.

(a) Commencing on the Closing Date and for a period of twelve (12) months thereafter, Seller shall not, and shall direct its Affiliates and their respective officers and directors not to, directly or indirectly, disclose, reveal, divulge or communicate to any Person other than authorized officers, directors and employees of Buyer or use or otherwise exploit for its own benefit or for the benefit of anyone other than Buyer, any Confidential Information (as defined below). Seller and its officers, directors and Affiliates shall not have any obligation to keep confidential any Confidential Information, if and to the extent disclosure thereof is required by Law; provided, however, that, in the event disclosure is required by applicable Law, Seller shall, to the extent reasonably possible, provide Buyer with prompt notice of such requirement prior to making any disclosure so that Buyer may seek an appropriate protective order.

(b) For purposes of this Section 6.5, "***Confidential Information***" shall mean any confidential information with respect to the Business, including, to the extent it is confidential, methods of operation, customers, customer lists, products, prices, fees, costs, technology, inventions, trade secrets, know-how, software, marketing methods, plans, personnel, suppliers, competitors, markets or other specialized information or proprietary matters. "***Confidential Information***" does not include, and there shall be no obligation hereunder with respect to, information that (i) is generally available to the public on the Agreement Date, or (ii) becomes generally available to the public other than as a result of a disclosure not otherwise permissible hereunder. This Section 6.5 shall not in any way limit the disclosure of information, including Confidential Information by Seller, its Affiliates and their respective officers and directors, (A) to Lender and its authorized representatives, (B) in connection with the prosecution of the Bankruptcy Case, including providing Confidential Information to other bidders or potential bidders pursuant thereto, or (C) in connection with any other legal proceedings.

6.6 Preservation of Records. Seller (or any subsequently appointed bankruptcy estate representative, including, but not limited to, a trustee, a creditor trustee or a plan administrator)

and Buyer agree that each of them shall preserve and keep the records held by it or its Affiliates relating to the Business prior to the Closing (excluding the Company Records) from the date hereof until such date on which an orderly wind-down of the Seller's operations has occurred in the reasonable judgment of Buyer and Seller, and shall make such records available to the other Party (and permit such other Party to make extracts and copies of such books and records at its own expense) as may be reasonably required by such Party in connection with, among other things, any insurance claims by, legal proceedings or Tax audits against or governmental investigations of Seller or Buyer or any of their Affiliates or in order to enable Seller or Buyer to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby or thereby; provided that the Seller shall not be required to make available to Buyer any Consolidated Tax Return. .

6.7 Waiver of Bulk Sales Laws. To the greatest extent permitted by applicable Law, Buyer and Seller hereby waive compliance by Buyer and Seller with the terms of any bulk sales or similar Laws in any applicable jurisdiction in respect of the transactions contemplated by this Agreement. The Sale Order shall exempt the Buyer and Seller from compliance with any such Laws.

6.8 Employees.

(a) Buyer intends to extend offers of employment (which may be for employment with Buyer or any of its Affiliates) to substantially all of the Seller's Employees as of the date hereof; provided, that each of such Employees have not been terminated or otherwise left the employ of the Seller prior to the Closing Date, subject to Buyer's new, initial terms and conditions of employment which shall be communicated to such Employees at the time it extends such offers of employment. Employment of any Employee by Buyer shall be conditioned upon acceptance of such initial terms and conditions of employment by such Employee.

(b) Seller will make available to Buyer a correct and complete list of all their then-current Employees no less than ten (10) days prior to the Closing Date. Consistent with applicable Law, Seller shall provide Buyer access to its personnel records and personnel files, and shall provide such other information regarding its employees as Buyer may reasonably request. All such Employees who accept such offers of employment, and commence such employment immediately after the Closing, with Buyer or its Affiliates are hereinafter referred to as the "***Newco Employees***". Effective as of immediately before the Closing, Seller shall terminate the employment of each Newco Employee.

(c) Buyer shall set new, initial terms and conditions of employment for all Newco Employees (the acceptance of which shall be a condition of employment) which shall be in effect immediately upon commencement of employment.

(d) Unless otherwise permitted by Law or Order, if Employees represented by United Food and Commercial Workers Union Local 1546 (the "***Union***") comprising a majority of the substantial and representative complement of Buyer operations (in accordance with

applicable Law), Buyer intends to negotiate a new collective bargaining agreement with the Union covering the terms and conditions of employment for such employees, to replace the initial terms and conditions of employment set by Buyer. Buyer does not intend to adopt any other term or condition of employment of Seller, or the collective bargaining agreement(s) between Seller and Union, and specifically does not intend to adopt the Union sponsored pension fund or Seller's benefit plans, for Newco Employees.

(e) For purposes of eligibility, vesting, and participation (but not benefit accrual) under any Buyer's own plans and programs providing employee benefits to Newco Employees after the Closing Date (the "***Post-Closing Plans***"), each Newco Employee shall be credited with his or her years of service with Seller before the Closing Date to the same extent as such Newco Employee was entitled, before the Closing Date, to credit for such service under similar Employee Benefit Plans (if any) in which such Newco Employees participated before the Closing Date (such Seller plans, the "***Seller Benefit Plans***"), except to the extent such credit would result in a duplication of benefits or such credit is prohibited by the applicable Post-Closing Plan.

(f) Seller shall not, prior to the Closing Date, make any representation to Seller's Employees concerning their employment by Buyer, other than as expressly described herein in Section 6.8.

(g) For purposes of each Post-Closing Plan providing medical, dental, hospital, pharmaceutical or vision benefits to any Newco Employee, Buyer shall use commercially reasonable efforts to cause to be waived all pre-existing condition exclusions and actively-at-work requirements of such Post-Closing Plan for such Newco Employee and his or her covered dependents (unless such exclusions or requirements were applicable under Seller Benefit Plans or are not permitted under any Post-Closing Plan). In addition, Buyer shall use reasonable efforts to cause any co-payments, deductible and other eligible expenses incurred by such Newco Employee and/or his or her covered dependents under Seller's Employee Benefit Plan providing, medical, dental, hospital, pharmaceutical or vision benefits during the plan year ending on the Closing Date to be credited for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such Newco Employee and his or her covered dependents for the applicable plan year of each comparable Post-Closing Plan in which he or she participates.

(h) Buyer shall assume and honor all vacation days and other paid-time-off accrued or earned, but not yet taken, by each Newco Employee as of the Closing Date. A list of all of the vacation time and other paid-time-off accrued or earned, but not yet take as of the date hereof is attached hereto as Schedule 6.8(h).

(i) The Seller shall be responsible for the payment of any severance payment or benefits that become due to any current or former employee, officer, director, member, partner or independent contractor as a result of the termination of such individual by Seller or ERISA Affiliate thereof. The Seller shall be responsible for all legally mandated health care continuation coverage for its, and its Affiliates', current and former employees (and their

qualified beneficiaries) who had or have a loss of coverage due to a "qualifying event" (within the meaning of Section 603 of ERISA) which occurred or occurs on or prior to the Closing Date including, without limitation, any loss of coverage that results directly or indirectly from the transactions contemplated by this Agreement. The Buyer or its Affiliates shall be responsible for any severance benefits for any Newco Employee who terminates employment with the Buyer or such Affiliate after the Closing Date, to the extent such Newco Employee is entitled to severance benefits under a Post-Closing Plan or Assigned Contract.

(j) On and following the Agreement Date, Seller and Buyer shall reasonably cooperate in all matters reasonably necessary to effect the transactions contemplated by this Section 6.8, including exchanging information and data relating to workers' compensation, employee benefits and employee benefit plan coverage, and in obtaining any governmental approvals required hereunder, except as would result in the violation of any applicable Law, including without limitation, any Law relating to the safeguarding of data privacy.

(k) The provisions of this Section 6.8 are for the sole benefit of the Parties to this Agreement only and shall not be construed to grant any rights, as a third party beneficiary or otherwise, to any Person who is not a party to this Agreement, nor shall any provision of this Agreement be deemed to be the adoption of, or an amendment to, any employee benefit plan, as that term is defined in Section 3(3) of ERISA, or otherwise to limit the right of Buyer or the Seller to amend, modify or terminate any such employee benefit plan. In addition, nothing contained herein shall be construed to (i) prohibit any amendments to or termination of any Employee Benefit Plans or (ii) prohibit the termination or change in terms of employment of any employee (including any Newco Employee) as permitted under applicable Law. Nothing herein, expressed or implied, shall confer upon any employee (including any Newco Employee) any rights or remedies (including, without limitation, any right to employment or continued employment for any specified period) of any nature or kind whatsoever, under or by reason of any provision of this Agreement.

6.9 Payments and Revenues. If, after the Closing, either Party (or any Affiliate of a Party) shall receive any payment or revenue that belongs to the other Party pursuant to this Agreement, it shall promptly remit or cause to be remitted the same to that other Party.

6.10 Update of Disclosure Schedules.

(a) Each Party has the continuing right and obligation (i) to supplement, modify or amend, with respect to any matter hereafter arising or events or conditions arising after the date hereof and prior to the Closing, the information required to be set forth on the disclosure schedules as to representations made by such Party with respect to any matter hereafter arising or discovered which, if existing or known at the date hereof, would have been required to have been set forth on such disclosure schedules, and (b) if necessary or appropriate to correct any inaccuracy in a representation made by such Party, to add a schedule to the disclosure schedules with a corresponding reference in this Agreement (such information and additional schedules collectively being called the "***Updating Information***");

(b) To the extent Updating Information contains Liabilities in excess of $10,000 in the aggregate, all such Liabilities in excess of that amount shall be Excluded Liabilities and Buyer shall not assume nor be deemed to have assumed such excess Liabilities; and

(c) Notwithstanding anything to the contrary contained herein, Buyer shall be entitled to remove and leave behind with Seller, in its sole discretion, any asset of the Business that would constitute an Acquired Asset (and Liabilities associated therewith) so long as no reduction in Purchase Price is made as a result of such removal. Buyer shall deliver notice to Seller of any such removal promptly after making such determination, but in any event, at least five (5) Business Days prior to Closing Date. In addition, Buyer and Seller shall have the right to modify the schedules attached hereto to their mutual satisfaction until May 15, 2017 or such later date as the Parties may otherwise agree.

ARTICLE 7

BANKRUPTCY COURT MATTERS

7.1 Approval of Break Up Fee.

(a) Seller acknowledges and agrees that Buyer has expended considerable time and expense in connection with this Agreement, and the negotiation thereof, and the identification and quantification of assets of Seller, and that the entry into this Agreement provides value to Seller's chapter 11 estate by, among other things, inducing other parties to submit higher or better offers for the Acquired Assets. In consideration therefor, the Bid Procedures Order shall provide for the payment (i) of a breakup fee in an amount equal to four percent (4%) of the aggregate value offered by the Buyer pursuant to this Agreement and (ii) the Expense Reimbursement (collectively, the "***Break Up Fee"***), in the event that Seller consummates an Alternative Transaction; provided that the Break Up Fee shall be deemed an administrative priority expense under Sections 503(b) and 507(a)(2) of the Bankruptcy Code and not subordinated in right of payment to any claims of the Lenders under Section 507(b) of the Bankruptcy Code.

(b) Conditioned upon entry of the Bid Procedures Order by the Bankruptcy Court, Seller shall pay to Buyer the Break Up Fee from the sale proceeds of the closing of an Alternative Transaction on the first (1st) Business Day after the closing of an Alternative Transaction.

7.2 Bid Procedures. This Agreement is subject to consideration by Seller of higher or better competing bids from Qualified Bidders for all or substantially all of the Acquired Assets, including in concert with other assets of the Seller, in accordance with the Bid Procedures Order. On the Petition Date, Seller sought the Bankruptcy Court's approval of the Bid Procedures Order, which included the following bid procedures and bid protections for the submission and consideration of qualified bids:

(a) in order for any Alternative Transaction to be a qualified bid (each a "***Qualified Bid***" and each Person submitting a Qualified Bid being a "***Qualified Bidder***"), it must be:

(i) in writing;

(ii) received by Seller at its addresses set forth in Section 11.10 hereof no later than the deadline for submitting an Alternative Transaction established by the Bid Procedures Order, which shall be no less than seven (7) days prior to the Auction (the "***Bid Deadline***");

(iii) a firm, unconditional bid to purchase the Acquired Assets, including in concert with the other assets of the Seller, not subject to any contingencies as to the validity, effectiveness and/or binding nature of the offer, including, without limitation, further due diligence review or financing;

(iv) a firm bid of at least Five Hundred Thousand Dollars ($500,000.00) (the "***Excess Amount***") over the Purchase Price, (for avoidance of doubt, the firm bid must exceed the Purchase Price by at least the Excess Amount);

(v) accompanied by sufficient information to demonstrate that the competing bidder has the financial wherewithal and ability to timely consummate the acquisition of the Acquired Assets on terms and conditions substantially the same as this Agreement, including evidence of adequate financing;

(vi) accompanied by a signed Contract substantially in the form of this Agreement, and marked to show any changes made to this Agreement; and

(vii) accompanied by a good faith cash deposit in an amount equal to four percent (4%) of the purchase price of the competing bid, to be deposited with Seller on or before the Bid Deadline;

(b) the Auction of Seller's assets shall occur during the period (x) beginning fifty (50) calendars after the Petition Date and (y) ending sixty (60) calendar days after the Petition Date;

(c) all Qualified Bids must be received by Seller no later than seven (7) days prior to the Auction;

(d) Seller shall provide Buyer of all Qualified Bids and supporting documentation submitted therewith within forty-eight (48) hours of Seller's determination that such bid is a Qualified Bid, and shall provide any information received related to the terms and conditions of such Qualified Bids;

(e) Buyer shall have the opportunity to increase the Purchase Price to a level at least Two Hundred and Fifty Thousand Dollars ($250,000.00) in excess of any Qualified Bid

to be eligible to become the starting bid at the Auction contemplated by the Bid Procedures Order ("***Starting Auction Bid***"); and Buyer shall be entitled to credit its Break Up Fee against the purchase price reflected in such Qualified Bid and any subsequent Qualified Bid submitted by Buyer;

(f) Seller shall evaluate all Qualified Bids received and shall determine which Qualified Bid reflects the highest or best offer as the Starting Auction Bid for the Acquired Assets. Seller shall announce its determination of the Starting Auction Bid twenty-four (24) hours prior to the commencement of the Auction;

(g) no bids shall be considered by Seller unless a party timely submitted a Qualified Bid prior to the commencement of the Auction;

(h) at the Auction, bidding will begin with the Starting Auction Bid and all Qualified Bidders may increase their respective bids as many times as they choose using bidding increments in the amount of at least Two Hundred Fifty Thousand Dollars ($250,000), payable in cash (except Buyer shall be entitled to credit its Break Up Fee in any submitted Qualified Bids);

(i) at the conclusion of the Auction, or as soon thereafter as practicable, the Seller shall: (i) review each Qualified Bid on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the transactions contemplated hereby; and (ii) identify the highest or otherwise best offer(s) for the Acquired Assets received at the Auction (the "***Highest Bid***", and the bidder(s) making such bid, the "***Highest Bidder***"). If Seller desires to select a bid from an entity other than Buyer that Buyer believes is not the highest or best bid or that Buyer believes was not from a Person qualified to participate in the Auction, Buyer may object to the selection of such bid as the Highest Bid;

(j) each Qualified Bidder attending the Auction, including the Buyer, shall agree, to the extent it is designated the "Back-Up Bidder" by Seller, to remain ready, willing and able to close the sale of the Acquired Assets under the terms of its last Qualified Bid submitted at such Auction as a back-up bidder until the earlier of (1) the close of the sale of the Acquired Assets or (2) the Outside Date. The Seller shall designate one of the Qualified Bidders as the "Back-Up Bidder" at the end of the Auction;

(k) when determining the highest or best bid at the conclusion of the Auction (the "***Accepted Bid***"), Seller shall consider the face amount of Buyer's final bid notwithstanding the fact that Buyer is entitled to credit the Break Up Fee against the purchase reflected in such final bid in accordance with Section 7.2(d);

(l) the payment of the Break Up Fee to Buyer in accordance with Section 7.1 hereof;

(m) following the Sale Hearing, if the Highest Bidder fails to consummate the closing of the sale because the Highest Bidder either breaches or otherwise fails to perform, Seller is authorized to consummate the sale of the Acquired Assets to the Back-Up Bidder

(subject to satisfaction or waiver of applicable closing conditions) without further Order of the Bankruptcy Court. In such case, the Back-Up Bidder shall be deemed to be the Highest Bidder and shall be required to consummate the purchase of the Acquired Assets under the terms and conditions of their Agreement, as applicable. In addition, any defaulting Highest Bidder's deposit shall be forfeited to Seller. For avoidance of doubt, in the event that the Buyer is the Back-Up Bidder and the Highest Bidder defaults, Seller shall not be authorized pursuant to this Section 7.2(j) to consummate the sale with any Qualified Bidder other than the Back-Up Bidder, absent further Order of the Bankruptcy Court. In so moving, Seller shall address how such determination comports with Seller's fiduciary duties;

(n) In the event that Seller determines in good faith that it has not received a Qualified Bid by the Bid Deadline that is a higher or better bid than the one represented by this Agreement, Seller shall seek approval of this Agreement at a hearing to approve the Sale Order without conducting an Auction and without further motion or adjournment without the written consent of Buyer.

7.3 The Sale Order. Seller shall use its commercially reasonable efforts to cause the Bankruptcy Court to enter a Sale Order that contains, among other provisions requested by Buyer, the following provisions (it being understood that certain of such provisions may be contained in either the findings of fact or conclusions of Law to be made by the Bankruptcy Court as part of the Sale Order):

(a) the sale of the Acquired Assets by Seller to Buyer (A) are or will be legal, valid and effective transfers of the Acquired Assets; (B) vest or will vest Buyer with all right, title and interest of such Seller to the Acquired Assets free and clear of all Liens and Claims pursuant to Section 363(f) of the Bankruptcy Code (other than Liens created by Buyer and Assumed Liabilities); and (C) constitute transfers for reasonably equivalent value and fair consideration under the Bankruptcy Code and the Laws of the state in which Seller is incorporated and any other applicable non-bankruptcy Laws;

(b) all amounts to be paid to Buyer pursuant to this Agreement constitute administrative expenses under Sections 503(b) and 507(a)(2) of the Bankruptcy Code, and are immediately payable, if and when the obligations of Seller arise under this Agreement, without any further Order of the Bankruptcy Court;

(c) all Persons are enjoined from taking any actions against Buyer or any Affiliates of Buyer (as they existed immediately prior to the Closing) to recover any claim that such Person has solely against Seller or its Affiliates, except with respect to Assumed Liabilities;

(d) obligations of Seller relating to Taxes, whether arising under Law, by this Agreement, or otherwise, shall be fulfilled by Seller;

(e) the provisions of the Sale Order are non-severable and mutually dependent;

(f) provide that Buyer will not have any successor or transferee liability for Liabilities of Seller or any Affiliate of Seller (whether under federal or state Law or otherwise) as a result of the sale of the Acquired Assets;

(g) Buyer has acted in good faith within the meaning of Section 363(m) of the Bankruptcy Code, the transactions contemplated by this Agreement are undertaken by Buyer and Seller at arm's length, without collusion and in good faith within the meaning of Section 363(m) of the Bankruptcy Code, and such Parties are entitled to the protections of Section 363(m) of the Bankruptcy Code;

(h) all Assigned Contracts shall be assigned to Buyer pursuant to Section 365 of the Bankruptcy Code and, as required by this Agreement, Seller shall be obligated to pay and satisfy all Cure Costs in respect thereof, and Buyer shall be found to have demonstrated adequate assurance of future performance pursuant to Section 365 of the Bankruptcy Code;

(i) At the Closing, Buyer shall pay the portion of the Closing Date Cash Payment equal to the aggregate amount of the Cure Costs for the Assigned Contracts into an escrow account maintained by Seller's counsel at the Closing and Seller shall use such proceeds to pay all Cure Costs for the Assigned Contracts within five (5) business days after Closing;

(j) Seller shall be solely liable for all Cure Costs and no party shall be permitted to assert claims against Buyer for such Cure Costs or use the non-payment of such Cure Costs to terminate or modify performance under the Assigned Contracts;

(k) At the Closing, Buyer shall pay the portion of the Closing Date Cash Payment equal to the amount of Real Estate Taxes into an escrow account maintained by Seller's counsel at the Closing and Seller shall use such proceeds to pay all Real Estate Taxes to the Landlord or to the applicable tax authorities, as directed by the Buyer, within five (5) Business Days after Closing;

(l) Seller shall be solely liable for all Cure Costs and no party shall be permitted to assert claims against Buyer for such Cure Costs or use the non-payment of such Cure Costs to terminate or modify performance under the Assigned Contracts;

(m) the terms of any plan that Seller submits to the Bankruptcy Court, shall not conflict with, supersede, abrogate, nullify or restrict the terms of this Agreement, the Bid Procedures Order or the Sale Order, or in any way prevent or interfere with the consummation or performance of the transactions contemplated by this Agreement, including, without limitation, any transaction contemplated or approved pursuant to the Sale Order or Bid Procedures Order;

(n) the Bankruptcy Court retains exclusive jurisdiction to interpret and enforce the provisions of this Agreement, the Bid Procedures Order and the Sale Order in all respects; provided, however, that in the event the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction with respect to any matter provided for in this clause or is without jurisdiction, such abstention, refusal or lack of jurisdiction shall have no effect upon and

shall not control, prohibit or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter;

(o) waive the stay of the Sale Order under Bankruptcy Rule 6004(h); and

(p) such other provisions to which Buyer may agree.

7.4 Bankruptcy Court Approval.

(a) On or around April 10, 2017 Seller filed a Petition for relief under Chapter 11 of the Bankruptcy Code on behalf of Seller with the Bankruptcy Court.

(b) On the Petition Date, Seller served and filed the Sale Motion, in the Seller's Bankruptcy Case requesting that the Bankruptcy Court (x) schedule the hearing for approving the Bid Procedures, (y) enter the Bid Procedures Order and (z) enter the Sale Order at the final hearing on the Sale Motion.

(c) Seller shall use comply with all requirements under the applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules in connection with obtaining approval of the Bid Procedures Order and the Sale Order and to cause each to become a Final Order. Seller shall provide appropriate notice of the hearings on the Sale Motion, as is required by the Bankruptcy Code and the Bankruptcy Rules (which notice shall include notice by publication in a local and national newspaper as approved by the Bankruptcy Court), to all Persons entitled to notice, including, but not limited to, all Persons that have asserted Liens in the Acquired Assets or the Business, all parties to the Assigned Contracts, and all taxing, environmental, and other applicable governmental authorities in jurisdictions applicable to Seller. Seller shall be responsible for making all appropriate filings relating thereto with the Bankruptcy Court, which filings shall be submitted, to the extent practicable, to Buyer prior to their filing with the Bankruptcy Court for Buyer's prior review and comment.

(d) Seller shall obtain entry by the Bankruptcy Court of the Sale Order by the later of (i) sixty (60) days after the Petition Date, and (ii) forty-five (45) days after entry of the Bid Procedures Order (but in no event later than ninety (90) days after the Petition Date) (the "***Outside Date***").

(e) Seller shall cooperate with Buyer and its representatives in connection with the Sale Motion, Sale Order, the Bid Procedures Order and the bankruptcy proceedings in connection therewith. Such cooperation shall include, but not be limited to, (i) consulting with Buyer at Buyer's reasonable request concerning the status of such proceedings, (ii) providing Buyer with drafts of pleadings, notices, proposed orders and other documents relating to such proceedings as soon as reasonably practicable prior to any submission thereof to the Bankruptcy Court for review and comment and (iii) providing Buyer and its counsel with copies of all notices, filings and orders of the Bankruptcy Court that Seller has in its possession (or receives) pertaining to the Sale Motion.

(f) Seller shall not seek any modification to the Bid Procedures Order or the Sale Order without the prior written consent of Buyer.

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

(h) Seller further covenants and agrees that the terms of any plan it submits to the Bankruptcy Court shall not conflict with, supersede, abrogate, nullify or restrict the terms of this Agreement, or in any way prevent or interfere with the consummation or performance of the transactions contemplated by this Agreement, including, without limitation, any transaction contemplated by or approved pursuant to the Sale Order or the Bid Procedures Order.

7.5 Assignment of Assigned Contracts.

(a) The Sale Order shall provide for the assignment to Buyer, of the Assigned Contracts on the terms and conditions set forth in this Section 7.5 and in the Bid Procedures Order on the Closing Date.

(b) Schedule 7.5 contains a list of Contracts that the Buyer is contemplating assuming as of the date hereof (the "***Assigned Contracts List***") entered into in connection with or related to the Business to be assigned by Seller to Buyer.

(c) As soon as practicable following the entry of the Bid Procedures Order, Seller shall serve a notice substantially in the form attached as Exhibit E to the Sale Motion (the "***Assumption and Assignment Notice***"), by first class mail, on all non-debtor counterparties to all of Seller's executory contracts and unexpired leases related to the Business, which executory contracts or leases include, without limitation, all Contracts listed on the Assigned Contracts List. The Assumption and Assignment Notice shall include all information required by the Bid Procedures Order.

(d) No later than seven (7) calendar days prior to the Auction, (i) Buyer will notify Seller of any additions or subtractions of Contracts to the Assigned Contracts List and (ii) Seller will file and serve on each applicable Contract counterparty (x) notice that its Contract has, as of that date, been determined to be an Assigned Contract; or (y) notice that its Contract has, as of that date, been determined not to be an Assigned Contract. No later than one day prior to the Sale Hearing, (i) Buyer will notify Seller of any subtractions of Contracts to the Assigned Contracts and (ii) Seller will file and serve on each applicable Contract counterparty notice that their Contract has, as of that date, been determined not to be an Assigned Contract. Service of notices pursuant to this provision shall be made via email to all email addresses available to Seller for the counterparty in its files, and via first class mail to all addresses available to Seller for the counterparty in its files. At the Closing, and subject to the approval of the Bankruptcy

Court pursuant to the Sale Order or such other Order of the Bankruptcy Court, Seller shall assign any and all Assigned Contracts to the Buyer.

(e) Notwithstanding the foregoing or anything to the contrary in the Bid Procedures Order, at any time within five (5) calendar days prior to Closing, Buyer may remove any Contract from the Assigned Contracts List by delivering written notice to Seller, and any such Contract shall not be assigned to the Buyer.

(f) Seller and Buyer agree that objections, if any, to the assignment of any Contract shall be addressed as set forth in the Bid Procedures Order.

(g) If a counterparty to a Contract does not timely and properly file an objection in the manner set forth in the Bid Procedures Order, Seller's proposed Cure Costs set forth in Assumption and Assignment Notice shall be fixed and shall be paid to such counterparty to the extent such Contract is assigned, and such counterparty shall be deemed to Consent to the assignment of the Contract. If a counterparty timely and properly files an objection, then, as set forth in the Assumption and Assignment Notice, such counterparty shall have the opportunity to appear before the Bankruptcy Court at the hearing to approve the Sale Motion. The proposed Cure Costs determined by the Bankruptcy Court (if there is an objection) or set forth in the Assumption and Assignment Notice (if there is no objection), if any, must be paid by the Seller to the counterparty to the Contract upon the assignment of such Contract within five (5) days after the Closing.

(h) The Bid Procedures Order shall provide that, if an objection is not timely and properly filed and served in accordance with the Bid Procedures Order, (i) Seller's proposed Cure Costs shall be controlling with respect to the Contract notwithstanding anything to the contrary in any Contract or any other document, (ii) such Contract shall be assigned to Buyer, (iii) the failure to object shall be deemed Consent by the counterparty to the assignment for the purposes of section 365(c) of the Bankruptcy Code or otherwise, (iv) the counterparty to the Contract shall be forever barred from asserting any other claim arising prior to the assignment, if applicable, against Seller and Buyer and (v) with respect to the Contract, Buyer's promise to perform under the Contract shall be deemed adequate assurance of future performance under the Contract.

(i) At Buyer's request, and at Buyer's cost and expense, Seller shall reasonably cooperate from the date hereof forward with Buyer as reasonably requested by Buyer (i) to allow Buyer to enter into an amendment of any Assigned Contract upon assumption of such Assigned Contract by Buyer (and Seller shall reasonably cooperate with Buyer to the extent reasonably requested by Buyer in negotiations with the counterparties thereof), or (ii) to otherwise amend any Assigned Contract to the extent such amendments would not adversely affect Seller; provided, however, that Seller shall not be required to enter into any such amendment if such amendment that Seller deems to be adverse to Seller unless such Assigned Contract will be assigned to Buyer at the time of such assumption; provided, further, that any amendment entered into pursuant to this Section 7.5 shall be effective only if the Closing occurs and only as of the Closing Date.

(j) Prior to the Closing Date, Seller shall not reject, terminate, amend, supplement, modify, waive any rights under, or create any Lien with respect to any Contract, or increase, or take any affirmative action not required by the terms thereof, any payments required to be paid thereunder by Seller or Buyer contingent upon any such Contract becoming an Assigned Contract, without the prior written consent of Buyer.

(k) In connection with the assignment to Buyer of any Assigned Contract pursuant to this Section 7.5 or the Bid Procedures Order, and as promptly as practicable following the date hereof and no later than seven (7) days prior to the Auction, Seller shall provide Buyer with a complete and comprehensive written analysis of the amounts required to cure all defaults under each Assigned Contract. In addition to the foregoing, Buyer and Seller shall use commercially reasonable efforts to cooperate and determine the amounts required to cure all defaults, if any.

(l) In the event Seller is unable to assign any Assigned Contract to Buyer pursuant to an Order of the Bankruptcy Court, then the Parties shall use their commercially reasonable efforts prior to the Closing Date to obtain, and to cooperate in obtaining, all Consents from any Governmental Authority or third parties necessary to assign such Assigned Contract to Buyer as Buyer may reasonably request (the "***Necessary Consents***"); provided, however, that Seller shall not be obligated to initiate any litigation or legal proceedings (other than those contemplated by this Agreement) to obtain any such Necessary Consent.

(m) To the extent that any Necessary Consent is not obtained by the Closing Date with respect to any Assigned Contract (other than the TR Agreement), Seller will, with respect to each such Assigned Contract, from and after the Closing and until the earliest to occur of (i) the date on which such applicable Consent is obtained (which Consent the Parties shall use their reasonable best efforts, and cooperate with each other, to obtain promptly; provided, however, that none of the Parties shall be required to pay any consideration therefor other than filing, recordation or similar fees, which shall be borne by Seller), and (ii) the date on which such Contract is rejected following the written request of Buyer, use commercially reasonable efforts during the term of such Assigned Contract to (x) provide to Buyer the benefits under such Assigned Contract, (y) cooperate in any reasonable and lawful arrangement (including holding such Contract in trust for Buyer pending receipt of the required Consent) designed to provide such benefits to Buyer and (z) use its commercially reasonable efforts to enforce for the account of Buyer any rights of Seller under such Assigned Contracts (including the right to elect to terminate such Assigned Contracts in accordance with the terms thereof upon the written direction of Buyer). Buyer shall reasonably cooperate with Seller in order to enable Seller to provide to Buyer the benefits contemplated hereby.

ARTICLE 8

TAXES

8.1 Taxes Related to Purchase of Acquired Assets. All state, federal, provincial, and local sales, use, transfer, or other similar Taxes in connection with the transfer of the Acquired

Assets and the assumption of the Assumed Liabilities under this Agreement or the transactions contemplated hereby (other than any such Taxes that constitute a franchise tax or are otherwise imposed in lieu of an income tax), and that are not exempt under Section 1146(a) of the Bankruptcy Code, (collectively, "***Transaction Taxes***") shall be paid by the Seller. The Seller shall, at its own expense, timely file any Tax Return or other document required to be filed with respect to such Taxes, and Buyer shall join in the execution of any such Tax Return if required by Law.

8.2 Proration of Real and Personal Property Taxes. All real and personal property Taxes and assessments on the Acquired Assets for any taxable period commencing on or prior to the Closing Date (the "***Adjustment Date***") and ending on or after the Adjustment Date (a "***Straddle Period***") shall be prorated between Buyer and Seller as of the close of business on the Adjustment Date based on the best information then available, with (a) Seller being liable for such Taxes attributable to any portion of a Straddle Period ending on the day prior to the Adjustment Date and (b) Buyer being liable for such Taxes attributable to any portion of a Straddle Period on or after the Adjustment Date. All such prorations shall be allocated so that items relating to the portion of a Straddle Period ending on the day prior to the Adjustment Date shall be allocated to Seller based upon the number of days in the Straddle Period prior to the Adjustment Date and items related to the portion of a Straddle Period on and after the Adjustment Date shall be allocated to Buyer based upon the number of days in the Straddle Period from and after the Adjustment Date. The amount of all such prorations for which Seller is liable that must be paid in order to convey the Acquired Assets to Buyer free and clear of all Liens other than Assumed Liabilities shall be calculated (or, if not subject to calculation, estimated) and either paid by Seller to Buyer on the Closing Date or, if not subject to payment on such date, Buyer shall withhold from the Purchase Price Seller's portion, or estimated portion, of such amounts and in both cases shall thereafter be responsible for paying such amounts. Buyer shall prepare and file any tax return with respect to a Straddle Period relating to the Acquired Assets.

8.3 Cooperation on Tax Matters. Seller (for not longer than three years following the Closing) and Buyer shall (and shall cause their respective Affiliates to) cooperate with each other and make available or cause to be made available to each other for consultation, inspection and copying (at such other Party's expense) in a timely fashion such personnel, Tax data, relevant Tax Returns or portions thereof and filings, files, books, records, documents, financial, technical and operating data, computer records and other information as may be reasonably requested, including (a) for the preparation by such other Party of any Tax Returns or (b) in connection with any Tax audit or proceeding including one Party (or an Affiliate thereof) to the extent such Tax audit or proceeding relates to or arises from the transactions contemplated by this Agreement. Nothing herein shall require Seller to continue in existence or to continue to operate, manage or control its remaining assets and property after the Closing for any specified period of time, and failure of Seller to do so will not constitute a breach of this Agreement.

8.4 Retention of Tax Records. After the Closing Date and for a period of seven (7) years from the Closing Date, Buyer shall retain possession of all accounting, business, financial, and Tax records and information that (a) relate to the Acquired Assets and are in

existence on the Closing Date and (b) come into existence after the Closing Date but relate to the Acquired Assets before the Closing Date, and Buyer shall give Seller notice and a reasonable opportunity to retain any such records in the event that Buyer determines to destroy or dispose of them during such period. In addition, from and after the Closing Date, Buyer shall provide to Seller and its Affiliates (after reasonable notice and during normal business hours and without charge to Seller) access to the books, records, documents, and other information relating to the Acquired Assets as Seller may reasonably deem necessary to properly prepare for, file, prove, answer, prosecute, and defend any Tax Return, claim, filing, Tax audit, Tax protest, suit, proceeding, or answer. Such access shall include access to any computerized information systems that contain data regarding the Acquired Assets. The provisions contained in this Section 8.4 are intended to, and shall, supplement and not limit the generality of the provisions contained in Section 6.6 above.

8.5 Purchase Price Allocation. The Purchase Price (along with any other items of consideration for purposes of the Code) shall be allocated for all income Tax purposes among the Acquired Assets using the residual method set forth in Treasury Regulation Section 1.1060-1(c). Each Party agrees that it will not, in its Tax Returns or elsewhere, take a position inconsistent with the allocations provided for herein.

ARTICLE 9

CONDITIONS PRECEDENT TO PERFORMANCE BY PARTIES

9.1 Conditions Precedent to Performance by Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction, on or before the Closing Date, of the following conditions, any one or more of which (other than Section 9.1(e)) may be waived by Seller in its sole discretion:

(a) Representations and Warranties of Buyer. The representations and warranties of Buyer made in this Agreement that are qualified by materiality shall be true and correct as of the date hereof and on and as of the Closing Date, as though made on and as of the Closing Date, and the representations and warranties of Buyer that are not so qualified shall be true and correct in all material respects as of the date hereof and on and as of the Closing Date, as though made on and as of the Closing Date, except in each case for representations and warranties that speak as of a specific date or time (which need only be true and correct in all material respects as of such date or time).

(b) Performance of the Obligations of Buyer. Buyer shall have in all material respects performed or tendered performance of or complied with each and every covenant, obligation and condition on Buyer's part to be performed that, by its terms, is required by this Agreement to be performed or complied with at or before the Closing.

(c) Buyer's Deliveries. Buyer shall have delivered, and Seller shall have received, all of the items set forth in Section 3.3.

(d) No Violation of Orders. No preliminary or permanent injunction or other Order that declares this Agreement or any Ancillary Agreements invalid or unenforceable in any respect or that prevents the consummation of the transactions contemplated hereby or thereby shall be in effect.

(e) Entry of Sale Order. The Sale Order shall have been entered by the Bankruptcy Court and shall be a Final Order.

If the Closing occurs, all conditions set forth in this Section 9.1 that have not been fully satisfied as of the Closing shall be deemed to have been fully waived by Seller.

9.2 Conditions Precedent to the Performance by Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the satisfaction, on or before the Closing Date, of the following conditions, any one or more of which may be waived by Buyer in its sole discretion:

(a) Representations and Warranties of Seller. The representations and warranties of Seller made in this Agreement that are qualified by materiality, shall be true and correct as of the date hereof and on and as of the Closing Date, as though made on and as of the Closing Date, and the representations and warranties of Seller that are not so qualified shall be true and correct in all material respects as of the date hereof and on and as of the Closing Date, as though made on and as of the Closing Date, except in each case for representations and warranties that speak as of a specific date or time (which need only be true and correct in all material respects as of such date or time).

(b) Performance of the Obligations of Seller. Seller shall have in all material respects performed or tendered performance of or complied with, each and every covenant, obligation and condition on Seller's part to be performed which, by its terms, is required by this Agreement to be performed or complied with at or before the Closing.

(c) No Material Adverse Effect. Since the date of this Agreement, there will not have been any Material Adverse Effect.

(d) Seller's Deliveries. Seller shall have delivered, and Buyer shall have received, all of the items set forth in Section 3.2.

(e) No Violation of Orders. No preliminary or permanent injunction or other Order that declares this Agreement or any Ancillary Agreements invalid or unenforceable in any respect or that prevents the consummation of the transactions contemplated hereby or thereby shall be in effect.

(f) Accepted Bid. Seller shall have accepted a bid from Buyer as the Accepted Bid.

(g) Entry of Bid Procedures Order. The Bid Procedures Order shall have been entered by the Bankruptcy Court and shall be a Final Order.

(h) Entry of Sale Order. The Sale Order shall have been entered by the Bankruptcy Court and shall be a Final Order.

(i) Assumption of the TR Agreement. A Final Order shall have been entered finding that the TR Agreement is in full force and effect, assigning the TR Agreement to Buyer, approving Buyer's assumption of the TR Agreement, providing that Seller is responsible for all Cure Costs associated with the TR Agreement, providing that Buyer shall have no Liability for any Cure Costs associated with the TR Agreement, and prohibiting the counterparty to the TR Agreement from terminating or modifying its performance under the TR Agreement as a result of any non-payment of the Cure Costs by Seller.

(j) Purchase of Real Estate. The Buyer or an Affiliate thereof, shall have purchased the Real Property from the Landlord on terms acceptable to Buyer in its sole discretion (the "***Real Estate Transaction***").

(k) Cure Obligations. A Final Order shall have been entered requiring Buyer to pay the portion of the Closing Date Cash Payment equal to the amount of Cure Costs for the Assigned Contracts into an escrow account maintained by Seller's counsel at the Closing and requiring Seller to use such proceeds to pay all Cure Costs for the Assigned Contracts within five (5) business days after Closing. The Final Order shall further provide that Seller shall be solely liable for all Cure Costs and no party shall be permitted to assert claims against Buyer for such Cure Costs or use the non-payment of such Cure Costs to terminate or modify performance under the Assigned Contracts.

(l) Disclosure Schedules. Buyer has agreed to the schedules attached hereto in all respects, as contemplated by Section 6.10.

(m) Rejection of Labor Agreements. Seller has obtained a Final Order from the Bankruptcy Court approving the rejection of the Seller's Labor Agreements pursuant to Section 1113 of the Bankruptcy Code, unless otherwise agreed to in writing by the Parties.

If the Closing occurs, all conditions set forth in this Section 9.2 that have not been fully satisfied as of the Closing shall be deemed to have been fully waived by Buyer.

ARTICLE 10

TERMINATION AND EFFECT OF TERMINATION

10.1 Right of Termination. Notwithstanding anything to the contrary contained herein, this Agreement may be terminated only as provided in this ARTICLE 10. In the case of any such termination that is not automatic pursuant to Section 10.2(b) below, the terminating Party shall give proper written notice to the other Party specifying the provision pursuant to which the Agreement is being terminated.

10.2 Termination Rights. This Agreement may be terminated at any time before Closing or in the case of the items listed in subsection (b) will be terminated:

(a) by mutual written consent of Seller and Buyer;

(b) automatically and without any action or notice by Seller to Buyer, or Buyer to Seller:

(i) upon the issuance of a final and non-appealable Order by a Governmental Authority to restrain, enjoin, or otherwise prohibit the transfer of the Acquired Assets contemplated hereby;

(ii) upon entry of a final and non-appealable Order converting Seller's Bankruptcy Case to a case under Chapter 7 of the Bankruptcy Code or dismissing Seller's Bankruptcy Case; or

(iii) in the event Buyer's final bid is not declared the Accepted Bid and Buyer is not the designated as the Back-Up Bidder upon completion of the Auction;

(c) by written notice from the Buyer:

(i) if the Buyer is not in material breach of this Agreement and there has been a breach by Seller of any representation, warranty, or covenant contained in this Agreement as a result of which the conditions referred to in Section 9.2(a) or 9.2(b) would not be satisfied, and (A) that breach has not been waived by the Buyer, and (B) Seller has failed to cure within ten (10) calendar days following receipt of notification thereof by the Buyer pursuant to Section 11.10 hereof of such breach or failure to perform; or

(ii) at any time after fifteen (15) days following the entry of the Sale Order by the Bankruptcy Court (as may be extended by written agreement of the Parties, the "***Termination Date***"), if the Closing shall not have occurred and such failure to close is not caused by or the result of Buyer's material breach of this Agreement;

(iii) if the Seller petitions the Bankruptcy Court for any alterations to the Bid Procedures that have not been approved by the Buyer;

(iv) in the event Buyer's final bid is not declared the Accepted Bid;

(v) if the Bankruptcy Court does not approve the Bid Procedures set forth on Exhibit C hereof within 40 calendar days of the Petition Date; or

(vi) if the Sale Order with respect to the transactions contemplated in this Agreement has not been entered and become a Final Order on or before the sixtieth (60th) day following the Petition Date, or such later date in accordance with Section 7.4, if such non-entry is not caused by or the result of Buyer's material breach of this Agreement.

(d) by written notice from the Seller if Seller is not in material breach of this Agreement and there has been a breach by Buyer of any representation, warranty, or covenant contained in this Agreement as a result of which the condition referred to in Sections 9.1(a) or

9.1(b) would not be satisfied, and (A) that breach has not been waived by Seller, and (B) Buyer has failed to cure within ten (10) calendar days following receipt of notification thereof by Seller pursuant to Section 11.10 hereof of such breach or failure to perform.

10.3 Effect of Termination.

(a) In the event this Agreement is terminated pursuant to Sections 10.2(a), 10.2(b), or 10.2(c) above, the Parties shall instruct the Escrow Agent to deliver the Deposit pursuant to the terms of the Escrow Agreement to the Buyer. This shall be the Buyer's sole and exclusive remedy for such termination. Thereafter, both Parties shall be relieved of and released from any further Liability hereunder, and neither they nor their respective Related Persons will have any Liability or obligations arising under or in connection with this Agreement, and neither Party shall be entitled to specific performance or any other remedy; provided, however, that the obligation to pay the Break Up Fee to the extent required pursuant to ARTICLE 7 of this Agreement and the provisions contained in ARTICLE 10 and ARTICLE 11 of this Agreement shall survive any such termination and shall be enforceable hereunder and; provided, further, however, that if this Agreement is terminated pursuant to Section 10.2(b) or Section 10.2(c), the Seller shall also reimburse the Buyer for its actual, reasonable fees, costs and expenses (including reasonable attorneys' fees, other professional fees and lender fees) in connection with the transactions contemplated hereby.

(b) In the event the Seller rightfully terminates this Agreement pursuant to Section 10.2(d)(i) above, the Deposit shall be disbursed by the Escrow Agent in accordance with the terms and conditions of the Escrow Agreement, and the Seller shall retain the Deposit as the sole and exclusive remedy for such termination and as liquidated damages with respect to such default. Thereafter, both Parties shall be relieved of and released from any further Liability hereunder, and neither they nor their respective Related Persons will have any Liability or obligations arising under or in connection with this Agreement, and neither Party shall be entitled to specific performance; provided, however, that, subject to this Section 10.3, the provisions contained in ARTICLE 10 and ARTICLE 11 of this Agreement shall survive any such termination and shall be enforceable hereunder. The Seller and the Buyer agree that it would be extremely difficult and impracticable to fix actual damages to the Seller as a result of a default by the Buyer and that they have agreed the sum of the Deposit is a fair and reasonable amount to be retained by the Seller as agreed and liquidated damages in light of the Seller's removal of the Acquired Assets from the market and the costs incurred by the Seller and that retention of said Deposit by the Seller shall not constitute a penalty or forfeiture.

ARTICLE 11

MISCELLANEOUS

11.1 Successors and Assigns. Except as otherwise provided in this Agreement, neither Party may assign this Agreement or any rights or obligations hereunder without the prior written

consent of the other, and any such attempted assignment without such prior written consent shall be void and of no force and effect; provided, however, that without obtaining the consent of the Seller, Buyer may assign all or part of its rights under this Agreement to, and all or part of its obligations under this Agreement may be assumed by, any of its Affiliates or any successor of its business as a consequence of the sale or other transfer of all or substantially all its business to a third party that agrees to be bound by the terms of this Agreement, as if it were the selling or transferring Party, provided, further, that if such assignment and/or assumption takes place, the Buyer shall continue to be liable jointly and severally with such assignee, purchaser or transferee for all of its obligations hereunder.

11.2 Governing Law; Jurisdiction. This Agreement shall be construed, performed and enforced in accordance with, and governed by, the Laws of the State of Delaware in accordance with the laws applicable to contracts executed in such state (without giving effect to the principles of conflicts of Laws thereof). Without limiting any Party's right to appeal any Order of the Bankruptcy Court, the Parties agree that the Bankruptcy Court shall retain sole jurisdiction over any legal Action or proceeding with respect to this Agreement and Seller. Each of the Parties irrevocably waives any objection, including any objection to the laying of venue or based on the grounds of forum non conveniens, that it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Agreement or the transactions contemplated hereby; provided, however, that if the Bankruptcy Case has been fully and finally dismissed and/or the Bankruptcy Court declines jurisdiction, the Parties agree to and hereby unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the District of Delaware. If that court declines jurisdiction, the Parties agree to and hereby unconditionally and irrevocably submit to the exclusive jurisdiction of the state courts located in Illinois. In addition, the Parties irrevocably consent to service of process by delivering a copy of the process to such Person to the address provided pursuant to Section 11.10 of this Agreement by federal express or other overnight courier for overnight delivery or by certified mail, postage prepaid.

11.3 Waiver of Jury Trial. THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT THEY MAY HAVE TO TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION, OR IN ANY PROCEEDING, DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT, OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS Section 11.3.

11.4 Warranties Exclusive. **BUYER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS PROVIDED IN THIS AGREEMENT, THE SELLER**

MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER RELATING TO THE ACQUIRED ASSETS. WITHOUT LIMITING THE FOREGOING, (A) SELLER HEREBY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO ANY PORTION OF THE ACQUIRED ASSETS, AND (B) BUYER FURTHER ACKNOWLEDGES THAT BUYER HAS CONDUCTED AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE PHYSICAL CONDITION OF THE ACQUIRED ASSETS AND ALL SUCH OTHER MATTERS RELATING TO OR AFFECTING THE ACQUIRED ASSETS AS BUYER DEEMED NECESSARY OR APPROPRIATE AND THAT IN PROCEEDING WITH ITS ACQUISITION OF THE ACQUIRED ASSETS, EXCEPT FOR ANY REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS AGREEMENT, BUYER IS DOING SO BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS.

11.5 No Survival of Representations and Warranties; Post-Closing. The Parties hereto acknowledge and agree that the representations and warranties set forth in this Agreement shall expire on the Closing Date or upon the earlier termination of this Agreement, and be of no further force and effect after such date. The Parties hereto agree that the covenants contained in this Agreement to be performed at or after the Closing shall survive the Closing hereunder.

11.6 Mutual Drafting. This Agreement is the result of the joint efforts of Buyer and Seller, and each provision hereof has been subject to the mutual consultation, negotiation, and agreement of the Parties and there is to be no construction against either Party based on any presumption of that Party's involvement in the drafting thereof.

11.7 Expenses. Except as otherwise provided herein or in any Order of the Bankruptcy Court with respect to Buyer, each of the Parties shall pay its own expenses in connection with this Agreement and the transactions contemplated hereby, including any legal and accounting fees, whether or not the transactions contemplated hereby are consummated, except as provided in ARTICLE 7 and Section 10.3.

11.8 Broker's and Finder's Fees. Each Party shall pay, and indemnify the other Party against, any fees or other commissions that may be payable to any agent, broker, finder, or investment or commercial banker, or other Person or firm engaged by, or acting on behalf of, the Party that engaged such Person in connection with the negotiation, execution, or performance of this Agreement or the transactions contemplated by this Agreement.

11.9 Severability. If any term or provision of this Agreement is found by any Governmental Authority to be illegal, invalid or unenforceable, then the Parties hereby waive such term or provision to the extent that it is found to be illegal, invalid or unenforceable and to the extent that to do so would not deprive one of the Parties of the substantial benefit of its bargain. Such term or provision will, to the extent allowable by Law and the preceding sentence, not be voided or canceled but will instead be modified by such Governmental Authority so that it becomes enforceable and, as modified, will be enforced as any other term or provision

hereof. All other terms and provisions hereof will remain in full force and effect and are to be construed in accordance with the modified term or provision as if such illegal, invalid or unenforceable term or provision had not been contained in this Agreement.

11.10 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given: (a) on the day of service if served personally on the Party to whom notice is to be given; (b) on the day of transmission if sent via facsimile transmission to the facsimile number given below, and confirmation of receipt is obtained during regular business hours on a Business Day and, if not, then on the following Business Day; (c) on the day of transmission if sent via e-mail transmission to the e-mail address given below during regular business hours on a Business Day and, if not, then on the following Business Day; (d) on the Business Day after delivery to Federal Express or similar overnight courier for overnight delivery; or (e) on the fifth day after mailing, if properly addressed and mailed to the Party to whom notice is to be given by first class, registered, or certified mail, with postage prepaid, to the Party as follows:

If to Seller:
Rupari Foods
15600 Wentworth Ave
South Holland, IL 60473
Attn: Jack Kelly
E-mail:jkelly@rupari.com
Facsimile: _____

With a copy to:
DLA Piper LLP (US)
444 West Lake Street, Suite 900
Chicago, Illinois
Attn: Thomas Horenkamp
Email: Thomas.horenkamp@dlapiper.com
Facsimile: (312) 251-2878

If to Buyer:
CBQ, LLC
c/o Carl Buddig and Company
950 W. 175th Street
Homewood, IL 60430
Attn: Daniel Wynn
E-mail: dwynn@buddig.com
Facsimile: (708) 798-6709

With a copy to:
Matthew S. Brown, Esq.
Katten Muchin Rosenman LLP
525 West Monroe
Chicago, Illinois 60661
E-mail: matthew.brown@kattenlaw.com
Facsimile: (312) 902-1061

Either Party may change its address for the purpose of this Section 11.10 by giving the other Party written notice of its new address in the manner set forth above.

11.11 Amendments; Waivers. This Agreement may be amended or modified, and any of the terms, covenants, representations, warranties, or conditions hereof may be waived, only by a written instrument executed by the Parties, or in the case of a waiver, by the Party waiving compliance. Any waiver by either Party of any condition, or of the breach of any provision, term, covenant, representation, or warranty contained in this Agreement, in any one or more instances, shall not be deemed to be nor construed as a furthering or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation, or warranty of this Agreement.

11.12 Public Announcements. Prior to Closing, no Party shall make any press release or public announcement concerning the transactions contemplated by this Agreement without the prior written approval of the other Party, unless a press release or public announcement is required by Law or Order of the Bankruptcy Court, or is reasonably necessary for approval of the transactions contemplated by this Agreement by the Bankruptcy Court. If any such announcement or other disclosure is required by Law or Order of the Bankruptcy Court, the disclosing Party shall give the non-disclosing Party or Parties prior notice and approval of, the proposed disclosure. Nothing in this Section 11.12 shall restrict, in any way, the Parties from filing with the Bankruptcy Court any and all pleadings, documents or other statements as they shall deem necessary.

11.13 Entire Agreement.

(a) This Agreement and the Ancillary Agreements contain the entire understanding between the Parties with respect to the transactions contemplated hereby and supersede and replace all prior and contemporaneous agreements and understandings, oral or written, with regard to such transactions. All documents and instruments delivered pursuant to any provision hereof are expressly made a part of this Agreement as fully as though completely set forth herein.

(b) All exhibits and schedules referenced herein are incorporated herein and expressly made a part of this Agreement as though completely set forth herein. All references to this Agreement herein or in any of the exhibits or schedules shall be deemed to refer to this entire Agreement, including all exhibits and schedules. Any item or matter required to be disclosed on a particular section of the schedules pursuant to this Agreement shall be deemed to have been disclosed with respect to all other schedules and sections and any representations, warranties, covenants, or agreements where the applicability of such item or matter to such other schedules, sections, representations, warranties, covenants, and/or agreements is reasonably apparent, regardless of whether a cross-reference to the applicable schedule and/or section is actually made. The information contained in the schedules is disclosed solely for the purposes of this Agreement, and no information contained therein shall be deemed to be an admission by a Party to any third party of any Liability or obligation whatsoever, including of any violation of Law or

breach of any agreement. Capitalized terms used in the schedules and not otherwise defined therein shall have the meanings given to such terms in this Agreement.

11.14 Parties in Interest. Nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any Persons other than Seller and Buyer and their respective successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligations or Liability of any third Persons to Seller or Buyer. No provision of this Agreement shall give any third Persons any right of subrogation or action over or against Seller or Buyer.

11.15 Headings. The article and section headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

11.16 Construction. Unless the context of this Agreement otherwise requires, (a) words of any gender include the other gender, (b) words using the singular or plural number also include the plural or singular number, respectively, (c) the terms "hereof," "herein," "hereby," and derivative or similar words refer to this entire Agreement as a whole and not to any other particular article, section or other subdivision, (d) the words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation," (e) "shall," "will," or "agrees" are mandatory, and "may" is permissive, and (f) "or" is not exclusive.

11.17 Currency. Except where otherwise expressly provided, all amounts in this Agreement are stated and shall be paid in United States currency.

11.18 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute the same agreement. This Agreement and any signed agreement entered into in connection herewith or contemplated hereby, and any amendments hereto or thereto, to the extent signed and delivered by facsimile or delivery of a .pdf or equivalent file, shall be treated in all manner and respects as an original Contract and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.

11.19 Further AssurancesIn case at any time after the Closing Date any further action is reasonably necessary, proper or advisable to carry out the purposes of this Agreement, as soon as reasonably practicable, each Party shall use its commercially reasonable efforts to, and shall cause its officers, managers, directors and/or employees to use commercially reasonable efforts to, take such necessary action. Buyer and Seller hereby agree that they will cooperate with one another and their respective shareholders, members, owners and representatives, in a prompt and timely manner, in connection with any litigation, arbitration, governmental investigation or enforcement Action or tax matter in which Buyer, Seller or their respective shareholders, members, directors, managers or representatives are a party and which relates to Seller's or Buyer's acquisition, ownership and/or operation of the Acquired Assets. Such cooperation shall include making available, during normal business hours and upon reasonable notice, access to the Acquired Assets and all books, records and information reasonably requested and necessary or useful in connection with such litigation, arbitration, governmental investigation or

enforcement Action or tax matter. Such cooperation shall also include making available for conferences, meetings, interviews, depositions, trial testimony, written declaration and/or affidavits, upon reasonable notice and subject to reimbursement for reasonable travel and lodging expenses, Buyer's and Seller's current directors, managers, officers, shareholders, members and employees who are believed to have knowledge of any facts at issue in such litigation, arbitration, governmental investigation or enforcement Action or tax matter. As to former directors, managers, officers, shareholders, members and employees, Buyer and Seller shall use commercially reasonable efforts to have such individuals appear for conferences, meetings, interviews, depositions and trial testimony under the same conditions as for current directors, officers, shareholders, members and employees. Any Person made available under this paragraph shall be made available at a mutually agreeable time and place. Nothing herein shall require Seller to continue in existence or to continue to operate, manage or control its remaining assets and property after the Closing for any specified period of time, and failure of Seller to do so will not constitute a breach of this Agreement.

(b) The obligations of Seller pursuant to this Section 11.19 shall be subject to any orders entered, or approvals or authorizations granted or required, by or under the Bankruptcy Court or the Bankruptcy Code (including in connection with the Bankruptcy Cases), and each of Seller' obligations as a debtor-in-possession to comply with any Order of the Bankruptcy Court (including the Bidding Procedures Order and the Sale Order) and Seller's duty to seek and obtain the highest or otherwise best price for the Business as required by the Bankruptcy Code.

(c) Buyer shall make available to Seller, without charge to Seller, such office space and employee support reasonably necessary to assist Seller to wind up Seller's operations following the Closing, resolve the Bankruptcy Cases, and dissolve the Seller.

11.20 Assignability of Certain Contracts. To the extent that the assignment to Buyer of any Assigned Contract pursuant to this Agreement is not permitted without the Consent of a third party and such restriction cannot be effectively overridden or canceled by the Sale Order or other related Order of the Bankruptcy Court, then this Agreement will not be deemed to constitute an assignment of or an undertaking or attempt to assign such Contract or any right or interest therein unless and until such Consent is obtained; provided, however, that the Parties will use their commercially reasonable efforts, before the Closing, to obtain all such consents; provided, further, that if any such consents are not obtained prior to the Closing Date, Seller and Buyer will reasonably cooperate with each other in any lawful and feasible arrangement designed to provide Buyer with the benefits and obligations of any such Contract and Buyer shall be responsible for performing all obligations under such Contract required to be performed by Seller on or after the Closing Date to the extent set forth in this Agreement.

11.21 No Consequential or Punitive Damages. NO PARTY (OR ITS AFFILIATES OR RELATED PERSONS) SHALL, UNDER ANY CIRCUMSTANCE, BE LIABLE TO THE OTHER PARTY (OR ITS AFFILIATES OR RELATED PERSONS) FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES CLAIMED BY SUCH OTHER PARTY UNDER THE TERMS OF OR DUE TO ANY

BREACH OF THIS AGREEMENT, INCLUDING LOSS OF REVENUE OR INCOME, DAMAGES BASED ON ANY MULTIPLIER OF PROFITS OR OTHER VALUATION METRIC, COST OF CAPITAL, DIMINUTION OF VALUE OR LOSS OF BUSINESS REPUTATION OR OPPORTUNITY.

11.22 Non-Recourse. The Parties acknowledge and agree that no past, present or future Affiliate or Related Person of the Parties to this Agreement, in such capacity, shall have any Liability for any obligations or liabilities of Buyer or Seller, as applicable, under this Agreement or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby.

ARTICLE 12

DEFINITIONS

12.1 Certain Terms Defined. As used in this Agreement, the following terms shall have the following meanings:

"***Accepted Bid***" is defined in Section 7.2(k).

"***Accounting Firm***" is defined in Section 2.4(e).

"***Accounts Receivable***" means the Seller's accounts receivables remaining open as of the applicable date.

"***Acquired Assets***" is defined in Section 1.1.

"***Acquired IP***" is defined in Section 4.12.

"***Action***" means any demand, claim, action, suit or proceeding, arbitral action, inquiry, criminal prosecution or investigation by or before any Governmental Authority.

"***Adjustment Date***" is defined in Section 8.2.

"***Affiliate***" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under direct or indirect common control with such first Person where "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a Person, through the ownership of voting securities, by contract, as trustee, executor or otherwise.

"***Agreement***" is defined in the Preamble.

"***Agreement Date***" is defined in the Preamble.

"***Alternative Transaction***" means any acquisition or purchase of a material portion of the Acquired Assets by a purchaser other than the Buyer, or any merger, consolidation, recapitalization, restructuring, reorganization, liquidation or other business combination or

disposition of the Acquired Assets, including, without limitation, under a chapter 11 plan, other than a sale to the Buyer in accordance with the terms hereof.

"***Ancillary Agreements***" means, collectively, the agreements to be executed in connection with the transactions contemplated by this Agreement, including the Assignment and Assumption Agreement.

"***Assigned Contracts***" is defined in Section 1.3(c).

"***Assigned Contracts List***" has the meaning set forth in Section 7.5(b).

"***Assignment and Assumption Agreement***" is defined in Section 3.2(c).

"***Assignment and Assumption Notice***" is defined in Section 7.5(c).

"***Assumed Liabilities***" is defined in Section 1.3.

"***Auction***" means the auction conducted pursuant to the Bid Procedures Order.

"***Bankruptcy Case***" is defined in the Recitals.

"***Bankruptcy Code***" is defined in the Recitals.

"***Bankruptcy Court***" is defined in the Recitals.

"***Base Purchase Price***" is defined in Section 2.1.

"***Bid Deadline***" is defined in Section 7.2(a)(ii).

"***Bid Procedures***" means the bid procedures and bid protections acceptable to Buyer and approved by the Bankruptcy Court in the form that the Seller petitioned the Bankruptcy Court to approve on the Petition Date, and including those procedures and protections specified in Section 7.2, with such changes as are acceptable to Buyer.

"***Bid Procedures Order***" means the Order entered by the Bankruptcy Court, containing bid procedures and bid protections including those procedures and protections specified in Section 7.2, in the form attached hereto as Exhibit C, with such changes as are acceptable to Buyer.

"***Bill of Sale***" is defined in Section 3.2(a).

"***Break Up Fee***" is defined in Section 7.1(a).

"***Business***" is defined in the Recitals.

"***Business Day***" means any day other than Saturday, Sunday, or any day that is a legal holiday or a day on which banking institutions in New York, New York are authorized by Law or other Governmental Authority to close.

"***Buyer***" is defined in the Preamble.

"***Cash***" means cash and cash equivalents, including wire transfers, checks and other readily marketable direct obligations of the United States of America and certificates of deposit issued by banks.

"***Claim***" has the meaning set forth in section 101(5) of the Bankruptcy Code.

"***Closing***" is defined in Section 3.1.

"***Closing Date***" is defined in Section 3.1.

"***Closing Date Cash Payment***" is defined in Section 2.3.

"***Code***" means the Internal Revenue Code of 1986, as amended.

"***Company Records***" is defined in Section 1.2(b).

"***Confidential Information***" is defined in Section 6.5(b).

"***Consent***" means any consent, approval, authorization, qualification, waiver, or notification of a Governmental Authority or third Person if required after giving effect to applicable bankruptcy Law or the Sale Order.

"***Consolidated Tax Return***" means any Tax Return filed on a consolidated, combined, unitary, aggregate or similar basis with another Person that owns, directly or indirectly, equity interests in the Seller.

"***Contract***" means any written or oral contract, agreement, license, sublicense, lease, sublease, mortgage, instruments, guaranties, commitment, undertaking, or other similar arrangement.

"***Cure Costs***" means those amounts that must be paid and obligations that otherwise must be satisfied, including pursuant to section 365(b) of the Bankruptcy Code as a condition of the assumption and/or assignment of any Assigned Contract, including the cost of obtaining Consents in respect of the Assigned Contracts.

"***Deposit***" is defined in Section 2.2.

"***Disputed Items Decision***" has the meaning set forth in Section 2.4(e).

"***Employee Benefit Plans***" means: (a) any employee benefit plans, as defined in section 3(3) of ERISA and any "multi-employer plan" as defined in section 3(37) of ERISA or

each deferred compensation and each bonus or other incentive compensation, stock purchase, stock option, and other equity related compensation plan, program, agreement or arrangement; each medical, surgical, hospitalization, life insurance, and other "welfare" plan, fund or program (within the meaning of section 3(1) of ERISA and whether or not it is subject to ERISA); (b) each profit-sharing, stock bonus, or other "pension" plan, fund or program (within the meaning of section 3(2) of ERISA and whether or not it is subject to ERISA); (c) each employment, termination, severance, consulting, non-competition, change in control, or retention agreement or arrangement; (d) and each other employee benefit plan, fund, program, agreement, or arrangement, in each case, that is sponsored, maintained or contributed to, or required to be contributed to, by Seller or an ERISA Affiliate or to which Seller or an ERISA Affiliate is party, whether written or oral.

"***Employee Related Costs***" means any and all accrued expenses related to the Employees of Seller, including, without limitation, with respect to each Newco Employee, an amount equal to the number of accrued vacation days for such Newco Employee, multiplied by the daily wages for such Newco Employee and accrued bonus for the Newco Employees, in each case, as set forth on Schedule 12.1(a).

"***Environmental Claim***" means any Action, Order of any Governmental Authority, Lien, fine, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging Liability of whatever kind or nature (including Liability or responsibility for the costs of enforcement proceedings, investigations, cleanup, governmental response, removal or remediation, natural resources damages, property damages, personal injuries, medical monitoring, penalties, contribution, indemnification and injunctive relief) arising out of, based on or resulting from: (a) the presence, Release of, or exposure to, any Hazardous Substances; or (b) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit.

"***Environmental Law***" means all applicable federal, state and local Laws (including common law) or Orders relating to the protection of natural resources, wildlife, or the environment (including ambient air, indoor air, surface water, groundwater, land surfaces, sediment or subsurface strata) or employee or public health or safety, or for the manufacture, use, transport, treatment, storage, disposal, Release, or threatened Release of Hazardous Substances, petroleum products, asbestos, urea formaldehyde insulation, polychlorinated biphenyls, or any substance listed, classified or regulated as "hazardous" or "toxic" or any similar term under such Environmental Law, including the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq., the Resource Conservation and Recovery Act of 1976, as amended, 42 U.S.C. §§ 6901 et seq., the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq., the Emergency Planning and Community Right-to-know Act, as amended, 42 U.S.C. §§ 11001 et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 et seq., the Oil Pollution Act of 1990, 33 U.S.C. §§ 2701 et seq. and the Occupational Safety and Health Act of 1970, 29 U.S.C. §§ 651 et. seq. and the regulations promulgated pursuant thereto, and any state or local counterparts.

"***Environmental Liabilities***" means all Liabilities arising from any impairment or damage to the environment (including ambient air, indoor air, surface water, groundwater, land surfaces, sediment or subsurface strata) or natural resources, failure to comply with Environmental Laws, or the Release of or exposure to Hazardous Substances: (a) in connection with the prior or ongoing ownership or operation of the Business; or (b) on, in, under, to or from any real property currently or formerly owned, operated, occupied or leased in connection with the ongoing or prior ownership or operation of the Business, including Liabilities related to: (i) the handling, generation, treatment, transportation, storage, use, arrangement for disposal or disposal, manufacture, distribution, formulation, packaging or labeling of Hazardous Substances or waste; (ii) the Release of or exposure to Hazardous Substances; (iii) any other pollution or contamination of the surface, substrata, soil, air, ground water, surface water or marine environments; (iv) any other obligations imposed under Environmental Laws with respect to the Business; and (v) all obligations with respect to personal injury, property damage, wrongful death and other damages and losses arising under applicable Law as a result of any of the matters identified in clauses (i) – (iv) of this definition.

"***Environmental Notice***" means any written directive, notice of violation or infraction, or notice respecting any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

"***Environmental Permits***" means all licenses, permits, approvals, consents, certificates, registrations and other authorizations issued pursuant to Environmental Laws in respect of the Business.

"***Equipment***" means all equipment, forklifts, trucks, automobiles, furniture, computers, servers, machinery, apparatus, appliances, implements, spare parts, supplies and all other tangible personal property of every kind and description, in each case, that are owned by the Seller and used in or relate to the Business.

"***ERISA***" means the Employee Retirement Income Security Act of 1974, as amended, and any similar foreign Laws.

"***ERISA Affiliate***" means any entity that with Seller is: (a) member of a controlled group of corporations within the meaning of section 414(b) of the Code; (b) a member of a group of trades or businesses under common control within the meaning of section 414(c) of the Code; (c) a member of an affiliated service group within the meaning of section 414(m) of the Code; or (d) a member of a group of organizations required to be aggregated under section 414(o) of the Code.

"***Escrow Agent***" means Wilmington Trust.

"***Escrow Agreement***" is defined in Section 2.2.

"***Estimated Net Working Capital***" has the meaning set forth in Section 2.4(a).

"***Estimated Net Working Capital Statement***" has the meaning set forth in Section 2.4(a).

"***Estimated NWC Deficit***" has the meaning set forth in Section 2.3.

"***Estimated NWC Surplus***" has the meaning set forth in Section 2.3.

"***Excess Amount***" is defined in Section 7.2(a)(iv).

"***Excluded Assets***" is defined in Section 1.2.

"***Excluded Liabilities***" is defined in Section 1.4.

"***Existing Contracts***" is defined in Section 4.7.

"***Existing Real Property Lease***" means the Contract for the lease of Real Property.

"***Expense Reimbursement***" means the reimbursement of the Buyer for its actual and reasonable out of pocket fees, costs and expenses (including reasonable attorneys' fees, other professional fees and lender fees) incurred in connection with the transactions contemplated hereby; provided, however, that in no event shall the aggregate amount of the Expense Reimbursement exceed the amount of Three Hundred Twenty Five Thousand Dollars ($325,000.00).

"***Final Net Working Capital***" is defined in Section 2.4(c).

"***Final Net Working Capital Statement***" is defined in Section 2.4(c).

"***Final Order***" means an Order has not been (i) reversed, modified, vacated or stayed, (ii) the time to appeal such Order has expired, and (iii) no appeal, petition for certiorari, reargument, reconsideration or rehearing with respect thereto shall then be pending. The requirement that the Order become "Final" may be waived by written agreement by the Buyer.

"***Financial Statements***" is defined in Section 4.8.

"***Fixed Assets***" means all fixed assets owned and/or used in the conduct of the Business by Seller, including all such owned assets listed on Schedule 1.1(c) and all such leased assets listed on Schedule 1.1(c).

"***GAAP***" means United States generally accepted accounting principles and practices in effect from time to time applied consistently throughout the periods involved.

"***Governmental Authority***" means any agency, division, subdivision, audit group, procuring office, or governmental or regulatory authority in any event or any adjudicatory body thereof, of the United States or any state thereof or of any foreign government.

"***Hazardous Substances***" means (i) any chemicals, materials, substances, or items in any form, whether solid, liquid, gaseous, semisolid, or any combination thereof, whether waste materials, raw materials, chemicals, finished products, by-products, or any other materials or articles, which are listed, defined or otherwise designated as hazardous, toxic or dangerous under

Environmental Law, including asbestos, urea formaldehyde foam insulation, and lead-containing paints or coatings, (ii) any petroleum, petroleum derivatives, petroleum products or by-products of petroleum refining, and (iii) any other chemical, substance or waste that is regulated by Environmental Law or for which Liability can be imposed under any Environmental Law.

"***Highest Bid***" is defined in Section 7.2(i).

"***Highest Bidder***" is defined in Section 7.2(i).

"***Intellectual Property***" means (i) patents, registered and unregistered trademarks and service marks, brand names, trade names, trade secrets, domain names and URLs, social media accounts, copyrights, designs, artwork (including for label designs and advertisements), (ii) applications for and registrations of such patents, trademarks, service marks, trade names, trade secrets, domain names, copyrights, designs, and artwork (including for label designs and advertisements), and (iii) specifications for materials, manufacturing, packaging, labeling and quality assurance and processing instructions, know-how and other proprietary information, in each case whether held at Seller's location or off-site by another Person, and

"***Interim Balance Sheet***" is defined in Section 4.8.

"***Inventory***" means all raw materials, supplies, work-in-process, finished goods and packaging materials of Seller held for use and resale in the Business and finished goods purchased in the Ordinary Course of Business of Seller and held for resale.

"***Inventory Count***" is defined in Section 2.4(b).

"***IP Assignment***" is defined in Section 3.2(b).

"***Key Customers***" means the top twenty (20) customers of Seller in terms of gross sales for the twelve (12) month period ending on December 31, 2016.

"***Key Suppliers***" means the top ten (10) suppliers of Seller in terms of gross costs for the twelve (12) months ending on December 31, 2016.

"***Knowledge***" of Seller means the actual knowledge, following due inquiry, of Jack Kelly, Matt Jackson, and Micah Valine.

"***Labor Agreements***" means any and all Contracts, collective bargaining agreements, shop agreements, memoranda of understanding, letters of understanding, side agreements and other labor agreements between or applicable to Seller and any certified or lawfully recognized labor organization representing employees (including a works council, labor union, or labor organization) employed by Seller, including, without limitation, that certain Collective Bargaining Agreement, dated February 1, 2015, by and between Rupari Food Services, Inc. and United Food and Commercial Workers International Union, Local 1546.

"***Landlord***" means Store Master Funding V, LLC.

"***Law***" means any federal, state, provincial, local or foreign law, statute, code, ordinance, rule or regulation.

"***Legal Proceeding***" means any judicial, administrative or arbitral actions, suits, proceeds (public or private), or claims of any proceedings by or before a court or other Governmental Authority.

"***Lender***" means SunTrust Bank, Fifth Third Bank, and Antares Capital LP.

"***Liability***" means any debt, liability, commitment, or obligation of any kind (whether direct or indirect, known or unknown, fixed, absolute or contingent, matured or unmatured, asserted or not asserted, accrued or unaccrued, liquidated or unliquidated).

"***Lien***" means any interests, claims, charges, hypothecations, mortgages, pledges, deeds of trust, ***security*** interests, equitable interests, title retention agreements, conditional sale or installment contracts, finance leases, liens, rights of setoff or recoupment, encroachments, community or other marital property interests, easements, servitudes, rights of way, encumbrances, leases, subleases, licenses, conditions, covenants, puts, calls, options, burdens, title defects, rights of others, or restrictions (whether on voting, sale, transfer, disposition or otherwise), voting or voting trust agreements, proxies, preemptive rights, rights of first offer, negotiation or refusal or similar restrictions, restrictions on use, transfer, receipt of income, ownership of property, or exercise of any other attribute of ownership, whether imposed by agreement, understanding, Law, equity or otherwise.

"Material Adverse Effect" shall mean any circumstance, change or effect that is, in the aggregate, materially adverse to the results of operations of the Business or the Acquired Assets taken as a whole, other than any such change or effect resulting from (a) changes in general economic or political conditions or the financing or capital markets in general or changes in currency exchange rates, (b) changes in Laws or changes in accounting requirements or principles, (c) changes affecting generally the industries or markets in which the Business operates, or (d) any natural disaster or any acts of terrorism, sabotage, military action or war (whether or not declared) or any material escalation or worsening thereof; provided, however, that with respect to each of clauses (a), (b), or (c) above, any such circumstance, change or effect shall only be disregarded and not taken into account in determining whether a Material Adverse Effect has occurred to the extent that such circumstance, change or effect does not have a disproportionate effect on the Business or the Acquired Assets taken as a whole, relative to other Persons operating in the same industry, sector or sectors of the Business.

"***Necessary Consents***" has the meaning set forth in Section 7.6(l).

"***Net Working Capital***" means the Accounts Receivable and Inventory as of any given date of determination (in each case, as determined pursuant to Exhibit A), minus the Liabilities of Seller contemplated by Section 1.3(c) and Section 1.3(d).

"***NWC Target***" means an amount equal to Twenty-Six Million Dollars ($26,000,000).

"***Newco Employees***" is defined in Section 6.8(b).

"***NWC Escrow Account***" means the escrow account specified as the NWC Escrow account pursuant to the Escrow Agreement.

"***NWC Escrow Amount***" means One Million Dollars ($1,000,000).

"***Order***" means any order, injunction, judgment, decree, ruling, endorsement, writ, and assessment, or arbitration award of any Governmental Authority.

"***Ordinary Course of Business***" means the operation and conduct of the Business in the ordinary course, consistent with past practice through and including December 31, 2016, except has such practice is restricted, modified, effected, or altered by the filing of the Bankruptcy Case. For the avoidance of doubt, the Seller's business practices in January 2017 and thereafter shall not be considered for purposes of this definition.

"***Outside Date***" is defined in Section 7.4(d).

"***Party***" and "***Parties***" are defined in the Preamble.

"***Permits***" means any permits, permit transfers, authorizations, approvals, consents, registrations, certificates and licenses relating to the Business issued by any Governmental Authority (and pending applications for the foregoing).

"***Permitted Encumbrances***" means (i) statutory liens for current property Taxes and assessments not yet due and payable, including liens for ad valorem Taxes and statutory liens not yet due and payable arising other than by reason of any default by Seller, (ii) easements, rights of way, restrictive covenants, encroachments and similar non-monetary on the Real Property, which do not, individually or in the aggregate, adversely affect the use or occupancy of such Real Property as it relates to the operation of the Business or materially detract from the value of the Real Property or, (iii) applicable zoning Laws, building codes, land use restrictions and other similar restrictions imposed by Law, and (iv) such other Liens or title exceptions as Buyer may approve in writing in its sole discretion or which do not, individually or in the aggregate, materially and adversely affect the operation of the Business.

"***Person***" means an individual, a partnership, a corporation, an association, a limited or unlimited company, a joint stock company, a trust, a joint venture, an unincorporated organization or other entity or Government Authority.

"***Petition***" is defined in the Recitals.

"***Petition Date***" is defined in the Recitals.

"***Post-Closing Plan***" is defined in Section 6.8(e).

"***Products***" is defined in Section 4.22(a).

"***Purchase Price***" is defined in Section 2.1.

"***Purchased Deposits***" means all deposits of Seller (including deposits and security deposits for rent and electricity) and prepaid charges and expenses of the Seller, such as for security, as surety money, as a retainer or other similar amounts, other than any deposits or prepaid charges and expenses paid in connection with or relating primarily to any Excluded Assets or Excluded Liabilities.

"***Qualified Bid***" is defined in Section 7.2(a).

"***Qualified Bidder***" is defined in Section 7.2(a).

"***Real Estate Taxes***" means any and all Taxes payable by the Seller pursuant to the Existing Real Property Lease for all periods prior to the Closing Date and for the period ending on the Closing Date, regardless of when due pursuant to the terms of the Existing Real Property Lease.

"***Real Property***" means that certain parcel of property located at 15600 Wentworth Avenue, South Holland, Illinois 60473, together with the building located thereon and all fixtures appurtenant thereto.

"***Receivables***" is defined in Section 4.18.

"***Related Person***" means, with respect to any Person, all past, present and future Affiliates, directors, officers, members, managers, stockholders, employees, controlling persons, agents, professionals, attorneys, accountants, investment bankers or representatives of any such Person.

"***Release***" means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, migration or leaching into or through the indoor or outdoor environment, or into or out of any property.

"***Representatives***" is defined in Section 6.1.

"***Required Permits***" is defined in Section 4.15.

"***Review Period***" is defined in Section 2.4(d).

"***Sale Hearing***" means the hearing to approve this Agreement and seeking entry of the Sale Order.

"***Sale Motion***" means, collectively, the Seller's motion(s), together with appropriate supporting papers and notices, for entry of the Bid Procedures Order and the Sale Order, and the granting of related relief, by the Bankruptcy Court. The Sale Motion shall be in a form reasonably satisfactory to the Buyer.

"***Sale Order***" means the order entered by the Bankruptcy Court containing the provisions specified in Section 7.3(a) and in the form attached hereto as Exhibit C, with such changes as are acceptable to Buyer.

"***Sellable Inventory***" is defined in Section 2.4(b).

"***Seller***" is defined in the Preamble.

"***Seller Adjustment Amount***" has the meaning set forth in Section 2.4(f)(i).

"***Seller Benefit Plan***" is defined in Section 6.8(e).

"***Starting Auction Bid***" is defined in Section 7.2(c).

"***Straddle Period***" is defined in Section 8.2.

"***Tax Return***" means any report, return, information return, filing or other information, including any schedules, exhibits or attachments thereto, and any amendments to any of the foregoing required to be filed or maintained in connection with the calculation, determination, assessment or collection of any Taxes (including estimated Taxes).

"***Taxes***" means (a) all taxes, however denominated, and all like charges, levies, duties, imposts or other assessments, including any interest, penalties or additions to tax that may become payable in respect thereof, imposed by any Government, which taxes shall include all income taxes, Transaction Taxes, capital, payroll and employee withholding, unemployment insurance, social security (or similar), sales and use, excise, franchise, gross receipts, occupation, real and personal property, stamp, transfer, workmen's compensation, customs duties, registration, documentary, value added, alternative or add-on minimum, estimated, environmental (including taxes under section 59A of the Code) and other obligations of the same or a similar nature, whether arising before, on or after the Closing Date, (b) any transferee, successor or other Liability in respect of Taxes of another (whether by Contract or otherwise) and any Liability in respect of any Taxes as a result of any company being a member of any "affiliated group" as defined in section 1504 of the Code, or any analogous combined, consolidated or unitary group defined under state, federal, provincial, local or foreign Tax Law and (c) any interest or penalties imposed with respect to any amounts described in (a) or (b).

"***Termination Date***" is defined in Section 10.2(c)(ii).

"***TR Agreement***" means that certain License Agreement, entered into as of May 1, 2007, by and between the Seller and Roma Dining LP, as amended.

"***Transaction Taxes***" is defined in Section 8.1.

"***True-Up Deficit***" has the meaning set forth in Section 2.4(f)(ii).

"***True-Up Surplus***" has the meaning set forth in Section 2.4(f)(i).

"***Union***" is defined in Section 6.8(d).

"***Updating Information***" is defined in Section 6.10(a).

"***Working Capital***" is defined in Section 2.1.

"***Working Capital Collar***" means Five Hundred Thousand Dollars ($500,000).

"***Working Capital Statement Response Notice***" is defined in Section 2.4(d).

[Signature Page Follows]

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

RUPARI FOOD SERVICE, INC.

By: _____
Name: Jack Kelly
Its: Chief Executive Officer

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

CBQ, LLC

By: _____
Name: _____
Its: _____