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

| | | |
|---|---|---|
| In re: | ) | Chapter 11 |
| AMERICAN TIRE DISTRIBUTORS, INC., *et al.*,[1] | ) | Case No. 24-12391 (CTG) |
| Debtors. | ) | (Jointly Administered) |

**ORDER (I) AUTHORIZING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS, ENCUMBRANCES, AND OTHER INTERESTS, (II) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION THEREWITH, AND (III) GRANTING RELATED RELIEF**

Upon the *Motion of Debtors For Entry of an Order (I) Approving Bid Procedures for the Sale of the Debtors' Assets, (II) Scheduling Certain Dates and Deadlines With Respect Thereto, (III) Approving the Form and Manner of Notice Thereof, (IV) Approving Certain Bid Protections In Connection with the Debtors' Entry Into Any Potential Stalking Horse Agreement, (V) Establishing Notice and Procedures For the Assumption and Assignment of Contracts and Leases, (VI) Authorizing the Assumption and Assignment of Contracts and Leases, (VII) Approving the Sale of Assets, and (VIII) Granting Related Relief*, dated October 29, 2024 [Docket No 109] (the "Motion"),[2] of the above-captioned debtors and debtors in possession (each,

[1] The last four digits of Debtor American Tire Distributors, Inc.'s federal tax identification number are 4594. A complete list of each of the Debtors in these Chapter 11 Cases and such Debtor's federal tax identification number may be obtained on the website of the Debtors' claims and noticing agent at www.donlinrecano.com/atd. The location of the Debtors' service address is: 12200 Herbert Wayne Court, Suite 150, Huntersville, NC 28078.

[2] Capitalized terms used, but not defined, herein shall have the meanings ascribed to them in the Motion, the APA (as defined below), or the *Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Grant Senior Secured Priming Liens and Superpriority Administrative Expense Claims, and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to the Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief* [Docket No. 340] (the "Final DIP Order"), as applicable.

a "Debtor" and, collectively, the "Debtors"), pursuant to sections 105(a), 363, 365, 503, and 507 of title 11 of the United States Code (the "Bankruptcy Code") and rules 2002, 6004, 6006, and 6007 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and rules 2002-1, 6004-1, and 9013-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), seeking entry of, *inter alia*, an order (the "Bidding Procedures Order"): (i) authorizing and approving the bidding procedures (the "Bidding Procedures"); (ii) authorizing the Debtors to select an Alternative Stalking Horse Bid and provide Alternative Bid Protections if the Stalking Horse Agreement is terminated; (iii) establishing certain related dates and deadlines with respect to the marketing and sale of the Debtors' Assets; (iv) approving the form and manner of notice of the Auction (if any) and the Sale Transactions, the notice of the Winning Bidder(s), and the notice of designation of any Alternative Stalking Horse Bid; (v) approving the Assumption and Assignment Procedures, including the notices of potential assumption and proposed cure amounts attached to the Bidding Procedures Order; and (vi) granting related relief; and the Debtors having signed that certain asset purchase agreement dated November 26, 2024 (as may be amended from time to time in accordance with the terms thereof and this order (the "Order"), the "Stalking Horse Agreement," herein referred to as the "APA") contemplating the sale of the Acquired Assets (as defined in the APA) to Asphalt Buyer LLC (collectively, the "Buyer")[3] free and clear of any Claims (as defined below), but subject to certain Permitted Encumbrances (as defined in the APA) and the assumption of the Assumed Liabilities (as defined in the APA) (the "Sale Transaction"); and the Court having entered the Bidding Procedures Order on November 26, 2024 [Docket No. 361]; and no other Qualified Bids having been received in accordance with the terms of the Bidding Procedures and,

[3] For the avoidance of doubt, Buyer shall include any Buyer Designee (as defined in the APA).

thus, no Auction having been conducted and, thus, the Debtors having determined that the Sale Transaction represents the highest or otherwise best bid for the Acquired Assets; and the Sale Hearing having been held on February 10, 2025, at which hearing the Court approved the Buyer as the highest or otherwise best bidder for the Acquired Assets; and the Court having reviewed and considered the relief sought in the Motion, the APA and the arguments of counsel made, and the evidence proffered or adduced, at the Sale Hearing; and upon the Murray Declaration[4] and the Bienias Declaration (collectively, the "Declarations")[5]; and all parties in interest having been heard or having had the opportunity to be heard regarding the Sale Transaction and the relief granted by this Order; and due and sufficient notice of the Sale Hearing and the relief sought in the Motion having been given under the particular circumstances of these chapter 11 cases (the "Chapter 11 Cases") and in accordance with the Bidding Procedures Order; and it appearing that no other or further notice need be provided; and it appearing that the relief granted herein is in the best interests of the Debtors, their estates, their creditors and all other parties in interest; and the Court having jurisdiction over this matter; and the legal and factual bases set forth in the Motion and at the Sale Hearing establishing just cause for the relief granted herein; and after due deliberation thereon,

---

4 "Murray Declaration" means the *Declaration of Rachel Murray in Support of the Order (I) Authorizing the Sale of Substantially all of the Debtors' Assets Free and Clear of all Liens, Claims, Interests, Encumbrances, and Other Interests, (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith and (III) Granting Related Relief* [Docket No. 709].

5 "Bienias Declaration" means the *Declaration of Ronald J. Bienias in Support of the Order (I) Authorizing the Sale of Substantially all of the Debtors' Assets Free and Clear of all Liens, Claims, Interests, Encumbrances, and Other Interests, (II) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection Therewith and (III) Granting Related Relief* [Docket No. 711].

**THE COURT HEREBY FINDS THAT:**[6]

**Jurisdiction and Venue**

A. This Court has jurisdiction to hear and determine the relief requested in the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of the Chapter 11 Cases and these proceedings is proper in this District and this Court under 28 U.S.C. §§ 1408 and 1409.

**Statutory Predicates**

B. The statutory predicates for the relief requested in the Motion are Bankruptcy Code sections 105(a), 363, 365, 503, and 507. The relief requested therein is also warranted pursuant to Bankruptcy Rules 2002, 6004, 6006, 6007, 9007, 9008, and 9014 and Local Rules 2002-1, 6004-1, 9006-1(c), and 9013-1.

**Final Order**

C. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Order, waives any stay, and expressly directs entry of judgment as set forth herein.

**Notice**

D. On October 22, 2024 (the "Petition Date"), the Debtors commenced the Chapter 11 Cases by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

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

Since the Petition Date, the Debtors have continued to operate and manage their businesses as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

E. In accordance with the Bidding Procedures Order, the Debtors published the *Notice of Auctions for the Sale of Debtors' Assets* (the "Sale Notice") in (i) the national edition of *The New York Times* on December 5, 2024 [Docket No. 447], and (ii) *The Charlotte Observer* on December 6, 2024 [Docket No. 448].

F. As evidenced by the *Affidavit of Service* of the *Notice of Filing of Asset Purchase Agreement* filed at Docket No. 376, *Affidavit of Service* of the Bidding Procedures Order filed at Docket No. 377, and the *Affidavit of Service* of the Sale Notice filed at Docket No. 614, due, proper, timely, adequate, and sufficient notice of the Motion, the Bidding Procedures Order, the Bidding Procedures, the Sale Hearing, the APA, and the Sale Transaction has been provided in accordance with Bankruptcy Code sections 102(1) and 363, Bankruptcy Rules 2002 and 9014 and Local Rules 2002-1, and 6004-1. Notice of the Motion, the entry of the Bidding Procedures Order, the Sale Hearing, the APA, and the Sale Transaction has been provided in accordance with the Bidding Procedures Order. The aforementioned notices are good, sufficient, and appropriate under the circumstances, and no other or further notice of the Motion, the Bidding Procedures Order, the Bidding Procedures, the Sale Hearing, the APA, or the Sale Transaction is or shall be required and service and notice is in compliance with Bankruptcy Rule 2002.

G. As provided in the Sale Notice, a reasonable opportunity to object or be heard regarding the requested relief has been afforded to all persons and entities. Other parties interested in bidding on the Acquired Assets were provided, pursuant to the Bidding Procedures Order, sufficient information to make an informed judgment whether to submit a bid with respect to the Acquired Assets.

H. In accordance with, and as provided by, the Bidding Procedures Order, the *Notice of Potential Assumption or Assumption and Assignment of Certain Contracts or Leases* was filed with the Court on December 11, 2024 [Docket No. 462] (the "Cure Notice") and served on the applicable Contract Counterparties to the Contracts and Leases via first class mail, electronic mail, or overnight delivery as reflected in the applicable affidavit of service [Docket No. 480]. On January 28, 2025, the Debtors filed the *Supplemental Notice of Assumption or Assumption and Assignment of Certain Contracts and Leases* [Docket No. 666]. For the avoidance of doubt, creditors who were served the Cure Notice, were properly served and notified and therefore are subject to the Cure Objection Deadline (as defined in the Cure Notice).

I. The service of the Cure Notice complied with the Bidding Procedures Order, was due, proper, timely, adequate, sufficient, and appropriate under the circumstances and no further notice need be given in respect of the assumption and assignment of the executory contracts and unexpired leases that may be assumed and assigned pursuant to the APA (the "Debtor Contracts") or establishing Cure Costs. Contract Counterparties to the Debtor Contracts have had an adequate opportunity to object to and be heard regarding the potential assumption and assignment of the Debtor Contracts and the associated Cure Costs.[7]

J. On January 12, 2025, the Debtors filed the *Notice of (I) Selection of a Winning Bidder and (II) Cancellation of the Auction* [Docket No. 596].

[7] To the extent required by Bankruptcy Code section 365(b)(1) and (f)(2), the Debtors shall be obligated to cure or provide adequate assurance that they will promptly cure any additional or incremental default that has occurred with respect to an executory contract or unexpired lease that is assumed and assigned to the Buyer since the filing of the Cure Notice, including any such default that occurs prior to an assignment of an executory contract or unexpired lease and is invoiced after such assignment, regardless of whether the cure or assumption of such obligation is contemplated under Section 2.3 of the APA, with such Cure Costs to be paid by the Buyer in accordance with the terms of the APA. For the avoidance of doubt, nothing herein is intended as or shall be construed or deemed to be an implication, admission, or finding that a purported default under an executory contract actually exists.

K. The Debtors' disclosures concerning the APA, the Bidding Procedures, the Sale Transaction, the Sale Hearing, and the Debtor Contracts were adequate and complete.

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

**Compliance with the Bidding Procedures Order**

M. As demonstrated by the record, the Declarations in support of the Sale Transaction and the evidence proffered or adduced at the Sale Hearing, the Debtors have complied in all material respects with the Bidding Procedures Order. The Debtors and their professionals have adequately and appropriately marketed the Acquired Assets in compliance with the Bidding Procedures and the Bidding Procedures Order, and in accordance with the Debtors' fiduciary duties. Based upon the record of these proceedings, creditors, other parties in interest, and prospective purchasers were afforded a reasonable and fair opportunity to bid for the Acquired Assets.

N. The Bidding Procedures were substantively and procedurally fair to all parties and all potential bidders and afforded notice and a full, fair, and reasonable opportunity for any person to make a higher or otherwise better offer to purchase the Acquired Assets. The Debtors and their advisors conducted a robust marketing and sale process in accordance with the Bidding Procedures Order, as more fully detailed in the Declarations. The sale process and the Bidding Procedures were non-collusive, duly noticed, good-faith, and provided a full, fair, reasonable, and adequate opportunity for any entity that either expressed an interest in acquiring the Acquired Assets, or who the Debtors believed may have had an interest in acquiring the Acquired Assets, to make an offer to purchase the Acquired Assets.

O. The Buyer is the Winning Bidder, and the APA sets forth the terms of the Winning Bid, for the Acquired Assets in accordance with the Bidding Procedures Order. The Buyer, the Ad Hoc Group (and the members thereof), and the DIP Term Lenders have each complied in all respects with the Bidding Procedures Order and all other applicable orders of this Court in negotiating and entering into the APA, and the Sale Transaction and the APA comply with the Bidding Procedures Order and all other applicable orders of this Court.

**Business Judgment**

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

Q. The Debtors' determination that the consideration provided by the Buyer under the APA constitutes the highest or otherwise best offer for the Acquired Assets constitutes a valid and sound exercise of the Debtors' business judgment.

R. Consistent with their fiduciary duties, the Debtors have demonstrated good, sufficient and sound business reasons and justifications for entering into the Sale Transaction and the performance of their obligations under the APA, including the fact that: (i) the consideration provided by the Buyer under the APA represents the best available alternative for the Debtors' estates, as evidenced by the Debtors' extensive and active marketing of the Acquired Assets; and (ii) the Sale Transaction is the most value-maximizing option as no other entity has offered to purchase the Acquired Assets pursuant to a higher or otherwise better bid.

S. The Sale Transaction must be approved and consummated promptly to preserve the viability of the Debtors' businesses as a going concern and to maximize the value of the Debtors'

estates. Time is of the essence in consummating the Sale Transaction. Given all of the circumstances of these Chapter 11 Cases, the evidence submitted to the Court, including the Declarations, and the adequacy and fair value of the Purchase Price, the proposed Sale Transaction constitutes a reasonable and sound exercise of the Debtors' business judgment and should be approved.

T. The consummation of the Sale Transaction and the assumption and assignment of the Debtor Contracts are legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including Bankruptcy Code sections 105(a), 363(b), 363(f), 363(m), and 365, and, upon payment of the Cure Costs, all of the applicable requirements of such sections have been complied with in respect of the Sale Transaction. The Sale Transaction neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a chapter 11 plan of the Debtors. The Sale Transaction does not constitute a sub rosa plan.

**Credit Bid**

U. As set forth more fully in the Final DIP Order, the Debtors have acknowledged that the Prepetition Term Loan Obligations: (i) constitute legal, valid, binding, enforceable, unavoidable obligations of the Debtors; (ii) are secured by valid, binding, enforceable, unavoidable, and properly perfected Prepetition Liens on the Prepetition Collateral; (iii) constitute allowed secured claims under Bankruptcy Code sections 502(a) and 506; and (iv) are authorized to be credit bid pursuant to Bankruptcy Code section 363(k).

V. As set forth more fully in the Final DIP Order, the New Money DIP Term Loan Obligations: (i) constitute legal, valid, binding, enforceable, unavoidable obligations of the Debtors; (ii) are secured by valid, binding, enforceable, unavoidable, and properly perfected DIP

Liens on the DIP Collateral; and (iii) are authorized to be credit bid pursuant to Bankruptcy Code section 363(k).

W. The Buyer is a Delaware limited liability company. Pursuant to applicable law, including Bankruptcy Code section 363(k), and in accordance with the Final DIP Order, the Buyer has elected to credit bid (i) the full amount of the New Money DIP Term Loan Obligations and (ii) an aggregate amount equal to $585,000,000 of the Prepetition Term Loan Obligations, as contemplated under the APA. Such credit bid is valid and proper consideration pursuant to Bankruptcy Code sections 363(b) and 363(k) and the Final DIP Order, with the allocation of the consideration to be received by the holders of the New Money DIP Term Loan Obligations and the Prepetition Term Loan Obligations dictated by the terms of the financing agreements of the Buyer, absent which the Buyer would not have had authority or required financing to acquire the Acquired Assets.

**Corporate Authority**

X. Subject to entry of this Order, each Debtor: (i) has full corporate power and authority to execute and deliver the APA and all other documents contemplated thereby; (ii) has all of the necessary corporate power and authority to consummate the transactions contemplated by the APA, including the Sale Transaction and the assumption and assignment of such Debtor's right, title and interest in the Debtor Contracts, as applicable; (iii) has taken all corporate action necessary to authorize and approve the APA and the consummation by the Debtors of the transactions contemplated thereby, including the Sale Transaction and the assumption and assignment of the Debtor Contracts, as applicable; and (iv) subject to entry of this Order, needs no consents or approvals, other than those expressly set forth in the APA or this Order, to consummate

the transactions contemplated thereby, including the Sale Transaction and the assumption and assignment of the Debtor Contracts, as applicable.

**Good Faith of Debtors and Buyer**

Y. As demonstrated by the record, the Declarations, and the evidence proffered or adduced at the Sale Hearing, the sale process was conducted by the Debtors in accordance with the Bidding Procedures and the Bidding Procedures Order, and the negotiation of the APA was at arm's length, non-collusive, in good faith and substantively and procedurally fair to all parties in interest. The Debtors, the Buyer, the Ad Hoc Group (and the members thereof), and the DIP Term Lenders, and their respective representatives, have not engaged in any conduct that would cause or permit the APA or the Sale Transaction to be avoided, or costs or damages to be imposed, under Bankruptcy Code section 363(n).

Z. The Debtors have complied, in good faith, in all respects with the Bidding Procedures Order and the Bidding Procedures. The Debtors and their management, board of directors, board of managers (or comparable governing authority), employees, agents, and representatives, and the Buyer, the Ad Hoc Group (and the members thereof), and the DIP Term Lenders, and their employees, agents, advisors, and representatives, each actively participated in the bidding process and each acted in good faith, at arm's length and in a non-collusive manner. The Buyer's bid was subjected to competitive bidding in accordance with the Bidding Procedures and was designated the Winning Bidder for the Acquired Assets in accordance with the Bidding Procedures and the Bidding Procedures Order.

AA. The Buyer is a good faith purchaser within the meaning of Bankruptcy Code section 363(m) and is therefore entitled to the full protection of that provision in respect of the Sale Transaction, each term of the APA (and any ancillary documents executed in connection

therewith) and each term of this Order, and otherwise has proceeded in good faith in all respects in connection with this proceeding. None of the Debtors, the Buyer, the Ad Hoc Group (and the members thereof), or the DIP Term Lenders has engaged in any conduct that would prevent the application of Bankruptcy Code section 363(m). The Debtors were free to deal with any other party interested in buying or selling some or all of the Acquired Assets on behalf of the Debtors' estates. No other person, including any holder of Prepetition Term Loan Obligations that is not a member of the Ad Hoc Group, submitted a bid for the Acquired Assets. The protections afforded by Bankruptcy Code section 363(m) are integral to the Sale Transaction and the Buyer would not consummate the Sale Transaction without such protections.

BB. The form and total consideration to be realized by the Debtors under the APA constitutes not less than fair value, fair, full and adequate consideration, reasonably equivalent value, and reasonable market value for the Acquired Assets.

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

**Transfer of Assumed Liabilities**

DD. The transfer of the Assumed Liabilities pursuant to the terms of the APA and this Order is an integral part of the consideration provided under the APA and is in the best interests of the Debtors, their estates and their creditors.

**No Fraudulent Transfer**

EE. The consideration provided by the Buyer for the Acquired Assets pursuant to the APA: (i) is fair and reasonable; (ii) is the highest or otherwise best offer for the Acquired Assets; (iii) will provide a greater recovery for the Debtors' creditors and estates than would be provided by any other practical available alternative; and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, and each state, territory, possession thereof, and the District of Columbia.

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

**Free and Clear**

GG. The transfer of the Acquired Assets to the Buyer (including the assignment of any Debtor Contracts and the Avoidance Actions and other claims and causes of action acquired pursuant to section 2.1(o) of the APA (collectively, with the Avoidance Actions, the "Causes of Action")) will be legal, valid, and effective transfers of the Acquired Assets, and will vest the Buyer with all right, title, and interest of the Sellers to the Acquired Assets free and clear of all claims, liens (including any statutory lien on real and personal property and any and all "liens" as that term is defined and used in the Bankruptcy Code, including section 101(37) thereof), liabilities (including the Excluded Liabilities), interests, rights, and encumbrances (other than the Permitted

Encumbrances and the Assumed Liabilities), including the following: all mortgages; restrictions (including any restriction on the use, voting rights, transfer rights, claims for receipt of income or other exercise of any attributes of ownership); hypothecations; charges; indentures; loan agreements; instruments; leases; licenses; sublicenses; options; deeds of trust; security interests; equity interests; conditional sale rights or other title retention agreements; pledges; judgments; demands; rights of first refusal; consent rights; offsets; contract rights; rights of setoff (except for setoffs exercised prior to the Petition Date and as provided for in paragraph 54); reimbursement rights; contribution claims; indemnity rights; exoneration rights; product liability claims; alter-ego claims; environmental rights and claims (including toxic tort claims); labor rights and claims; employment rights and claims; pension rights and claims; tax claims; regulatory violations asserted by any governmental entity; decrees of any court or foreign or domestic governmental entity; charges of any kind or nature; debts arising in any way in connection with any agreements, acts, or failures to act, reclamation claims, obligation claims, demands, guaranties, option rights or claims, rights, contractual or other commitment rights and claims; rights of tenants and subtenants (if any) under Bankruptcy Code section 365(h) or any similar statute; and all other matters of any kind and nature, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of the Chapter 11 Cases (but, for the avoidance of doubt, in each case arising under or out of, in connection with, or in any way relating to, the Debtors, the Debtors' predecessors or insiders, the Acquired Assets, the ownership, sale, or operation of the Acquired Assets prior to closing of the Sale Transaction (including the transfer of any Acquired Assets to the Buyer after

the initial Closing Date (as defined in the APA), the "Closing"), or the transfer of the Acquired Assets to the Buyer) and whether imposed by agreement, understanding, law, equity, or otherwise, including claims otherwise arising under any theory, law, or doctrine of successor or transferee liability or related theories (all of the foregoing, including liens and liabilities, collectively being referred to in this Order as "Claims" and, as used in this Order, the term "Claims" includes any and all "claims" as that term is defined and used in the Bankruptcy Code, including section 101(5) thereof).

HH. The Sellers may transfer the Acquired Assets, subject only to the Assumed Liabilities, to the extent applicable, free and clear of all Claims, including rights or claims based on any successor or transferee liability, because, in each case, one or more of the standards set forth in Bankruptcy Code section 363(f)(1)-(5) has been satisfied, with all such Claims to attach to the proceeds of the Sale Transaction to be received by the Debtors with the same validity, force, priority, and effect which they now have as against the Acquired Assets, subject to paragraph 7 below and any claims and defenses the Debtors and their estates may possess with respect thereto. Those (i) holders of Claims and (ii) non-Debtor parties to the Debtor Contracts, who did not object or who withdrew their objections to the Motion, are deemed to have consented pursuant to Bankruptcy Code section 363(f)(2).

II. Each of (i) the DIP Secured Parties and (ii) the Prepetition Secured Parties has consented, or is deemed to consent, to the sale of the Acquired Assets to the Buyer pursuant to the APA free and clear of any Claims (other than Assumed Liabilities and Permitted Encumbrances) of the DIP Secured Parties and the Prepetition Secured Parties against the Acquired Assets, with any Claims of the DIP Secured Parties or the Prepetition Secured Parties that are not credit bid or Permitted Encumbrances attaching to the proceeds of the Sale Transaction to be received by the

Debtors with the same validity, force, priority, and effect which they now have as against the Acquired Assets.

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

KK. The Buyer would not have entered into the APA and would not consummate the transactions contemplated thereby, including the Sale Transaction and the assumption and assignment of the Debtor Contracts and the assumption of the Assumed Liabilities: (i) if the transfer of the Acquired Assets were not free and clear of all Claims; or (ii) if the Buyer would, or in the future could, be liable for any such Claims. The Buyer will not consummate the transactions contemplated by the APA, including the Sale Transaction, and the assumption and assignment of the Debtor Contracts, unless this Court expressly orders that none of the Buyer, their respective affiliates, their respective present or contemplated members or shareholders, or the Acquired Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any Claims (except for the Assumed Liabilities).

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

MM. Neither the Buyer nor any of its affiliates is a mere continuation of the Debtors or their estates; there is no continuity or common identity between the Buyer, any of its affiliates and any of the Debtors; and there is no continuity of enterprise between the Buyer, any of its affiliates and any of the Debtors. Neither the Buyer nor any of its affiliates are holding themselves out to

the public as a continuation of any of the Debtors. Neither the Buyer nor any of its affiliates is a successor to any of the Debtors or their estates, and none of the transactions contemplated by the APA, including the Sale Transaction and the assumption and assignment of the Debtor Contracts amounts to a consolidation, merger, or *de facto* merger of the Buyer or any of its affiliates with or into any of the Debtors.

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

**Validity of Transfer**

OO. The consummation of the transactions contemplated by the APA, including the Sale Transaction and the assumption and assignment of the Debtor Contracts is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, Bankruptcy Code sections 105(a), 363(b), 363(f), 363(m), 365(b), and 365(f), and, upon payment of the Cure Costs, all of the applicable requirements of such sections have been complied with in respect of the transactions contemplated under the APA.

PP. The Debtors' right, title, and interest in the Acquired Assets constitute property of the Debtors' estates and good title thereto is vested in the Debtors' estates within the meaning of

Bankruptcy Code section 541(a). The Debtors are the sole and lawful owners of the Debtors' right, title, and interest in the Acquired Assets.

QQ. The transfer of the Acquired Assets will be, as of the "Closing Date" (as defined in the APA), a legal, valid, binding, and effective transfer of the Debtors' rights, title, and interest in the Acquired Assets to the Buyer, which transfer will vest the Buyer with all rights, title, and interests of the Debtors to the Acquired Assets free and clear of all liens, claims, interests, and encumbrances (other than Permitted Encumbrances). The transfer of the Assumed Liabilities, including the Assumed Trade Payables, to the Buyer shall likewise be a legal, valid, and effective transfer.

RR. The APA has been duly and validly executed and delivered by the Debtors and, subject to the terms of the APA, shall constitute a valid and binding obligation of the Debtors, enforceable against the Debtors in accordance with its terms. The APA, the Sale Transaction, and the consummation thereof shall be specifically enforceable against and binding upon (without posting any bond) the Debtors and any chapter 7 or chapter 11 trustee appointed in these Chapter 11 Cases, and shall not be subject to rejection or avoidance by the foregoing parties or any other person.

**Assumption and Assignment of the Debtor Contracts**

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

TT. The Debtors have met all requirements of section 365(b) of the Bankruptcy Code for each of the Debtor Contracts; *provided*, that any defaults or other obligations under the Debtor

Contracts shall be deemed cured by the Buyer's payment or other satisfaction of the Cure Costs, if any, associated with the Debtor Contracts.

UU. Pursuant to the terms of the APA and this Order, on or after the Closing Date, as applicable pursuant to the terms of this Order and the APA, the Buyer will have, except as otherwise provided in the APA or this Order, or as otherwise expressly agreed to between the Buyer and such Contract Counterparty: (i) cured, or provided adequate assurance of cure of, any monetary default existing as of and including the Closing Date under any of the Debtor Contracts, within the meaning of Bankruptcy Code section 365(b)(1)(A); (ii) provided compensation, or adequate assurance of compensation, to any party for actual pecuniary loss to such party resulting from a monetary default existing as of and including the Closing Date under any of the Debtor Contracts, within the meaning of Bankruptcy Code section 365(b)(1)(B); and (iii) used commercially reasonable efforts to provide adequate assurance of its future performance under the Debtor Contracts within the meaning of Bankruptcy Code sections 365(b)(1)(C), 365(b)(3) (to the extent applicable), and 365(f)(2)(B).

**Compelling Circumstances for an Immediate Sale**

VV. To maximize the value of the Acquired Assets and preserve the viability of the business to which the Acquired Assets relate, it is essential that the transactions contemplated by the APA, including the Sale Transaction and the assumption and assignment of the Debtor Contracts occur within the time constraints set forth in the APA and the RSA. Time is of the essence in consummating the transactions contemplated by the APA, including the Sale Transaction and the assumption and assignment of the Debtor Contracts.

WW. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the immediate approval and consummation of the

transactions contemplated by the APA, including the Sale Transaction and the assumption and assignment of the Debtor Contracts.

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

**General Provisions**

1. The Motion is GRANTED as provided herein, and entry into and performance under, and in respect of, the APA, attached hereto as **Exhibit 1**, and the first amendment to the APA, dated February 9, 2025, attached here as **Exhibit 2**, and the consummation of the transactions contemplated thereby, including the Sale Transaction and the assumption and assignment of the Debtor Contracts is authorized and approved.

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

3. This Court's findings of fact and conclusions of law set forth in the Bidding Procedures Order are incorporated herein by reference.

**Approval of the APA**

4. The APA, all ancillary documents, the transactions contemplated thereby, including the Sale Transaction and the assumption and assignment of the Debtor Contracts (but subject to the Buyer's rights and obligations with respect thereto pursuant to the APA), and all the terms and conditions thereof, are approved in all respects. The failure specifically to include any particular

provision of the APA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the APA be authorized and approved in its entirety.

5. The Debtors and their respective officers, employees, and agents are authorized to take any and all actions necessary, appropriate, or reasonably requested by the Buyer to perform, consummate, implement, and close the Sale Transaction, including: (i) the sale to the Buyer of all Acquired Assets, in accordance with the terms and conditions set forth in the APA and this Order; and (ii) executing, acknowledging, and delivering such deeds, assignments, conveyances and other assurance, documents, and instruments of transfer and taking any action for purposes of assigning, transferring, granting, conveying, and confirming to the Buyer, or reducing to possession, the Acquired Assets, all without further order of this Court. The Debtors and their third-party vendors (including ordinary course professionals retained by the Debtors in these Chapter 11 Cases) are further authorized, without further order of this Court, to cooperate with the Buyer with respect to actions reasonably requested by the Buyer in connection with the Closing. The Debtors are further authorized to pay, without further order of this Court, whether before, at or after the Closing Date, any expenses or costs that are required or reasonably contemplated to be paid by the Debtors to consummate the transactions contemplated by the APA or perform their obligations under the APA. Any amounts that become payable by the Debtors to the Buyer pursuant to this Order and/or the APA (and related agreements executed in connection therewith, including any transition services agreement), shall: (a) constitute allowed administrative expenses of the Debtors' estates under Bankruptcy Code sections 503(b)(1) and 507(a)(2); (b) be treated with such priority if any Chapter 11 Case is converted to a case under chapter 7 of the Bankruptcy Code; and (c) not be discharged, modified, or otherwise affected by any reorganization or liquidation plan for the

Debtors, except by written agreement with the Buyer (such agreement to be provided in the Buyer's sole discretion).

6. The sale of the Acquired Assets to and the assumption of the Assumed Liabilities by the Buyer under the APA constitutes a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and laws of all applicable jurisdictions, including the laws of each jurisdiction in which the Acquired Assets are located, and the sale of the Acquired Assets to the Buyer may not be avoided under any statutory or common law fraudulent conveyance and fraudulent transfer theories whether under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing.

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

7. Pursuant to Bankruptcy Code sections 105(a) and 363(f), the Acquired Assets shall be sold free and clear of all Claims (other than Permitted Encumbrances and Assumed Liabilities, including the assumption of Cure Costs and the Assumed Trade Payables), with all such Claims to attach to the proceeds of the Sale Transaction to be received by the Debtors with the same validity, force, priority and effect which they now have as against the Acquired Assets, subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

8. At Closing, all of the Debtors' right, title, and interest in and to, and possession of, the Acquired Assets, including, upon payment of the Cure Costs, Debtor Contracts, shall be immediately vested in the Buyer (or any assignee of the Buyer in accordance with the APA) pursuant to Bankruptcy Code sections 105(a), 363(b), and 363(f) free and clear of any and all Claims, with all such Claims to attach to the proceeds of the Sale Transaction to be received by the Debtors with the same validity, force, priority, and effect which they now have as against the

Acquired Assets, subject to paragraph 7 above and any claims and defenses the Debtors and their estates may possess with respect thereto. Such transfer shall constitute a legal, valid, binding, and effective transfer of, and shall vest the Buyer with good and marketable title to, the Acquired Assets. All persons or entities, presently or on or after the Closing Date, in possession of some or all of the Debtors' right, title, or interest in the Acquired Assets are directed to surrender possession of such right, title, or interest in the Acquired Assets to the Buyer on the Closing Date or at such time thereafter as the Buyer may request.

9. This Order is and shall be binding upon and shall authorize and govern the acts of all entities, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks, or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, and each of the foregoing persons and entities is hereby authorized to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the Sale Transaction contemplated by the APA. The Acquired Assets are sold free and clear of any reclamation rights.

10. Effective upon the Closing and except to the extent included in Assumed Liabilities or Permitted Encumbrances or as otherwise expressly provided in the APA or this Order, all persons and entities (and their respective successors and assigns), including the Debtors, the Debtors' estates, all debt security holders, equity security holders, insiders, affiliates, foreign, federal, state, and local governmental, tax, and regulatory authorities, lenders, customers, vendors, employees, former employees, trustees, trade creditors, litigation claimants, and any other

creditors (or agent of any of the foregoing) who may or do hold Claims against the Debtors or the Acquired Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated) arising under or out of, in connection with, or in any way relating to, the Debtors, the Debtors' predecessors, insiders, affiliates, their respective current or former directors, officers, employees, or agents, the Acquired Assets, the ownership, sale, or operation of the Acquired Assets prior to Closing, the transfer of the Acquired Assets to the Buyer, or the consummation of the Sale Transaction, are hereby prohibited, forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing any cause of action or any process or other act or seeking to collect, offset, or recover on account of, whether in law or equity, in any judicial, administrative, arbitral, or other proceeding, any such Claims against the Buyer, its affiliates, its shareholders, its successors or assigns, their property, or the Acquired Assets, including any (i) Claims arising under, out of, in connection with or in any way relating to the Debtors, the Debtors' predecessors, insiders, affiliates, their respective current or former directors, officers, employees, or agents, the Buyer, the Acquired Assets, the ownership, sale, or operation of the Acquired Assets prior to and including the Closing Date, or (ii) successor or transferee liability, including the following actions: (a) commencing or continuing in any manner any action, whether at law or in equity, in any judicial, administrative, arbitral, or any other proceeding, against the Buyer, its successors or assigns, affiliates, shareholders, assets (including the Acquired Assets) and/or properties; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Buyer, its successors or assigns, its affiliates, shareholders, assets (including the Acquired Assets) and/or properties; (c) creating, perfecting, or enforcing any Claim against the Buyer, its successors or assigns, its affiliates, shareholders, assets (including the Acquired Assets) and/or properties; (d) asserting any setoff

(except for setoffs exercised prior to the Petition Date) or right of subrogation of any kind against any obligation due to the Buyer, its successors or assigns, its affiliates, or its shareholders; or (e) commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with this Order, the APA, other orders of this Court, or agreements or actions contemplated or taken in respect of this Order and such other orders, including taking any action to prevent, adversely affect or interfere with, or which would be inconsistent with, the ability of the Debtors to transfer the Acquired Assets to the Buyer in accordance with the APA and this Order. No such Person shall assert or pursue against Buyer or its affiliates, shareholders, successors, or assigns any such Claim. Following the Closing, no holder of any Claim shall interfere with the Buyer's title to or use and enjoyment of the Acquired Assets based on or related to any such Claim, or based on any action the Debtors may take in the Chapter 11 Cases.

11. The Debtors are authorized to execute such documents as may be necessary to release any Claims of any kind against the Acquired Assets as such Claims may have been recorded or may otherwise exist. If any person or entity that has filed financing statements, *lis pendens*, or other documents or agreements evidencing Claims against or in the Acquired Assets shall not have delivered to the Debtors prior to the Closing of the Sale Transaction, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of all Claims that the person or entity has with respect to the Acquired Assets: (i) the Debtors are hereby authorized to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the Acquired Assets; (ii) the Buyer is hereby authorized to file, register, or otherwise record a certified copy of this Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all such Claims against the Buyer and the applicable Acquired Assets; and (iii) the Buyer may seek in this

Court or any other court to compel appropriate parties to execute termination statements, instruments of satisfaction, and releases of all such Claims with respect to the Acquired Assets. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department, or office. Notwithstanding the foregoing, the provisions of this Order authorizing the sale and assignment of the Acquired Assets free and clear of Claims shall be self-executing, and none of the Debtors nor the Buyer shall be required to execute or file releases, termination statements, assignments, consents, or other instruments to effectuate, consummate, and implement the provisions of this Order.

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

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

**Refinancing of ABL Facility and Releases of ABL Lenders**

14. As a condition to the Closing under the APA, and notwithstanding any other provision of this Order or the APA, all Prepetition ABL Obligations, 2024 Delayed Draw FILO Obligations, DIP ABL Roll-Up Obligations, and 2024 FILO Roll-Up DIP Obligations shall be Paid in Full pursuant to terms set forth in a payoff letter entered into by the DIP ABL Agent (acting in its sole discretion) (an "ABL Payoff Letter") unless otherwise assumed by the Buyer under a new asset-based lending facility on terms agreed in writing by the DIP ABL Agent (acting in its sole discretion) (an "ABL Exit Facility").

15. Upon the Closing Date, and notwithstanding any other provision of this Order or the APA, the Debtors and their estates, on their own behalf and on behalf of their past, present, and future predecessors, successors and assigns ("ABL Releasors"), hereby waive any and all actions related to, and hereby release, the DIP ABL Agent, DIP ABL Lenders, the Prepetition ABL Agent, the Prepetition ABL Lenders, the 2024 Delayed Draw FILO Agent, the 2024 Delayed Draw FILO Lenders, the Hedge Bank and each of their respective current and former officers, directors, partners, stockholders, managers, controlling persons, employees, agents, administrators, representatives, advisors, attorneys, investors, parents, predecessors, subsidiaries, successors, assigns, and affiliates, each of the foregoing in their capacity as such (the "ABL Releasees") from any and all Claims or causes of action of any kind, whether known or unknown, now existing or hereafter arising, asserted or unasserted, mature or inchoate, contingent or non-contingent, liquidated or unliquidated, material or nonmaterial, disputed or undisputed, and whether imposed by agreement, understanding, law, equity, or otherwise, related to or arising out of the DIP ABL Facility, the Prepetition ABL Facility, the 2024 Delayed Draw FILO Facility, the Master Agreement, the Chapter 11 Cases, the Acquired Assets, the formulation, preparation, negotiation,

execution, delivery, implementation or consummation of the transactions contemplated by the APA, including, the Sale Transaction and the assumption and assignment of the Debtor Contracts, or any other contract, instrument, release, agreement, settlement or document created, modified, amended, terminated or entered into in connection with the APA or the Sale Transaction (including, for the avoidance of doubt, any obligation to fund any portion of the Carve Out or any amounts reflected in an Approved Budget).

**No Successor or Transferee Liability**

16. Upon the Closing Date, except as provided in the APA, the entry of this Order and the Closing under the APA shall mean that neither the Buyer nor its affiliates, as a result of any action taken in connection with the APA, the consummation of the Sale Transaction, or the transfer or operation of the Acquired Assets, shall be deemed to: (a) be a legal successor or successor employer to the Debtors, or otherwise be deemed a successor to the Debtors, and shall instead be, and be deemed to be, a new employer with respect to all federal or state unemployment laws, including any unemployment compensation or tax laws, or any other similar federal or state laws; (b) have, *de facto* or otherwise, merged or consolidated with or into the Debtors; or (c) be an alter ego or a mere continuation or substantial continuation of the Debtors or the enterprise(s) of the Debtors, including, in the case of each of (a)-(c), (x) within the meaning of any foreign, federal, state, or local revenue law, pension law, the Employee Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act ("COBRA"), the WARN Act (29 U.S.C. §§ 2101 *et seq*.) ("WARN"), Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964 (as amended), the Age Discrimination and Employment Act of 1967 (as amended), the Federal Rehabilitation Act of 1973 (as amended), or the National Labor Relations Act, 29 U.S.C. § 151, *et*

*seq*. (the "NLRA") or (y) in respect of: (i) any environmental liabilities, debts, claims, or obligations arising from conditions first existing on or prior to the Closing Date (including the presence of hazardous, toxic, polluting, or contaminating substances or wastes), which may be asserted on any basis, including under CERCLA; (ii) any liabilities, debts, or obligations of or required to be paid by the Debtors for any taxes of any kind for any period, labor, employment, or other law, rule, or regulation (including filing requirements under any such laws, rules, or regulations); (iii) any products liability law or doctrine with respect to the Debtors' liability under such law, rule, or regulation or doctrine; or (iv) any consumer protection law or doctrine with respect to the Debtors' liability under such law, rule, or regulation or doctrine, including any liabilities, penalties, costs, debts, or obligations imposed by the Federal Trade Commission and/or Bureau of Consumer Protection, of or required to be paid by the Debtors.

17. Without limiting the generality of the foregoing, and except as otherwise provided in the APA and this Order and with respect to the Assumed Liabilities, neither the Buyer nor any of its affiliates shall have any responsibility for (i) any liability or other obligation of the Debtors or related to the Acquired Assets or (ii) any Claims against the Debtors or any of their predecessors, insiders, or affiliates or their respective current or former directors, officers, employees, or agents. By virtue of the Buyer's purchase of the Acquired Assets, neither the Buyer nor any of its affiliates shall have any liability whatsoever with respect to the Debtors' (or their predecessors', insiders', or affiliates' or their respective current or former directors, officers, employees, or agents) respective businesses or operations or any of the Debtors' (or their predecessors', insiders', or affiliates' or their respective current or former directors, officers, employees, or agents) obligations based, in whole or part, directly or indirectly, on any theory of successor, transferee or vicarious liability of any kind or character, or based upon any theory of

antitrust, environmental (including, but not limited to, CERCLA), successor or transferee liability, *de facto* merger, or substantial continuity, discrimination, labor and employment (including, but not limited to, WARN), consumer protection law, or products liability law, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated, including liabilities or non-monetary obligations on account of any settlement or injunction or any liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Acquired Assets prior to the Closing Date. The Buyer would not have acquired the Acquired Assets but for the foregoing protections against potential claims based upon "successor liability" theories.

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

19. Except as expressly provided in the APA or this Order, nothing shall require the Buyer or any of its affiliates to: (i) continue or maintain in effect, or assume any liability in respect of, any employee, collective bargaining agreement, pension, welfare, fringe benefit, or any other benefit plan, trust arrangement, or other agreements to which the Debtors are a party or have any responsibility therefor including medical, welfare, and pension benefits payable after retirement or other termination of employment; or (ii) assume any responsibility as a fiduciary, plan sponsor, or otherwise, for making any contribution to, or in respect of the funding, investment, or administration of any employee benefit plan, arrangement, or agreement (including but not limited to pension plans) or the termination of any such plan, arrangement, or agreement.

20. For the avoidance of doubt, except as otherwise expressly provided in the APA, after the Closing, the Debtors shall have no further liability with respect to the Acquired Assets, and any claims that are Assumed Liabilities, whether administrative or otherwise, relating to or arising from such Acquired Assets after the Closing of the Sale Transaction asserted against the Debtors shall be deemed disallowed as to the Debtors.

21. No bulk sales law or similar law of any state or other jurisdiction shall apply in any way to the transactions with the Debtors that are approved by this Order, including the APA and the Sale Transaction.

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

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

23. None of the Debtors, the Buyer, the Ad Hoc Group (and the members thereof), the DIP Term Lenders, or their respective representatives has engaged in any conduct that would cause or permit the APA or the transactions contemplated thereby, including the Sale Transaction and the assumption and assigned of the Debtor Contracts, to be avoided, or costs or damages to be imposed, under Bankruptcy Code section 363(n). The consideration provided by the Buyer (and

the allocation of equity interests in the Buyer in respect of the consideration provided, including the provision of debt and equity financing to the Buyer in connection with the closing of the transactions contemplated by the APA) for the Acquired Assets under the APA is fair and reasonable, and the Sale Transaction may not be avoided under Bankruptcy Code section 363(n).

**Assumption and Assignment of the Debtor Contracts**

24. Except as otherwise expressly provided in the APA or this Order, upon the Closing Date, pursuant to Bankruptcy Code sections 105(a), 363, and 365, the Debtors are authorized to (i) assume each of the Debtor Contracts set forth in Schedule 2.5(a) to the APA (the "Assumed Contracts Exhibit"), which shall be filed on or before February 14, 2025 and which may be subsequently modified pursuant to the terms of the APA, and assign the Debtor Contracts to the Buyer free and clear of all Claims (other than the Assumed Liabilities and Permitted Encumbrances), and (ii) execute and deliver to the Buyer such documents or other instruments as may be reasonably requested by Buyer to assign and transfer the Debtor Contracts to the Buyer.

25. All Cure Costs, if any, with respect to Debtor Contracts that are assumed and assigned to the Buyer shall be paid by the Buyer in accordance with the APA.[8] Upon the payment of the Cure Costs, if any, the Debtor Contracts shall remain in full force and effect, and no default shall exist under the Debtor Contracts nor shall there exist any event or condition which, with the passage of time or giving of notice, or both, would constitute such a default. After the payment of

[8] To the extent required by Bankruptcy Code section 365(b)(1) and (f)(2), the Debtors shall be obligated to cure or provide adequate assurance that they will promptly cure any additional or incremental default that has occurred with respect to an executory contract or unexpired lease that is assumed and assigned to the Buyer since the filing of the Cure Notice, including any such default that occurs prior to an assignment of an executory contract or unexpired lease and is invoiced after such assignment, regardless of whether the cure or assumption of such obligation is contemplated under Section 2.3 of the APA, with such Cure Costs to be paid by the Buyer in accordance with the terms of the APA. For the avoidance of doubt, nothing herein is intended as or shall be construed or deemed to be an implication, admission, or finding that a purported default under an executory contract actually exists.

the Cure Costs, if any, with respect to the Debtor Contracts, none of the Debtors or the Buyer shall have any further liabilities to the Contract Counterparties to the Debtor Contracts other than the Buyer's obligations under the Debtor Contracts that accrue and become due and payable on or after the Closing Date.

26. In the event of a dispute as of the Closing Date regarding the assumption and assignment or Cure Cost of any executory contract or unexpired lease proposed to be assumed by the Buyer, the assumption and assignment of such executory contract or unexpired lease, and payment of any applicable Cure Cost, shall be made following a Disputed Contract Determination (as defined in the APA) or upon a consensual resolution of such dispute in accordance with Section 2.5(a)(v) of the APA.

27. To the extent any Contract Counterparty to a Debtor Contract has failed to timely object to a proposed Cure Cost, such Cure Cost has been and shall be deemed to be finally determined as the Cure Cost listed on the Assumed Contracts Exhibit and any such Contract Counterparty shall be prohibited from challenging, objecting to, or denying the validity and finality of the Cure Cost at any time; *provided*, *however*, that a counterparty to an Assumed Contract shall not be barred from seeking additional amounts on account of any defaults occurring between the deadline to object to the Cure Costs set forth in the Assumption and Assignment Notice and the assumption of the contract. The Contract Counterparty to a Debtor Contract is forever bound by the applicable Cure Cost and, upon payment of the Cure Costs as provided herein and in the APA, is hereby barred from taking any action against Buyer with respect to any claim for cure under the Debtor Contract.

28. Any provisions in any Debtor Contract that prohibit or condition the Debtors' assignment of such Debtor Contract or allow the counterparty to such Debtor Contract to terminate,

recapture, impose any penalty, condition on renewal or extension or modify any term or condition, have been affirmatively waived, waived by the failure of the non-Debtor party to such Debtor Contract to object to the assumption and assignment of such Debtor Contract or prosecute any such objection, constitute unenforceable anti-assignment provisions that are void and of no force and effect.[9]

29. Each Debtor Contract constitutes an executory contract or unexpired lease under Bankruptcy Code section 365, and all requirements and conditions under Bankruptcy Code sections 363 and 365, including payment of the Cure Costs, for the assumption by the Debtors and assignment to the Buyer of the Debtor Contracts have been, or will be, satisfied prior to the effectiveness of assumption by the Debtors and assignment to the Buyer. Upon the Buyer's assumption of the Debtor Contracts in accordance with the terms hereof, pursuant to Bankruptcy Code sections 363 and 365, (i) the Buyer shall be fully and irrevocably vested with all rights, title and interest of the Debtors under the Debtor Contracts, (ii) the Buyer shall be deemed to be substituted for the Debtors as a party to the applicable Debtor Contracts, and (iii) the Debtors shall be relieved, pursuant to Bankruptcy Code section 365(k), from any further liability under the Debtor Contracts.

---

[9] Notwithstanding anything to the contrary in this Order, absent a subsequent agreement among the Buyer and On Demand Technologies, Inc. d/b/a OneRail ("OneRail") regarding the transfer of shares of stock in OneRail owned by the Debtors to the Buyer (or its affiliated designee) and the assumption and assignment of certain logistics and other agreements between the Debtors and OneRail to the Buyer (or its affiliated designee), if necessary, the issues raised in the *Objections of On Demand Technologies, Inc. d/b/a OneRail to: (I) Proposed Cure Amounts Regarding Logistics Service Agreements; and (II) Assumption and Assignment of Shareholder Agreements* [Docket No. 546] and *Objection of On Demand Technologies, Inc. d/b/a OneRail to Debtors' Proposed Sale Transaction* [Docket No. 607] shall be preserved and adjourned to a hearing at a date to be determined between the Buyer and OneRail (subject to Court availability) or as otherwise scheduled by the Court.

30. The Buyer has demonstrated adequate assurance of future performance under the Debtor Contracts within the meaning of Bankruptcy Code sections 365(b)(1)(C) and 365(f)(2)(B) and in accordance with the Bidding Procedures to the extent that any such assurance is required and not waived by the Contract Counterparty to such Debtor Contracts.

31. Upon the Closing and the payment of the relevant Cure Costs, if any, the Buyer shall be deemed to be substituted for the Debtors as a party to the applicable Debtor Contracts and the Debtors shall be released, pursuant to section 365(k) of the Bankruptcy Code, from any liability under the Debtor Contracts arising after the Closing. There shall be no rent accelerations, assignment fees, increases, or any other fees charged to the Debtors or the Buyer solely as a result of the assumption, assignment and sale of the Debtor Contracts. The validity of the transactions contemplated by the APA, including the Sale Transaction and the assumption and assignment of the Debtor Contracts, shall not be affected by any dispute between any of the Debtors or their affiliates and another party to a Debtor Contract regarding the payment of any amount. Upon assignment to the Buyer, the Debtor Contracts shall be valid and binding, in full force and effect and enforceable by the Buyer in accordance with their respective terms to the extent of the Debtors' right, title, and interest in the Debtor Contracts prior to such assignment.

32. Pursuant to Bankruptcy Code sections 105(a), 363, and 365, upon payment of the Cure Costs, all Contract Counterparties to the Debtor Contracts are forever barred and permanently enjoined from raising or asserting against the Debtors or the Buyer any assignment fee, default, breach, or claim of pecuniary loss, or condition to assignment, arising under or related to the Debtor Contracts existing as of and including the Closing Date under the APA or arising by reason of the consummation of transactions contemplated by the APA, including the Sale Transaction and the assumption and assignment of the Debtor Contracts.

33. Upon payment of the Cure Costs, any party that may have had the right to consent to the assignment of a Debtor Contract is deemed to have consented to such assignment for purposes of Bankruptcy Code sections 365(c)(1)(B) and 365(e)(2)(A)(ii) and otherwise if such party failed to file a timely objection to the assumption and assignment of such Debtor Contract in accordance with the Bidding Procedures Order.

34. Subject to the terms of the APA and upon payment of the Cure Costs, notwithstanding anything to the contrary herein, the Debtors may assume and assign any Debtor Contract to the Buyer, or any of its subsidiaries or affiliates, or otherwise; provided that such assumption and assignment shall not be deemed to modify any assignment-related provisions in the applicable Debtor Contract.

35. All Contract Counterparties to the Debtor Contracts shall cooperate and expeditiously execute and deliver, upon the reasonable requests of the Buyer, and shall not charge the Debtors or the Buyer for, any instruments, applications, consents, or other documents which may be required or requested by any public or quasi-public authority or other entity to effectuate the applicable transfers in connection with the sale of the Acquired Assets.

**Related Relief**

36. The Debtors and their estates, on their own behalf and on behalf of their past, present, and future predecessors, successors and assigns, hereby waive any and all actions related to, and hereby release, the Buyer and its property (including, the Acquired Assets) the Ad Hoc Group, the members of the Ad Hoc Group and the DIP Term Lenders from any and all Claims or causes of action of any kind, whether known or unknown, now existing or hereafter arising, asserted or unasserted, mature or inchoate, contingent or non-contingent, liquidated or unliquidated, material or nonmaterial, disputed or undisputed, and whether imposed by agreement, understanding, law,

equity, or otherwise, related to or arising out of the Sale Transaction, the Acquired Assets, the formulation, preparation, negotiation, execution, delivery, implementation or consummation of the transactions contemplated by the APA, including, the assumption and assignment of the Debtor Contracts, or any other contract, instrument, release, agreement, settlement or document created, modified, amended, terminated or entered into in connection with the APA or the Sale Transaction, except to the extent specifically assumed or established under the APA or this Order. For the avoidance of doubt, nothing in this paragraph shall release the Buyer of any of its obligations under the APA and/or this Order.

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

38. Except as expressly set forth in this Order, nothing herein shall impair, modify, or affect the Final DIP Order and upon the Closing of the Sale Transaction the Final DIP Order shall continue in full force and effect with respect to any terms pertinent to Prepetition Term Loan Obligations that have not been credit bid in connection with the Sale Transaction.

39. In connection with the Sale Transaction and in accordance with Section 7.11 of the APA, the Buyer and the Debtors may and are hereby authorized to enter into a transition services agreement pursuant to which, effective as of the Closing, the Buyer and the Debtors may provide certain services to each other for a transitional period following the Closing (the "Transition Services Agreement"). The Buyer and the Debtors are hereby authorized to execute and deliver any additional documentation contemplated by the APA or in furtherance of the Sale Transaction, and to perform all such other and further acts as may be required in connection with the negotiation,

execution, and performance of the Transaction Services Agreement. For the avoidance of doubt, the Transition Services Agreement shall provide that neither the Debtors nor their estates shall incur any liabilities for fees, expenses, costs, or disbursements on account of any transition services provided by the Buyer to the Debtors, and the Buyer shall promptly reimburse the Debtors for any fees, costs, expenses, or other disbursements incurred by the Debtors (including their professionals) in connection with any transition services provided to the Buyer pursuant to the Transition Services Agreement, except as set forth in the Transition Services Agreement. The Debtors shall provide the advisors to the Committee with a copy of the Transition Services Agreement no later than three (3) business days prior to the Closing Date.

40. Nothing contained in any plan of liquidation or reorganization, or order of any type or kind entered in these Chapter 11 Cases, any subsequent chapter 7 or chapter 11 case of the Debtors or any related proceeding subsequent to entry of this Order, will conflict with or derogate from the terms of the APA or this Order.

41. This Order and the APA shall be binding in all respects upon all prepetition and postpetition holders of Claims, all interest holders of the Debtors, all non-debtor parties to the Debtor Contracts, the Committee (as defined in the Bidding Procedures Order), all insiders, successors and assigns of the Debtors and their affiliates and subsidiaries, and any trustees, examiners, "responsible persons", or other fiduciaries appointed in these Chapter 11 Cases or upon a conversion of the Debtors' cases to those under chapter 7 of the Bankruptcy Code, including a chapter 7 trustee, and the APA and Sale Transaction shall not be subject to rejection or avoidance under any circumstances. If any order under Bankruptcy Code section 1112 is entered, such order shall provide (in accordance with Bankruptcy Code sections 105 and 349) that this Order and the

rights granted to the Buyer hereunder shall remain effective and, notwithstanding such dismissal, shall remain binding on parties in interest.

42. Nothing in this Order or the APA shall release, nullify, discharge, bar, impair, enjoin, or otherwise preclude or affect: (i) any liability to any Governmental Unit that is not a Claim; (ii) any Claim of a Governmental Unit arising on or after the date hereof; (iii) any liability to a Governmental Unit under police and regulatory statutes or regulations that any entity would be subject to as the owner, agent, lessor, lessee, permittee, controller, or operator of property or rights to property that such entity owns, operates, licenses, or leases on or after the date hereof; or (iv) any liability to a Governmental Unit on behalf of any non-Debtor. Nor shall anything in this Order release the Debtors from any Claim against the estate based on any pre-Closing actions or enjoin, limit, or bar a Governmental Unit from asserting, exercising, or enforcing, outside this Court, any liability described in the preceding sentence or any police and regulatory powers.

43. Further, nothing in this Order or the APA, authorizes the assumption, sale, transfer or assignment of any governmental (i) license, (ii) permit, (iii) registration, (iv) authorization, or (v) approval, or the discontinuation of any obligation thereunder (collectively, "Governmental Interests"), without compliance with all applicable legal requirements and approvals under police or regulatory law. Nothing in this Order shall: (i) be interpreted to require any Governmental Unit to approve or otherwise consent to the assumption, sale, assignment, or transfer of any Governmental Interests; (ii) relieve any entity from any obligation to address or comply with information requests or inquiries from any Governmental Unit; (iii) affect any setoff or recoupment rights of any Governmental Unit; or (iv) divest any tribunal of any jurisdiction it may have under police or regulatory law to interpret this Order or to adjudicate any defense asserted under this Order.

44. This Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of the APA and this Order, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith to which the Debtors are a party or which has been assigned by the Debtors to the Buyer, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale Transaction, including any and all disputes with respect to assumption and assignment of any Debtor Contract or any cure disputes and any party that has, or asserts, possession, control or other rights in respect of any of the Debtors' assets; *provided*, *however*, that, in the event the Court abstains from exercising or declines to exercise such jurisdiction with respect to the APA, the Bidding Procedures Order or this Order, such abstention, refusal or lack of jurisdiction shall have no effect upon and shall not control, prohibit or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter. This Court retains jurisdiction to compel delivery of the Acquired Assets to the Buyer, to protect the Buyer and its assets, including the Acquired Assets, against any Claims and successor and transferee liability and to enter orders, as appropriate, pursuant to Bankruptcy Code sections 105(a) or 363 (or other applicable provisions) necessary to transfer the Acquired Assets to the Buyer.

45. As contemplated by the APA, at any time prior to the Closing Date, the Buyer or the Sellers may terminate the APA pursuant to the terms thereof.

46. The Buyer and the Seller and/or any Additional Sellers are hereby authorized to execute and deliver any additional documentation as contemplated by the APA.

47. The APA and any related agreements, documents, or other instruments may be modified, amended or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court; *provided*, *however*, that any such modification,

amendment, or supplement does not have a material adverse effect on the Debtors' estates and, after no less than two (2) business days' notice to counsel to the Committee, unless such notice period is waived by the Committee.

48. The Retained Cash (as defined in the APA) shall constitute "cash collateral" within the meaning of section 363 of the Bankruptcy Code and the Prepetition Term Loan Secured Parties consent to the use of such Cash Collateral after consummation of the Sale Transaction for purposes reasonably related to paying expenses related to confirmation and consummation of a chapter 11 plan and wind-down of the Debtors' estates, including payment of administrative expenses and priority claims and subject to the terms set forth in the Final DIP Order and the APA. The Debtors shall be entitled to deposit into the Funded Reserve Account an amount equal to all estate professional fees as of the Closing Date and such amounts shall be deemed Funded Reserves (each as defined in the Final DIP Order).

49. Notwithstanding anything to the contrary in this Order, or any Notice related thereto, the Cigna Employee Benefits Agreements (as defined in the Bidding Procedures Order) shall be assumed and assigned to the Buyer as of the Closing Date, and, in lieu of cure, all obligations due and unpaid under the Cigna Employee Benefits Agreements accruing prior to the Closing Date shall pass through to the Buyer and survive assumption and assignment, and nothing herein or section 365 of the Bankruptcy Code shall affect such obligations.

50. Notwithstanding anything to the contrary in this Order, or any notice related thereto, the LINA Policies (as defined in the *Objection of Life Insurance Company of North America to Notice of Potential Assumption or Assumption and Assignment of Certain Contracts or Leases* [Docket No. 486]) shall be assumed and assigned to the Buyer as of the Closing Date, and, in lieu of cure, all obligations due and unpaid under the LINA Policies accruing prior to the Closing Date

shall pass through to the Buyer and survive assumption and assignment, and nothing herein or section 365 of the Bankruptcy Code shall affect such obligations.

51. Notwithstanding anything to the contrary herein, that certain Michelin North America, Inc. Authorized Commercial Customer Agreement dated as of January 1, 2019 and the MNA Authorized Distributor Agreement (the "MNA Agreements") may be assumed and assigned to the Buyer or its subsidiaries or affiliates; provided, however, that such subsidiaries or affiliates are not owned, directly or indirectly, by any manufacturer of competing brands. The MNA Agreements shall otherwise remain subject to the terms and conditions thereof.

52. To the extent that FacilitySource, LLC d/b/a CBRE Retail ("CBRE") asserts any warehouseman's lien, mechanics' lien, or other similar statutory or common law lien under applicable state law relating to amounts owed in respect of services provided to the Debtors prior to the Closing Date, all of the rights and defenses of CBRE, the Debtors, and the Buyer with respect to any such asserted liens are expressly reserved and preserved.

53. Notwithstanding anything to the contrary herein, (a) on or prior to the Closing Date, the Debtors shall pay any unpaid portion of the 2024 *ad valorem* property tax liability owed by the Sellers to the Texas Taxing Authorities, if any, and (b) with respect to any unpaid portion of the 2025 *ad valorem* property tax liability owed by the Sellers to the Texas Taxing Authorities, if any (the "2025 Texas Ad Valorem Tax Claims"), the Texas Taxing Authorities shall retain their respective statutory liens on account of such 2025 Texas Ad Valorem Tax Claims against the taxable property, consistent with existing lien priorities, and such statutory liens shall constitute Permitted Encumbrances under the APA. The Buyer shall pay the 2025 Texas Ad Valorem Tax Claims in full in the ordinary course of business when due, consistent with the applicable provisions of the Texas tax code.

54. For the avoidance of doubt, nothing in this Order or as a result of the Sale Transaction, shall impact the validity or enforceability of that certain *Assignment of Leases and Rents* made by 12200 Herbert Wayne Owner, LLC, as assignor, to Byline Bank, as assignee, dated as of April 29, 2021.

55. Notwithstanding anything to the contrary in the APA or this Order, with respect to any unexpired leases of the Debtors (each as may be modified in any written agreement between the Buyer and the relevant landlord (such modification, a "Landlord Agreement")) that are assumed and assigned to the Buyer, and to the extent required by Bankruptcy Code section 365(b)(1) and (f)(2), all indemnification obligations; accrued and unbilled rent, common area maintenance, insurance, taxes, and other charges that come due on or after the effective date of the assumption and assignment of the relevant lease; repair and maintenance obligations; and all other similar obligations validly due under such unexpired leases, regardless of whether such obligations are attributable to the period prior to the date such lease was assigned, shall survive assumption and assignment and be paid by the Buyer, and nothing in this Order shall affect such obligations. The parties do not waive any rights or defenses under the relevant unexpired leases or applicable law with respect to any such indemnification or other obligations, all of which rights or defenses are expressly reserved and preserved. Further, nothing in this Order or the APA shall impair or prejudice any landlord's rights with respect to the Debtors' available insurance coverage with respect to third-party claims asserted in connection with the Debtors' use and occupancy of the applicable property with regard to events that occurred prior to the date such lease was assigned.

56. This Order constitutes a final order within the meaning of 28 U.S.C. section 158(a). Notwithstanding any provision in the Bankruptcy Rules to the contrary, including but not limited

to Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds there is no reason for delay in the implementation of this Order and, accordingly: (i) the terms of this Order shall be immediately effective and enforceable upon its entry; (ii) the Debtors are not subject to any stay of this Order or in the implementation, enforcement or realization of the relief granted in this Order; and (iii) the Debtors and the Buyer may, in their discretion and without further delay, take any action and perform any act authorized under this Order.

57. The Buyer shall not be required to seek or obtain relief from the automatic stay under Bankruptcy Code section 362 to give any notice permitted by the APA or to enforce any of its remedies under the APA or any other document related to the Sale Transaction. The automatic stay imposed by Bankruptcy Code section 362 is modified solely to the extent necessary to implement the preceding sentence; *provided, however*, that this Court shall retain exclusive jurisdiction over any and all disputes with respect thereto.

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

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

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

61. This Court retains jurisdiction to interpret, implement and enforce the terms and provisions of this Order and the terms and provisions of the APA.



**Dated: February 11th, 2025**
**Wilmington, Delaware**

**CRAIG T. GOLDBLATT**
**UNITED STATES BANKRUPTCY JUDGE**

# Exhibit 1

**APA**

# ASSET PURCHASE AGREEMENT

**DATED AS OF NOVEMBER 26, 2024**

**BY AND AMONG**

**ASPHALT BUYER LLC,**

**AMERICAN TIRE DISTRIBUTORS, INC.**

**AND**

**THE ADDITIONAL SELLERS**

## TABLE OF CONTENTS

**Page**


**ARTICLE 1**

**DEFINITIONS**

1.1 Definitions....2
1.2 Other Definitions and Interpretive Matters....21

**ARTICLE 2**

**PURCHASE AND SALE**

2.1 Purchase and Sale....22
2.2 Excluded Assets....25
2.3 Assumed Liabilities....26
2.4 Excluded Liabilities....27
2.5 Assignment and Assumption of Contracts....29
2.6 Further Assurances....33

**ARTICLE 3**

**PURCHASE PRICE**

3.1 Consideration....33
3.2 True-Up of Wind Down Expenses....33
3.3 Allocation of Purchase Price....34
3.4 Post-Closing Accounts Receivable....34
3.5 Withholding....35

**ARTICLE 4**

**CLOSING AND DELIVERIES**

4.1 Closing Date....35
4.2 Buyer's Deliveries....35
4.3 Sellers' Deliveries....36

**ARTICLE 5**

**REPRESENTATIONS AND WARRANTIES OF SELLERS**

5.1 Organization and Good Standing....37
5.2 Authority; Validity....37
5.3 Subsidiaries....37

5.4 No Conflict....37
5.5 Real Property....38
5.6 Environmental and Health and Safety Matters....40
5.7 Title to Acquired Assets....41
5.8 Taxes....42
5.9 Legal Proceedings....42
5.10 Compliance with Legal Requirements; Permits....43
5.11 Labor Matters....43
5.12 Employee Benefits....45
5.13 Intellectual Property; Data Security; Data Privacy....48
5.14 Contracts....49
5.15 Sufficiency of Assets....50
5.16 Insurance....50
5.17 Brokers or Finders....50
5.18 Interests of Affiliates....50
5.19 Bank Accounts....50
5.20 Credit Support....50
5.21 Anti-Corruption Laws, Anti-Money Laundering Laws, Sanctions and Ex-Im Laws....51
5.22 Financial Statements....52
5.23 Undisclosed Liabilities....52
5.24 Absence of Certain Changes....53
5.25 Material Suppliers; Material Customers....54
5.26 Products; Warranties....54
5.27 Warranties Exclusive....54

**ARTICLE 6**

**REPRESENTATIONS AND WARRANTIES OF BUYER**

6.1 Organization and Good Standing....55
6.2 Authority; Validity; Consents....55
6.3 No Conflict....55
6.4 Credit Bid and Release....56
6.5 Solvency....56
6.6 Brokers or Finders....56
6.7 Legal Proceedings....56

**ARTICLE 7**

**ACTIONS PRIOR TO THE CLOSING DATE**

7.1 Access and Reports....56
7.2 Operations Prior to the Closing Date....58
7.3 Antitrust Filings; Cooperation....60
7.4 Bankruptcy Court Matters....63
7.5 Notice of Developments....64

7.6 Sale Free and Clear ....64
7.7 Acquisition Proposals ....65
7.8 Back-Up Bidder ....65
7.9 Estoppels ....66
7.10 Consents ....66
7.11 Transition Services ....66
7.12 Financing Cooperation (Sellers) ....67
7.13 Direction Letter ....68

**ARTICLE 8**

**ADDITIONAL AGREEMENTS**

8.1 Taxes ....69
8.2 Bulk Sales ....70
8.3 Payments Received; Mail and Other Communications ....70
8.4 Assumed Contracts: Adequate Assurance and Performance ....70
8.5 Employee Matters ....71
8.6 Post-Closing Books and Records and Personnel ....72
8.7 Casualty Loss ....73
8.8 Change of Name ....73

**ARTICLE 9**

**CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER TO CLOSE**

9.1 Accuracy of Representations ....74
9.2 Sellers' Performance ....74
9.3 No Order ....74
9.4 Governmental Authorizations ....74
9.5 Sellers' Deliveries ....74
9.6 DIP Orders ....74
9.7 Sale Order ....75
9.8 Assumed Contracts ....75
9.9 Encumbrance Releases ....75
9.10 Material Adverse Effect ....75
9.11 No Default; No DIP Termination Event ....75
9.12 Restructuring Support Agreement ....75
9.13 ABL Credit Agreement ....75

**ARTICLE 10**

**CONDITIONS PRECEDENT TO THE OBLIGATION OF SELLERS TO CLOSE**

10.1 Accuracy of Representations ....75
10.2 Sale Order ....76
10.3 Buyer's Performance ....76

10.4 No Order ....76
10.5 Governmental Authorizations ....76
10.6 Buyer's Deliveries ....76
10.7 Waiver of Conditions ....76

**ARTICLE 11**

**TERMINATION**

11.1 Termination Events ....76
11.2 Effect of Termination ....78

**ARTICLE 12**

**GENERAL PROVISIONS**

12.1 Survival ....79
12.2 Confidentiality ....79
12.3 Public Announcements ....79
12.4 Notices ....80
12.5 Waiver ....81
12.6 Entire Agreement; Amendment ....82
12.7 Assignment ....82
12.8 Severability ....82
12.9 Expenses ....82
12.10 Governing Law; Consent to Jurisdiction and Venue; Jury Trial Waiver ....82
12.11 Counterparts ....83
12.12 Parties in Interest; No Third-Party Beneficiaries; No Amendment ....83
12.13 Remedies ....83
12.14 Specific Performance ....83
12.15 Sellers' Representative; Reliance ....84
12.16 Limitations on Damages ....85
12.17 Non-Recourse ....85
12.18 Conflicts; Privileges ....86
12.19 Joinder ....87
12.20 Limitation on Representations and Warranties ....87

**SCHEDULES**

Schedule 1.1(a) – Key Persons
Schedule 1.1(b) – Knowledge Persons
Schedule 1.1(c) – Seller Transaction Expenses
Schedule 1.1(d) – Confidentiality Agreements
Schedule 2.1(h) – Assumed Benefit Plans
Schedule 2.1(n) – Transferred Permits
Schedule 2.5(a) – Assumed Contracts
Schedule 3.2(a) – True-Up of Wind Down Expenses
Schedule 5.1 – Organization and Good Standing
Schedule 5.3 – Subsidiaries
Schedule 5.4 – No Conflict
Schedule 5.5 – Leased Real Property
Schedule 5.6 – Environmental and Health and Safety Matters
Schedule 5.7 – Title to Acquired Assets
Schedule 5.8 – Taxes
Schedule 5.9 – Legal Proceedings
Schedule 5.10 – Compliance with Legal Requirements; Permits
Schedule 5.11 – Labor Matters
Schedule 5.12 – Employee Benefits
Schedule 5.13 – Intellectual Property; Data Security; Data Privacy
Schedule 5.14 – Material Contracts
Schedule 5.15 – Sufficiency of Assets
Schedule 5.16 – Insurance
Schedule 5.18 – Affiliate Transactions
Schedule 5.19 – Bank Accounts
Schedule 5.20 – Credit Support
Schedule 5.23 – Undisclosed Liabilities
Schedule 5.24 – Absence of Certain Changes
Schedule 5.25 – Material Suppliers; Material Customers
Schedule 5.26 – Products; Warranties
Schedule 6.2 – Authority; Validity; Consents
Schedule 7.2 – Operations Prior to the Closing Date
Schedule 7.9 – Estoppels
Schedule 7.10 – Consents
Schedule 8.5(e) – Employee Matters
Schedule 9.8 – Assumed Contracts
Schedule 9.13 – ABL Credit Agreement

**EXHIBITS**

| | |
|---|---|
| Exhibit A | Form of Assumption Agreement |
| Exhibit B | Form of Bill of Sale |
| Exhibit C | Form of Intellectual Property Assignment Agreement |
| Exhibit D | Form of Assignment and Assumption of Sellers' Interest in Leases |

# ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** (this "***Agreement***"), dated as of November 26, 2024 (the "***Execution Date***"), is made and entered into by and among Asphalt Buyer LLC, a Delaware limited liability company ("***Buyer***"), American Tire Distributors, Inc., a Delaware corporation (the "***Company***"), and the Additional Sellers (together with the Company, the "***Sellers***", and each entity individually, a "***Seller***"). Capitalized terms used herein and not otherwise defined herein have the meanings set forth in Article 1.

## RECITALS

**WHEREAS**, the Company is engaged in the marketing, sale, distribution and supply of tires, wheels, and related products for passenger, light truck and commercial vehicles and related businesses;

**WHEREAS**, on October 22, 2024, the Sellers filed voluntary petitions (the "***Bankruptcy Cases***") under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "***Bankruptcy Court***");

**WHEREAS**, in accordance with the Bidding Procedures and subject to the terms and conditions set forth in this Agreement and the entry of the Sale Order, Sellers desire to sell to Buyer the Acquired Assets, Buyer desires to purchase from Sellers the Acquired Assets and assume the Assumed Liabilities, and the Parties intend to effectuate the transactions contemplated by this Agreement;

**WHEREAS**, pursuant to a direction letter, dated on or around the Execution Date (the "***Direction Letter***"), a true and correct copy of which has been provided to Sellers, the requisite lenders under each of the New Money DIP Credit Agreement and the Prepetition Term Loan Credit Agreement have each authorized and directed that the New Money DIP Agent, the Term Loan Agent and Buyer credit bid the obligations, pursuant to the terms and subject to the conditions set forth in this Agreement;

**WHEREAS**, upon the Closing, the Acquired Assets and Assumed Liabilities shall be purchased and assumed by Buyer pursuant to the Sale Order, free and clear of all Encumbrances (other than Permitted Encumbrances), pursuant to sections 105, 363 and 365 of the Bankruptcy Code, and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure;

**WHEREAS**, the Sellers' ability to consummate the transactions set forth in this Agreement is subject to, among other things, the entry of the Sale Order by the Bankruptcy Court; and

**WHEREAS**, the board of directors, managing member or similar governing body of each Seller has determined that it is advisable and in the best interests of such Seller and its constituencies to enter into this Agreement and to consummate the transactions provided for herein, subject to entry of the Sale Order, and each has approved the same.

**NOW, THEREFORE**, in consideration of the premises and the mutual promises herein made, and in consideration of the foregoing and of the representations, warranties,

covenants, agreements and conditions herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

## ARTICLE 1

## DEFINITIONS

1.1 Definitions.

For purposes of this Agreement, the following terms have the meanings specified or referenced below.

"***2024 FILO Roll-Up Claims***" has the meaning set forth in the Restructuring Support Agreement.

"***ABL Credit Agreement***" has the meaning set forth in the Restructuring Support Agreement.

"***ABL Event of Default***" has the meaning set forth in Section 9.1.

"***ABL Financing***" means a financing pursuant to a new or assumed ABL Credit Agreement on terms set forth on Schedule 9.13 or on terms otherwise approved by Buyer.

"***ABL Lenders***" means the lenders providing the ABL Financing.

"***Accounts Receivable***" means, with respect to each Seller, all accounts receivable, notes receivable, purchase orders, negotiable instruments, chattel paper, notes and other rights to payment, including those consisting of all accounts receivable in respect of services rendered or products sold to customers by such Seller, any other miscellaneous accounts receivable of such Seller, and any claim, remedy or other right of such Seller related to any of the foregoing, together with all unpaid financing charges accrued thereon and any payments with respect thereto.

"***Acquired Assets***" has the meaning set forth in Section 2.1.

"***Acquisition Proposal***" means any oral or written inquiry, proposal or offer from any Person (other than Buyer or any of its Affiliates) with respect to an Alternative Transaction.

"***Action***" means any legal action, suit, petition, plan, charge, claim, demand, hearing, arbitration, complaint, summons, litigation, mediation, proceeding (including any civil, criminal, administrative, or appellate proceeding), prosecution, contest, audit, or similar matter commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority.

"***Actual Fraud***" means, with respect to any Person, actual and intentional common law fraud in the making of the representations and warranties set forth in this Agreement as determined under Delaware law. Actual Fraud expressly excludes any theory of fraud premised upon constructive fraud, including any theory of fraud based upon constructive knowledge or negligent misrepresentation or omission.

"***Actual Wind Down Expenses***" means an amount equal to all expenses, Taxes and other Liabilities incurred by Sellers, or for which Sellers are otherwise responsible, that are reasonably, necessary to confirm a chapter 11 plan and wind down the Sellers' estates, including administrative costs and close the Bankruptcy Cases (whether before, on, or after the Closing) including all expenses, Taxes and other Liabilities incurred in connection with winding down their respective bankruptcy estates pursuant to a plan of liquidation (including payment of all administrative and priority claims required to be paid pursuant to such plan of liquidation); including an amount equal to: (i) twenty-five percent (25%) of the total retention bonus amount under each Retention Bonus Agreement for each Employee that receives a Retention Bonus Agreement but does not become a Buyer Employee, (ii) twenty-five percent (25% ) of the total retention bonus payment under each New Retention Bonus Agreement, to the extent they are implemented prior to Closing, for each Employee that does not become a Buyer Employee and (iii) the employer portion of payroll taxes in respect of the amounts provided for in (i) and (ii) above; provided, that Actual Wind Down Expenses will not include any amounts to the extent included in the determination of Seller Transaction Expenses or the Seller Closing Date Accrual and shall not include any severance amounts for any Employees who are offered employment with Buyer. Notwithstanding the foregoing, (i) Actual Wind Down Expenses in excess of $19,300,000 shall require approval of Buyer and (ii) in no event shall the professional fees included in the Actual Wind Down Expenses exceed $10,000,000.

"***Additional Sellers***" means:

(i) ATD New Holdings, Inc.;

(ii) ATD New Holdings II, Inc.;

(iii) ATD New Holdings III, Inc.;

(iv) ATD Sourcing Solutions, LLC;

(v) ATD Technology Solutions Inc.;

(vi) FLX FWD Logistics, LLC;

(vii) Hercules Tire International Inc.;

(viii) Terry's Tire Town Holdings, LLC;

(ix) The Hercules Tire & Rubber Company;

(x) Tirebuyer.com, LLC;

(xi) Tire Pros Francorp, LLC;

(xii) Torqata Data and Analytics LLC; and

(xiii) PolyAtom, LLC.

"***Affiliate***" has the meaning set forth in Rule 12b-2 of the regulations promulgated under the Exchange Act.

"***Affiliate Transactions***" has the meaning set forth in Section 5.18.

"***Agreement***" has the meaning set forth in the introductory paragraph.

"***Allocation Statement***" has the meaning set forth in Section 3.3.

"***Alternative Transaction***" means any sale, disposition, new-money investment, restructuring, reorganization, merger, amalgamation, acquisition, consolidation, dissolution, debt investment, equity investment, liquidation, asset sale, share issuance, consent solicitation, exchange offer, tender offer, recapitalization, or plan of reorganization or liquidation, share exchange, business combination, joint venture, debt incurrence, or similar transaction involving the Company and/or any of its Subsidiaries (including, for the avoidance of doubt, a transaction premised on a sale of assets under section 363 of the Bankruptcy Code), or the debt, equity, or other interests in the Company and/or any of its Subsidiaries that is an alternative to the transactions contemplated by this Agreement. Notwithstanding the foregoing, a liquidation or wind-down of Sellers' estates that does not involve a going concern sale of the Business shall not be an Alternative Transaction.

"***Annual Financial Statements***" has the meaning set forth in Section 5.22.

"***Anti-Corruption Laws***" means the U.S. Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and any applicable Legal Requirements related to bribery or corruption.

"***Anti-Money Laundering Laws***" means the Money Laundering Control Act of 1986 (18 U.S.C. §§ 1956-1957), the USA PATRIOT ACT ((Pub. L. No. 107-56), the Bank Secrecy Act (31 U.S.C. §§5311-5332)), the UK Proceeds of Crime Act 2002, the UK Terrorism Act 2000 and any other applicable Legal Requirements related to terrorist financing or money laundering, including know-your-customer (KYC) and financial recordkeeping and reporting requirements.

"***Antitrust Law***" means, collectively, the HSR Act, title 15 of the United States Code §§ 1-7, as amended (the Sherman Act), Title 15 of the United States Code §§ 12-27 and Title 29 of the United States Code §§ 52-53, as amended (the Clayton Act), the Federal Trade Commission Act (15 U.S.C.§ 41 et seq.), as amended, and the rules and regulations promulgated thereunder, and all other national, state, local or foreign Legal Requirements in effect from time to time that are designed or intended to (a) prohibit, restrict or regulate actions or transactions having the purpose or effect of monopolization or restraint of trade or lessening of competition through merger or acquisition and (b) regulate transactions involving foreign investments, including any Legal Requirements that provide for review of national security matters in any jurisdiction.

"***Applicable Counterparty***" has the meaning set forth in Section 2.5(c)(ii).

"***Apportioned Taxes***" has the meaning set forth in Section 8.1(b).

"***Assignment of Leases***" means an Assignment and Assumption of Sellers' Interest in Leases, in substantially the form attached hereto as Exhibit D.

"***Assumed Benefit Plans***" means those Benefit Plans set forth on Schedule 2.1(h) (with respect to Buyer Employees only, except as provided in Section 54.4980B-9, A-8(c)(1) of the Treasury Regulations).

"***Assumed Contracts***" means all executory Contracts (including all Leases) to which one or more of the Sellers are party and which are to be included in the Acquired Assets but excluding any and all Benefit Plans other than Assumed Benefit Plans.

"***Assumed Liabilities***" has the meaning set forth in Section 2.3.

"***Assumed New Retention Bonus Agreement***" has the meaning set forth on Schedule 2.1(h) of the Disclosure Schedules.

"***Assumed Retention Bonus Agreement***" has the meaning set forth on Schedule 2.1(h) of the Disclosure Schedules.

"***Assumed Trade Payables***" has the meaning set forth in Section 2.3(c).

"***Assumption Agreement***" means the Assignment and Assumption Agreement, in substantially the form attached hereto as Exhibit A.

"***Auction***" means the auction for the sale of Sellers' assets conducted by Sellers if, and only if, any Qualified Bid (other than this Agreement) is received pursuant to the terms and conditions of the Bidding Procedures Order.

"***Avoidance Action***" means any claim, right or cause of action of any Seller arising under chapter 5 of the Bankruptcy Code and any analogous state law claims relating to the Acquired Assets or the Business.

"***Back-Up Bid***" has the meaning set forth in the Bidding Procedures.

"***Back-Up Bid Expiration Date***" has the meaning set forth in Section 7.8.

"***Back-Up Bidder***" has the meaning set forth in the Bidding Procedures.

"***Bankruptcy Cases***" has the meaning set forth in the recitals.

"***Bankruptcy Code***" means title 11 of the United States Code, sections 101 *et seq*.

"***Bankruptcy Court***" has the meaning set forth in the recitals.

"***Benefit Plan***" and "***Benefit Plans***" means pension, profit-sharing, savings, retirement, employment, consulting, offer letter, severance pay, notice pay, termination, executive compensation, incentive compensation, deferred compensation, bonus, stock purchase, stock option, phantom stock or other equity or equity-based compensation, change in control, retention, salary continuation, vacation, sick leave, disability, death benefit, group insurance, hospitalization,

medical, dental, life (including all individual life insurance policies as to which any Seller(s) is the owner, the beneficiary, or both), Code section 125 "cafeteria" or "flexible" benefit, employee loan, educational assistance, fringe benefit or other similar plan, program, policy, arrangement or agreement, whether written or oral, including any "employee benefit plan" within the meaning of Section 3(3) of ERISA, (i) sponsored, administered, maintained or contributed to or required to be contributed to, or entered into, by any of the Sellers, (ii) under which any current or former officer, director, employee, or individual service provider (or their respective representatives or beneficiaries) of Sellers has any present or future right to benefits, or (iii) pursuant to which the Sellers have any Liability.

"***Bid Deadline***" has the meaning set forth in Section 7.4(b).

"***Bidding Procedures***" means bid procedures, filed with the Bankruptcy Court on October 30, 2024 (with changes approved by Buyer and Sellers), to be approved by the Bankruptcy Court pursuant to the Bidding Procedures Order.

"***Bidding Procedures Order***" means an order approving the Bidding Procedures substantially in the form of the proposed Order (I) Approving Bid Procedures for the Sale of the Debtors' Assets, (II) Scheduling Certain Dates and Deadlines with Respect Thereto, (III) Approving the Form and Manner of Notice Thereof, (IV) Approving Certain Bid Protections in Connection with the Debtors' Entry Into the Stalking Horse Agreement, (V) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases, (VI) Authorizing the Assumption and Assignment of Contracts and Leases, (VII) Approving the Sale of Assets, and (VIII) Granting Related Relief filed in the Bankruptcy Cases at Docket No. 109-2, or otherwise acceptable to Sellers and Buyer.

"***Bill of Sale***" means a Bill of Sale, in substantially the form attached hereto as Schedule 1Part AExhibit B.

"***Business***" means the business and operations of the Sellers and each of their respective Subsidiaries (wherever such business and operations are situated or conducted) as conducted by the Sellers as of the Execution Date, including the business and operations related to the distribution and supply of tires, wheels, and related products for passenger, light truck and commercial vehicles.

"***Business Day***" means any day of the year on which national banking institutions in New York, New York are open to the public for conducting business and are not required or authorized to close.

"***Business Group Person***" has the meaning set forth in Section 5.21(b).

"***Business Software***" has the meaning set forth in Section 5.13(d).

"***Buyer***" has the meaning set forth in the introductory paragraph and shall also include any Buyer Designee.

"***Buyer Designee***" has the meaning set forth in Section 2.1.

"***Buyer Employees***" has the meaning set forth in Section 8.5(a).

"***Carve Out***" has the meaning set forth in the DIP Orders.

"***Claim***" means a "claim" as defined in section 101(5) of the Bankruptcy Code.

"***Closing***" has the meaning set forth in Section 4.1.

"***Closing Date***" means the date and time as of which the Closing occurs as set forth in Section 4.1.

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

"***Collective Bargaining Agreement***" has the meaning set forth in Section 5.11(a).

"***Company***" has the meaning set forth in the introductory paragraph.

"***Confidentiality Agreements***" has the meaning set forth in Schedule 1.1(d).

"***Contract***" means any agreement, contract, obligation, promise, undertaking, lease (including any Leases), sublease, purchase order, license, commitment, insurance policy or other binding arrangement or understanding (in each case whether written or oral), and any amendments, modifications or supplements thereto.

"***Copyrights***" has the meaning assigned thereto under the definition of "Intellectual Property".

"***Credit Bid and Release***" has the meaning set forth in Section 3.1(b).

"***Credit Support***" means all guaranties, letters of credit, reimbursement agreements, bonds, deposits, prepayments amounts and other credit or contractual assurances of a comparable nature made or issued by or for the account of any Seller for the benefit of a counterparty under an Assumed Contract or otherwise in connection with the Business.

"***Cure Costs***" means all monetary liabilities, including pre-petition monetary liabilities, of Sellers that must be paid or otherwise satisfied to cure all of Sellers' monetary defaults under the Assumed Contracts pursuant to section 365 of the Bankruptcy Code at the time of the assumption thereof and assignment to Buyer as provided hereunder, as such amounts are determined by the Bankruptcy Court or otherwise agreed in writing after the Petition Date between Sellers (with the consent of the Buyer) and the applicable Contract counterparty.

"***Current Representation***" has the meaning set forth in Section 12.18(a).

"***Data Handling***" means the collection, storage, use, transmission, disclosure, retention, destruction and any other processing of Personal Data.

"***Data Protection Laws***" means all applicable Legal Requirements pertaining to data protection, data privacy, data security, data breach notification, data localization and cross-border data transfer of Personal Data.

"***Deal Communications***" has the meaning set forth in Section 12.18(b).

"***Designated Person***" has the meaning set forth in Section 12.18(a).

"***Designation Rights Period***" means the period from the Closing Date until the 90th day after the Closing Date.

"***Determination Date***" has the meaning set forth in Section 2.5(a)(i).

"***DIP Orders***" means, collectively, the Interim DIP Order and the Final DIP Order.

"***DIP TL Event of Default***" has the meaning set forth in Section 9.1.

"***Direction Letter***" has the meaning set forth in the recitals.

"***Disclosure Schedules***" means the Disclosure Schedules attached and designated as Disclosure Schedules hereto, dated as of the Execution Date, delivered by Sellers to Buyer in connection with the execution of this Agreement.

"***Disputed Contract***" has the meaning set forth in Section 2.5(a)(i).

"***Disputed Contract Determination***" has the meaning set forth in Section 2.5(a)(v).

"***Documents***" means all of the documents that are used or useful in, held for use in, or intended to be used in, or that arise in any way out of, the Business of the Seller.

"***DOL***" has the meaning set forth in Section 5.12(c).

"***ELT Retention Bonus Agreements***" has the meaning set forth on Schedule 8.5(e) of the Disclosure Schedules.

"***Employees***" means all employees of Sellers as of the Closing Date.

"***Encumbrance***" means any interest (as that term is used in section 363(f) of the Bankruptcy Code), charge, lien, mortgage, claim, demand, debt, fine, judgement, penalty, liability, obligation, commitment, assessment, fee, charge, hypothecation, deed of trust, pledge, security interest, option, right of first offer or first refusal, put, call, easement, restrictive covenant, right of way, collateral assignment or other encumbrance of any kind whatsoever, whether imposed by Contract, Legal Requirement, equity or otherwise.

"***Environmental, Health and Safety Laws***" means any and all Legal Requirements concerning or relating to (a) public health and safety, (b) worker/occupational health and safety related to Hazardous Substances, (c) pollution or protection of natural resources, endangered or threatened species, or the environment or (d) the presence, use, manufacturing, refining, production, generation, handling, transportation, treatment, recycling, storage, disposal, distribution, importing, labeling, testing, processing, discharge, Release, threatened Release, control, or cleanup of, or exposure to Hazardous Substances.

"***Equipment***" means all furniture, fixtures, equipment, computers, machinery, vehicles, apparatus, attachments, appliances, fittings, lighting fixtures, doors, cabinets, partitions, mantels, motors, pumps, screens, plumbing, heating, air conditioning, waste disposal and storing, wiring, telephones, televisions, monitors, security systems, carpets, floor coverings, wall coverings, office equipment, laboratory equipment, computers, registers, safes, trash containers, meters and scales, combinations, codes and keys, implements, telephone systems, signage, supplies, communications equipment, information technology assets, and any attached and associated hardware, routers, devices, panels, cables, manuals, cords, connectors, cards, and vendor documents, and including all warranties of the vendor applicable thereto, and all other tangible personal property of every kind and description, and Improvements used, or held for use, in connection with the operation of the Business, wherever located.

"***Equity Interests***" means any shares of any class of capital stock, membership interests, partnership interests or other equity or equity-based interests (including securities convertible or exchangeable into equity interests) in any Person, which are issued and outstanding (including all rights to receive all beneficial interest in any such items), and any outstanding warrants, options, voting agreements or other Contracts or obligations pursuant to which such Person is or may become obligated to issue, sell, purchase, return or redeem or vote or abstain from voting any shares of capital stock, membership interests, partnership interests or other equity interests.

"***ERISA***" means the Employee Retirement Income Security Act of 1974, as amended and the regulations issued thereunder.

"***ERISA Affiliate***" means any trade or business, whether or not incorporated, that, together with Sellers, is or was at the relevant time, considered a "single employer" within the meaning of section 414 of the Code or section 4001 of ERISA.

"***Estimated Wind Down Budget***" has the meaning set forth in Section 3.2(a).

"***Estimated Wind Down Expenses***" has the meaning set forth in Section 3.2(a).

"***Estoppel Certificates***" has the meaning set forth in Section 7.9.

"***Ex-Im Laws*****"** means (a) applicable Legal Requirements related to (i) export controls, including the U.S. Export Administration Regulations administered by the U.S. Department of Commerce and U.S. International Traffic in Arms Regulations administered by the U.S. Department of State and (ii) import controls and customs laws, including those administered by U.S. Customs and Border Protection and (b) U.S. anti-boycott laws administered by the U.S. Department of Commerce and U.S. Department of the Treasury.

"***Exchange Act***" means the Securities Exchange Act of 1934, as amended.

"***Excluded Assets***" has the meaning set forth in Section 2.2.

"***Excluded Contracts***" has the meaning set forth in Section 2.5(a)(i).

"***Excluded Liabilities***" has the meaning set forth in Section 2.4.

"***Excluded Records***" has the meaning set forth in Section 2.1(g).

"***Execution Date***" has the meaning set forth in the introductory paragraph.

"***Field Support Severance Plan***" has the meaning set forth on Schedule 5.12 of the Disclosure Schedules.

"***Final Allocation Statement***" has the meaning set forth in Section 3.3.

"***Final DIP Order***" means the Final Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Grant Senior Secured Priming Liens and Superpriority Administrative Expense Claims and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to the Prepetition Secured Parties; (III) Modifying the Automatic Stay; and (IV) Granting Related Relief [Docket No. 340].

"***Final Order***" means a judgment or Order of the Bankruptcy Court (or any other court of competent jurisdiction) entered on the docket in the Bankruptcy Case (or the docket of such other court), which has not been modified, amended, reversed, vacated or stayed and as to which (a) the time to appeal, petition for certiorari, or move for a new trial, stay, reargument or rehearing has expired and as to which no appeal, petition for certiorari or motion for new trial, stay, reargument or rehearing shall then be pending or (b) if an appeal, writ of certiorari, new trial, stay, reargument or rehearing thereof has been sought, such Order or judgment of the Bankruptcy Court (or other court of competent jurisdiction) shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, stay, reargument or rehearing shall have expired, as a result of which such Action or Order shall have become final in accordance with Rule 8002 of the Federal Rules of Bankruptcy Procedure; provided, however, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedures, or any analogous rule under the Federal Rules of Bankruptcy Procedure, may be filed relating to such Order, shall not cause an Order not to be a Final Order.

"***Financial Statements***" has the meaning set forth in Section 5.22.

"***FLSA***" means Fair Labor Standards Act and any state, province or local laws governing wages, hours, and/or overtime pay.

"***Foreign Plan***" has the meaning set forth in Section 5.12(k).

"***GAAP***" has the meaning set forth in Section 5.22.

"***Governmental Authority***" means any United States federal, state or local or any foreign government, multi-national organization, quasi-governmental authority, or other similar recognized governmental authority or regulatory or administrative authority, agency or commission or any court, tribunal or judicial body having jurisdiction.

"***Governmental Authorization***" means any approval, consent, license, Permit, waiver or other authorization issued, granted or otherwise made available by or under the authority of any Governmental Authority.

"***Hazardous Substance***" means (a) any substance, material or waste which is regulated by, or for which liability or standards of conduct may be imposed, under any Environmental, Health and Safety Laws due to its toxic, hazardous, dangerous or deleterious properties or characteristics, including any substance, material or waste that is defined or regulated as a "pollutant," "contaminant," "hazardous waste," "hazardous material," "hazardous substance," "toxic substance," or "toxic waste" under any Environmental, Health and Safety Laws, and (b) petroleum or any fraction thereof, petroleum products, natural gas, natural gas liquids, asbestos or asbestos-containing materials, lead or lead-containing materials, radioactive materials, radon, toxic mold, urea formaldehyde, per- or polyfluoroalkyl substances, and polychlorinated biphenyls.

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

"***HSR Rules***" means the rules and regulations promulgated under the HSR Act.

"***Improvements***" means the buildings, structures, fixtures, systems, facilities, easements, rights-of-way, privileges, improvements, parking areas, landscaped areas, PP&E, licenses, appurtenances and all other rights and benefits demised under any lease of, or other contract or agreement for the use of, the Leased Real Properties, as applicable.

"***Indebtedness***" means, at any time and with respect to any Person: (a) all indebtedness of such Person for borrowed money or indebtedness issued or incurred in substitution or exchange for indebtedness for borrowed money; (b) all indebtedness of such Person for the deferred price of property or services, including reimbursement and other obligations for surety bonds; (c) all obligations of such Person evidenced by notes, bonds, debentures or other similar instruments; (d) non-contingent obligations of such Person to reimburse any bank or other Person in respect of amounts paid under a letter of credit, banker's acceptance or similar instrument; (e) equity securities of such Person subject to repurchase or redemption other than at the sole option of such Person; (f) "earnouts", purchase price adjustments, profit sharing arrangements, deferred purchase money amounts and similar payment obligations or continuing obligations of any nature of such Person arising out of purchase and sale contracts; (g) all indebtedness of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person that does not constitute Acquired Assets (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property); (h) all obligations of such Person under leases which have been or should be, in accordance with GAAP (or any interpretation thereof), recorded as capital leases, to the extent required to be so recorded that do not relate to Acquired Assets; (i) all vendor financing arrangements that do not relate to Acquired Assets; (j) off-balance sheet liabilities and/or pension plan or multiemployer plan liabilities of such Person; (k) all Indebtedness of others referred to in clauses (a) through (j) above guaranteed directly or indirectly by such Person, or in effect guaranteed directly or indirectly by such Person through an agreement (i) to pay or purchase such Indebtedness or to advance or supply funds for the payment or purchase of such Indebtedness, (ii) to purchase, sell or lease (as lessee or lessor) property, or to purchase or sell services, primarily for the purpose of enabling the debtor to make payment of such Indebtedness, (iii) to supply funds to or in any other manner invest in the debtor (including any agreement to pay for property or services irrespective of whether such property is received or such services are rendered) or (iv) otherwise to assure a creditor against loss in respect of such Indebtedness; (l) all Indebtedness

referred to in clauses (a) through (k) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Encumbrance upon or in property (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness and (m) for clause (a) through (l) above, all accrued interest thereon, if any, and any termination fees, prepayment penalties, "breakage" cost or similar payments associated with the repayments of such Indebtedness.

"***Intellectual Property***" means all rights, title, and interests in all intellectual property and intangible rights in and to the following throughout the world: (a) patents, patent applications and inventions (whether or not patentable), and all reissues, continuations, continuations-in-part, revisions, divisionals, extensions and reexaminations thereof (collectively, "***Patents***"); (b) trademarks, service marks, trade dress, trade names, corporate names, logos, slogans, social media identifiers/handles, Internet domain names, and all other indicia of origin, whether registered or unregistered, and registrations and pending applications to register the foregoing, and all goodwill associated therewith (collectively, "***Trademarks***"); (c) all copyrights, works of authorship and rights in software, whether registered or unregistered, including all copyright registrations and applications (collectively, "***Copyrights***"); (d) all trade secrets, know-how and confidential or proprietary business information including, methods, models, techniques, processes, financial, business and marketing plans, and customer and supplier lists (collectively, "***Trade Secrets***"); (e) rights in technical and computer data, databases, and all content contained on Internet sites; (f) all registrations, applications, renewals, extensions, restorations and any other recordings with a Governmental Authority for any of the foregoing; and (g) all other intellectual property and proprietary rights.

"***Intellectual Property Assignment Agreement***" means the Intellectual Property Assignment Agreement, in substantially the form attached hereto as Exhibit C.

"***Interim Balance Sheet***" has the meaning set forth in Section 5.22.

"***Interim Balance Sheet Date***" has the meaning set forth in Section 5.22.

"***Interim DIP Order***" means the Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Grant Senior Secured Priming Liens and Superpriority Administrative Expense Claims and (C) Utilize Cash Collateral; (II) Granting Adequate Protection to the Prepetition Secured Parties; (III) Modifying the Automatic Stay; (IV) Scheduling Final Hearing; and (V) Granting Related Relief [Docket No. 90].

"***Interim Financial Statements***" has the meaning set forth in Section 5.22.

"***Inventory***" has the meaning set forth in Section 2.1(f).

"***IRS***" has the meaning set forth in Section 5.12(c).

"***Key Person***" means individuals listed on Schedule 1.1(a).

"***Kirkland***" has the meaning set forth in Section 12.18(a).

"***Knowledge***" means, with respect to any matter in question, in the case of Sellers, the actual knowledge of any of the individuals listed on Schedule 1.1(b) is deemed to have after reasonable investigation and inquiry of their direct reports.

"***Lease***" and "***Leases***" means individually or collectively, all leases, subleases, licenses, sublicenses, occupancy agreements, and any memoranda, amendments, restatements, modifications, supplements and assignments thereof, pursuant to which any Seller uses or occupies the Leased Real Property.

"***Leased Real Property***" means, as of the Execution Date, (a) all real property and real property interests leased, subleased, licensed, sublicensed or otherwise used or occupied by any Seller, as tenant, subtenant, lessee, sublessee, licensee, sublicensee or otherwise and (b) all buildings and other structures, facilities or Improvements located thereon, all fixtures, systems, Equipment and items of personal property of any Seller attached or appurtenant thereto, and all easements, licenses, rights and appurtenances relating to the foregoing (and any present or future rights, title and interests arising from or related to the foregoing), just in the case of clause (b) to the extent of Seller's interest therein.

"***Legal Requirement***" means any federal, state, provincial, county, local, municipal, foreign, international, or multinational law (statutory, common or otherwise), constitution, treaty, ordinance, equitable principle, code, rule, regulation or Order enacted, adopted, promulgated or applied by any Governmental Authority.

"***Liability***" means Claim or Encumbrance of any kind or nature whatsoever (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due).

"***Material Adverse Effect***" means any fact, state of facts, change, circumstance, occurrence, effect, event, result or development that individually or in the aggregate (taking into account all other such facts, states of fact, changes, circumstances, occurrences, effects, events, results or developments) has had, or would be reasonably expected to have, a material adverse effect on (a) the Business, the Acquired Assets or the assets, properties, prospects, condition (financial or otherwise), liabilities or results of operations of the Business (excluding the Excluded Assets and the Excluded Liabilities), taken as a whole or (b) the ability of the Sellers to consummate the transactions contemplated by this Agreement or to perform any of their obligations under this Agreement, but, with respect to clause (a) only, excluding any fact, state of facts, change, circumstance, occurrence, effect, event, result or development to the extent that it results from or arises out of, either alone or in combination, (i) the Bankruptcy Cases; (ii) the execution and delivery of this Agreement or any effect resulting from the announcement of this Agreement, the negotiation, execution, performance of this Agreement, or the consummation of the transactions contemplated by this Agreement, the identity of Buyer or any facts or circumstances relating to Buyer or the announcement or other disclosure of Buyer's plans or intentions with respect to the conduct of the Business, including the initiation of litigation by any Person with respect to this Agreement; (iii) any adoption, implementation, modification, repeal or other changes in Legal Requirement or accounting regulations or principles, or in interpretations of any of the foregoing (including effects in, arising from or relating to changes in, GAAP or the interpretation thereof); (iv) any actions taken (or not taken) by Seller of any of its Subsidiaries or

the Business that is required or expressly contemplated or permitted to be taken (or not taken) pursuant to this Agreement; (v) any change or effect of economic, business or political conditions (including outbreak, continuation or escalation of any military conflict, declared or undeclared war, armed hostilities, civil unrest, public demonstrations or acts of foreign or domestic terrorism or sabotage (including hacking, ransomware or any other electronic attack), or any escalation or worsening of any such conditions) or the securities, debt, banking, capital, credit or financial markets, or in interest or exchange rates, or in changes in Taxes or tariffs, in each case, in any country or region; (vi) any epidemic, pandemic or outbreak of disease, or any escalation or worsening of such conditions; (vii) any natural or manmade disasters or calamities, weather conditions including hurricanes, floods, tornados, tsunamis, earthquakes and wild fires, cyber outages, or other force majeure events, or any escalation or worsening of such conditions; (viii) any other regional, national or international calamity, crisis or emergency; (ix) any failure, in and of itself, to achieve any budgets, projections, forecasts, estimates, plans, predictions, performance metrics or operating statistics or the inputs into such items (whether or not shared with Buyer or its Affiliates) and any other failure to win or maintain customers or business, but not the event or reason underlying any such failure; (x) any change that generally affects the business or areas in which the Business operates, including changes in the prices or industry margins of the products sold, and the materials or inventory used by the Business; or (xii) any action taken (or omitted to be taken) at the written request or with the written consent of Buyer or any of its Affiliates; provided, that, in the cases of immediately preceding clauses (iii), (v), (vi), (vii), (viii) and (x), such fact, state of facts, change, circumstance, occurrence, effect, event, result or development shall be taken into account to the extent that Sellers are disproportionately affected, taken as a whole, as compared to other companies in the same industry as Sellers.

"***Material Contract***" means any of the following Contracts to which Seller is a party or by which it is bound in connection with the Business or the Acquired Assets: (i) Contracts with a term greater than one (1) year (as renewed, as applicable) that (A) are not terminable for convenience by Seller without incurring a liability for such termination in excess of $1,300,000 or (B) requires Seller to pay or incur aggregate liabilities greater than or equal to $500,000 per annum; (ii) any Contract that requires Seller to pay or incur aggregate liabilities greater than or equal to $1,300,000 per annum; (iii) employment Contracts providing (A) for base salary and/or wages in excess of $250,000 per annum, (B) for the payment of any cash or other compensation or benefits upon the execution of this Agreement or the consummation of the transactions contemplated herein, (C) that otherwise restricts Seller's ability to terminate the employment or services of any such Person at any time for any lawful reasons or for no reason without penalty, or (D) providing for severance payments in the event that the employment is terminated; (iv) Contracts under which Seller grants or is granted a license in or to Intellectual Property material to the Business, other than (A) non-exclusive licenses granted to or by service providers, (B) non-exclusive licenses to commercially available software (including software as a service Contracts), and (C) any Third-Party License; (v) collective bargaining agreements, (vi) partnership or joint venture agreements, and any other Contract relating to the ownership of, investments in or loans and advances to any Person, including minority equity investments, (vii) Contracts containing a covenant on the part of any Seller not to compete with respect to the operation of the Business or which provide for "exclusivity" or any similar requirement in favor of any Person other than Sellers; (viii) Contracts relating to the acquisition or disposition, in each case in excess of $5,000,000, by any Seller outside the Ordinary Course of Business of any material assets or any material business (whether by merger, sale or purchase of stock, sale or purchase of assets or otherwise) to the extent any actual

or contingent material obligations of any Seller thereunder remain in effect; (ix) settlement, conciliation or similar Contracts with any Governmental Authority that are required to be listed on a Disclosure Schedule and which impose continuing obligations on a Seller; (x) any settlement agreement which imposes any payment or other material obligations of Sellers after the Closing Date in excess of $100,000 in each case, or $1,000,000 in the aggregate; (xi) Contracts relating to borrowed money or other Indebtedness or the mortgaging, pledging or otherwise placing an Encumbrance on any material asset or group of material assets of Sellers or any letter of credit arrangements, or any guaranty therefor; (xii) powers of attorney or other similar Contracts or grant of agency, (xiii) Leases, or (xiv) Contracts with a Material Supplier and a Material Customer.

"***Material Customers***" has the meaning set forth in Section 5.25.

"***Material Suppliers***" has the meaning set forth in Section 5.25.

"***Multiemployer Plan***" has the meaning set forth in Section 5.12(b).

"***Necessary Consent***" has the meaning set forth in Section 2.5(d).

"***New Money DIP Agent***" has the meaning set forth in the Restructuring Support Agreement.

"***New Money DIP Claims***" has the meaning set forth in the Restructuring Support Agreement.

"***New Money DIP Claims Credit Bid and Release***" has the meaning set forth in Section 3.1(b).

"***New Money DIP Credit Agreement***" has the meaning set forth in the Restructuring Support Agreement.

"***New Retention Bonus Agreements***" has the meaning set forth on Schedule 2.1(h) of the Disclosure Schedules.

"***Objection Deadline***" has the meaning set forth in Section 2.5(c)(ii).

"***Order***" means any order, writ, injunction, judgment, verdict, ruling, decision, subpoena, mandate, precept, command, directive, consent, approval, award, decree or similar determination or finding entered, issued, made or rendered by any Governmental Authority or an arbitrator, mediator or other quasi-judicial or judicially sanctioned Person.

"***Ordinary Course of Business***" means the ordinary and usual course of operations of the Business, taken as a whole, consistent with its past practice, taking into account the contemplation, commencement and pendency of the Bankruptcy Cases.

"***Other Rights and Interests***" means (a) easements, rights of way, privileges, licenses, hereditaments, appurtenances and all other rights and benefits appurtenant or in any way related to, or demised under any lease of or agreement for the use of, the Leased Real Property and (b) all strips and gores and any land lying in the bed of a public road, highway or other access way,

open or proposed adjourning such Leased Real Property, in the case of both (a) and (b), only to the extent any Seller has a legally recognized interest therein.

"***Outside Date***" has the meaning set forth in Section 11.1(b)(i).

"***Party***" or "***Parties***" means, individually or collectively, Buyer and Sellers.

"***Patents***" has the meaning assigned thereto under the definition of "Intellectual Property".

"***PCI DSS***" means the Payment Card Industry Data Security Standard, issued by the Payment Card Industry Security Standards Council, as revised from time to time.

"***Permits***" means any and all permits, licenses, approvals, authorizations, clearances, consents, waivers, franchises, filings, accreditations, registrations, certifications, certificates of occupancy, easements, rights of way, notifications, exemptions, and authorizations, together with all modifications, renewals, amendments, supplements and extensions thereof, of or from any Governmental Authority or any other Person that are necessary for Sellers to own the Acquired Assets or operate the Business.

"***Permitted Encumbrances***" means any (i) Permitted Liens (as defined in Prepetition Term Loan Credit Agreement and the ABL Credit Agreement), (ii) Encumbrance securing Indebtedness incurred in satisfaction of the 2024 FILO Roll-Up Claims, (iii) Encumbrance for Taxes the nonpayment of which is permitted or required by the Bankruptcy Code and (iv) solely for purposes of the Disclosure Schedules, other Encumbrances that are not individually or in the aggregate material to the Business.

"***Person***" means any individual, corporation (including any non-profit corporation), partnership, limited liability company, joint venture, unincorporated organization, estate, trust, association, organization or other legal entity or group (as defined in section 13(d)(3) of the Exchange Act) or Governmental Authority.

"***Personal Data***" means any individually identifiable information (or information that, in combination with other information, could reasonably allow the identification of an individual, household or device or could be reasonably linked to an individual, household or device), or that is otherwise defined as "personal data," "personal information" or other similar term under Data Protection Laws.

"***Petition Date***" means October 22, 2024.

"***Post-Closing Designation Notice***" has the meaning set forth in Section 2.5(c)(ii).

"***Post-Closing Desired Excluded Contracts***" has the meaning set forth in Section 2.5(c)(ii).

"***Post-Closing Tax Period***" means any taxable period (or portion thereof) beginning after the Closing Date.

"***Pre-Closing Tax Period***" means any taxable period (or portion thereof) ending on or prior to the Closing Date.

"***Pre-Paid Expenses***" means all deposits (including customer deposits and security deposits (whether maintained in escrow or otherwise) for rent, electricity, telephone or otherwise), advances, pre-paid or deferred charges and expenses, prepayments, rights under warranties or guarantees, vendor rebates and other refunds of every kind and nature (whether or not known or unknown or contingent or non-contingent) that relate to the Business, except professional fee retainers.

"***Prepetition Term Loan Claims***" has the meaning set forth in the Restructuring Support Agreement.

"***Prepetition Term Loan Claims Credit Bid and Release***" has the meaning set forth in Section 3.1(b).

"***Prepetition Term Loan Credit Agreement***" has the meaning set forth in the DIP Orders.

"***Previously Omitted Contract***" has the meaning set forth in Section 2.5(b)(i).

"***Previously Omitted Contract Designation***" has the meaning set forth in Section 2.5(b)(i).

"***Previously Omitted Contract Notice***" has the meaning set forth in Section 2.5(b)(ii).

"***Products***" means any and all products of the Business owned by Sellers that Sellers market, distribute or sell, in any medium or through any form, as of the Execution Date.

"***Purchase Price***" has the meaning set forth in Section 3.1.

"***Qualified Bid***" has the meaning set forth in the Bidding Procedures.

"***Release***" means (a) any releasing, spilling, discharging, dumping, disposing, leaking, pumping, injecting, pouring, depositing, dispersing, emitting, emptying, escaping, leaching or migrating of Hazardous Substances into the environment, including ambient air, soil, surface water, groundwater and surface or subsurface strata and (b) the abandonment or discarding of barrels, tanks, containers or receptacles, whether or not sealed or closed, containing Hazardous Substances.

"***Representative***" means, with respect to a particular Person, any director, manager, officer, employee, agent, consultant, advisor or other representative of such Person, including legal counsel, accountants and financial advisors.

"***Retention Modifications***" has the meaning set forth on Schedule 2.1(h) of the Disclosure Schedules.

"***Required Consenting Lenders***" has the meaning set forth in the Restructuring Support Agreement.

"***Restricted Person***" means any Person that is (a) the target of Sanctions, including any Person(s) listed on any Sanctions list, including OFAC's Specially Designated Nationals and Blocked Persons List and Sectoral Sanctions Identifications List, the EU Consolidated List and HM Treasury's Consolidated List of Persons Subject to Financial Sanctions; (b) designated under a list administered by an Ex-Im Laws authority, including BIS' Entity List, BIS' Denied Persons List, BIS' Unverified List, BIS' Military End User List, DDTC's Debarred Parties List, and U.S. Department of Homeland Security's UFLPA Entity List, (c) located, organized, or resident in or incorporated under the laws of any Sanctioned Country or (d) owned or controlled by or acting on behalf or at the direction of (as such terms are defined and interpreted by the relevant Sanctions and/or Ex-Im Laws) any Person(s) that are described in clause(s) (a), (b) and/or (c) such that such Person is subject to the same restrictions or prohibitions as the Person(s) described in clause(s) (a), (b) and/or (c) above.

"***Restructuring Support Agreement***" means that certain Restructuring Support Agreement, dated as of October 22, 2024, among the Company and the other parties thereto.

"***Retained Cash***" means cash in an amount equal to (a) the Estimated Wind Down Expenses, plus (b) Seller Transaction Expenses, plus (c) Seller Closing Date Accrual, less (d) amounts in that certain escrow account holding amounts on account of professional fees under the Carve Out as defined under the Final DIP Order.

"***Retention Bonus Agreements***" has the meaning set forth in Schedule 2.1(h) of the Disclosure Schedules.

"***Sale Hearing***" means the hearing to consider the entry of the Sale Order.

"***Sale Motion***" means the Motion of Debtors for Entry of an Order (I) Approving Bid Procedures for the Sale of the Debtors' Assets, (II) Scheduling Certain Dates and Deadlines with Respect Thereto, (III) Approving the Form and Manner of Notice Thereof, (IV) Approving Certain Bid Protections in Connection with the Debtors' Entry Into Any Potential Stalking Horse Agreement, (V) Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases,(VI) Authorizing the Assumption and Assignment of Contracts and Leases, (VII) Approving the Sale of Assets, and (VIII) Granting Related Relief [Docket No. 109].

"***Sale Order***" means an Order of the Bankruptcy Court, pursuant to, *inter alia*, sections 105, 363 and 365 of the Bankruptcy Code authorizing and approving, *inter alia*, the sale of the Acquired Assets to Buyer and/or the Buyer Designees, as applicable, on the terms and conditions set forth herein, free and clear of all Encumbrances (other than Permitted Encumbrances) to the extent permitted by section 363(f) of the Bankruptcy Code, and the assumption and assignment of the Assumed Contracts to Buyer and/or the Buyer Designees, as applicable, and containing findings of fact and conclusions of law that Buyer and/or the Buyer Designees, as applicable, has acted in "good faith" within the meaning of section 363(m) of the Bankruptcy Code, in a form acceptable to the Parties.

"***Sales Taxes***" has the meaning set forth in Section 8.1(a).

"***Sanctioned Country***" means any country or region (a) that is the subject or target of comprehensive Sanctions (including Cuba, Iran, North Korea, Syria, Crimea, the so-called Donetsk People's Republic and so-called Luhansk People's Republic, Kherson, Zaporizhzhia and other regions of Ukraine that are the subject or target of comprehensive Sanctions); (b) whose government is the subject or target of Sanctions (including Venezuela) or (c) that is otherwise the subject or target of broad Sanctions (including Russia, Belarus and Afghanistan).

"***Sanctions***" means any economic, financial or trade sanctions or trade embargoes administered or enforced from time to time by (a) the United States Government (including those administered by OFAC, the U.S. Department of State and the U.S. Department of Commerce), (b) the United Nations Security Council, (c) the European Union and each member state thereof (including those administered by the EU Council or EU Commission, when acting in furtherance of the EU's Common and Foreign Security Policy), (d) the United Kingdom (including those administered by His Majesty's Treasury and the Department of Business, Innovation and Skills), (e) Canada and (f) Australia.

"***Security Incident***" means any unauthorized or unlawful access, acquisition, exfiltration, erasure, loss, use, or disclosure that compromises the confidentiality, integrity, availability or security of Personal Data or the Systems, or that triggers any reporting requirement under any Data Protection Laws or Contract provision.

"***Seller Closing Date Accrual***" means the amount equal to all unpaid administrative and priority claims required to be paid by the Sellers, or for which Sellers are otherwise responsible, that have accrued as of the Closing Date.

"***Seller Retained Professional Fees***" means an aggregate amount equal to the reasonable and documented out of pocket fees and expenses incurred by any professionals retained by Sellers pursuant to section 327 of the Bankruptcy Code or any other estate professionals, in each case, to the extent such out-of-pocket fees and expenses (a) are accrued and unpaid as of the Closing Date, and (b) are or become authorized to be paid pursuant to any order of the Bankruptcy Court.

"***Seller Transaction Expenses***" means an amount, the categories for which are set forth on Schedule 1.1(c), equal to all Liabilities incurred by Sellers, or for which Sellers are otherwise responsible, that are necessary to consummate the transactions contemplated by this Agreement to the extent such amounts have not been paid as of immediately prior to the Closing, including all professional fees (including all fees, costs and expenses of financial advisors, legal counsel, accountants and other professional service providers).

"***Sellers***" has the meaning set forth in the introductory paragraph.

"***Sensitive Data***" means all Personal Data or Trade Secrets that are collected, maintained, stored, transmitted, used, disclosed or otherwise processed (as defined in Data Protection Laws) by or on behalf of the Sellers in connection with the Business.

"***Straddle Period***" has the meaning set forth in Section 8.1(b).

"***Subsidiary***" means any entity with respect to which a specified Person (or a Subsidiary thereof) has the power, through the ownership of securities or otherwise, to elect a majority of the managers, directors or similar managing body.

"***Successful Bidder***" has the meaning set forth in the Bidding Procedures.

"***Systems***" means the information technology systems, operational technology systems, and infrastructure, owned, leased or licensed by any Seller for the Business, including industrial control systems, software, firmware, hardware, networks, platforms and related systems in the custody or control of the Sellers and to the extent included in the Acquired Assets.

"***Tax***" or "***Taxes***" means any U.S. federal, state, provincial, local or non-U.S. income, alternative minimum, add-on minimum, accumulated earnings, personal holding company, franchise, capital stock, net worth, capital, profits, intangibles, windfall profits, gross receipts, value added, sales, use, goods and services, excise, transfer, conveyance, mortgage, registration, stamp, documentary, recording, premium, severance, real property, personal property, ad valorem, intangibles, rent, occupancy, occupational, employment, unemployment insurance, social security, disability, workers' compensation, payroll, health care, withholding, estimated or other similar tax, duty, levy or other governmental charge or assessment or deficiency thereof, in each case, in the nature of a tax, imposed by any Governmental Authority (including all interest and penalties thereon and additions thereto, whether disputed or not).

"***Tax Return***" means any return, declaration, report, claim for refund, information return or other document (including any related or supporting estimates, elections, schedules and statements) filed or required to be filed with a Governmental Authority in connection with the determination, assessment or collection of any Tax or the administration of any laws, regulations or administrative requirements relating to any Tax.

"***Term Loan Agent***" has the meaning set forth in the Restructuring Support Agreement.

"***Third-Party Licenses***" has the meaning set forth in Section 5.13(f).

"***Trade Secrets***" has the meaning assigned thereto under the definition of "Intellectual Property".

"***Trademarks***" has the meaning assigned thereto under the definition of "Intellectual Property".

"***Transaction Documents***" means this Agreement, the Assumption Agreement, the Bills of Sale, the Intellectual Property Assignment Agreement, the Assignment of Leases, the Restructuring Support Agreement, the Transition Services Agreement and any other agreements, instruments or documents entered into at the Closing pursuant to this Agreement.

"***Transaction Steps Memorandum***" means the Transaction Steps Memorandum, in form and substance reasonably acceptable to the Sellers and Buyer.

"***Transfer Taxes***" has the meaning set forth in Section 8.1(a).

"***Transferred Permits***" has the meaning set forth in Section 2.1(m).

"***Transition Services Agreement***" means the Transition Services Agreement, in form and substance mutually agreed by the Parties.

"***Troutman***" has the meaning set forth in Section 12.18(a).

"***Union***" and "***Unions***" has the meaning set forth in Section 5.11.

"***Utilities***" means gas, water, electricity and other utilities at any facilities at which the Business is conducted.

"***WARN Act***" has the meaning set forth in Section 5.11(c).

1.2 Other Definitions and Interpretive Matters.

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

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

Day. Any reference in this Agreement to days (but not Business Days) means calendar days.

Dollars. Any reference in this Agreement to $ means United States dollars.

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

Gender and Number. Any reference in this Agreement to gender includes all genders, and words imparting the singular number only include the plural and vice versa.

Headings. The provision of a table of contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in the construction or interpretation of this Agreement. All references in this Agreement to any "***Section***" or "***Article***" are to the corresponding Section or Article of this Agreement unless otherwise specified.

Herein. Words such as "***herein***", "***hereof***" and "***hereunder***" refer to this Agreement as a whole and not merely to a subdivision in which such words appear, unless the context otherwise requires.

Including. The word "***including***" or any variation thereof means "***including, without limitation,***" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

Or. The word "***or***" shall be disjunctive but not exclusive.

(b) No Strict Construction. Buyer, on the one hand, and Sellers, on the other hand, participated jointly in the negotiation and drafting of this Agreement, and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by Buyer, on the one hand, and Sellers, on the other hand, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement. Without limiting the foregoing, no rule of strict construction construing ambiguities against the draftsperson shall be applied against any Person with respect to this Agreement.

## ARTICLE 2

## PURCHASE AND SALE

2.1 Purchase and Sale. Subject to the entry of the Sale Order and upon the terms and subject to the conditions of this Agreement, consistent with the transaction steps set forth in the Transaction Steps Memorandum, on the Closing Date, Sellers shall sell, transfer, assign, convey and deliver to Buyer and/or one or more other Affiliates of Buyer designated by Buyer (each, a "***Buyer Designee***"), and Buyer shall purchase, acquire and accept from Sellers, free and clear of any and all Encumbrances (other than Permitted Encumbrances), all of Sellers' direct or indirect right, title and interest in, to or under the Business, including all of Sellers' properties, rights, Claims and assets (other than the Excluded Assets) of every kind and description (wherever situated or located, real, personal or mixed, tangible or intangible, whether identifiable or contingent, owned, leased or licensed) used, held for use in, or useful in, or intended to be used in, or that arise in any way out of, the Business, whether or not reflected on the books and records of Sellers, as the same shall exist on the Closing Date (collectively, the "***Acquired Assets***"). Without limiting the generality of the prior sentence, the Acquired Assets shall include, whether they relate exclusively to the Business or not (except where so noted in the following list or in any definition used in the following list) all of Sellers' direct or indirect right, title and interest in, to and under the following:

(a) all Accounts Receivable;

(b) all Pre-Paid Expenses;

(c) all cash and cash equivalents, including checks, commercial paper, treasury bills, certificates of deposit, bank accounts and other bank deposits, instruments and investments of Sellers, excluding (i) amounts in that certain escrow account holding amounts on account of professional fees under the Carve Out as defined under the Final DIP Order and (ii) the Retained Cash;

(d) all Intellectual Property owned by the Sellers;

(e) all Equipment, whether owned or leased (and, to the extent leased, any Contract or rights related thereto if such Contract is an Assumed Contract);

(f) all inventory of any kind or nature and Products, related to the Business and maintained, held or stored by or for the Sellers on the Closing Date, whether or not prepaid, and wherever located, held or owned, and any prepaid deposits for any of the same, but excluding any of the foregoing in which a Seller does not have an ownership interest, including inventory and Products held by a Seller under a bailment, consignment or similar arrangement ("***Inventory***");

(g) to the extent permitted by Legal Requirements, all Documents and other books and records (including financial and accounting files (but excluding (i) personnel files of any Employee or former employee of the Sellers, (ii) the general corporate files and records of Sellers, insofar as they relate to the organization, existence or capitalization of the applicable Seller, (iii) records solely to the extent relating to the sale of the Acquired Assets (other than sales by the Sellers in the Ordinary Course of Business), including competing bids, (iv) information and data that is subject to third party contractual restrictions on assignment or disclosure solely to the extent relating to Excluded Assets, or any privileged information to the extent the transfer pursuant hereto would jeopardize such privilege, and (v) any other files or records solely to the extent relating to any Excluded Assets or Excluded Liabilities (clauses (i) through (v), the "***Excluded Records***"))), and correspondence, and all customer sales, marketing, advertising, packaging and promotional materials, files, data, Business Software (whether written, recorded or stored on disk, film, tape or other media, and including all computerized data), drawings, other technical information and data, vendor lists, supplier lists, and all other business and other records, and all Tax Returns of the Sellers to the extent solely or primarily related to the Acquired Assets or Assumed Liabilities;

(h) all Assumed Contracts, and, with respect to any Assumed Benefit Plan set forth on Schedule 2.1(h), the sponsorship of, all rights associated with, and any and all assets, trust agreements, insurance policies, administrative services agreements, and other contracts, files, and records in respect thereof;

(i) all Leased Real Property under any Lease that is an Assumed Contract (and any agreement and rights related thereto or under the applicable Lease to the extent that such agreement or Lease is an Assumed Contract) together with all interests of any Seller, if any, in and to all Improvements located thereon or attached thereto, and other appurtenances thereto, and rights in respect thereof including all Other Rights and Interests in respect thereof, and copies (and originals in Sellers' possession ) of all instruments, Leases and agreements evidencing Sellers' interest in the same, and any existing surveys, zoning reports, architectural and engineering blueprints, plans and specifications and reports, and legal descriptions, in each case, concerning such Leased Real Properties, that are in the possession or control of Sellers, which shall be deemed to be delivered to the extent located at any of the Leased Real Property;

(j) all security deposits with respect to any Lease that is an Assumed Contract;

(k) all rights under or arising out of all insurance policies and programs

(other than director and officer insurance policies, but including workers compensation), including third party property and casualty insurance proceeds and other insurance proceeds;

(l) all goodwill, customer and referral relationships, other intangible property and all privileges, set-offs, indemnification rights, causes of action, actions, Claims and demands and rights of any kind as against others (whether by contract or otherwise) relating to, arising from or associated with any of the Acquired Assets (including the Intellectual Property owned by Sellers), the Assumed Liabilities and/or the Business or otherwise;

(m) all Avoidance Actions, including against directors, officers and advisors of Sellers serving in such capacity prior to, and as of, the Execution Date; provided, that Buyer will not bring or pursue or permit to be brought or pursued, either directly, or indirectly, any such Avoidance Actions against vendors or service providers to the Sellers except as a defense (to the extent permitted under applicable Legal Requirements) against any Action asserted by any such counterparty;

(n) all Permits that relate to the Business or the Acquired Assets, to the extent transferable, including those designated as "Transferred Permits" on Schedule 2.1(n) (the "***Transferred Permits***"); provided, however, that Schedule 2.1(n) and the definition of "Transferred Permits" shall be deemed updated and amended to exclude, without further action by any Party, any Permit that solely relates to an Excluded Asset or an Excluded Liability;

(o) all claims, interests, rights, rebates, refunds, abatements, remedies, recoveries and benefits of Sellers, and all claims and causes of action (in each case, other than with respect to Taxes), arising under or relating to any of the Acquired Assets, the Assumed Liabilities or the Business, including those arising out of Assumed Contracts, express or implied warranties, representations, licenses and guarantees from suppliers, manufacturers, contractors or others to the extent relating to the operation of the Business or affecting the Equipment, Improvements, Inventory or other tangible Acquired Assets or ordered by the Sellers prior to the Closing Date (and in any case, any component thereof);

(p) all rights non-disclosure or confidentiality, non-compete, or non-solicitation agreements with Employees or former employees and agents of Sellers or with third parties (including any non-disclosure or confidentiality, non-compete, or non-solicitation agreements entered into in connection with or in contemplation of the Auction);

(q) all telephone, telex and telephone facsimile numbers and other directory listings;

(r) all domain names, URLs and web sites;

(s) all Business Software; and

(t) all credits, deposits, prepaid amounts and other rights to refunds of Taxes to the extent attributable to (i) the Acquired Assets for Post-Closing Tax Periods, or (ii) the Assumed Liabilities.

2.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement (including Section 2.1), nothing herein shall be deemed to sell, transfer, assign, convey or deliver any of the Excluded Assets to Buyer or any of the Buyer Designees, and Sellers shall retain all right, title and interest to, in and under, and all Liabilities with respect to, the Excluded Assets. For all purposes of and under this Agreement, the term "***Excluded Assets***" shall consist of only the following items, assets and properties:

(a) subject to Section 2.1(g), the limited liability company, partnership and corporate books and records of internal limited liability company, partnership and corporate proceedings, minute books, organizational or governing documents, stock ledgers, Tax Returns, and other records of Sellers as they pertain to ownership, organization, qualification to do business or existence of Sellers; provided, however, that copies of the foregoing items (including copies of Tax Returns of Sellers) shall be made available by Sellers to Buyer at Buyer's request to the extent that, and limited or redacted as necessary, any such information relates solely or primarily to the Acquired Assets or Assumed Liabilities;

(b) the Excluded Records;

(c) any Contract that is not an Assumed Contract or Assumed Benefit Plan;

(d) any Collective Bargaining Agreements;

(e) all current and prior director and officer insurance policies of the Sellers and all rights of any nature with respect thereto, including all insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries;

(f) all personnel files and other records relating to any Employee or former employee of the Sellers;

(g) the general corporate files and records of Sellers, insofar as they relate to the organization, existence or capitalization of the applicable Seller, as well as any other records or materials relating to the Sellers generally and not primarily involving or primarily related to the Acquired Assets or the operations of the Business; provided, that copies of such files and records shall be made available to Buyer upon reasonable request to the extent permitted by applicable law;

(h) other than as described in Section 2.1, all insurance policies of the Sellers and all rights of any nature with regard thereto;

(i) documents (i) that Sellers are required by Legal Requirements to retain, (ii) that if transferred would violate any applicable Legal Requirements (including with respect to privacy) or (iii) that are subject to any attorney-client, work product or similar privilege with respect to work performed in anticipation of or in connection with the preparation or administration of the Bankruptcy Cases, this Agreement or the transactions contemplated by this Agreement;

(j) any rights, claims or causes of action of Sellers under this Agreement or any other Transaction Document;

(k) all Equity Interests of Sellers and any Subsidiary thereof;

(l) all credits, deposits, prepaid amounts and other rights to refunds of Taxes to the extent attributable to (i) the Acquired Assets for Pre-Closing Tax Periods (unless such Taxes are Assumed Liabilities), (ii) Excluded Liabilities, or (iii) Excluded Assets;

(m) the Retained Cash; and

(n) all bank accounts and securities accounts of Sellers or any of their Subsidiaries, but not the contents thereof (other than to the extent such contents constitute Retained Cash).

2.3 Assumed Liabilities. Subject to entry of the Sale Order, upon the terms and subject to the conditions of this Agreement, consistently with the transaction steps set forth in the Transaction Steps Memorandum, on the Closing Date, Buyer or Buyer Designee shall, effective at the time of the Closing, assume and agree to discharge and perform when due, only the following Liabilities of Sellers (the "***Assumed Liabilities***"), and no other Liabilities:

(a) all Liabilities solely to the extent arising from the ownership or operation of the Business or the Acquired Assets by Buyer after the Closing;

(b) all Liabilities under the Assumed Contracts that are required to be performed after the Closing Date (including all Cure Costs payable under this Agreement), solely to the extent they arise or relate to periods of time after the Closing Date (but excluding any liability or obligation relating to or arising out of such Assumed Contract as a result of (i) any breach of such Assumed Contract occurring prior to the Closing or (ii) any indemnification or similar obligation arising from period prior to the Closing Date);

(c) the sponsorship of and all (i) Liabilities relating to any Assumed Benefit Plan and (ii) Liabilities for any workers' compensation claims with respect to any Employee or former employee of any Seller, including, in each case, incurred but not reported claims (IBNR);

(d) trade and accounts payable (including without limitation those arising under Assumed Contracts) incurred in the Ordinary Course of Business from and after the Petition Date and outstanding as of the Closing Date ("***Assumed Trade Payables***");

(e) (i) all Liabilities with respect to any Taxes imposed on or with respect to the Business or the Acquired Assets to the extent attributable to any Post-Closing Tax Period, and (ii) Sales Taxes and Transfer Taxes; and

(f) all Liabilities with respect to the Buyer Employees for any action or inaction of Buyer occurring after the Closing; and

(g) the obligations under the ABL Credit Agreement and with respect to the 2024 FILO Roll-Up Claims, in the case of the obligations under the ABL Credit Agreement, to the extent the Buyer elects to assume such obligations prior to Closing (provided that to the extent the Buyer does not elect to assume such obligations, then the cash component of the Purchase Price will increase by the amount necessary to pay off the obligations under the ABL Credit Agreement in full at Closing and release all Encumbrances on collateral securing such obligations).

The assumption by Buyer or any of its applicable Buyer Designees of the Assumed Liabilities shall not, in any way, enlarge the rights of any third parties relating thereto. For the avoidance of doubt, Assumed Liabilities shall not include any Liability relating to or arising out of any violation of law by, or any Action against, any Seller or any breach, default or violation by any Seller of or under any Assumed Contracts, all of which shall constitute Excluded Liabilities.

2.4 Excluded Liabilities. Notwithstanding any provision in this Agreement to the contrary, neither Buyer nor any Buyer Designee shall assume, nor shall Buyer or any of its applicable Buyer Designees be obligated to assume or be obliged to pay, perform or otherwise discharge, any Liability of, or Liability against, Sellers, Sellers' Subsidiaries, the Business or the Acquired Assets, of any kind or nature, whether absolute, accrued, contingent or otherwise, whether due or to become due and whether or not assets, and whether or not known or unknown or currently existing or hereafter arising or matured or unmatured, direct or indirect, and however arising, other than the Assumed Liabilities, and Sellers shall be solely and exclusively liable with respect to all Liabilities of Sellers, other than the Assumed Liabilities (such Liabilities other than Assumed Liabilities, collectively, the "***Excluded Liabilities***"). Without limiting the generality of the foregoing, the Excluded Liabilities shall include each of the following Liabilities of Sellers and Sellers' Subsidiaries other than the Assumed Liabilities:

(a) all Actions pending on or before the Closing Date or to the extent against or giving rise to Liability against the Business or the Acquired Assets prior to the Closing Date even if instituted after the Closing Date;

(b) any obligation of any Seller to indemnify any Person by reason of, or in connection with, the fact that such Person was a director, officer, manager, employee or agent of such Seller or any other Person;

(c) all Liabilities with respect to any Excluded Asset, including (i) obligations arising under, in connection with or otherwise related to any Benefit Plans that are not Assumed Benefit Plans and (ii) all Contracts that are not Assumed Contracts;

(d) other than set forth in Section 2.3 or with respect to Assumed Benefit Plans or as set forth in Section 8.5, all Liabilities with respect to Employees, former employees, or current or former directors, officers, consultants, contractors, or applicants for employment (and, in each case, their respective representatives or beneficiaries) of any Seller for any action or inaction of any of the Sellers (or any of their predecessors) occurring on or prior to the Closing Date, including payroll, vacation, sick leave, unemployment benefits, notice pay, retirement benefits, pension benefits, employment agreements or arrangements, severance, retention or termination agreements or arrangements, employee stock option, equity compensation, equity-

based compensation, employee stock purchase, employee benefits, Benefit Plans, compensation arrangements, or profit sharing plans, health care and other welfare plans or benefits (including COBRA, except as provided in Section 54. 4980B-9, A-8(c)(1) of the Treasury Regulations), or any other employee plans, agreements, policies, or arrangements or benefits or other compensation of any kind, and obligations and Liability of any kind including any Liability pursuant to the WARN Act;

(e) other than as set forth in Section 2.3 or with respect to Assumed Benefit Plans or as set forth in Section 8.5, all Liabilities, whether arising before, on or after the Closing Date, with respect to any Employee or former employee of any Seller who does not become a Buyer Employee;

(f) any Liability under section 4062 of ERISA for the termination of a Benefit Plan or any current or future withdrawal liability owed or that becomes owed to a Multiemployer Plan due to a partial or complete withdrawal defined under sections 4203 and 4205 of ERISA, in each case with respect to which Sellers or any ERISA Affiliate has any Liability, contingent or otherwise, including with respect to the IRS, the DOL or otherwise;

(g) all Indebtedness of the Sellers except as contemplated by Section 2.3 above;

(h) (i) all Liabilities with respect to (x) any Taxes imposed on or with respect to the Business or the Acquired Assets that are attributable to any Pre-Closing Tax Period; and (y) Taxes related to the Excluded Assets; and (ii) all Liabilities for Taxes of any Seller or its stockholders or members for any Tax period (including any Liability of any Seller for the Taxes of any other Person under Section 1.1502-6 of the U.S. Treasury Regulations (or any similar provision of state, local or non-U.S. law), as a transferee or successor, by contract or otherwise);

(i) all Liabilities for (i) legal, accounting, investment banking, reorganization, restructuring, brokerage or similar costs and expenses incurred or owed by any Seller in connection with the administration of the Bankruptcy Cases (including all Seller Retained Professional Fees and all Estimated Wind Down Expenses) and administrative expenses and priority claims accrued through the Closing Date, including arising under sections 503(b), 507(b) or 1114(e)(2) of the Bankruptcy Code and specified post-closing administrative wind-down expenses of the bankruptcy estates pursuant to the Bankruptcy Code and (ii) all costs and expenses incurred in connection with the negotiation, execution and consummation of the transactions contemplated under this Agreement by Sellers, including any retention bonuses, "success" fees, change of control payments and any other payment obligations of Sellers or of any of their predecessors payable as a result of the consummation of the transactions contemplated by this Agreement and the documents delivered in connection herewith;

(j) all Liabilities relating to or arising out of any Excluded Asset;

(k) all trade and accounts payable that are not Assumed Trade Payables;

(l) all Liabilities relating to the Acquired Assets based on events or conditions occurring or existing prior to the Closing and connected with, arising out of or relating to (and including, in each case, those Liabilities listed or described in the Disclosure Schedules)

(i) Hazardous Substances or Environmental, Health and Safety Laws, (ii) claims relating to employee health and safety, including claims for injury, sickness, disease or death of any Person or (iii) compliance with any Legal Requirement relating to any of the foregoing;

(m) all Liabilities to any equityholder of any Seller or Seller Subsidiary; and

(n) any other Liabilities or other obligations of Sellers not expressly assumed by Buyer pursuant to Section 2.3.

2.5 Assignment and Assumption of Contracts.

(a) Disputed Contracts.

(i) Schedule 2.5(a) sets forth a list of all Assumed Contracts (except for any Leases) together with the physical address of the Leased Real Property applicable to any Lease constituting an Assumed Contract (subject to the terms of this Section 2.5) and Sellers' good faith estimate of the Cure Costs associated with each Assumed Contract as of the Execution Date. For the avoidance of doubt, Buyer shall be responsible for the payment of all Cure Costs associated with each Assumed Contract. From and after the Execution Date until the Closing Date, the Sellers shall make such deletions to Schedule 2.5(a) as Buyer shall request in writing in Buyer's sole discretion up to two (2) Business Days prior to the Closing Date. Any such deleted Contract shall be deemed to no longer be an Assumed Contract. The Parties acknowledge and agree that there will be no reduction in, or increase to, the Purchase Price as a result of (i) any change in Cure Costs or (ii) any addition or elimination of any Contract as an Assumed Contract. All Contracts of Sellers that are not listed on Schedule 2.5(a) shall not be considered an Assumed Contract or an Acquired Asset and shall be deemed "***Excluded Contracts***"; provided, that Buyer has the right at any time before two (2) Business Days prior to the Closing Date (such date, the "***Determination Date***") to (x) amend Schedule 2.5(a) to designate any other contract which has not been rejected by the Sellers to be an Assumed Contract, and (y) to remove from Schedule 2.5(a) an Assumed Contract that is subject to a cure dispute with the counterparty thereto or other dispute with the counterparty thereto as to the assumption or assignment of such Assumed Contract that has not been resolved to the satisfaction of Buyer (in its sole discretion) prior to the Determination Date (any such Contract, a "***Disputed Contract***").

(ii) Sellers shall take all actions required to assume and assign the Assumed Contracts to Buyer or any of its applicable Buyer Designees, including taking all actions required to obtain an Order containing a finding that the proposed assumption and assignment of the Assumed Contracts to Buyer satisfies all applicable requirements of section 365 of the Bankruptcy Code.

(iii) If prior to the Closing Date there are Contracts or Leases that have not been designated as an Assumed Contract or an Excluded Contract, the Sellers shall not assume or reject any such Contract or Lease pursuant to section 365 of the Bankruptcy Code and any Order of the Bankruptcy Court, until the earlier of the date Buyer so directs the Sellers and the Closing Date.

(iv) At Closing, (x) Sellers shall, pursuant to the Sale Order and the

Assumption Agreement, assume and assign to Buyer or the applicable Buyer Designee (the consideration for which is included in the Purchase Price) each of the Assumed Contracts that is capable of being assumed and assigned in connection with such assumption and assignment (as agreed to among Buyer and Sellers or as determined by the Bankruptcy Court) and (y) Buyer shall assume and perform and discharge the Assumed Liabilities (if any) under the Assumed Contracts, pursuant to the Assumption Agreement.

(v) On the Closing Date, Sellers shall provide Buyer with a list of all Disputed Contracts and the amount of Cure Costs that has been proposed by each such non-Seller counterparty for such Disputed Contracts; provided, that Sellers shall agree to any Cure Costs for any Contract irrevocably designated by Buyer in writing as an Assumed Contract if instructed to do so by Buyer. If Sellers, with the consent of Buyer, and the non-Seller counterparty with respect to any Disputed Contract, are unable to agree on Cure Costs and/or the assumption and assignment of such Disputed Contract within five (5) Business Days following the Closing Date, solely upon Buyer's written request, Sellers shall seek to have the amount of Cure Costs related to such Disputed Contract or the proposed assumption and assignment of such Disputed Contract determined by the Bankruptcy Court (a "***Disputed Contract Determination***"). Upon a Disputed Contract Determination that prohibits assumption and assignment to Buyer, such Disputed Contract will automatically be an Excluded Contract. If assumption and assignment to Buyer is not prohibited, then Buyer may elect to re-designate such Disputed Contract as an Excluded Contract. If such Disputed Contract is not so re-designated, (x) the applicable Sellers shall promptly take such steps as are reasonably necessary at Buyer's sole cost and expense, including, if applicable and reasonably practicable, promptly on delivery of no less than five (5) Business Days' notice to the non-Seller counterparty to such Contract, to cause such Contract to be assumed by the applicable Seller and assigned to Buyer, including by executing and delivering to Buyer an Assignment and Assumption Agreement with respect to such Assumed Contract, and (y) Buyer shall pay the Cure Costs with respect to such Assumed Contract either (i) concurrently with Sellers' assumption and assignment thereof to Buyer or (ii) as agreed in writing by Buyer and the applicable counterparty to such Assumed Contract, and execute and deliver to Buyer an Assignment and Assumption Agreement with respect to such Assumed Contract.

(b) Previously Omitted Contracts.

(i) If prior to or following Closing until the date of confirmation of a plan of liquidation or any other plan is confirmed in the Bankruptcy Cases, it is discovered that a Contract should have been listed on Schedule 2.5(a) but was not listed on Schedule 2.5(a) and has not been rejected by Sellers (any such Contract, a "***Previously Omitted Contract***"), Sellers shall, immediately following the discovery thereof (but in no event later than two (2) Business Days following the discovery thereof), notify Buyer in writing of such Previously Omitted Contract and all Cure Costs (if any) for such Previously Omitted Contract. Buyer shall thereafter deliver written notice to Sellers, no later than ten (10) Business Days following notification of such Previously Omitted Contract from Sellers, designating such Previously Omitted Contract as "Assumed" or "Rejected" (a "***Previously Omitted Contract Designation***"). A Previously Omitted Contract designated in accordance with this Section 2.5(b)(i) as "Excluded," or with respect to which Buyer fails to deliver a Previously Omitted Contract Designation, shall be an Excluded Contract.

(ii) If Buyer designates a Previously Omitted Contract as "Assumed" in accordance with Section 2.5(b)(i), Sellers shall serve a notice (the "***Previously Omitted Contract Notice***") on the counterparties to such Previously Omitted Contract notifying such counterparties of the Cure Costs with respect to such Previously Omitted Contract and Sellers' intention to assume and assign such Previously Omitted Contract in accordance with this Section 2.5. The Previously Omitted Contract Notice shall provide the counterparties to such Previously Omitted Contract with ten (10) Business Days to object, in writing to the Sellers and Buyer, to the Cure Costs or the assumption and assignment to Buyer of its Contract. If the counterparties, Sellers and Buyer are unable to reach a consensual resolution with respect to the objection, the Sellers will seek an expedited hearing before Bankruptcy Court to determine the Cure Costs and approve the assumption and assignment to Buyer of the Previously Omitted Contract. If no objection is timely served on the Sellers and Buyer, Sellers shall obtain an order of the Bankruptcy Court fixing the Cure Costs and approving the assumption and assignment to Buyer of the Previously Omitted Contract and, Buyer shall pay the Cure Costs associated thereto.

(c) Assumption of Excluded Contracts.

(i) Excluded Contracts. At any time during the Designation Rights Period, Buyer may provide Sellers with a list of Excluded Contracts that Sellers shall not reject without the prior written consent of Buyer. Buyer shall be responsible for timely paying all reasonable and documented costs incurred and unpaid as of the Closing Date by Sellers under such Excluded Contracts until they are either (A) rejected by the Sellers or (B) assumed and assigned pursuant to Section 2.5(c)(ii) during the Designation Rights Period.

(ii) Post-Closing Assumption of Excluded Contracts. At any time after Closing and at least five (5) Business Days prior to expiration of the Designation Rights Period, Buyer may notify (a "***Post-Closing Designation Notice***") Sellers from time to time of its determination to designate an Excluded Contract (the "***Post-Closing Desired Excluded Contracts***") that has not previously been designated as an Assumed Contract pursuant to Schedule 2.5(a) or designated and assigned pursuant to this Section 2.5(c), for assumption by the applicable Sellers and assignment to Buyer (or its designee). Within three (3) Business Days of Seller's receipt of a Post-Closing Designation Notice, the applicable Seller shall provide written notice to the counterparty of such Post-Closing Desired Excluded Contract (such counterparty, the "***Applicable Counterparty***") of Seller's intent to assume and assign such Post-Closing Desired Excluded Contract (each, a "***Seller's Notice***"). Each Seller's Notice shall be filed with the Bankruptcy Court and include: (A) the proposed Cure Costs applicable to such Post-Closing Desired Excluded Contract; (B) information, or contact information and instructions on how to obtain information, supplied by Buyer or its designee intended to provide such Applicable Counterparty with adequate assurance of future performance; and (C) the deadline to object to the assumption and assignment of such Post-Closing Desired Excluded Contract (the "***Objection Deadline***"), which deadline shall be no fewer than 14 days from service of such Seller's Notice. The assumption and assignment of a Post-Closing Desired Excluded Contract shall be effective without further order of the Bankruptcy Court upon expiration of the applicable Objection Deadline unless: (A) the Applicable Counterparty timely serves an objection upon Buyer and the applicable Seller that relates to adequate assurance of future performance or a cure issue that could not have been raised in an objection to any cure notice prior to the Sale Hearing and pertains to matters arising after the Closing; or (B) the Applicable Counterparty otherwise consents to the

assumption and assignment on terms mutually agreed by Buyer (or its designee) and such Applicable Counterparty. If Buyer (or its designee), the applicable Seller and the Applicable Counterparty are unable to resolve such objection timely served pursuant to clause (A) above, the Sellers shall schedule the matter for hearing on no less than five Business Days' notice. Any Excluded Contract that is not assumed and assigned before the expiration of the Designation Rights Period shall not be acquired by Buyer (or its designee). Notwithstanding anything to the contrary in this Agreement, Buyer shall pay all Cure Costs and all of Seller's reasonable documented out-of-pocket costs and expenses to the extent arising from any Post-Closing Desired Excluded Contracts.

(iii)Notwithstanding anything to the contrary in Section 2.5(c)(ii), during the Designation Rights Period, Buyer may deliver a written notice to the applicable Seller of Buyer's entry into an agreement with an Applicable Counterparty to any Post-Closing Desired Excluded Contract pursuant to which such Applicable Counterparty consents to the assumption by the applicable Seller and assignment to Buyer or its designee of such Post-Closing Desired Excluded Contract on the terms set forth in such agreement. The assumption and assignment of any Post-Closing Desired Excluded Contract pursuant to this Section 2.5(c)(iii) shall be effective on the date set forth in the written notice provided to the applicable Seller without further order of the Bankruptcy Court. At the request of Buyer, such Seller shall file a notice with the Bankruptcy Court identifying such Post-Closing Desired Excluded Contracts.

(d) Non-Assignment of Contracts and Permits. Notwithstanding anything contained in this Agreement to the contrary, this Agreement shall not constitute an agreement to assign or transfer any Contract or any Permit, if, notwithstanding the provisions of sections 363 and 365 of the Bankruptcy Code, an attempt at assignment or transfer thereof, without the consent or approval required or necessary for such assignment or transfer (a "***Necessary Consent***"), would constitute a breach thereof or in any way adversely affect any of the rights of Buyer, as the assignee or transferee of such Contract or Permit (as the case may be) thereunder. If, notwithstanding the provisions of sections 363 and 365 of the Bankruptcy Code and the commercially reasonable efforts of Sellers, such consent or approval is required but not obtained with respect to an Assumed Contract or a Permit, neither Sellers nor Buyer shall be in breach of this Agreement nor shall the Purchase Price be adjusted nor (but subject to the satisfaction of the conditions set forth in Section 9.4 (unless waived by Buyer in its sole and absolute discretion)) shall the Closing be delayed in respect of the Assumed Contracts or the Permits; provided, however, if the Closing occurs, then, with respect to any Assumed Contract or Permit for which consent or approval is required but not obtained, from and after the Closing, through the earlier of such time as such consent or approval is obtained and six months following the Closing (or the closing of the Bankruptcy Cases, if shorter), Sellers and Buyer shall (A) use commercially reasonable efforts to secure such consent or approval as promptly as practicable after the Closing; provided, that neither Seller nor Buyer will be obligated to pay any consideration or grant any accommodation therefor to any third party from whom consent or approval is requested or to initiate any Action to obtain any such consent or approval and (B) the applicable Seller will hold such Assumed Contract or Permit in trust for the benefit of Buyer, and the applicable Seller and Buyer will cooperate in a mutually agreeable arrangement, to the extent feasible and without the need for any Necessary Consent, under which Buyer would obtain the benefits and assume the obligations under such purchased Assumed Contract or Permit in accordance with this Agreement, including subcontracting, sub-licensing, or sub-leasing to Buyer, or under which the applicable

Seller would enforce their rights thereunder for the benefit of Buyer with Buyer assuming each applicable Seller's obligations thereunder.

2.6 Further Assurances. At and after the Closing, and without further consideration therefor, the Parties shall execute and deliver such further instruments and certificates as shall be necessary or desirable (i) to vest, perfect or confirm ownership (of record or otherwise) in Buyer and/or one or more Buyer Designees, Sellers' right, title or interest in, to or under any or all of the Acquired Assets free and clear of all Encumbrances (other than Permitted Encumbrances) or (ii) to otherwise effectuate the purposes and intent of this Agreement and the other Transaction Documents or for aiding, assisting, collecting and reducing to possession any of the Acquired Assets and exercising rights with respect thereto. Each of the Parties shall take, or cause to be taken, all actions, do or cause to be done all things as may be reasonably requested by the other Parties in order to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in Buyer or one of more Buyer Designees or otherwise to carry out this Agreement, and shall execute and deliver all deeds, bills of sale, instruments of conveyance, powers of attorney, assignments, assumptions and assurances, and as may be required to consummate the transactions contemplated by this Agreement.

## ARTICLE 3

## PURCHASE PRICE

3.1 Consideration. The aggregate consideration (the "***Purchase Price***") for the purchase, sale, assignment and conveyance of Sellers' right, title and interest in, to and under the Acquired Assets shall be paid consistently with the transaction steps set forth in the Transaction Steps Memorandum, and consist of:

(a) the assumption by Buyer or any of its applicable Buyer Designees, as applicable, of the Assumed Liabilities from Sellers (subject to adjustment in accordance with Section 2.3(g), including the addition of cash proceeds to the Purchase Price, if applicable); and

(b) the release of Sellers that are obligors or guarantors under each of (i) the full amount of the New Money DIP Claims as of the Closing Date (such amount, the "***New Money DIP Claims Credit Bid and Release***") and (ii) the Prepetition Term Loan Claims in an aggregate amount equal to $585,000,000 (such amount, the "***Prepetition Term Loan Claims Credit Bid and Release***" and, collectively with the New Money DIP Claims Credit Bid and Release, such amounts, the "***Credit Bid and Release***"), in each case pursuant to section 363(k) of the Bankruptcy Code.

3.2 True-Up of Wind Down Expenses.

(a) No later than fourteen (14) days following the Execution Date, Sellers shall deliver to Buyer a written statement (the "***Estimated Wind Down Budget***") setting forth Sellers' good faith estimate, determined on a reasonable basis of the Actual Wind Down Expenses (the "***Estimated Wind Down Expenses***"), the Seller Transaction Expenses, the Seller Closing Date Accrual, and the determination of Retained Cash based thereon that shall be consistent in all material respects with Schedule 3.2(a) (including with respect to the categories of

expenses and the estimates thereof). Sellers will reasonably cooperate to promptly provide Buyer with any information Buyer may reasonably request relating to the determination of the Estimated Wind Down Expenses, Seller Transaction Expenses, the Seller Closing Date Accrual, and Retained Cash. Sellers and Buyers shall mutually agree upon the final Estimated Wind Down Budget (each Party acting reasonably and in good faith and subject to the terms of this Section 3.2(a)).

(b) In the event that the Estimated Wind Down Expenses exceeds the Actual Wind Down Expenses, the Sellers shall promptly (and in any event within five (5) Business Days) pay to Buyer in cash such difference, by wire transfer of immediately available funds to an account specified in writing by Buyer provided, that, in the event of such payment, the Credit Bid and Release shall be deemed to be increased in an amount equal to such payment (and such adjustment shall be treated as an adjustment to the Purchase Price for Tax purposes unless otherwise required by applicable Legal Requirement).

3.3 Allocation of Purchase Price. Within one hundred and twenty (120) days after the Closing Date, Buyer shall prepare and deliver to Sellers a statement allocating the sum of the Purchase Price, the Assumed Liabilities and other relevant items that are treated as purchase price for Tax purposes among the Acquired Assets in accordance with section 1060 of the Code and the Treasury Regulations promulgated thereunder (such statement, the "***Allocation Statement***"). Within thirty (30) calendar days of delivery of the Allocation Statement, Sellers shall notify Buyer of any proposed changes. Unless otherwise required by law, the IRS or any other taxing authority, the Allocation Statement, as prepared and adjusted by Buyer after consideration of Sellers' comments, shall be final and binding on the Parties (the "***Final Allocation Statement***") and the Parties shall file all relevant U.S. federal, state, and local Tax Returns (including IRS Form 8594 and any supplements to such form) in accordance with the Final Allocation Statement, and shall not take any position inconsistent therewith. If the IRS or any other taxing authority proposes a different allocation, Sellers or Buyer, as the case may be, shall promptly notify the other party of such proposed allocation. Sellers or Buyer, as the case may be, shall provide the other party with such information and shall take such actions (including executing documents and powers of attorney in connection with such proceedings) as may be reasonably requested by such other party to carry out the purposes of this Section 3.3. Except as otherwise required by any Legal Requirement or pursuant to a "determination" under section 1313(a) of the Code (or any comparable provision of United States federal, state, local, or non-United States Legal Requirement), (i) the transactions contemplated by Article 2 of this Agreement shall be reported for all Tax purposes in a manner consistent with the terms of this Section 3.3; and (ii) neither Party (nor any of their Affiliates) will take any position inconsistent with this Section 3.3 in any Tax Return, in any refund claim, in any litigation or otherwise. Notwithstanding the allocation of the Purchase Price set forth in the Allocation Statement, nothing in the foregoing shall be determinative of values ascribed to the Acquired Assets or the allocation of the value of the Acquired Assets in any plan or reorganization or liquidation that may be proposed.

3.4 Post-Closing Accounts Receivable. In the event any Seller or its estate receives any payment in respect of the conduct of the Business after the Closing, Sellers agree to remit promptly (or cause to be remitted promptly) such funds to Buyer (unless such funds are an Excluded Asset). For purposes of this Section 3.4, Sellers and Buyer agree that the Parties shall treat Buyer as the beneficial owner of any post-Closing Accounts Receivable for income tax purposes.

3.5 Withholding. Notwithstanding anything in this Agreement to the contrary, Buyer, Sellers, and any other Person required to make a payment with respect to the transactions contemplated hereby shall be entitled to deduct and withhold from such payments such amounts as Buyer, Sellers, or any other Person is required to deduct and withhold under applicable Legal Requirements; provided, that the Parties shall use commercially reasonable efforts to notify the other Party of any anticipated deduction or withholding at least five (5) Business Days prior to making the applicable payment. The Parties shall use commercially reasonable efforts to cooperate to mitigate or eliminate any such withholding to the maximum extent permitted by applicable Legal Requirement. To the extent that amounts are so deducted and withheld and paid over to the appropriate Governmental Authority, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made.

## ARTICLE 4

## CLOSING AND DELIVERIES

4.1 Closing Date. Upon the terms and subject to the conditions hereof, the closing of the sale of the Acquired Assets and the assumption of the Assumed Liabilities (other than those pertaining to Previously Omitted Contracts pursuant to Section 2.5(b) and Disputed Contracts pursuant to Section 2.5(a)(i)) contemplated hereby (the "***Closing***") shall take place remotely by electronic mail or other electronic exchange of documents, among and between the Parties and/or their respective counsel, no later than three (3) Business Days following the date on which all the conditions set forth in Article 9 and Article 10 have been satisfied or (if permissible) waived by the Party entitled to waive such condition (other than the conditions which by their nature are to be satisfied at the Closing, but subject to the satisfaction or (if permissible) waiver of such conditions), or on such other date and time as Sellers and Buyer may mutually agree in writing. The date and time at which the Closing actually occurs is hereinafter referred to as the "***Closing Date***". Upon consummation of the Closing, the purchase and sale of the Acquired Assets and the assumption of the Assumed Liabilities hereunder, and the Closing, shall be deemed to have occurred as of 12:01 a.m. (New York time) on the Closing Date.

4.2 Buyer's Deliveries. At the Closing, Buyer shall deliver (or cause one or more of its Affiliates or Buyer Designees to deliver) to Sellers:

(a) the Assumption Agreement, duly executed by Buyer or the applicable Buyer Designee;

(b) the Assignment of Leases, duly executed by Buyer or the applicable Buyer Designee;

(c) the Intellectual Property Assignment Agreement, duly executed Buyer or the applicable Buyer Designee;

(d) the Transition Services Agreement, duly executed by Buyer or the applicable Buyer Designee;

(e) each other Transaction Document to which Buyer is a party, duly executed by Buyer;

(f) the certificates of Buyer to be received by Sellers pursuant to Sections 10.1 and 10.3; and

(g) such other documents as Sellers may reasonably request that are customary for a transaction of this nature and necessary to evidence or consummate the transactions contemplated by this Agreement.

4.3 Sellers' Deliveries. At the Closing, Sellers shall deliver to Buyer:

(a) the Bills of Sale, the Assumption Agreement, the Assignment of Leases and each other Transaction Document to which any Seller is a party, duly executed by the applicable Sellers;

(b) the Intellectual Property Assignment Agreement, duly executed by the applicable Sellers, in form reasonably acceptable to the Parties and customary for recordation with the appropriate Governmental Authorities;

(c) the Transition Services Agreement, duly executed by the applicable Sellers;

(d) with respect to the Leased Real Properties included in the acquired Assets, (i) possession of such Leased Real Properties, and (ii) any Estoppel Certificates obtained under Section 7.9.

(e) a copy of the Sale Order;

(f) the certificates of Sellers to be received by Buyer pursuant to Sections 9.1 and 9.2;

(g) a valid IRS Form W-9 or IRS Form W-8, as applicable, from each Seller or Seller's regarded owner for U.S. federal income tax purposes;

(h) a certificate of good standing from each Seller, certified by the appropriate Governmental Authority in its jurisdiction of incorporation or formation; and

(i) such other documents as 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, including the documents and instruments described in Article 9 of this Agreement.

## ARTICLE 5

### REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers hereby jointly and severally represent and warrant to Buyer as follows, except as disclosed in the Disclosure Schedules attached hereto:

5.1 Organization and Good Standing. Each Seller is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization. Each Seller has all requisite corporate or limited liability company power and authority to own or lease and to operate and use the Acquired Assets and to carry on the Business as presently conducted. Sellers are duly qualified or licensed to do business and are in good standing in each jurisdiction where the character of their Business or the nature of the Acquired Assets makes such qualification or licensing necessary, except for such failures to be so qualified or licensed or in good standing as would not, individually or in the aggregate, have a Material Adverse Effect. Schedule 5.1 contains a correct and complete list of each jurisdiction where each Seller is qualified or licensed to do business.

5.2 Authority; Validity. Each Seller has, subject to entry of the Sale Order, the requisite corporate or limited liability company power and authority necessary to enter into and perform its obligations under this Agreement and the other Transaction Documents to which such Seller is a party and to consummate the transactions contemplated hereby and thereby, and the execution, delivery and performance of this Agreement and such other Transaction Documents by such Seller and the consummation by such Seller of the transactions contemplated herein and therein have been duly and validly authorized by all requisite corporate or limited liability company action. This Agreement has been duly and validly executed and delivered by each Seller and each other Transaction Document required to be executed and delivered by a Seller at the Closing will be duly and validly executed and delivered by such Seller at the Closing. This Agreement and the other Transaction Documents, in each case, assuming due execution and delivery by each of the other parties hereto as applicable, constitute, with respect to each Seller that is party thereto, the legal, valid and binding obligations of such Seller, enforceable against such Seller in accordance with their respective terms, except as such enforceability is limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether considered in a proceeding in equity or at law).

5.3 Subsidiaries. Except as set forth in Schedule 5.3, no Seller (a) has any direct or indirect Subsidiaries, (b) has any direct or indirect interest in, or is under any current or prospective obligation to receive an interest in, any shares or other Equity Interest in any other Person, or (c) is a member of or participant in any partnership, joint venture or similar entity.

5.4 No Conflict.

(a) Neither the execution and delivery by any Seller of this Agreement or the Transaction Documents to which it is a party nor the consummation of the transactions contemplated hereby or thereby nor compliance by it with any of the provisions hereof or thereof (a) conflict with or result in a violation of (i) any provision of the organizational documents of

such Seller or (ii) any judgment, order, writ, injunction, decree, statute, law, ordinance, rule or regulation in any material respect binding upon such Seller or (b) violate, conflict with, or result in a breach of any of the terms of, or constitute a default under, or give rise to any right of termination, modification, cancellation or acceleration under, any Material Contract.

(b) Subject to entry of the Sale Order, and except for any notice, filing, or consent required under the Material Contracts set forth on Schedule 5.14, Sellers are not required to give any notice to, make any registration, declaration or filing with or obtain any consent, waiver or approval from, any Person (including any Governmental Authority) in connection with the execution and delivery of this Agreement and the other Transaction Documents or the consummation or performance of any of the transactions contemplated hereby and thereby, except (a) for notices, filings and consents required in connection with the Bankruptcy Cases, (b) for the notices, filings and consents in respect of Material Contracts set forth on Schedule 5.4(b), and (c) where failing to give such notice, make such registration, declaration or filing or obtain such consent, waiver or approval would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

5.5 Real Property.

(a) Owned Real Property. None of the Sellers owns any fee simple interest in any real property and any ownership rights or interests appurtenant thereto.

(b) Leased Real Property. Schedule 5.5(b) contains a complete and accurate list of the physical address of each Leased Real Property. Sellers have made available true and complete copies of all Leases to Buyer, including any amendments, restatements, modifications, supplements and assignments (excluding any landlord assignment that is not in any Seller's possession) thereto through the Execution Date. No Affiliate of the Sellers or any other Person has any ownership or leasehold interest in any of the Leased Real Property. The applicable Seller has a valid, binding, enforceable and existing leasehold interest in all of the Leased Real Property, free and clear of all Encumbrances (except for Permitted Encumbrances). Other than as set forth on Schedule 5.5(b), none of the Sellers nor, to Sellers' Knowledge, any other party to any Lease, is in default of any Lease beyond any applicable notice and cure period thereunder, and, other than as set forth on Schedule 5.5(b) and other than routine repairs or maintenance in the Ordinary Course of Business, to the Knowledge of Sellers, no event has occurred or circumstance exists which, with or without the delivery of notice, the passage of time or both, would constitute a breach or default, or permit the termination, modification or acceleration of rent under the applicable Lease (and there is no pending notice of default under any Lease where there is a cure period currently ongoing); provided, however, if and to the extent that the Bankruptcy Cases result in or constitute a basis for a default or breach of any such Lease, then such representations and warranty shall be deemed to be modified to take into account the disclosure of the Bankruptcy Cases and that the same is or constitutes a basis for a breach or default under the applicable Lease. Each Lease is in full force and effect and is the valid, binding and enforceable obligation of such Seller, and, to the Sellers' Knowledge, each other party thereto in accordance with its terms. Other than as set forth on Schedule 5.5(b), Sellers have accepted full possession of each individual Leased Real Property and are currently occupying and using same pursuant to the terms of the applicable Lease. None of the Leased Real Property is subject to any sublease, license, sublicense or grant to any Person of any right to the use, occupancy or enjoyment of the Leased Real Property

or any portion thereof, except as set forth on Schedule 5.5(b). The Leased Real Property is not subject to any Encumbrances that materially impact or interfere with the Business. To Sellers' Knowledge, the Leased Real Property is not subject to any use restrictions, exceptions, reservations or limitations which in any material respect interfere with or impair the present and continued use thereof in the Ordinary Course of Business. No security deposit or portion thereof deposited with respect to any Lease has been applied in respect of a breach or default under such Lease which has not been re-deposited in full. Except as set forth on Schedule 5.5(b), no Seller has pledged, collaterally assigned, granted any mortgage or other security interest in, or otherwise encumbered any Lease or any interest therein. Except as set forth on Schedule 5.5(b), no Seller has waived any rights under any Lease that would be in effect on or after the date of this Agreement and that would be adverse to any Seller.

(c) The Leased Real Properties constitute all interests in real property (i) currently used, occupied or held for use in connection with the Business in the Ordinary Course of Business and (ii) necessary for the continued operation of the Business in the Ordinary Course of Business. None of the Sellers has received any written notice within the past three (3) years that any Leased Real Property (or any portion thereof) is not in compliance with any Legal Requirements including fire, health, building, use, occupancy and zonings laws which has not been cured. To the Knowledge of Sellers, other than with respect to routine repairs or maintenance in the Ordinary Course of Business, the Leased Real Properties, including all buildings, structures, Improvements and fixtures constituting a part thereof, are in good operating condition and repair without structural defects, not in need of maintenance or repair except for ordinary routine maintenance and repair, are, to the Knowledge of Sellers, structurally sound with no known material defects and in conformity with all applicable Legal Requirements currently in effect, are in compliance with the requirements of the applicable Lease, are in compliance with all applicable Legal Requirements including fire, health, building, use, occupancy and zonings laws, and are sufficient for their current and contemplated uses. All mechanical and other systems located at the Leased Real Properties are in good operating condition in all material respects, and no condition exists requiring repairs (other than routine maintenance) or alterations thereof. To the Knowledge of Sellers, each parcel of Leased Real Property is properly zoned for its present use under applicable zoning ordinances, and there are no pending or threatened actions or proceedings that could result in a modification or termination of such zoning.

(d) None of the Sellers has received any written notice within the past three (3) years from any insurance company that has issued a policy with respect to any Leased Real Property requiring performance by Sellers of any structural or other repairs or alterations to such Leased Real Property that have not been completed.

(e) The existing Utilities at the Leased Real Properties are adequate to serve the utility needs of the Leased Real Properties and the Business conducted thereon. All approvals, licenses and Permits required for the Utilities have been obtained and are in full force and effect. All of the Utilities are installed and operating, and all installation and connection charges have been paid in full.

(f) None of the Sellers is obligated under or is a party to, any obligation to purchase, acquire, sell, assign or dispose of any real estate or any portion thereof or interest therein, including the Leased Real Properties or any portion thereof.

(g) There does not exist any actual, and, to the Knowledge of the Sellers, there is no threatened or contemplated, condemnation or eminent domain proceeding (or any consensual agreement in lieu thereof) or rezoning application or proceeding with respect to any Leased Real Property.

(h) Other than as set forth on Schedule 5.5(h), and except for any routine maintenance and repairs, no work has been done at any Leased Real Property by, through or under any Seller, and no materials have been supplied to any Leased Real Property by, through or under Seller, that have not been paid for, and, other than as set forth on Schedule 5.5(h), there are no materialman's liens or mechanic's liens affecting any Leased Real Property.

(i) Other than as set forth on Schedule 5.5(j), all "landlord work," all "tenant work" and any corresponding credits (or credits in lieu thereof) contemplated or required under all Leases have been completed (or credited, as applicable) in accordance with the applicable Lease and accepted by the applicable Seller, and no capital improvements are required to be made to any Leased Real Property pursuant to the terms of any Lease.

(j) Other than as set forth on Schedule 5.5(k), no Seller has received any written notice within the past three (3) years of any increase in the current assessed valuation of any Leased Real Property or any notice of any planned or contemplated special assessments that would be such Seller's obligation to pay under any Lease, or any written notice of any planned changes to zoning laws applicable to any Leased Real Property.

(k) Each parcel of Leased Real Property has access to a public street adjoining the Leased Real Property, and such access is not dependent on any land or other real property interests which is not included in the Leased Real Property.

5.6 Environmental and Health and Safety Matters. Except as set forth on Schedule 5.6:

(a) the Acquired Assets (including the Leased Real Properties) and Sellers' operation of the Business is in compliance in all material respects with all Environmental, Health, and Safety Laws;

(b) none of the Sellers has received any written or, to Seller's Knowledge, oral notice, report or other information regarding any actual or alleged violation, non-compliance, liability or potential liability regarding environmental matters or compliance with Environmental, Health and Safety Laws with regard to any of the Acquired Assets or the Business, or any prior business for which the Sellers have retained liability under any Contract or Environmental, Health and Safety Laws, in each case which remains pending or unresolved or is the source of ongoing obligations;

(c) to Seller's Knowledge, the Acquired Assets (including the Leased Real Properties) do not contain, and have not previously contained, any Hazardous Substances in amounts or concentrations which (i) constitute or constituted a violation in any material respect of or (ii) could reasonably be expected to give rise to material liability, including liability for response costs, corrective action costs, personal injury, property damage or natural resources damage, under any applicable Environmental, Health and Safety Laws;

(d) none of the Sellers nor any other Person, has handled, stored, transported, disposed of, arranged for or permitted the disposal of, or Released any substance, including any Hazardous Substances, with respect to the Acquired Assets or the Business, in a manner that has given or could reasonably be expected to give rise to material liability, including material liability for response costs, corrective action costs, personal injury, property damage or natural resources damage, under any applicable Environmental, Health and Safety Laws;

(e) no Action is pending or, to the Sellers' Knowledge, threatened under any Environmental, Health and Safety Laws against Sellers or with respect to the Acquired Assets or the Business, nor are there any Orders, or other similar administrative or judicial requirements outstanding under any Environmental, Health and Safety Law binding against the Sellers or otherwise with respect to the Acquired Assets or the Business;

(f) to Seller's Knowledge, neither the Transaction Documents nor the consummation or performance of any of the transactions contemplated hereby will result in any liabilities for site investigation or cleanup, or require the consent of any Person, pursuant to any Environmental, Health and Safety Law, including any so-called "transaction-triggered" or "responsible property transfer" requirements;

(g) none of the Sellers have assumed or undertaken any material liabilities, including any obligation for corrective or remedial action, of any other Person relating to Environmental, Health and Safety Laws;

(h) Sellers have made available or provided Buyer with copies of all material environmental reports, assessments, audits (including environmental compliance audits), evaluations, studies, and tests in their possession or within their reasonable control relating to the Business or the Acquired Assets (including the Leased Real Property), whether generated by Sellers or others, including environmental audits and environmental site assessments;

(i) Except as specifically identified on Schedule 5.6(i), to Sellers' Knowledge, none of the following exists at the Leased Real Properties: (i) under or above-ground storage tanks, (ii) asbestos containing material in a form or condition, (iii) materials or equipment containing polychlorinated biphenyls or (iv) landfills, surface impoundments or waste disposal areas; and

(j) To Sellers' Knowledge, no facts, events or conditions relating to the Acquired Assets or the Business will prevent, hinder or limit continued compliance in all material respects with Environmental Laws or give rise to material Liabilities under Environmental Laws.

5.7 Title to Acquired Assets. Immediately prior to Closing, Sellers have good, valid, exclusive and marketable title to, or, in the case of property leased or licensed by Sellers, a valid, binding and enforceable leasehold or licensed interest in, all of the Acquired Assets, free and clear of all Encumbrances, except for Permitted Encumbrances. The Acquired Assets consisting of personal property are in good operating condition and repair (reasonable wear and tear excepted), in all material respects, and are suitable for the purposes for which they are presently used. No Seller has taken any action, or failed to take any action, which action or failure

would preclude or prevent Buyer as a legal matter from conducting the Business after the Closing as currently conducted in all material respects.

5.8 Taxes.

(a) Sellers have each timely filed all material Tax Returns required to be filed with respect to the Business and/or the Acquired Assets with the appropriate Governmental Authorities (taking into account any applicable extension of time to file). All material Taxes (other than Taxes the nonpayment thereof is permitted or required by the Bankruptcy Code) relating to the Business and/or the Acquired Assets that have become due and payable, whether or not shown to be payable on such Tax Returns, have been timely paid. No examination of any such material Tax Return of Sellers (with respect to the Acquired Assets or the Business) is currently in progress by any Governmental Authority and none of the Sellers has received written notice of any contemplated examination of any such material Tax Return (with respect to the Acquired Assets or the Business). No adjustment has been proposed to a Seller in writing with respect to any such material Tax Returns (with respect to the Acquired Assets or the Business) by any Governmental Authority that has not been resolved.

(b) Sellers have not received written notice of any material Tax deficiency outstanding, proposed or assessed against or allocable to the Business and/or the Acquired Assets, which has not been resolved or terminated, and Sellers have not outside of the Ordinary Course of Business for any material Tax executed any waiver of any statute of limitations in respect of Taxes nor agreed outside of the Ordinary Course of Business to any extension of time with respect to a material Tax assessment or deficiency, in each case, with respect to the Business and/or the Acquired Assets, which waiver or extension is still in effect. There are no material pending or threatened (in writing) audits, investigations, disputes, notices of deficiency, claims or other actions for or relating to any Liability for any Taxes relating to the Business and/or the Acquired Assets.

(c) There are no liens for material Taxes (other than Permitted Encumbrances and Encumbrances for Taxes the nonpayment of which is permitted or required by the Bankruptcy Code) upon any of the Acquired Assets.

Notwithstanding anything in this Agreement to the contrary, the representations and warranties in this Section 5.8 and in Section 5.12 (insofar as they relate to Taxes) shall constitute the sole and exclusive representations and warranties in this Agreement by the Sellers with respect to Taxes. No representation or warranty is made with respect to a Post-Closing Tax Period.

5.9 Legal Proceedings. Except for the Bankruptcy Cases and as set forth on Schedule 5.9, there is no Action or Order pending, outstanding or, to Sellers' Knowledge, threatened, against or related to the Business or any Seller, whether at law or in equity, whether civil or criminal in nature or by or before any arbitrator or Governmental Authority, nor, to the Sellers' Knowledge, are there any investigations relating to the Business or any Seller, pending or threatened by or before any arbitrator or any Governmental Authority, which, if determined adversely, would reasonably be expected to be material to the Business or the Acquired Assets, taken as a whole.

5.10 Compliance with Legal Requirements; Permits.

(a) Except as set forth on Schedule 5.10(a), Sellers have conducted the Business and own and operate the Acquired Assets in accordance, in all material respects, with all Legal Requirements and material Permits applicable to Sellers and the Acquired Assets, and the Business is in compliance, in all material respects, with all applicable Legal Requirements and material Permits and has obtained all material approvals, authorizations and clearances necessary for owning and operating the Acquired Assets and has made all necessary filings with all Governmental Authorities having jurisdiction necessary for owning and operating the Acquired Assets. Except as set forth on Schedule 5.10(a), the Sellers have not received any written notice or, to the Knowledge of the Sellers, any oral notice within the past three (3) years from a Governmental Authority that alleges that the Business is not in material compliance with any Legal Requirement or material Permit applicable to the Business or the operations or properties of the Business or the Acquired Assets or that states the intention on the part of any issuing authority to cancel, suspend or modify any Permit material to the current operation and conduct of the Business and the Acquired Assets.

(b) All Permits held by the Sellers are set forth on Schedule 5.10(b). The Sellers hold all of the material Permits (including material Permits required pursuant to Environmental, Health and Safety Laws) necessary for the occupation of their facilities, to operate the Acquired Assets and conduct the Business as currently conducted. All of such material Permits are in full force and effect and no Seller is in default under or in violation of any such material Permit, except where such failure to be in full force and effect would not, individually or in the aggregate, reasonably be expected to be material to the Business or the Acquired Assets, taken as a whole. No suspension, revocation or cancellation of any of such material Permits is, to the Knowledge of the Sellers, threatened or contemplated, except with respect to regular periodic expirations and renewals thereof, which renewals, to the Knowledge of the Sellers, will be granted. No Seller has had within the past three (3) years any such material Permits appealed, denied, revoked, restricted or suspended and no Seller is currently a party to any proceedings involving the possible appeal, denial, revocation, restriction or suspension of any such material Permits or any of the privileges granted thereunder.

5.11 Labor Matters.

(a) None of the Sellers is party to or subject to any collective bargaining agreements, works council agreements, labor union contracts, trade union agreements, or other agreements, including imposed terms and conditions of employment (each a "***Collective Bargaining Agreement***") with any union, works council, or labor organization (each a "***Union***", and collectively, "***Unions***"), and, as of the Execution Date, no Collective Bargaining Agreement is being negotiated by any of the Sellers. In the past three (3) years, (i) to Sellers' Knowledge, no Union or group of Employees or former employees of Sellers has sought to organize any employees for purposes of collective bargaining, made a demand for recognition or certification, sought to bargain collectively with any of the Sellers, or filed a petition for recognition with any Governmental Authority, and (ii) to the Knowledge of Sellers, there have been no actual or, to Sellers' Knowledge, threatened strikes, lockouts, slowdowns, work stoppages, boycotts, handbilling, picketing, walkouts, demonstrations, leafleting, sit-ins, sick-outs, or other forms of organized labor disruption with respect to any of the Sellers.

(b) Sellers have provided to Buyer true, complete and accurate lists of (i) each Employee, together with each such Employee's name, job title, start date, work location, subsidiary affiliation/direct employer, annual salary or hourly wage rate, part-time, full-time, temporary or other status, exempt or non-exempt status, visa status (if not a United States citizen) and date of visa expiration, and whether or not any such individual is on an approved leave of absence, including the basis of the leave of absence and expected date of return and (ii) each individual independent contractor of the Sellers, together with each such individual's name, location, compensation arrangement and history, and a description of the services provided.

(c) Except as set forth on Schedule 5.11(c), (i) within the past three (3) years, no Seller has failed to provide advance notice of layoffs or terminations as required by the Worker Adjustment and Retraining Notification Act of 1988, as amended and including any similar state, province or local Legal Requirement, or any other applicable Legal Requirements for employees outside the United States, regarding the termination or layoff of employees (collectively, the "***WARN Act***") or has incurred any liability or obligation under such Legal Requirements; (ii) within the past three (3) years, the Sellers have been in material compliance with all applicable Legal Requirements relating to labor and employment, including but not limited to all Legal Requirements relating to employment practices; the hiring, promotion, assignment, and termination of employees; discrimination; equal employment opportunities; disability; labor relations; wages and hours; FLSA, classification of independent contractors, hours of work; payment of wages; immigration; workers' compensation; employee benefits; background and credit checks, working conditions; occupational safety and health; family and medical leave; or employee terminations; employee data privacy and data protection; (iii) there are no pending or, to Sellers' Knowledge, threatened, lawsuits, grievances, unfair labor practice charges, arbitrations, charges, investigations, hearings, actions, claims, or proceedings (including any administrative investigations, charges, claims, actions, or proceedings) against the Sellers brought by or on behalf of any applicant for employment, any Employee or former employee, representative, agent, consultant, independent contractor, subcontractor, leased employee, volunteer, or "temp" of the Sellers, or any group or class of the foregoing, any Governmental Authority, any person alleging to be an Employee or former employee, or any group or class of the foregoing, alleging violation of any labor or employment Legal Requirements, breach of any Collective Bargaining Agreement, breach of any express or implied contract of employment, wrongful termination of employment, or any other discriminatory, wrongful, or tortious conduct in connection with the employment relationship; (iv) each of the Employees has all work permits, immigration permits, visas, or other authorizations required by Legal Requirements for such Employee given the duties and nature of such Employee's employment; (v) none of the Sellers is or has been party to a settlement agreement with a current officer or current senior executive of any of the Sellers that involves allegations relating to discrimination, harassment (including sexual harassment), or retaliation by such current officer or current senior executive; (vi) in the past three (3) years, to the Knowledge of Sellers, in the course of the performance of their employment duties, no current or former officer, senior executive or leader, or key personnel of Sellers has engaged in any conduct, has been or is being investigated for any conduct, has been or is being subjected to any disciplinary action in connection with any conduct, or has aided or assisted any other Person to engage in any conduct or cover up of such conduct, that could cause or has caused any material damage to the reputation or business of Sellers, including, but not limited to, any conduct constituting sexual misconduct, harassment (including sexual harassment), discrimination or retaliation; and (vii) and

no individual has been improperly excluded from, or wrongly denied benefits under, any Benefit Plan.

5.12 Employee Benefits.

(a) Schedule 5.12(a) sets forth a true and complete list of each material Benefit Plan. All references to "Sellers" in this Section 5.12(a) shall refer to Sellers, each of their Subsidiaries and any ERISA Affiliate.

(b) No Benefit Plan is, and Sellers and its ERISA Affiliates do not maintain, sponsor, contribute to, or have any obligation to contribute to, or have any liability (contingent or otherwise) with respect to, and within the last six (6) years, have not sponsored, maintained, contributed to or had any obligation to contribute to or any liability (contingent or otherwise) with respect to any plan that is, (i) subject to Title IV of ERISA or Section 412 of the Code, (ii) a "defined benefit plan" (as defined in Section 3(35) of ERISA) or any other plan that is or was subject to Section 302 or Title IV of ERISA, (iii) a "multiemployer plan" (within the meaning of Section 3(37) of ERISA) ("***Multiemployer Plan***"), (iv) a "multiple employer plan" (within the meaning of Section 413 of the Code), (v) a plan or arrangement that provides or promises to provide post-retirement or post-termination health or life insurance or other similar benefits (other than health continuation coverage required by Part 6 of Subtitle B of Title I of ERISA or Section 4980B of the Code), (vi) a "multiple employer welfare arrangement" within the meaning of Section 3(40) of ERISA, (vii) an "employee pension benefit plan" within the meaning of Section 3(2) of ERISA and that is not intended to be qualified under Section 401(a) of the Code or (viii) a non-U.S. defined benefit pension plan.

(c) (i) Each Assumed Benefit Plan and related trust and, except as would not reasonably be expected to result in liability to Buyer, each Benefit Plan that is not an Assumed Benefit Plan and related trust has been established, administered and maintained in all material respects in accordance with its terms and in compliance with the applicable provisions of ERISA, the Code and all other Legal Requirements; (ii) with respect to each Assumed Benefit Plan, and except as would not reasonably be expected to result in liability to Buyer, each Benefit Plan that is not an Assumed Benefit Plan all reports, returns, notices and other documentation that are required to have been filed with or furnished to the Internal Revenue Service (the "***IRS***"), the United States Department of Labor ("***DOL***") or any other Governmental Authority, or to the participants or beneficiaries of such Benefit Plan have been filed or furnished on a timely basis; (iii) each Benefit Plan that is intended to be qualified within the meaning of section 401(a) of the Code is so qualified and has received a favorable determination or opinion letter from the IRS (with respect to the most recent IRS review cycle available) to the effect that the Benefit Plan satisfies the requirements of section 401(a) of the Code and that its related trust is exempt from taxation under section 501(a) of the Code and nothing has occurred, and, to the Knowledge of Sellers, there are no facts or circumstances that could reasonably be expected to cause the loss of such qualification or the imposition of any material liability, penalty or tax under ERISA, the Code or any other Legal Requirements; (iv) no Benefit Plan that is intended to be qualified within the meaning of section 401(a) of the Code has been partially or completely terminated; (v) other than routine claims for benefits, no liens, lawsuits, actions or complaints to or by any Person or Governmental Authority have been made, commenced, filed or threatened in writing against any Assumed Benefit Plan or against Sellers with respect to any Assumed Benefit Plan or, to the

Knowledge of Sellers, against any other person or party with respect to any Assumed Benefit Plan and, to the Knowledge of Sellers, no such liens, lawsuits, actions or complaints are contemplated or threatened in writing with respect to any Assumed Benefit Plan; (vi) no individual who has performed services for any Seller has been improperly excluded from participation in any Assumed Benefit Plan or any Benefit Plan that is not an assumed Benefit Plan except as would not reasonably be expected to result in liability to Buyer and (vii) within the past three (3) years, no Assumed Benefit Plan has been the subject of any examination or audit by a Governmental Authority or the subject of an application or filing under or is a participant in, an amnesty, voluntary compliance, self-correction or similar program or proceedings sponsored by any Governmental Authority which poses the possibility of any ongoing material Liability to Sellers or any Assumed Benefit Plan.

(d) None of the Sellers nor, to the Knowledge of Sellers, any other "party in interest" or "disqualified person" with respect to any Assumed Benefit Plan has engaged in a non-exempt "prohibited transaction" within the meaning of section 406 of ERISA or section 4975 of the Code involving such Assumed Benefit Plan which, individually or in the aggregate, could reasonably be expected to subject Sellers to Liability, tax or penalty imposed by section 4975 of the Code or sections 501, 502 or 510 of ERISA. No fiduciary has incurred any liability for breach of fiduciary duty or any other failure to act or comply with the requirements of ERISA, the Code or any other Legal Requirements in connection with the administration or investment of the assets of any Assumed Benefit Plan.

(e) All liabilities or expenses of Sellers in respect of any Benefit Plan (including workers' compensation) which have not been paid, have been properly accrued on Sellers' most recent financial statements in compliance with GAAP. All contributions (including all employer contributions and employee salary reduction contributions) or premium payments required to have been made under the terms of any Benefit Plan, or in accordance with Legal Requirements, as of the Execution Date have been timely made or reflected on Sellers' financial statements in accordance with GAAP.

(f) Except as set forth on Schedule 5.12(f), neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (either alone or in combination with another event) (i) result in any payment becoming due, or increase the amount of any compensation due, to any current or former officer, director, employee, leased employee, consultant or agent (or their respective representatives or beneficiaries) of Sellers under any Assumed Benefit Plan and, except as would not reasonably be expected to result in liability to Buyer, each Benefit Plan that is not an Assumed Benefit Plan; (ii) increase any benefits otherwise payable under any Assumed Benefit Plan or any Benefit Plan that is not an Assumed Benefit Plan except as would not reasonably be expected to result in liability to Buyer; (iii) result in the acceleration of the time of payment or vesting of any such compensation or benefits under any Assumed Benefit Plan or any Benefit Plan that is not an Assumed Benefit Plan except as would not reasonably be expected to result in liability to Buyer; (iv) result in a non-exempt "prohibited transaction" within the meaning of section 406 of ERISA or section 4975 of the Code or (v) result in the payment of any amount that could, individually or in combination with any other such payment, constitute an "excess parachute payment", as defined in section 280G(b)(1) of the Code and the regulations promulgated thereunder that could result in a lost tax deduction for Buyer under Section 280G of the Code. No Seller has any obligation to "gross-up" or reimburse any Person for

taxes or related interest or penalties incurred by such Person, including under Section 4999, 409A, or 105(h) of the Code.

(g) Each Assumed Benefit Plan that is subject to section 409A of the Code has been administered in compliance with its terms and the operational and documentary requirements of section 409A of the Code and the final regulations and official guidance promulgated thereunder.

(h) With respect to each material Benefit Plan and Assumed Benefit Plan, Sellers have provided to Buyer, a true, correct and complete copy (or, to the extent no such copy exists or the appliable Benefit Plan is not in writing, an accurate written description) thereof and, to the extent applicable: (i) all documents constituting the plan and all amendments thereto; (ii) any related trust agreement or other funding instrument and all other material contracts currently in effect with respect to such plan (including all administrative agreements, group insurance contracts and group annuity contracts); (iii) the most recent IRS determination letter and/or opinion letter for each plan, if applicable; (iv) the most recent summary plan description and summary of material modifications; (v) the three most recent Forms 5500 and schedules thereto; (vi) all discrimination tests for the most recent plan year; (vii) for the last three (3) years, all non-routine correspondence with the IRS, the DOL and any other Governmental Authority.

(i) Each Assumed Benefit Plan, and each Benefit Plan that is not an Assumed Benefit Plan except as would not reasonably be expected to result in liability to Buyer, is in compliance in all material respects with, and the operation of each such plan will not result in any Liability to any Seller under, the Patient Protection and Affordable Care Act and its companion bill, the Health Care and Education Reconciliation Act of 2010, to the extent applicable.

(j) Except as set forth on Schedule 5.12(j), Sellers have no obligation to create any additional employee benefit or compensation plans, policies or arrangements or, except as may be required by law, to modify any Assumed Benefit Plan. Except as set forth on Schedule 5.12(j), the Sellers have no commitments or obligations and no Seller has made any representations to any employee, officer, director, contractor or consultant, whether or not legally binding, to adopt, amend, modify or terminate any Benefit Plan, in connection with the consummation of the transactions contemplated by this Agreement or otherwise.

(k) With respect to each Benefit Plan (and any other benefit plan for which any Seller could have any liability) that is subject to the Legal Requirements of relevant jurisdictions other than the United States (each, a "***Foreign Plan***"): (i) each Foreign Plan is in compliance in all material respects with the applicable Legal Requirements regarding employee benefits, mandatory contributions and retirement plans of each jurisdiction in which each such Foreign Plan is maintained, to the extent those Legal Requirements are applicable to such Foreign Plan; (ii) each Foreign Plan has been administered at all times and in all material respects in accordance with its terms; (iii) there are no pending investigations by any Governmental Authority involving any Foreign Plan, and no pending claims (except for claims for benefits payable in the normal operation of the Foreign Plans), suits or proceedings against any Foreign Plan or asserting any rights or claims to benefits under any Foreign Plan; (iv) the transactions contemplated by this Agreement, by themselves or in conjunction with any other transactions, will not create or otherwise result in any material liability, accelerated payment or any enhanced benefits with

respect to any Foreign Plan and (v) all liabilities with respect to each Foreign Plan have been funded in accordance with the terms of such Foreign Plan and have been properly reflected in the Financial Statements of the Company.

5.13 Intellectual Property; Data Security; Data Privacy.

(a) Schedule 5.13(a) sets forth a true and complete list of all U.S. and foreign (i) registered Patents and pending patent applications; (ii) registered Trademarks and pending trademark applications; (iii) registered Copyrights and pending copyright applications; and (iv) Business Software and material unregistered Trademarks that is used or held for use in the conduct of the Business as currently conducted, in each case which are owned by a Seller as of the Execution Date. Except as set forth on Schedule 5.13(a), Sellers are the sole owners of all of the Intellectual Property set forth on Schedule 5.13(a), and each is subsisting, unexpired, valid and enforceable and all required filings and maintenance/renewal fees related to such Intellectual Property have been timely filed with and paid to the relevant Governmental Authorities and authorized registrars, and there are no such fees due within six (6) months of the date of this Agreement.

(b) Schedule 5.13(b) sets forth a true, accurate and complete list of all pending or, to Sellers' Knowledge, threatened Intellectual Property challenges either by a third-party or by a Seller. Except as disclosed on Schedule 5.13(b), to Sellers' Knowledge, (i) the conduct of the Business by Sellers as currently conducted (including the products and services currently sold or provided by Sellers) does not infringe or otherwise violate any Person's Intellectual Property rights, and no such claims are pending or threatened in writing against Sellers, and (ii) no Person is infringing or otherwise violating any Intellectual Property owned by Sellers, and no such claims are pending or threatened in writing against any Person by Sellers.

(c) The Acquired Assets and any rights provided to Buyer pursuant to the Transaction Documents include all third-party Intellectual Property rights required to conduct the Business as it is presently being conducted by Sellers, but only to the extent such rights are provided under Assumed Contracts.

(d) Schedule 5.13(d) sets forth a list of all software that both (i) relates to and is material to the Business and (ii) was developed by or for the Business or any Seller and which any Seller owns (the "***Business Software***"). To Sellers' Knowledge, no open-source software is incorporated into, integrated, distributed or bundled with Business Software in a manner that would require distribution of the source code of the Business Software to any third party.

(e) Sellers have taken reasonable security measures to protect the secrecy, confidentiality and value of all material Trade Secrets used in the Business. To Sellers' Knowledge, none of such Trade Secrets have been disclosed or authorized to be disclosed to any Person other than to employees or agents for use in connection with the Business or pursuant to a confidentiality or non-disclosure agreement, and no unauthorized disclosure of any such Trade Secrets has occurred, except as set forth on Schedule 5.13(e).

(f) Schedule 5.13(f) lists each material Contract through which Intellectual Property owned by a third party is licensed to any Seller or the Business that is used

or held for use in the conduct of the Business as currently conducted, excluding Contracts for Business Software and any "off the shelf," "shrink-wrap" or "click-through" software licenses or similar agreements (the "***Third-Party Licenses***"). To Sellers' Knowledge, each such Third-Party License is valid, binding and enforceable in accordance with its terms, and no Seller is in material breach or default under any such agreement. None of the Sellers has received any written notice of any pending cancellation or non-renewal of any such Third-Party License.

(g) All Systems owned by the Sellers and required to conduct the Business as presently conducted by Sellers, including the Business Software owned by Sellers, (i) are included in the Acquired Assets, (ii) to Sellers' Knowledge, perform in conformance with their respective documentation in all material respects and, to Sellers' Knowledge, function in all material respects in accordance with all specifications and any other descriptions under which they were supplied, (iii) to Sellers' Knowledge, operate and perform in all material respects as is necessary for the operation of the Business as currently conducted (iv) to Sellers' Knowledge, are free from any material software defect, and (v) to Sellers' Knowledge, do not contain any ransomware, disabling codes or instructions, spyware, Trojan horses, worms, viruses or hardware components or software routines designed to permit unauthorized access to, or to disable, disrupt, impair, destroy or otherwise harm any Systems or Sensitive Data. to Sellers' Knowledge, within the last three (3) years, the conduct of the Business by Sellers complies in all material respects with all applicable Data Protection Laws, PCI DSS to the extent applicable, public privacy policies, and the obligations under their Contracts related to Data Handling, in each case, as applicable to Personal Data included in the Acquired Assets.

(h) Except as set forth on Schedule 5.13(h), within the past three (3) years, Sellers have not suffered any Security Incident with respect to Acquired Assets. To Sellers' Knowledge, no service provider (in the course of providing services for or on behalf of the Sellers) has suffered any Security Incident with respect to Acquired Assets. The Sellers have not received any written subpoenas, demands, or other written notices investigating, and no Action has been served on, or, to Sellers' Knowledge, initiated against any of the Sellers alleging, in each case, any violation of any Data Protection Laws or improper Data Handling practices with respect to Personal Data in the Acquired Assets.

5.14 Contracts. Schedule 5.14 sets forth a complete list, as of the Execution Date, of all Material Contracts (excluding any Leases) to which any Seller is a party. Except as set forth on Schedule 5.14, no Seller has assigned, delegated or otherwise transferred to any third party any of its rights or obligations with respect to any such Contract. Each Contract listed on Schedule 5.14 is in full force and effect and is a valid and binding obligation of each Seller party thereto in accordance with its terms and conditions, in each case except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity, and as set forth on Schedule 5.14. Upon entry of the Sale Order and payment by Buyer of any Cure Costs, (i) no Seller will be in breach or default of its obligations under any Assumed Contract except in respect of the Bankruptcy Cases and any insolvency event related thereto, (ii) no condition exists that with notice or lapse of time or both would constitute a default by any Seller under any Assumed Contract except in respect of the Bankruptcy Cases and any insolvency event related thereto and (iii) to Sellers' Knowledge, no other party to any Assumed Contract is in breach or default thereunder, except in the case of clauses (i), (ii) and (iii) for any breaches or defaults that would not (A) be

enforceable against Sellers or Buyer under the Bankruptcy Code, or (B) individually or in the aggregate, have a Material Adverse Effect.

5.15 Sufficiency of Assets. Except for as set forth on Schedule 5.15, (a) the Acquired Assets, as of the Closing Date, constitute all of the assets, properties and rights necessary for Buyer to conduct the Business in substantially the same manner operated by the Sellers during the twelve (12) month period immediately prior to the Execution Date and (b) none of the Acquired Assets are owned by any Person other than Sellers.

5.16 Insurance. Sellers maintain the insurance policies set forth on Schedule 5.16, which Schedule 5.16 sets forth all insurance policies covering the property, assets, Employees, and operations of the Business (including policies providing property, casualty, liability and workers' compensation coverage), but except for any policy related to any Benefit Plan. Such policies are in full force and effect. Sellers have paid all premiums on such policies due and payable prior to the Closing Date. To Sellers' Knowledge, Sellers have not done anything by way of action or inaction that invalidates any such policies in whole or in part. The Leased Real Properties are insured with financially sound and reputable insurance companies in such amounts (after giving effect to any self-insurance compatible with the following standards), with such deductibles and covering such risks as are customarily carried by companies engaged in similar businesses and otherwise in compliance with the terms of the applicable Lease.

5.17 Brokers or Finders. Other than the Seller Retained Professional Fees, none of the Sellers are a party to any lease brokerage, commission or finder's agreement, and none of the Sellers have incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement, the other Transaction Documents or the transactions contemplated hereby or thereby for which Buyer is or will become liable.

5.18 Interests of Affiliates. No Affiliate of Sellers, or any of their respective equityholders, officers, directors, or employees, has any right, title or interest in or to any of the Acquired Assets, regardless of kind or character (whether real, personal or mixed, tangible or intangible, contingent or otherwise). The Business, as currently conducted, has been conducted solely by Sellers and not through any other Affiliate of any Seller. Other than as set forth on Schedule 5.18 and employment relationships and the payment of compensation and benefits in the Ordinary Course of Business, no obligations, Contracts or other liabilities exist between any Seller, on the one hand, and any non-Seller Affiliate of such Seller or their respective equityholders, officers, directors or employees, on the other hand ("***Affiliate Transactions***"), that relate to the operation of the Business, the use of the Acquired Assets or the Assumed Liabilities.

5.19 Bank Accounts. Schedule 5.19 sets forth a true, complete and correct list of each bank, deposit, securities, lock box or cash collection, management or other account or sub-account of the Sellers, including the title and number of the account and the financial or other institution at which such account is located (designating each authorized signatory).

5.20 Credit Support. Schedule 5.20 sets forth all Contracts or other requirements pursuant to which any Seller has, or is required to provide, performance, surety or similar bonds,

letters of credit or similar third-party assurances or Credit Support, and the amount of such bonds, letters of credit or assurances or Credit Support and the issuer thereof.

5.21 Anti-Corruption Laws, Anti-Money Laundering Laws, Sanctions and Ex-Im Laws.

(a) None of the Sellers nor any of their Subsidiaries, nor any officer, director, or to the Knowledge of Sellers, employee, or agent or other entity acting at the direction thereof, has directly or indirectly, on behalf of or with respect to the Business or the Acquired Assets: (a) made any contributions, payments or gifts of its property to or for the private use of any governmental official, employee or agent where either the payment or the purpose of such contribution, payment or gift is illegal under the laws of the United States, any state thereof or any other jurisdiction (foreign or domestic); (b) either established or maintained any unrecorded fund or asset for any purpose, or made any intentionally false or artificial entries on its books or records for any reason; (c) made any payments to any Person with the intention or understanding that any part of such payment was to be used for any purpose other than that described in the documents supporting the payment; (d) either made any contribution, or reimbursed any political gift or contribution made by any other Person, to candidates for public office, whether federal, state or local, where such contribution or reimbursement would be in violation of any Legal Requirement; (e) created or used any "off-book" bank or cash account or "slush fund;" or (f) engaged in any conduct constituting a violation of or otherwise violated Anti-Corruption Laws.

(b) None of the Sellers nor any of its Subsidiaries, nor any of their respective officers, directors, or to the Knowledge of Sellers, employees or agents, engaged with respect to the Business or Acquired Assets (collectively, "***Business Group Persons***"), is a Restricted Person.

(c) Each of the Sellers, their Subsidiaries and Business Group Persons with respect to the Business and the Acquired Assets has been during the past six years and is in compliance with Anti-Corruption Laws, Anti-Money Laundering Laws, Ex-Im Laws and Sanctions. Each of the Sellers and their Subsidiaries with respect to the Business and the Acquired Assets (i) have not had and do not have assets located in, or otherwise directly or indirectly derived or derives revenues from or engaged or engages in, investments, dealings, activities, or transactions in or with or involving any Sanctioned Country or Restricted Person, in each case, during the past six years, in violation of Sanctions; and (ii) have not imported into the United States any item manufactured wholly or in part with forced labor or in violation of the Uyghur Forced Labor Prevention Act or any other Legal Requirement.

(d) The Sellers have implemented and maintained policies and procedures designed to ensure compliance by the Sellers, their Subsidiaries and Business Group Persons with respect to the Business and the Acquired Assets with Anti-Corruption Laws, Anti-Money Laundering Laws, Ex-Im Laws and Sanctions.

(e) With respect to the Business and the Acquired Assets, at no time during the past five (5) years has any Seller or any of their Subsidiaries (i) made a voluntary, directed, or involuntary disclosure to any Governmental Authority with respect to any actual or potential violation under any Anti-Corruption Laws, Anti-Money Laundering Laws, Ex-Im Laws

or Sanctions; (ii) been the subject of pending or, to the Knowledge of Sellers, threatened Action, or any investigation by any Seller or any of their Subsidiaries involving the foregoing, that relates to a potential or actual violation of Anti-Corruption Laws, Anti-Money Laundering Laws, Ex-Im Laws or Sanctions; nor does a basis therefor exist; or (iii) received from a Governmental Authority any notice, request, or citation in writing for any actual or suspected violation of Anti-Corruption Laws, Anti-Money Laundering Laws, Ex-Im Laws or Sanctions.

(f) No part of the Purchase Price will be, directly or indirectly, used or otherwise lent, contributed, or otherwise made available, to any Person, (i) to fund any activity, business, or transaction of, with, or involving any Restricted Person or Sanctioned Country, or (ii) in any manner that would result in a violation of Sanctions, Ex-Im Laws, Anti-Money Laundering Laws or Anti-Corruption Laws by any Person (including any Party or any of their Affiliates).

5.22 Financial Statements. Sellers have delivered to Buyer the consolidated balance sheets of the Company and its Subsidiaries as of, and consolidated statements of operations, income, changes in stockholder's equity and cash flows for, the fiscal years ended December 31, 2023 and December 31, 2022 (collectively, the "***Annual Financial Statements***"). The Annual Financial Statements have been prepared in accordance with generally accepted accounting principles ("***GAAP***") consistently applied in accordance with the Company's past practice throughout the periods indicated. Sellers have also delivered to Buyer unaudited condensed consolidated balance sheets for the Company and its Subsidiaries as of September 30, 2024 (such date, the "***Interim Balance Sheet Date***", and such balance sheet, the "***Interim Balance Sheet***"), and the condensed consolidated statements of operations and cash flows for the period then ending (collectively, the "***Interim Financial Statements***"). The Interim Financial Statements have been prepared in accordance with GAAP consistently applied in accordance with Sellers' past practice except for the absence of footnotes and customary year-end adjustments. The Annual Financial Statements and the Interim Financial Statements (together, the "***Financial Statements***") (i) are true, correct and complete in all material respects, (ii) are in accordance in all material respects with the books and records of Sellers, (iii) have been prepared on a consistent basis with respect to each period covered thereunder (except as noted therein) and (iv) fairly present in all material respects the financial position of Sellers at the dates specified and the results of their operations for the period covered. The copies of the Financial Statements delivered to Buyer are true, correct and complete copies.

5.23 Undisclosed Liabilities. Sellers have no liabilities which, under GAAP, should be accrued or disclosed on a balance sheet of Sellers similar to that included in the Financial Statements (including the footnotes thereto), other than liabilities (a) reflected in, reserved against or otherwise described in the Interim Balance Sheet, (b) that have arisen since the Interim Balance Sheet Date in the Ordinary Course of Business and are similar in character and amount to the Liabilities set forth in the Interim Balance Sheet, (c) as to which Buyer will be acquiring Acquired Assets free and clear under the Sale Order, (d) liabilities otherwise disclosed in this Agreement, including as part of any Schedule to this Agreement, (e) liabilities contemplated by or in connection with this Agreement, the other Transaction Documents, or the transactions contemplated hereby or thereby or (e) that are otherwise disclosed on Schedule 5.23.

5.24 Absence of Certain Changes. Except as set forth on Schedule 5.24 or as expressly contemplated by this Agreement or the DIP Orders, from the Interim Balance Sheet Date to the Execution Date, Sellers have not:

(a) terminated, modified or amended in any respect any Material Contract or taken any action which violates, conflicts with or resulted in breach of any provision of, or constitutes a default under, any Material Contract;

(b) (A) purchased or otherwise acquired any material properties or assets (tangible or intangible) or sold, leased, transferred or otherwise disposed of any material Acquired Assets, except for purchases of materials and sales of Inventory in the Ordinary Course of Business, (B) permitted, allowed or suffered any of the Acquired Assets to be subjected to any Encumbrance (other than Permitted Encumbrances), other than immaterial subleases or (C) removed any Equipment or other material assets (other than Inventory) from the Leased Real Properties other than in the Ordinary Course of Business;

(c) waived or released any claim or rights included in or related to the Acquired Assets or the Business with a value individually or in the aggregate in excess of $500,000 or revalued any of the Acquired Assets, except for adjustments to the value of Inventory in the Ordinary Course of Business;

(d) entered into any Material Contracts with any third party related to the Acquired Assets or the Business, other than in the Ordinary Course of Business;

(e) made, or made any material commitments for, capital expenditures in excess of $1,000,000 except as set forth on Schedule 5.24(e);

(f) (A) hired any employee or independent contractor having base or guaranteed compensation in excess of $300,000 annually; (B) terminated any Key Person (other than for "cause"); (C) increased the annual base level of compensation of any Employee or independent contractor or former employee of Sellers whose annualized rate prior to such increase was in excess of $300,000 annually; (D) other than in accordance with the Approved Budget (as defined in the Final DIP Order), and Wages Motion Final Order (as defined in the Final DIP Order) paid any bonus, benefit, or other direct or indirect incentive compensation; (E) awarded any equity compensation awards (whether phantom or equity); (F) created any new severance pay, termination pay, vacation pay, company awards, salary continuation for disability, sick leave, deferred compensation, bonus, or other employee bonus, policy, benefit, or arrangement made to, for, or with any Employee or former employee, or otherwise modified, amended or terminated any such bonus, policy, benefit, or arrangement; (G) entered into any employment, compensation, severance, non-competition, or similar contract (or amended or waived any rights under any such contract) to which any Seller is a party other than in the Ordinary Course of Business; (H) adopted any new employee benefit plan with respect to Employees that would be a Benefit Plan if it existed on the Execution Date (including any employment agreement, severance agreement, change in control agreement, or transaction or retention bonus agreements); or (I) amended or terminated any Benefit Plan, except as required by applicable Legal Requirements;

(g) suffered any material damage or destruction to or loss of any material assets or properties whether or not covered by insurance;

(h) changed in any way Sellers' accounting methods, principles or practices other than required by changes in GAAP;

(i) incurred any Indebtedness other than (A) trade debt incurred in the Ordinary Course of Business, and (B) Indebtedness incurred pursuant to the Prepetition Term Loan Credit Agreement, the DIP Credit Agreement and the ABL Credit Agreement;

(j) allowed any Permit held by any Seller to terminate, expire or lapse; or

(k) agreed or committed to do any of the foregoing.

5.25 Material Suppliers; Material Customers. Schedule 5.25(a) sets forth a true, correct and complete list of the ten (10) largest suppliers (the "***Material Suppliers***") of the Business for the year ended December 31, 2023, and nine (9) months ended September 30, 2024, calculated based on the total amount of purchases from such suppliers during such period, together with, in each case, the amount of purchases from such supplier in the applicable period. Schedule 5.25(b) sets forth a true, correct and complete list of the ten (10) largest customers (the "***Material Customers***") of the Business for the year ended December 31, 2023, and nine (9) months ended September 30, 2024, calculated based on the total amount of purchases by such customers during such period, together with, in each case, the amount of purchases by such customers in the applicable period. No Material Supplier or Material Customer has terminated, cancelled or failed to renew, or given any Seller written notice, or to the Knowledge of the Sellers, oral notice that it intends to terminate, reduce, cancel, modify or fail to renew, its business relationship with the Business (whether or not subject to a Contract), nor has such Material Supplier or Material Customer stated its intention in writing threatened to do so.

5.26 Products; Warranties. Except as set forth on Schedule 5.9 or Schedule 5.26, there is no currently pending Action for product liability or warranty by a third party against a Seller (whether based on contract or tort and whether relating to personal injury, including death, or economic loss) in excess of $500,000, individually, or $1,000,000, in the aggregate, or series of related claims, arising from (i) the services or Products rendered by the Business during the last three (3) years, or (ii) the operation of the Business during the last three (3) years.

5.27 Warranties Exclusive. EXCEPT AS EXPRESSLY SET FORTH IN THIS Article 5, SELLERS MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, IN RESPECT OF THE BUSINESS, ANY OF THEIR ASSETS (INCLUDING THE ACQUIRED ASSETS), LIABILITIES (INCLUDING THE ASSUMED LIABILITIES) OR OPERATIONS, INCLUDING, WITH RESPECT TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, OR NON-INFRINGEMENT, AND ANY SUCH OTHER REPRESENTATIONS OR WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED AND NONE SHALL BE IMPLIED AT LAW OR IN EQUITY. BUYER HEREBY ACKNOWLEDGES AND AGREES THAT BUYER IS

PURCHASING THE ACQUIRED ASSETS ON AN "AS IS, WHERE IS" BASIS AFTER GIVING EFFECT TO THE TERMS CONTAINED HEREIN.

## ARTICLE 6

### REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Sellers as follows:

6.1 Organization and Good Standing. Buyer is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware. Buyer has the requisite power and authority to own or lease and to operate and use its properties and to carry on its business as now conducted.

6.2 Authority; Validity; Consents. Buyer has the requisite power and authority necessary to enter into and perform its obligations under this Agreement and the other Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement by Buyer and the consummation by Buyer of the transactions contemplated herein have been duly and validly authorized by all requisite limited liability company or corporate actions in respect thereof. This Agreement has been duly and validly executed and delivered by Buyer and each other Transaction Document to which Buyer is a Party will be duly and validly executed and delivered by Buyer, as applicable, at the Closing. This Agreement and the other Transaction Documents to which Buyer is a party constitute the legal, valid and binding obligation of Buyer, enforceable against Buyer in accordance with their respective terms, except in each case as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity. Except as set forth on Schedule 6.2, Buyer is not or will not be required to give any notice to or obtain any consent from any Person (including any Governmental Authority) in connection with the execution and delivery of this Agreement and the other Transaction Documents to which it is a Party or the consummation or performance of any of the transactions contemplated hereby or thereby, except for such notices, filings and consents, the failure of which to provide, make or obtain, would not, individually or in the aggregate, materially affect Buyer's ability to perform its obligations under this Agreement or any other Transaction Documents or to consummate the transactions contemplated hereby or thereby.

6.3 No Conflict. Neither the execution and delivery by Buyer of this Agreement or the Transaction Documents to which it is a party nor the consummation of the transactions contemplated hereby or thereby nor compliance by it with any of the provisions hereof or thereof (a) conflict with or result in a violation of (i) any provision of the organizational documents of Buyer or (ii) any judgment, order, writ, injunction, decree, statute, law, ordinance, rule or regulation in any material respect binding upon Buyer or (b) violate, conflict with, or result in a breach of any of the terms of, or constitute a default under, or give rise to any right of termination, modification, cancellation or acceleration under, (i) any note, bond, mortgage, indenture, deed of trust, contract, commitment, arrangement, license, agreement, lease or other instrument or obligation to which Buyer is a party or by which Buyer may be bound or to which any of Buyer's assets may be subject or affected in any material respect and that, in each case, is material to the

business of Buyer, or (ii) any material license, permit, authorization, consent, order or approval of, or registration, declaration or filings with, any Governmental Authority.

6.4 Credit Bid and Release. The requisite lenders under each of the New Money DIP Credit Agreement and the Prepetition Term Loan Credit Agreement shall have executed and delivered to the New Money DIP Agent and the Term Loan Agent pursuant to the New Money DIP Credit Agreement and the Prepetition Term Loan Credit Agreement, as applicable, on the Execution Date, a complete and accurate copy of the Direction Letter to authorize the New Money DIP Agent and the Term Loan Agent, as applicable, and Buyer to consummate the Credit Bid and Release, and Buyer is duly authorized, to, among other things, enter into and perform and comply with this Agreement and consummate the transactions contemplated hereby, including the making and consummation of the Credit Bid and Release. The requisite lenders under each of the New Money DIP Credit Agreement and the Prepetition Term Loan Credit Agreement have not entered into any side letters, agreements or other arrangements relating to the Direction Letter that would materially and adversely affect the Buyer's ability to consummate the transactions contemplated by this Agreement.

6.5 Solvency. As of the Closing and immediately after consummating the transactions contemplated by this Agreement and the other transactions contemplated by the Transaction Documents, Buyer and its subsidiaries (taken as a whole) will not, (a) be insolvent (either because their financial condition is such that the sum of their debts is greater than the fair value of their assets or because the present fair value of their assets will be less than the amount required to pay their Liability (calculated as the amount that would reasonably be expected to become an actual and matured Liability) on their debts as they become absolute and matured); (b) have unreasonably small capital with which to engage in their respective businesses; or (c) have incurred or plan to incur debts beyond their ability to repay such debts as they become absolute and matured.

6.6 Brokers or Finders. Neither Buyer nor any Person acting on behalf of Buyer has paid or become obligated to pay any fee or commission to any broker, finder, investment banker, agent or intermediary for or on account of the transactions contemplated by this Agreement for which any Seller is or will become liable.

6.7 Legal Proceedings. There is no Action or Order pending, outstanding or, to Buyer's knowledge, threatened against or affecting Buyer, whether at law or in equity, whether civil or criminal in nature or by or before any arbitrator or Governmental Authority, that will materially and adversely affect Buyer's performance under this Agreement or the consummation of the transactions contemplated by this Agreement.

## ARTICLE 7

## ACTIONS PRIOR TO THE CLOSING DATE

7.1 Access and Reports.

(a) During the period from and including the Execution Date through and including the Closing Date or the earlier termination of this Agreement in accordance with the

provisions of Article 11, if and to the extent permitted under each applicable Lease, Sellers shall (i) afford Buyer and its Representatives full access, upon reasonable notice during normal business hours, to its personnel, the Leased Real Properties, landlords, tenants, licensors, licensees, suppliers, properties, facilities, books, Permits, Contracts and records, and furnish promptly to Buyer all information concerning the Acquired Assets, the Business, properties, any Benefit Plans and personnel as may be reasonably requested; (ii) furnish to Buyer such financial and operating data and other information relating to Sellers, the Business and the Acquired Assets as may be reasonably requested (including Tax Returns that are solely or primarily related to the Business and the Acquired Assets); (iii) permit Buyer to make such reasonable inspections and, at Buyer's expense, copies as Buyer may require and (iv) instruct the executive officers and senior business managers, employees, counsel, auditors and financing advisors of Sellers to reasonably cooperate with Buyer and its Representatives regarding the same. No investigation pursuant to this Section 7.1 or by Buyer or its Representatives at any time prior to or following the Execution Date shall affect or be deemed to modify any representation or warranty made by the Sellers herein. Notwithstanding anything contained in this Agreement to the contrary, none of Buyer or its Representatives or any Buyer Designees shall have any right to perform or conduct, or cause to be performed or conducted, any invasive environmental sampling or testing at, in, on or underneath any of Sellers' properties without the prior written consent from the Company, in the Company's sole discretion.

(b) This Section 7.1 shall not require Sellers to permit any access to, or to disclose (i) any information that, in the reasonable, good faith judgment (after consultation with counsel, which may be in-house counsel) of the Company, is reasonably likely to result in any violation of any Legal Requirement or any Contract to which the Company or any Seller is a party or cause any privilege (including attorney-client privilege) that Sellers would be entitled to assert to be undermined with respect to such information and such undermining of such privilege could in the Company's good faith judgment (after consultation with counsel, which may be in-house counsel) adversely affect in any material respect Sellers' position in any pending or, what the Company believes in good faith (after consultation with counsel, which may be in-house counsel) could be, future litigation or (ii) if the Company or any Seller, on the one hand, and Buyer or any of its Affiliates, on the other hand, are adverse parties in a litigation, any information that is reasonably pertinent thereto; provided, that, in the case of clause (i), the parties hereto shall cooperate in seeking to find a way to allow disclosure of such information to the extent doing so (A) would not (in the good faith belief of the Company (after consultation with counsel, which may be in-house counsel)) be reasonably likely to result in the violation of any such Legal Requirement or Contract or be reasonably likely to cause such privilege to be undermined with respect to such information or (B) could reasonably (in the good faith belief of the Company (after consultation with counsel, which may be in-house counsel)) be managed through the use of customary "clean-room" arrangements pursuant to which non-employee Representatives could be provided access to such information.

(c) The information provided pursuant to this Section 7.1 will be used solely for the purpose of consummating the transactions contemplated by this Agreement and will be governed by all the terms and conditions of the Confidentiality Agreements, which Confidentiality Agreements shall not terminate upon the execution of this Agreement notwithstanding anything to the contrary therein. Buyer will, and will cause its Representatives to, abide by the terms of the Confidentiality Agreements, with respect to such access and any

information furnished to Buyer or any of its Representatives. For the avoidance of doubt, the terms of this Agreement shall govern in the event the terms of this Agreement conflict with the terms of the Confidentiality Agreements.

(d) From and after the Closing for a period of three (3) years following the Closing Date (or, if later, the closing of the Bankruptcy Cases), Buyer will use commercially reasonable efforts to provide Sellers and their Representatives with reasonable access, during normal business hours, and upon reasonable advance notice, to the books and records, including work papers, schedules, memoranda, Tax Returns, Tax schedules, Tax rulings, and other documents (for the purpose of examining and copying) relating to the Acquired Assets, the Excluded Assets, the Assumed Liabilities or the Excluded Liabilities with respect to periods or occurrences prior to the Closing Date, and reasonable access, during normal business hours, and upon reasonable advance notice, to employees, officers, Representatives, accountants, offices and properties of Buyer (including for the purpose of better understanding the books and records). Unless otherwise consented to in writing by Sellers, Buyer will not, for a period of three (3) years following the Closing Date, destroy, alter or otherwise dispose of any of such books and records without first offering to surrender to Sellers such books and records or any portion thereof that Buyer may intend to destroy, alter or dispose of. From and after the Closing, Buyer will use commercially reasonable efforts to, and will cause its employees to, provide Sellers with reasonable assistance, support and cooperation with Sellers' wind-down and related activities (*e.g.*, helping to locate documents or information related to preparation of Tax Returns or prosecution or processing of insurance/benefit claims).

7.2 Operations Prior to the Closing Date. Sellers covenant and agree that, except (v) as expressly contemplated by this Agreement, (w) as disclosed in Schedule 7.2, (x) with the prior written consent of Buyer (which shall not be unreasonably withheld, conditioned or delayed) or (y) as otherwise required or restricted by Legal Requirements, after the Execution Date and prior to the Closing Date:

(a) Sellers shall, in each case, subject to any limitations imposed on Sellers by virtue of the Bankruptcy Cases:

(i) carry on the Business in the Ordinary Course of Business;

(ii) maintain, preserve and protect the Business (including with respect to the operations, organization and goodwill of the Business) and the Acquired Assets in the condition in which they exist on the Execution Date in all material respects;

(iii) manage Inventory, the timing of collection of accounts receivable and the payment of post-Petition Date accounts payable in the Ordinary Course of Business;

(iv) maintain their books, accounts and records in accordance with past custom and practice;

(v) use commercially reasonable efforts to pay all post-petition trade and accounts payables and collect all Accounts Receivable after the Petition Date in the Ordinary Course of Business;

(vi) use commercially reasonable efforts to (A) retain employees who are in good standing and (B) maintain their relationships with and preserve for the Business the goodwill of their suppliers, customers, Governmental Authorities, lessors, directors, managers, officers, Key Persons and other Persons with whom they have material business relationships;

(vii) (A) comply in all respects with all Legal Requirements applicable to them or having jurisdiction over the Business or any Acquired Asset, (B) comply in all respects with all Anti-Corruption Laws, Anti-Money Laundering Laws, Ex-Im Laws and Sanctions, (C) comply in all respects with post-Petition Date contractual obligations applicable to or binding upon them pursuant to Assumed Contracts, as the same may be limited by the Bankruptcy Code and (D) maintain in full force and effect all Permits and comply with the terms of each such Permit;

(viii) cause any of their current property insurance policies with respect to the Business or any of the other Acquired Assets (including the Leased Real Properties) not to be canceled or terminated or any of the coverage thereunder to lapse unless, simultaneously with such termination, cancellation or lapse, replacement, policies providing coverage equal to or greater than the coverage under the canceled, terminated or lapsed policies are in full force and effect;

(ix)maintain, preserve and protect in full force and effect the existence of all material Intellectual Property owned by Sellers;

(x) use commercially reasonable efforts not to take or agree to or commit to assist any other Person in taking any action that would reasonably be expected to (i) result in a failure of any of the conditions to the Closing or (ii) impair the ability of Sellers or Buyer to consummate the Closing in accordance with the terms hereof or to materially delay such consummation; and

(xi) use commercially reasonable efforts to obtain Bankruptcy Court approval of (i) the Bidding Procedures and Bidding Procedures Order, in each case in form and substance acceptable to Sellers and Buyer, and (ii) subject to the Bidding Procedures and the process outlined therein, the Sale Order.

(b) Sellers shall not:

(i) take any action enumerated in Section 5.24(b) except as set forth on Schedule 5.24(b);

(ii) sell, assign, transfer, lease, license or allow to lapse any rights in the Intellectual Property owned by the Sellers (other than non-exclusive licenses to Intellectual Property granted in the Ordinary Course of Business);

(iii) make, change or revoke any material election relating to Taxes, change any annual accounting period for applicable Tax purposes, adopt or change any material Tax accounting method, file any material amended Tax Return (other than an amended Tax Return to obtain any U.S. federal, state, or local income Tax refund), enter into any material closing agreement, settle any material claim or assessment with respect to Taxes or request or consent to

any extension or waiver of the limitation periods applicable to any material claim or assessment with respect to Taxes (other than an extension granted in the Ordinary Course of Business in connection with an extension for the filing of Tax Returns), in each case that adversely affects Taxes of the Business, the Acquired Assets or the Assumed Liabilities (other than Taxes that constitute Excluded Liabilities);

(iv) authorize, commit or agree to take, or commit to assist any other Person in taking, any of the actions set forth in this Section 7.2(b);

(v) make any alterations or improvements to the Leased Real Property other than in the Ordinary Course of Business;

(vi) amend, modify, restate, supplement or terminate any Lease or enter into any new Lease without (1) providing Buyer all relevant supporting documentation, as reasonably determined by Buyer, (2) delivering to Buyer a written request for Buyer's approval of such amendment, modification, termination or new Lease, and (3) obtaining such approval from Buyer (which shall not be unreasonably withheld, conditioned or delayed);

(vii) acquire any material properties or assets or sell, assign, license, transfer, convey, lease, sublease or otherwise dispose of any material assets of Sellers related to the Business, including any material assets that but for such sale, assignment, license, transfer, conveyance, lease, sublease or other disposition would constitute Acquired Assets, in each case;

(viii) enter into any new, or amend, waive or renew existing, Material Contracts; or

(ix) except for Permitted Encumbrances, permit, allow or suffer to be encumbered, any of the Acquired Assets.

7.3 Antitrust Filings; Cooperation.

(a) Subject to Section 7.3(d), as soon as reasonably practicable (and, in any event, in the case of notifications under the HSR Act, within twenty (20) days, or if such date will occur after the new amendments to the HSR Rules go into effect, an earlier date as agreed by the Parties) following entry of the Bidding Procedures Order, Sellers, on the one hand, and Buyer, on the other hand, shall each prepare and file, or cause to be prepared and filed, any notifications advisable or required to be filed under (i) the HSR Act with the United States Federal Trade Commission and the Antitrust Division of the United States Department of Justice, and request early termination of the waiting period under the HSR Act and (ii) any other applicable Antitrust Laws. Buyer, on the one hand, and Sellers, on the other hand, shall supply as promptly as practicable to the appropriate Governmental Authorities any additional information and documentary material that may be requested in connection with such filings and shall take all other actions necessary to cause the waiting periods under the HSR Act and waiting or review periods under any other applicable Antitrust Laws to terminate or expire at the earliest practicable date after the date of filing. Buyer shall be responsible for payment of the applicable filing fee under the HSR Act and any other applicable Antitrust Laws, and each Party shall be responsible for payment of its own respective costs and expenses (including attorneys' fees and other legal fees

and expenses) associated with the preparation of its portion of any antitrust filings and the provision of any additional information and documentary material that may be requested by any Governmental Authorities.

(b) In addition to the actions to be taken under Section 7.3(a) and subject to the other terms of this Agreement, Sellers, on the one hand, and Buyer, on the other hand, shall use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, and to assist and cooperate with the other in doing, all things necessary, proper or advisable to consummate and make effective, in the most expeditious manner practicable, the transactions contemplated hereby, including using commercially reasonable efforts to accomplish the following: (i) taking all reasonable acts necessary to cause the conditions precedent set forth in Article 9 and Article 10 to be satisfied, (ii) obtaining, at the earliest practicable date, of all necessary Governmental Authorizations and the making all necessary registrations, declarations and filings (including registrations, declarations and filings with Governmental Authorities, if any) and the taking of all reasonable steps as may be necessary to avoid any Action by any Governmental Authority, (iii) defending of any Actions challenging this Agreement or the consummation of the transaction contemplated by this Agreement, including seeking to have any stay or temporary restraining order entered by any court or other Governmental Authority vacated or reversed, and (iv) executing and delivering any additional instruments necessary to consummate the transactions contemplated hereby and to fully carry out the purposes of this Agreement. Consistent with its obligations hereunder, Buyer shall plan and propose the strategy, timing, content, action, advocacy and resolution of matters related to such required filings and submissions, and in the event of a disagreement between the Parties, the Buyer shall control and direct such matters.

(c) The obligations of Sellers pursuant to this Agreement, including this Section 7.3, 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), Sellers' debtor-in-possession financing, and Sellers' obligations as debtors in possession to comply with any Order of the Bankruptcy Court (including the Bidding Procedures Order and the Sale Order), and Sellers' duty to seek and obtain the highest or otherwise best price for the Acquired Assets as required by the Bankruptcy Code.

(d) Sellers, on the one hand, and Buyer, on the other hand, (i) shall promptly inform each other of any communication from any Governmental Authority concerning this Agreement, the transactions contemplated hereby, and any filing, notification or request for approval and (ii) as far as reasonably practicable, shall permit the other to review in advance any proposed written or material oral communication or information submitted to any such Governmental Authority in response thereto, subject to preexisting confidentiality agreements or to the attorney-client privilege or work product doctrine. In addition, none of Parties shall agree to participate in any meeting with any Governmental Authority in respect of any filings, investigation or other inquiry with respect to this Agreement or the transactions contemplated by this Agreement, unless such Party consults with the other Parties in advance and, to the extent permitted by any such Governmental Authority, gives the other Parties the opportunity to attend and participate thereat, in each case to the maximum extent practicable. Subject to restrictions under any Legal Requirements, each of Buyer, on the one hand, and Sellers, on the other hand, shall furnish the other with copies of all correspondence, filings and communications between it

and its Affiliates and their respective Representatives on the one hand, and the Governmental Authority or members of its staff on the other hand, with respect to this Agreement, the transactions contemplated hereby (excluding documents and communications which are subject to preexisting confidentiality agreements or to the attorney-client privilege or work product doctrine or which refer to valuation of the Business) or any such filing, notification or request for approval. Each Party shall also furnish the other Party with such necessary information and assistance as such other Party and its Affiliates may reasonably request in connection with their preparation of necessary filings, registration or submissions of information to the Governmental Authority in connection with this Agreement, the transactions contemplated hereby and any such filing, notification or request for approval.

(e) Subject to the immediately following sentence, Sellers and Buyer will use commercially reasonable efforts to as promptly as practicable (and in any event prior to the Outside Date) obtain any clearances, consents, approvals, waivers, actions, waiting period expirations or terminations, non-actions or other authorizations required under the HSR Act or such Antitrust Laws for the consummation of this Agreement and the transactions contemplated hereby and will keep each other apprised of the status of any communications with, and any inquiries or requests for additional information from, any Governmental Authority and will comply promptly with any such inquiry or request. Subject to the terms and conditions of this Agreement, Sellers and Buyer shall take commercially reasonable efforts to avoid or eliminate impediments under any Antitrust Law that may be asserted by any Governmental Authority with respect to the transactions contemplated hereby so as to enable the Closing to occur as soon as reasonably possible, including, (i) opposing any motion or action for a temporary, preliminary or permanent Order against, or preventing or delaying, the consummation of the transactions contemplated by this Agreement, and exhausting all avenues of appeal, including appealing properly any adverse decision or Order by any Governmental Authority, (ii) proposing, negotiating, committing to and effecting, by consent decree or otherwise, the sale, divestiture or disposition of such assets, products, businesses or interests of Buyer (or any of its Subsidiaries) or, after Closing, the Acquired Assets as may be required in order to avoid the entry, or to effect the dissolution, of any injunction, temporary restraining order or other order in any suit or proceeding, (iii) agreeing to the termination, modification, or assignment of existing relationships, joint ventures, contracts or obligations of Buyer (and any of its Subsidiaries) and (iv) agreeing to such limitations on conduct or actions of members of Buyer and its Subsidiaries after the Closing as may be required in order to obtain satisfaction of the closing conditions set forth in Article 9 prior to the Outside Date, in each case, so as to allow the consummation of this Agreement and the transactions contemplated hereby as soon as practicable and, in any event, prior to the Outside Date; provided, however, that nothing in this Agreement shall require Buyer to propose, execute, carry out or agree or submit to any action or remedy set forth in sub-parts (ii), (iii), or (iv) that individually or in the aggregate would reasonably be expected to have a material adverse effect on the business, operations, financial condition or results of operations of the Business or the Acquired Assets (taken as a whole).

(f) Notwithstanding anything herein to the contrary: none of Buyer's Affiliates (except for any Subsidiaries of Buyer) or equityholders shall be required to, or be required to agree to: (i) sell, divest or dispose of, any assets, products, businesses, equity or interests; (ii) any conditions relating to, or changes or restrictions in, any such assets, products, businesses, equity or interests; (iii) any modification or waiver of the terms and conditions of this

Agreement; or (iv) any other condition that requires Buyer's Affiliates (except for any Subsidiaries of Buyer) or equity holders to take any action or refrain from taking any action that limits the freedom of action with respect to any assets, products, businesses, equity or interests of Buyer's Affiliates (except for any Subsidiaries of Buyer) or equity holders.

7.4 Bankruptcy Court Matters.

(a) Bidding Procedures Hearing and Bidding Procedures Order. Within thirty-five (35) days following the Petition Date, the Bankruptcy Court shall have (i) held a hearing to consider approval of the Bidding Procedures and (ii) entered the Bidding Procedures Order, in each case in substantially the form filed at Docket No. 109 on October 30, 2024, and with any modifications the Parties may approve.

(b) Qualified Bids. Pursuant to the Bidding Procedures Order, any and all Qualified Bids shall have been submitted on or prior to the date which is eighty (80) days following the Petition Date (the "***Bid Deadline***"). If any Qualified Bid (other than this Agreement) is submitted prior to the Bid Deadline, the Auction shall have occurred on or prior to that date which is eighty-three (83) days following the Petition Date.

(c) Sale Order. Within eighty-six (87) days following the Petition Date, the Bankruptcy Court shall have entered the Sale Order.

(d) Contracts. Sellers shall serve on all non-Seller counterparties to all of their Contracts a notice specifically stating that Sellers are or may be seeking the assumption and assignment of such Contracts and shall notify such non-Seller counterparties of the deadline for objecting to the Cure Costs, if any, which deadline shall not be less than fourteen (14) days prior to the Sale Hearing.

(e) Bankruptcy Filings. From and after the Execution Date and until the Closing Date, Sellers shall deliver to Buyer, at least two (2) Business Days in advance, drafts of any and all material pleadings, motions, notices, statements, schedules, applications, reports and other papers to be filed or submitted in connection with this Agreement for Buyer's prior review and comment, including any Tax motions, and such filings shall be acceptable to Buyer to the extent they relate to the Acquired Assets, any Assumed Liabilities or any of Buyer's obligations hereunder; provided, however, that in the event that not less than two (2) Business Days' notice is impossible or impracticable under the circumstances, the Sellers shall provide draft copies of any motions or other pleadings to counsel to Buyer as soon as otherwise practicable before the date when the Sellers intend to file any such pleadings. Sellers agree to diligently prosecute the entry of the Bidding Procedures Order and the Sale Order. In the event the entry of the Bidding Procedures Order or the Sale Order is appealed, Sellers shall use commercially reasonable efforts to defend such appeal. Sellers shall comply with all notice requirements (i) of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and (ii) imposed by the Sale Order, in each case, in connection with any pleading, notice or motion to be filed in connection herewith. Sellers shall use commercially reasonable efforts to cause the Bidding Procedures Order and the Sale Order to be entered and become Final Orders as soon as practicable after entry. Notwithstanding the foregoing, nothing in this Agreement precludes the Parties from consummating the transactions contemplated by this Agreement if the Sale Order has been entered and has not been stayed and

Buyer, in its sole discretion, waives in writing the condition set forth in Section 9.7 that the Sale Order be a Final Order.

7.5 Notice of Developments.

(a) Sellers shall promptly notify Buyer of, and furnish Buyer any information it may reasonably request with respect to, (i) any material notice or other communication from any Person alleging that the consent of such Person is required in connection with the Acquired Assets or the transactions contemplated by this Agreement, (ii) any material notice or other communication received from any Governmental Authority in connection with the transactions contemplated by this Agreement or relating to the Acquired Assets or the Assumed Liabilities, (iii) any material breach discovered by the Sellers, or of which the Sellers become aware, of their representations, warranties or covenants contained in this Agreement or any of the other Transaction Documents, or (iv) any material Actions commenced relating to the Acquired Assets or the Assumed Liabilities of which it receives notice or any other fact, circumstance or event, the existence or occurrence of which Sellers acquire knowledge, (A) which in any manner challenges or seeks to prevent, enjoin, materially alter or materially delay the transactions contemplated by this Agreement, (B) has resulted in, or would reasonably be expected to result in, a material breach of a representation or warranty made by the Sellers under this Agreement or (C) has resulted in, or would be reasonably expected to result in, the failure of any condition set forth in Article 9 to be satisfied by the Outside Date; provided, that Sellers shall not be required to provide Buyer notice of any pleading filed by any other party in the Bankruptcy Cases or statements therein.

(b) Buyer shall promptly notify Sellers of, and furnish Sellers any information it may reasonably request with respect to, (i) any material notice or other communication from any Person alleging that the consent of such Person is required in connection with the Acquired Assets or the transactions contemplated by this Agreement, (ii) any material notice or other communication received from any Governmental Authority in connection with the transactions contemplated by this Agreement or relating to the Acquired Assets or the Assumed Liabilities, (iii) any material breach discovered by Buyer, or of which Buyer become aware, of their representations, warranties or covenants contained in this Agreement or any of the other Transaction Documents, or (iv) any material Actions commenced relating to the Acquired Assets or the Assumed Liabilities of which it receives notice or any other fact, circumstance or event, the existence or occurrence of which Buyer acquires knowledge, (A) which in any manner challenges or seeks to prevent, enjoin, materially alter or materially delay the transactions contemplated by this Agreement, (B) has resulted in, or would reasonably be expected to result in, a material breach of a representation or warranty made by Buyer under this Agreement or (C) has resulted in, or would be reasonably expected to result in, the failure of any condition set forth in Article 10 to be satisfied by the Outside Date.

7.6 Sale Free and Clear. Sellers acknowledge and agree, and the Sale Order shall provide that, on the Closing Date and concurrently with the Closing, all then existing or thereafter arising obligations, Liabilities and Encumbrances (including, for the avoidance of doubt, all successor liability) of, against or created by Sellers or their bankruptcy estate, shall be fully released from and with respect to the Acquired Assets, other than the Permitted Encumbrances and the Assumed Liabilities. On the Closing Date, the Acquired Assets shall be transferred to Buyer

and/or one or more Buyer Designees, as applicable, free and clear of all obligations, Liabilities and Encumbrances (including, for the avoidance of doubt, all successor liability, including to the maximum extent permitted by applicable law any successorship obligations with respect to any Employees and/or Benefit Plans that are not Assumed Benefit Plans), other than the Permitted Encumbrances and the Assumed Liabilities.

7.7 Acquisition Proposals.

(a) From and after the conclusion of the Auction (or, if there is no Auction, from and after the determination by the Sellers that this Agreement is the only Qualified Bid), if Buyer is selected as the Successful Bidder, than other than with respect to any Back-Up Bid pursuant to the terms of the Bidding Procedures, Sellers shall not, and shall not authorize or permit any of their Affiliates or their respective Representatives to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an Acquisition Proposal; (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Acquisition Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Acquisition Proposal; provided, for the avoidance of doubt, the Sellers and their Representatives may encourage, solicit, initiate, or facilitate an Acquisition Proposal in connection with any Alternative Transaction prior to selecting Buyer as the Successful Bidder. From and after the conclusion of an Auction (or, if there is no Auction, from and after the determination by the Sellers that this Agreement is the only Qualified Bid), if Buyer is selected as the Successful Bidder, other than with respect to any Back-Up Bid pursuant to the terms of the Bidding Procedures, Sellers shall immediately cease and cause to be terminated, and shall cause its Affiliates and all of its and their Representatives to immediately cease and cause to be terminated, all existing discussions or negotiations with any Persons conducted heretofore with respect to, or that could reasonably be expected to lead to, an Acquisition Proposal. Without limiting Sellers obligations under clauses (i) and (ii) above, notwithstanding the foregoing, nothing herein will limit Sellers' (or their directors') from taking such actions as they determine in good faith are necessary to comply with their fiduciary duties.

(b) Sellers agree that the rights and remedies for noncompliance with this Section 7.7 shall include having such provision specifically enforced by the Bankruptcy Court, it being acknowledged and agreed that any such breach or threatened breach shall cause irreparable injury to Buyer and that money damages would not provide an adequate remedy to Buyer.

7.8 Back-Up Bidder. If an Auction is conducted, and Buyer is not the Successful Bidder at the Auction but is the next highest bidder after the Successful Bidder at the Auction, Buyer shall serve as a Back-Up Bidder and keep its bid to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be improved upon in the Auction) open and irrevocable (subject to the terms and conditions of this Agreement, except any term that would require entry of a Sale Order to occur, or would give Buyer a termination right if Closing does not occur, before the Back-Up Bid Expiration Date), notwithstanding any right of Buyer to otherwise terminate this Agreement pursuant to Article 11 hereof, until the earlier of (i) the Outside Date and (ii) the first (1st) Business Day after the closing of a transaction with a Successful Bidder for the Acquired Assets that is not Buyer (the "***Back-Up Bid Expiration Date***"); provided, however, that if prior to the Back-Up Bid Expiration Date, a Successful Bidder for the Acquired Assets that is not Buyer fails to consummate

its transaction as a result of a breach or failure to perform on the part of such Successful Bidder, or because a condition in such Successful Bidder's purchase agreement cannot otherwise be met, and the purchase agreement with such Successful Bidder is terminated, Buyer (as the Back-Up Bidder) will be deemed to have the new prevailing bid, and Seller will be authorized, without further Order of the Bankruptcy Court, to, and Buyer (as the Back-Up Bidder) shall, subject to the terms and conditions of this Agreement, consummate the transactions contemplated by this Agreement within thirty (30) days of becoming the Successful Bidder, on the terms and conditions set forth in this Agreement (as the same may be improved upon in the Auction).

7.9 Estoppels. With respect to each Lease set forth on Schedule 7.9, Sellers shall use commercially reasonable efforts to request that the landlords execute estoppel certificates in form and substance acceptable to Buyer ("***Estoppel Certificates***"); provided, that with respect to each Lease set forth on Schedule 7.10, Buyer has provided a form of Estoppel Certificate to Sellers. After any such request, Sellers shall use good faith efforts, at no material cost to Buyer, to obtain any such Estoppel Certificates; provided, however, in no event shall failure to obtain any Estoppel Certificates be a default of Sellers hereunder or a condition to Closing.

7.10 Consents. The Parties shall use commercially reasonable efforts to obtain or provide, at the earliest practicable date, each consent, waiver, approval, order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Authority required or necessary to consummate the transactions contemplated by this Agreement and listed on Schedule 7.10 (including consents from each landlord party to the Leases requiring the consent of such landlord party in connection with the consummation of the transaction contemplated herein, provided, that no efforts will need to be made to obtain any consent that is provided for in the Sale Order). All such consents, waivers, approvals, orders, Permits, authorizations, declarations, filings, or notifications shall be in writing and in form and substance satisfactory to Buyer, and executed counterparts thereof shall be delivered to Buyer promptly after the receipt thereof or making thereof. Notwithstanding anything to the contrary in this Agreement, no Party nor any of its Affiliates shall be required to pay any amounts in connection with obtaining any such consents, waivers, approvals, orders, Permits, authorizations, declarations, filings, or notifications.

7.11 Transition Services. As soon as reasonably practicable following the Effective Date, Sellers and Buyer shall use commercially reasonable efforts to negotiate the terms of, and at the Closing shall enter into, the Transition Services Agreement pursuant to which Buyer or one or more of its Affiliates will provide, or cause to be provided, from the Closing until the date of a final decree closing of the Bankruptcy Cases and the winding up and dissolution of the Sellers and their debtor Affiliates in the Bankruptcy Cases, unless sooner terminated pursuant to the terms of the relevant agreement, (a) services to enable the Sellers and their debtor Affiliates in the Bankruptcy Cases to (i) process Taxes and (ii) process monthly operating reports and financial data for the Sellers and their debtor Affiliates in the Bankruptcy Cases, and (b) use of the applicable systems and facilities included in the Acquired Assets, to the extent such use is necessary to enable the foregoing, in each case, that are necessary to wind down and dissolve the Sellers and their debtor Affiliates in the Bankruptcy Cases. Buyer and its Affiliates shall not be liable for any damages arising in connection with the services, other than to the extent caused by Buyer's or its Affiliates' fraud. Notwithstanding the foregoing, the services under the Transition Services Agreement shall be provided at no additional cost to Sellers.

7.12 Financing Cooperation (Sellers).

(a) From and after the date hereof until the earlier of the Closing Date and the termination of this Agreement pursuant to Section 11.1, the Sellers shall use commercially reasonable efforts to provide such assistance (and to cause their respective Representatives, personnel and advisors to use their respective commercially reasonable efforts to provide such assistance) to Buyer as is reasonably requested by Buyer in connection with the ABL Financing. Such commercially reasonable efforts to provide such assistance shall include using commercially reasonable efforts in connection with each of the following:

(i) assisting Buyer with the preparation of, and executing and delivering, to the extent applicable, the following: (A) customary perfection certificates, pledge and security documents, certificates, incumbencies, corporate organizational documents, good standing certificates and other customary documentation, in each case to the extent required to be delivered to a Lender to satisfy a financing condition and (B) promptly providing all documentation and other information required to be delivered to the ABL Lenders in connection with Sanctions and Anti-Money Laundering Laws by bank regulatory authorities, under applicable "know-your-customer" and anti-money laundering rules and regulations and a certification regarding beneficial ownership;

(ii) assisting Buyer with Buyer's preparation of schedules to the definitive agreements as may be required in connection with the ABL Financing, and facilitating the pledging of, and granting of liens on, collateral for the ABL Financing; and

(iii) taking corporate and other organizational actions to approve any credit agreement, guarantee, pledge and security documents and other definitive financing documentation, and executing and delivering consents and resolutions, as may be reasonably requested by Buyer or any financing source (it being understood that all such actions will be contingent on, and effective only at or after, the occurrence of the Closing).

(b) Notwithstanding any other provision of this Agreement to the contrary, none of the Sellers or their respective Representatives, personnel or advisors shall be required to provide any such assistance or cooperation which the Sellers reasonably believes would:

(i) require the Sellers to pay any commitment or other fee or incur any other liability or obligation in connection with the arrangement of the ABL Financing prior to the Closing (other than execution of any notices of prepayment with respect to the ABL Credit Agreement);

(ii) result in a breach or violation of any confidentiality arrangement or material agreement or the loss of any legal or other privilege (including attorney-client privilege);

(iii) cause any representation or warranty in this Agreement to be breached or any condition to Closing set forth in Article 9 to not be satisfied;

(iv) cause any director, manager, officer, employee or stockholder

of the Sellers to incur any personal liability;

(v) require the Sellers or any of their respective directors, managers, officers or employees to execute, deliver or perform, or amend or modify, any agreement, document or instrument, including any financing agreement, with respect to the ABL Financing that is not contingent upon the Closing or that would be effective prior to the Closing (other than any notices of prepayment with respect to the ABL Credit Agreement);

(vi) take any action in respect of the ABL Financing that would conflict with or violate the Sellers' organizational documents or any Legal Requirement; or

(vii) take any action to the extent such action would unreasonably interfere with the business or operations of the Sellers.

(c) Buyer shall promptly, upon request by Sellers after any termination of this Agreement pursuant to Section 11.1 or the Closing Date, reimburse the Sellers for all reasonable and documented out-of-pocket costs and expenses (including reasonable attorneys' fees) incurred by the Sellers in connection with the cooperation of the Sellers contemplated by this Section 7.12 (provided that the Sellers and their respective Representatives, personnel and advisors shall be responsible for any amounts that would have been incurred in connection with the transactions contemplated by this Agreement regardless of the ABL Financing or this Section 7.12) and shall indemnify and hold harmless the Sellers and their respective Representatives from and against any and all losses, damages, claims, costs or expenses actually suffered or incurred by any of them in connection with any ABL Financing except to the extent such losses, damages, claims, costs or expenses result from (i) information relating to the Sellers or their Affiliates or the Acquired Assets provided expressly for use in connection with the ABL Financing that is determined to be an intentional material misrepresentation, (ii) the bad faith, gross negligence, willful misconduct or fraud of the Sellers or their respective Representatives, personnel or advisors or (iii) a material breach by the Sellers or their respective Representatives, personnel or advisors of this Section 7.12, and the foregoing obligations shall survive termination of this Agreement.

(d) The Sellers hereby consent to the use of the Sellers' logos on or around the Acquired Assets in connection with the ABL Financing; provided, that such logos shall be used (i) solely in a manner that is not intended or reasonably likely to harm or disparage the Sellers or (ii) in any manner as consented to by the Sellers.

7.13 Direction Letter. Buyer shall not amend, supplement, replace, substitute, terminate or otherwise modify or waive the terms of the Direction Letter delivered to Sellers on or around the Execution Date in a manner that would (a) reasonably be expected to materially delay or prevent the Closing or (b) materially and adversely affect Sellers' rights under this Agreement. Buyer shall not enter into any side letters, agreements or other arrangements relating to the Direction Letter that would materially and adversely affect Buyer's ability to consummate the transactions contemplated by this Agreement.

# ARTICLE 8

## ADDITIONAL AGREEMENTS

8.1 Taxes.

(a) Any sales Tax, use Tax, goods and services Tax or similar Tax attributable to the sale or transfer of the Acquired Assets and not exempted under the Sale Order ("***Sales Taxes***") and any real or personal property transfer Tax, conveyance Tax, recording charges, value added tax, documentary stamp Tax or similar Tax attributable to the sale or transfer of the Acquired Assets and not exempted under the Sale Order ("***Transfer Taxes***") shall be borne by Buyer. Sellers and Buyer shall reasonably cooperate to (i) mitigate and/or eliminate the amount of Sales Taxes and/or Transfer Taxes resulting from the transactions contemplated herein to the extent otherwise consistent with this Agreement (its being understood, for the avoidance of doubt, that such cooperation shall not require the filing of a plan) and (ii) timely prepare and file any Tax Returns relating to such Sales Taxes and/or Transfer Taxes, including any claim for exemption or exclusion from the application or imposition of any Sales Taxes and/or Transfer Taxes. The Party responsible under applicable Legal Requirement shall be responsible for preparing and filing all necessary Tax Returns or other documents with respect to Sales Taxes and Transfer Taxes; provided, however, that in the event any such Tax Return requires execution by Buyer (in the case of a Tax Return prepared by Sellers) or an applicable Seller (in the case of a Tax Return prepared by Buyer), the Party responsible for preparing the Tax Return shall deliver it to Buyer or the applicable Sellers, as applicable, not less than twenty (20) days before the due date thereof, and Buyer shall promptly execute such Tax Return and return it to the Party responsible for filing it.

(b) All Liability for any ad valorem Taxes (including, for the avoidance of doubt, real or personal property Taxes) (the "***Apportioned Taxes***") with respect to the Acquired Assets for the Pre-Closing Tax Period shall be borne by Sellers. All Liability for any Apportioned Taxes with respect to the Acquired Assets for the Post-Closing Tax Period shall be borne by Buyer. The total amount of Apportioned Taxes allocable to the Pre-Closing Tax Period of a Straddle Period shall be the product of (i) such Tax for the entirety of such Straddle Period, multiplied by (ii) a fraction, the numerator of which is the number of days for such Straddle Period included in the Pre-Closing Tax Period of such Straddle Period and the denominator of which is the total number of days in such Straddle Period, and the balance of such Apportioned Taxes shall be allocable to the Post-Closing Tax Period of such Straddle Period. At the Closing, Apportioned Taxes with respect to each Acquired Asset for the applicable Straddle Period shall be prorated in accordance with the foregoing provisions based on the Tax assessment for such Acquired Asset for such Straddle Period, if available or, if not available, based on the Apportioned Taxes paid with respect to such Acquired Asset during the preceding Tax year. "***Straddle Period***" shall mean any taxable period commencing on or before, and ending after the Closing Date.

(c) After the Closing, unless consented to by Seller (not to be unreasonably withheld, conditioned, or delayed), neither Buyer nor any of its Affiliates shall take any tax action or make any Tax election with respect to the Acquired Assets that would reasonably be expected to increase a Tax that is an Excluded Liability.

(d) Buyer and Sellers shall, and shall cause their respective Affiliates

to, reasonably cooperate and agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Business and the Acquired Assets (including access to books and records and Tax Returns and related working papers dated before Closing) as is reasonably necessary for the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any taxing authority, the prosecution or defense of any claims, suit or proceeding relating to any Tax, and the claiming by Buyer of any U.S. federal, state, local or non-U.S. business tax credits or incentives that Buyer may qualify for in any of the jurisdictions in which any of the Acquired Assets are located, in each case, with respect to the Acquired Assets and the Business. Any out-of-pocket expenses incurred in furnishing such information or assistance pursuant to this Section 8.1(d) shall be borne by Buyer.

(e) In the case of any Straddle Period, for all applicable purposes of this Agreement, the amount of any Taxes based on or measured by income, gross or net sales, receipts, transactions, proceeds, profits, payroll or similar items for the Pre-Closing Tax Period of such Straddle Period shall be determined based on an interim closing of the books as of the end of the day on the Closing Date.

8.2 Bulk Sales. The Parties intend that the Sale Order shall provide that compliance with the Legal Requirements relating to bulk sales and transfers is not necessary or appropriate under the circumstances. In furtherance of the foregoing, each Party hereby waives compliance by the Parties with "bulk sales," "bulk transfers" or similar Legal Requirements in respect of the transactions contemplated by this Agreement.

8.3 Payments Received; Mail and Other Communications. Sellers, on the one hand, and Buyer, on the other hand, each agree that, after the Closing, each will hold and will promptly transfer and deliver to the other, from time to time as and when received by them, any cash, checks with appropriate endorsements (using commercially reasonable efforts not to convert such checks into cash) or other property that they may receive on or after the Closing which belongs to the other and will account to the other for all such receipts. Sellers agree that at any time and from time to time after the Closing, Buyer and its Affiliates shall have the right and authority to open all mail and other communications, in all formats (both tangible and intangible), including service of process, received by Buyer or its Affiliates pertaining to the Business, even if addressed to a Seller, for processing or forwarding to the applicable Seller. Sellers further agree to forward to Buyer all mail and other communications, in all formats (both tangible and intangible) pertaining to the Business received by Sellers at any time and from time to time after the Closing.

8.4 Assumed Contracts: Adequate Assurance and Performance. Buyer shall use commercially reasonable efforts to provide adequate assurance of the future performance by Buyer (or the applicable Buyer Designee) of each Assumed Contract as required under section 365 of the Bankruptcy Code. Buyer and Sellers agree that they will promptly take all actions reasonably required to assist in obtaining a Bankruptcy Court finding that there has been an adequate demonstration of adequate assurance of future performance under the Assumed Contracts pursuant to section 365 of the Bankruptcy Code, such as furnishing timely requested and factually accurate affidavits, non-confidential financial information and other documents or information for filing with the Bankruptcy Court and making Buyer's and Sellers' employees and representatives available to testify before the Bankruptcy Court.

8.5 Employee Matters.

(a) Employees. As of Closing, Buyer shall provide offers of employment to any Employee, if any, as determined in Buyer's sole discretion with base salary/hourly rates and health and welfare benefits (excluding any defined benefit pension or post-employment welfare benefits) that are substantially similar in the aggregate to the base salary/hourly rates and health and welfare benefits (subject to the same exclusions) in place immediately prior to the Closing; provided, however, such offers will provide service credit for paid time off so long as there is no duplication of benefits. Any Employee who accepts Buyer's offer of employment and who further commences employment with Buyer is a "***Buyer Employee***". On the Closing Date, Sellers shall terminate, or shall cause to be terminated, the employment of each Buyer Employee. Notwithstanding the foregoing, nothing herein will, after the Closing Date, impose on Buyer any obligation to retain any Buyer Employee in its employment for any amount of time or on any terms and conditions of employment. Except as described in the remaining sentences of this Section 8.5, the employment of each such Buyer Employee with Buyer will commence immediately after the Closing Date. In the case of any individual who is offered employment by Buyer and accepts such offer, but who is absent from active employment and receiving short-term disability or workers' compensation benefits, the employment of any such individual with Buyer would commence upon his or her return to active work, and such individual would become a Buyer Employee as of such date. Except as otherwise required by Legal Requirement, specified in this Agreement, or otherwise agreed in writing by Buyer, Buyer shall not be obligated to provide any severance, separation pay, notice pay, or other payments or benefits, including any employee retention payments or employee incentive plan payments, to any Employee on account of any termination of such Employee's employment by Sellers on or prior to Closing, and such benefits (if any) shall remain obligations of Sellers.

(b) Access to Information. After the Execution Date, Sellers shall provide Buyer and its Affiliates with access to the Employees and, with respect to Buyer Employees, with information, including employee records and Benefit Plan data, reasonably requested by Buyer and such Affiliates, except as otherwise prohibited by any Legal Requirement.

(c) No Third-Party Beneficiaries; Employment Status. All provisions contained in this Agreement with respect to employee benefit plans or compensation of Buyer Employees are included for the sole benefit of the respective parties hereto. Nothing contained herein (i) shall confer upon any former, current or future employee of Sellers or Buyer or any legal representative or beneficiary thereof any rights or remedies, including any right to employment or continued employment, of any nature, for any specified period, (ii) shall cause the employment status of any former, present or future employee of Sellers or Buyer to be other than terminable at will, (iii) shall confer any third party beneficiary rights upon any Buyer Employee or any dependent or beneficiary thereof or any heirs or assigns thereof or (iv) shall be construed to establish or be treated as an amendment or modification of any employee benefit plan, program, agreement, arrangement, or policy.

(d) WARN Act. With respect to the Buyer Employees, Buyer will have full responsibility under the WARN Act relating to any act or omission of Buyer after the Closing Date. With respect to the Employees, including those who become Buyer Employees, Sellers will have full responsibility under the WARN Act relating to any act or omission of Sellers prior to or

on the Closing Date, including any such Liabilities that result from Employees' separation of employment from Sellers and/or Employees not becoming Buyer Employees pursuant to this Section 8.5. Sellers shall be responsible for compliance with and all other Liabilities with respect to the WARN Act relating to the periods after the Closing Date relating to any act or commission of Sellers, with respect to the Employees that do not become Buyer Employees.

(e) Retention Bonus Agreements. On or promptly following the Closing, Buyer shall enter into retention bonus agreements with the individuals set forth on Schedule 8.5(e) to the extent such individual becomes a Buyer Employee, on such terms and conditions (including amounts) set forth on Schedule 8.5(e). For the avoidance of doubt, Buyer shall not be obligated to enter into a retention bonus agreement with any of the individuals set forth on Schedule 8.5(e) to the extent such individual does not become a Buyer Employee for any reason.

(f) Severance. For a period of one (1) year following the Closing, to the extent a Buyer Employee who was eligible under the Field Support Severance Plan immediately prior to the Closing experiences a severance eligible termination of employment (as determined under the applicable Buyer plan or by the Buyer), Buyer or Buyer Affiliates shall provide such Buyer Employee severance of at least one week of base salary pay plus an additional one (1) week of base salary pay for each year of such Buyer Employee's continuous service (with crediting for continuous service with the Company prior to the Closing) up to a maximum of twelve (12) weeks of base salary pay.

(g) Additional Employee Matters. Except with respect to an Assumed Benefit Plan, Buyer is not and shall not be obligated to, and does not, accept or adopt any employment contracts, Collective Bargaining Agreements, wage rates, employee benefits, employee policies, or any other terms and conditions of employment.

(h) Accrued and Unpaid Wages. At Closing, Sellers shall pay, or cause to be paid, (i) to all Employees all accrued and unpaid base salary and hourly wages for services performed through and including the Closing, and (ii) to Employees other than Buyer Employees, all accrued and unused vacation time and paid time off. Sellers shall ensure such payments are made in compliance with all applicable laws and regulations and if requested by Buyer, shall promptly provide all documentation evidencing the same.

(i) For the avoidance of doubt, this Section 8.5 is subject to Sections 2.3 and 2.4. To the extent of any conflict between this Section 8.5 and Sections 2.3 and 2.4, the more specific provisions of this Section 8.5 will control.

8.6 Post-Closing Books and Records and Personnel. From and after the Closing Date, each Party shall provide the other Parties (and their respective Representatives) with access, at reasonable times and in a manner so as not to unreasonably interfere with their normal business, solely to the books and records acquired pursuant to this Agreement as of the Closing Date so as to enable Buyer and Sellers to prepare Tax, financial or court filings or reports, to respond to court orders, subpoenas or inquiries, investigations, audits or other proceedings of Governmental Authorities, and to prosecute and defend legal Actions or for other like purposes, including administration of the Bankruptcy Cases and Claims reconciliation, objections and resolutions. If any Party desires to dispose of any such records, such Party shall, thirty (30) days prior to such

disposal, provide the other Party with a reasonable opportunity to remove such records to be disposed of at the removing Party's expense.

8.7 Casualty Loss. Notwithstanding any provision in this Agreement to the contrary, if, before the Closing, all or any portion of the Acquired Assets is (a) condemned or taken by eminent domain, or (b) is damaged or destroyed by fire, flood or other casualty, Sellers shall notify Buyer promptly in writing (email being sufficient) of such fact, (i) in the case of condemnation or taking, Sellers shall assign or pay, as the case may be, any proceeds thereof (to the extent of Sellers' interests therein) to Buyer at the Closing, and (ii) in the case of fire, flood or other casualty, Sellers shall assign Sellers' interest, if any, to the insurance proceeds therefrom to Buyer at Closing; provided, in each case, that with respect to Leased Real Property, (A) Sellers shall comply with all requirements applicable to a casualty or condemnation under the applicable Lease, and (B) if any casualty or condemnation would permit the applicable Seller to terminate such Lease, Sellers shall notify Buyer of such right. Notwithstanding the foregoing, the provisions of this Section 8.7 shall not in any way modify Buyer's other rights under this Agreement, including any applicable right to terminate the Agreement if any condemnation, taking, damage or other destruction resulted in a Material Adverse Effect. Sellers shall reasonably cooperate with Buyer in connection with any condemnation, taking or casualty.

8.8 Change of Name. As promptly as reasonably practicable following the Closing, each Seller shall, and shall cause its direct and indirect Subsidiaries to, discontinue the use of its current name (and any other trade names or "d/b/a" names currently utilized by each Seller or its direct or indirect Subsidiaries) and shall not subsequently change its name to or otherwise use or employ any name which includes the words "American Tire", "ATD", "Tire Pros", "Tire Town", "Tire Buyer", "Hercules Tire & Rubber", "Hercules Tire", "Torqata", "PolyAtom" or "FLX FWD", without the prior written consent of Buyer; provided, that each Seller, and its direct and indirect Subsidiaries, shall be entitled to use its current name (and any other trade names or "d/b/a" names currently utilized by each Seller or its direct or indirect Subsidiaries) in connection with the Bankruptcy Cases and for so long as the Bankruptcy Cases are pending. Additionally, each Seller and each of its direct and indirect Subsidiaries may use its current name (and any other trade name or "d/b/a" names currently utilized by each Seller or its direct or indirect Subsidiaries) included on any business cards, stationery and other similar materials following the Closing for a period of up to one hundred and eighty (180) days solely for purposes of winding down the affairs of each Seller and licenses granted by each Seller to any third party with respect to the use of such names shall continue in accordance with the applicable terms of such licenses; provided, that, when utilizing such materials, other than in incidental respects, each Seller and each of its direct and indirect Subsidiaries shall use commercially reasonable efforts to indicate its new name and reference its current name (and any other trade names or "d/b/a" names currently utilized by each Seller or its direct Subsidiaries) as "formally known as" or similar designation. From and after the Closing (except in connection with the Bankruptcy Cases), each Seller covenants and agrees not to (and to cause each of its direct or indirect Subsidiaries not to) use or otherwise employ any of the trade names, corporate names, "d/b/a" names or any mark that is confusingly similar to the Intellectual Property rights utilized by Sellers and Sellers' Subsidiaries in the conduct of the Business or any Acquired Asset, except to the extent permitted under applicable law. As promptly as reasonably practicable following the Closing, Sellers shall file, and shall cause its direct and indirect Subsidiaries to file, all necessary organizational amendments with the applicable Secretary of State of each Seller's jurisdiction of

formation and in each State in which each such Seller is qualified to do business to effectuate the foregoing.

## ARTICLE 9

## CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER TO CLOSE

The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to fulfillment, at or prior to the Closing, of each of the following conditions, any one or more of which may be waived by Buyer, in its sole and absolute discretion:

9.1 Accuracy of Representations. The representations and warranties of Sellers set forth in this Agreement shall be true and correct as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date (provided, that representations and warranties which are confined to a specified date shall speak only as of such date), in each case, unless the effect of all such breaches of representations and warranties taken together would not have, or be reasonably likely to have, in the aggregate, a Material Adverse Effect; provided, that the representations and warranties of Sellers set forth in the first two sentences of Section 5.1, Sections 5.2, 5.3, 5.4(a), and the first sentence of Section 5.7 shall be true and correct (other than *de minimis* inaccuracies) as of the Closing Date as though such representations and warranties had been made on and as of the Closing Date (provided, that any such representations and warranties which are confined to a specified date shall speak only as of such date). Buyer shall have received a certificate of Sellers to such effect signed by a duly authorized officer thereof.

9.2 Sellers' Performance. The covenants and agreements that Sellers are required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been performed and complied with in all material respects and Buyer shall have received a certificate of Sellers to such effect signed by a duly authorized officer thereof.

9.3 No Order. No Governmental Authority shall have enacted, issued, promulgated, decreed or entered any Order, which is in effect and has the effect of restraining or preventing (or delaying beyond the Outside Date) the consummation of or imposing material modifications on the transactions contemplated by this Agreement.

9.4 Governmental Authorizations. To the extent that consent under the HSR Act or any other applicable Antitrust Law is required, any waiting period (and any extension thereof) under the HSR Act shall have expired or shall have been terminated, and any approvals or consents that are necessary under any other applicable Antitrust Law, including the antitrust legislation of any other relevant jurisdiction applicable to the purchase of the Acquired Assets or the Business contemplated by this Agreement shall have been obtained (whether by lapse of time or express confirmation of the relevant Governmental Authority).

9.5 Sellers' Deliveries. Each of the deliveries required to be made to Buyer pursuant to Section 4.3 shall have been so delivered.

9.6 DIP Orders. The Bankruptcy Court shall have entered the Interim DIP Order and the Final DIP Order, and the Final DIP Order shall have become a Final Order.

9.7 Sale Order. The Bankruptcy Court shall have entered the Sale Order and the Sale Order shall have become a Final Order.

9.8 Assumed Contracts. The Bankruptcy Court shall have approved and authorized the assumption and assignment of each Assumed Contract, except as would not have a Material Adverse Effect on the Business from and after the Closing, including the assignment and assumption of the Assumed Contracts set forth on Schedule 9.8 on the terms set forth on such Schedule.

9.9 Encumbrance Releases. Buyer shall have received all instruments and documents necessary to release any and all material Encumbrances on the Acquired Assets that are not Permitted Encumbrances, including any necessary and appropriate UCC financing statement amendments (termination statements) which shall, in each case, be in a customary and recordable form.

9.10 Material Adverse Effect. Since the Execution Date, no Material Adverse Effect shall have occurred.

9.11 No Default; No DIP Termination Event. No DIP Termination Event (as defined in the DIP Orders), no Event of Default (as defined in the ABL Credit Agreement and referred to herein as "***ABL Event of Default***") and no Event of Default (as defined in the DIP Credit Agreement and referred to herein as "***DIP TL Event of Default***") shall have occurred unless (a) in the case of a DIP Termination Event, such DIP Termination Event has been waived by the applicable requisite party pursuant to the terms of the DIP Orders, (b) in the case of an ABL Event of Default, such ABL Event of Default has been waived by the requisite lenders pursuant to the terms of the ABL Credit Agreement and/or (c) in the case of a DIP TL Event of Default, such DIP TL Event of Default has been waived by the applicable requisite lenders pursuant to the terms of the DIP Credit Agreement.

9.12 Restructuring Support Agreement. The Restructuring Support Agreement shall not have been terminated and shall be in full force and effect.

9.13 ABL Credit Agreement. The Buyer and the applicable lenders have either (i) executed a new ABL Credit Agreement, or (ii) the Buyer shall have assumed the ABL Credit Agreement, in each case on the terms set forth on Schedule 9.13 or otherwise approved by Buyer.

## ARTICLE 10

## CONDITIONS PRECEDENT TO THE OBLIGATION OF SELLERS TO CLOSE

The obligations of Sellers to consummate the transactions contemplated by this Agreement are subject to fulfillment, at or prior to the Closing, of each of the following conditions, any one or more of which may be waived by Sellers, in their sole and absolute discretion:

10.1 Accuracy of Representations. The representations and warranties of Buyer set forth in this Agreement shall be true and correct in all material respects (except that those representations and warranties which are qualified as to materiality or Material Adverse Effect or similar expressions shall be true and correct in all respects) as of the Closing Date with the same

effect as though such representations and warranties had been made on and as of the Closing Date (provided, that representations and warranties which are confined to a specified date shall speak only as of such date). Sellers shall have received a certificate of Buyer to such effect signed by a duly authorized officer thereof.

10.2 Sale Order. The Bankruptcy Court shall have entered the Sale Order in form and substance, including with respect to all findings of fact and conclusions of law, reasonably acceptable to the Sellers, and the Sale Order shall have become a Final Order.

10.3 Buyer's Performance. The covenants and agreements that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been performed and complied with in all material respects (with respect to the transactions contemplated hereby, taken as a whole), and Sellers shall have received a certificate of Buyer to such effect signed by a duly authorized officer thereof.

10.4 No Order. No Governmental Authority shall have enacted, issued, promulgated, decreed, or entered any Order, which is in effect and has the effect of preventing (or delaying beyond the Outside Date) the consummation of or imposing material modifications on the transactions contemplated by this Agreement.

10.5 Governmental Authorizations. To the extent that consent under the HSR Act or any other applicable Antitrust Law is required, any waiting period (and any extension thereof) under the HSR Act shall have expired or shall have been terminated, and any approvals or consents that are necessary under any other applicable Antitrust Law, including the antitrust legislation of any other relevant jurisdiction applicable to the purchase of the Acquired Assets or the Business contemplated by this Agreement, shall have been obtained (whether by lapse of time or express confirmation of the relevant Governmental Authority).

10.6 Buyer's Deliveries. Each of the deliveries required to be made to Sellers pursuant to Section 4.2 shall have been so delivered.

10.7 Waiver of Conditions. Upon the occurrence of the Closing, any condition set forth in Article 9 or this Article 10 that was not satisfied as of the Closing will be deemed to have been waived for all purposes by the Party having the benefit of such condition as of and after the Closing. None of Buyer or Sellers may rely on the failure of any condition set forth in Article 9 or Article 10, as applicable, to be satisfied if such failure was caused by such Party's failure to perform any of its obligations under this Agreement, including its obligation to use commercially reasonable efforts to consummate the transactions contemplated hereby as required under this Agreement.

## ARTICLE 11

## TERMINATION

11.1 Termination Events. Anything contained in this Agreement to the contrary notwithstanding, this Agreement may be terminated at any time prior to the Closing only as follows:

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

(b) by written notice of either Sellers or Buyer:

(i) if the Closing shall not have occurred on or prior to the date which is one hundred and one (101) days following the Petition Date (the "***Outside Date***"); provided, however, that the right to terminate this Agreement under this Section 11.1(b)(i) shall not be available to any Party whose failure to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur on or prior to the Outside Date;

(ii) if a Governmental Authority issues a final, non-appealable ruling or Order permanently restraining, enjoining or otherwise prohibiting the transactions contemplated hereby where such ruling or Order was not requested, encouraged or supported by any of Sellers or Buyer; provided, that the right to terminate this Agreement under this Section 11.1(b)(ii) shall not be available to any Party whose failure to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur on or prior to the Outside Date;

(iii) if at the end of the Auction, Buyer is not determined by Sellers to be the Successful Bidder or Back-Up Bidder;

(iv) upon the termination of the Restructuring Support Agreement as to the Required Consenting Lenders;

(v) if the Bankruptcy Court shall have entered an Order dismissing, or converting into cases under chapter 7 of the Bankruptcy Code, any of the Bankruptcy Cases;

(vi) upon the final, non-appealable ruling or denial of the Governmental Authorizations described in Section 7.3(b); provided, that the right to terminate this Agreement under this Section 11.1(b)(vi) shall not be available to any Party whose failure to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur on or prior to the Outside Date;

(c) by written notice of Buyer, if Buyer is not then in material breach of its obligations under this Agreement:

(i) in the event of any material breach by any Seller of any agreements, covenants, representations or warranties contained in this Agreement or in the Sale Order, which material breach would result in Sellers being unable to satisfy a condition set forth in Section 9.1 or Section 9.2 by the then-applicable Outside Date or shall not have been cured during the thirty (30) day period following delivery by Buyer of notice to Sellers of such material breach;

(ii) other than as contemplated by the Sale Motion or Bidding Procedures Order, if any Seller (a) makes any filing with the Bankruptcy Court or enters into any document indicating that they intend to consummate an Alternative Transaction (unless Buyer is the Backup Bidder) or (b) consummates an Alternative Transaction or seeks to have the

Bankruptcy Court enter an Order dismissing, or converting into cases under chapter 7 of the Bankruptcy Code, any of the Bankruptcy Cases, or appointing a trustee in any of the Bankruptcy Cases or appointing a responsible officer or an examiner with enlarged powers (other than a fee examiner) relating to the operation of Sellers' businesses pursuant to section 1104 of the Bankruptcy Code in any of the Bankruptcy Cases;

(iii) if any of the events set forth in clauses (a) through (c) of Section 7.4 shall not have occurred by the respective dates set forth therein;

(iv) upon the occurrence of any DIP Termination Event (as defined in the DIP Orders) that has not been otherwise waived by the Required Consenting Lenders;

(v) if, for any reason, Buyer (other than as a result of its own breach of this Agreement) is unable, pursuant to section 363(k) of the Bankruptcy Code, to credit bid all or any portion of the Purchase Price as set forth in Section 3.1;

(vi) a Material Adverse Effect occurs; or

(d) by written notice of Sellers, if each Seller is not then in material breach of its obligations under this Agreement, in the event of any material breach by Buyer of any agreements, covenants, representations or warranties contained in this Agreement or in the Sale Order, which material breach would result in Buyer being unable to satisfy a condition set forth in Section 10.1 or Section 10.3 by the then-applicable Outside Date or shall not have been cured during the thirty (30) day period following delivery by Sellers of notice to Buyer of such material breach.

Each condition set forth in this Section 11.1, pursuant to which this Agreement may be terminated shall be considered separate and distinct from each other such condition. If more than one of the termination conditions set forth in this Section 11.1 are applicable, the applicable party shall have the right to choose the termination condition pursuant to which this Agreement is to be terminated. The Parties acknowledge and agree that no notice of termination or extension of the Outside Date shall become effective until two (2) Business Days after the delivery of such notice to the other Parties, and only if such notice shall not have been withdrawn during such two (2) Business Day period or otherwise become invalid.

11.2 Effect of Termination. In the event of termination of this Agreement by Buyer or Sellers pursuant to this Article 11, this Agreement shall become null and void *ab initio* and have no effect and all rights and obligations of the Parties under this Agreement shall terminate without any Liability of any Party to any other Party except (i) nothing herein shall relieve any Party from Liability for any willful breach of this Agreement occurring prior to such termination and (ii) this Section 11.2 (and, to the extent applicable to the interpretation or enforcement of such provision, Article 1 and Article 12), shall expressly survive the termination of this Agreement.

## ARTICLE 12

## GENERAL PROVISIONS

12.1 Survival. All covenants and agreements contained herein or in any other Transaction Document or in any certificate delivered hereunder or thereunder, which by their terms are to be performed in whole or in part, or which prohibit actions, subsequent to the Closing shall, solely to the extent such covenants and agreements are to be performed, or prohibit actions, subsequent to the Closing, survive the Closing in accordance with their terms, and if no term is specified, then for five (5) years following the Closing Date (and defined terms used in this Section 12.1 and such surviving covenants and agreements shall have the meanings specified or referenced in Section 1.1), and nothing in this Section 12.1 will be deemed to limit any rights or remedies of any Person for breach of any such surviving covenant or agreement. In addition, all covenants and agreements herein that are necessary to enforce or interpret the foregoing surviving provisions will also survive the Closing to the extent necessary. All other covenants and agreements and all representations and warranties contained herein or in any other Transaction Document or in any certificate delivered hereunder or thereunder, shall not survive the Closing and shall thereupon terminate, such that no Action for breach of any such representation, warranty, covenant or agreement, detrimental reliance or other right or remedy (whether in contract, in tort or at law or in equity) may be brought with respect thereto after the Closing. Purchaser and Sellers acknowledge and agree, on their own behalf and on behalf of their respective successors and permitted assigns, that the agreements contained in this Section 12.1 (a) require performance after the Closing to the maximum extent permitted by applicable Legal Requirements and will survive the Closing for five (5) years and (b) are an integral part of the transactions contemplated hereby and that, without the agreements set forth in this Section 12.1, none of the Parties would enter into this Agreement. Notwithstanding the foregoing or anything to the contrary in this Agreement, nothing will limit any Party's ability to make a claim or seek any remedy in respect of Actual Fraud.

12.2 Confidentiality. Following the Closing, each Seller agrees to, and to cause its Affiliates to, treat and hold as confidential, and not use or disclose all or any of the information concerning the Business, the Acquired Assets, the negotiation or existence and terms of this Agreement or the business affairs of Buyer except disclosure to employees and advisors of matters that become a matter of public record as a result of the Bankruptcy Case and the filings related thereto. Notwithstanding the foregoing, in the event that any Seller reasonably determines, on advice of counsel, that any use or disclosure of such matters is required by the Bankruptcy Court or otherwise under applicable Legal Requirements, such Seller shall give Buyer advance written notice of, and a meaningful opportunity to review and comment on, the proposed form and substance of any such disclosure, but prior written approval shall not be required. In addition, Sellers may disclose such matters to the extent required to enforce its rights.

12.3 Public Announcements. Unless otherwise required by applicable Legal Requirement, including requirements by the Bankruptcy Court to make filings with the Bankruptcy Court, or to enforce rights or obligations of Buyer or Sellers or their respective Affiliates pursuant to any listing agreement with or rules of any securities exchange, Buyer, on the one hand, and Sellers, on the other hand, shall consult with each other before issuing any press release or otherwise making any public statement with respect to this Agreement, the transactions

contemplated by this Agreement or the activities and operations of the other and shall not issue any such release or make any such statement without the prior written consent of the other (such consent not to be unreasonably withheld, conditioned or delayed). Notwithstanding the foregoing, Buyer shall not be restricted from making any public announcements or issuing any press releases after the Closing.

12.4 Notices

All notices, requests, demands, waivers and other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been duly given if delivered personally or sent by overnight courier or electronic mail:

(i) If to Sellers, then to:

American Tire Distributors, Inc.
12200 Herbert Wayne Court
Huntersville, NC 28078
Attn: Robert Toms, Deputy General Counsel
Email: rtoms@atd.com

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

Kirkland & Ellis LLP
333 West Wolf Point Plaza
Chicago, IL 60654
Attn: Anup Sathy, P.C.
Chad J. Husnick, P.C.
Email: anup.sathy@kirkland.com
chad.husnickkirkland.com

and

Kirkland & Ellis LLP
2049 Century Park East, Suite 3700
Los Angeles, CA 90067
Attn: Jonathan Benloulou, P.C.
Daniel Elizondo
Email: jonathan.benloulou@kirkland.com
daniel.elizondo@kirkland.com

and

Troutman Pepper Hamilton Sanders LLP
301 S. College Street, Suite 3400
Charlotte, NC 28202
Attn: Christian Chad Warpula P.C.
Email: chad.warpula@troutman.com

(ii) If to Buyer:

Asphalt Buyer LLC
c/o Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10036
Attn: Philip Dublin; Naomi Moss; and Zachary Wittenberg
Email: pdublin@akingump.com; nmoss@akingump.com; and zwittenberg@akingump.com

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

Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10036
Attn: Philip Dublin; Naomi Moss; Daniel Fisher; and Zachary Wittenberg
Email: pdublin@akingump.com; nmoss@akingump.com; dfisher@akingump.com; and zwittenberg@akingump.com

or to such other person or address as any party shall specify by notice in writing to the other party. All such notices, requests, demands, waivers and communications shall be deemed to have been received on the date on which so personally delivered or faxed or delivered by overnight courier or electronic mail.

12.5 Waiver. Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement shall operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power, or privilege shall preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by Legal Requirements, (a) no waiver that may be given by a Party shall be applicable except in the specific instance for which it is given, and (b) no notice to or demand on one Party shall be

deemed to be a waiver of any right of the Party giving such notice or demand to take further action without notice or demand.

12.6 Entire Agreement; Amendment. This Agreement (including the Disclosure Schedules and the Exhibits) and the other Transaction Documents supersede all prior agreements between Buyer, on the one hand, and Sellers, on the other hand, with respect to its subject matter and constitute a complete and exclusive statement of the terms of the agreements between Buyer, on the one hand, and Sellers, on the other hand, with respect to their subject matter. This Agreement may not be amended, modified or supplements except by a written agreement executed by each of the Parties hereto.

12.7 Assignment. This Agreement, and the rights, interests and obligations hereunder, shall not be assigned by any Party by operation of law or otherwise without the express written consent of the other Parties (which consent may be granted or withheld in the sole discretion of such other Party); provided, however, that Buyer shall be permitted to assign all or part of its rights or obligations hereunder to one or more Buyer Designees without the prior consent of Sellers. Notwithstanding the foregoing sentence, no assignment permitted by this Section 12.7 shall relieve Buyer from its liabilities or obligations hereunder.

12.8 Severability. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability.

12.9 Expenses. Except as otherwise expressly provided in this Agreement, including Section 11.2 and as set forth in the DIP Orders, whether or not the transactions contemplated by this Agreement are consummated, the Parties shall bear their own respective expenses (including all compensation and expenses of counsel, financial advisors, consultants, actuaries and independent accountants) incurred in connection with this Agreement and the transactions contemplated hereby.

12.10 Governing Law; Consent to Jurisdiction and Venue; Jury Trial Waiver.

(a) Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to contracts made and to be performed entirely in such state without regard to principles of conflicts or choice of laws or any other law that would make the laws of any other jurisdiction other than the State of Delaware applicable hereto.

(b) Without limitation of any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated

hereby and (ii) any and all claims relating to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent and submit to the exclusive jurisdiction and venue of the Bankruptcy Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Action; provided, however, that, if the Bankruptcy Case is closed, all Actions arising out of or relating to this Agreement shall be heard and determined in a Delaware Court of Chancery or a federal court sitting in the State and County of Delaware, and the Parties hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such Action and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Action. The Parties consent to service of process by mail (in accordance with Section 12.4 or any other manner permitted by law).

(c) THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR COUNTERCLAIM (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF SELLERS, BUYER OR THEIR RESPECTIVE REPRESENTATIVES IN THE NEGOTIATION OR PERFORMANCE HEREOF.

12.11 Counterparts. This Agreement and any amendment hereto may be executed in two or more counterparts, each of which shall be deemed to be an original of this Agreement or such amendment and all of which, when taken together, shall constitute one and the same instrument. Notwithstanding anything to the contrary in Section 12.4, delivery of an executed counterpart of a signature page to this Agreement or any amendment hereto by telecopier, facsimile or email attachment that contains a portable document format (.pdf) file of an executed signature shall be effective as delivery of a manually executed counterpart of this Agreement or such amendment, as applicable.

12.12 Parties in Interest; No Third-Party Beneficiaries; No Amendment. This Agreement and the other Transaction Documents shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. This Agreement and the other Transaction Documents are for the sole benefit of the Parties and their permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable benefit, claim, cause of action, remedy or right of any kind. Notwithstanding anything to the contrary, nothing in this Agreement shall constitute an amendment to any Benefit Plan.

12.13 Remedies. Neither the exercise of nor the failure to exercise a right of set-off or to give notice of a claim under this Agreement will constitute an election of remedies or limit Sellers or Buyer in any manner in the enforcement of any other remedies that may be available to any of them, whether at law or in equity.

12.14 Specific Performance. Each Party agrees that irreparable damage, for which monetary relief, even if available, would not be an adequate remedy, would occur if this Agreement is not performed in accordance with its specific terms or is otherwise breached, including if any of the Parties fails to take any action required of it hereunder to consummate the transactions contemplated by this Agreement and the Transaction Documents. The Parties shall therefore be entitled, in addition to any other remedies that may be available under this Agreement, to an injunction or injunctions, specific performance or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in the courts described in

Section 12.10. Any Party against whom specific performance of this Agreement is sought shall waive the defense that there is an adequate remedy at law. Each Party agrees to waive any requirement for the security or posting of any bond in connection with any Action seeking specific performance of this Agreement. The right of specific performance and other equitable relief is an integral part of the transactions contemplated by this Agreement, and without that right, neither Sellers nor Buyer would have entered this Agreement. If, prior to the Outside Date, any Party brings any Action, in each case in accordance with Section 12.10, to enforce specifically the performance of the terms and provisions hereof by any other Party, the Outside Date will automatically be extended (a) for the period during which such Action is pending, plus 10 Business Days or (b) by such other time period established by the court presiding over such Action, as the case may be.

12.15 Sellers' Representative; Reliance. Sellers, jointly and severally, hereby represent and warrant that the statements in this Section 12.15 are correct and complete as of the Execution Date:

(a) The Company has been appointed, and is authorized, and empowered to act, in connection with, and to facilitate the consummation of, the transactions contemplated by this Agreement and the Transaction Documents and in connection with any activities to be performed by the Sellers under this Agreement and the Transaction Documents, for the purposes and with the powers, and authority set forth in this Agreement, which will include the sole power and authority:

(i) to receive notices on behalf of Sellers hereunder pursuant to Section 12.4;

(ii) to receive and distribute the Purchase Price or any other amount paid in connection with this Agreement or the Transaction Documents to Sellers;

(iii) to enforce and protect the rights and interests of Sellers arising out of or under or in any manner relating to this Agreement and the Transaction Documents (including in connection with any claims related to the transactions contemplated hereby and thereby) and, in connection therewith, to (A) assert any claim or institute any action, (B) investigate, defend, contest or litigate any action initiated by Buyer or any other Person pursuant to this Agreement and the Transaction Documents and receive process on behalf of each Seller in any such action and compromise or settle on such terms as the Company will determine to be appropriate, give receipts, releases and discharges on behalf of all or any Seller with respect to any such action, (C) file any proofs, debts, claims and petitions as the Company may deem advisable or necessary, (D) settle or compromise any claims related to the transactions contemplated by this Agreement and the Transaction Documents, (E) assume, on each Sellers' behalf, the defense of any claims related to the transactions contemplated by this Agreement and the Transaction Documents, and (F) file and prosecute appeals from any decision, judgment or award rendered in any of the foregoing actions;

(iv) to enforce or refrain from enforcing any right of any Seller (prior to the Closing) and/or of the Company arising out of or under or in any manner relating to this Agreement or the Transaction Documents;

(v) to take any action to be taken by one or more Sellers under or in connection with this Agreement or any Transaction Document; or

(vi) to make, execute, acknowledge and deliver all such other Contracts, guarantees, orders, receipts, endorsements, notices, requests, instructions, certificates, stock powers, letters and other writings, and, in general, to do any and all things and to take any and all action that the Company, in its sole and absolute discretion, may consider necessary or proper or convenient in connection with or to carry out the activities described in Section 12.15(a)(i) through Section 12.15(a)(iv) and the transactions contemplated by this Agreement and the Transaction Documents.

(b) The Company's power and grant of authority is (i) coupled with an interest and is irrevocable and survives the bankruptcy or liquidation of any Seller and will be binding on any successor thereto; and (ii) may be exercised by the Company acting by signing as the representative of any Seller.

(c) Buyer and its Affiliates and Representatives may conclusively and absolutely rely, without inquiry, upon the action of the Company as the action of each Seller (and may ignore any action taken or notice given by any Seller other than the Company) in all matters relating to this Agreement, the Transaction Documents or the transactions contemplated hereby and thereby. Any document delivered or notice delivered by or on behalf of Buyer or its Affiliates to, or action taken by or on behalf of Buyer or its Affiliates with respect to, the Company shall be deemed to have been delivered to, or taken with respect to, all Sellers. Any amounts to be paid by Buyer to Sellers pursuant to this Agreement shall be divided by Sellers among themselves, but may be paid by Buyer to the Company. Sellers shall be jointly and severally liable for any amounts due to be paid or owed by Sellers to Buyer pursuant to this Agreement.

12.16 Limitations on Damages. NO PARTY (OR ITS AFFILIATES OR REPRESENTATIVES) SHALL, UNDER ANY CIRCUMSTANCE, BE LIABLE TO THE OTHER PARTY (OR ITS AFFILIATES OR REPRESENTATIVES) FOR ANY EXEMPLARY OR PUNITIVE DAMAGES CLAIMED BY SUCH OTHER PARTY UNDER THE TERMS OF OR DUE TO ANY BREACH OF THIS AGREEMENT; PROVIDED, HOWEVER, THAT THE FOREGOING LIMITATION SHALL NOT APPLY TO THE EXTENT SUCH DAMAGES ARE PAYABLE TO A THIRD PARTY.

12.17 Non-Recourse. No past, present or future director, officer, employee, incorporator, member, partner or equity holder of the Parties will have any liability for any obligations or liabilities of any Seller or Buyer, as applicable, under this Agreement, or any agreement entered into in connection herewith of or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby and thereby; provided, that the foregoing shall not limit the rights of Buyer with respect to Acquired Assets. Any claim or cause of action based upon, arising out of, or related to this Agreement or any agreement, document or instrument contemplated by this Agreement may only be brought against Persons that are expressly named as parties hereto or thereto, and then only with respect to the specific obligations set forth herein or therein. Other than the Parties hereto, no Person shall have any liability or obligation for any of the representations, warranties, covenants, agreements, obligations or liabilities of any party under this Agreement or the agreements, documents or instruments contemplated hereby or of or for any

action or proceeding based on, in respect of, or by reason of, the transactions contemplated hereby or thereby (including breach, termination or failure to consummate such transactions), in each case whether based on contract, tort, fraud, strict liability, other Legal Requirements or otherwise and whether by piercing the corporate veil, by a claim by or on behalf of a party hereto or another Person or otherwise.

12.18 Conflicts; Privileges.

(a) It is acknowledged by each of the Parties that each Seller has retained Kirkland & Ellis LLP ("***Kirkland***") and Troutman Pepper Hamilton Sanders LLP ("***Troutman***") to act as its counsel in connection with this Agreement and the transactions contemplated hereby (the "***Current Representation***"). Buyer hereby agrees that after the Closing, Kirkland or Troutman may represent any Seller or any of its Affiliates or any of their respective Representatives (any such Person, a "***Designated Person***") in any matter involving or arising from the Current Representation, including any interpretation or application of this Agreement or any other agreement entered into in connection with the transactions contemplated hereby, and including for the avoidance of doubt any Action between or among Buyer or any of its Affiliates, and any Designated Person, even though the interests of such Designated Person may be directly adverse to Buyer or any of its Affiliates. Buyer hereby waives and agrees not to assert (i) any claim that Kirkland or Troutman has a conflict of interest in any representation described in this Section 12.18 or (ii) any confidentiality obligation with respect to any communication between Kirkland or Troutman, on the one hand, and any Designated Person, on the other hand, occurring during the Current Representation.

(b) Buyer hereby agrees that all communications (whether before, at or after the Closing) between Kirkland or Troutman, on the one hand, and any Designated Person, on the other hand, that relate in any way to the Current Representation that are attorney-client privileged (the "***Deal Communications***") and all rights to any other evidentiary privilege, and the protections afforded to information relating to representation of a client under applicable rules of professional conduct that may apply to such Deal Communications, belong to such Seller and may be controlled by such Seller and will not pass to or be claimed by Buyer or any of its Representatives and Buyer hereby agrees that it will not seek to compel disclosure to Buyer or any of its Representatives of any such communication that is subject to attorney client privilege, or any other evidentiary privilege.

(c) Notwithstanding the foregoing, in the event that a dispute arises between Buyer and any Person that is not a Seller, Buyer may assert the attorney-client privilege to prevent the disclosure of the Deal Communications to such Person; provided, however, that Buyer may not waive such privilege without the prior written consent of the applicable Seller (which such consent shall not be unreasonably withheld, conditioned or delayed). In the event that Buyer or any of its respective directors, officers, employees, or other Representatives is legally required by an Order made or rendered by any Governmental Authority to access or obtain a copy of all or a portion of the Deal Communications, Buyer shall, to the extent legally permissible, (i) reasonably promptly notify the applicable Seller in writing (including by making specific reference to this Section 12.18(c)), (ii) agree that such Seller may seek a protective Order and (iii) use, at such Seller's sole cost and expense, commercially reasonable efforts to assist therewith.

12.19 Joinder. At the Closing, any Person to whom Buyer assigns the right to receive the Acquired Assets at Closing shall execute a joinder in customary form, pursuant to which each such other Person will assume, and will be obligated with Buyer on a joint and several basis, to perform and satisfy each of Buyer's obligations under this Agreement.

12.20 Limitation on Representations and Warranties.

(a) Buyer acknowledges and agrees that, except as expressly set forth in Article 5 and the Transaction Documents, (i) none of the Sellers or their Affiliates has made or makes any representation or warranty, express or implied, written or oral, at law or in equity, with respect to itself or any of its Affiliates or any of their respective assets, liabilities, businesses, operations, future revenue, profitability or success, including in respect of the correctness, accuracy or completeness of any information made available, or to be furnished or made available, or statement made, by or on behalf of any Seller or any of its Affiliates in connection with the transactions contemplated hereby, and (ii) any such other representations or warranties are hereby expressly disclaimed. Other than the representations and warranties made to the Buyer as set forth in Article 5, Buyer is not relying upon any information provided by, or representation or warranty of, the Sellers or any of their respective Affiliates or agents, written or otherwise, in determining to execute, deliver and perform this Agreement and the transactions contemplated hereby. Buyer has consulted to the extent deemed appropriate by them with their own advisers as to the financial, tax, legal, accounting, regulatory and related matters concerning the transactions contemplated hereby, and on that basis understand the financial, tax, legal, accounting, regulatory and other consequences of such transactions. In executing, delivering and performing this Agreement and the transactions contemplated hereby, Buyer has not relied nor will rely upon any information, representation or warranty, except those representations and warranties set forth in Article 5 and the Transaction Documents.

(b) Sellers acknowledge and agree that, except as expressly set forth in Article 6 and the Transaction Documents, (i) neither Buyer nor its Affiliates has made or makes any representation or warranty, express or implied, written or oral, at law or in equity, with respect to itself or any of its Affiliates or any of their respective assets, liabilities, businesses or operations, and (ii) any such other representations or warranties are hereby expressly disclaimed. Other than the representations and warranties made to the Sellers as set forth in Article 6, Sellers are not relying upon any information provided by, or representation or warranty of, the Buyer or any of its Affiliates or agents, written or otherwise, in determining to execute, deliver and perform this Agreement and the transactions contemplated hereby. Sellers have consulted to the extent deemed appropriate by them with their own advisers as to the financial, tax, legal, accounting, regulatory and related matters concerning the transactions contemplated hereby, and on that basis understand the financial, tax, legal, accounting, regulatory and other consequences of such transactions. In executing, delivering and performing this Agreement and the transactions contemplated hereby, no Seller has relied nor will rely upon any representation or warranty, except those representations and warranties set forth in Article 6 and the Transaction Documents.

[*Signature pages follow.*]

[*Buyer signature pages on file with the Company*]

**SELLERS:**

AMERICAN TIRE DISTRIBUTORS, INC.

By: Signed by: Ronald J. Bienias FA885AD91A81451...
Name: Ronald J. Bienias
Title: Chief Restructuring Officer

ATD NEW HOLDINGS, INC.

By: Signed by: Ronald J. Bienias FA885AD91A81451...
Name: Ronald J. Bienias
Title: Chief Restructuring Officer

ATD NEW HOLDINGS II, INC.

By: Signed by: Ronald J. Bienias FA885AD91A81451...
Name: Ronald J. Bienias
Title: Chief Restructuring Officer

ATD NEW HOLDINGS III, INC.

By: Signed by: Ronald J. Bienias FA885AD91A81451...
Name: Ronald J. Bienias
Title: Chief Restructuring Officer

ATD SOURCING SOLUTIONS, LLC

By: Signed by: Ronald J. Bienias FA885AD91A81451...
Name: Ronald J. Bienias
Title: Chief Restructuring Officer

ATD TECHNOLOGY SOLUTIONS INC.

By: Signed by: Ronald J. Bienias FA885AD91A81451...
Name: Ronald J. Bienias
Title: Chief Restructuring Officer

FLX FWD LOGISTICS, LLC

By: Signed by: Ronald J. Bienias FA885AD91A81451...
Name: Ronald J. Bienias
Title: Chief Restructuring Officer

HERCULES TIRE INTERNATIONAL INC.

By: Signed by: Ronald J. Bienias FA885AD91A81451...
Name: Ronald J. Bienias
Title: Chief Restructuring Officer

TERRY'S TIRE TOWN HOLDINGS, LLC

By: Signed by: Ronald J. Bienias FA885AD91A81451...
Name: Ronald J. Bienias
Title: Chief Restructuring Officer

THE HERCULES TIRE & RUBBER COMPANY

By: Signed by: Ronald J. Bienias FA885AD91A81451...
Name: Ronald J. Bienias
Title: Chief Restructuring Officer

TIREBUYER.COM, LLC

By: Signed by: Ronald J. Bienias FA885AD91A81451...
Name: Ronald J. Bienias
Title: Chief Restructuring Officer

TIRE PROS FRANCORP, LLC

By: Signed by: Ronald J. Bienias FA885AD91A81451...
Name: Ronald J. Bienias
Title: Chief Restructuring Officer

TORQATA DATA AND ANALYTICS LLC

By: Signed by: Ronald J. Bienias FA885AD91A81451...
Name: Ronald J. Bienias
Title: Chief Restructuring Officer

POLYATOM, LLC

By: Signed by: Ronald J. Bienias FA885AD91A81451...
Name: Ronald J. Bienias
Authorized Signatory
On behalf of American Tire Distributors, Inc.

**Exhibit A**

**Form of Assignment and Assumption Agreement**

[Attached]

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is made and entered into as of [●], 202[_], by and among American Tire Distributors, Inc., a Delaware corporation (the "Company"), [●][1] (together with the Company, the "Assignors"), and Asphalt Buyer LLC, a Delaware limited liability company (the "Assignee") (each of the Assignors and the Assignee, a "Party" and collectively, the "Parties").

WHEREAS, this Agreement is made and entered into in connection with the closing of the transactions contemplated by that certain Asset Purchase Agreement, dated as of November 25, 2024 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Purchase Agreement"), by and among the Assignors and the Assignee;

WHEREAS, pursuant to the Purchase Agreement, the Assignors have agreed to assign the Assumed Contracts to the Assignee, and the Assignee has agreed to assume certain obligations of the Assignors thereunder;

WHEREAS, the execution and delivery of this Agreement is required by Sections 4.2(a) and 4.3(a) of the Purchase Agreement; and

WHEREAS, this Agreement, as duly executed by the Assignors and the Assignee, is being delivered as of the date hereof by each Party to each other Party hereto effective as of the Closing Date.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Assignee and the Assignors do hereby agree as follows:

1. Definitions. Capitalized terms used but not defined herein shall have the respective meanings given to such terms in the Purchase Agreement.

2. Assignment and Assumption. Subject to the terms and conditions of the Purchase Agreement, each Assignor does hereby sell, transfer, assign, convey and deliver to the Assignee, and the Assignee does hereby take assignment of, all of such Assignor's direct or indirect right, title, and interest in, to and under any and all Assumed Contracts to which such Assignor is party and required to be assigned pursuant to Section 2.5(a)(iv) of the Purchase Agreement, subject to Section 2.5(c) of the Purchase Agreement. Subject to the terms and conditions of the Purchase Agreement, the Assignee hereby unconditionally and irrevocably assumes, and hereby agrees to discharge and perform when due, all of the Assumed Liabilities arising under, required to be performed under or related to the Assumed Contracts.

3. Excluded Assets. Notwithstanding anything to the contrary in this Agreement or in the Purchase Agreement, no Assignor shall sell, transfer, assign, convey or deliver to the Assignee,

---

[1] **Note to Draft**: To be updated.

and the Assignee shall not take assignment of, any contract or any other form of agreement included in the Excluded Assets or any obligation thereunder.

4. Excluded Liabilities. Notwithstanding anything to the contrary in this Agreement or in the Purchase Agreement, the Assignee shall not assume or otherwise be liable in respect of any of the Excluded Liabilities.

5. Further Assurances. From time to time hereafter, and without further consideration therefor, each Assignor and its respective successors and permitted assigns, covenants and agrees that such Assignor and its successors and permitted assigns, shall execute and deliver such further instruments and certificates as shall be necessary or desirable (i) to vest, perfect or confirm ownership (of record or otherwise) in the Assignee, such Assignor's right, title or interest in, to or under any or all of the Assumed Contracts free and clear of all Encumbrances (other than Permitted Encumbrances) or (ii) to otherwise effectuate the purposes and intent of this Agreement or for aiding, assisting, collecting and reducing to possession any of the Assumed Contracts and exercising rights with respect thereto. Each of the Parties shall take, or cause to be taken, all actions, do or cause to be done all things as may be reasonably requested by the other Parties in order to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Assignee or otherwise to carry out this Agreement, and shall execute and deliver all deeds, bills of sale, instruments of conveyance, powers of attorney, assignments, assumptions and assurances, and as may be required to consummate the transactions contemplated by this Agreement.

6. Terms of the Purchase Agreement. This Agreement is executed and delivered pursuant to the Purchase Agreement. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement shall govern, supersede and prevail. Notwithstanding anything to the contrary in this Agreement, nothing herein is intended to, nor shall it, extend, amplify or otherwise alter any representation, warranty, covenant or obligation contained in the Purchase Agreement.

7. Incorporation by Reference. Article 12 of the Purchase Agreement (except for Sections 12.1, 12.13, and 12.15 through 12.20) are hereby incorporated by reference, *mutatis mutandis*.

8. No Reliance. Each Party represents and warrants that in entering into this Agreement it is relying on its own judgment, belief and knowledge and, as applicable, on that of any attorney it has retained to represent it in this matter. In entering into this Agreement, no Party is relying on any representation or statement made by any other Party or any person representing such other Party.

9. Construction. This Agreement has been drafted through a cooperative effort of both Parties, and neither Party shall be considered the drafter of this Agreement so as to give rise to any presumption of convention regarding construction of this document. All terms of this Agreement were negotiated in good faith and at arm's-length, and this Agreement was prepared and executed without fraud, duress, undue influence, or coercion of any kind exerted by any of the Parties upon the other. The execution and delivery of this Agreement is the free and voluntary act of the Parties.

10. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original of this Agreement and all of which, when taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Agreement by telecopier, facsimile or email attachment that contains a portable

document format (.pdf) file of an executed signature shall be effective as delivery of a manually executed counterpart of this Agreement.

[*The remainder of this page is intentionally left blank.*]

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed as of the date first set forth above.

ASSIGNEE:

ASPHALT BUYER LLC

By: _____
Name:
Title:

ASSIGNORS:

[AMERICAN TIRE DISTRIBUTORS, INC.]

By: _____
Name:
Title:

[_____]

By: _____
Name:
Title:

**Exhibit B**

**Form of Bill of Sale**

[Attached]

# BILL OF SALE

This BILL OF SALE (this "Bill of Sale") is made and entered into as of [●], 202[_], by and among American Tire Distributors, Inc., a Delaware corporation (the "Company"), [●][1] (together with the Company, the "Assignors"), and Asphalt Buyer LLC, a Delaware limited liability company (the "Assignee") (each of the Assignors and the Assignee, a "Party" and collectively, the "Parties").

WHEREAS, this Bill of Sale is made and entered into in connection with the closing of the transactions contemplated by that certain Asset Purchase Agreement, dated as of November 25, 2024 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Purchase Agreement"), by and among the Assignors and the Assignee;

WHEREAS, pursuant to the Purchase Agreement, the Assignors have agreed to sell, transfer, assign, convey and deliver, or cause to be sold, transferred, assigned, conveyed and delivered, to the Assignee and/or one or more other Persons designated by the Assignee, and the Assignee has agreed to purchase, acquire and accept from the Assignors, all of the Assignors' direct or indirect right, title and interest in, to and under certain assets;

WHEREAS, the execution and delivery of this Bill of Sale is required by Section 4.3(a) of the Purchase Agreement; and

WHEREAS, this Bill of Sale, as duly executed by the Assignors and the Assignee, is being delivered as of the date hereof by each Party to each other Party hereto effective as of the Closing Date.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Assignee and the Assignors do hereby agree as follows:

1. Definitions. Capitalized terms used but not defined herein shall have the respective meanings given to such terms in the Purchase Agreement.

2. Assignment of Assets. Subject to the terms and conditions of the Purchase Agreement, each Assignor hereby sells, transfers, assigns, conveys and delivers to the Assignee, and the Assignee does hereby purchase, acquire and accept from each Assignor, all of such Assignor's direct or indirect right, title and interest in, to and under all of the Acquired Assets. Subject to the terms and conditions of the Purchase Agreement, the Assignee hereby assumes, and hereby agrees to discharge and perform when due, all of the Assumed Liabilities arising under or related to the Acquired Assets.

3. Excluded Assets. Notwithstanding anything to the contrary in this Bill of Sale or in the Purchase Agreement, no Assignor shall sell, transfer, assign, convey or deliver to the

[1] **Note to Draft**: To be updated.

Assignee, and the Assignee shall not purchase, acquire or accept from any Assignor, any of the Excluded Assets.

4. Excluded Liabilities. Notwithstanding anything to the contrary in this Bill of Sale or in the Purchase Agreement, the Assignee shall not assume or otherwise be liable in respect of any of the Excluded Liabilities.

5. Further Assurances. From time to time hereafter, and without further consideration therefor, each Assignor and its respective successors and permitted assigns, covenants and agrees that such Assignor and its successors and permitted assigns, shall execute and deliver such further instruments and certificates as shall be necessary or desirable (i) to vest, perfect or confirm ownership (of record or otherwise) in the Assignee, such Assignor's right, title or interest in, to or under any or all of the Acquired Assets free and clear of all Encumbrances (other than Permitted Encumbrances) or (ii) to otherwise effectuate the purposes and intent of this Bill of Sale or for aiding, assisting, collecting and reducing to possession any of the Acquired Assets and exercising rights with respect thereto. Each of the Parties shall take, or cause to be taken, all actions, do or cause to be done all things as may be reasonably requested by the other Parties in order to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Assignee or otherwise to carry out this Bill of Sale, and shall execute and deliver all deeds, bills of sale, instruments of conveyance, powers of attorney, assignments, assumptions and assurances, and as may be required to consummate the transactions contemplated by this Bill of Sale.

6. Terms of the Purchase Agreement. This Bill of Sale is executed and delivered pursuant to the Purchase Agreement. In the event of a conflict between the terms and conditions of this Bill of Sale and the terms and conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement shall govern, supersede and prevail. Notwithstanding anything to the contrary in this Bill of Sale, nothing herein is intended to, nor shall it, extend, amplify or otherwise alter any representation, warranty, covenant or obligation contained in the Purchase Agreement.

7. Incorporation by Reference. Article 12 of the Purchase Agreement (except for Sections 12.1, 12.13, and 12.15 through 12.20) are hereby incorporated by reference, *mutatis mutandis*.

8. No Reliance. Each Party represents and warrants that in entering into this Bill of Sale it is relying on its own judgment, belief and knowledge and, as applicable, on that of any attorney it has retained to represent it in this matter. In entering into this Bill of Sale, no Party is relying on any representation or statement made by any other Party or any person representing such other Party.

9. Construction. This Bill of Sale has been drafted through a cooperative effort of both Parties, and neither Party shall be considered the drafter of this Bill of Sale so as to give rise to any presumption of convention regarding construction of this document. All terms of this Bill of Sale were negotiated in good faith and at arm's-length, and this Bill of Sale was prepared and executed without fraud, duress, undue influence, or coercion of any kind exerted by any of the

Parties upon the other. The execution and delivery of this Bill of Sale is the free and voluntary act of the Parties.

10. Counterparts. This Bill of Sale may be executed in two or more counterparts, each of which shall be deemed to be an original of this Bill of Sale and all of which, when taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Bill of Sale by telecopier, facsimile or email attachment that contains a portable document format (.pdf) file of an executed signature shall be effective as delivery of a manually executed counterpart of this Bill of Sale.

[*The remainder of this page is intentionally left blank.*]

**IN WITNESS WHEREOF**, the Parties have caused this Bill of Sale to be executed as of the date first set forth above.

ASSIGNEE:

ASPHALT BUYER LLC

By: _____
Name:
Title:

ASSIGNORS:

[AMERICAN TIRE DISTRIBUTORS, INC.]

By: _____
Name:
Title:

[_____]

By: _____
Name:
Title:

# Exhibit C

## Form of Intellectual Property Assignment Agreement

[Attached]

***Final Form***

INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT

This INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT (the "Assignment Agreement") is made and entered into as of [●], 202[_] ("Effective Date"), by and among American Tire Distributors, Inc., a Delaware corporation (the "Company"), [●][1] (together with the Company, the "Assignors"), and Asphalt Buyer LLC, a Delaware limited liability company ("Assignee") (each of the Assignors and the Assignee, a "Party" and collectively, the "Parties").

WHEREAS, this Assignment Agreement is made and entered into in connection with the closing of the transactions contemplated by that certain Asset Purchase Agreement, dated as of November 25, 2024 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Purchase Agreement"), by and among the Assignors and the Assignee;

WHEREAS, each Assignor is the owner of all right, title, and interest in and to the trademarks, patents and copyrights set forth in Exhibit A attached hereto, including all the goodwill associated therewith (the "Assigned Intellectual Property"), and has the right to enter into this Assignment Agreement; and

WHEREAS, each Assignor desires to assign the respective Assigned Intellectual Property to Assignee and Assignee desires to accept such assignment, on the terms and conditions set forth below and as contemplated in the Purchase Agreement.

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

1. Assignment by Assignors. As of the Effective Date, each Assignor hereby sells, assigns, transfers and conveys to Assignee, and Assignee hereby accepts, all right, title and interest in and to all the Assigned Intellectual Property along with all goodwill associated therewith, together with all rights to future royalty and license fees as well as all causes of action, claims, demands and any other rights for, or arising from, any past, present or future infringement of the Assigned Intellectual Property.

2. Recordation. The Parties agree that this Assignment Agreement may be recorded with the United States Patent and Trademark Office, the United States Copyright Office and any other offices as desired by Assignee at Assignee's sole cost and risk. Upon Assignee's reasonable request and at the sole cost and expense of the Assignee, each Assignor shall execute other agreements or assignments to assist Assignee to record this Assignment Agreement or other assignment agreements, as necessary, with the applicable authorities and government offices.

3. Further Assurances. Each Assignor shall provide to Assignee, its successors, assigns, or other legal representatives cooperation and assistance (including, without limitation, the execution and delivery of any and all affidavits, declarations, oaths, samples, exhibits, specimens,

[1] **Note to Draft**: To be updated.

and other documentation as may be reasonably required), at Assignee's request and expense, in connection with the implementation, perfection and/or recording of (i) any releases of any and all claims, liens and other encumbrances in and to the Assigned Intellectual Property and (ii) this Assignment Agreement, including executing any other documents to effectuate the intent of this Assignment Agreement, including recordation thereof in the United States and elsewhere.

4. Terms of the Purchase Agreement. This Assignment Agreement is executed and delivered pursuant to the Purchase Agreement. In the event of a conflict between the terms and conditions of this Assignment Agreement and the terms and conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement shall govern, supersede and prevail. Notwithstanding anything to the contrary in this Assignment Agreement, nothing herein is intended to, nor shall it, extend, amplify or otherwise alter any representation, warranty, covenant or obligation contained in the Purchase Agreement.

5. Incorporation by Reference. Article 12 of the Purchase Agreement (except for Sections 12.1, 12.13, and 12.15 through 12.20) are hereby incorporated by reference, *mutatis mutandis*.

6. No Reliance. Each Party represents and warrants that in entering into this Assignment Agreement it is relying on its own judgment, belief and knowledge and, as applicable, on that of any attorney it has retained to represent it in this matter. In entering into this Assignment Agreement, no Party is relying on any representation or statement made by any other Party or any person representing such other Party.

7. Construction. This Assignment Agreement has been drafted through a cooperative effort of both Parties, and neither Party shall be considered the drafter of this Assignment Agreement so as to give rise to any presumption of convention regarding construction of this document. All terms of this Assignment Agreement were negotiated in good faith and at arm's-length, and this Assignment Agreement was prepared and executed without fraud, duress, undue influence, or coercion of any kind exerted by any of the Parties upon the other. The execution and delivery of this Assignment Agreement is the free and voluntary act of the Parties.

8. Counterparts. This Assignment Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original of this Assignment Agreement and all of which, when taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Assignment Agreement by telecopier, facsimile or email attachment that contains a portable document format (.pdf) file of an executed signature shall be effective as delivery of a manually executed counterpart of this Assignment Agreement.

[*The remainder of this page is intentionally left blank.*]

**IN WITNESS WHEREOF**, the Parties have caused this Assignment Agreement to be duly executed on the date as of the Effective Date.

ASSIGNEE:

ASPHALT BUYER LLC

By: _____
Name:
Title:

ASSIGNORS:

[AMERICAN TIRE DISTRIBUTORS, INC.]

By: _____
Name:
Title:

[_____]

By: _____
Name:
Title:

# EXHIBIT A [2]

## Trademarks

| Jurisdiction | Trademark | Serial No./Filing Basis | Applicant |
|---|---|---|---|
| [●] | [●] | [●] | [●] |

## Patents

[____]

## Copyrights

[____]

[2] **Note to Draft**: To be updated to list all the Assigned IP.

# Exhibit D

## Form of Assignment and Assumption of Sellers' Interest in Leases

[Attached]

***Final Form***

ASSIGNMENT AND ASSUMPTION OF LEASES

This ASSIGNMENT AND ASSUMPTION OF LEASES (this "Assignment") is made and entered into as of [●], 202[_] (the "Effective Date"), by and among American Tire Distributers, Inc., a Delaware corporation (the "Company"), [●][1] (together with the Company, the "Assignors"), and Asphalt Buyer LLC, a Delaware limited liability company (the "Assignee") (each of the Assignors and the Assignee, a "Party" and collectively, the "Parties").

RECITALS:

WHEREAS, this Assignment is made and entered into in connection with the closing of the transactions contemplated by that certain Asset Purchase Agreement, dated as of November 25, 2024 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Purchase Agreement"), by and among the Assignors and the Assignee;

WHEREAS, each Assignor, as tenant, is party to those certain leases described on Schedule 1 attached hereto (each, a "Lease", and collectively, the "Leases") for those certain properties, as listed on Schedule 1;

WHEREAS, pursuant to the Purchase Agreement, each Assignor has agreed to assign to the Assignee, and the Assignee has agreed to assume from such Assignor, the Leases in accordance with the terms and conditions of this Assignment;

WHEREAS, this Agreement is being delivered pursuant to Sections 4.2(b) and 4.3(a) of the Purchase Agreement; and

WHEREAS, this Assignment, as duly executed by the Assignors and the Assignee, is being delivered as of the Effective Date by each Party to each other Party hereto, effective as of the Closing Date.

AGREEMENT:

NOW THEREFORE, in consideration of the foregoing and the covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Assignee and the Assignors do hereby agree as follows:

(a) Recitals Incorporated; Defined Terms. The foregoing recitals are hereby incorporated within and made an integral part of this Assignment as if fully set forth herein. All capitalized terms used and not defined herein shall have the meanings ascribed to such terms in the Purchase Agreement.

(b) Assignment and Assumption. Each Assignor hereby assigns, transfers and conveys to the Assignee all of such Assignor's right, title and interest in and to the Leases. Assignee hereby (i) accepts the assignment, transfer and conveyance of the Leases, (ii) assumes all of Assignors' right, title and interest in and to the Leases and all of Assignors' obligations, liabilities and duties

[1] **Note to Draft**: To be updated.

under the Leases, and (iii) agrees to perform any and all covenants, agreements and obligations of Assignors under the terms, provisions and conditions of the Leases, provided that for clauses (ii) and (iii), solely to the extent arising from the ownership or operation of the Leases by Assignee after the Closing. Subject to the terms and conditions of the Purchase Agreement, and without limiting the generality of the foregoing, the Assignee hereby assumes, and hereby agrees to discharge and perform when due, all of the Assumed Liabilities arising under, required to be performed under or related to the Leases.

(c) Excluded Assets. Notwithstanding anything to the contrary in this Assignment or in the Purchase Agreement, no Assignor shall sell, transfer, assign, convey or deliver to the Assignee, and the Assignee shall not purchase, acquire or accept from any Assignor, any of the Excluded Assets.

(d) Excluded Liabilities. Notwithstanding anything to the contrary in this Assignment or in the Purchase Agreement, the Assignee shall not assume or otherwise be liable in respect of any of the Excluded Liabilities.

(e) Further Assurances. From time to time hereafter, and without further consideration therefor, each Assignor and its respective successors and permitted assigns, covenants and agrees that such Assignor and its successors and permitted assigns, shall execute and deliver such further instruments and certificates as shall be necessary or desirable (i) to vest, perfect or confirm ownership (of record or otherwise) in the Assignee, such Assignor's right, title or interest in, to or under any or all of the Leases free and clear of all Encumbrances (other than Permitted Encumbrances) or (ii) to otherwise effectuate the purposes and intent of this Assignment or for aiding, assisting, collecting and reducing to possession any of the Leases and exercising rights with respect thereto. Each of the Parties shall take, or cause to be taken, all actions, do or cause to be done all things as may be reasonably requested by the other Parties in order to vest, perfect or confirm any and all right, title and interest in, to and under such rights, properties or assets in the Assignee or otherwise to carry out this Assignment, and shall execute and deliver all deeds, bills of sale, instruments of conveyance, powers of attorney, assignments, assumptions and assurances, and as may be required to consummate the transactions contemplated by this Assignment.

(f) Terms of the Purchase Agreement. This Assignment is executed and delivered pursuant to the Purchase Agreement. In the event of a conflict between the terms and conditions of this Assignment and the terms and conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement shall govern, supersede and prevail. Notwithstanding anything to the contrary in this Assignment, nothing herein is intended to, nor shall it, extend, amplify or otherwise alter any representation, warranty, covenant or obligation contained in the Purchase Agreement.

(g) Incorporation by Reference. Article 12 of the Purchase Agreement (except for Sections 12.1, 12.13, and 12.15 through 12.20) are hereby incorporated by reference, *mutatis mutandis*.

(h) No Reliance. Each Party represents and warrants that in entering into this Assignment it is relying on its own judgment, belief and knowledge and, as applicable, on that of any attorney it has retained to represent it in this matter. In entering into this Assignment, no Party

is relying on any representation or statement made by any other Party or any person representing such other Party.

(i) Construction. This Assignment has been drafted through a cooperative effort of both Parties, and neither Party shall be considered the drafter of this Assignment so as to give rise to any presumption of convention regarding construction of this document. All terms of this Assignment were negotiated in good faith and at arm's-length, and this Assignment was prepared and executed without fraud, duress, undue influence, or coercion of any kind exerted by any of the Parties upon the other. The execution and delivery of this Assignment is the free and voluntary act of the Parties.

(j) Counterparts. This Assignment may be executed in two or more counterparts, each of which shall be deemed to be an original of this Assignment and all of which, when taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Assignment by telecopier, facsimile or email attachment that contains a portable document format (.pdf) file of an executed signature shall be effective as delivery of a manually executed counterpart of this Assignment.

[*The remainder of this page is intentionally left blank.*]

**IN WITNESS WHEREOF**, the Parties have caused this Assignment to be duly executed on the date as of the Effective Date.

**ASSIGNOR**:

AMERICAN TIRE DISTRIBUTORS, INC.

By:_____
Name:
Title:

[_____]

By: _____
Name:
Title:

**ASSIGNEE**:

ASPHALT BUYER LLC

By: _____
Name:
Title:

## SCHEDULE 1

### Description of Leases[2]

1. [Lease Agreement] dated as of [_____] by and between [American Tire Distributors, Inc.], as tenant, and [_____], as landlord, with respect to that certain real property located at [_____].

[2] **Note to Draft**: To be updated to list the assigned Leases.

**Schedules**

*[On File with the Company.]*

**Exhibit 2**

**First Amendment to APA**

***Execution Version***

**AMENDMENT TO**
**ASSET PURCHASE AGREEMENT**

This AMENDMENT (this "***Amendment***") to the Asset Purchase Agreement, dated November 26, 2024 (the "***Asset Purchase Agreement***"), by and among Asphalt Buyer LLC, a Delaware limited liability company ("***Buyer***"), American Tire Distributors, Inc., a Delaware corporation (the "***Company***") and the Additional Sellers (together with the Company, the "***Sellers***", and each entity individually, a "***Seller***") is entered into as of February 9, 2025. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Asset Purchase Agreement.

**WHEREAS**, pursuant to Section 12.6 of the Asset Purchase Agreement, the provisions of Asset Purchase Agreement may not be amended, modified or supplemented except by a written agreement executed by each of the parties thereto; and

**WHEREAS**, as of the date of this Amendment, the parties hereto desire to amend the Asset Purchase Agreement in accordance with the terms set forth in this Amendment.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements contained in this Amendment and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as set forth below:

1. Amendment to Section 2.1(p). Section 2.1(p) of the Asset Purchase Agreement is hereby amended and restated in its entirety as follows (with additions shown in bold and underlined for ease of review and such formatting shall not be incorporated into the Asset Purchase Agreement as amended by this Amendment):

> "(p) all rights **under** non-disclosure or confidentiality, non-compete, or non-solicitation agreements with Employees or former employees and agents of Sellers or with third parties (including any non-disclosure or confidentiality, non-compete, or non-solicitation agreements entered into in connection with or in contemplation of the Auction);".

2. Amendment to Section 2.3(b). Section 2.3(b) of the Asset Purchase Agreement is hereby amended and restated in its entirety as follows (with additions shown in bold and underlined for ease of review and such formatting shall not be incorporated into the Asset Purchase Agreement as amended by this Amendment):

> "(b) **(i)** all Liabilities under the Assumed Contracts that are required to be performed after the Closing Date, solely to the extent they arise or relate to periods of time after the Closing Date (but excluding any liability or obligation relating to or arising out of such Assumed Contract as a result of (**x**) any breach of such Assumed Contract occurring prior to the Closing or (**y**) any indemnification or similar obligation arising from period prior to the Closing Date)**, and (ii) all Cure Costs**;".

3. Amendment to Section 2.3(d). Section 2.3(d) of the Asset Purchase Agreement is hereby amended and restated in its entirety as follows (with additions shown in bold and underlined for ease of review and such formatting shall not be incorporated into the Asset Purchase Agreement as amended by this Amendment):

"(d) **(i)** trade and accounts payable (including without limitation those arising under Assumed Contracts) incurred in the Ordinary Course of Business from and after the Petition Date and outstanding as of the Closing Date**; and (ii) all obligations arising under the critical vendor arrangement described on Schedule 2.3(d) (and subject to the estimated dollar limit set forth on such Schedule 2.3(d)), which limit shall be subject to upward or downward adjustment pursuant to the terms and conditions of the applicable agreement based upon actual payment activity occurring prior to the Closing Date**; **and (iii) all allowed claims against the Debtors arising under section 503(b)(9) of the Bankruptcy Code not to exceed $1,300,000.00 in the aggregate** (the "***Assumed Trade Payables***");".

4. Amendment to Section 2.3. The final paragraph of Section 2.3 of the Asset Purchase Agreement is hereby amended and restated in its entirety as follows (with additions shown in bold and underlined for ease of review and such formatting shall not be incorporated into the Asset Purchase Agreement as amended by this Amendment):

"The assumption by Buyer or any of its applicable Buyer Designees of the Assumed Liabilities shall not, in any way, enlarge the rights of any third parties relating thereto. For the avoidance of doubt, **other than with respect to Cure Costs,** Assumed Liabilities shall not include any Liability relating to or arising out of any violation of law by, or any Action against, any Seller or any breach, default or violation by any Seller of or under any Assumed Contracts, all of which shall constitute Excluded Liabilities.".

5. Amendment to Section 2.4. The first paragraph of Section 2.4 of the Asset Purchase Agreement is hereby amended and restated in its entirety as follows (with additions shown in bold and underlined for ease of review and such formatting shall not be incorporated into the Asset Purchase Agreement as amended by this Amendment):

"Notwithstanding any provision in this Agreement to the contrary, neither Buyer nor any Buyer Designee shall assume, nor shall Buyer or any of its applicable Buyer Designees be obligated to assume or be obliged to pay, perform or otherwise discharge, any Liability of, or Liability against, Sellers, Sellers' Subsidiaries, the Business or the Acquired Assets, of any kind or nature, whether absolute, accrued, contingent or otherwise, whether due or to become due and whether or not assets, and whether or not known or unknown or currently existing or hereafter arising or matured or unmatured, direct or indirect, and however arising, other than the Assumed Liabilities, and Sellers shall be solely and exclusively liable with respect to all Liabilities of Sellers, other than the Assumed Liabilities (such Liabilities other than Assumed Liabilities, collectively, the "***Excluded Liabilities***"). Without limiting the generality of the foregoing, the Excluded Liabilities shall include each of the following Liabilities of Sellers and Sellers' Subsidiaries **(but for the avoidance of doubt excluding any** Assumed Liabilities**)**:".

6. Amendment to Section 2.4(i). Section 2.4(i) of the Asset Purchase Agreement is hereby amended and restated in its entirety as follows (with additions shown in bold and underlined for ease of review and such formatting shall not be incorporated into the Asset Purchase Agreement as amended by this Amendment):

"(i) all Liabilities for (i) legal, accounting, investment banking, reorganization, restructuring, brokerage or similar costs and expenses incurred or owed by any Seller in connection with the administration of the Bankruptcy Cases (including all Seller Retained Professional Fees and all Estimated Wind Down Expenses) and administrative expenses and priority claims accrued through the Closing Date, including arising under sections 503(b), 507(b) or 1114(e)(2) of the Bankruptcy Code and specified post-closing administrative wind-down expenses of the bankruptcy estates pursuant to the Bankruptcy Code **(for the avoidance of doubt, the "Excluded Liabilities" shall not include the Assumed Trade Payables and Cure Costs)** and (ii) all costs and expenses incurred in connection with the negotiation, execution and consummation of the transactions contemplated under this Agreement by Sellers, including any retention bonuses, "success" fees, change of control payments and any other payment obligations of Sellers or of any of their predecessors payable as a result of the consummation of the transactions contemplated by this Agreement and the documents delivered in connection herewith;".

7. Amendment to Section 7.1. Section 7.1 of the Asset Purchase Agreement is hereby amended by inserting the following clause (e) immediately following clause (d) of Section 7.1 (with additions shown in bold and underlined for ease of review and such formatting shall not be incorporated into the Asset Purchase Agreement as amended by this Amendment):

"**(e) The Sellers will use commercially reasonable efforts to conduct wind-down and related activities for their respective estates in a cost-efficient manner and as promptly as practicable following the Closing.**".

8. Amendment to Section 7.4(c). Section 7.4(c) of the Asset Purchase Agreement is hereby amended and restated in its entirety as follows (with additions shown in bold and underlined for ease of review and such formatting shall not be incorporated into the Asset Purchase Agreement as amended by this Amendment):

"(c) Sale Order. **T**he Bankruptcy Court shall have entered the Sale Order **by February 14, 2025**.".

9. Amendment to Section 11.1(b)(i). Clause (i) of Section 11.1(b) of the Asset Purchase Agreement is hereby amended and restated in its entirety as follows (with additions shown in bold and underlined for ease of review and such formatting shall not be incorporated into the Asset Purchase Agreement as amended by this Amendment):

"(i) if the Closing shall not have occurred on or prior to **February 28, 2025** (the "***Outside Date***"); provided, however, that the right to terminate this Agreement under this Section 11.1(b)(i) shall not be available to any Party whose failure to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Closing to occur on or prior to the Outside Date;".

10. Amendment to Section 12.4(i). Clause (i) of Section 12.4 of the Asset Purchase Agreement is hereby amended by deleting the text "chad.husnickkirkland.com" and substituting in lieu thereof the text "chad.husnick@kirkland.com".

11. Effect on Asset Purchase Agreement. Except as specifically set forth in this Amendment, all of the terms, conditions, covenants, representations and understandings contained in the Asset Purchase Agreement shall remain unchanged and in full force and effect.

12. Interpretation; Headings. On and after the approval of this Amendment, each reference in the Asset Purchase Agreement to "this Agreement", "hereunder", "hereof", "herein" or words of like import referring to the Asset Purchase Agreement, shall mean and be a reference to the Asset Purchase Agreement as amended by this Amendment. The headings in this Amendment are inserted for convenience only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Amendment or any provision hereof.

13. Incorporation. The provisions of Sections 12.2 through 12.18 of the Asset Purchase Agreement are hereby incorporated into this Amendment by reference and shall be applicable to this Amendment for all purposes (*mutatis mutandis*).

*[Signatures on Following Page]*

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment to be executed on the day and year first above written.

**BUYER:**

**ASPHALT BUYER LLC**

By:____ Signed by: Sean P. Franciscus 3134E0939531489... ____
Name: Sean P. Franciscus
Title: Authorized Person

**SELLERS:**

**AMERICAN TIRE DISTRIBUTORS, INC.**

By: Signed by: Ronald J. Bienias FA885AD91A81451...
Name: Ronald J. Bienias
Title: Chief Restructuring Officer

**ATD NEW HOLDINGS, INC.**

By: Signed by: Ronald J. Bienias FA885AD91A81451...
Name: Ronald J. Bienias
Title: Chief Restructuring Officer

**ATD NEW HOLDINGS II, INC.**

By: Signed by: Ronald J. Bienias FA885AD91A81451...
Name: Ronald J. Bienias
Title: Chief Restructuring Officer

**ATD NEW HOLDINGS III, INC.**

By: Signed by: Ronald J. Bienias FA885AD91A81451...
Name: Ronald J. Bienias
Title: Chief Restructuring Officer

**ATD SOURCING SOLUTIONS, LLC**

By: Signed by: Ronald J. Bienias FA885AD91A81451...
Name: Ronald J. Bienias
Title: Chief Restructuring Officer

**ATD TECHNOLOGY SOLUTIONS INC.**

By: Signed by: Ronald J. Bienias FA885AD91A81451...
Name: Ronald J. Bienias
Title: Chief Restructuring Officer

**FLX FWD LOGISTICS, LLC**

By: Signed by: Ronald J. Bienias FA885AD91A81451...
Name: Ronald J. Bienias
Title: Chief Restructuring Officer

**HERCULES TIRE INTERNATIONAL INC.**

By: Signed by: Ronald J. Bienias FA885AD91A81451...
Name: Ronald J. Bienias
Title: Chief Restructuring Officer

**TERRY'S TIRE TOWN HOLDINGS, LLC**

By: Signed by: Ronald J. Bienias FA885AD91A81451...
Name: Ronald J. Bienias
Title: Chief Restructuring Officer

**THE HERCULES TIRE & RUBBER COMPANY**

By: Signed by: Ronald J. Bienias FA885AD91A81451...
Name: Ronald J. Bienias
Title: Chief Restructuring Officer

**TIREBUYER.COM, LLC**

By: Signed by: Ronald J. Bienias FA885AD91A81451...
Name: Ronald J. Bienias
Title: Chief Restructuring Officer

**TIRE PROS FRANCORP, LLC**

By: Signed by: Ronald J. Bienias FA885AD91A81451...
Name: Ronald J. Bienias
Title: Chief Restructuring Officer

**TORQATA DATA AND ANALYTICS LLC**

By: Signed by: Ronald J. Bienias FA885AD91A81451...
Name: Ronald J. Bienias
Title: Chief Restructuring Officer

**POLYATOM, LLC**

By: Signed by: Ronald J. Bienias FA885AD91A81451...
Name: Ronald J. Bienias
Title: Authorized Signatory
On behalf of American Tire Distributors,