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

| | |
|---|---|
| In re | Chapter 11 |
| HOUSE SPIRITS DISTILLERY LLC, | Case No. 25-10660 (KBO) |
| Debtor.[1] | (Subchapter V) |
| | **Re: D.I. 254, 276, 277, 283, 284, 286, 290, 293, 294, 319, 321, 324 &325** |

**ORDER (I) APPROVING ASSET PURCHASE AGREEMENT BETWEEN THE DEBTOR AND THE PURCHASER, (II) APPROVING SALE OF SUBSTANTIALLY ALL OF THE DEBTOR' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, (III) APPROVING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND (IV) GRANTING RELATED RELIEF**

This matter coming before the Court on the *Debtor's Motion for Entry of an Order (I) Approving (A) Bidding Procedures for the Sale of Substantially All Assets of the Debtor and (B) Expense Reimbursement for the Stalking Horse Bidder, (II) Scheduling Bid Deadline and Auction, (III) Approving the Form and Manner of Notice Thereof, (IV) Approving Procedures for the Assumption and Assignment of Contracts and Leases, and (V) Granting Related Relief* [D.I. 254] (the "Sale Motion"), filed by the above-captioned debtor and debtor in possession (the "Debtor" or "Seller") in the above-captioned chapter 11 case; and the Court having previously entered the *Order (I) Approving Bidding Procedures for the Sale of Substantially All Assets of the Debtor, and (II) Scheduling Bid Deadline and Auction, (III) Approving the Form and Manner of Notice Thereof, (IV) Approving Procedures for the Assumption and Assignment of Contracts and Leases, and (V) Granting Related Relief* [D.I. 293] (the "Bidding Procedures Order"); and the DIP Lenders and their permitted designees under the APA (as defined below) (collectively,

[1] The last four digits of the Debtor's federal tax identification number are 2069. The Debtor's mailing address is 65 SE Washington Street, Portland, OR 97214.

the "Purchaser") having submitted the highest and best bid for the Acquired Assets, as reflected in that certain Asset Purchase Agreement, dated as of September 26, 2025, by and between the Purchaser and the Debtor (as amended or otherwise modified from time to time, the "APA"), a copy of which is attached hereto as **Exhibit 1**; and the Court having entered the Bidding Procedures Order on September 4, 2025, prior to which time all objecting and interested parties were offered an opportunity to be heard with respect to the relief set forth in the Bidding Procedures Order; and the Court having reviewed and considered: (i) the Sale Motion; (ii) the Bidding Procedures Order, (iii) the APA; (iv) the *Declaration of Thomas Mooney in Support of the Sale* [D.I. 325] (the "Mooney Declaration"); (v) the *Declaration of Philip Cassel in Support of the Sale* [D.I.324] (the "Cassel Declaration" and together with the Mooney Declaration, the "Sale Declarations"); and (vi) the arguments of counsel made, and the evidence proffered or adduced, at the hearing held before the Court on October 1, 2025 (the "Sale Hearing"); and after due deliberation the Court having determined that the legal and factual bases set forth in the Sale Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Sale Motion is in the best interest of the Debtor, its estate, and its creditors, and the Debtor having demonstrated good, sufficient, and sound business justifications for the relief granted herein;[2]

**IT IS HEREBY FOUND AND DETERMINED THAT:[3]**

A. Jurisdiction and Venue. This Court has jurisdiction to consider the Sale Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing*

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the APA or the Bidding Procedures Order, as applicable.

[3] The findings of fact and conclusions of law set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") 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

*Order of Reference from the United States District Court for the District of Delaware*, dated as of February 29, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

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

C. Statutory Predicates. The statutory and other legal predicates for the relief sought in the Sale Motion and granted herein are sections 105, 363, and 365 of title 11 of the United States Code (the "Bankruptcy Code"), Bankruptcy Rules 2002, 4001, 6004, 6006, 9007, and 9014, and Rules 2002-1, 6004-1, and 9006-1 of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the "Local Rules").

D. Notice and Opportunity to Be Heard. As evidenced by the *Notice of Bid Procedures, Auction, and Deadlines Relating to the Sale of All or Substantially All of the Assets of the Debtor* [D.I. 294] (the "Sale Notice"), the *Notice of (I) Cancellation of Auction and (II) Successful Bid* [D.I. 321] (the "Notice of Successful Bidder"), the *Notice to Counterparties to Potentially Assumed and Assigned Executory Contracts and Unexpired Leases Regarding Cure Amounts and Possible Assignment to the Successful Bidder at Auction* [D.I. 307] (the "Assignment Notice"), the affidavits of service filed with the Court with respect thereto, and the publishing of the Sale Motion, the Bidding Procedures, the Bidding Procedures Order, the APA, the Sale Notice, the Notice of Successful Bidder, the Assignment Notice, and certain other documents on the Debtor's case website, the Debtor has provided proper, timely, adequate and sufficient notice of, and a fair and reasonable opportunity to object and be heard with respect to the transaction contemplated by the APA (the "Sale") to all persons and entities entitled to such notice. Such

law constitute findings of fact, they are adopted as such. The Court's findings also shall include any oral findings of fact and conclusions of law made by the Court during the Sale Hearing.

notice was good, sufficient, and appropriate under the circumstances, including but not limited to providing each counterparty to an executory contracts or unexpired leases to be assumed and assigned in connection with the Sale (each, an "Assigned Contract" and collectively, the "Assigned Contracts") with a full and fair opportunity to object to the assumption and assignment of their respective Assigned Contracts (including with respect to any proposed cure costs or adequate assurance of future performance relating thereto), and no other or further notice of any of the foregoing is required.

E. Sound Business Purpose. The Debtor has demonstrated good, sufficient and sound business purposes and justifications for approval of the Sale. The Debtor's entry into the APA and any ancillary agreements thereto (i) are the result of due deliberation by the Debtor and constitute a sound and reasonable exercise of the Debtor's business judgment and a proper exercise of the fiduciary duties of the Debtor; (ii) provide value and are beneficial to the Debtor's estate, and are in the best interests of the Debtor, its estate, and its stakeholders; and (iii) are reasonable and appropriate under the circumstances.

F. Highest and Best Value. The Purchaser submitted the only Bid for the Acquired Assets. Therefore, the Purchaser's bid, as reflected in the APA, is the only Qualified Bid for the Acquired Assets and was designated as the Successful Bid pursuant to the Bidding Procedures Order [D.I. 321]. No party came forward at the Sale Hearing with a bid or offer. As such, no Auction was conducted, and the Purchaser's bid, as reflected in the APA, was presented to the Court as the Successful Bid at the Sale Hearing. The Bidding Procedures provided a full, fair, and reasonable opportunity for any entity to make an offer to purchase the Acquired Assets, and the Sale process has conclusively determined that the value of such Acquired Assets is equal to the Purchase Price. No party may challenge the valuation of the Acquired Assets established pursuant

to the Sale process for purposes of this Chapter 11 Case or otherwise, including, without limitation, in connection with confirmation of a liquidating plan in this case. The Sale represents the highest and best offer received for the Acquired Assets and the best opportunity to maximize the value of the Acquired Assets.

G. Compliance with Bidding Procedures. The Debtor conducted an open and fair sale process in compliance with the Bidding Procedures Order. The sale process was non-collusive, substantively and procedurally fair to all parties, was the result of arm's-length negotiations, and was reviewed and approved through appropriate corporate governance processes. The Debtor: (i) afforded interested potential purchasers a full, fair, and reasonable opportunity to qualify as bidders and submit their highest or otherwise best offer to purchase the Debtor's Assets, (ii) provided potential purchasers sufficient information to enable them to make an informed judgment on whether to bid on the Assets, (iii) considered all bids submitted, and (iv) determined, in its reasonable business judgment, in a manner consistent with its fiduciary duties, that the APA represented the highest or otherwise best bid for the Acquired Assets. Based upon the circumstances and record of this chapter 11 case, all creditors and other parties in interest and all prospective purchasers have been afforded a reasonable and fair opportunity to bid for the Acquired Assets.

H. Assigned Contract Objection Deadline. The deadlines to file an objection to the proposed assumption, assignment, or transfer of an Assigned Contract (including any proposed Cure Costs and the sufficiency of the adequate assurance of future performance provided) (each, an "Assigned Contract Objection") have expired and to the extent any party to an Assigned Contract timely filed an Assigned Contract Objection, all such Assigned Contract Objections have been resolved, withdrawn, overruled, or continued to a later hearing by agreement of the parties.

To the extent that any party to an Assigned Contract did not timely file an Assigned Contract Objection, such party shall be deemed to have consented to (i) the assumption, assignment, and sale of the Assigned Contract in connection with the Sale (including any adequate assurance with respect thereto) and (ii) the proposed Cure Cost set forth on the Assignment Notice.

I. Credit Bid. Pursuant to paragraph 3 of the Bidding Procedures Order, the DIP Lenders have the right to credit bid the DIP Obligations (as defined in the Final DIP Order) in accordance with and subject to the requirements of section 363(k) of the Bankruptcy Code. The portion of the Purchase Price set forth in the APA that constitutes a credit bid of 100% of the DIP Obligations as of Closing (the "Credit Bid") was a valid and proper credit bid under section 363(k) of the Bankruptcy Code. No cause exists to limit the amount of the Credit Bid pursuant to section 363(k) of the Bankruptcy Code.

J. Fair Consideration. The consideration the Purchaser will pay under the APA (i) constitutes fair and reasonable consideration for the Acquired Assets; (ii) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, the Uniform Voidable Transactions Act, and other laws of the United States, any state, territory, possession thereof, or the District of Columbia, and (iii) satisfies the requirements of the "entire fairness" standard under applicable law. The APA was not entered into, and the Sale is not being consummated, for the purpose of hindering, delaying, or defrauding creditors of the Debtor. Neither the Debtor nor the Purchaser have entered into the APA, or any agreement contemplated thereby, or are consummating the Sale with any fraudulent or otherwise improper purpose. No other person has offered to purchase the Acquired Assets for an amount that would provide greater value to the Debtor and its estate than the value provided by the Purchaser..

K. Free and Clear Sale. The Acquired Assets constitute property of the Debtor's estate within the meaning of section 541(a) of the Bankruptcy Code. The Debtor may sell the Acquired Assets free and clear of all Interests (defined herein) (other than any Permitted Liens and Assumed Liabilities expressly assumed under, or expressly permitted by, the APA or this Order), because, in each case, one or more of the standards set forth in section 363(f)(1)–(5) of the Bankruptcy Code has been satisfied. Any holders of Interests in the Acquired Assets could be compelled in a legal or equitable proceeding to accept money in satisfaction of such Interest pursuant to section 363(f)(5) or fall within one or more of the other subsections of section 363(f) and, therefore, are adequately protected by having their Interests in the Acquired Assets attach solely to the proceeds of the Sale ultimately attributable to the sale of the property on which such holders have an Interest, in the same order of priority, and with the same validity, force and effect that such Interests had immediately prior to the consummation of the Sale, subject to any rights, claims, or defenses of the Debtor and its estate. Any Interest holders that did not object, or that withdrew their objections, to the Sale, are deemed to have consented to the Sale of the Acquired Assets free and clear of their respective Interests in the Acquired Assets pursuant to section 363(f)(2) of the Bankruptcy Code.

L. Interests. Other than any Permitted Liens and Assumed Liabilities expressly assumed under, or expressly permitted by, the APA or this Order, as used in this Order, the term "Interest" includes, in each case to the extent against or with respect to the Debtor or in, on, or against or with respect to any of the Acquired Assets: liens (as defined in section 101(37) of the Bankruptcy Code), claims (as defined in section 101(5) of the Bankruptcy Code), debts (as defined in section 101(12) of the Bankruptcy Code), encumbrances, obligations, liabilities, demands, guarantees, actions, suits, defenses, deposits, credits, allowances, options, rights, restrictions, limitations, contractual commitments, rights, or interests of any kind or nature whatsoever,

whether known or unknown, inchoate or not, 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 this chapter 11 case, and whether imposed by agreement, understanding, law, equity, or otherwise, including, but not limited to, (i) mortgages, deeds of trust, pledges, charges, security interests, hypothecations, encumbrances, easements, servitudes, leases, subleases, rights-of-way, encroachments, restrictive covenants, restrictions on transferability or other similar restrictions, rights of offset or recoupment, rights of use or possession, subleases, leases, conditional sale arrangements, or any similar rights, (ii) all claims, including, without limitation, all rights or causes of action (whether in law or equity), proceedings, warranties, guarantees, indemnities, rights of recovery, setoff, recoupment, indemnity or contribution, obligations, demands, restrictions, indemnification claims, or liabilities relating to any act or omission of the Debtor or any other person, consent rights, options, contract rights, covenants, and interests of any kind or nature whatsoever (known or unknown, matured or unmatured, accrued, or contingent and regardless of whether currently exercisable), whether arising prior to or subsequent to the commencement of this chapter 11 case, and whether imposed by agreement, understanding, law, equity or otherwise; (iii) all debts, liabilities, obligations, contractual or tort rights and claims, and labor, employment, and pension claims; (iv) any rights that purport to give any party a right or option to effect any forfeiture, modification, right of first offer or first refusal, or consents, or termination of the Debtor's or the Purchaser's interest in the Acquired Assets, or any similar rights; (v) any rights under labor or employment agreements; (vi) any rights under pension, multiemployer plan (as such term is defined in section 3(37) or section 4001(a)(3) of the Employment Retirement Income

Security Act of 1974 (as amended, "ERISA")), health or welfare, compensation or other employee benefit plans, agreements, practices, and programs, including, without limitation, any pension plans of the Debtor or any multiemployer plan to which the Debtor has at any time contributed to or had any liability or potential liability; (vii) any other employee, worker's compensation, occupation disease, or unemployment or temporary disability claims, including, without limitation, claims that might otherwise arise under or pursuant to (a) ERISA, (b) the Fair Labor Standards Act, (c) Title VII of the Civil Rights Act of 1964, (d) the Federal Rehabilitation Act of 1973, (e) the National Labor Relations Act, (f) the Age Discrimination and Employment Act of 1967 and Age Discrimination in Employment Act, each as amended, (g) the Americans with Disabilities Act of 1990, (h) the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, including, without limitation, the requirements of Part 6 of Subtitle B of Title I of ERISA and Section 4980B of the Internal Revenue Code of any similar state law, (i) state or federal discrimination laws, (j) state unemployment compensation laws or any other similar state laws, (k) any other state or federal benefits or claims relating to any employment with the Debtor, or (l) the WARN Act (29 U.S.C. §§ 2101, *et seq.*) or any state or other laws of similar effect; (viii) any bulk sales or similar law; (ix) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, and any taxes arising under or out of, in connection with, or in any way relating to the operation of the assets or business of the Debtor prior to the Closing; (x) any executory or non-executory contract or unexpired lease to which any of the Debtor is a party that is not an Assigned Contract; *provided*, *however*, notwithstanding anything to the contrary in this Order or in the APA, Interests shall not include, and the transfer of any nonresidential real property lease be subject to (and shall not extinguish or diminish), and shall not be free and clear of, any obligations, or liabilities arising under, or any provisions of such Assigned Contracts that are

expressly assumed by the Purchaser pursuant to the terms of the APA and this Order, including, but not limited to, any Interests, covenants, or rights applicable to such Assigned Contracts that limit or condition the use of or lease of real property such as easements, reciprocal easement agreements, operating or redevelopment agreements, covenants, licenses, or permits that are not executory or that run with the land; (xi) any other Excluded Liabilities; and (xii) any of the foregoing Interests arising under or in connection with any acts, or failures to act, of the Debtor, including, but not limited to, those arising under any doctrines of successor, transferee, or vicarious liability, violation of the Securities Act, the Exchange Act, or other applicable securities laws or regulations, breach of fiduciary duty, or aiding or abetting breach of fiduciary duty, or any similar theories under applicable law or otherwise.

M. No Successor or Other Derivative Liability. By consummating the Sale pursuant to the APA, the Purchaser is not a mere continuation of the Debtor, the Debtor's estate, or any enterprise(s) of the Debtor, and there is no common identity between the Purchaser and the Debtor. The Purchaser is not, and is not holding itself out as, a continuation of the Debtor. The Purchaser is not a successor to the Debtor or the Debtor's estate by reason of any theory of law or equity, and the Sale does not amount to a consolidation, merger or *de facto* merger of the Purchaser and the Debtor or the Debtor's estate. Neither the Purchaser nor any of its affiliates nor any of their respective successors, assigns, managed funds or accounts, members, managers, representatives, limited or general partners, principals, officers, agents, directors, employees, or direct or indirect equity holders, investors, or owners (or the equivalent thereof) (each, a "Purchaser Related Person" and collectively, the "Purchaser Related Persons") shall assume or in any way be responsible for any obligation or Liability of the Debtor (or any affiliate or predecessor of the Debtor) or the Debtor's estate, except as expressly provided in the APA. Except as otherwise expressly set forth

in the APA or this Order, the sale and transfer of the Acquired Assets to the Purchaser, including the assumption by the Debtor and assignment, transfer, and/or sale to the Purchaser of any of the Assigned Contracts, will not subject the Purchaser and the Purchaser Related Persons to any Liability with respect to the operation of the Debtor's business prior to the Closing or by reason of such transfer. Without limiting the generality of the foregoing, and except as expressly provided in the APA or this Order, the parties intend and the Court hereby finds that the Purchaser Related Persons shall not be liable for any Lien or Liability against the Debtor, and the Purchaser Related Persons shall have no successor or vicarious liability of any kind or character whether known or unknown as of the Closing Date, whether now existing or hereafter arising, or whether fixed or contingent, with respect to the Business, the Acquired Assets or any Liabilities of the Debtor arising or attributable to periods prior to the Closing Date. The Purchaser would not have acquired the Acquired Assets but for the foregoing protections against potential claims based upon "successor liability," *de facto* merger, or theories of similar effect.

N. Good Faith; No Collusion. The Debtor, the Purchaser, and their respective counsel and other advisors have negotiated and entered into the APA and each of the transactions contemplated thereby in good faith, without collusion, and from arm's-length bargaining positions. The Purchaser is a good faith purchaser and is acting in good faith within the meaning of section 363(m) of the Bankruptcy Code, and, as such, is entitled to all of the protections afforded thereby. The Debtor was free to deal with any other party interested in acquiring all or some of the Acquired Assets. Neither the Debtor nor the Purchaser have engaged in any conduct that would cause or permit the Sale, the APA, or any of the transactions contemplated thereby to be avoided or subject to monetary damages under section 363(n) of the Bankruptcy Code, or that would prevent the application of sections 363(m) of the Bankruptcy Code. Neither the Purchaser nor the Purchaser

Related Persons have violated section 363(n) of the Bankruptcy Code by any action or inaction. The Purchaser has not acted in a collusive manner with any person or entity. All payments to be made by the Purchaser and all agreements entered into by the Purchaser and the Debtor under the APA in connection with the Sale have been disclosed and are appropriate.

O. Validity of the Sale. The consummation of the Sale is legal, valid and properly authorized under all applicable provisions of the Bankruptcy Code, including sections 105(a), 363(b), 363(f), 363(k), 363(m), 365(b), and 365(f) and all of the applicable requirements of such sections have been complied with in all respects in connection with the Sale. As of the Closing, the sale and assignment of the Acquired Assets and the Assigned Contracts to the Purchaser will be a legal, valid, and effective transfer of the Acquired Assets, and will vest the Purchaser with all right, title, and interest of the Debtor in and to the Acquired Assets free and clear of all Interests (other than any Permitted Liens and Assumed Liabilities expressly assumed under, or expressly permitted by, the APA or this Order). The Debtor is authorized to execute the APA and all other documents contemplated thereby, and the Sale has been duly and validly authorized by all necessary corporate action(s) of the Debtor. Upon entry of this Order, other than any consents identified in the APA, no consent or approval from any other person, entity, or legal authority is required to consummate the Sale.

P. No Sub Rosa Plan. Neither the Sale nor the APA impermissibly restructures the rights of any of the Debtor's creditors or impermissibly dictates the terms of a liquidating plan of reorganization of the Debtor. Neither the Sale nor the APA constitutes a *sub rosa* or *de facto* plan of reorganization or liquidation.

Q. No Stay of Order. Time is of the essence to implement the APA and consummate the Sale. The Sale must be approved and consummated promptly in order to preserve the value of

the Acquired Assets and to maximize the value to the Debtor, its estate, its creditors, and all other parties in interest. The Debtor has demonstrated compelling circumstances and sound business justifications for the immediate approval and consummation of the Sale as contemplated by the APA. Notwithstanding the provisions of Bankruptcy Rules 6004(h), 6006(d), 7062, or any applicable provisions of the Local Rules, this Order shall not be stayed and shall be effective and enforceable immediately upon entry.

R. Single, Integrated Transaction. Entry of this Order approving the APA is a necessary condition precedent to the Purchaser consummating the Sale. The provisions of this Order and the APA and the transactions contemplated hereby and thereby are inextricably linked and technically and collectively constitute a single, integrated transaction.

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

1. Sale Motion Granted. The Sale Motion and the relief requested therein (to the extent not previously granted by the Court pursuant to the Bidding Procedures Order or otherwise) are GRANTED and approved as set forth herein.

2. Objections. Any objections or reservation of rights filed or asserted in response to the Sale Motion and the relief granted herein, to the extent not resolved as set forth herein or on the record at the Sale Hearing, are hereby overruled on the merits in their entirety with prejudice, other than any Assigned Contract Objections continued to a later hearing by agreement of the parties. Those parties who did not object or withdrew their objection to the Sale Motion are deemed to have consented to the Sale pursuant to and for purposes of section 363(f)(2) of the Bankruptcy Code.

3. Sale Approved. The APA and all ancillary documents and transactions contemplated thereby, including the Sale, are APPROVED.

4. Prior Findings of Fact and Conclusions of Law. The Court's findings of fact and conclusions of law in the Bidding Procedures Order and the findings of fact recited above are incorporated herein by reference.

5. Debtor's Performance Authorized. The Debtor is hereby authorized to enter into and perform its obligations under the APA, and to take such other actions as may be necessary or desirable to effectuate the terms of the APA, including providing transition services, if needed, and other instruments or documents that may be reasonably necessary or desirable to implement and effectuate the terms of the APA, the Sale, or this Order, without further order of the Court. The Debtor is hereby further authorized to take all other actions as may reasonably be requested by the Purchaser or otherwise for the purpose of assigning, transferring, granting, conveying, and conferring to the Purchaser, or reducing to the Purchaser's possession any or all of the Acquired Assets, as may be necessary or appropriate for the Debtor to perform its obligations under the APA and consummate the Sale, including executing and filing such statements, instruments, releases, and other documents with respect to the Acquired Assets that are necessary or appropriate to effectuate the APA, the Sale, or this Order.

6. Valid Transfer. Effective as of the Closing Date, the sale and assignment of the Acquired Assets by the Debtor to the Purchaser (or, if designated by the Purchaser at or prior to Closing, to one or more wholly owned subsidiaries of the Purchaser) shall constitute a legal, valid, and effective transfer and assignment of the Acquired Assets, notwithstanding any requirement for approval or consent by any Person.

7. Assumption and Assignment of Assigned Contracts. Except as otherwise expressly provided in this Order, the Debtor's assumption and assignment of the Assigned Contracts to the Purchaser pursuant to the terms of the APA is hereby approved, and the requirements of section

365 of the Bankruptcy Code with respect thereto are hereby deemed satisfied. Upon the Debtor's assumption and assignment of the Assigned Contracts to the Purchaser, subject to the payment of the Cure Costs with respect thereto, other than the Purchaser's obligations under the Assigned Contracts that accrue and become due and payable on or after the Closing, each applicable counterparty shall be forever barred, estopped, and permanently enjoined from raising or asserting against the Debtor, the Purchaser, or its respective property, any assignment fee, default, breach, claim, pecuniary loss, liability, or condition to assignment arising under or out of, in connection with or in any way related to, the Assigned Contracts that existed as of the Closing Date or arising by reason of the Closing; *provided*, *however*, for any indemnity obligations for which the Debtor would be liable under any unexpired real property lease for the use and occupancy of the leased premises, which may have arisen prior to the applicable assumption and assignment of the Assigned Contract, the Debtor's liability shall survive the assumption and assignment of such Assigned Contract and the Debtor shall not be released from any duty to indemnify under the terms of such leases, provided that the respective lease counterparty shall look only to proceeds of Debtor's insurance coverage for payment of any such indemnity claims and any such actions; *provided*, *further*, to the extent the Purchaser relies on the Debtor's existing insurance coverage to satisfy any assumed indemnification obligations under any Assigned Contracts, any deductibles or self-insured retention amount shall be the responsibility of the Purchaser. Upon the Debtor's assumption and assignment of the Assigned Contracts to the Purchaser, the Purchaser shall be fully and irrevocably vested with all right, title, and interest of the Debtor in and to the Assigned Contracts and the Assigned Contracts shall be deemed to be valid and binding and in full force and effect and enforceable in accordance with their terms. Subject to paragraph 17 of this Order, if any Assigned Contract is designated by the Purchaser to be assigned to a designated subsidiary or

affiliate of the Purchaser at Closing, such contract shall be deemed to have been assigned directly to such designee, and the Purchaser shall have no liability or obligation with respect to such Assigned Contract from and after the Closing. As soon as reasonably practicable after the Closing, the Debtor shall file a notice of the Closing, attaching the list of the Assigned Contracts assumed and assigned to the Purchaser effective as of the Closing Date.

8. Free and Clear Sale. Except as otherwise expressly provided in this Order, the sale and transfer of the Acquired Assets to the Purchaser will vest the Purchaser with all right, title and interest of the Debtor and its estate in and to the Assigned Contracts and the Acquired Assets free and clear of any and all Interests incurred or arising prior to the Closing of any person or entity (other than any Permitted Liens and Assumed Liabilities expressly assumed under, or expressly permitted by, the APA or this Order), pursuant to section 363(f) of the Bankruptcy Code, with all such Interests to attach to the net proceeds of the Sale ultimately attributable to the sale of the property on which such holders have an Interest, in the same order of priority, and with the same validity, force, and effect that such Interests had prior to the consummation of the Sale.

9. Except with respect to Permitted Liens and Assumed Liabilities or as otherwise expressly provided in this Order, effective upon the Closing Date, all persons and entities are forever prohibited and enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral, or other proceeding against the Purchaser or any Purchaser Related Person or their assets (including the Acquired Assets) with respect to any (a) Interest in the Acquired Assets incurred or arising prior to the Closing, or (b) successor, transferee, vicarious, or other similar liability or theory of liability, including (i) commencing or continuing any action or other proceeding pending or threatened, in any manner or place, that does not comply with, or is inconsistent with, the provisions of this Order

or other orders of the Court or the agreements or actions contemplated or taken in respect hereof or thereof, (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order, (iii) creating, perfecting, or enforcing any Interest, (iv) asserting any setoff, right of subrogation, or recoupment of any kind, or (v) revoking, terminating, or failing or refusing to renew any license, permit, or authorization to operate any of the Acquired Assets or conduct any of the businesses operated with the Acquired Assets.

10. This Order shall be binding in all respects upon the Debtor, its estate, its creditors (known or unknown), and holders of equity interests in the Debtor, any holders of Interests in all or any portion of the Acquired Assets, the Purchaser, and all successors and assigns to the Purchaser. This Order and the APA shall inure to the benefit of the Debtor and its estate, the Purchaser, and their respective successors and assigns

11. The provisions of this Order authorizing the sale and transfer of the Acquired Assets free and clear of Interests (other than any Permitted Liens and Assumed Liabilities expressly assumed under, or expressly permitted by, the APA or this Order) shall be self-executing, and neither the Debtor nor the Purchaser shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, or implement the provisions of this Order. For the avoidance of doubt, on or after the Closing Date, the Debtor and the Purchaser shall be authorized, but not directed, to file any such releases, termination statements, assignments, consents, or other instruments in any jurisdiction to record the release, discharge, and termination of Interests in the Acquired Assets pursuant to the terms of this Order.

12. Direction to Creditors. This Order shall be (a) effective as a determination that, as of the Closing Date, all Interests in the Acquired Assets (except as otherwise expressly assumed

under, or expressly permitted by, the APA or this Order) shall be unconditionally released, discharged and terminated as to the Purchaser and the Acquired Assets; and (b) binding upon all persons and entities, including all the Debtor's creditors and any holder of an Interest in any of the Acquired Assets, and all such persons and entities are hereby authorized and directed to execute such documents and take all other actions as may be reasonably necessary to release their respective Interests in the Acquired Assets, if any. If any person or entity that has filed a financing statement, mortgage, mechanics lien, *lis pendens*, or other document, instrument, notice, or agreement evidencing any Interest on the Acquired Assets has not delivered to the Debtor on or before the Closing, in proper form for filing and executed by the appropriate parties, termination statements, releases, or instruments of satisfaction that the person or entity has with respect to the Acquired Assets, the Debtor and the Purchaser are authorized to (x) request that the applicable person or entity execute and file such termination statements, releases, instruments of satisfaction, or other documents with respect to the Acquired Assets, and, to the extent such person or entity fails to do so, execute and file such termination statements, releases, instruments of satisfaction, or other documents with respect to the Acquired Assets on behalf of the applicable person or entity, and (y) 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 Interests in 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 U.S. federal, state, and local government agency, department, or office and may be deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every tribal or foreign government agency, department, or office.

13. Recording Officers. All filing agents or officers, title agents or companies, recorders of mortgages or deeds, registrars, administrative agencies, governmental units or departments, secretaries of state, governmental officials, and all other persons or entities that may be required by operation of law or the duties of their office or contract to accept, file, register, or otherwise record or release any documents or instruments regarding the Acquired Assets or who may be required to report or insure any title or state of title in or to the Acquired Assets, (collectively, the "Recording Officers") are hereby authorized to (a) accept any and all documents or instruments necessary and appropriate to consummate the Sale or to record and reflect that the Purchaser is the owner of the Acquired Assets free and clear of all Interests (other than any Permitted Liens and Assumed Liabilities expressly assumed under, or expressly permitted by, the APA or this Order) and (b) strike all recorded Interests in the Acquired Assets from their records.

14. Direction to Surrender the Acquired Assets. All persons or entities in possession or control of any of the Acquired Assets, either presently or on or before the Closing Date, are directed to surrender possession or control of the Acquired Assets to the Purchaser on the Closing Date.

15. Anti-Assignment Provisions Unenforceable. No section or provision of any Assigned Contract that purports to (a) prohibit, restrict, or condition the assignment of an Assigned Contract, including, but not limited to, the conditioning of such assignment on the consent of any counterparty to such Assigned Contract; (b) authorize the termination, cancellation, or modification of an Assigned Contract based on the filing of a bankruptcy case, the financial condition of the Debtor, or similar circumstances; (c) declare a breach or default as a result of a change in control in respect of the Debtor; or (d) provide for additional payments, profit sharing, penalties, conditions, renewals, extensions, charges, or other financial accommodations in favor

of the counterparty to an Assigned Contract, or modification of any term or condition upon the assignment of a contract or the occurrence of the conditions set forth in subsection (b) above, shall have any force or effect, and any such section or provision constitutes an unenforceable anti-assignment provision under section 365(f) or 365(l), as applicable, of the Bankruptcy Code or is otherwise unenforceable under section 365(e) of the Bankruptcy Code solely in connection with Sale as contemplated by this Order.

16. Direction to Contract Counterparties. All counterparties to Assigned Contracts assigned to the Purchaser in accordance with the terms of this Order and the APA shall cooperate with, and expeditiously execute and deliver upon, any reasonable request of the Purchaser, with any third-party expense to be borne by Purchaser, any instruments, applications, consents, or other documents that may be required or requested by any governmental unit or other public or quasi-public authority or other party to effectuate the applicable transfers in connection with the Debtor's assumption and assignment of the Assigned Contracts to the Purchaser.

17. Omitted Contracts. If it is discovered that a Contract should have been included on the Assignment Notice but was omitted therefrom (an "Omitted Contract"), the Debtor shall, promptly following discovery thereof (but in no event later than five (5) Business Days after such discovery), (x) notify the Purchaser in writing of such Omitted Contract and the corresponding estimated Cure Costs related thereto (if any) and (y) if requested by the Purchaser in writing (email to suffice), file a motion with the Court on notice to the counterparty to such Omitted Contract seeking entry of an Order fixing the Cure Costs and approving the assumption and assignment of such Omitted Contract to Purchaser or Purchaser's designee (provided that no Omitted Contract shall be assumed by and assigned unless such Omitted Contract shall be accepted at such time in writing (email to suffice) by the Purchaser as an Assigned Contract).

18. Multnomah County Tax Liens. Notwithstanding any other provision of this Order, the Sale to Purchaser is expressly subject to any liens for unpaid real and personal property taxes (including any penalties and interest) owed to Multnomah County, Oregon, Division of Assessment, Recording, and Taxation in connection with the Acquired Assets, and Purchaser has agreed to assume responsibility for the payment of all such unpaid taxes.

19. U.S. Specialty Insurance Company Surety Bond. Notwithstanding any provision in this Sale Order, the Bid Procedures Order, the Asset Purchase Agreement (APA), or related documents (collectively, the "Sale Documents"), the rights of U.S. Specialty Insurance Company and its affiliates (individually and collectively, the "Surety') against the Debtor in connection with or arising out of: (i) the Distilled Spirits Bond No. 100267967 (the "Bond"), (ii) the Indemnity Agreement dated January 30, 2020 (the "Indemnity Agreement"), (iii) the Collateral Security Agreement dated March 4, 2016 (the "Collateral Security Agreement"), and (iv) any related documents (along with (i), (ii), and (iii)), collectively, these are hereafter referred to as the "Surety Documents") are neither affected nor otherwise impaired by the Sale Documents. In addition, the rights of the Surety in connection with any collateral, including the $210,000 in collateral held by the Surety and provided by the Debtor (the "Bond Collateral") shall not be affected or impaired by the Sale Documents.

20. Notwithstanding any provision in the Sale Documents, all lien, set-off and recoupment rights of the Surety and any obligee under the Bond are preserved against the Debtor and, to the extent applicable, said lien, set-off and recoupment rights shall attach to the proceeds of the Sale in the same priority as already exists, except as to the Bond Collateral which the Surety shall continue to hold and have a lien against. The Debtor and Purchaser agree to give the Surety

access to the Debtor's books and records upon the receipt of any Bond claim and also to provide the Surety sixty (60) day prior written notice of the proposed destruction of such books and records.

21. The Purchaser shall indemnify the Surety for any loss, costs and expenses incurred during the transition period to the same extent the Debtor is obligated to do so under the terms of the Surety Documents and/or by way of common law and/or the Surety's subrogation rights. The Purchaser's indemnification obligation shall survive the expiration of this transition period but shall only cover the transition period. The Purchaser shall, however, not be entitled to rely on the Bond after the transition period, without the Surety's consent and payment of the cure amount then due. At least ten (10) days prior to the end of the transition period, the Purchaser shall notify Surety if it would like to assume the Bond and other Surety Documents. The Surety shall, within five (5) days of receiving this notice, provide the Purchaser with written notice of the cure amount, additional collateral required, and any other conditions for providing its consent, provided however that the Purchaser shall not be able to directly or indirectly rely on the Bond for a period longer than 120 days under a transition period without the consent of the Surety and/or further order of the Bankruptcy Court.

22. Licenses and Permits. The Purchaser and its designees shall be authorized, from and after the Closing Date, to operate under any license, permit, registration, and any other governmental authorization or approval of the Debtor 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 Purchaser or its designees, as applicable, as of the Closing Date. From and after the Closing, the Purchaser shall undertake commercially reasonable efforts to apply for and obtain any necessary license or permit promptly after the Closing Date; *provided*, that the licenses and permits of the Debtor shall remain in place for the

benefit of the Purchaser or its designees until either a new license or permit is obtained or the existing license or permit is transferred in accordance with the applicable administrative procedures. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license relating to the operation of the Acquired Assets sold, transferred, or conveyed to the Purchaser on account of the filing or pendency of this chapter 11 case or the consummation of the Sale.

23. Amendments. The APA and any related agreements may be amended, supplemented, or otherwise modified by the parties thereto in accordance with the terms of the APA, including to extend any dates or deadlines, without further order of the Court; *provided*, that no such amendment, supplement, or modification shall be made without the consent of any affected creditor if, and only to the extent that, such amendment, supplement, or modification would materially and adversely affect the rights or interests of such creditor.

24. Binding Order. This Order shall be binding upon and govern the acts of all persons and entities, including without limitation, the Debtor and the Purchaser, their respective successors and permitted assigns, including, without limitation, any chapter 11 trustee hereinafter appointed for the Debtor's estate or any trustee appointed in any chapter 7 case of the Debtor if this chapter 11 case is converted to a case under chapter 7, all creditors of the Debtor (whether known or unknown), all counterparties to any Assigned Contracts, and all Recording Officers. Neither the Sale nor the APA shall be subject to rejection or avoidance under any circumstances. This Order and the APA shall inure to the benefit of the Debtor, its estate, its creditors, the Purchaser, and its respective successors and assigns.

25. Failure to Specify Provisions; Conflicts. The failure specifically to include or mention 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 Debtor and the Purchaser that the APA be authorized and approved in its entirety, including any amendments thereto as may be made by the parties thereto in accordance with the terms thereof and this Order. Likewise, all of the provisions of this Order are nonseverable and mutually dependent.

26. Section 1.2(a) of the APA is hereby modified to read as follows:

> (a) all cash and cash equivalents wherever located and bank accounts, which shall be used exclusively in accordance with the Transition Service Agreement to pay all of the ordinary and customary operating expenses incurred in connection therewith and thereafter, and at the conclusion of the Transition Services Agreement (i) as permitted by applicable law, Fifty Thousand Dollars ($50,000.00) shall remain with Seller for payment on account of general unsecured claims and (ii) the remainder shall pass to Purchaser;

27. Further Assurances. From time to time, as and when requested, all parties to the Sale shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as the requesting party may reasonably deem necessary or desirable to consummate the Sale, including such actions as may be necessary to vest, perfect, confirm, record, or otherwise in the Purchaser its right, title, and interest in and to the Acquired Assets and the Assigned Contracts.

28. Transition Services; Dual Representation. The Debtor's professionals are authorized to provide transition services and support as reasonably requested by the Purchaser in connection with the transactions contemplated by this Agreement. Without limiting the foregoing, the Debtor's professionals may, from and after the Closing Date, be employed or retained by the Purchaser or its Affiliates in connection with the operation or integration of the Acquired Assets, and such employment or retention shall not preclude any such professional from continuing to provide services to, and be employed or retained by, the Debtor or its estate.

29. Automatic Stay. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby modified to the extent necessary, without further order of the Court, to allow the

Purchaser to deliver any notice provided for in the APA and to take any and all actions permitted or required under the APA in accordance with the terms and conditions thereof.

30. No Stay of Order. Notwithstanding Bankruptcy Rules 6004(h), 6006(d), 7062, and any applicable Local Rules, this Order shall not be stayed and shall be effective and enforceable immediately upon entry. The provisions of this Order shall be self-executing. Time is of the essence in implementing the APA and consummating the Sale as soon as practicable.

31. Governing Terms. 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.

32. Retention of Jurisdiction. This Court shall retain exclusive jurisdiction to (a) interpret, implement and enforce the terms and provisions of this Order and the APA, including all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith; and (b) decide any issues or disputes concerning or related to this Order, the APA, or the rights and duties of the parties hereunder or thereunder, including the interpretation of the terms, conditions, and provisions hereof and thereof, and the status, nature and extent of the Acquired Assets and the Assigned Contracts.

33. The Debtor is authorized and empowered to take all actions necessary or appropriate to implement the relief granted in this Order.

**Dated: October 1st, 2025**
**Wilmington, Delaware**

Ka B. Ow

**KAREN B. OWENS**
**CHIEF JUDGE**

**Exhibit 1**

---

**ASSET PURCHASE AGREEMENT**

**DATED AS OF SEPTEMBER 26, 2025**

**BY AND BETWEEN**

**DIP LENDERS, AS PURCHASER,**

**AND**

**HOUSE SPIRITS DISTILLERY LLC, AS SELLER**

---

This is a draft agreement only, and delivery or discussion of this draft agreement is not, and will not be deemed or construed to be, an offer or commitment with respect to the proposed transaction to which this draft agreement relates. Notwithstanding the delivery of this draft agreement or any other past, present or future written or oral indications of assent, or indications of the result of negotiations or agreements, no party to the proposed transaction (and no person or entity related to any such party) will be under any legal obligation whatsoever with respect to the proposed transaction unless and until the definitive agreement providing for such transaction has been executed and delivered by all parties thereto.

**ARTICLE I PURCHASE AND SALE OF ACQUIRED ASSETS; ASSUMPTION OF ASSUMED LIABILITIES ..... 1**
Section 1.1 Purchase and Sale of the Acquired Assets ..... 1
Section 1.2 Excluded Assets ..... 3
Section 1.3 Assumption of Certain Liabilities ..... 4
Section 1.4 Excluded Liabilities ..... 6
Section 1.5 Assumption and Assignment of Certain Contracts ..... 8
Section 1.6 Good Faith Deposit. ..... 11
Section 1.7 Inspection and Due Diligence. ..... 11

**ARTICLE II CONSIDERATION; PAYMENT; CLOSING ..... 12**
Section 2.1 Consideration; Payment ..... 12
Section 2.2 Closing ..... 13
Section 2.3 Closing Deliveries by the Seller ..... 13
Section 2.4 Closing Deliveries by Purchaser ..... 14

**ARTICLE III REPRESENTATIONS AND WARRANTIES OF THE SELLER ..... 15**
Section 3.1 Organization; Qualification ..... 15
Section 3.2 Authorization of Agreement ..... 15
Section 3.3 Conflicts; Consents ..... 16
Section 3.4 Title to Acquired Assets ..... 16
Section 3.5 Condition and Sufficiency of Assets ..... 16
Section 3.6 Inventory ..... 17
Section 3.7 Assigned Contracts ..... 17
Section 3.8 Permits ..... 17
Section 3.9 Compliance with Laws ..... 18
Section 3.10 Legal Proceedings; Orders. ..... 18
Section 3.11 Intellectual Property ..... 18
Section 3.12 Real Property ..... 19
Section 3.13 Employment Matters ..... 19
Section 3.14 Employee Benefits. ..... 20
Section 3.15 Taxes. ..... 20
Section 3.16 Brokers ..... 21
Section 3.17 Regulatory Compliance. ..... 21
Section 3.18 Products Liability. ..... 22
Section 3.19 No Other Representations or Warranties ..... 23

**ARTICLE IV REPRESENTATIONS AND WARRANTIES OF PURCHASER ..... 24**
Section 4.1 Organization and Qualification ..... 24
Section 4.2 Authorization of Agreement ..... 24
Section 4.3 Conflicts; Consents ..... 24
Section 4.4 Sufficient Funds ..... 25
Section 4.5 No Litigation ..... 25
Section 4.6 Brokers ..... 25
Section 4.7 No Additional Representations or Warranties ..... 25

**ARTICLE V COVENANTS AND AGREEMENTS....25**
Section 5.1 Conduct of the Seller....25
Section 5.2 Competing Bids....26
Section 5.3 Bankruptcy Matters....27
Section 5.4 Access....27
Section 5.5 Reasonable Efforts....28
Section 5.6 Disclosure Schedules and Supplements....28
Section 5.7 No Costs....29
Section 5.8 Notice of Certain Events....29
Section 5.9 Tax Matters....29
Section 5.10 Employee Matters....31
Section 5.11 Confidentiality....33
Section 5.12 Governmental Approvals and Consents; Permits....33
Section 5.13 Transition Period Services....34
Section 5.14 Public Announcement....35
Section 5.15 Receivables....35
Section 5.16 Receipt of Misdirected Assets; Liabilities....36
Section 5.17 Change of Name....36
Section 5.18 Wind-Down....36

**ARTICLE VI CONDITIONS TO CLOSING....37**
Section 6.1 Conditions Precedent to the Obligations of Purchaser and the Seller....37
Section 6.2 Conditions to Obligations of Purchaser....37
Section 6.3 Conditions to Obligations of Seller....38
Section 6.4 Waiver of Conditions....38

**ARTICLE VII TERMINATION....38**
Section 7.1 Termination of Agreement....38
Section 7.2 Effect of Termination....40

**ARTICLE VIII MISCELLANEOUS....40**
Section 8.1 Non-Survival of Representations and Warranties and Certain Covenants; Certain Waivers....40
Section 8.2 Expenses....41
Section 8.3 Approval....41
Section 8.4 Notices....41
Section 8.5 Binding Effect; Assignment....42
Section 8.6 Amendment and Waiver....42
Section 8.7 Third Party Beneficiaries....42
Section 8.8 Non-Recourse....42
Section 8.9 Severability....43
Section 8.10 Construction....43
Section 8.11 Complete Agreement....43
Section 8.12 Specific Performance....43
Section 8.13 Jurisdiction and Exclusive Venue....44
Section 8.14 Governing Law; Waiver of Jury Trial....44

Section 8.15 No Right of Set-Off ....45
Section 8.16 Counterparts and PDF ....45
Section 8.17 Bulk Sales Laws ....45
Section 8.18 Fiduciary Obligations ....46
Section 8.19 Disclosure Schedules. ....46
Section 8.20 Further Assurances ....46
Section 8.21 Limitation of Liability ....46

**ARTICLE IX ADDITIONAL DEFINITIONS AND INTERPRETIVE MATTERS ....46**
Section 9.1 Certain Definitions ....46
Section 9.2 Rules of Interpretation ....54

# ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement"), dated as of September 26, 2025, is made by and between, (a) **DIP Lenders** (together with its designees and assigns, "Purchaser"), and (b) **House Spirits Distillery LLC**, as a debtor-in-possession (the "Seller"). Purchaser and Seller is referred to herein individually as a "Party" and together as the "Parties." Capitalized terms used herein shall have the meanings set forth herein, including Article IX.

WHEREAS, on April 6, 2025, the Seller commenced voluntary case under chapter 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), under Case No. 25-10660 (the "Bankruptcy Case").

WHEREAS, on the terms and subject to the conditions set forth herein, Seller desires to sell, transfer and assign to Purchaser, and Purchaser desires to purchase, acquire and assume from Seller, pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, all of the Purchased Assets and Assumed Liabilities, both as hereinafter defined.

NOW, THEREFORE, the Parties hereby agree as follows.

## ARTICLE I
## PURCHASE AND SALE OF ACQUIRED ASSETS; ASSUMPTION OF ASSUMED LIABILITIES

**Section 1.1 Purchase and Sale of the Acquired Assets**. Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, on the terms and subject to the conditions set forth herein and in the Sale Order at the Closing, the Seller shall sell, transfer, assign, convey, and deliver to Purchaser, and Purchaser shall purchase, acquire, and accept from the Seller, all of the Seller's right, title and interest in and to the Acquired Assets, free and clear of any and all Encumbrances other than Permitted Encumbrances. "Acquired Assets" means all of the Seller's right, title and interest in and to, as of the Closing all of the properties, rights, interests and other tangible and intangible assets of the Seller, including, but not limited to the following and expressly excluding the Excluded Assets:

(a) Subject to Section 1.5 hereof, the Contracts (including Assigned Real Property Leases) to which the Seller is a party listed in Section 1.1(a) of the Disclosure Schedules (each such Contract, including each such Assigned Real Property Lease, an "Assigned Contract" and collectively the "Assigned Contracts");

(b) all inventory, finished goods, raw materials, work in progress, packaging, supplies, parts and other inventories (collectively, the "Inventory");

(c) all furniture, fixtures, equipment, machinery, tools, vehicles, office equipment, supplies, computers, telephones and other tangible personal property;

(d) all approvals, licenses and Permits and Governmental Authorizations which are held by Seller that are assignable to Purchaser, including those listed on Section 1.1(d)

of the Disclosure Schedules, and all pending applications therefor (the "Assigned Permits");

(e) all security deposits, maintenance deposits, and any other deposits held by landlords, vendors, trade creditors or any other party, in each case related to the Acquired Assets (including the Assigned Real Property Leases);

(f) all proceeds relating to any and all bonds, letters of credit, guarantees or other security provided by Seller and any and all insurance (other than directors and officers insurance, and only to the extent that such proceeds relate to claims or potential claims arising from facts or circumstances existing or arising on or prior to the Closing Date which claims or potential claims have not been paid or resolved by Seller on or prior to the Closing Date), condemnation and similar proceeds;

(g) all of Seller's rights under warranties, indemnities and all similar rights against third parties relating to the Acquired Assets;

(h) all actual and/or potential claims and causes of action under Section 547 and Section 548 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code or similar action under other applicable Law (the "Avoidance Actions"), in each case solely against the Seller's vendors and customers as of the date that is ninety (90) days prior to the commencement of the Bankruptcy Case and all other Claims, except any such Claims arising out of or related to Excluded Assets or Excluded Liabilities;

(i) all prepaid expenses, credits, advance payments, claims, security, deposits, charges, sums and fees (including any such item relating to the payment of Taxes (excluding prepaid insurance and any other item described in Section 1.2(j))), in each case to the extent solely related to the Acquired Assets or Assumed Liabilities;

(j) originals, or where not available, copies, of all books, records, files, and documents (in each case whether or not in electronic form), including, books of account, ledgers and general, financial and accounting records, machinery and equipment maintenance files, customer lists, customer purchasing histories, price lists, distribution lists, supplier lists, production data, quality control records and procedures, customer complaints and inquiry files, research and development files, records and data (including all correspondence with any Governmental Body), sales material and records, strategic plans, internal financial statements, marketing and promotional surveys, and material and research and files relating to the Business and IP Assets (collectively, "Books and Records"); provided, however, that the following shall not constitute "Books and Records": (i) the corporate seals, organizational documents, minute books, stock books, tax returns, books of account or other records having to do with the corporate organization of Seller, including, without limitation, the minute books of the board of directors (or similar governing body) and/or stockholders or members of the Seller, and (ii) any books, records, files or documents of the Seller relating to any Excluded Assets ((i) and (ii) collectively, the "Excluded Books and Records");

(k) all goodwill and the going concern of the Business;

(l) any and all IP Assets and other Intellectual Property held or owned by the Seller including those listed on Section 1.1(d) of the Disclosure Schedules, and

(m) any other assets of the Seller listed in Section 1.1(m) of the Disclosure Schedules or not excluded below.

**Section 1.2 Excluded Assets**. Notwithstanding anything to the contrary in this Agreement, nothing contained herein shall be deemed to sell, transfer, assign, convey or deliver to Purchaser any right, title or interest in or to any assets other than the Acquired Assets, and in no event shall the Seller be deemed to sell, transfer, assign, convey or deliver, and the Seller shall retain all right, title and interest to, in and under any of the following assets, properties, rights or interests of the Seller (collectively, the "Excluded Assets"):

(a) all cash and cash equivalents wherever located and bank accounts, which shall be used exclusively in accordance with the Transition Services Agreement to pay all of the ordinary and customary operating expenses incurred in connection therewith and thereafter, and at the conclusion of the Transition Service Agreement: (i) Fifty Thousand Dollars ($50,000.00) shall remain with Seller for payment on account of general unsecured claims and (ii) the remainder shall pass to the Purchaser;

(b) all Contracts that are not Assigned Contracts (the "Excluded Contracts");

(c) all Leases that are not Assigned Real Property Leases;

(d) all Permits and Governmental Authorizations which are held by Seller that are not assignable to Purchaser, including those listed on Section 1.1(d) of the Disclosure Schedules, and all pending applications therefor (the "Excluded Permits");

(e) all accounts or notes receivable held by Seller and due and payable by any current customer, supplier or vender of the Seller, for Products delivered and/or services performed but unbilled or unpaid as of the Closing, and any security, claim, remedy or other right related to the foregoing (the "Accounts Receivable"), which shall be used exclusively in accordance with the Transition Services Agreement to pay all of the ordinary and customary operating expenses incurred in connection therewith and thereafter, and shall pass to the Purchaser at the conclusion of the Transition Service Agreement;

(f) all current and prior insurance policies of the Seller, including, for the avoidance of doubt, all director and officer insurance policies, and all rights and benefits of any nature of the Seller with respect thereto, including all insurance recoveries thereunder (only to the extent that such proceeds relate to claims or potential claims arising from facts or circumstances existing or arising following the Closing Date) and rights to assert claims with respect to any such insurance recoveries;

(g) all pre-paid expenses, deposits and retainers unrelated to the Acquired Assets;

(h) all of Seller's rights, interests, claims, demands and causes of action under all Excluded Contracts and leases that are not Assigned Real Property Leases;

(i) all rights, claims or causes of action for, under or relating to the Excluded Assets;

(j) all demands, credits, statements, allowances, refunds, rebates (including any vendor or supplier rebates), rights (including under or with respect to express or implied guarantees, warranties, representations, covenants and indemnities), Claims, counterclaims, defenses, credits, causes of action, rights of set off, rights of recovery or rights of recoupment relating to or arising against suppliers, vendors, merchants, manufacturers and counterparties to leases, licenses or any Contract, arising out of or relating to events occurring on or prior to the Closing;

(k) any and all claims of the Seller for refunds of, credits attributable to, loss carryforwards with respect to or similar Tax assets relating to (i) Income Taxes, (ii) Taxes attributable to the Excluded Assets and (iii) Non-Income Taxes that are attributable to any Tax period (or portion of the Straddle Period) ending on or prior to the Closing Date;

(l) the Seller Benefit Plans and the Seller's right, title and interest in any assets of or relating to the Seller Benefit Plans;

(m) any records, documents or other information relating to current or former Employees (other than any Transferred Employee from whom Purchaser obtained written consent for Seller to transfer to Purchaser all such records, documents or other information related to the Transferred Employee);

(n) the Excluded Books and Records;

(o) proceeds from sales of the Excluded Assets;

(p) (i) all records and reports prepared or received by the Seller or its Representatives in connection with the Bankruptcy Case, (ii) all bids and expressions of interest received from third parties with respect to the acquisition of any of the Seller's Business or assets in connection with the Bankruptcy Case, (iii) all privileged materials, documents and records (including any work product) of the Seller or its Representatives prepared in connection with the Bankruptcy Case, (iv) confidentiality agreements with prospective purchasers of the Acquired Assets in connection with the Bankruptcy Case; and (iv) any other files or records to the extent relating exclusively to any Excluded Assets or Excluded Liabilities;

(q) the Purchase Price and all rights of Seller under this Agreement; and

(r) copies of any books and records relating to any of the foregoing.

**Section 1.3 Assumption of Certain Liabilities**. On the terms and subject to the conditions set forth herein, the Transition Services Agreement, and in the Sale Order, effective as of the Transition Termination Date, in addition to the payment of the Cash Payment in accordance with Section 2.1, Purchaser shall assume from the Seller (and from and after the Closing pay, perform, discharge or otherwise satisfy in accordance with their respective terms), and the Seller shall transfer, assign, convey and deliver to Purchaser, only the following Liabilities, without

duplication and only to the extent not paid prior to the conclusion of the Transition Period (collectively, the "Assumed Liabilities"):

(a) all Liabilities and obligations of the Seller for payment and performance under the Assigned Contracts in accordance with their terms that become due from and after the Closing (other than those Liabilities resulting from a breach or default, or deemed breach or default, by Seller under the terms thereof prior to the Closing);

(b) subject to the terms of the Transition Services Agreement, all Liabilities arising out of or relating to the ownership and operation of the Business, the Assigned Real Property Leases or the Acquired Assets, but in all events only to the extent that such Liabilities thereunder (i) first arise at or after the Closing, (ii) are attributable to the period commencing at Closing, and (iii) do not relate to any breach, default or violation by Seller on or prior to the Closing;

(c) subject to the terms of the Transition Services Agreement, all accounts payable and trade payables existing on the Closing that relate to post-Closing periods (including, for the avoidance of doubt, (i) invoiced accounts payable and (ii) accrued but un-invoiced accounts payable), of the Seller to the extent related to the Acquired Assets;

(d) all Liabilities for (i) all Transfer Taxes and (ii) all Non-Income Taxes that are allocated to Purchaser pursuant to Section 5.9(e);

(e) all cure costs required to be paid pursuant to section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Assigned Contracts (the "Cure Costs"), and any and all obligations under the Assigned Contracts that arise from facts, circumstances, events or obligations to be performed at or after the Closing, in each case as set forth on Section 1.3(e) of the Disclosure Schedules. In order to minimize Cure Costs, Seller represents and warrants that all post-petition operating expenses (i.e., rent, utility expenses, etc.) shall be paid through the date of Closing, and through the conclusion of the Transition Services Period from the Excluded Assets;

(f) subject to the terms of the Transition Services Agreement, any payroll, employment benefits, and any other related Liabilities related to Transferred Employees, including, without limitation, Accrued PTO and all Post-Closing COBRA Liabilities;

(g) subject to the terms of the Transition Services Agreement, all post-petition trade liabilities related to the Acquired Assets, including but not limited to vendor, supplier, lessor and all other Liabilities incurred in the Ordinary Course;

(h) subject to the terms of the Transition Services Agreement, all Liabilities and obligations of the Seller under the Assigned Permits in accordance with their terms, but only to the extent such obligations do not arise from or relate to any actual or alleged breach of such Assigned Permit or violation of law, in each case, arising as of, or related to the period prior to, the Closing; and

(i) all Chapter 11 administrative and priority claims of Seller ("Bankruptcy Claims") to the extent that the amount of such Bankruptcy Claims exceed the Cash

Payment; provided, however, that all Bankruptcy Claims outstanding after application of the Cash Payment shall be first paid from the Excluded Assets.

**Section 1.4 Excluded Liabilities**. Except for the Assumed Liabilities, Purchaser shall not assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for any Liabilities of, or Action against, the Seller of any kind or nature whatsoever, whether absolute, accrued, contingent or otherwise, liquidated or unliquidated, due or to become due, known or unknown, currently existing or hereafter arising, matured or unmatured, direct or indirect, and however arising, whether existing on the Closing Date or arising thereafter as a result of any act, omission, or circumstances taking place prior to the Closing (collectively, the "Excluded Liabilities"). Without limiting the generality of the foregoing, the Excluded Liabilities shall include the following Liabilities of Seller:

(a) any Liabilities of Seller arising or incurred in connection with the negotiation, preparation, investigation and performance of this Agreement and the Transaction, including, fees and expenses of counsel, accountants, consultants, advisors and others;

(b) any Liabilities of Seller related to any professional retained pursuant to sections 327 and 1103 of the Bankruptcy Code in the Bankruptcy Case;

(c) all Liabilities of Seller for fees, costs and expenses that have been incurred or that are incurred or owed by the Seller in connection with this Agreement or the administration of the Bankruptcy Case (including all fees and expenses of professionals engaged by the Seller) and administrative expenses and priority claims accrued through the Closing Date and any post-closing administrative wind-down expenses of the bankrupt estates pursuant to the Bankruptcy Code (which any such amounts shall be paid by the Seller) and all costs and expenses incurred in connection with (i) the negotiation, execution and consummation of the Transaction, and (ii) the consummation of the Transaction, including any retention bonuses, "success" fees, change of control payments and any other payment obligations of the Seller payable as a result of the consummation of the Transaction;

(d) any Liabilities of Seller for (i) all Income Taxes of Seller, without regard to whether such Income Taxes relate to periods (or portions thereof) ending prior to the Closing; (ii) Non-Income Taxes that are attributable to any Tax period (or portion of the Straddle Period) ending on or prior to the Closing (determined pursuant to Section 5.9(e)); (iii) Taxes attributable to the Excluded Assets or (iv) subject to Section 5.9(a), Taxes of Seller that arise out of the consummation of the Transaction;

(e) any Liabilities of Seller relating to or arising out of the Excluded Assets;

(f) all Liabilities of Seller for Indebtedness and any other Liabilities associated with debt, loans or credit facilities of Seller and/or the Business owing to financial institutions as of the Closing Date;

(g) any Liabilities of Seller in respect of any Claim, or threatened Claim, (i) arising out of, relating to or otherwise in respect of the operation of the Business or the

Acquired Assets to the extent such Claim relates to such operation on or prior to the effective time of the Closing, or (ii) against Seller;

(h) any Liabilities of any kind first arising or existing on or prior to the Closing Date (other than Cure Costs), including but not limited to: (i) Liabilities arising from illegal, fraudulent or negligent acts of the Seller or any of its respective directors, officers, agents, or employees; (ii) Liabilities imposed on the Seller by any Governmental Authority related to the conduct the of the Business prior to the Closing; and (iii) any liability arising out of a suit, claim or cause of action that is not disclosed by the Seller;

(i) any Liabilities of Seller resulting from the resolution or settlement of any Claim or Order to which Seller is a party or otherwise subject, but excluding any Liabilities of Purchaser or any of its Affiliates resulting from the resolution or settlement of any Claim or Order to which Seller and Purchaser or its Affiliates are a party or otherwise subject;

(j) except to the extent included as an Assumed Liability, any Liability of Seller for injury to a Person or property which (i) relates to any product sold, manufactured, held or marketed by, or on behalf of, the Seller prior to the effective time of Closing, (ii) relates to any service provided or marketed by, or on behalf, of the Seller prior to the effective time of Closing, or (iii) arises out of or is based upon any express or implied representation, warranty, agreement or guaranty made by the Seller, or by reason of the improper performance or malfunctioning of a product, improper design or manufacture, failure to adequately package, label or warn of hazards or other related product defects of any Products manufactured or sold prior to Closing, or any service performed by the Seller prior to the effective time of Closing;

(k) any recall, design defect or similar claims of any Products manufactured, licensed, or sold, or any service performed by Seller prior to the effective time of the Closing;

(l) except to the extent included as an Assumed Liability (which, for the avoidance of doubt includes the Post-Closing COBRA Liabilities and Accrued PTO), any Liabilities of Seller for any current or former employees, officers, directors, retirees, independent contractors or consultants of Seller, including, any Liabilities associated with any claims for wages or other benefits, bonuses, accrued vacation, workers' compensation, severance, retention, termination or other payments;

(m) any Liabilities of Seller to indemnify, reimburse or advance amounts to any present or former officer, director, employee or agent of Seller (including with respect to any breach of fiduciary obligations by same);

(n) any Liabilities of Seller under the Excluded Contracts, including any Liabilities arising out of the rejection of any such Contracts pursuant to Section 365 of the Bankruptcy Code;

(o) any Liabilities of Seller under any Contracts, Leases, or Permits of Seller (i) which are not validly and effectively assigned, or transferred, as applicable, to Purchaser pursuant to this Agreement; or (ii) to the extent such Liabilities arise out of or relate to a

breach by Seller of such Contracts or Leases or noncompliance with such Permits prior to the effective time of the Closing;

(p) all Liabilities of the Seller to its equity holders respecting dividends, distributions in liquidation, redemptions of interests, option payments or otherwise;

(q) all Liabilities of Seller arising out of or relating to any business or property formerly owned or operated by Seller, but not presently owned and operated by Seller;

(r) any drafts or checks outstanding of Seller as of the Closing;

(s) any "de facto merger" or "successor-in-interest" theories of Liability or fraudulent transfer or conveyance Law; and

(t) any Liabilities of Seller arising out of, in respect of or in connection with the failure by Seller to comply with any Law or Order.

**Section 1.5 Assumption and Assignment of Certain Contracts**. The Sale Order shall provide for the assumption and assignment of the Assigned Contracts by the applicable Seller(s), to the maximum extent permitted by Law, to Purchaser, and the assumption by Purchaser of the Assigned Contracts, effective upon the Transition Termination Date and in accordance with Section 1.1 and this Section 1.5.

(a) At the conclusion of the Transition Services Agreement, the Seller shall assume and assign, to the maximum extent permitted by Law, to Purchaser and Purchaser shall assume the Assigned Contracts and all Assumed Liabilities relating thereto.

(b) From and after the date of this Agreement and until the date that is fourteen (14) days prior to Closing, Purchaser may, subject to Seller's prior written consent, designate any Contract of the Seller as an Assigned Contract or remove any such Contract from Section 1.1(a) of the Disclosure Schedules, such that it is not an Assigned Contract and is instead designated as an Excluded Asset, in each case by providing written notice of such designation or removal to the Seller, in which case Section 1.1(a) of the Disclosure Schedules shall be deemed to be amended to include or remove, as applicable, such Contract as an Assigned Contract; provided, however, if an objection to the proposed assumption and assignment of any Assigned Contract (including, without limitation, to the amount of the proposed Cure Costs) has been properly and timely filed in the Bankruptcy Case in accordance with the Bidding Procedures Order and such objection is not satisfactorily resolved prior to or at the Sale Hearing, Purchaser may remove such Assigned Contract from Section 1.1(a) of the Disclosure Schedules at any time prior to the Closing consistent with the procedures set forth in this subparagraph (b) and in accordance with the assumption and assignment procedures set forth in the Bidding Procedures Order.

(c) In the case of any valid amendment by Purchaser of Section 1.1(a) of the Disclosure Schedules pursuant to Section 1.5(b), the Seller shall give notice to the other parties to any Contract to which such amendment relates of the removal or addition of such Contract from Section 1.1(a) of the Disclosure Schedules within one (1) Business Day of Purchaser notifying the Seller of such amendment.

(d) Notwithstanding any provision in this Agreement to the contrary, from and after the date hereof through the Closing, Seller will not reject or take any action (or fail to take any action necessary to prevent rejection by operation of Law) to reject, withdraw, repudiate, materially amend, terminate, or disclaim any material Contract unless Purchaser has provided its prior written consent.

(e) In connection with the assignment to and assumption by Purchaser of any Assigned Contract pursuant to this Section 1.5, in addition to the Purchase Price, Purchaser shall make provision for the payment of all of the Cure Costs. Notwithstanding anything contained herein to the contrary, Purchaser shall only assume, and shall only be responsible for, Contracts being designated as an Assigned Contract as of the Closing, and which Assigned Contracts are in fact assumed and assigned to Purchaser at the conclusion of the Transition Services Agreement and pursuant to this Section 1.5.

(f) If the Seller's assumption and assignment of any Assigned Contract by Seller to Purchaser requires the consent of any Governmental Body or other third party to permit such assumption and assignment by the Seller to Purchaser of such Contract pursuant to Section 365 of the Bankruptcy Code, then Purchaser and the Seller shall use commercially reasonable efforts whether before or after the Closing to obtain, and to cooperate in obtaining, all Consents and Governmental Authorizations from Governmental Bodies and third parties necessary to assign such Assigned Contract to Purchaser and for Purchaser to assume such Assigned Contract; provided, however, that the Seller shall not be required to pay any amount or incur any obligation to any Person from whom such Consent or Governmental Authorization may be required in order to obtain such Consent or Governmental Authorization.

(g) Notwithstanding any provision herein to the contrary, a Contract shall not be an Assigned Contract hereunder and shall not be assigned to or assumed by Purchaser to the extent that such Contract (i) is deemed rejected under Section 365 of the Bankruptcy Code, (ii) terminated by any party thereto other than the Seller, or terminates or expires by its terms, prior to the Closing and is not continued or otherwise extended upon assumption or (iii) requires a Consent or Governmental Authorization (other than, and in addition to, that of the Bankruptcy Court) in order to permit the sale or transfer to Purchaser of the Seller's rights under such Contract, if such Consent or Governmental Authorization has not been obtained.

(h) Non-Assignable Assets.

(i) To the extent that any Acquired Asset, Assigned Contract, Permit or any claim, right or benefit arising thereunder or resulting therefrom (the "Non-Assignable Asset") is not capable of being sold, assigned, transferred or conveyed without the approval, consent or waiver of another party thereto, or any third person (including a Governmental Body) (each such action, a "Necessary Consent"), or if such sale, assignment, transfer or conveyance or attempted sale, assignment, transfer or conveyance would constitute a breach thereof or a violation of any law, decree, order, regulation or other governmental edict, this Agreement shall not constitute a sale, assignment, transfer or conveyance thereof, or an attempted assignment, transfer or conveyance thereof. From

the date hereof until the earlier of the termination of this Agreement and the Closing Date, the Seller shall, if requested by the Purchaser, use its commercially reasonable efforts, subject to the Conditions, and the Purchaser shall reasonably cooperate with the Seller, to obtain all Necessary Consents, or to resolve any such impediments to transfer as necessary to convey to the Purchaser each such Non-Assignable Asset as soon as practicable; provided, however, that neither the Seller nor the Purchaser shall be obligated to pay any fees or other consideration to obtain such Necessary Consents for the transfer thereof, except for Cure Costs which shall be paid by the Purchaser and filing fees and other ordinary administrative or other charges provided for in the Assigned Contracts which shall be paid by the Purchaser to the third party from whom such Necessary Consent is requested.

(ii) To the extent that any of the Necessary Consents referred to in Section 1.5(h)(i) herein have not been obtained by the Seller and the Purchaser as of the Closing, or the Bankruptcy Court has not entered an Order providing that such Necessary Consent is not required, the Closing will proceed with respect to the remaining Acquired Assets (but not the Acquired Assets with respect to which any such Necessary Consent has not been obtained), and there will be no reduction in the Purchase Price as a result thereof, and, for a period of six (6) months following the Closing Date (or the closing of the Bankruptcy Cases or dissolution of the Seller, if earlier), (a) the Parties shall use reasonably best efforts to secure such Necessary Consent as promptly as practicable after the Closing, (b) in connection with such Necessary Consents, the Purchaser agrees that it will cooperate with and promptly take such actions as are reasonably requested by Seller or such contract counterparty to the applicable Acquired Asset to assist in obtaining entry of a finding by the Bankruptcy Court of adequate assurance of future performance by the Purchaser relating to its ability to perform its obligations, including affidavits or other documents or information (including for filing with the Bankruptcy Court) for the purposes, among others, of providing necessary assurances of performance by the Purchaser under this Agreement and such Acquired Assets and demonstrating that the Purchaser is a "good faith" purchaser under the Bankruptcy Code; (c) at the reasonable request of the Purchaser, the Seller shall use commercially reasonable efforts to cooperate with the Purchaser in any reasonable and lawful arrangements designed to provide the economic rights and benefits of such Non-Assignable Asset to the Purchaser so long as the Purchaser cooperates with the Seller in such arrangements and reimburses the Seller for all expenses incurred by the Seller (including ongoing expenses of the Seller operating in bankruptcy) and payments made by the Seller in connection with such arrangements, and the Purchaser shall assume and timely discharge any related burden and obligation with respect to such Acquired Asset; provided, that (x) the foregoing shall not restrict or limit the wind-down or liquidating plan of the Seller following the Closing Date and (y) the foregoing shall be subject to (1) any Orders entered, or approvals or authorizations granted or required, by or under the Bankruptcy Court or the Bankruptcy Code, obligations or limitations arising under or related to the DIP Facility or the DIP Term Sheet, and each of the Seller's obligations to comply with any Order of the Bankruptcy Court (including the Bidding Procedures Order, Final DIP Order, and the Sale Order) and the Seller's duty to seek and obtain the highest or otherwise best price for its assets as required by the Bankruptcy Code, (2) limitations on operations imposed by the Bankruptcy Court or the Bankruptcy Code or agreements governing Seller's debtor-in-possession financing, and (3) limitations arising out of or related to the financial distress of the Seller and the Bankruptcy Cases, including

limitations on personnel, funds and other resources ((x) and (y), collectively, and as applicable as used herein, the "Conditions").

(iii) Notwithstanding anything to the contrary herein, the Seller shall not be required to compensate any applicable third party, commence or participate in any proceeding or offer or grant any accommodation (financial or otherwise, including any accommodation or arrangement to indemnify, remain primarily, secondarily or contingently liable for any Liability) to any applicable third party in connection with the Seller obligations under this Section 1.5(h) or otherwise. Receipt of any Necessary Consent shall not be a condition to the Purchaser's obligation to timely consummate the Closing (including the Purchaser's obligation to pay the Purchase Price in full) or comply with the Purchaser's obligations under this Agreement or any other Transaction Agreement and the failure to receive any Necessary Consent shall not give the Purchaser the right to terminate this Agreement.

**Section 1.6 Good Faith Deposit**. Upon the execution and delivery of this Agreement by the Parties hereto, Purchaser shall pay (or shall have paid) Fifty Thousand Dollars ($50,000.00) (the funds deposited into the escrow account, are referred to as the "Good Faith Deposit") by wire transfer of immediately available funds to the escrow account established by Seller's counsel (the "Escrow Agent"). Upon termination of this Agreement by Purchaser or Seller pursuant to Section 7.1, and provided that Purchaser is not in breach of its obligations under this Agreement, within three (3) Business Days following such termination, Purchaser and the Seller shall execute joint written instructions to Escrow Agent instructing Escrow Agent to disburse the Good Faith Deposit to Purchaser.

**Section 1.7 Inspection and Due Diligence.**

(a) From the date hereof until the earlier of the termination of this Agreement and the Closing Date, the Seller will use commercially reasonable efforts to (i) make available for the Purchaser's inspection and copying such material information and other materials requested in writing by the Purchaser related to the Acquired Assets as may reasonably be in the Seller's possession and control, and (ii) promptly respond to any written requests from the Purchaser for additional information as long as such information is reasonably within the Seller's possession and control.

(b) The Purchaser hereby acknowledges and agrees that the sale of the Acquired Assets is and will be made on an "as is, where is and with all faults" basis (except for the Express Representations contained in **Error! Reference source not found.**, as qualified, amended, supplemented and modified by the Disclosure Schedule and in accordance with the express terms and conditions (including limitations and exclusions) of this Agreement). The occurrence of the Closing shall constitute an acknowledgement by the Purchaser that the Acquired Assets have been accepted without representation or warranty, express or implied (except for the Express Representations). Except for the Express Representations, the Seller disclaims any further representations, warranties, or guaranties of any kind or character, whether express or implied, oral or written, past, present, future, or otherwise, of, as to, concerning, or with respect to the Seller, the Acquired Assets, or the Assumed Liabilities or with respect to any information, statements, disclosures, documents, projections, forecasts or other material of any nature Made Available or

provided by any Person, or elsewhere to the Purchaser or any of its Advisors on behalf of the Seller, including (i) any implied representation of merchantability or fitness for any particular use or purpose, (ii) any implied representation regarding the use or operation of the Acquired Assets after the Closing in any manner, and (iii) any implied representation regarding the probable success or profitability of the Acquired Assets. The Purchaser further acknowledges that the information provided and to be provided with respect to the Seller, the Acquired Assets and the Assumed Liabilities was obtained from a variety of sources and, except as set forth in the Express Representations, the Seller, (x) has not made any independent investigation or verification of such information and (y) has not made any express or implied, oral or written, representations as to the accuracy or completeness of such information. Notwithstanding the generality of the foregoing, the Purchaser acknowledges and agrees that it has received from the Seller certain projections, forward-looking statements, forecasts, and prospective or third-party information relating to the Seller, the Business, the Acquired Assets, and the Assumed Liabilities (whether in written, electronic, or oral form) (collectively, "Projections"). The Purchaser acknowledges that (1) such Projections are being provided solely for the convenience of the Purchaser to facilitate its own independent investigation; (2) there are uncertainties inherent in attempting to make such Projections; and (3) none of the Seller nor any other Person makes any representations or warranties with respect to such Projections. The Purchaser hereby disclaims reliance on any such Projections. The Purchaser acknowledges that it has conducted to its reasonable satisfaction an independent investigation and verification of the Business including the Acquired Assets, its financial condition, results of operations, assets, Liabilities, properties, Contracts, environmental compliance, employee matters, regulatory compliance, business risks and prospects of the Seller, and, in making its determination to proceed with the Transaction contemplated by this Agreement, the Purchaser has relied solely on the results of its own independent investigation and verification, and has not relied on, is not relying on, and will not rely on, the Seller, the Projections or any information, statements, disclosures, documents, projections, forecasts or other material Made Available to The Purchaser in the Dataroom or otherwise, in each case, whether written or oral, made or provided by, or as part of, any of the foregoing or the Seller or any of their respective Affiliates or Representatives, or any failure of any of the foregoing to disclose or contain any information, except for the Express Representations. This Section 1.7 shall survive the termination of this Agreement and the Closing.

## ARTICLE II
## CONSIDERATION; PAYMENT; CLOSING

**Section 2.1 Consideration; Payment**. The aggregate consideration (collectively, the "Purchase Price") to be paid by Purchaser for the purchase of the Acquired Assets shall be $2.7 million dollars and allocated as follows: (i) credit bid in the amount equal to the DIP Facility, which is equal to approximately $2.2 million dollars ("Credit Bid")); and (ii) (a) commitment to fund the Bankruptcy Claims up to and in no event more than a cap of $500,000.00 (the "Cash Payment"); (iii) payment of all Cure Costs in cash with respect to the Assigned Contracts pursuant to Section 365 of the Bankruptcy Code; and (iv) assumption of the Assumed Liabilities (other than the Cure Costs). At the Closing, Purchaser shall deliver, or cause to be delivered, to the Seller the Cash Payment and the Cure Costs (the "Closing Date Payment") and shall assume the Assumed Liabilities. The Closing Date Payment and any payment required to be made pursuant to any other provision hereof shall be made in cash by wire transfer of immediately available funds to such bank account as shall be designated in writing by the Seller at least two (2) Business Days prior to

the date such payment is to be made. In satisfaction of the Credit Bid portion of the Purchase Price, effective as of the Closing, the DIP Lenders shall (a) acknowledge, in writing, the satisfaction of the obligations under the DIP Facility and (b) release all security interests and liens securing the DIP Facility (the "Credit Bid Release").

**Section 2.2 Closing**. The closing of the purchase and sale of the Acquired Assets, the delivery of the Closing Day Payment, the assumption of the Assumed Liabilities in accordance with this Agreement (the "Closing") will take place by telephone conference and electronic exchange of documents at 10:00 a.m. Eastern Time on the second Business Day following full satisfaction or due waiver (by the Party entitled to the benefit of such condition) of the closing conditions set forth in Article VI (other than conditions that by their terms or nature are to be satisfied at the Closing), but in no event sooner than the date that is two (2) weeks following the entry of the Sale Order, or at such other place and time as the Parties may agree in writing, and no later than forty (40) days after conclusion of the Bid Deadline (as defined in the Bidding Procedures Order), subject to extension as agreed by the Seller, in consultation with the Subchapter V Trustee, in its business judgment. The date on which the Closing actually occurs is referred to herein as the "Closing Date." The Closing shall be effective as of 12:01 a.m. Eastern Time on the Closing Date for all purposes of this Agreement, including for Tax and accounting purposes.

**Section 2.3 Closing Deliveries by the Seller**. At or prior to the Closing, the Seller shall deliver to Purchaser:

(a) a bill of sale and an assignment and assumption agreement in form and substance reasonably satisfactory to Purchaser assigning the Assigned Contracts to Purchaser (the "Assignment and Assumption Agreement") duly executed by the Seller;

(b) assignments in form and substance reasonably satisfactory to Purchaser and duly executed by Seller, transferring all of Seller's right, title and interest in and to any Intellectual Property owned or held by Seller (the "IP Assignment");

(c) an IRS Form W-9 executed by the Seller (or, if the Seller is disregarded, its regarded owner for U.S. federal income tax purposes);

(d) with respect to each Assigned Real Property Lease, a Lease Assignment and Assumption Agreement in form and substance reasonably satisfactory to Purchaser (each, a "Lease Assignment and Assumption Agreement") and duly executed by Seller;

(e) a certificate, dated as of the Closing Date and signed by a duly authorized officer of Seller, that each of the conditions set forth in Section 6.2(a) and Section 6.2(b) have been satisfied;

(f) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Seller certifying (1) that attached thereto are true and complete copies of all resolutions adopted by the Chief Executive Officer of Seller authorizing the execution, delivery and performance of this Agreement and the consummation of the Transaction, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the Transaction, and (2) the names and signatures of the officers of Seller authorized to sign this Agreement and the other documents to be delivered hereunder and thereunder;

(g) to the extent that any Encumbrances (other than Permitted Encumbrances) against the Acquired Assets are not released pursuant to the Sale Order, executed termination statements, in form and substance reasonably satisfactory to Purchaser, on Form UCC-3 or such other appropriate form that, when filed or recorded, as the case may be, sufficient to release any and all such documents, provided that Purchaser may record the Sale Order with the appropriate Governmental Body wherein any UCC financing statements are recorded against the Seller;

(h) a certificate from the Secretary of State of the state of incorporation or formation of the Seller dated within three Business Days prior to the Closing Date, certifying that the Seller is in good standing;

(i) a transition services agreement to be mutually agreed-upon by Seller and Purchaser pursuant to which Seller will provide certain transition services to Purchaser for a period (such period, the "Transition Period") beginning as of the Closing Date and ending on the Transition Termination Date (the "Transition Services Agreement") duly executed by Seller;

(j) a copy of the Sale Order; and

(k) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Purchaser, as may be required to give effect to this Agreement and consummate the Transaction.

**Section 2.4 Closing Deliveries by Purchaser**. At the Closing, Purchaser shall deliver to (or at the direction of) the Seller:

(a) the Closing Date Payment, free and clear of, and without any deduction or withholding on account of, any Tax;

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

(c) the IP Assignment, duly executed by Purchaser;

(d) with respect to each Assigned Real Property Lease, a Lease Assignment and Assumption Agreement duly executed by Purchaser;

(e) a certificate, dated as of the Closing Date and signed by a duly authorized officer of the Purchaser, that each of the conditions set forth in Section 6.2(a) and Section 6.2(b) have been satisfied;

(f) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of the Purchaser certifying (1) that attached thereto are true and complete copies of all resolutions adopted by the managing member of the Purchaser authorizing the execution, delivery and performance of this Agreement and the consummation of the Transaction, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the Transaction, and (2) the names and signatures of the officers of the

Purchaser authorized to sign this Agreement and the other documents to be delivered hereunder and thereunder;

(g) a certificate from the Secretary of State of the state of incorporation or formation of the Purchaser dated within three Business Days prior to the Closing Date, certifying that the Purchaser is in good standing;

(h) the Transition Services Agreement duly executed by Purchaser;

(i) evidence in form reasonably satisfactory to Seller evidencing the Credit Bid Release; and

(j) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to the Seller, as may be required to give effect to this Agreement and consummate the Transaction.

## ARTICLE III
## REPRESENTATIONS AND WARRANTIES OF THE SELLER

Except as disclosed in the correspondingly numbered section of the Disclosure Schedules (whether or not an express reference to the Disclosure Schedules is included herein), the Seller represents and warrants to Purchaser as of the date hereof and as of the Closing Date as follows:

**Section 3.1** **Organization; Qualification; Capitalization**. The Seller is duly incorporated or organized, validly existing and in good standing under the Laws of Delaware and has full limited liability company power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on the Business as conducted as of the date hereof. The Seller is duly licensed or qualified to do business under the Laws of each jurisdiction in which the nature of the business conducted by it makes such licensing or qualification necessary, except where failure to be so licensed, qualified or in good standing would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

**Section 3.2** **Authorization of Agreement**. Subject to the applicable Conditions:

(a) the Seller has all necessary power and authority to execute and deliver this Agreement and the other Transaction Agreements to which the Seller is a party and to perform its obligations hereunder and to consummate the Transaction;

(b) the execution, delivery and performance by the Seller of this Agreement and the other Transaction Agreements to which the Seller is a party, and the consummation by the Seller of the Transaction, have been duly authorized by all requisite limited liability company action on the part of the Seller, as applicable, and no other organizational proceedings on the Seller's part are necessary to authorize the execution, delivery and performance by the Seller of this Agreement or the other Transaction Agreements and the consummation by it of the Transaction; and

(c) this Agreement and the other Transaction Agreements to which the Seller is a party have been, or will be, duly executed and delivered by the Seller and, assuming

due authorization, execution and delivery hereof and thereof by the other parties hereto and thereto and the Bankruptcy Court's entry of the Sale Order, constitutes, or will constitute, legal, valid and binding obligations of the Seller, enforceable against the Seller in accordance with its and their terms, except that such enforceability (a) may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar Laws of general application affecting or relating to the enforcement of creditors' rights generally and (b) is subject to general principles of equity, whether considered in a proceeding at law or in equity (collectively, the "Enforceability Exceptions").

**Section 3.3 Conflicts; Consents**. Assuming that (a) requisite Bankruptcy Court approvals are obtained and the applicable Conditions are satisfied, and (b) the notices, authorizations, approvals, Orders, permits or consents set forth in Section 3.3 of the Disclosure Schedules are waived, made, given or obtained (as applicable), neither the execution and delivery by the Seller of this Agreement or the other Transaction Agreements, nor the consummation by the Seller of the Transaction, nor performance or compliance by the Seller with any of the terms or provisions hereof or thereof, will (i) conflict with or violate any provision of the Seller's certificate of formation or limited liability company agreement as applicable (collectively, the "Governing Documents"); (ii) violate any Law or Order applicable to the Seller; (iii) require the consent, notice or other action by any Person under, conflict with, violate or constitute a breach of or default (with or without notice or lapse of time, or both) under or give rise to a right of acceleration, termination, modification, or cancelation of any obligation or to the loss of any benefit, any of the terms or provisions of the Assigned Contracts or any Acquired Asset, except as would not reasonably be expected to result in a Material Adverse Effect; or (iv) result in the creation of any Encumbrance (other than a Permitted Encumbrance) on any Acquired Assets. No consent, approval, Permit, Order, declaration or filing with, or notice to, any Governmental Body is required by or with respect to the Seller in connection with the execution and delivery of this Agreement and the consummation of the Transaction, except for the requisite Bankruptcy Court approvals.

**Section 3.4 Title to Acquired Assets**. Except pursuant to the Bankruptcy Code or an order of the Bankruptcy Court, no Acquired Asset is subject to any Claim or Order that materially restricts in any manner the use, transfer, sale or licensing thereof, no third party has any ownership interest in any of the Acquired Assets. Seller has, and at Closing, will transfer, convey and assign, good and valid title to, or a valid leasehold interest in, all of the Acquired Assets except as set forth on Section 3.4 of the Disclosure Schedules and Seller is in possession or control of the Acquired Assets. The Sale Order shall provide that all of such Acquired Assets (including leasehold interests) will be transferred to Purchaser free and clear of Encumbrances except for Permitted Encumbrances.

**Section 3.5 Condition and Sufficiency of Assets**.

(a) Except as set forth on Section 3.6 of the Disclosure Schedules, the buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of tangible personal property included in the Acquired Assets are in good operating condition and repair (except for normal wear and tear), and are adequate in all material respects for the uses to which they are being put in the Ordinary Course, and none of such buildings, plants, structures, furniture, fixtures, machinery, equipment, vehicles and other items of

tangible personal property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs.

(b) Other than the Excluded Permits which cannot be assigned to Purchaser, the Acquired Assets are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted prior to the Closing. Other than the Excluded Permits and any Contracts removed by Purchaser pursuant to Section 1.5(b) hereof, none of the other Excluded Assets are material to the Business.

**Section 3.6 Inventory**. All Inventory consists of a quality and quantity usable and salable in the Ordinary Course in all material respects, except for obsolete, damaged, defective or slow-moving items that have been written off or written down to fair market value or for which adequate reserves have been established. Except as set forth on Section 3.6 of the Disclosure Schedules, no Inventory is held on a consignment basis.

**Section 3.7 Assigned Contracts**. True and complete copies of the Assigned Contracts have previously been Made Available to Purchaser or Purchaser's Advisors. Subject to requisite Bankruptcy Court approvals and satisfaction of the applicable Conditions, and assumption by the applicable Seller(s) of the applicable Assigned Contracts in accordance with applicable Law (including satisfaction by Purchaser of any applicable Cure Costs) and except as a result of the commencement of the Bankruptcy Case, to the Knowledge of Seller, (a) the Assigned Contracts are valid and binding on the Seller and each other party thereto, and are in full force and effect, subject to the Enforceability Exceptions; (b) the Seller and any other party thereto have performed all material obligations required to be performed by them under the Assigned Contracts except where failure to so perform would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect; (c) none of the Seller or any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of any intention to terminate, any Assigned Contract; (d) there are no events or conditions which constitute, or, after notice or lapse of time or both, will constitute a material default on the part of the Seller under the relevant Assigned Contract; (e) the Seller has not received any written notice from any Person that such Person intends to terminate, or not renew, the relevant Assigned Contract, and (f) there are no material disputes pending or threatened under any Contract included in the Acquired Assets.

**Section 3.8 Permits**. Section 3.8 of the Disclosure Schedules sets forth all Permits used in the operation of the Business. Except as described in Section 3.8 of the Disclosure Schedules, other than in connection with or as a result of the Bankruptcy Case, as of the date hereof, (a) the Seller has all material Governmental Authorizations, licenses, permits, certificates, approvals, Orders, billing and authorizations necessary for the conduct of the Business as presently conducted and used or that are necessary for the lawful ownership and use of the Acquired Assets (collectively, the "Permits"), and each of the Permits is valid, subsisting and in full force and effect, (b) the operation of the Business by the Seller as currently conducted is not, and has not been since January 1, 2025, in violation of, nor is the Seller in default or violation under, in any material respect, any Permit (except for such past violation or default as has been remedied and imposes no continuing obligations or costs on the Seller); (c) to the Knowledge of Seller, no event has occurred which, with notice or the lapse of time or both, would constitute a default or violation of any term, condition or provision of any Permit, except where such default or violation of such Permit has

not resulted in and would not reasonably be expected to result in a Material Adverse Effect and (d) there are no actions pending or, to the Knowledge of Seller, threatened in writing, that seek the revocation, cancellation or modification of any Permit.

**Section 3.9 Compliance with Laws**. To the Knowledge of Seller, the Seller is in compliance with, in all material respects, all applicable Laws and Orders relating to the Acquired Assets, the Assumed Liabilities and the Business, except for such past noncompliance as has been remedied and imposes no continuing obligations or costs on the Business. None of Seller has received any written notice since January 1, 2025 from a Governmental Body that alleges that the Seller is not in compliance in a material respect with any Law or Order in connection with the Business.

**Section 3.10 Legal Proceedings; Orders**.

(a) There are no Claims pending or, to the Knowledge of Seller, threatened against or by Seller (a) relating to or affecting the Business, the Acquired Assets or the Assumed Liabilities; or (b) that challenge or seek to prevent, enjoin or otherwise delay the Transaction.

(b) Except Orders of the Bankruptcy Court, there are no outstanding Orders and, to the Knowledge of Seller, no unsatisfied judgments, penalties or awards against, relating to or affecting the Business.

**Section 3.11 Intellectual Property**

(a) Seller is the sole and exclusive legal, record and beneficial owner of all right, title and interest in and to the assets listed on Section 1.1(d) of the Disclosure Schedules (the "IP Assets"), which together with Intellectual Property rights licensed to the Seller, consist of all material Intellectual Property rights necessary for the conduct of the Business as presently conducted, without any known infringement of the rights of others.

(b) Except as set forth on Section 3.11 of the Disclosure Schedules, the Seller has the valid and enforceable right to use all IP Assets and other Intellectual Property used or held for use in or necessary for the conduct of the Business as currently conducted or as proposed to be conducted, in each case free and clear of all Encumbrances, other than Permitted Encumbrances. Seller has the right and authority to transfer all of its right, title and interest in the IP Assets to Purchaser, and they have not previously transferred or granted any right, license or interest in or to the IP Assets that would conflict with or limit the scope of any right, title, or interest in the IP Assets to be transferred to Purchaser under this Agreement.

(c) Section 3.11(c) of the Disclosure Schedules sets forth all Contracts governing the development or acquisition of, or involving, the grant or receipt of a license with respect to, the IP Assets. Except as set forth in Section 3.11(c) of the Disclosure Schedules, there are no outstanding options, licenses or agreements of any kind relating to the IP Assets.

(d) Except as set forth on Section 3.11(d) of the Disclosure Schedules, the IP Assets are not subject to any material Encumbrances in favor of, or material written claims of ownership by, any third party.

(e) To the Knowledge of Seller, the conception, development and reduction to practice of the IP Assets have not constituted or involved the misappropriation of trade secrets or other proprietary rights or property of any third party.

(f) The IP Assets constitute all Intellectual Property registered with a Governmental Body and, to the Knowledge of Seller, all material trade secrets, in each case, owned by Seller for use in exploitation of the Acquired Assets immediately before the Closing.

**Section 3.12 Real Property**.

(a) The Seller has good and valid leasehold interests to the Leased Real Property set forth in Section 3.12(a) of the Disclosure Schedules, in each case sufficient in all material respects to continue the conduct of the Business free and clear of all Encumbrances (other than Permitted Encumbrances). Seller has delivered to Purchaser a true and complete copy of each Assigned Real Property Lease. With respect to each Assigned Real Property Lease and Leased Real Property, to the Knowledge of Seller:

(i) such Assigned Real Property Lease is valid, binding, enforceable and in full force and effect, and Seller enjoy peaceful and undisturbed possession of the Leased Real Property;

(ii) Seller is not in breach or default under such Assigned Real Property Lease, and no event has occurred or circumstance exists, in each case, on the part of the Seller, which, with the delivery of notice, passage of time or both, would constitute such a breach or default by the Seller, and Seller has paid all rent due and payable under such Assigned Real Property Lease;

(iii) Seller has not received nor given any notice of any default or event that with notice or lapse of time, or both, would constitute a default by Seller under any of the Assigned Real Property Leases and no other party is in default thereof, and no party to any Assigned Real Property Lease has exercised any termination rights with respect thereto;

(iv) except as set forth on Section 3.12(a)(iv) of the Disclosure Schedules, Seller has not subleased, assigned or otherwise granted to any Person the right to use or occupy such Leased Real Property or any portion thereof; and

(v) Seller has not pledged, mortgaged or otherwise granted an Encumbrance on its leasehold interest in any Leased Real Property.

**Section 3.13 Employment Matters**.

(a) Seller has Made Available to Purchaser a list of all persons who are Employees as of the date hereof, including any Employee who is on a leave of absence of any nature, paid or unpaid, authorized or unauthorized, and sets forth for each such individual the following: (i) name; (ii) title or position (including whether full-time or part-time); (iii) hire or retention date; (iv) current annual base salary or hourly wage rate and (v) current commission, bonus or other incentive-based compensation targets.

(b) Seller is not, and has not in the past three (3) years been, a party to, bound by, or negotiating any collective bargaining agreement or other Contract with a union, works council or labor organization (collectively, "Union"), and there is not, and has not in the past three (3) years been, any Union representing or purporting to represent any employee of Seller, and, to the Knowledge of Seller, no Union or group of Employees is seeking to organize Employees for the purpose of collective bargaining. There has not in the past three (3) years been, nor, to the Knowledge of Seller, has there been any threat of, any strike, slowdown, work stoppage, lockout, concerted refusal to work overtime or other similar material labor disruption or dispute affecting Seller or any employees of Seller servicing the Business. Seller has no duty to bargain with any Union.

**Section 3.14 Employee Benefits.**

(a) Seller is not required to make any contributions to any defined benefit pension for the benefit of its Employees. Subject to the foregoing, the Seller has, as of the date hereof, made all required payments, contributions and filings under or in respect of any such plans or arrangements, and, to the Knowledge of Seller, there has not occurred any act, omission, event or condition such as would reasonably be expected to give rise to any material liability of the Seller thereunder other than the obligations to make normal payments and contributions thereunder. Each Employee Benefit Plan that is intended to qualify under Section 401(a) of the United States Internal Revenue Code of 1986, as amended (the "Code") has received a favorable determination or opinion letter from the IRS regarding its qualification thereunder and, to the Knowledge of Seller, nothing has occurred since the date of the most recent such determination or opinion letter that could reasonably be expected to materially adversely affect the qualified status of any of such Employee Benefit Plans.

(b) Except as set forth on Section 3.12(a) of the Disclosure Schedules, neither the Seller nor any of its respective ERISA Affiliates within the six (6) year period preceding the date of this Agreement has sponsored, maintained or contributed to (or has been obligated to contribute to), or has any current or contingent liability or obligation under or with respect to: (i) any "employee pension plan," as defined in Section 3(2) of ERISA, that is or was subject to Title IV of ERISA or Section 412, 430 or 436 of the Code; or (ii) any multiemployer plan as defined in Section 3(37) of ERISA or Section 4001(a)(3) of ERISA. No Employee Benefit Plan is a "multiple employer plan" within the meaning of Section 413(c) of the Code or Section 210 of ERISA, or a "multiple employer welfare arrangement" as defined in Section 3(40) of ERISA.

**Section 3.15 Taxes**.

(a) All material Tax Returns required to be filed by Seller with respect to the Non-Income Taxes for any taxable period ending on or before the Closing Date have been timely filed. Such Tax Returns are true, complete and correct in all material respects. All material Non-Income Taxes due and owing by Seller (whether or not shown on any Tax Return) have been, or will be, timely paid.

(b) Seller has withheld and paid each material Tax required to have been withheld and paid in connection with amounts paid or owing to the Seller employee, director, creditor, customer, shareholder or any other party, and complied with all information reporting and backup withholding provisions of applicable Law in all material respects.

(c) No extensions or waivers of statutes of limitations with respect to any material Taxes or material Tax Returns of or with respect to the Acquired Assets or the Business is outstanding, nor is there pending any request for such a waiver or extension.

(d) All material deficiencies asserted, or assessments made, against Seller as a result of any examinations by any taxing authority, with respect to any Taxes or Tax Returns of or with respect to the Acquired Assets or the Business, have been fully paid.

(e) Seller is not a party to any material Claim by any taxing authority with respect to any Taxes or Tax Returns of Seller or with respect to the Acquired Assets or the Business. There are no pending or threatened material Claims by any taxing authority with respect to any Taxes or Tax Returns of Seller or with respect to the Acquired Assets or the Business.

(f) There are no Encumbrances for Taxes upon any of the Acquired Assets (other than for current Taxes not yet due and payable).

**Section 3.16 Brokers**. Other than Cassel Salpeter & Co., who has been engaged as the Seller's investment banker, no other broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission, or the reimbursement of expenses in connection therewith, in connection with the Transaction, in each case based upon arrangements made by or on behalf of the Seller.

**Section 3.17 Regulatory Compliance**.

(a) Seller conducts, and has conducted, its business in compliance in all material respects with all applicable Law related to the preparation, labeling, and sale of the Products to consumers, including, to the extent applicable, any provisions of the Federal Food, Drug and Cosmetic Act, as amended from time to time (including any applicable regulations adopted thereunder, the "FFDCA"), the applicable statutes, regulations and requirements of the United States Department of Agriculture (the "USDA"), the applicable statutes, regulations and requirements of the Alcohol and Tabacco Tax and Trade Bureau (the "TTB"), all applicable statutes enforced by the Federal Trade Commission (the "FTC") and the applicable FTC regulations and requirements and any applicable statutes, regulations and requirements established by any state, provincial, local or foreign Governmental Body responsible for regulating the preparation, labeling, sale and

distribution of the Products (collectively, the "Regulatory Authorities" and the FFDCA, the statutes, regulations and requirements of the USDA and the TTB and such other statutes, regulations and requirements collectively, the "Regulatory Law") and terms and conditions imposed in any permits granted by any Regulatory Authority. All inventory and products produced or sold by Seller, under its own brand or, to the Knowledge of Seller, for third parties (collectively, the "Products"), have complied in all material respects, and are in material compliance, with applicable Regulatory Law and terms and conditions imposed in any Permits granted by any Regulatory Authority, including any applicable good manufacturing practices and sanitation requirements, labeling and advertising requirements, product composition requirements, testing requirements or protocols, recordkeeping or reporting requirements, monitoring requirements, packaging requirements, laboratory controls, storage and warehousing procedures, shipping requirements and shelf-life requirements, in each case as required under applicable Regulatory Law or material permits granted by any Regulatory Authority. To the Knowledge of Seller, the Products have been manufactured and packaged in accordance and compliance with the respective labels and packaging, such that the labeling and packaging of each respective Product accurately and completely reflects the contents of each such individually sold Product in all material respects.

(b) Seller has never been excluded, debarred or suspended from participation under any government program pursuant to any applicable Regulatory Law, in each case with respect to the Business or the Products.

(c) The finished goods included in the Acquired Assets (i) have been properly handled and stored and are properly packaged and labeled in all material respects, (ii) may be shipped in interstate commerce in accordance with applicable Regulatory Law, and (iii) are not materially adulterated or misbranded within the meaning of applicable Regulatory Law.

(d) Except as set forth on Section 3.12(a) of the Disclosure Schedules, Seller has not received nor is Seller subject to, or has been subject to, (x) any warning letter, untitled letter, notice of inspectional observation, notice of suspension, notice of intended enforcement or other adverse correspondence or notice from any Regulatory Authority, or (y) any import detention, investigation, suspension or withdrawal of inspection or registration, penalty assessment or other compliance or enforcement action by any Regulatory Authority.

(e) None of the Products requires any specific approval of the FDA, USDA or any other Regulatory Authority for the purpose of which they are being manufactured, prepared, produced, or sold, which has not been obtained.

**Section 3.18 Products Liability**.

(a) The Products sold by Seller and any finished products that constitute Inventory were, at all times up to and including the sale thereof: (a) in compliance in all material respects with all applicable legal requirements, and all applicable product content, labeling, registration and certification requirements for any jurisdiction in which each

Product is marketed, (b) manufactured in material compliance with applicable legal requirements, (c) in conformance, in all material respects, with the applicable product specifications and descriptions provided by or on behalf of the Seller with respect to Seller's brand or to Seller with respect to third-party brands, (d) were able to be introduced into interstate commerce in the United States and do not contain articles which may not be introduced into interstate commerce, and (e) fit for the ordinary purposes for which they are intended to be used.

(b) There has been no act or omission by Seller or other occurrence which, to the Knowledge of Seller, would be expected to give rise to, or form the basis of, any material product liability or material liability for breach of warranty (whether or not covered by insurance) on the part of Seller. There are not presently pending, and, to the Knowledge of Seller, there are not threatened and there is no reasonable basis for, any legal proceedings, notices of violation or demand letters relating to any alleged hazard or alleged defect in design, manufacture, materials or workmanship, including any failure to warn or alleged breach of an express or implied warranty or representation, relating to any product formulated, manufactured, or sold by or on behalf of Seller.

(c) In product manufacturing agreements and except as implied or required by legal requirements, Seller has not extended to any of its customers any written, non-uniform product warranties, indemnifications or guarantees in excess of those required by its trade customers and distributors in the Ordinary Course.

**Section 3.19 No Other Representations or Warranties**. Except for the representations and warranties expressly contained in this Article III (as qualified by the Disclosure Schedules and in accordance with the express terms and conditions (including limitations and exclusions) of this Agreement) (the "Express Representations") (it being understood that Purchaser has relied only on the Express Representations and warranties), Purchaser acknowledges and agrees that neither the Seller nor any other Person on behalf of the Seller makes, and Purchaser has not relied on, is relying on, or will rely on the accuracy or completeness of any express or implied representation or warranty with respect to the Seller, the Business, the Acquired Assets, or the Assumed Liabilities or with respect to any information, statements, disclosures, documents, projections, forecasts or other material of any nature Made Available or provided by any Person or in that certain virtual data room administered by the Seller (the "Dataroom") or elsewhere to Purchaser or any of its Affiliates or Advisors by or on behalf of the Seller or any of its Advisors. Without limiting the foregoing, neither the Seller nor any of its Advisors nor any other Person will have or be subject to any Liability whatsoever to Purchaser, or any other Person, resulting from the distribution to Purchaser or any of its Affiliates or Advisors, or Purchaser's or any of its Affiliates' or Advisors' use of or reliance on, any such information, including any information presentation, any information, statements, disclosures, documents, projections, forecasts or other material Made Available to Purchaser or any of its Affiliates or Advisors in the Dataroom or otherwise in expectation of the Transaction or any discussions with respect to any of the foregoing information, except for the Express Representations. Seller acknowledges and agrees to Section 4.7.

## ARTICLE IV
## REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to the Seller as of the date hereof and as of the Closing Date as follows:

**Section 4.1 Organization and Qualification**. As of the Closing Date, the Purchaser shall be duly organized, validly existing and in good standing under the Laws of Delaware and shall have full limited liability company power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on the Business as conducted as of the date hereof. The Purchaser is duly licensed or qualified to do business under the Laws of each jurisdiction in which the nature of the business conducted by it makes such licensing or qualification necessary, except where failure to be so licensed, qualified or in good standing would not, individually or in the aggregate, reasonably be expected to result in a material adverse effect on the Purchaser's ability to consummate the Transaction contemplated by this Agreement.

**Section 4.2 Authorization of Agreement**. Purchaser has all necessary power and authority to execute and deliver this Agreement and to perform its obligations hereunder and to consummate the Transaction. The execution, delivery and performance by Purchaser of this Agreement or other Transaction Agreements, and the consummation by Purchaser of the Transaction, subject to requisite Bankruptcy Court approvals, have been duly authorized by all requisite corporate or similar organizational action and no other corporate or similar organizational proceedings on its part are necessary to authorize the execution, delivery and performance by Purchaser of this Agreement and the other Transaction Agreements to which the Purchaser is a party and the consummation by it of the Transaction. Subject to requisite Bankruptcy Court approvals, this Agreement has been duly executed and delivered by Purchaser and, assuming due authorization, execution and delivery hereof by the other Parties, constitutes a legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except that such enforceability may be limited by the Enforceability Exceptions.

**Section 4.3 Conflicts; Consents**. Assuming that (a) the Sale Order and all other requisite Bankruptcy Court approvals are obtained and (b) the notices, authorizations, approvals, Orders, permits or consents set forth in Section 4.3 of the Disclosure Schedules are waived, made, given or obtained (as applicable), neither the execution and delivery by Purchaser of this Agreement or the other Transaction Agreements, nor the consummation by Purchaser of the Transaction, nor performance or compliance by Purchaser with any of the terms or provisions hereof, will (i) conflict with or violate any provision of Purchaser's organizational documents, (ii) violate any Law or Order applicable to Purchaser, (iii) violate or constitute a breach of or default (with or without notice or lapse of time, or both) under or give rise to a right of termination, modification, or cancelation of any obligation or to the loss of any benefit, any of the terms or provisions of any loan or credit agreement or other material Contract to which Purchaser is a party or accelerate Purchaser's obligations under any such Contract or (iv) result in the creation of any Encumbrance (other than a Permitted Encumbrance) on any properties or assets of Purchaser, except, in the case of clauses (i) through (iv), as would not, individually or in the aggregate,

reasonably be expected to prevent or materially impair, alter or delay the ability of Purchaser to consummate the Transaction.

**Section 4.4 Sufficient Funds**.

(a) Purchaser has, and will have at the Closing, sufficient funds in an aggregate amount necessary to pay the Purchase Price, to perform the Assumed Liabilities as they become due in accordance with their terms and to consummate all of the other Transaction, including the payment of the Closing Date Payment and all fees, expenses of, and other amounts required to be paid by, Purchaser in connection with the Transaction. Purchaser is and shall be capable of satisfying the conditions contained in sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Acquired Assets and the related Assumed Liabilities. Purchaser acknowledges and agrees that its obligations under this Agreement are not subject to any conditions regarding its ability to obtain financing for all or any portion of the Purchase Price.

(b) Upon the consummation of the Transaction, (i) Purchaser will not be insolvent as defined in Section 101 of the Bankruptcy Code, (ii) Purchaser will not be left with unreasonably small capital, (iii) Purchaser will not have incurred debts beyond its ability to pay such debts as they mature and (iv) the capital of Purchaser will not be impaired.

**Section 4.5 No Litigation**. There are no Actions pending or, to Purchaser's knowledge, threatened against or affecting Purchaser that will or would be reasonably likely to prevent, restrain, materially delay, prohibit or otherwise challenge the consummation, legality or validity of the Transaction or Purchaser's performance of its obligations or covenants under this Agreement or the other Transaction Agreements to which it is a party or that would, individually or in the aggregate, reasonably be expected to delay the Closing.

**Section 4.6 Brokers**. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission, or the reimbursement of expenses in connection therewith, in connection with the Transaction, in each case based upon arrangements made by or on behalf of Purchaser.

**Section 4.7 No Additional Representations or Warranties**. Except for the representations and warranties contained in this Article IV, the Seller is not relying on and will not rely on the accuracy or completeness of any other express or implied representation or warranty with respect to Purchaser or with respect to any other information provided to the Seller by Purchaser and acknowledges that neither the Purchaser nor any other Person on behalf of Purchaser makes on behalf of the Purchaser makes any other express or implied representation or warranty with respect to Purchaser or with respect to any other information provided to the Seller by Purchaser. Purchaser acknowledges and agrees to Section 3.19.

## ARTICLE V
## COVENANTS AND AGREEMENTS

**Section 5.1 Conduct of the Seller**.

(a) Subject to the applicable Conditions, and except (a) as required by applicable Law, Order or a Governmental Body, (b) for any limitations or changes on operations imposed by the Bankruptcy Court or the Bankruptcy Code, (c) as expressly contemplated, required or permitted by this Agreement or (d) to the extent related to an Excluded Asset or an Excluded Liability, during the period from the date of this Agreement until the Closing (or such earlier date and time on which this Agreement is terminated pursuant to Article VII), unless Purchaser otherwise consents in writing (such consent not to be unreasonably withheld, delayed or conditioned), the Seller shall use commercially reasonable efforts to (i) conduct the Business in the Ordinary Course, (ii) maintain and preserve intact its current Business organization, operations and franchise and to preserve the rights, franchises, goodwill and relationships of its employees, customers, lenders, suppliers, regulators and others having relationships with the Business, (iii) use commercially reasonable efforts to keep and maintain possession of any compliance with the terms of all Permits necessary or required by Law to own, lease, and operate the Business or the Acquired Assets; and (iv) use commercially reasonable efforts to repair and maintain all tangible properties and assets with respect to the Business in accordance with its usual and ordinary repair and maintenance standards and maintain the Fixed Assets through the Closing Date in substantially the same condition as they were at the time of the Inspections, normal wear and tear excepted (for the avoidance of doubt, subject to the applicable Conditions, including requisite approvals by the Bankruptcy Court and under the DIP Facility, the DIP Term Sheet, and the DIP Order on the use of cash).

(b) Subject to the applicable Conditions, and except (a) as required by applicable Law, Order or a Governmental Body, (b) for any limitations or changes on operations imposed by the Bankruptcy Court or the Bankruptcy Code, (c) as expressly contemplated, required or permitted by this Agreement or (d) to the extent related to an Excluded Asset or an Excluded Liability, during the period from the date of this Agreement until the Closing (or such earlier date and time on which this Agreement is terminated pursuant to Article VII), unless Purchaser otherwise consents in writing (such consent not to be unreasonably withheld, delayed or conditioned), the Seller shall not (i) sell, lease, license, transfer, or dispose of any Acquired Assets, other than Inventory in the Ordinary Course, (ii) end, terminate or change in any material respect, as related to the Acquired Assets, any Assigned Contract, and shall not knowingly do any act or omit to do any act, or permit an act or omission to act, which will cause a material breach of any such Assigned Contract, (iii) pledge or subject to Encumbrances any of the Acquired Assets, except for Permitted Encumbrances or Encumbrances arising pursuant to or in connection with the DIP Facility, (iv) dispose of or permit to lapse any rights in, to or for the use of any IP Assets or Intellectual Property rights, (v) incur any indebtedness for borrowed money, other in the Ordinary Course and consistent with past practice; or (vi) agree or authorize, in writing or otherwise, to take any of the foregoing actions; provided, however, that nothing herein shall limit the Seller's right to remove the Excluded Assets from the Business prior to closing, including any cash.

**Section 5.2 Competing Bids**. This Agreement and the Transaction are subject to the Seller's right and ability to consider higher or better competing bids with respect to the Business and the Acquired Assets pursuant to the bidding procedures, as approved by the Bidding Procedures Order. In accordance with the Bidding Procedures Order, until the conclusion of the

auction, the Seller shall have the right to, and may cause its Representatives to: (a) initiate contact with, solicit or encourage submission of any inquiries, proposals, offers or bids by, and negotiate with, any Person (in addition to Purchaser and its Affiliates and Representatives) in connection with any sale or other disposition of the Acquired Assets; (b) respond to any request for information or due diligence inquiry, or make management available for such purposes, to any such Person and (c) furnish any information with respect to, or assist or participate in, or facilitate in any other manner, any effort or attempt by any Person to do or seek to do any of the foregoing.

**Section 5.3 Bankruptcy Matters**.

(a) The Seller shall use commercially reasonable efforts to (i) cooperate with the Purchaser concerning the Sale Order and any other orders of the Bankruptcy Court relating to the Transaction, and (ii) provide the Purchaser with copies of all applications, pleadings, notices, proposed orders and other documents relating to this Agreement or the Transaction, at least three (3) Business Days in advance of the proposed filing date so as to permit the Purchaser sufficient time to review and comment on such drafts and, with respect to all provisions that materially impact the Purchaser, such pleadings and proposed orders shall be reasonably acceptable to the Purchaser and consistent with this Agreement. The Seller shall give the Purchaser reasonably advance notice of any hearings regarding the motions required to obtain the issuance of the Sale Order. These obligations of the Seller shall terminate upon the Closing except to the extent that any such proceeding or related document is directly related to this Agreement or the Transaction.

(b) The Sale Order shall, among other things, (a) approve, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, (i) the execution, delivery and performance by Seller of this Agreement, (ii) the sale of the Acquired Assets to Purchaser on the terms set forth herein and free and clear of all Encumbrances (other than Encumbrances included in the Assumed Liabilities and Permitted Encumbrances), and (iii) the performance by Seller of its obligations under this Agreement, (b) authorize and empower Seller to assume and assign to Purchaser the Assigned Contracts, (c) find that Purchaser is a "good faith" the Purchaser within the meaning of Section 363(m) of the Bankruptcy Code, (d) find that Purchaser is not a successor to the Seller, and grant Purchaser the protections of Section 363(m) of the Bankruptcy Code, (e) find that Purchaser shall have no Liability or responsibility for any Liability or other obligation of the Seller arising under or related to the Acquired Assets other than the Assumed Liabilities and as otherwise expressly set forth in this Agreement, (f) find that Purchaser has provided adequate assurance (as that term is used in Section 365 of the Bankruptcy Code) of future performance in connection with the assumption of the Assigned Contracts and (g) find that Purchaser shall have no Liability for any Excluded Liabilities.

**Section 5.4 Access**. From the date hereof until the Closing, Seller shall, during business hours and upon reasonable prior written notice, (a) afford Purchaser and its Representatives reasonable access to and the right to inspect all of the Leased Real Property, properties, assets, premises, Books and Records, Contracts and other documents and data related to the Business, during ordinary business hours and upon reasonable prior notice; (b) furnish Purchaser and its Representatives with such financial, operating and other data and information related to the Business as Purchaser or any of its Representatives may reasonably request; and (c) instruct the

Representatives of Seller to cooperate reasonably with Purchaser in its investigation of the Business; *provided, however*, that the Seller shall have the right to have a Representative present for any communication with any employee, agent or other Representative of Purchaser and the Seller shall not be required to provide access or furnish, nor shall Purchaser or its Representatives have any right to inspect or investigate, any Excluded Books and Records. Any investigation pursuant to this Section 5.5 shall be conducted in such manner as not to interfere unreasonably with the conduct of the Business or any other businesses of Seller. No investigation by Purchaser or other information received by Purchaser shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller in this Agreement.

**Section 5.5 Reasonable Efforts**. Subject to the terms and conditions of this Agreement and any relevant Orders of the Bankruptcy Court, at all times prior to the earlier of the Closing and the termination of this Agreement in accordance with its terms, each of Purchaser and the Seller shall use its commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable Laws to expeditiously satisfy the closing conditions set forth herein and to cause the Transaction contemplated herein to be effected as soon as practicable. The "commercially reasonable efforts" of the Parties will not require the Parties or their Representatives to expend any money to remedy any breach of any representation or warranty, to commence any Action, to waive or surrender any right, to modify any Contract or to waive or forego any right, remedy or condition hereunder. From time to time, on or after the Closing Date until the dissolution and liquidation of the Seller, the Seller shall execute and deliver such other instruments of transfer to Purchaser as are reasonably necessary and as Purchaser may reasonably request in order to more effectively vest in Purchaser all of the Seller's right, title and interest to the Acquired Assets, free and clear of all Encumbrances (other than Permitted Encumbrances).

**Section 5.6 Disclosure Schedules and Supplements**.

(a) Seller shall, no later than five (5) Business Days prior to the Closing Date, deliver a copy of the Disclosure Schedules to Purchaser, which, subject to Section 5.6(b) below, copy shall be substantially complete in all respects. The Parties agree that the Disclosure Schedules delivered pursuant to this Section 5.6(a) shall be deemed to have been delivered as of the effective date of this Agreement. The Disclosure Schedules referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

(b) From the date hereof until the Closing, the Seller shall use commercially reasonable efforts promptly notify the Purchaser upon the Seller becoming aware (to the Knowledge of Seller) of any material breach by the Seller of any representation, warranty, or covenant made by the Seller hereunder or occurrence of any event or circumstance which will result in such a breach. At any time prior to the Closing, the Seller may supplement or amend the Disclosure Schedule to this Agreement to the extent that the Seller becomes aware (to the Knowledge of Seller) of any matter previously existing or hereafter arising which, if existing, occurring or known as of the date of this Agreement, would have been required to be set forth or described in such Disclosure Schedule or that is otherwise necessary to correct any information in such Disclosure Schedule that has been rendered inaccurate thereby (collectively, the "Schedule Updates"). On or before the day prior to

the Closing Date, the Seller may deliver an updated set of Disclosure Schedules containing all Schedule Updates through such date in form and substance reasonably agreeable to the Purchaser. The Schedule Updates may describe facts, circumstances, events or conditions that: (a) did not exist on, or have changed since, the date hereof ("New Information"); or (b) existed on the date hereof ("Correcting Information"). No New Information or Correcting Information set forth in a Schedule Update shall affect the representations or warranties of the Seller or the Purchaser's right to rely thereon, or the conditions to the obligations of the Purchaser.

**Section 5.7 No Costs**. Nothing in this Article V shall (i) require the Seller to make any expenditure or incur any obligation on its own or on behalf of Purchaser or (ii) prohibit the Seller from ceasing operations or winding up its affairs following the Closing.

**Section 5.8 Notice of Certain Events**.

(a) From the date hereof until the Closing, Seller shall promptly notify Purchaser in writing of:

(i) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had, or could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, (B) has resulted in, or could reasonably be expected to result in, any representation or warranty made by Seller hereunder not being true and correct or (C) has resulted in, or could reasonably be expected to result in, the failure of any of the conditions set forth in Section 6.1 to be satisfied;

(ii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the Transaction;

(iii) any notice or other communication from any Governmental Body in connection with the Transaction; and

(iv) any Claims commenced or, to the Knowledge of Seller, threatened against, relating to or involving or otherwise affecting the Business, the Acquired Assets or the Assumed Liabilities that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 3.10 or that relates to the consummation of the Transaction.

(b) Purchaser's receipt of information pursuant to this Section 5.8 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller in this Agreement and shall not be deemed to amend or supplement the Disclosure Schedules.

**Section 5.9 Tax Matters**.

(a) Purchaser shall bear and pay (i) any sales, use, purchase, transfer, deed, fixed asset, stamp, documentary stamp, motor vehicle, value added, excise or other similar Taxes incurred or imposed with respect to the Transaction described in this Agreement (collectively, the "Transfer Taxes") and (ii) required filing and recording fees and expenses

in connection with the filing and recording of the assignments, conveyances, or other instruments required to convey title to the Acquired Assets to Purchaser. Except to the extent otherwise required by Law, Purchaser shall, at its own expense, timely file all Tax Returns and other documentation related to any Transfer Taxes.

(b) Within thirty (30) days of Closing, Purchaser shall provide a draft allocation (the "Proposed Allocation") of the Purchase Price (and any other items properly treated as consideration for U.S. federal income Tax purposes), as determined in Purchaser's reasonable discretion, among the Acquired Assets solely within the six categories of assets specified in Part II of IRS Form 8594 (Asset Acquisition Statement under Section 1060) and in accordance with Section 1060 of the Tax Code and the applicable Treasury Regulations promulgated thereunder (and any similar provision of state, local, or non-U.S. law, as appropriate) for the Seller's review. Within thirty (30) days after delivery of the Proposed Allocation, Seller shall notify Purchaser in writing of any objections to the Proposed Allocation, or Seller shall be deemed to have agreed to the Proposed Allocation as prepared by Purchaser. In the event of any objection, Seller and Purchaser shall negotiate in good faith to resolve such dispute; provided, however, that if Seller and Purchaser are unable to resolve all disputes with respect to the Proposed Allocation within thirty (30) days after Seller's delivery to Purchaser of written objections to the Proposed Allocation, all remaining disputes shall be resolved by a qualified independent accountant to be mutually agreed between Purchaser and Seller prior to the Closing. The resulting allocation of the consideration for the Acquired Assets shall be final and binding on the Parties (the "Final Allocation"). The Seller and Purchaser agree that the Final Allocation shall be used by the Seller and Purchaser in reporting the Transaction for U.S. federal, state and local income tax purposes, and neither the Seller nor Purchaser will take any position (or will allow any of their respective Affiliates to take any position) (whether in audits, Tax Returns, or otherwise) that is inconsistent with the Final Allocation, except, in each case, to the extent otherwise required by a final determination pursuant to Section 1313(a) of the Code (or any comparable provision of state or local Tax Law). If the Final Allocation is disputed, in whole or in part, by any taxing authority, the Party receiving notice of such dispute shall promptly notify and consult with the other Party and keep the other Party apprised of material developments concerning the resolution of such dispute.

(c) After the Closing, none of Purchaser or its Affiliates shall take any action (including making any tax election) with respect to a Tax period (or portion thereof) ending on or before the Closing Date to the extent that such action could adversely affect Seller or could otherwise increase the amount of any Taxes payable by Seller.

(d) Purchaser shall cooperate fully, as and to the extent reasonably requested by the Seller, in connection with any tax matters related to the Acquired Assets, including the preparation, filing and execution of Tax Returns, and any audit, litigation or other proceeding with respect to Taxes. Such cooperation shall include the retention and (upon a Seller's reasonable request) the provision of records and information that are reasonably relevant to any such Tax Return or audit, litigation or other proceeding and making employees available (as reasonably requested) on a mutually convenient basis to provide additional information and explanation of any materials provided under this Agreement. Purchaser agrees to retain all books and records with respect to Tax matters pertinent to

the Acquired Assets relating to any Tax period beginning before the Closing Date until the expiration of the statute of limitations of the respective taxable periods and to abide by all record retention agreements entered into with any Governmental Body.

(e) The Seller shall be allocated and bear all Non-Income Taxes attributable to (A) any Tax period ending on or prior to the Closing Date and (B) the portion of any Straddle Period ending on the Closing Date, and Purchaser shall be allocated and bear all Non-Income Taxes (X) attributable to any Tax attributable to the period beginning after the Closing Date, (Y) attributable to the portion of any Straddle Period beginning after the Closing Date and (Z) due and owing to the Multnomah County, Oregon, Division of Assessment, Recording, and Taxation even if such Non-Income Taxes are attributable to any Tax period or portion of a Straddle Period ending on or prior to the Closing Date. For purposes of determining the allocation of Non-Income Taxes set forth in the first sentence of Section 5.9(a), (i) Non-Income Taxes that are based upon or related to sales or receipts imposed on a transactional basis (other than Non-Income Taxes described in (ii)) shall be allocated to the period in which the transaction giving rise to such Non-Income Taxes occurred and (ii) Non-Income Taxes that are ad valorem, property or other Non-Income Taxes imposed on a periodic basis pertaining to a Straddle Period shall be allocated between the portion of such Straddle Period ending on the Closing Date and the portion of such Straddle Period beginning after the Closing Date by prorating each such Non-Income Tax based on the number of days in the applicable Straddle Period that occur on or before the Closing Date, on the one hand, and the number of days in such Straddle Period that occur after the Closing Date, on the other hand.

**Section 5.10 Employee Matters**.

(a) At least five (5) days prior to the Transition Termination Date, Purchaser shall offer at-will employment to substantially all Employees, on the terms and subject to the conditions specified by Buyer in its sole discretion; provided, however, that, Purchaser shall not be required to offer the same health benefit packages or any other benefits or compensation that may be offered to such employees of Seller as of the Closing Date; provided, further, that the compensation and benefits to be provided by Purchaser or its Affiliates to the Transferred Employees shall be substantially similar to the compensation and benefits provided to similarly situated employees of Purchaser or its Affiliates. As of the Closing, all Transferred Employees shall have resigned from their employment with Sellers or their Affiliates, or Sellers or their Affiliates shall have terminated their employment with Sellers or their Affiliates.

(b) Purchaser's hiring of the Employees is conditioned upon the occurrence of the Closing, and upon satisfaction of such reasonable standard hiring requirements as Purchaser may include in its employment letter to such Employees (including, without limitation, completion of Form I-9, typical background checks and similar requirements that are imposed on similarly-situated employees of Purchaser). Only upon the reasonable satisfaction of all such conditions shall a Employee become a Transferred Employee, and until such time (i) the Employees shall not be eligible for compensation from, or to participate in, any benefit plans of Purchaser, and (ii) Purchaser shall have no liability with respect to the Employees.

(c) Seller agrees that, notwithstanding the terms of any noncompetition, customer non-solicit, employee non-solicit, non-disclosure, or other restrictive covenant obligation between Seller and any of the Transferred Employees, such Employee shall be permitted to provide services to Purchaser and its Affiliates following the Closing, and Seller will not seek to enforce the terms of any such restrictive covenant following the Closing with respect to such Transferred Employee's services to Purchaser and its Affiliates.

(d) Effective as of the Closing, Purchaser shall assume all obligations and Liabilities of the Seller for the accrued, unused vacation time and other paid time off of the Transferred Employees; provided, that to the extent any such amounts must be paid to a Transferred Employee upon termination of employment with Seller pursuant to applicable Law, Purchaser shall be responsible for payment of, or shall indemnify and reimburse Seller for, any such payments (collectively, the "Accrued PTO").

(e) Purchaser or one of its Affiliates shall be responsible for satisfying the continuation coverage requirements of COBRA for all individuals who are M&A qualified beneficiaries (as such term is defined in Treasury Regulation Section 54.4980B-9, Q&A-4(a)) ("Post-Closing COBRA Liabilities"); provided that Seller shall make available to Purchaser all applicable personnel records and personnel files and such other information as Purchaser may reasonably request in order to satisfy its obligations under this Section 5.10(e), to the extent compliant with applicable Laws.

(f) For purposes of eligibility and determining level of benefits under the Purchaser's vacation policy in effect from time to time, each Transferred Employee shall be credited with his or her years of service with Seller before the Closing Date, except to the extent such credit would result in a duplication of benefits. To the extent that any Transferred Employee (and his or her eligible dependents) becomes eligible to participate in any Benefit Plan of Purchaser or its Affiliates that is a health or welfare plan in the plan year in which the Closing occurs, Purchaser shall, or shall cause its Affiliates to, use commercially reasonable efforts to ensure that such plans (a) do not limit or exclude coverage on the basis of any pre-existing condition of such Transferred Employee or dependent or on the basis of any other exclusion, actively-at-work requirement or waiting period (to the same extent such condition, exclusion, requirement or period was waived or otherwise satisfied as inapplicable under the corresponding Benefit Plan of Seller as of immediately prior to the Closing) and (b) provide such Transferred Employee full credit for any deductible, co-payment, co-insurance and out-of-pocket expenses already incurred by the Transferred Employee under the corresponding Benefit Plan of Seller during such year for purposes of any deductible, co-payment, co-insurance and maximum out-of-pocket expense provisions, as applicable, of such Benefit Plan of Purchaser or its Affiliates.

(g) The provisions of this Section 5.10 are for the sole benefit of the Parties and nothing herein, express or implied, is intended or shall be construed to confer upon or give any Person (including for the avoidance of doubt any Employees or Transferred Employees), other than the Parties and their respective permitted successors and assigns, any legal or equitable or other rights or remedies (with respect to the matters provided for in this Section 5.10 or under or by reason of any provision of this Agreement). Nothing

contained herein, express or implied: (i) shall be construed to establish, amend, or modify any Benefit Plan, (ii) shall alter or limit Purchaser's or the Seller's ability to amend, modify or terminate any particular Benefit Plan, (iii) is intended to confer upon any current or former employee or other Person any right to employment or service or continued employment or service for any period of time by reason of this Agreement, or any right to a particular term or condition of employment or service or (iv) shall limit or restrict the ability of the Seller to terminate the employment or engagement of any employee or other Person at any time, provided, however, that prior to the termination of employment or engagement of any employee or other Person, Seller shall provide Purchaser five (5) days prior written notice, and if Purchaser objects to the termination of any employee or other Person, Seller shall not terminate such employee or other Person except for cause.

(h) Purchaser shall be responsible for the payment of, or shall reimburse Seller for, any severance and other Liabilities that arise as a result of Buyer's failure to provide an offer of employment to any Employees pursuant to this Section **Error! Reference source not found.**.

**Section 5.11 Confidentiality**. The Confidentiality Agreement is hereby incorporated herein by reference and shall continue in full force and effect in accordance with its terms; provided that from and after the Closing, all of Purchaser's and its Affiliates obligations under the Confidentiality Agreement with respect to confidential information that constitutes an Acquired Asset or Assumed Liability, shall terminate and be of no further force or effect. From and after the Closing the confidential information and trade secrets included in the Acquired Assets ("Business Confidential Information") will be the confidential information of Purchaser. Seller will not use the Business Confidential Information for any reason (except to the extent permitted pursuant to the immediately following sentence). From and after the Closing, Seller agree to keep confidential and not disclose the Business Confidential Information, except to the extent that (i) Purchaser shall have provided its prior written consent, (ii) such information has otherwise been made public by Purchaser, or (iii) Seller is required by applicable Law (including, in connection with the Bankruptcy Case) to divulge or disclose any such information (in which case Seller shall promptly notify Purchaser, to the extent legally permitted, in advance of disclosing such information and use commercially reasonable efforts to cooperate with Purchaser to limit such disclosure, to the extent permitted under applicable Law).

**Section 5.12 Governmental Approvals and Consents; Permits**.

(a) Each Party shall, as promptly as possible, (i) make, or cause or be made, all filings and submissions required under any Law applicable to such Party or any of its Affiliates; and (ii) use commercially reasonable efforts to obtain, or cause to be obtained, all consents, authorizations, orders and approvals from all Governmental Authorities that may be or become necessary for its execution and delivery of this Agreement and the performance of its obligations pursuant to this Agreement; provided, however, that none of the Seller shall be required to pay any amount or incur any obligation to any Person from whom any such Consent or Governmental Authorization may be required in order to obtain such Consent or Governmental Authorization. Each Party shall cooperate fully with the other Party and its Affiliates in promptly seeking to obtain all such consents, authorizations, orders and approvals. The Parties shall not willfully take any action that will have the

effect of delaying, impairing or impeding the receipt of any required consents, authorizations, orders and approvals.

(b) Except for the Assigned Permits to be assigned or transferred to Purchaser pursuant to this Agreement and those Excluded Permits to be maintained by Seller after the Closing pursuant to the Transition Services Agreement, Purchaser has, or will have as of or as promptly as practicable following the Closing, all Permits of all agencies, whether federal, state, local or foreign, necessary for Purchaser's operation of the Business following the Closing, including all Permits from agencies regulating or otherwise having jurisdiction over beverage alcohol products. All such Permits are or will be valid and in full force and effect, and Purchaser will be in material compliance with all such Permits.

**Section 5.13 Transition Period Services**. Unless terminated in accordance with Section 7.1 and 7.2, from and after the Effective Date until the later of (i) all Governmental Approvals, Consents and Permits are effective or (ii) a date that is ninety (90) days from the Closing to be extended by the Parties as necessary ("Transition Termination Date") and as provided for in the Transition Services Agreement, Seller agrees as follows:

(a) Services Provided During the Transition Period.

(i) Except as otherwise expressly contemplated by this Agreement, and the Transition Service Agreement to be entered into by the Parties prior to or contemporaneously with the Closing, and subject in all cases to Seller's compliance with the obligations, prohibitions and restrictions of a Chapter 11 debtor under the Bankruptcy Code and contained in any orders entered by the Bankruptcy Court in the Chapter 11 Cases, from the date hereof Seller shall: (A) carry on the Business in the Ordinary Course of Business and pay all expense and obligations related thereto from the Excluded Assets; (B) collect and retain the accounts receivable for use during the Transition Service Period; (C) have in effect and maintain at all times all insurance now in force; (D) use its reasonable efforts to preserve the Business and the Purchased Assets intact, to keep available the services of the present officers and Business Employees of the Seller and to make no changes therein, and to preserve the goodwill of all suppliers, customers, licensors, sales representatives and others having business relations with the Seller; and (E) maintain the Business and the Purchased Assets in the Ordinary Course of Business.

(ii) Except as otherwise expressly contemplated by this Agreement, and the Transition Service Agreement to be entered into by the Parties prior to or contemporaneously with the Closing, and subject in all cases to Seller's compliance with the obligations, prohibitions and restrictions of a Chapter 11 debtor under the Bankruptcy Code and contained in any orders entered by the Bankruptcy Court in the Chapter 11 Cases, from the date hereof, Seller shall not: (A) make any material change in accounting practices or procedures; (B) enter into any material Contract or commitment without the Purchaser's prior written consent; (C) subject any of the Purchased Assets to a Lien; (D) terminate any Governmental Authorizations or Assumed Contracts; (E) waive any material right with respect to the Purchased

Assets or the Business; (F) incur any Indebtedness or Liabilities except as may be incurred from Purchaser to allow the Seller to continue to operate the Business during the Transition Period; (G) make any material change in the compensation or benefit payable or to become payable to any Business Employee or making any new bonus payment or arrangement or benefit to or with any of them, other than those that are usual and normal in the Ordinary Course of Business, in which case, such changes shall be disclosed to Purchaser on a weekly basis, and to the extent that any material changes in compensation or benefits are payable or to become payable to any Business Employee prior to Closing, Seller shall immediately provide notice to Purchaser of such changes in compensation or benefits; or (H) remove any of the Purchased Assets, or sell or assign any of the Purchased Assets, in each case, other than sales of Inventory in the Ordinary Course of Business.

(III) THE PARTIES HEREBY ACKNOWLEDGE AND AGREE THAT, IN THE CASE OF, SELLER IS NOT IN THE BUSINESS OF PROVIDING SERVICES. THE PARTIES HAVE AGREED TO PROVIDE THE SERVICES HEREUNDER SOLELY AS AN ACCOMMODATION TO PURCHASER, AND SUCH SERVICES ARE PROVIDED ON AN "AS-IS, WHERE-IS" BASIS AND IN THE MANNER PROVIDED IN THIS AGREEMENT.

(b) To the extent permitted under applicable rules and regulations, either (i) Seller shall transfer its surety bond to Purchaser, or (ii) Purchaser shall obtain a new surety bond and the Seller shall release its surety bond. Any cash collateral and/or security deposits related to the current surety bond shall remain in place until the transfer of the surety bond to the Purchaser or the Purchaser obtaining a new surety bond, and once either of these actions take place, said cash collateral and/or security deposit shall transfer automatically to the Purchaser.

(c) Termination of Transition Services of Seller. Seller's continued business operations on behalf of the Purchaser shall terminate in its entirety: (i) on the date upon which Purchaser has obtained all approvals for operations of the business; (ii) the Transition Termination Date; or (iii) pursuant to Section 7.1 and 7.2 of this Agreement.

**Section 5.14 Public Announcement**. Unless otherwise required by applicable Law (based upon the reasonable advice of counsel), including in connection with the Bankruptcy Case, no Party shall make any public announcements in respect of this Agreement or the Transaction or otherwise communicate with any news media without the prior written consent of the other Party (which consent shall not be unreasonably withheld, conditioned or delayed), and the Parties shall cooperate as to the timing and contents of any such announcement.

**Section 5.15 Receivables**. From and after the Closing through the Transition Termination Date, if Purchaser receives or collects any funds relating to any Accounts Receivable or any other Excluded Asset, Purchaser shall remit such funds to Seller within five (5) Business Days after its receipt thereof, which shall be used by the Seller in accordance with the Transition Service Agreement. From and after the Closing, if Seller receives or collects any funds relating to

any Acquired Asset, Seller shall remit any such funds to Purchaser or its Affiliate within five (5) Business Days after its receipt thereof.

**Section 5.16 Receipt of Misdirected Assets; Liabilities**.

(a) From and after the Closing, if Seller receives any right, property or asset that is an Acquired Asset, Seller shall promptly transfer such right, property or asset (and shall promptly endorse and deliver any such asset that is received in the form of cash, checks or other documents) to Purchaser, and such asset will be deemed the property of Purchaser held in trust by Seller for Purchaser until so transferred. From and after the Closing, if Purchaser or any of its Affiliates receives any right, property or asset that is an Excluded Asset, Purchaser shall promptly transfer or cause such of its Affiliates to transfer such asset (and shall promptly endorse and deliver any such right, property or asset that is received in the form of cash, checks, or other documents) to Seller, and such asset will be deemed the property of Seller held in trust by Purchaser for Seller until so transferred.

(b) From and after the Closing, if Seller is subject to a Liability that should belong to Purchaser or its Affiliates pursuant to the terms of this Agreement, Seller shall promptly transfer such Liability to Purchaser, and Purchaser shall assume and accept such Liability. From and after the Closing, if Purchaser or any of its Affiliates is subject to a Liability that should belong to Seller pursuant to the terms of this Agreement, Purchaser shall promptly transfer or cause such of its Affiliates to transfer such Liability to Seller, and Seller shall assume and accept such Liability.

**Section 5.17 Change of Name**. Promptly (and, in any event, within ten (10) Business Days) following the Transition Termination Date, the Seller shall (a) discontinue the use of its current names (and any other trade names or "d/b/a" names currently utilized by the Seller in connection with the Business) and shall not subsequently change any of their names to or otherwise use or employ any name which includes the word "Westward" without the prior written consent of Purchaser, and (b) cause the name of Seller in the caption of the Bankruptcy Case to be changed to the new name(s) of Seller.

**Section 5.18 Wind-Down.** Notwithstanding anything to the contrary herein, from and after the Closing Date until the later of the conclusion of the Bankruptcy Case and the wind-down and final distribution of all assets of Seller, Purchaser shall give Seller and its Representatives reasonable access during normal business hours upon reasonable advance notice of not less than forty-eight (48) hours before the requested date of access to any books, records and information pertaining to the Acquired Assets and Assumed Liabilities for the purposes of (i) the preparation or amendment of Tax Returns or (ii) as is necessary to administer, or satisfy their obligations in connection with, the Bankruptcy Case and the wind-down of Seller and its assets, in each case of clauses (i)-(ii), in such a manner as not to unreasonably interfere with the conduct of the Business. Purchaser shall and shall cause each of its Affiliates and its Representatives to, cooperate with Seller and its Representatives as may reasonably be requested by Seller for such purposes. Notwithstanding anything to the contrary herein, unless otherwise consented to in writing by Seller, Purchaser will not, for a period of three (3) years following the Closing Date, destroy, alter, or otherwise dispose of any of the Books and Records without first offering to surrender to Seller such Books and Records or any portion thereof that Purchaser may intend to destroy, alter, or

dispose of. Seller shall be permitted to keep copies of any Books and Records to the extent reasonably necessary or required by the Bankruptcy Courts or in connection with the Bankruptcy Case or to facilitate any subsequent wind down proceedings or liquidating plan of Seller.

## ARTICLE VI
## CONDITIONS TO CLOSING

**Section 6.1 Conditions Precedent to the Obligations of Purchaser and the Seller**. The respective obligations of each Party to consummate the Closing are subject to the satisfaction (or to the extent permitted by Law, written waiver by the Seller and Purchaser) on or prior to the Closing Date, of each of the following conditions:

(a) no court of competent jurisdiction or other Governmental Body shall have issued, enacted, entered, promulgated or enforced any Order (including any temporary restraining Order or preliminary or permanent injunction) restraining, enjoining or otherwise prohibiting the Transaction or causing the Transaction to be rescinded following completion thereof, in each case that is still in effect;

(b) the Bankruptcy Court shall have entered the Sale Order and the Sale Order shall have become a Final Order and shall not have been modified in a manner not reasonably acceptable to the Parties; and

(c) all approvals required to be obtained from any Governmental Body shall have been obtained.

**Section 6.2 Conditions to Obligations of Purchaser**. The obligations of Purchaser to consummate the Transaction shall be subject to the fulfillment or Purchaser's written waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties contained in Section 3.1 (*Organization and Qualification*), Section 3.2 (*Authorization of Agreement*), Section 3.3 (*Conflicts; Consents*), Section 3.5 (*Title to Acquired Assets*) and Section 3.16 (*Brokers*) (the "Fundamental Representations"), the representations and warranties of Seller contained in this Agreement shall be true and correct in all respects (without giving effect to any limitation indicated by the words "Material Adverse Effect," "in all material respects," "in any material respect," "material," or "materially") on and as of the date hereof and on and as of the Closing with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects), in each case, except where the failure of such representations and warranties to be so true and correct would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The Fundamental Representations shall be true and correct in all respects, other than *de minimis* inaccuracies, on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

(b) Seller shall have duly performed and complied in all material respects with all covenants and obligations required by this Agreement to be performed or complied with by it as of or prior to the Closing Date.

(c) The Bankruptcy Court shall have entered the Sale Order.

**Section 6.3 Conditions to Obligations of Seller.** The obligation of the Seller to consummate the Transaction shall be subject to the fulfillment or Seller's written waiver, at or prior to the Closing, of each of the following conditions:

(a) No Governmental Body of competent jurisdiction shall have issued, enacted, entered, promulgated or enforced any Order (including any temporary restraining Order or preliminary or permanent injunction) or Law that is continuing in effect and which restrains, enjoins or otherwise prohibits the consummation of the Transaction.

(b) The representations and warranties of Purchaser contained in this Agreement shall be true and correct in all respects (without giving effect to any limitation indicated by the words "Material Adverse Effect," "in all material respects," "in any material respect," "material," or "materially") on and as of the date hereof and on and as of the Closing with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

(c) Purchaser shall have duly performed and complied in all material respects with all covenants and obligations required by this Agreement to be performed or complied with by it as of or prior to the Closing Date.

(d) The Bankruptcy Court shall have entered the Sale Order.

**Section 6.4 Waiver of Conditions**. Upon the occurrence of the Closing, any condition set forth in this Article VI 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 Purchaser or the Seller may rely on the failure of any condition set forth in this Article VI, 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 its reasonable best efforts to consummate the Transaction as required under this Agreement.

## ARTICLE VII
## TERMINATION

**Section 7.1 Termination of Agreement**. This Agreement may be terminated at any time prior to the Closing only in accordance with this Section 7.1:

(a) upon the mutual written consent of the Seller and Purchaser;

(b) by written notice of either Purchaser or the Seller:

(i) upon the issuance of an Order by a court of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Closing or declaring unlawful the Transaction and such Order having become final, binding and non-appealable, provided that no Party may terminate this Agreement under this Section 7.1(b)(i) if the issuance of such Order was caused by such Party's failure to perform any of its obligations under this Agreement;

(ii) if the Closing shall not have occurred on or before October 15, 2025 (the "Outside Date"), provided that a Party shall not be permitted to terminate this Agreement pursuant to this Section 7.1(b)(ii) if the failure of the Closing to have occurred by the Outside Date was caused by such Party's failure to perform any of its obligations under this Agreement, provided, further that the Seller may extend the Outside Date up to an additional sixty (60) days to the extent necessary to satisfy the conditions set forth in Section 6.1 so long as the other conditions in Article VI (other than conditions that by their nature are to be satisfied at the Closing) have been satisfied or waived;

(iii) if, following the Sale Hearing, Purchaser is not the "Winning Bidder" or the "Backup Bidder" (as such terms are defined in the Bidding Procedures attached as an exhibit to the Bid Procedures Order of the Bankruptcy Court);

(iv) if prior to the entry of the Sale Order, the Seller enters into one or more Alternate Transaction with one or more Persons other than Purchaser or the Bankruptcy Court approves an Alternate Transaction other than with Purchaser;

(v) if the Purchaser is unable to obtain the requisite Governmental Authorizations by the end of the Transition Termination Date;

(c) by written notice from Purchaser to Seller if:

(i) Seller has breached, or failed to perform, any of its representations, warranties, covenants or agreements set forth in this Agreement, in each case, such that the conditions set forth in Section 6.2(a) or Section 6.2(b) would not be satisfied; provided, that (i) if such breach or failure is curable by Seller then Purchaser may not terminate this Agreement under this Section 7.1(c) unless such breach or failure has not been cured by the date that is the earlier to occur of (A) 30 days after written notice thereof is given to Seller and (B) two (2) Business Days prior to the Outside Date, and (ii) the right to terminate this Agreement pursuant to this Section 11.1(c) shall not be available to Purchaser at any time that Purchaser is in material breach of any representation, warranty, covenant or agreement hereunder;

(ii) Seller (i) moves to dismiss any of the Bankruptcy Case, (ii) moves for conversion of any of the Bankruptcy Case to a case under Chapter 7 of the Bankruptcy Code, or (iii) moves for appointment of an examiner with expanded powers pursuant to Section 1104 of the Bankruptcy Code;

(iii) the Bankruptcy Court does not enter the Sale Order within five (5) Business Days of the conclusion of the Sale Hearing;

(iv) following entry by the Bankruptcy Court of the Sale Order, the Sale Order is voided, reversed or vacated or is subject to a stay;

(d) by written notice from Seller to Purchaser if:

(i) Purchaser has breached, or failed to perform, any of its representations, warranties, covenants or agreements set forth in this Agreement, in each case, such that the conditions set forth in Section 6.3(a) or Section 6.3(b) would not be satisfied; provided, that (i) if such breach or failure is curable by Purchaser then Seller may not terminate this Agreement under this Section 7.1(d) unless such breach or failure has not been cured by the date that is the earlier to occur of (A) 30 days after written notice thereof is given to Purchaser and (B) two (2) Business Days prior to the Outside Date, and (ii) the right to terminate this Agreement pursuant to this Section 11.1(d) shall not be available to Seller at any time that Seller is in material breach of any representation, warranty, covenant or agreement hereunder; or

(ii) all of the conditions set forth in Section 6.2 have been satisfied (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions at the Closing) or waived and (ii) Purchaser fails to complete the Closing.

**Section 7.2 Effect of Termination**. In the event of termination of this Agreement pursuant to Section 7.1, this Agreement shall forthwith become null and void and no Party or any of its partners, officers, directors, managers or equity holders will have any Liability under this Agreement, provided that this Section 7.2 and Article VIII shall survive any such termination, provided, further, that no termination will relieve Purchaser from any Liability for damages, losses, costs or expenses resulting from any fraud or deliberate act or a deliberate failure to act regardless of whether breaching was the conscious object of the act or failure to act of this Agreement prior to the date of such termination (which, for the avoidance of doubt, will be deemed to include any failure by Purchaser to consummate the Closing if and when it is obligated to do so hereunder). Subject to Section 8.8, nothing in this Section **Error! Reference source not found.** will be deemed to impair the right of any Party to be entitled to specific performance or other equitable remedies to enforce specifically the terms and provisions of this Agreement. For the avoidance of doubt, in the event Seller fails to consummate a transaction with Purchaser because of a breach or failure to perform on the part of Purchaser, the defaulting Purchaser s Good Faith Deposit, if any, shall be forfeited to Seller.

## ARTICLE VIII
## MISCELLANEOUS

**Section 8.1 Non-Survival of Representations and Warranties and Certain Covenants; Certain Waivers**. Each of the representations and warranties and the covenants and agreements (to the extent such covenant or agreement contemplates or requires performance by such Party prior to the Closing) of the Parties set forth in this Agreement or in any other document contemplated hereby will terminate effective immediately as of the Closing (except Section 1.7) such that no claim 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. Each covenant and agreement that explicitly contemplates performance after the Closing, will, in each case and to such extent, expressly survive the Closing in accordance with its terms and if no term is specified, then until the date that is the earlier of (x) five (5) years following the Closing Date, and (y) the date that any wind-down, dissolution, or liquidation of Seller occurs. Purchaser and Seller acknowledge and agree, on their own behalf and on behalf of their Affiliates, as the case may be, that the agreements (among others) contained in Sections 5.14 and 5.15, and this Section 8.1 (a) require performance after the Closing to the maximum extent permitted by applicable Law and will survive the Closing until the date that is the earlier of (x) five (5) years and (y) the date that any wind-down, dissolution, or liquidation of Seller occurs.

**Section 8.2 Expenses**. Whether or not the Closing takes place, except as otherwise provided herein, all fees, costs and expenses (including fees, costs and expenses of Advisors) incurred in connection with the negotiation of this Agreement and the other agreements contemplated hereby, the performance of this Agreement and the other agreements contemplated hereby and the consummation of the Transaction will be paid by the Party incurring such fees, costs and expenses.

**Section 8.3 Approval**. Seller's obligations under this Agreement and in connection with the Transaction are subject to entry of and, to the extent entered, the terms of any Orders of the Bankruptcy Court (including entry of the Sale Order). Nothing in this Agreement shall require Seller to give testimony to or submit a motion to the Bankruptcy Court that is untruthful or to violate any duty of candor or other fiduciary duty to the Bankruptcy Court or its stakeholders.

**Section 8.4 Notices**. Except as otherwise expressly provided herein, all notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given (a) when personally delivered, (b) when transmitted by electronic mail (having obtained electronic delivery confirmation thereof), if delivered by 5:00 P.M. local time of the recipient on a Business Day and otherwise on the following Business Day, (c) the day following the day on which the same has been delivered prepaid to a reputable national overnight air courier service or (d) the third Business Day following the day on which the same is sent by certified or registered mail, postage prepaid, in each case, to the respective Party at the number, electronic mail address or street address, as applicable, set forth below, or at such other number, electronic mail address or street address as such Party may specify by written notice to the other Party.

Notices to Purchaser:

DIP Lenders
c/o Luis Fernando Leal
Email: luisfer@fparcae.com

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

Bielli & Klauder, LLC
1204 N. King Street
Wilmington, DE 19801

Attention: David M. Klauder, Esq.
Email: dklauder@bk-legal.com

Notices to the Seller:

House Spirits Distillery LLC
65 SE Washington Street
Portland, OR 97214
Attention: Thomas Mooney
Email: thomas@westwardwhiskey.com

with copies to (which shall not constitute notice):

Pashman Stein Walder Hayden P.C.
824 North Market Street, Suite 800
Wilmington, DE 19801
Attention: Joseph C. Barsalona II, Richard W. Riley, and Amy M. Oden
Email: jbarsalona@pashmanstein.com, rriley@pashmanstein.com, and aoden@pashmanstein.com

**Section 8.5 Binding Effect; Assignment**. This Agreement shall be binding upon Purchaser and, subject to the terms of the Bidding Procedures Order (with respect to the matters covered thereby) and the entry and terms of the Sale Order, the Seller, and shall inure to the benefit of and be so binding on the Parties and their respective successors and permitted assigns, including any trustee or estate representative appointed in the Bankruptcy Case or any successor Chapter 7 cases, provided that neither this Agreement nor any of the rights or obligations hereunder may be assigned or delegated by Seller without the prior written consent of Purchaser, and any attempted assignment or delegation without such prior written consent shall be null and void. Purchaser may, with reasonable notice to Seller, assign the Agreement and any of Purchaser's rights and obligations hereunder to an Affiliate or other designee of Purchaser, provided that at the time of such assignment such Affiliate or other designee of Purchaser has the financial wherewithal to fulfill all payment obligations hereunder.

**Section 8.6 Amendment and Waiver**. Any provision of this Agreement or the Disclosure Schedules or exhibits hereto may be (a) amended only in a writing signed by Purchaser and the Seller or (b) waived only in a writing executed by the Party against which enforcement of such waiver is sought. No waiver of any provision hereunder or any breach or default thereof will extend to or affect in any way any other provision or prior or subsequent breach or default.

**Section 8.7 Third Party Beneficiaries**. Except as otherwise expressly provided herein, nothing expressed or referred to in this Agreement will be construed to give any Person other than (a) for purposes of Section 8.8, the Non-Recourse Persons and (b) the Parties hereto and such permitted assigns, any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement.

**Section 8.8 Non-Recourse**. This Agreement may only be enforced against, and any Action based upon, arising out of or related to this Agreement or the negotiation, execution or

performance of this Agreement, may only be brought against the Persons that are expressly named as parties to this Agreement. Except to the extent named as a party to this Agreement, and then only to the extent of the specific obligations of such parties set forth in this Agreement, (a) no past, present or future shareholder, member, partner, manager, director, officer, employee, incorporator, Affiliate, agent or Advisor of any Party or such Person's successors or permitted assigns (each, a "Non-Recourse Person") will have any Liability (whether in contract, tort, equity or otherwise) for any of the representations, warranties, covenants, agreements or other obligations or Liabilities of any of the parties to this Agreement or other Transaction Agreement, or based on, in respect of, or by reason of this Agreement or other Transaction Agreement or their negotiation, execution, performance or breach, or for any claim, action, suit or legal proceeding based on, in respect of or by reason of the Transaction contemplated hereby and (b) in no event shall any Party have any shared or vicarious liability, or otherwise be the subject of legal or equitable claims, for the actions, omissions (including through equitable claims (such as unjust enrichment) not requiring proof of wrongdoing committed by the subject of such claims) of any other Person, and each of such Persons are intended third party beneficiaries of this Section 8.8 and shall be entitled to enforce this Section 8.8 as if a party directly hereto. This Section 8.8 may not be terminated or modified in any manner that adversely affects any Non-Recourse Party, without the prior written consent of such affected Non-Recourse Party.

**Section 8.9 Severability**. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Law in any jurisdiction, such provision will be ineffective only to the extent of such prohibition or invalidity in such jurisdiction, without invalidating the remainder of such provision or the remaining provisions of this Agreement or in any other jurisdiction.

**Section 8.10 Construction**. The language used in this Agreement will be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction will be applied against any Person.

**Section 8.11 Complete Agreement**. This Agreement, the Disclosure Schedules, the Confidentiality Agreement and any other agreements expressly referred to herein or therein, contains the entire agreement of the Parties respecting the sale and purchase of the Acquired Assets and the Assumed Liabilities and the Transaction and supersedes all prior agreements among the Parties respecting the sale and purchase of the Acquired Assets and the Assumed Liabilities and the Transaction. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, the terms and provisions of the execution version of this Agreement will control and prior drafts of this Agreement and the documents referenced herein will not be considered or analyzed for any purpose (including in support of parol evidence proffered by any Person in connection with this Agreement), will be deemed not to provide any evidence as to the meaning of the provisions hereof or the intent of the Parties with respect hereto and will be deemed joint work product of the Parties.

**Section 8.12 Specific Performance**. The Parties agree that irreparable damage, for which monetary relief, even if available, would not be an adequate remedy, would occur in the event that any provision of 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 him,

her or it hereunder to consummate the Transaction. It is accordingly agreed that (a) the Parties will be entitled 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 8.13 without proof of damages or otherwise, this being in addition to any other remedy to which they are entitled under this Agreement and (b) the right of specific performance and other equitable relief is an integral part of the Transaction and without that right, neither the Seller nor Purchaser would have entered into this Agreement. The Parties acknowledge and agree that any Party pursuing an injunction or injunctions or other Order to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in accordance with this Section 8.12 will not be required to provide any bond or other security in connection with any such Order. The remedies available to the Seller pursuant to this Section 8.12 will be in addition to any other remedy to which they were entitled at law or in equity, and the election to pursue an injunction or specific performance will not restrict, impair or otherwise limit the Seller from seeking to collect or collecting damages. If, prior to the Outside Date, any Party brings any action, in each case in accordance with Section 8.13, to enforce specifically the performance of the terms and provisions hereof by any other Party, the Outside Date will automatically be extended (i) for the period during which such action is pending, plus ten (10) Business Days or (ii) by such other time period established by the court presiding over such action, as the case may be. In no event will this Section 8.12 be used, alone or together with any other provision of this Agreement, to require the Seller to remedy any breach of any representation or warranty made by the Seller herein.

**Section 8.13 Jurisdiction and Exclusive Venue**. Each of the Parties irrevocably agrees that any Action of any kind whatsoever, including a counterclaim, cross-claim, or defense, regardless of the legal theory under which any Liability or obligation may be sought to be imposed, whether sounding in contract or in tort or under statute, or whether at law or in equity, or otherwise under any legal or equitable theory, that may be based upon, arising out of, or related to this Agreement or the negotiation, execution, or performance of this Agreement or the Transaction and any questions concerning the construction, interpretation, validity and enforceability of this Agreement (each, an "Agreement Dispute") brought by any other Party or its successors or assigns will be brought and determined only in (a) the Bankruptcy Court and any federal court to which an appeal from the Bankruptcy Court may be validly taken or (b) if the Bankruptcy Court is unwilling or unable to hear such Action, in the Court of Chancery of the State of Delaware (or if such court lacks jurisdiction, any other state or federal court sitting in the State of Delaware) (the "Chosen Courts"), and each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the Chosen Courts for itself and with respect to its property, generally and unconditionally, with regard to any Agreement Dispute. Each of the Parties agrees not to commence any Agreement Dispute except in the Chosen Courts, other than Actions in any court of competent jurisdiction to enforce any Order, decree or award rendered by any Chosen Courts, and no Party will file a motion to dismiss any Agreement Dispute filed in a Chosen Court on any jurisdictional or venue-related grounds, including the doctrine of *forum non-conveniens*. The Parties irrevocably agree that venue would be proper in any of the Chosen Courts, and hereby irrevocably waive any objection that any such court is an improper or inconvenient forum for the resolution of any Agreement Dispute. Each of the Parties further irrevocably and unconditionally consents to service of process in the manner provided for notices in Section 8.4. Nothing in this Agreement will affect the right of any Party to serve process in any other manner permitted by Law.

**Section 8.14 Governing Law; Waiver of Jury Trial**.

(a) Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement and any Agreement Dispute will be governed by and construed in accordance with the internal Laws of the State of Delaware applicable to agreements executed and performed entirely within such State without regards to conflicts of law principles of the State of Delaware or any other jurisdiction that would cause the Laws of any jurisdiction other than the State of Delaware to apply.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY AGREEMENT DISPUTE IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND THEREFORE HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY AGREEMENT DISPUTE. EACH OF THE PARTIES AGREES AND CONSENTS THAT ANY SUCH AGREEMENT DISPUTE WILL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE PARTIES MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THE IRREVOCABLE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. EACH PARTY (I) CERTIFIES THAT NO ADVISOR OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF ANY AGREEMENT DISPUTE, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 8.14(B).

**Section 8.15 No Right of Set-Off**. Purchaser, on its own behalf and on behalf of its successors and permitted assigns, hereby waives any rights of set-off, netting, offset, recoupment or similar rights that Purchaser or any of its successors and permitted assigns has or may have with respect to the payment of the Purchase Price or any other payments to be made by Purchaser pursuant to this Agreement or any other document or instrument delivered by Purchaser in connection herewith.

**Section 8.16 Counterparts and PDF**. This Agreement and any other agreements referred to herein or therein, and any amendments hereto or thereto, may be executed in multiple counterparts, any one of which need not contain the signature of more than one party hereto or thereto, but all such counterparts taken together will constitute one and the same instrument. Any counterpart, to the extent signed and delivered by means of a .PDF or other electronic transmission, will be treated in all manner and respects as an original Contract and will be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person. No party hereto or to any such Contract will raise the use of a .PDF or other electronic transmission to deliver a signature or the fact that any signature or Contract was transmitted or communicated through the use of PDF or other electronic transmission as a defense to the formation of a Contract and each such party forever waives any such defense.

**Section 8.17 Bulk Sales Laws**. The Parties intend that pursuant to Section 363(f) of the Bankruptcy Code, the transfer of the Acquired Assets shall be free and clear of any Encumbrances in the Acquired Assets including any liens or claims arising out of the bulk transfer laws except Permitted Encumbrances, and the Parties shall take such steps as may be necessary or appropriate to so provide in the Sale Order. In furtherance of the foregoing, each Party hereby waives compliance by the Parties with the "bulk sales," "bulk transfers" or similar Laws and all other similar Laws in all applicable jurisdictions in respect of the Transaction.

**Section 8.18 Fiduciary Obligations**. Nothing in this Agreement, or any document related to the Transaction, will require the Seller or any of its shareholders, members, partners, managers, directors, officers or members, in each case, in their capacity as such, to take any action, or to refrain from taking any action, to the extent inconsistent with their fiduciary obligations or applicable Law. For the avoidance of doubt, the Seller retains the right to pursue any transaction or restructuring strategy that, in the Seller's business judgment, will maximize the value of its estate.

**Section 8.19 Disclosure Schedules.** Any disclosure under one of the Disclosure Schedules shall be deemed disclosure under each other Disclosure Schedule to which the relevance of such disclosure is reasonably apparent on its face. Disclosure of any matter in the Disclosure Schedules shall not constitute an expression of a view that such matter is material or is required to be disclosed pursuant to this Agreement. To the extent that any representation or warranty set forth in this Agreement is qualified by the materiality of the matter(s) to which the representation or warranty relates, the inclusion of any matter in the Disclosure Schedules does not constitute a determination by any Selling Entity that any such matter is material. The disclosure of any information concerning a matter in the Disclosure Schedules does not imply that any other, undisclosed matter that has a greater significance or value is material.

**Section 8.20 Further Assurances**. Each Party, as requested by the other, shall use commercially reasonable efforts to execute, acknowledge and deliver any further deeds, assignments, conveyances and other assurances, documents and instruments of transfer, reasonably requested by the other, and shall take any other action consistent with the terms of this Agreement that may reasonably be requested by the other, for the purpose of assigning, transferring, granting, conveying and confirming to such Party, or reducing to possession, any or all property to be conveyed and transferred under this Agreement.

**Section 8.21 Limitation of Liability**. Except as otherwise provided herein (including as set forth in Section 7.2), in no event will any Party or any of its Affiliates be liable for any special, incidental, indirect, exemplary, punitive or consequential damages (including lost profits, loss of revenue or lost sales) in connection with any claims, losses, damages or injuries arising out of related to this Agreement or the Transaction.

## ARTICLE IX
### ADDITIONAL DEFINITIONS AND INTERPRETIVE MATTERS

**Section 9.1 Certain Definitions**. For purposes of this Agreement, capitalized terms used in this Agreement but not otherwise defined herein shall have the meanings set forth below.

(a) "Action" means any action, suit, litigation, arbitration, mediation, audit, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding) or prosecution of any kind whatsoever whether sounding in contract or tort, or whether at law or in equity, or otherwise under any legal or equitable theory, commenced, brought, conducted or heard by or before any Governmental Body.

(b) "Advisors" means, with respect to any Person as of any relevant time, any directors, officers, employees, investment bankers, financial advisors, accountants, agents, attorneys, consultants, or other Representatives of such Person.

(c) "Affiliate" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management, affairs and policies of such Person, whether through ownership of voting securities, by Contract or otherwise.

(d) "Alternate Transaction" shall mean a transaction in which some or all of the Acquired Assets are sold or conveyed to a the Purchaser or entity other than the Purchaser, including pursuant to a plan of reorganization, at a higher and better price for the Acquired Assets than offered by Purchaser.

(e) "Approved Budget" shall have the meaning set forth in the Final DIP Order.

(f) "Assigned Real Property Leases" means the real property leases set forth on Section 1.1(a) of the Disclosure Schedules.

(g) "Benefit Plan" means each (i) "employee benefit plan" as defined in Section 3(3) of ERISA, whether or not subject to ERISA, (ii) end of service or severance, termination protection, retirement, pension, profit sharing, deferred compensation, equity or equity-based, health or welfare, employment, consulting, independent contractor, vacation, change in control, transaction, retention, bonus or other incentive, fringe benefit, paid time off or similar plan, Contract, arrangement, program or policy or (iii) other plan, Contract, policy, or arrangement providing compensation or benefits, and in the case of each clause (i) through (iii) whether or not written.

(h) "Bidding Procedures Order" means the *Order (I) Approving Bidding Procedures for the Sale of Substantially all Assets of the Debtor, (II) Scheduling Bid Deadline and Auction, (III) Approving the Form and Manner of Notice Thereof, (IV) Approving Procedures for the Assumption and Assignment of Contracts and Leases, and (V) Granting Related Relief* [D.I. 293].

(i) "Business" means the business of producing, marketing and selling American malt whisky (wherever such business and operations are situated or conducted) as presently conducted by Seller.

(j) "Business Day" means any day other than a Saturday, Sunday or other day on which banks in New York City, New York are authorized or required by Law to be closed.

(k) "Claim" means all actions, claims, counterclaims, suits, proceedings, demand, lawsuit, arbitration, inquiry, audit, notice of violation, litigation, citation, summons, rights of action, causes of action, Liabilities, losses, damages, remedies, penalties, judgments, settlements, costs, expenses, fines, disbursements, demands, reasonable costs, fees and expenses of counsel, including in respect of subpoena, investigation, interest, demands and actions of any nature or any kind whatsoever, known or unknown, disclosed or undisclosed, accrued or unaccrued, matured or unmatured, choate or inchoate, legal or equitable, and arising in tort, contract or otherwise, including any "claim" as defined in the Bankruptcy Code.

(l) "Consent" means any approval, consent, ratification, permission, waiver or authorization, or an Order of the Bankruptcy Court that deems, or renders unnecessary, the same.

(m) "Contract" means any written contract, indenture, note, bond, lease, sublease, mortgage, agreement, guarantee, or other agreement that is binding upon a Person or its property, in each case, other than a purchase order, service order, or sales order.

(n) "DIP Facility" means the debtor-in-possession financing provided to Seller under the DIP Term Sheet, and as subsequently amended to increase the amount provided under DIP Facility.

(o) "DIP Term Sheet" means that certain Superpriority Secured Debtor-in-Possession Credit Facility Term Sheet dated as of May 20, 2025 by and among Seller, as borrower, and Themiscyra S.A., Endurance Invest Corp., Maria Isabel Leal, and Trillo San Carlos S.A., as lenders, as amended by that certain Amendment No. 1 to DIP Term Sheet.

(p) "Disclosure Schedules" means the disclosure schedules delivered by the Seller pursuant to Section 5.6.

(q) "Employees" means all employees of the Seller that provide services to the Business, including those on disability or a leave of absence, whether paid or unpaid.

(r) "Encumbrance" means any lien (as defined in Section 101(37) of the Bankruptcy Code), encumbrance, claim (as defined in Section 101(5) of the Bankruptcy Code), charge, mortgage, deed of trust, option, pledge, security interest or similar interests, title defects, hypothecations, easements, rights of way, encroachments, Orders, conditional sale or other title retention agreements and other similar impositions, imperfections or defects of title or restrictions on transfer or use.

(s) "ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

(t) "ERISA Affiliate" means any Affiliate of Seller and any other entity that, together with Seller, would be treated as a single employer under Section 4001 of ERISA or Section 414 of the Code.

(u) "Final DIP Order" means the *Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, 503, 506, and 507 (I) Authorizing the Debtor to Obtain Secured Priming Postpetition Financing, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Authorizing the Use of Cash Collateral, (IV) Modifying the Automatic Stay, and (V)Granting Related Relief* [D.I. 140] entered by the Bankruptcy Court in the Bankruptcy Case.

(v) "Final Order" means (a) an order or judgment of the Bankruptcy Court, as entered on the docket in any of the Bankruptcy Case (or any related adversary proceeding or contested matter) or the docket of any other court of competent jurisdiction; or (b) an order or judgment of any other court having jurisdiction over any appeal from (or petition seeking certiorari or other review of) any order or judgment entered by the Bankruptcy Court (or any other court of competent jurisdiction, including in an appeal taken) in the Bankruptcy Case (or in any related adversary proceeding or contested matter), in each case that has not been reversed, stayed, modified, or amended, and as to which the time to appeal, seek certiorari, or move for a new trial, reargument, or rehearing has expired according to applicable law and no appeal, petition for certiorari, or other proceedings for a new trial, reargument, or rehearing has been timely taken, or as to which any appeal that has been taken or any petition for certiorari that has been or may be timely filed has been withdrawn or resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or the new trial, reargument, or rehearing shall have been denied, resulted in no modification of such order, or has otherwise been dismissed with prejudice; *provided*, *however*, that the possibility a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Federal Rules of Bankruptcy Procedure or the Local Rules of Bankruptcy Practice and Procedure of the Bankruptcy Court, may be filed relating to such order shall not prevent such order from being a Final Order.

(w) "Governmental Authorization" means any permit, license, certificate, approval, consent, waiver, permission, clearance, designation, qualification or authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any applicable Law.

(x) "Governmental Body" means any government, quasi-governmental entity, or other governmental or regulatory body, agency or political subdivision thereof of any nature, whether foreign, federal, state or local, or any agency, branch, department, official, entity, instrumentality or authority thereof, or any court or arbitrator of applicable jurisdiction.

(y) "Income Taxes" means (a) all Taxes based upon, measured by, or calculated with respect to gross or net income, gross or net receipts or profits (including franchise Taxes and any capital gains, alternative minimum, and net worth Taxes, but excluding ad valorem, property, excise, severance, production, sales, use, real or personal property

transfer or other similar Taxes), (b) Taxes based upon, measured by, or calculated with respect to multiple bases (including corporate franchise, doing business or occupation Taxes) if one or more of the bases upon which such Tax may be based, measured by, or calculated with respect to is included in clause (a) above or (c) withholding Taxes measured with reference to or as a substitute for any Tax included in clauses (a) or (b) above.

(z) "Indebtedness" means, without duplication, all Liabilities, including unpaid principal amounts, accrued and unpaid interest on, and other payment obligations (including any prepayment penalties, premiums, costs, breakage or other amounts payable upon the discharge thereof) of the Seller arising under: (a) indebtedness for borrowed money or in respect of loans or advances, or obligations in substitution or exchange therefor (including bank term and revolving credit loans and convertible loans), (b) letters of credit, bonds, debentures, notes or similar instruments (including surety, performance or similar type of bonds), (c) subordinated loans, bank bills (acceptance credits), and other indebtedness for borrowed money, (d) all obligations under interest rate or currency swap or collar Transaction or other hedging agreements or arrangements, (e) capitalized leases required to be capitalized in accordance with GAAP, (f) deferred purchase price of property, assets, securities or services (including all deferred purchase price liabilities and earn-out or similar performance payments and any related Taxes including the employer's portion of Social Security Taxes (at the maximum amount payable thereunder), whether contingent or otherwise), (g) deferred rent (and any obligations which in accordance with GAAP should be recoded as deferred rent), (h) declared, but unpaid dividends or distributions, (i) payroll taxes deferred under the CARES Act or Payroll Tax Executive Order, (j) any Liabilities for deferred revenue, calculated in accordance with GAAP and (k) guarantees of any Indebtedness of the type described in the foregoing clauses (a)–(j).

(aa) "Intellectual Property" shall mean, without limitation, all intellectual property rights arising anywhere in the world, whether registered, unregistered, registerable, or unregistrable, and all rights associated therewith such as the right to apply for their registration and bring proceedings for their infringement, including (a) patents, reissues of and, re-examined patents, and patent applications (wherever filed and wherever issued, including continuations, continuations-in-part, substitutes, and divisions of such applications and all priority rights resulting from such applications) now existing and hereafter filed, issued or acquired; (b) rights to inventions, improvements, developments, and ideas (in each case, whether patentable or unpatentable); (c) rights associated with works of authorship, including copyrights, moral rights, copyright applications, copyright registrations, synchronization rights, mask work rights, mask work applications and mask work registrations; (d) trademarks, service marks, trade names, domain names, logos, trade dress, and the applications for registration and the registrations thereof and rights in goodwill; (e) rights in undisclosed or confidential information (such as know-how, trade secrets and inventions (whether patentable or not)), and other similar or equivalent rights or forms of protection (whether registered or unregistered) and (f) other proprietary rights arising under statutory or common law, contract, or otherwise, and whether or not perfected and all applications (or rights to apply) for, and for renewals and extensions of, such rights as may now or in the future exist anywhere in the world, in all media, for all versions and elements, in all languages, and for the entire duration of such rights.

(bb) "Knowledge of Seller", or words of like import, means the actual knowledge without independent verification (and in event encompasses constructive, imputed or similar concepts of knowledge) of Thomas Mooney, who, for the sake of clarity and avoidance of doubt, shall have no personal Liability or obligations regarding such knowledge.

(cc) "Law" means any federal, state, provincial, local, municipal, foreign or international, multinational or other law, statute, legislation, constitution, principle of common law, ordinance, code, decree, treaty, convention, rule, regulation or Order issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body of competent jurisdiction.

(dd) "Leased Real Property" means all real property leased by the Seller as lessee.

(ee) "Leases" means all unexpired leases, subleases, licenses, concessions, options, contracts, extension letters, easements, reciprocal easements, assignments, termination agreements, subordination agreements, nondisturbance agreements, estoppel certificates and other agreements (written or oral), and any amendments or supplements to the foregoing, and recorded memoranda of any of the foregoing, pursuant to which Seller hold any leasehold or subleasehold estates and other rights in respect of any Leased Real Property.

(ff) "Liability" means, as to any Person, any debt, adverse claim, liability, duty, responsibility, Tax, obligation, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution, or premium of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and regardless of when sustained, incurred or asserted or when the relevant events occurred or circumstances existed.

(gg) "Made Available" means such information or documents have been (i) disclosed in any forms, statements or other documents filed with the Bankruptcy Court or (ii) made available in the Dataroom, in each case at least fifteen (15) Business Days prior to the Closing.

(hh) "Material Adverse Effect" means any event, occurrence, fact, condition or change that is, or could reasonably be expected to cause or become, individually or in the aggregate, materially adverse to (a) the business, results of operations, condition (financial or otherwise) of the Business or the Acquired Assets (including the value thereof) and Assumed Liabilities, or (b) the ability of the Seller to consummate the Transaction on a timely basis, provided that none of the following (or the consequences thereof), either alone or in combination, shall constitute, or be taken into account in determining whether or not there has been, a Material Adverse Effect: (i) any matter, event, change, development, occurrence, circumstance or effect (each, an "Effect") in, arising from or relating to general business or economic conditions affecting the industry in which the Seller operate, including Effects arising from or relating to competition or ordinary course matters and

other Effects within such industry, new entrants into such industry, new products from other participants in such industry, changes in product pricing due to such competition, changes in market share or financial results due to such competition, and other related changes resulting from such competition; (ii) Effects in, arising from or relating to national or international political or social conditions, including tariffs, riots, protests, the engagement by the United States or other country in hostilities or the escalation thereof, whether or not pursuant to the declaration of a national emergency or war, or the occurrence or the escalation of any military, cyber or terrorist (whether or not state-sponsored) attack upon the United States or any other country, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, asset, equipment or personnel of the United States or of any other country; (iii) Effects in, arising from or relating to any fire, flood, hurricane, earthquake, tornado, windstorm, other calamity or act of God, global or national health concern, epidemic, pandemic (whether or not declared as such by any Governmental Body), viral outbreak (including "Coronavirus" or "COVID-19" or the worsening thereof) or any quarantine or trade restrictions related thereto or any other *force majeure*; (iv) Effects in, arising from or relating to the decline or rise in price of any currency or any equipment or supplies necessary to or used in the provision of services by the Seller (including any resulting inability to meet customer demands or fulfill purchase orders and any resulting breaches of Contracts); (v) Effects in, arising from, or relating to financial, banking, or securities markets (including (A) any disruption of any of the foregoing markets, (B) any change in currency exchange rates, (C) any decline or rise in the price of any security, commodity, Contract, or index, and (D) any increased cost, or decreased availability, of capital or pricing or terms related to any financing for the Transaction); (vi) Effects in, arising from or relating to changes in, GAAP or the interpretation thereof; (vii) Effects in, arising from or relating to changes in, Laws or other binding directives or determinations issued or made by or agreements with or consents of any Governmental Body and any increase (or decrease) in the terms or enforcement of (or negotiations or disputes with respect to) any of the foregoing; (viii) Effects in, arising from or relating to (A) the taking of any action permitted or contemplated by this Agreement or at the request of Purchaser or its Affiliates, (B) the failure to take any action if such action is prohibited by this Agreement, or (C) the negotiation, announcement, or pendency of this Agreement or the Transaction, the identity, nature, or ownership of Purchaser or Purchaser's plans with respect to the Acquired Assets and Assumed Liabilities, including the impact thereof on the relationships, contractual or otherwise, of the business of the Seller or their Affiliates with employees, customers, lessors, suppliers, vendors, or other commercial partners or litigation arising from or relating to this Agreement or the Transaction; (ix) Effects in, arising from or relating to any existing event, occurrence or circumstance that is publicly known or disclosed or with respect to which Purchaser has knowledge as of the date hereof; (x) Effects in, arising from or relating to any action required to be taken under any existing Contract to which the Seller (or any of its assets or properties) is bound; (xi) 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 Purchaser or its Affiliates or Advisors) and any other failure to win or maintain customers or business; (xii) the Effect of any action taken by Purchaser or its Affiliates with respect to the Transaction or breach by Purchaser of this Agreement; (xiii) the matters Made Available as of the date hereof and any changes

or developments in, or Effects or results arising from or relating to, such matters; (xiv) any matter set forth in the Disclosure Schedules or (xv) (A) the commencement or pendency of the Bankruptcy Case or any acts, omissions, events or circumstances, directly or indirectly, arising out of or caused by the commencement or pendency thereof; (B) any objections in the Bankruptcy Court to (1) this Agreement or any of the Transaction, (2) the Sale Order or the reorganization or liquidation of the Seller or their Affiliates or (3) the assumption or rejection of any Assigned Contract or (C) any Order of the Bankruptcy Court or any actions or omissions of the Seller or their Affiliates in compliance therewith.

(ii) "Non-Income Taxes" means any Taxes other than Income Taxes, including ad valorem, use, property, excise, sales, severance, production, gross proceeds, conservation, use or other similar Taxes based upon the acquisition, operation or ownership of the Acquired Assets, but excluding, for the avoidance of doubt, Transfer Taxes.

(jj) "Order" means any order, injunction, judgment, decree, ruling, writ or arbitration award of a Governmental Body of competent jurisdiction, including any order entered by the Bankruptcy Court in the Bankruptcy Case (including the Sale Order).

(kk) "Ordinary Course" means the ordinary course of business of the Seller, consistent with past practice.

(ll) "Permits" mean the Assigned Permits and Excluded Permits.

(mm) "Permitted Encumbrances" means (i) Encumbrances for utilities and Taxes not yet due and payable or the nonpayment of which is permitted or required by the Bankruptcy Code, (ii) easements, rights of way, restrictive covenants, encroachments and similar non-monetary encumbrances or non-monetary impediments against any of the Acquired Assets which do not, individually or in the aggregate, adversely affect the operation of the Acquired Assets, (iii) materialmans', mechanics', artisans', shippers', warehousemans' or other similar common law or statutory liens incurred in the Ordinary Course for amounts not yet due and payable or that are being contested by appropriate proceedings (and for which adequate reserves are maintained), (iv) licenses granted on a non-exclusive basis and (v) solely prior to Closing, any Encumbrances that will be removed or released by operation of the Sale Order.

(nn) "Person" means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization, labor union, organization, estate, Governmental Body or other entity or group.

(oo) "Representative" means, with respect to a particular Person, any director, officer, employee or other authorized representative of such Person or its Subsidiaries, including such Person's attorneys, accountants, financial advisors and restructuring advisors.

(pp) "Sale Hearing" means a hearing before the Bankruptcy Court at which the Seller will seek entry of the Sale Order.

(qq) "Sale Order" means the sale Order or Orders (i) approving this Agreement and the terms and conditions hereof, including pursuant to Sections 363 and 365 of the Bankruptcy Code and (ii) approving and authorizing the Seller to consummate the Transaction, in form and substance reasonably acceptable to the Parties.

(rr) "Seller Benefit Plan" means each Benefit Plan that is sponsored, maintained, administered or contributed to by the Seller for the benefit of its current or former directors, officers, employees or individual independent contractors.

(ss) "Straddle Period" means any Tax period beginning on or prior to and ending after the Closing Date.

(tt) "Subchapter V Trustee" means Natasha Songonuga, the trustee appointed pursuant to section 1183(a) of the Bankruptcy Code and whose duties are prescribed under section 1183(b) of the Bankruptcy Code.

(uu) "Tax" or "Taxes" means any taxes, assessments and other governmental charges in the nature of a tax imposed by any Governmental Body, including income, gross receipts, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, ad valorem, personal property, stamp, excise, occupation, sales, use, transfer, value added, import, export, alternative minimum or estimated tax, including any interest, penalty or addition thereto.

(vv) "Tax Code" means the United States Internal Revenue Code of 1986, as amended.

(ww) "Tax Return" means any return, claim for refund, report, statement or information return relating to Taxes required to be filed with a Governmental Body, including any schedule or attachment thereto and any amendments thereof.

(xx) "Transaction Agreements" means this Agreement and any other agreements, instruments or documents entered into pursuant to this Agreement.

(yy) "Transaction" means the transaction contemplated by this Agreement and the other Transaction Agreements.

**Section 9.2 Rules of Interpretation**. Unless otherwise expressly provided in this Agreement, the following will apply to this Agreement, the Disclosure Schedules and any other certificate, instrument, agreement or other document contemplated hereby or delivered hereunder.

(a) The terms "hereof," "herein" and "hereunder" and terms of similar import are references to this Agreement as a whole and not to any particular provision of this Agreement. Section, clause, section of the Disclosure Schedules and exhibit references contained in this Agreement are references to sections, clauses, sections of the Disclosure Schedules and exhibits in or to this Agreement, unless otherwise specified. All exhibits and Disclosure Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used

in any Disclosure Schedule or exhibits but not otherwise defined therein shall be defined as set forth in this Agreement.

(b) Whenever the words "include," "includes" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation." Where the context permits, the use of the term "or" will be equivalent to the use of the term "and/or."

(c) The words "to the extent" shall mean "the degree by which" and not simply "if."

(d) 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 will be excluded. If the last day of such period is a day other than a Business Day, the period in question will end on the next succeeding Business Day.

(e) Words denoting any gender will include all genders, including the neutral gender. Where a word is defined herein, references to the singular will include references to the plural and vice versa.

(f) The word "will" will be construed to have the same meaning and effect as the word "shall". The words "shall," "will," or "agree(s)" are mandatory, and "may" is permissive.

(g) All references to a day or days will be deemed to refer to a calendar day or calendar days, as applicable, unless otherwise specifically provided.

(h) Any reference to any agreement or Contract will be a reference to such agreement or Contract, as amended, modified, supplemented or waived.

(i) A reference to any Party to this Agreement or any other agreement or document shall include such Party's successors and assigns, but only if such successors and assigns are not prohibited by this Agreement.

(j) A reference to a Person in a particular capacity excludes such Person in any other capacity or individually.

*[Signature pages follow.]*

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

**PURCHASER:**

DIP Lenders

By: Henry Green

Name: Henry Green

Title: Authorized Representative of the DIP Lenders

**SELLER:**

**HOUSE SPIRITS DISTILLERY LLC**

By: _____
Name: Thomas Mooney
Title: CEO