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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**

WASHINGTON, D.C. 20549

**Form 8-K**

**CURRENT REPORT**

**PURSUANT TO SECTION 13 OR 15(D) OF  
THE SECURITIES EXCHANGE ACT OF 1934**

Date of Report (Date of earliest event reported): **June 19, 2019**

**FTD Companies, Inc.**

(Exact Name of Registrant as Specified in Charter)

**Delaware**  
(State or Other jurisdiction  
of Incorporation)

**001-35901**  
(Commission  
File Number)

**32-0255852**  
(I.R.S. Employer  
Identification No.)

**3113 Woodcreek Drive**  
**Downers Grove, Illinois 60515**  
(Address of Principal Executive Offices) (ZIP Code)

**Telephone: (630) 719-7800**  
(Registrant's Telephone Number, Including Area Code)

**N/A**  
(Former Name or Former Address, if Changed Since Last Report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, par value \$0.0001 per share(1)	N/A(1)	N/A(1)

(1) On June 13, 2019, the NASDAQ Stock Market ("NASDAQ") suspended trading of FTD Companies, Inc. common stock, par value \$0.0001 per share ("common stock"). NASDAQ intends on filing a Form 25-NSE with the U.S. Securities and Exchange Commission to delist the common stock from the NASDAQ Global Select Market. The delisting will be effective 10 days after the filing of the Form 25. The deregistration of the common stock under Section 12(b) of the Securities Exchange Act of 1934 will be effective 90 days, or such shorter period as the U.S. Securities and Exchange Commission may determine, after filing of the Form 25-NSE.

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR 230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR 240.12b-2).

Emerging Growth Company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

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**Item 1.01 Entry into a Material Definitive Agreement.**

As previously disclosed, on June 3, 2019 (the “**Petition Date**”), FTD Companies, Inc. (the “**Company**”) and substantially all of its domestic subsidiaries (together with the Company, the “**Debtors**”) filed voluntary petitions commencing cases under chapter 11 of title 11 of the U.S. Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”). The Debtors’ chapter 11 cases (together, the “**Chapter 11 Cases**”) are being jointly administered under the caption, In re FTD Companies, Inc., Case No. 19-11240 (LSS) (Bankr. D. Del.). The Debtors continue to operate their businesses as “debtors-in-possession” under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code and orders of the Bankruptcy Court.

*Amended and Restated Asset Purchase Agreement*

On June 19, 2019, FTD, Inc. (“**FTD Inc.**”), a wholly-owned subsidiary of the Company, and certain other subsidiaries of the Company entered into an amended and restated stalking horse asset purchase agreement (the “**A&R APA**”) with Gateway Mercury Holdings, LLC, an affiliate of Nexus Capital Management LP, a California-based private equity sponsor (the “**Purchaser**”), to acquire the Company’s North America and Latin America florist and consumer business, including the ProFlowers business (the “**Acquisition**”). The A&R APA amends and restates the previously-disclosed asset purchase agreement entered into among the same parties on June 2, 2019 (the “**Original APA**”).

The A&R APA, among other things, eliminates certain closing conditions and termination rights related to the finalization of the schedules to the Original APA and Purchaser providing evidence of financing (both of which occurred), and amends the mechanics of the purchase price adjustments set forth in the Original APA. The A&R APA also narrows the definition of “Current Liabilities” to only those liabilities incurred after the filing of the Chapter 11 Cases. Pursuant to the terms and subject to the conditions in the A&R APA, the purchase price remains \$95.0 million in cash, subject to customary adjustments (as clarified in the A&R APA). The A&R APA remains subject to certain closing conditions, including the entry of certain orders by the Bankruptcy Court and other customary closing conditions detailed in the A&R APA.

The A&R APA also remains subject to higher or better offers for the North America and Latin America florist and consumer business, including the ProFlowers business, as well as to approval of the Bankruptcy Court. The A&R APA includes a breakup fee of \$2.14 million, a reduction from \$2.3 million included in the Original APA, and continues to provide for reimbursement of up to \$1.5 million of the Purchaser’s expenses, each of which is payable upon certain termination events in accordance with the terms of the A&R APA.

Closing will be held upon the fourth business day following satisfaction of the conditions set forth in the A&R APA. The Company will seek to close the transaction as soon as possible and in accordance with milestones agreed to with the lenders party to the Superpriority Secured Debtor-In-Possession Credit Agreement, dated June 5, 2019, by and among the Company, the Debtors party thereto as guarantors, such lenders and Bank of America, N.A. as Administrative Agent (the “**DIP Lenders**”).

The foregoing description of the A&R APA and the transactions contemplated thereby, including the Acquisition, is qualified in its entirety by the text of the A&R APA, which is filed as Exhibit 2.1 to this Current Report on Form 8-K and incorporated herein by reference.

*Personal Creations Asset Purchase Agreement*

On June 23, 2019, Provide Creations, Inc. (“**Provide Creations**”), a wholly-owned subsidiary of the Company, and certain other subsidiaries of the Company entered into a stalking horse asset purchase agreement (the

“**Personal Creations Asset Purchase Agreement**”) with PlanetArt, LLC (the “**Personal Creations Purchaser**”), to acquire the Company’s Personal Creations personalized gifts business (the “**Personal Creations Acquisition**”).

Pursuant to the terms and subject to the conditions in the Personal Creations Asset Purchase Agreement, the purchase price is \$18.1 million in cash, subject to customary adjustments. The Personal Creations Asset Purchase Agreement is subject to certain closing conditions, including certain orders being entered by the Bankruptcy Court and other customary closing conditions detailed in the Personal Creations Asset Purchase Agreement.

The Personal Creations Asset Purchase Agreement also remains subject to higher or better offers for the Personal Creations personalized gifts business, as well as to approval of the Bankruptcy Court. The Personal Creations Asset Purchase Agreement includes a breakup fee of \$543,000 and provides for reimbursement of up to \$181,000 of the Personal Creations Purchaser’s expenses, each of which is payable upon certain termination events in accordance with the terms of the Personal Creations Asset Purchase Agreement.

Closing will be held one business day following satisfaction of the conditions set forth in the Personal Creations Asset Purchase Agreement. The Company will seek to close the transaction as soon as possible and in accordance with milestones agreed to with the DIP Lenders.

The foregoing description of the Personal Creations Asset Purchase Agreement and the transactions contemplated thereby, including the Personal Creations Acquisition, is qualified in its entirety by the text of the Personal Creations Asset Purchase Agreement, which is filed as Exhibit 10.1 to this Current Report on Form 8-K and incorporated herein by reference.

#### *Gourmet Foods Asset Purchase Agreement*

On June 23, 2019, Provide Commerce LLC (“**Provide Commerce**”), a wholly-owned subsidiary of the Company, entered into a stalking horse asset purchase agreement (the “**Gourmet Foods Asset Purchase Agreement**”) with Farids & Co., LLC, which is owned by Tariq Farid, founder of Edible Arrangements, LLC (the “**Gourmet Foods Purchaser**”), to acquire the Company’s Shari’s Berries online retail gourmet foods and food gifting business (the “**Gourmet Foods Acquisition**”).

Pursuant to the terms and subject to the conditions in the Gourmet Foods Asset Purchase Agreement, the purchase price is \$5.0 million in cash, subject to customary adjustments. The Gourmet Foods Asset Purchase Agreement is subject to certain closing conditions, including certain orders being entered by the Bankruptcy Court and other customary closing conditions detailed in the Gourmet Foods Asset Purchase Agreement.

The Gourmet Foods Asset Purchase Agreement also remains subject to higher or better offers for the online retail gourmet foods and food gifting business, as well as to approval of the Bankruptcy Court. The Gourmet Foods Asset Purchase Agreement includes a breakup fee of \$137,500 and provides for reimbursement of up to \$125,000 of the Gourmet Foods Purchaser’s expenses, each of which is payable upon certain termination events in accordance with the terms of the Gourmet Foods Asset Purchase Agreement.

Closing will be held upon the third business day following satisfaction of the conditions set forth in the Asset Purchase Agreement. The Company will seek to close the transaction as soon as possible and in accordance with milestones agreed to with the DIP Lenders (as defined below).

The foregoing description of the Gourmet Foods Asset Purchase Agreement and the transactions contemplated thereby, including the Gourmet Foods Acquisition, is qualified in its entirety by the text of the Gourmet Foods Asset Purchase Agreement, which is filed as Exhibit 10.2 to this Current Report on Form 8-K and incorporated herein by reference.

## **Item 7.01 Regulation FD Disclosure.**

On June 24, 2019, the Company issued a press release announcing entry into definitive asset purchase agreements for the sale of the Personal Creations and Shari's Berries businesses. A copy of the press release is attached hereto as Exhibit 99.1 and is incorporated herein by reference.

Additional information is available on the Company's restructuring website at [www.FTDrestructuring.com](http://www.FTDrestructuring.com). In addition, Bankruptcy Court filings and other information related to the Chapter 11 Cases are available on a separate website administered by the Company's claims agent, Omni Management Group ("Omni"), at [www.omnimgt.com/FTD](http://www.omnimgt.com/FTD), or by calling Omni representatives toll-free at 1-866-205-3144 or 1-818-906-8300 for calls originating outside of the U.S.

The information in this Item 7.01 and Exhibit 99.1 attached hereto shall not be deemed "filed" for purposes of Section 18 of the Securities Exchange Act, nor shall it be deemed incorporated by reference in any filing under the Securities Act, except as shall be expressly set forth by specific reference in such filing. The filing of this Item 7.01 of this report shall not be deemed an admission as to the materiality of any information herein that is required to be disclosed solely by reason of Regulation FD.

## **Forward-Looking Statements**

This Current Report on Form 8-K contains certain forward-looking statements within the meaning of the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995, as amended, based on our current expectations, estimates and projections about our operations, industry, financial condition, performance, results of operations, and liquidity. Statements containing words such as "may," "believe," "anticipate," "expect," "intend," "plan," "project," "projections," "business outlook," "estimate," or similar expressions constitute forward-looking statements. These forward-looking statements include, but are not limited to, statements regarding expectations about the timing and execution of the Company's strategic transactions (including the contemplated sales of substantially all of the Debtors' assets), the Company's future financial condition and future business plans and expectations, including statements related to the effect of, and our expectations with respect to, the operation of our business, adequacy of financial resources and commitments, and the operating expectations during the pendency of the Chapter 11 Cases and impacts to its business related thereto. Potential factors that could affect such forward-looking statements include, among others, risks and uncertainties relating to the Chapter 11 Cases, including, but not limited to, the Company's ability to obtain Bankruptcy Court approval of motions filed in the Chapter 11 Cases (including, but not limited to, the debtor-in-possession motion and the bidding procedures motion), the effects of the Chapter 11 Cases on the Company and on the interests of various constituents, Bankruptcy Court rulings in the Chapter 11 Cases and the outcome of the Chapter 11 Cases in general, the length of time the Company will operate under the Chapter 11 Cases, risks associated with third-party motions in the Chapter 11 Cases, the potential adverse effects of the Chapter 11 Cases on the Company's liquidity or results of operations and increased legal and other professional costs necessary to execute the Company's restructuring strategy; the conditions to which the Company's debtor-in-possession financing is subject and the risk that these conditions may not be satisfied for various reasons, including for reasons outside of the Company's control; the Company's and the Debtors' ability to consummate sales of substantially all of the Debtors' assets consistent with the milestones set forth in the interim debtor-in-possession financing of the Bankruptcy Court and the terms and conditions of any such sales; the Company's ability to implement operational improvement efficiencies; uncertainty associated with evaluating and completing any further strategic or financial alternative as well as the Company's ability to implement and realize any anticipated benefits associated with any alternative that may be pursued; the consequences of the acceleration of our debt obligations; trading price and volatility of the Company's common stock and the risks related to the Company's upcoming delisting from Nasdaq and trading on the OTC Pink Market and the other factors disclosed in the section entitled "Risk Factors" in our most recent [Annual Report on Form 10-K](#) filed with the U.S. Securities and Exchange Commission ("SEC"), as updated from time to time in our subsequent filings with the SEC. Readers are cautioned not to place undue reliance on these forward-looking statements, which reflect management's analysis only as of the date hereof. Such forward-looking statements are not guarantees of future performance or results and involve risks and uncertainties that may cause actual performance and results to differ materially from those predicted. Reported results should not be considered an indication of future performance. Except as required by

law, we undertake no obligation to publicly release the results of any revision to these forward-looking statements that may be made to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events.

*Cautionary Information Regarding Trading in the Company's Securities*

The Company cautions that trading in the Company's securities during the pendency of the Chapter 11 Cases is highly speculative and poses substantial risks. Trading prices for the Company's securities may bear little or no relationship to the actual recovery, if any, by the holders of the Company's securities in the Chapter 11 Cases. Based on the values for the Company's businesses contemplated by the A&R APA, the Personal Creations Asset Purchase Agreement and the Gourmet Foods Asset Purchase Agreement referred to herein, the Company expects that existing Company stockholders will receive no recovery at the end of the Chapter 11 Cases, consistent with legal priorities.

**Item 9.01 Financial Statements and Exhibits.**

(d) Exhibits

<u>Exhibit</u>	<u>Description</u>
2.1	<a href="#"><u>Amended and Restated Asset Purchase Agreement, dated June 19, 2019, by and between Gateway Mercury Holdings, LLC and FTD, Inc. and the other sellers party thereto*</u></a>
10.1	<a href="#"><u>Asset Purchase Agreement, dated June 23, 2019, by and between PlanetArt, LLC and Provide Creations, Inc. and the other sellers party thereto**</u></a>
10.2	<a href="#"><u>Asset Purchase Agreement, dated June 23, 2019, by and between Farids &amp; Co., LLC and Provide Commerce LLC**</u></a>
99.1	<a href="#"><u>Press Release of FTD Companies, Inc., dated June 24, 2019</u></a>

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\* Certain schedules have been omitted pursuant to Item 601(b)(2) of Regulation S-K promulgated by the SEC. The Company agrees to furnish a supplemental copy of any omitted schedule or exhibit to the SEC upon request.

\*\* Certain schedules and exhibits have been omitted pursuant to Item 601(a)(5) of Regulation S-K promulgated by the SEC. The Company agrees to furnish a supplemental copy of any omitted schedule or exhibit to the SEC upon request.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**FTD COMPANIES, INC.**

Dated: June 24, 2019

By: /s/ Steven D. Bamhart

Name: Steven D. Bamhart

Title: Executive Vice President and Chief Financial Officer

**AMENDED AND RESTATED ASSET PURCHASE AGREEMENT**

by and among

GATEWAY MERCURY HOLDINGS, LLC

as Purchaser

and

FTD, INC.

and the other Sellers party hereto

Dated as of June 19, 2019

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## AMENDED AND RESTATED ASSET PURCHASE AGREEMENT

This AMENDED AND RESTATED ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of June 19, 2019, is by and among Gateway Mercury Holdings, LLC, a Delaware limited liability company ("Purchaser"), FTD, Inc., a Delaware corporation (the "Company"), and each of the Company's Subsidiaries and other Affiliates listed on the signature pages to this Agreement (together with the Company, each a "Seller" and, collectively, "Sellers").

### RECITALS

- A. The Parties are party to that certain Asset Purchase Agreement dated as of June 2, 2019 (the "Prior Agreement").
- B. Sellers have filed voluntary petitions for relief under chapter 11 of Title 11 (the "Bankruptcy Case") of the United States Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").
- C. Sellers and their Affiliates conduct a business which: (i) operates a network of members consisting of florist retail and other retail locations for the purpose of sending and receiving floral orders; (ii) provides goods and services to such members (clauses (i) and (ii) together, the "Florist Network"); (iii) gathers orders through the FTD.com business and the ProFlowers business; (iv) sells personal gifts through the Shari's Berries business and Personal Creations business; and (v) owns certain real properties and leases certain other real properties in connection with the businesses described in clauses (i) through (iv) (collectively, the "Business") prior to the consummation of the Transactions.
- D. Purchaser desires to acquire the Acquired Business.
- E. Sellers desire to sell to Purchaser the Purchased Assets and assign to Purchaser the Assumed Liabilities and Purchaser desires to purchase from Sellers the Purchased Assets and assume the Assumed Liabilities, in each case, upon the terms and conditions set forth in this Agreement.
- F. On the terms and subject to the conditions set forth herein, following the filing of the Bankruptcy Cases, Sellers intend to request that the Bankruptcy Court authorize and approve the Transactions pursuant to the Approval Order, pursuant to, inter alia, Sections 105, 363 and 365 of the Bankruptcy Code, and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure, which Approval Order will include the authorization for the assumption by the applicable Seller and assignment by the applicable Seller to Purchaser of the Purchased Contracts and the Assumed Liabilities thereunder in accordance with Section 365 of the Bankruptcy Code, all in the manner and subject to the terms and conditions set forth in this Agreement and the Approval Order and in accordance with other applicable provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and the local rules for the Bankruptcy Court.
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G. The Parties desire to amend and restate the Prior Agreement in its entirety in the form of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby amend and restate the Prior Agreement in its entirety and agree as follows:

## I. DEFINITIONS

1.1 Certain Definitions. For purposes of this Agreement, each of the following terms, when used herein with initial capital letters, has the meaning specified in this Section 1.1 or in the other Sections of this Agreement identified in Section 1.2:

“Acquired Business” means (a) the businesses set forth under clauses (i)-(iii) of the definition of Business, (b) the Overhead and Shared Services, subject to the terms of this Agreement and the transition services agreement described in Section 8.10, and (c) the owned real property associated with clauses (a) and (b).

“Acquired Business Information” means all books, financial information, records, files, ledgers, documentation, instruments, research, papers, data, sales or technical literature or similar information that, in each case, is owned by any Seller and, in each case, is primarily (1) related to any license or use by any third party of, or rights of any third party with respect to, the Purchased Intellectual Property or the Purchased Contracts, (2) related to the Purchased Intellectual Property in connection with the Acquired Business or (3) related to the operation of the Acquired Business, including, for the avoidance of doubt:

(i) all marketing, advertising and promotional materials owned or controlled by Sellers and, in each case, primarily used or held for use by them in the conduct of the Acquired Business;

(ii) all technical, scientific and other know-how and information (including promotional material), trade secrets, confidential information, methods, processes, practices, designs, design rights and specifications, in each case, primarily used or held for use by Sellers in the conduct of the Acquired Business;

(iii) drawings, artwork, archival materials and advertising materials, copy, commercials, images, artwork and samples, in each case, primarily used or held for use by Sellers in the conduct of the Acquired Business;

(iv) the websites, social media sites and accounts (including the content contained therein, user names and passwords), diagrams, drawings, domain names and all advertising and marketing materials and collateral (including all physical, digital or electronic imagery and design files), vendor and merchandise supplier data and information used by the Sellers primarily in the conduct of the Acquired Business.

“Adjustment Escrow Amount” means \$9,500,000.

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, 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 and policies of such Person, whether through ownership of voting securities, by Contract or otherwise.

“Affiliated Group” means an “affiliated group” (as defined in Section 1504(a) of the Code without regard to the limitations contained in Section 1504(b) of the Code) that, at any time on or before the Closing Date, includes or has included any Seller or any direct or indirect predecessor of any Seller, or any other group of corporations filing Tax Returns on a combined, consolidated, group, unitary or similar basis that, at any time on or before the Closing Date, includes or has included any Seller or any direct or indirect predecessor of any Seller.

“Alternative Transaction” means (i) any transaction (or series of transactions) that results from a bid submitted in connection with the procedures established under the Bidding Procedures Order and involves the direct or indirect sale, transfer or other disposition of all, or a material portion of, the Purchased Assets to any Person other than Purchaser or its Affiliates; (ii) is a Partial Bid (as defined in the bidding procedures established under the Bidding Procedures Order) and Sellers choose not to consummate this Agreement because of the Partial Bid; or (iii) any other going-concern transaction (including a plan under chapter 11 of the Bankruptcy Code) that is pursued prior to the Termination Date and the consummation of which would be substantially inconsistent with the Transactions.

“Approval Order” means an order entered by the Bankruptcy Court pursuant to (without limitation) Sections 363 and 365 of the Bankruptcy Code, authorizing and approving, among other things, (a) the sale of the Purchased Assets, (b) the assumption of the Assumed Liabilities by Purchaser and (c) the assumption and assignment of the Purchased Contracts, in accordance with the terms and conditions of this Agreement, which will be in a form and substance reasonably acceptable to the Parties.

“Benefit Plan” means each (a) employment, consulting, compensation, profit-sharing, thrift, savings, bonus, incentive, change in control, severance, retention, retirement, pension benefit or deferred compensation plan, program, policy, practice, Contract, agreement or arrangement, and (b) fringe benefit, health, dental, vision, life, cafeteria, accident, hospitalization, insurance, disability, transportation, vacation, sabbatical, accidental death and dismemberment, workers’ compensation or supplemental unemployment benefit plan, program practice, Contract, agreement or arrangement, or other employee benefits or remuneration of any kind, whether written or unwritten or otherwise, funded or unfunded, including without limitation any “employee benefit plan” within the meaning of Section 3(3) of ERISA (and any trust, escrow, funding, insurance or other agreement related to any of the foregoing), whether or not such plan is subject to ERISA.

“Bidding Procedures Order” means an order of the Bankruptcy Court (including any attachment thereto) that (a) approves, among other things, the bidding procedures for conducting a sale and auction of the Purchased Assets and Purchased Contracts, and (b) is in a form reasonably acceptable to the Parties.

“Break-Up Fee” means an amount equal to \$2,140,000.

“Business Day” means any day other than a Saturday, a Sunday or any other day on which commercial banks in Chicago, Illinois are authorized or required by Law to close.

“Business Employee” means each employee of a Seller and FTD Canada Inc. who provides services to such Seller or FTD Canada Inc. in connection with the Acquired Business or who is a Shared Employee and, in each case, who is listed on Schedule 1.1(a).

“Code” means the Internal Revenue Code of 1986, as amended. All references to the Code, United States Treasury regulations or other governmental pronouncements will be deemed to include references to any applicable successor regulations or amending pronouncement.

“Company SEC Documents” means all forms, reports, schedules, statements and other documents filed with or furnished to the SEC that are required to be filed or furnished by it under the Securities Act of 1933 or the Securities Exchange Act of 1934.

“Contract” means any contract, agreement, commitment, promise or undertaking (including any indenture, note, bond, loan, or other evidence of indebtedness, mortgage, franchise, conditional sales contract, insurance policy, letter of credit, instrument, license, sublicense, lease, sublease, purchase order or other legally binding agreement) whether written or oral.

“Credit Card Accounts Receivable” means each “Account” or “Payment Intangible” (each as defined in the UCC ) together with all income, payments and proceeds thereof, owed by a credit card payment processor or an issuer of credit cards to a Seller resulting from charges by a customer of a Seller on credit cards processed by such processor or issued by such issuer in connection with the gathering of orders by a Seller, in each case in the Ordinary Course of Business.

“Cure Costs” means monetary amounts that must be paid and obligations that otherwise must be satisfied under Sections 365(b)(1)(A) and (B) of the Bankruptcy Code in connection with the assumption and assignment of any Purchased Contract, as agreed by Purchaser and the non-debtor counterparty to the applicable Purchased Contract, or as finally determined by the Bankruptcy Court.

“Current Assets” means, as of 11:59 p.m. Central time on the day prior the Closing Date, the combined current assets of Sellers with respect to the Acquired Business (which current assets will include only the line items, and reflect the exclusions, set forth on Schedule 1 under the heading “Current Assets” and no other assets), determined in accordance with GAAP as applied by Sellers’ ultimate parent company, FTD Companies, Inc. Current Assets exclude any ProFlowers Current Assets.

“Current Liabilities” means, as of 11:59 p.m. Central time on the day prior the Closing Date, the combined current liabilities of Sellers with respect to the Acquired Business (which current liabilities will include only the line items, and reflect those exclusions, set forth on Schedule 1 under the heading “Current Liabilities” and no other liabilities), incurred after the filing of the Bankruptcy Cases in the Ordinary Course of Business, determined in accordance

with GAAP as applied by Sellers' ultimate parent company, FTD Companies, Inc. Current Liabilities exclude any ProFlowers Current Liabilities.

“E-Commerce Platform” means the Software and hardware that support and enable operation of the websites of the Acquired Business (including FTD.com and ProFlowers.com) through which Sellers gather orders from customers.

“Effective Date” means June 2, 2019.

“Environmental Laws” means all common law, federal, state, local and foreign Laws concerning pollution or protection of the environment or human health and safety.

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

“Escrow Account” means the escrow account holding the Deposit Amount and the Adjustment Escrow Amount pursuant to the Escrow Agreement.

“Escrow Agreement” means the escrow agreement for the Escrow Account, by and among Purchaser, Sellers and U.S. Bank, dated as of June 10, 2019.

“Ex-Im Laws” means all U.S. and non-U.S. Laws relating to export, reexport, transfer and import controls, including the Export Administration Regulations, the International Traffic in Arms Regulations, the customs and import Laws administered by U.S. Customs and Border Protection, and the EU Dual Use Regulation.

“Exchange Act” means the Securities Exchange Act of 1934.

“Expense Reimbursement Amount” means an amount, not to exceed \$1,500,000, equal to Purchaser's or its Affiliates' reasonable and documented out-of-pocket costs and expenses (including fees and expenses of counsel and other advisors to Purchaser and its Affiliates) incurred in connection with this Agreement and the Transactions, and all proceedings incident thereto and appeals therefrom.

“GAAP” means generally accepted accounting principles in the United States.

“Governmental Body” means any government or governmental or regulatory body thereof, or political subdivision thereof, or any agency, authority, department, commission, board, bureau, official or instrumentality of such body, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), whether foreign, federal, state, or local, or any agency, instrumentality or authority thereof, or any court or arbitrator thereof (public or private) of competent jurisdiction.

“Intellectual Property” means any and all worldwide rights in and to all intellectual property rights or assets (whether arising under statutory or common law), including (a) patents, patent applications, industrial design registrations and applications therefor, divisions, divisionals, continuations, continuations-in-part, reissues, substitutes, renewals, registrations,

confirmations, re-examinations, extensions and any provisional applications, and any foreign or international equivalent of any of the foregoing, (b) trademarks (whether registered, unregistered or pending), historical trademark files, trade dress, service marks, service names, trade names, brand names, product names, logos, corporate names, fictitious names, other names, symbols (including business symbols), slogans, translations of any of the foregoing and any foreign or international equivalent of any of the foregoing and all goodwill associated therewith and (to the extent transferable by law) any applications and/or registrations in connection with the foregoing ("Trademarks"), (c) rights associated with works of authorship including copyrights, moral rights, design rights, rights in databases, copyright applications, copyright registrations, rights existing under any copyright Laws and rights to prepare derivative works, (d) technical, scientific and other know-how and information (including promotional material), trade secrets, confidential information, methods, processes, practices, formulas, designs, design rights, patterns, assembly procedures, and specifications, (e) Software in any form, (f) internet websites, domain names, IP addresses, web content and links, and mobile applications (g) rights of publicity and personality, (h) inventions, discoveries, processes, designs, techniques, developments and related improvements whether or not patentable, (i) databases, (j) all goodwill related to the foregoing, and (k) the right to sue for infringement and other remedies against infringement of any of the foregoing.

"IRS" means the Internal Revenue Service.

"Knowledge of Sellers" or "Sellers' Knowledge" means the knowledge, after reasonable inquiry, of those Persons identified on Schedule 1.1(b).

"Law" means any federal, state, local or foreign law, statute, code, ordinance, rule, regulation, Order, stipulation, award or common law requirement.

"Leased Real Property" means real property in the United States leased, subleased, or licensed by, or for which a right to use or occupy has been granted to, any Seller set forth on Schedule 1.1(c).

"Legal Proceeding" means any action, claim, arbitration, charge, complaint, petition, mediation, equitable action, hearing before any Governmental Body, investigation, litigation, or any other judicial, administrative or arbitral proceeding of any kind or nature whatsoever, or actions, suits, proceedings (public or private, civil or criminal) or claims or any proceedings commenced, brought, conducted or heard before, any Governmental Body.

"Liability" means any debt, loss, liability, claim (including "claim" as defined in the Bankruptcy Code), commitment, undertaking, damage, expense, fine, penalty, cost, royalty, deficiency or obligation (including those arising out of any action, such as any settlement or compromise thereof or judgment or award therein), of any nature whenever or however arising, whether known or unknown, disclosed or undisclosed, asserted or unasserted, express or implied, primary or secondary, direct or indirect, matured or unmatured, fixed, absolute, contingent, determined, determinable, accrued or unaccrued, liquidated or unliquidated, whether due or to become due, whether in contract, tort or otherwise, and whether or not the same would be required by GAAP to be reflected in financial statements or disclosed in the notes thereto.

“Lien” as applied to any Person means any lien (as defined in section 101(37) of the Bankruptcy Code), encumbrance, pledge, deed of trust, security interest, claim (as defined in section 101(5) of the Bankruptcy Code), charge, option, right of first offer or first refusal, right of use or possession, restriction, easement, rights of way or other title retention agreement, servitude, restrictive covenant, encroachment or encumbrance or any other similar encumbrance or restriction, imposition, imperfections or defects in title, in respect of an asset of such Person, whether imposed by Law, Contract or otherwise.

“Order” means any judicial, quasi-judicial, administrative, quasi-administrative and arbitral judgment, order, decision, injunction, decree, ruling, writ, assessment, award or other determination of, or entered, issued, made or rendered by, a Governmental Body, including by the Bankruptcy Court in the Bankruptcy Case.

“Ordinary Course of Business” means the ordinary and usual course of normal day-to-day operations of the Business by Sellers or their Affiliates consistent with their past practices and taking into account the commencement of the Bankruptcy Cases.

“Overhead and Shared Services” means the ancillary, corporate or other shared services or processes that are provided to or used in both (i) the Acquired Business and (ii) any Retained Business, including services and processes relating to: travel; meeting management and entertainment; labor; office supplies (including copiers and faxes); personal telecommunications (including e-mail); computer/telecommunications maintenance and support; software application and data hosting services (including maintenance of and access to the customer information described in Section 2.1(b)(xvii)); energy/utilities; procurement and supply arrangements; advertising and marketing; treasury; public relations, legal and regulatory matters; risk management (including workers’ compensation); payroll; procurement cards and travel cards; telephone/data connectivity; disaster recovery; accounting; tax; internal audit; executive management; quality control and oversight; design and engineering; human resources and employee relations management; employee benefits; credit, collections and accounts payable; property management; facility management; site security; asset management; supply chain and manufacturing; global trade compliance; and customs and excise matters.

“Owned Real Property” means the real property located at 3113 Woodcreek Drive, Downers Grove, IL 60515 with the legal description set forth on the policy of title insurance provided to Purchaser prior to the date of this Agreement.

“Party” or “Parties” means Purchaser and each Seller, as the case may be.

“Person” means any individual, sole proprietorship, corporation, limited liability company, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Body or other entity.

“Pre-Closing Tax Period” means any taxable year or period that ends before the Closing Date and, with respect to any Straddle Period, the portion of such Straddle Period ending before the Closing Date.

“ProFlowers Current Assets” means, as of 11:59 p.m. Central time on the day prior the Closing Date, the combined current assets of Sellers with respect to the ProFlowers component

of the Acquired Business (which current assets will include only the line items, and reflect the exclusions, set forth on Schedule 1A under the heading “Current Assets” and no other assets), determined in accordance with GAAP as applied by Sellers’ ultimate parent company, FTD Companies, Inc.

“ProFlowers Current Liabilities” means, as of 11:59 p.m. Central time on the day prior the Closing Date, the combined current liabilities of Sellers with respect to the ProFlowers component of the Acquired Business (which current liabilities will include only the line items, and reflect those exclusions, set forth on Schedule 1A under the heading “Current Liabilities” and no other liabilities), incurred after the filing of the Bankruptcy Cases in the Ordinary Course of Business, determined in accordance with GAAP as applied by Sellers’ ultimate parent company, FTD Companies, Inc.

“ProFlowers Target Current Assets” means \$5,299,000.

“ProFlowers Target Current Liabilities” means \$2,000,000.

“Purchaser Material Adverse Effect” means any event, change, effect, condition, state of facts or occurrence (regardless of whether such event, change, effect, condition, state of facts or occurrence constitutes a breach of any representation, warranty or covenant of Purchaser hereunder) which has had or would reasonably be expected to have, individually or when considered together with any other event, change, effect, condition, state of facts or occurrence, a material adverse effect on the ability of Purchaser to consummate the Transactions or perform its obligations under this Agreement.

“Representative” means, with respect to any Person, any and all of its directors, officers, partners, managers, employees, consultants, financial advisors, counsel, accountants and other agents.

“Retained Business” means any business owned or conducted by any Seller or any Affiliate of Seller other than the Acquired Business (including Sellers’ or their Affiliates’ (a) Interflora business, (b) Shari’s Berries business, (c) Personal Creations business, or (d) the tangible assets previously used in the ProFlowers business exclusively for physical order fulfillment).

“Retained Taxes” means any Liability for Taxes (a) arising from or relating to the ownership or operation of the Acquired Business or the Purchased Assets for any Tax period ending on or prior to the Closing Date, (b) of any and all Sellers (or for which any Seller or any of their Affiliates may otherwise be liable, including as a transferee, successor, by Contract (including the Tax Sharing Agreement) or otherwise, or arising as a result of being or having been a member of any Affiliated Group or being or having included or required to be included in any Tax Return related thereto), (c) in respect of any Excluded Assets, or (d) in an amount equal to 50% of any Transfer Taxes that are not set forth on Schedule 2.3(j).

“Sanctioned Country” means any country or region that is the subject or target of a comprehensive embargo under Sanctions Laws (including Cuba, Iran, North Korea, Sudan, Syria, and the Crimea region of Ukraine).

“Sanctioned Person” means any individual or entity that is the subject or target of sanctions or restrictions under Sanctions Laws or Ex-Im Laws, including: (a) any individual or entity listed on any applicable U.S. or non-U.S. sanctions- or export-related restricted party list, including OFAC’s Specially Designated Nationals and Blocked Persons List and the EU Consolidated List; (b) any entity that is, in the aggregate, 50% or greater owned, directly or indirectly, or otherwise controlled by a person or persons described in clause (a); or (c) any national of a Sanctioned Country.

“Sanctions Laws” means all U.S. and non-U.S. Laws relating to economic or trade sanctions, including the Laws administered or enforced by the United States (including by OFAC or the U.S. Department of State), the United Nations Security Council, and the European Union.

“SEC” means the United States Securities and Exchange Commission.

“Securities Act” means the Securities Act of 1933.

“Seller Material Adverse Effect” means any event, change, effect, condition, state of facts or occurrence (regardless of whether such event, change, effect, condition, state of facts or occurrence constitutes a breach of any representation, warranty or covenant of Sellers hereunder) which has had or would reasonably be expected to have, individually or when considered together with any other events, changes, effects, conditions, states of facts or occurrences, (a) a material adverse effect on, or a material adverse change in or to, the business, operations, assets, Liabilities, properties or condition (financial or otherwise), of the Acquired Business, including the Purchased Assets and the Assumed Liabilities, considered as a whole, (b) a material adverse effect on the ability of Sellers to consummate the Transactions or perform their obligations under this Agreement or (c) the effect of preventing or materially delaying the consummation of the Transactions; provided, that, in the case of clause (a), none of the following, alone or in combination, be deemed to constitute, nor will any of the following (including the effect of any of the following) be taken into account in determining whether there has been or would reasonably be expected to be, a “Seller Material Adverse Effect”: (i) any change in the United States or foreign economies or financial markets in general; (ii) any change that generally affects the businesses in which the Acquired Business operates; (iii) any change arising in connection with earthquakes, hurricanes, tomadoes, fires, acts of God, hostilities, acts of war, sabotage or terrorism or military actions or any escalation or material worsening of any such hostilities, acts of war, sabotage or terrorism or military actions; (iv) any change in applicable Laws or accounting rules; (v) any actions taken by Purchaser or any of its Affiliates (other than those expressly permitted to be taken hereunder); (vi) any effect resulting from the public announcement of this Agreement or the Bankruptcy Cases; or (vii) any effect resulting from (1) the commencement or filing of the Bankruptcy Cases, (2) any concurrent ancillary filing by a Subsidiary of Sellers that is not a party to this Agreement under a similar foreign insolvency regime or (3) a Seller’s inability to pay funded debt obligations as a result of the commencement of the Bankruptcy Cases; provided, however, that with respect to clauses (i), (ii), (iii) and (iv), such effects will only be excluded from consideration to the extent it does not disproportionately and materially adversely affect the Acquired Business as compared to similarly situated businesses.

“Shared Employee” means an employee of the Sellers who provides Overhead and Shared Services.

“Software” means all computer software and code, including assemblers, applets, compilers, source code, object code, development tools, design tools, user interfaces, databases and data, in any form or format, however fixed, including any related documentation.

“Straddle Period” means any taxable year or period beginning on or before and ending after the Closing Date.

“Subsidiary” means each corporation or other Person in which a Person owns or controls, directly or indirectly, capital stock or other equity interests representing more than 50% of the outstanding voting stock or other equity interests.

“Target Current Assets” means \$27,255,000.

“Target Current Liabilities” means \$27,000,000.

“Tax” (and, with correlative meaning, “Taxes”) includes (a) any federal, state, local, foreign, supra-governmental or supranational net income, gross income, gross receipts, windfall profit, severance, property, production, sales, use, license, excise, franchise, employment, payroll, employee contribution, withholding on amounts paid to or by any Person, alternative or add-on minimum, ad valorem, value-added, transfer, stamp, or environmental tax (including taxes under former Code Section 59A), or any other tax, custom, duty, governmental fee or other like assessment or charge of any kind whatsoever, together with any interest or penalty, addition to tax or additional amount imposed by any Tax Authority and (b) any liability for the payment of amounts determined by reference to amounts described in clause “(a)” as a result of being or having been a member of any Affiliated Group, as a result of any obligation under any Contract, agreement or arrangement (including any Tax allocation, Tax indemnity or Tax sharing Contract), as a result of being a transferee or successor, or otherwise.

“Tax Authority” means, with respect to any Tax, the Governmental Body or political subdivision thereof that imposes such Tax, and the agency (if any) charged with the collection of such Taxes for such entity or subdivision, including any governmental or quasi-governmental entity or agency that imposes, or is charged with collecting, social security or similar charges or premiums.

“Tax Return” means any report, return, document, declaration, statement, estimate, schedule, notice, notification, form, election, certificate or other information or filing supplied or required to be supplied to any Tax Authority with respect to Taxes, including any information return, claim for refund, tax credit, incentive or benefit, or amended return, any documents supplied or required to be supplied to any Tax Authority in connection with the determination, assessment, collection or payment of any Tax (including any attached schedule) or in connection with the administration, implementation or enforcement of or compliance with any applicable Law relating to any Tax.

“Tax Sharing Agreement” means that certain Tax sharing agreement by and between United Online, Inc. and FTD Companies, Inc., dated as of October 31, 2013 (as it may be amended, supplemented or modified from to time).

“Trademarks” has the meaning set forth in the definition of Intellectual Property.

“Transactions” means the transactions contemplated by this Agreement.

“Transferred Exception” means (a) all non-monetary defects, exceptions, restrictions, easements, rights of way and encumbrances disclosed in Part Two of the policy of title insurance provided to Purchaser prior to the date of this Agreement to the extent that the recorded instrument evidencing the same provided to Purchaser prior to the date of this Agreement is reasonably legible in the form so provided; (b) title of a lessor under a capital or operating lease if such lease is a Purchased Contract; (c) any other imperfections in title, charges, easements, restrictions, encroachments onto the Real Property and encumbrances with respect to Real Property that do not, individually or in the aggregate, materially affect the current value or use of the affected Real Property and that in any case are solely non-monetary in nature; (d) mechanics’, carriers’, workers’, repairers’, warehousemen’s and similar Liens arising or incurred in the Ordinary Course of Business that are not filed of record; (e) with respect to Real Property, Liens for Taxes (other than Retained Taxes) not yet due and payable, or are being contested in good faith by appropriate proceedings; (f) Liens created by Purchaser or its Affiliates; and (g) local, county, state and federal Laws, including Environmental Laws, local building and fire codes, and zoning, conservation or other land use regulations now or hereafter in effect relating to any Real Property, provided that Sellers are in material compliance with such Laws with respect to the affected Real Property. Notwithstanding the foregoing, Transferred Exceptions shall in all events exclude any Lien, Liability or other interest of or in an asset that may be sold free and clear under Section 363(f) of the Bankruptcy Code or that otherwise will be removed or released as against a Purchased Asset by operation of the Approval Order.

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

1.2 Terms Defined Elsewhere in this Agreement. For purposes of this Agreement, the following terms have meanings set forth in the sections indicated:

<u>Term</u>	<u>Section</u>
Acquired Business	Recitals
Agreement	Preamble
Allocation Notice of Objection	10.2(a)
Assignment and Assumption Agreements	4.2(b)
Assumed Cure Costs	2.5
Assumed Liabilities	2.3
Avoidance Action	2.1(b)(xx)
Bankruptcy Case	Recitals
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
Business	Recitals

<b>Term</b>	<b>Section</b>
Cash Amount	3.1
Closing	4.1
Closing Date	4.1
Closing Payment	3.3(b)
Closing Statement	3.3(a)
Company	Preamble
Company Permits	5.8
Company Plan	5.9(a)
Confidentiality Agreement	8.7
Deposit Amount	3.2
Dispute	3.4(c)
Dispute Notice	3.4(b)
Effective Date	Preamble
Employment Laws	5.10(b)
Estimated Current Assets	3.3(a)
Estimated Current Liabilities	3.3(a)
Excluded Assets	2.2
Excluded Liabilities	2.4
FCPA	5.18
Final Allocation Statement	10.2(a)
Final Cash Purchase Price	3.4(d)
Final Current Assets	3.4(d)
Final Current Liabilities	3.4(d)
Florist Network	Recitals
HSR Act	8.5(a)
Inventory	2.1(b)(iii)
Interflora Shares	9.1(f)
Leases	5.15(b)
Necessary Consent	2.6(a)
Neutral Firm	3.4(c)
Personal Information	5.17
Post-Closing Statement	3.4(a)
ProFlowers Estimated Current Assets	3.3(a)
ProFlowers Estimated Current Liabilities	3.3(a)
ProFlowers Final Current Assets	3.4(d)
ProFlowers Final Current Liabilities	3.4(d)
Proposed Allocation Statement	10.2(a)
Purchase Price	3.1
Purchased Assets	2.1(b)
Purchased Contracts	2.1(b)(v)
Purchased Intellectual Property	2.1(b)(vii)
Purchaser	Preamble
Purchaser Owed Amount	3.4(e)
Real Property	2.1(b)(ii)
Sale Motion	7.1

<b>Term</b>	<b>Section</b>
Schedule Completion Date	9.3(d)
Seller or Sellers	Preamble
Seller Owed Amount	3.4(e)
Seller Return	5.13(a)
Stalking Horse Order	7.1
Tangible Personal Property	2.1(b)(iv)
Termination Date	4.4(a)
Title Company	8.5(a)
Title Policy	8.5(a)
Transfer Taxes	10.1
WARN Act	5.10(a)(iii)

1.3 Other Definitional and Interpretive Matters.

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

(i) Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period will be excluded. If the last day for the giving of any notice or the performance of any act required or permitted under this Agreement is a day that is not a Business Day, then the time for the giving of such notice or the performance of such action will be extended to the next succeeding Business Day.

(ii) Contracts. Reference to any Contract means such Contract as amended or modified and in effect from time to time in accordance with its terms.

(iii) Dollars. Any reference in this Agreement to Dollars or \$ will mean U.S. dollars.

(iv) Schedules. All 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 Schedule but not otherwise defined therein will be defined as set forth in this Agreement.

(v) GAAP. Terms used herein which are defined in GAAP are, unless specifically defined herein, used herein as defined in GAAP.

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

(vii) Headings. The division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and will not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any Article, Section, Recital or Schedule are to the

corresponding Article, Section, Recital or Schedule of or to this Agreement unless otherwise specified.

(viii) Herein. The words such as “herein,” “hereinafter,” “hereof” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

(ix) Including. The word “including” or any variation thereof means “including, without limitation” and will not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(x) Law. Reference to any Law means such Law as amended, modified, codified, replaced or re-enacted, in whole or in part, and in effect from time to time, including any successor legislation thereto and any rules and regulations promulgated thereunder, and references to any section or other provision of a Law means that section or provision of such Law in effect from time to time and constituting the substantive amendment, modification, codification, replacement or re-enactment of such section or other provision.

(xi) Schedules. Any reference to a Schedule that is not attached to this Agreement on the Effective Date means such Schedule as agreed upon and described in Section 9.3(d).

(b) The Parties have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as jointly drafted by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

## II. PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

### 2.1 Purchase and Sale of Assets.

(a) On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser or one or more of its designees will purchase, acquire and accept from the applicable Seller, and each applicable Seller will sell, assign, transfer, convey and deliver to Purchaser or one or more of its designees, all of such Seller’s right, title and interest in, to and under the Purchased Assets, free and clear of all Liens (other than Liens created by Purchaser and Transferred Exceptions) and Excluded Liabilities.

(b) The term “Purchased Assets” means all of the properties, assets and rights of any Seller wherever situated or located, whether real, personal or mixed, whether tangible or intangible, whether identifiable or contingent, whether owned, leased, licensed, used or held for use, but in each case, only to the extent primarily used in the conduct of the Acquired Business, and whether or not reflected on the books and records of Sellers, existing as of the Closing, including the following:

- (i) all right, title and interest in and to the Owned Real Property;

- Property”);
- (ii) all right, title and interest in and to the Leased Real Property (together with the Owned Real Property, the “Real Property”);
  - (iii) all inventory that, as of the close of business on the Closing Date, is used or held for use primarily in the Acquired Business (the “Inventory”);
  - (iv) all fixtures, furniture, furnishings, equipment, leasehold improvements and other tangible personal property owned by a Seller or leased by a Seller, subject to the terms of the relevant lease, that are located on or at the Real Property, whether or not used or held for use in the Acquired Business (collectively, the “Tangible Personal Property”);
  - (v) all right, title and interest of Sellers now or hereafter existing, in, to and under the Contracts that (A) are set forth on Schedule 2.1(b)(v), and (B) are unexpired as of the Closing Date (including those Contracts that have been previously unexpired) (the “Purchased Contracts”);
  - (vi) all warranties, guarantees and similar rights related to the Purchased Assets, including warranties and guarantees made by suppliers, manufacturers and contractors under the Purchased Assets, and claims against suppliers and other third parties in connection with the Purchased Contracts;
  - (vii) all Intellectual Property relating primarily to the Acquired Business, including the Intellectual Property set forth on Schedule 2.1(b)(vii) (the “Purchased Intellectual Property”);
  - (viii) all originals and copies of all files and assignment documentation pertaining to existence, validity, availability, registrability, infringement, enforcement or ownership of any of the Purchased Intellectual Property and documentation of the development, conception or reduction to practice thereof, in each case, under any Seller’s possession or control;
  - (ix) all equity owned by Sellers in the entities set forth on Schedule 2.1(b)(ix);
  - (x) all accounts receivable (whether billed or unbilled), including all Credit Card Accounts Receivable and payment processor receivables, of Sellers arising primarily from the Acquired Business;
  - (xi) the telephone and fax numbers for the Acquired Business;
  - (xii) any outstanding promissory notes issued by members of the Florist Network to Sellers;
  - (xiii) all goodwill related to the Purchased Assets;
  - (xiv) all books, records, files, invoices, inventory records, product specifications, cost and pricing information, business plans and quality control records

and manuals, in each case primarily relating to any Purchased Asset, and all Acquired Business Information, including all data and other information stored in any format or media, including on hard drives, hard copy or other media primarily relating to any Purchased Asset, in each case to the extent permitted by applicable Laws;

(xv) all Company Permits and any permits to the extent required for performance by Purchaser under the Transition Services Agreement;

(xvi) the E-Commerce Platform;

(xvii) all customer data and information derived from customer purchase files and branded loyalty promotion programs and other similar information related to customer purchases, including personal information (such as name, address, telephone number, e-mail address, website and any other database information) and customer purchase history at a transaction level (including dollar amounts, dates, and items purchased, but excluding from the foregoing any credit card numbers or related customer payment source, social security numbers, or other information prohibited by applicable Laws) relating to customers of the Acquired Business, in each case, to the extent (w) owned by any Seller, (x) transferrable to Purchaser under applicable Law, (y) used or held for use by Sellers primarily in the conduct of the Acquired Business and (z) held in databases of Sellers related to the Acquired Business;

(xviii) all of Sellers' prepaid expenses relating to any of the Purchased Contracts;

(xix) insurance proceeds received by Sellers and insurance awards received by Sellers with respect to (x) the Real Property and (y) any of the other Purchased Assets that are not, in the case of this clause (y), in respect of any Excluded Liabilities;

(xx) all avoidance claims or causes of action against counterparties to Purchased Contracts arising under sections 544, 547, 548, 549 and 550 of the Bankruptcy Code and any similar state law (the "Avoidance Actions"), and all other claims or causes of action against counterparties to Purchased Contracts under any other provision of the Bankruptcy Code or applicable Laws, including all actions relating to vendors and service providers used in the Acquired Business, except for claims related to Excluded Liabilities; provided, that neither the Purchaser, nor any Person claiming by, through or on behalf of the Purchaser (including by operation of law, sale, assignment, conveyance or otherwise) will pursue, prosecute, litigate, institute or commence an action based on, assert, sell, convey, assign or file any claim that relates to the Avoidance Actions;

(xxi) all Sellers' e-mail addresses under the domain names included in the Purchased Intellectual Property to the extent such e-mail addresses exist; and

(xxii) all rights, claims, causes of action and credits owned by a Seller to the extent relating to any Purchased Asset or Assumed Liability, including any such item arising under any guarantee, warranty, indemnity, right of recovery, right of setoff or

similar right in favor of such Seller in respect of any Purchased Asset or Assumed Liability.

2.2 Excluded Assets. Nothing herein contained will be deemed to constitute an agreement to sell, transfer, assign or convey the Excluded Assets to Purchaser, and Sellers will retain all right, title and interest to, in and under the Excluded Assets. The term "Excluded Assets" means all assets, properties and rights of any Seller other than the Purchased Assets, including:

- (a) all assets related exclusively to the Retained Business;
- (b) all Contracts that are not Purchased Contracts;
- (c) any interest in real property other than the Real Property (including the leases set forth on Schedule 2.2(c));
- (d) all rights that accrue or will accrue to any Seller or any of their Subsidiaries pursuant to this Agreement;
- (e) the minute books and similar corporate records of any Seller;
- (f) except as set forth in Section 2.1(b)(xix), all insurance policies of any Seller or any of their Subsidiaries, and all rights to applicable claims and proceeds thereunder to the extent such applicable claims and/or proceeds thereunder relate to any Retained Business, Excluded Liability or Excluded Asset;
- (g) all prepaid expenses related to Contracts that are not Purchased Contracts; and
- (h) the sponsorship of, and any assets, properties, interests, or other rights of any Seller or any of their Affiliates under or with respect to, all Benefit Plans; and
- (i) the tangible assets previously used in the ProFlowers business exclusively for physical order fulfillment.

2.3 Assumption of Liabilities. On the terms and subject to the conditions set forth in this Agreement and the Approval Order, from and after the Closing, Purchaser will assume or will cause one or more of its designees to assume, effective as of the Closing, and will timely perform and discharge in accordance with their respective terms or such other terms as the Purchaser may be able to negotiate with the Person to whom such Liability is owed, the following Liabilities existing as of the Closing Date and no other Liabilities of Sellers or any of their Affiliates (collectively, the "Assumed Liabilities"):

- (a) all Liabilities from the ownership or operation of the Purchased Assets by Purchaser solely to the extent such Liabilities arise after the Closing, but excluding any such Liabilities that (i) accrued prior to the Closing (except as otherwise expressly provided in this Section 2.3) or (ii) arise directly from omissions, actions, or inactions of Sellers and/or any of

their Affiliates prior to Closing (it being understood that the Liabilities described in clauses (i) and (ii) are Excluded Liabilities, except as otherwise expressly provided in Section 2.3(d));

- (b) any Assumed Cure Costs that Purchaser is required to pay pursuant to Section 2.5 in the specific dollar amounts set forth on Schedule 2.1(b)(v) as such Schedule may be revised before Closing to reflect the amount of such Cure Costs as of the Closing;
- (c) all Liabilities of Sellers under the Purchased Contracts that are Current Liabilities or ProFlowers Current Liabilities;
- (d) all Current Liabilities and ProFlowers Current Liabilities;
- (e) any payments due and owing to a member of the Florist Network that are Current Liabilities or ProFlowers Current Liabilities;
- (f) all Liabilities of Sellers with respect to Groupon coupons and gift certificates related to the Acquired Business and all Liabilities for any unredeemed refund amounts issued to customers of the Acquired Business, in each case that are Current Liabilities or ProFlowers Current Liabilities;
- (g) all Liabilities in respect of wages and benefits of Transferred Employees arising from Purchaser's employment of Transferred Employees and to be performed only from and after the Closing Date (other than any such Liabilities that are Retained Taxes);
- (h) other than Transfer Taxes, any Taxes relating to the ownership or operation of the Purchased Assets or the Acquired Business that are not Retained Taxes;
- (i) any Liability owed to a Retained Business as a result of an order received and processed by an Acquired Business, but fulfilled by a Retained Business, in each case that is a Current Liability;
- (j) 100% of the Transfer Taxes set forth on Schedule 2.3(j);
- (k) the Liabilities set forth on Schedule 2.4(e) that are Current Liabilities or ProFlowers Current Liabilities; and
- (l) any Liability that is the subject of an insurance policy, but only to the extent such insurance policy is a Purchased Contract.

2.4 Excluded Liabilities. Notwithstanding anything to the contrary set forth herein, the Parties expressly acknowledge and agree that none of Purchaser, any Affiliates of Purchaser, or any assignee of Purchaser will assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for Liabilities of any Seller or any of their respective Affiliates, whether or not related to the Acquired Business or Purchased Assets and whether existing on the Closing Date or arising thereafter, including on the basis of any Law imposing successor or transferee liability or otherwise by operation of Law or by Contract, other than the Assumed Liabilities and the obligations of Purchaser under this Agreement (all such Liabilities

that Purchaser is not assuming being referred to collectively as the “Excluded Liabilities”). The Excluded Liabilities include the following Liabilities:

- (a) all Liabilities to the extent arising out of or relating to the operation or ownership of or conduct by Sellers or any of their Affiliates of any Retained Business or the Excluded Assets;
- (b) all Liabilities to the extent arising out of, relating to or in connection with any Legal Proceeding, including any pending or threatened Legal Proceeding against any Seller or relating to the Acquired Business;
- (c) all Liabilities arising out of, relating to or in connection with Sellers’ Contracts and Contracts involving any Seller or their Affiliates, other than the Assumed Liabilities;
- (d) all Liabilities, including any Legal Proceedings, relating to any employees of any Seller or any of their Affiliates, or any WARN Act payments; provided, that any Liability relating to any Transferred Employee will be an Assumed Liability to the extent set forth on Schedule 2.4(d);
- (e) all Liabilities of any Seller or any Affiliate of any Seller under any Benefit Plan; provided, that any Liability relating to any Transferred Employee will be an Assumed Liability to the extent set forth on Schedule 2.4(e);
- (f) all Liabilities to any broker, finder or agent or similar intermediary for any broker’s fee, finders’ fee or similar fee or commission relating to the Transactions for which any Seller or its Affiliates are responsible;
- (g) Liabilities relating to any Excluded Asset;
- (h) Except as set forth in Section 2.3(l), Liabilities accrued, or arising directly from omissions or inactions, prior to Closing and any Liabilities that are caused by any actions or inactions of any Seller and/or any of its Subsidiaries or any of their Affiliates prior to the Closing, including any obligations arising under Environmental Laws or obligations for infringement, misappropriation or violation of any third party Intellectual Property;
  - (i) other than Section 2.3(f), all Liabilities for any gift cards of the Acquired Business;
  - (j) any Retained Taxes;
  - (k) all costs and expenses incurred by any Seller in connection with the consummation of the Transactions;
  - (l) any administrative expenses under section 503(b)(9) of the Bankruptcy Code that do not constitute Assumed Cure Costs; and

(m) any accident, loss, injury, act or occurrence that occurred prior to the Closing Date, including matters that are not known until after the Closing.

2.5 Cure Amounts. At the Closing and pursuant to Section 365 of the Bankruptcy Code, Sellers will assume the Purchased Contracts (to the extent not previously assumed) and, subject to the terms herein, assign the Purchased Contracts to Purchaser, and Purchaser, subject to the terms herein, will assume the Purchased Contracts. All Cure Costs with respect to the Purchased Contracts (the "Assumed Cure Costs") will be paid by Purchaser (to the extent not paid by Sellers prior to Closing), as and when finally determined by the Bankruptcy Court or as agreed between the Purchaser and the non-debtor counterparty to the Purchased Contract, pursuant to the procedures set forth in the Approval Order, and not by Sellers, and Sellers will have no liability for any Assumed Cure Costs. Sellers agree that they will, as promptly as practicable, take such actions as are reasonably necessary to obtain an Order of the Bankruptcy Court providing for the assumption and assignment of the Purchased Contracts. Sellers will serve on all non-Seller counterparties to all Contracts set forth on Schedule 5.6(a), or otherwise designated by Purchaser, a notice stating that Sellers are or may (as applicable) be seeking the assumption and assignment of such Contracts and the proposed Cure Costs amount for each Contract, and will notify such non-Seller counterparties of the deadline for objecting to the Cure Costs relating to such Contracts, if any, which deadline will be not less than three Business Days prior to the sale hearing date designated in the Bidding Procedures Order.

2.6 Non-Assignment of Assets.

(a) Notwithstanding any other provision of this Agreement to the contrary, this Agreement will not constitute an agreement to assign or transfer and will not effect the assignment or transfer of any Purchased Asset (including any Purchased Contract) if (i) (A) prohibited by applicable Law, (B) an attempted assignment or transfer thereof would reasonably likely to subject Purchaser, its Affiliates or any of its or their respective Representatives to civil or criminal Liability or (C) an attempted assignment or transfer thereof, without the approval, authorization or consent of, or granting or issuance of any license or permit by, any Person (including, without limitation, expiration or early termination of the applicable waiting period under the HSR Act), would constitute a breach, default or violation thereof or of any Law or Order (each such action, a "Necessary Consent"), or in any way adversely affect the rights of Purchaser thereunder or (ii) the Bankruptcy Court has not entered an Order (including, for the avoidance of doubt, the Approval Order) approving such assignment or transfer. In such event, such assignment or transfer is subject to such Necessary Consent being obtained and Sellers and Purchaser will use their respective reasonable best efforts to obtain the Necessary Consents with respect to any such Purchased Asset (including any Purchased Contract) or any claim or right or any benefit arising thereunder for the assignment or transfer thereof to Purchaser as Purchaser may reasonably request; provided, however, that Sellers will not be obligated to pay any consideration therefor to any third party from whom consent or approval is requested or to initiate any litigation or Legal Proceedings to obtain any such consent or approval. If such Necessary Consent is not obtained, or if an attempted assignment or transfer thereof would give rise to any of the circumstances described in clauses (i) or (ii) of the first sentence of this Section 2.6(a), be ineffective or would adversely affect the rights of Purchaser to such Purchased Asset following the Closing, (x) Sellers and Purchaser will, and will cause their respective Affiliates to, (1) use reasonable best efforts (including cooperating with one another to obtain

such Necessary Consents, to the extent feasible) as may be necessary so that Purchaser would obtain the benefits and assume the obligations thereunder in accordance with this Agreement, (2) complete any such assignments or transfers as soon as reasonably practicable, and (3) upon receipt of any applicable Necessary Consents, to transfer or assign the applicable Purchased Asset to Purchaser, and (y) Sellers will, and will cause their respective Affiliates to, cooperate with Purchaser in good faith without further consideration in any arrangement reasonably acceptable to Purchaser and Sellers intended to provide Purchaser with the benefit of any such Purchased Assets.

(b) Subject to Section 2.6(a), if after the Closing (i) Purchaser or its designee holds any Excluded Assets or Excluded Liabilities or (ii) any Seller holds any Purchased Assets or Assumed Liabilities, Purchaser or the applicable Seller will promptly transfer (or cause to be transferred) such assets or assume (or cause to be assumed) such Liabilities to or from (as the case may be) the other Party. Prior to any such transfer, the Party receiving or possessing any such asset will hold it in trust for such other Party. Without limiting the generality of the foregoing, in the event that any Seller receives any payment from a third party after the Closing Date pursuant to any of the Purchased Contracts (or with respect to the operation by Purchaser of the Acquired Business or any Purchased Asset during the post-Closing period) and to the extent such payment is not in respect of an Excluded Asset or a Excluded Liability, Sellers will forward such payment, as promptly as practicable but in any event within 30 days after such receipt, to Purchaser and notify such third party to remit all future payments (in each case, to the extent such payment is in respect of any post-Closing period with respect to the Acquired Business and is not in respect of an Excluded Asset or an Excluded Liability) pursuant to the Purchased Contracts to Purchaser. Similarly, in the event that Purchaser receives any payment from a third party after the Closing on account of, or in connection with, any Excluded Asset, Purchaser will forward such payment, as promptly as practicable but in any event within 30 days after such receipt, to Sellers and notify such third party to remit all future payments on account of or in connection with the Excluded Assets to Sellers.

(c) Excluding or Adding Purchased Contracts. Purchaser will have the exclusive right to notify Sellers in writing of (i) any Purchased Contract that it does not wish to assume, or (ii) any Contract to which any Seller is a party and that is (A) related to the license or use by a third party, or rights of any third party with respect to, the Purchased Intellectual Property, or (B) related primarily to the Acquired Business (and in each case has not been rejected by any Seller) that Purchaser wishes to add as an Purchased Contract, in each case, up to three Business Days prior to the Closing. Any such previously considered Purchased Contracts that Purchaser no longer wishes to assume will be automatically deemed to be removed from the Schedules related to Purchased Contracts and automatically deemed not to be Purchased Contracts, in each case, without any adjustment to the Purchase Price, and to be an Excluded Asset, and any such previously considered Contracts that Purchaser wishes to assume as Purchased Contracts will be automatically deemed to be, and to be added to the Schedules related to, Purchased Contracts, and assumed by Sellers to sell and assign to Purchaser, without any adjustment to the Purchase Price. If any Contract that may be assigned by a Seller to Purchaser pursuant to Sections 363 and 365 of the Bankruptcy Code is added to the list of Purchased Contracts in accordance with this Section 2.6(c), then the applicable Seller will take such steps as are reasonably necessary to cause such Contract to be assumed and assigned to Purchaser as promptly as possible at or following the Closing, subject to provision by Purchaser

of adequate assurance as may be required under Section 365 of the Bankruptcy Code and payment by Purchaser of the Assumed Cure Costs in respect of such Purchased Contracts, pursuant to and in accordance with Section 365 of the Bankruptcy Code and the Approval Order. Sellers will not reject or seek to reject any Contract that is a Purchased Contract without the consent of Purchaser.

2.7 Further Conveyances and Assumptions. From time to time following the Closing, Sellers and Purchaser will, and will cause their respective Affiliates to, execute, acknowledge and deliver all such further conveyances, notices, assumptions, assignments, releases and other instruments, and will take such further actions, as may be reasonably necessary or appropriate to assure fully to Purchaser and its respective successors or assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Purchaser under this Agreement and to assure fully to each Seller and its Affiliates and their respective successors and assigns, the assumption of the liabilities and obligations assumed by Purchaser under this Agreement, and to otherwise make effective the Transactions; provided, that nothing in this Section 2.7 will require Purchaser or any of its Affiliates to assume any Liabilities other than the Assumed Liabilities.

### III. CONSIDERATION; ADJUSTMENT

3.1 Consideration. The aggregate consideration for the Purchased Assets (the "Purchase Price"), as adjusted pursuant to and in accordance with Section 3.4, will be: (a) \$95,000,000 in cash (the "Cash Amount"); plus (b) the assumption of the Assumed Liabilities.

3.2 Purchase Price Deposit. Sellers and Purchaser have negotiated and executed the Escrow Agreement and Purchaser has deposited a sum of \$9,500,000 (the "Deposit Amount") into the Escrow Account, which will be held in the Escrow Account and will be either delivered to Purchaser or paid to the Company as follows: (a) if the Closing occurs, the Deposit Amount, less the Adjustment Escrow Amount, will be applied towards the Cash Amount payable by Purchaser pursuant to Section 3.3, (b) if this Agreement is terminated by the Company pursuant to Section 4.4(d), then the Deposit Amount will promptly be released to the Company (and such Deposit Amount will be deemed fully earned by the Company as compensation and consideration for entering into this Agreement), or (c) if this Agreement is terminated for any reason other than by Sellers pursuant to Section 4.4(d), then the Deposit Amount will promptly be released to Purchaser.

#### 3.3 Pre-Closing Statement; Payment of Purchase Price.

(a) The Company will prepare and deliver to Purchaser not less than five Business Days prior to the Closing Date a statement (the "Closing Statement") setting forth the Company's good faith estimate of (i) Current Assets ("Estimated Current Assets"), (ii) Current Liabilities ("Estimated Current Liabilities"), (iii) ProFlowers Current Assets ("ProFlowers Estimated Current Assets"), and (iv) ProFlowers Current Liabilities ("ProFlowers Estimated Current Liabilities"), which will be calculated in accordance with and using the methodologies set forth on Schedule 1 (with respect to clauses (i) and (ii)) and Schedule 1A (with respect to clauses (iii) and (iv)). Notwithstanding the foregoing, the Parties have agreed that for purposes of this Agreement and notwithstanding the amounts set forth on the Closing Statement, (A) the

Estimated Current Liabilities will be the greater of (1) \$31,199,000 and (2) the estimate of Current Liabilities set forth on the Closing Statement, and (B) the ProFlowers Estimated Current Assets will be the lesser of (1) \$5,299,000 and (2) the estimate of ProFlowers Current Assets set forth on the Closing Statement. The Sellers agree to provide reasonable access to accounting records, systems and personnel and Purchaser agrees to coordinate with Sellers to minimize disruptions to the operations.

(b) At the Closing, (i) Purchaser will pay to Sellers, in immediately available funds to the account or accounts designated by the Company, (A) the Cash Amount plus (B) the amount, if any, by which the Estimated Current Assets exceed the Target Current Assets, less (C) the amount, if any, by which the Target Current Assets exceed the Estimated Current Assets, less (D) the amount by which Estimated Current Liabilities are greater than the Target Current Liabilities, less (E) the amount, if any, by which the ProFlowers Target Current Assets exceed the ProFlowers Estimated Current Assets, less, (F) the amount, if any, by which the ProFlowers Estimated Current Liabilities exceed the ProFlowers Target Current Liabilities, less (G) the Deposit Amount (the “Closing Payment”) and (ii) the Deposit Amount, less the Adjustment Escrow Amount, will be released to Sellers. Sellers and Purchaser will execute and deliver to U.S. Bank a joint instruction directing (i) payment to Sellers of an amount equal to the Deposit Amount less the Adjustment Escrow Amount and (ii) transfer to the Escrow Account a portion of the Deposit Amount equal to the Adjustment Escrow Amount.

#### 3.4 Post-Closing Adjustment.

(a) As promptly as practicable, but in no event later than 120 days after the Closing Date, Purchaser will prepare and deliver to Sellers a statement (the “Post-Closing Statement”) setting forth Purchaser’s good faith calculation of Current Assets, Current Liabilities, ProFlowers Current Assets and ProFlowers Current Liabilities. The Post-Closing Statement will be prepared in accordance with and using the methodologies set forth on Schedule 1 and Schedule 1A, as applicable. The Post-Closing Statement will also set forth in reasonable detail the basis for such determination as well as Purchaser’s calculation of the amount required to be paid pursuant to Section 3.4(d). Purchaser will provide to Sellers such additional back-up or supporting data relating to the preparation of the Post-Closing Statement and the calculation of Current Assets, Current Liabilities, ProFlowers Current Assets and ProFlowers Current Liabilities as Sellers may reasonably request and Sellers and their Representatives will be permitted to review Purchaser’s work papers and will have reasonable access to Purchaser’s personnel and relevant Representatives in connection with the preparation of the Post-Closing Statement and Purchaser’s calculation of Current Assets, Current Liabilities, ProFlowers Current Assets and ProFlowers Current Liabilities. The Parties will not introduce different judgments, accounting methods, policies, principles, practices, procedures, classifications or estimation methodologies for the purpose of determining the Current Assets, Current Liabilities, ProFlowers Current Assets and ProFlowers Current Liabilities under this paragraph from those used in Schedule 1 and Schedule 1A, as applicable. Without limiting the foregoing, only the accounts identified on Schedule 1 are to be included in the Current Assets or the Current Liabilities and only the accounts identified on Schedule 1A are to be included in the ProFlowers Current Assets or the ProFlowers Current Liabilities. For the avoidance of doubt, no new asset accounts should be included and no liability accounts should be excluded on Schedule 1 or Schedule 1A, to the extent the asset accounts are Purchased Assets or the liability accounts are Assumed Liabilities.

If Purchaser fails to deliver the Post-Closing Statement within 120 days following the Closing Date, then the Estimated Current Assets, the ProFlowers Estimated Current Assets and the ProFlowers Estimated Current Liabilities will be final, not subject to further adjustment and will be final and binding on the Parties, and the Estimated Current Liabilities will be deemed to be \$24,000,000.

(b) Sellers may, within 30 days following receipt of the Post-Closing Statement, provide Purchaser with written notice (a “Dispute Notice”) of their disagreement with the calculation of Current Assets, Current Liabilities, ProFlowers Current Assets and ProFlowers Current Liabilities reflected on the Post-Closing Statement. If no such notice is delivered to Purchaser by Sellers within such period, the Post-Closing Statement and the calculation of Current Assets, Current Liabilities, ProFlowers Current Assets and ProFlowers Current Liabilities reflected thereon will be deemed final and binding on the Parties. A Dispute Notice will set forth Sellers’ determination of Current Assets, Current Liabilities, ProFlowers Current Assets and ProFlowers Current Liabilities in reasonable detail and the basis for such determination. Purchaser and Sellers will endeavor in good faith to resolve any such disagreement within 15 days following the delivery by Sellers of such Dispute Notice. Any resolution (including any partial resolution) of such a disagreement will be set forth in a writing executed by Purchaser and Sellers, and any such resolution will be final and binding on the Parties.

(c) If Purchaser and Sellers are unable to completely resolve any such disagreement within the 15-day period referred to in Section 3.4(b), the unresolved issues (and only such unresolved issues) (such unresolved issues collectively, the “Dispute”) will be promptly submitted for resolution to BDO USA, LLP, or, if BDO USA, LLP is unwilling or unable to act, a recognizable, reputable and impartial certified public accounting firm that is mutually acceptable to Purchaser and Sellers (BDO USA, LLP or such other accounting firm, as applicable, the “Neutral Firm”). The Neutral Firm will be instructed to resolve any outstanding Dispute; provided, that the Neutral Firm’s determination of any amount subject to the Dispute will be no (x) less than the lesser of the amounts claimed by Purchaser and Sellers, respectively, or (y) greater than the greater of the amounts claimed by Purchaser and Sellers, respectively. The Parties will instruct the Neutral Firm to render its determination with respect to the entire Dispute within 30 days of the referral of the Dispute thereto, and the determination of the Neutral Firm will be final and binding upon the Parties. The fees and expenses of the Neutral Firm will be borne by Purchaser, on the one hand, and Sellers, on the other hand, in the same proportion that the dollar amount subject to Dispute which is not resolved in favor of Purchaser and Sellers, as applicable, bears to the total dollar amount subject to the Dispute resolved by the Neutral Firm. For illustration purposes only, if the total amount of the Dispute is \$100,000, and Sellers are awarded \$75,000 by the Neutral Firm, Sellers will bear 25% and Purchaser will bear 75% of the Neutral Firm’s fees and expenses.

(d) Within two Business Days after the date on which Current Assets, Current Liabilities, ProFlowers Current Assets and ProFlowers Current Liabilities are finally determined pursuant to Section 3.4(b) or 3.4(c), as the case may be (“Final Current Assets” and “Final Current Liabilities”, “ProFlowers Final Current Assets” and “ProFlowers Final Current Liabilities”, respectively), Purchaser and the Company will jointly determine the amount of the Closing Payment had the Final Current Assets, the Final Current Liabilities, the ProFlowers

Final Current Assets and the ProFlowers Final Current Liabilities, respectively, been used to calculate the Closing Payment pursuant to Section 3.3(b) (the result of such adjustments being the “Final Cash Purchase Price”).

(e) Owed Amounts. Any amount owed by Purchaser to Sellers pursuant to and after giving effect to this Section 3.4(e) is referred to as the “Purchaser Owed Amount”. Any amount owed by Sellers to Purchaser pursuant to and after giving effect to this Section 3.4(e) is referred to as the “Seller Owed Amount”.

(i) If the Final Current Assets are less than the Estimated Current Assets, the positive difference between the Final Current Assets and the Estimated Current Assets will be owed by Sellers to Purchaser and will be added to the Seller Owed Amount. If the Final Current Assets are greater than the Estimated Current Assets, the positive difference between the Final Current Assets and the Estimated Current Assets will be owed by Purchaser to Sellers and will be added to the Purchaser Owed Amount.

(ii) If the Final Current Liabilities are greater than the Estimated Current Liabilities, the positive difference between the Final Current Liabilities and the Estimated Current Liabilities will be owed by Sellers to Purchaser and will be added to the Seller Owed Amount. If the Estimated Current Liabilities are greater than the Final Current Liabilities, an amount equal to the lesser of (A) \$3,000,000 and (B) the positive difference between the Final Current Liabilities and the Estimated Current Liabilities will be owed by Purchaser to Sellers and will be added to the Purchaser Owed Amount.

(iii) If the ProFlowers Final Current Assets are less than the ProFlowers Estimated Current Assets, the positive difference between the ProFlowers Final Current Assets and the ProFlowers Estimated Current Assets will be owed by Sellers to Purchaser and will be added to the Seller Owed Amount. If the ProFlowers Final Current Assets are greater than the ProFlowers Estimated Current Assets, an amount equal to the lesser of (A) the ProFlowers Target Current Assets and (B) the positive difference between the ProFlowers Final Current Assets and the ProFlowers Estimated Current Assets will be owed by Purchaser to Sellers and will be added to the Purchaser Owed Amount.

(iv) If the ProFlowers Final Current Liabilities are greater than the ProFlowers Estimated Current Liabilities, the positive difference between the ProFlowers Final Current Liabilities and the ProFlowers Estimated Current Liabilities will be owed by Sellers to Purchaser and will be added to the Seller Owed Amount. If the ProFlowers Estimated Current Liabilities are greater than the ProFlowers Final Current Liabilities, the positive difference between the ProFlowers Final Current Liabilities and the ProFlowers Estimated Current Liabilities will be owed by Purchaser to Sellers and will be added to the Purchaser Owed Amount.

(f) The Purchaser Owed Amount and the Seller Owed Amount will, after giving effect to all of the calculations described in Section 3.4(e), be offset against each other. After giving effect to such offset:

(i) if the Sellers owe any amounts pursuant to Section 3.4(e), then within two Business Days of the date on which the Final Current Assets, the Final Current Liabilities, the ProFlowers Final Current Assets and the ProFlowers Final Current Liabilities are determined, Purchaser and Sellers will deliver joint instructions to U.S. Bank to deliver to Purchaser from the Escrow Account the amounts owed by Sellers pursuant to Section 3.4(e) by wire transfer of immediately available funds;

(ii) if the amount described in Section 3.4(f)(i) is more than the Adjustment Escrow Amount, then Sellers will pay Purchaser the amount of such excess in cash by wire transfer of immediately available funds;

(iii) if the amount described in Section 3.4(f)(i) is less than the Adjustment Escrow Amount, then Purchaser and Sellers will deliver joint instructions to U.S. Bank to deliver to Sellers the difference in cash by wire transfer of immediately available funds;

(iv) if the Purchaser owes any amounts pursuant to Section 3.4(e), then within two Business Days of the date on which the Final Current Assets, the Final Current Liabilities, the ProFlowers Final Current Assets and the ProFlowers Final Current Liabilities are determined, (A) Purchaser and Sellers will execute joint instructions to U.S. Bank to deliver to Sellers the Adjustment Escrow Amount in cash by wire transfer of immediately available funds, and (B) Purchaser will pay Sellers the amounts owed by Purchaser pursuant to Section 3.4(e) by wire transfer of immediately available funds.

(g) Any payment pursuant to Section 3.4(f) will be treated for all Tax purposes as a purchase price adjustment, unless otherwise required by applicable Law.

(h) Neither any Seller nor Purchaser will take (and each will cause its Affiliates not to take) any action with respect to the accounting books and records of the Acquired Business, or the items reflected thereon, on which the Post-Closing Statement is to be based, that would frustrate the review and adjustment procedure set forth in this Section 3.4.

3.5 Withholding. Notwithstanding anything in this Agreement to the contrary, Purchaser and its agents and designees will be entitled to withhold and deduct from the consideration otherwise payable pursuant to this Agreement such amounts as any of Purchaser or its designees or agents, as applicable, are required to deduct and withhold with respect to the making of such payment under any provision of Tax Law; provided, that Purchaser will use commercially reasonable efforts to notify the recipient of the withholding obligation (other than with respect to any withholding pursuant to Section 1445 of the Code) and the amount to be withheld at least five days prior to the date such amount is payable under this Agreement and provide the recipient with a reasonable opportunity to provide any forms or documentation necessary to avoid or minimize withholding. To the extent that amounts are so withheld and paid over to the appropriate Tax Authority, such amounts will be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding were made.

#### IV. CLOSING AND TERMINATION

4.1 Closing Date. Subject to the satisfaction of the conditions set forth in Sections 9.1, 9.2 and 9.3 hereof (or the waiver thereof by the Party entitled to waive that condition), the closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities provided for in Article II (the "Closing") will take place at Jones Day, 77 W. Wacker Dr. Suite 3500 Chicago, Illinois 60601 at 10:00 a.m. (Central time) on the date that is four Business Days following the satisfaction or waiver of the conditions set forth in Sections 9.1, 9.2 and 9.3 (other than conditions that by their nature are to be first satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), or at such other place and time as the Parties may designate in writing. The date on which the Closing is held is referred to in this Agreement as the "Closing Date."

4.2 Deliveries by Sellers. At the Closing, Sellers will deliver to Purchaser:

- (a) one or more duly executed bills of sale in a form to be reasonably agreed upon by the Parties;
- (b) (i) one or more duly executed assignment and assumption agreements, in a form to be agreed upon by the Parties and (ii) duly executed assignments to Purchaser of the registered Trademarks and Trademark applications and registered copyrights and copyright applications included in the Purchased Intellectual Property, in each case, in a form suitable for recording in the U.S. Patent and Trademark Office (and equivalent offices in jurisdictions outside the United States) (the "Assignment and Assumption Agreements");
- (c) the officer's certificate required to be delivered pursuant to Sections 9.1(a) and 9.1(b);
- (d) a non-foreign affidavit from each Seller dated as of the Closing Date, sworn under penalty of perjury and in form and substance reasonably satisfactory to Purchaser and as required under Treasury Regulations issued pursuant to Section 1445 of the Code stating that it is not a "foreign person" as defined in Section 1445 of the Code;
- (e) by the Seller of the Owned Real Property, a grant deed (or similar deed required in a particular jurisdiction where the Owned Real Property is located) to the Owned Real Property in recordable form, duly executed by the applicable Seller; and
- (f) stock certificate(s) representing ownership of the Interflora Shares, together with duly executed stock power(s), in the name of Purchaser or its designee;
- (g) all other deeds, endorsements, assignments, company seals, instruments of transfer and other instruments of conveyance reasonably requested by Purchaser or required to convey and assign the Purchased Assets to Purchaser and vest title therein in Purchaser free and clear of all Liens (other than Transferred Exceptions).

4.3 Deliveries by Purchaser. At the Closing, Purchaser will deliver to the Company:

- (a) the consideration specified in Section 3.1, as adjusted pursuant to Section 3.3;
- (b) the officer's certificate required to be delivered pursuant to Sections 9.2(a) and 9.2(b);
- (c) a duly executed copy of an intellectual property license from Purchaser in a form to be agreed between Purchaser and Seller or its Affiliate;
- (d) a duly executed copy of the transition services agreement described in Section 8.10; and
- (e) all such other documents, instruments and certificates, reasonably requested by Sellers, to evidence the assumption by Purchaser of the Assumed Liabilities.

4.4 Termination of Agreement. This Agreement may be terminated prior to the Closing as follows:

(a) by Purchaser or the Company, if:

(i) the Closing has not occurred by 5:00 p.m. Central time on August 26, 2019 (the "Termination Date"), which date may be extended pursuant to Sections 4.4(c) and 4.4(d)(i); provided, however, that if the Closing has not occurred on or before the Termination Date due to a breach of any representations, warranties, covenants or agreements contained in this Agreement (A) by Purchaser that has resulted in any of the conditions set forth in Sections 9.2 or 9.3 not being satisfied by the Termination Date, then Purchaser may not terminate this Agreement pursuant to this Section 4.4(a) or (B) by any Seller that has resulted in any of the conditions set forth in Section 9.1 or 9.3 not being satisfied by the Termination Date, then the Company may not terminate this Agreement pursuant to this Section 4.4(a); or

(ii) [Intentionally deleted.]

(b) by mutual written consent of the Company and Purchaser.

(c) by Purchaser; provided, that Purchaser is not then in breach of any representation, warranty, covenant or agreement contained in this Agreement that would result in a failure of a condition set forth in Sections 9.2 or 9.3.

(i) if (x) Sellers breach any representation or warranty or any covenant or agreement contained in this Agreement, (y) such breach would result in a failure of a condition set forth in Sections 9.1 or 9.3 or breach of Section 4.2 and (z) such breach has not been cured within 10 Business Days after the giving of written notice by Purchaser to the Company of such breach; provided, further, that in the event that Purchaser provides such written notice to the Company less than 10 Business Days before the Termination Date, then the Termination Date will be extended until the end of the 10 Business Day cure period set forth in this Section 4.4(c)(i); or

(ii) if (x) the Stalking Horse Order and the Bidding Procedures Order are not entered by the Bankruptcy Court on or before July 8, 2019; or (y) the Approval Order is not entered by the Bankruptcy Court on or before August 12, 2019.

(d) by the Company; provided, that no Seller is then in breach of any representation or warranty (but only after the Schedule Completion Date), covenant or agreement contained in this Agreement that would result in a failure of a condition set forth in Sections 9.1 or 9.3,

(i) if (x) Purchaser breaches any representation or warranty or any covenant or agreement contained in this Agreement, (y) such breach would result in a failure of a condition set forth in Sections 9.2 or 9.3 or breach of Section 4.1 and (z) such breach has not been cured within 10 Business Days after the giving of written notice by the Company to Purchaser of such breach; provided, further, that in the event that the Company provides such written notice to Purchaser less than 10 Business Days before the Termination Date, then the Termination Date will be extended until the end of the 10 Business Day cure period set forth in this Section 4.4(d)(i); or

(ii) if all of the conditions set forth in Sections 9.1 and 9.3 have been satisfied (other than those conditions that by their nature can only be satisfied at the Closing), Sellers have given written notice to Purchaser that they are prepared to consummate the Closing and Purchaser fails to consummate the Closing within ten Business Days after the date that the Closing should have occurred pursuant to Section 4.1.

(e) by the Company or Purchaser, if there is in effect a final non-appealable Order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Transactions; it being agreed that the Parties will promptly appeal and use reasonable best efforts to seek to overturn any adverse determination which is not non-appealable and pursue such appeal with reasonable diligence unless and until this Agreement is terminated pursuant to this Section 4.4.

(f) automatically, upon the consummation of an Alternative Transaction, in each case subject to Purchaser's right to payment of the Expense Reimbursement Amount and Break-Up Fee in accordance with Section 4.6.

(g) by the Company or Purchaser, if the Bankruptcy Case is dismissed or converted to a case or cases under Chapter 7 of the Bankruptcy Code, or if a trustee or examiner with expanded powers to operate or manage the financial affairs or reorganization of Sellers is appointed in the Bankruptcy Case.

(h) [Intentionally deleted.]

4.5 Procedure Upon Termination. In the event of termination pursuant to Section 4.4 (other than Section 4.4(f), under which termination will take place automatically), the terminating Party will give written notice thereof to the other Party or Parties, and this Agreement will terminate as described in Section 4.6, and the purchase of the Purchased Assets

and assumption of the Assumed Liabilities hereunder will be abandoned, without further action by Purchaser or any Seller.

4.6 Effect of Termination; Expense Reimbursement Amount; Break-Up Fee.

(a) In the event that this Agreement is terminated as provided herein, then each of the Parties will be relieved of its duties and obligations arising under this Agreement after the date of such termination and there will be no Liability or obligation on Purchaser, any Seller or any of their respective Representatives, except as specifically set forth in this Section 4.6; provided, however, that the provisions of Section 3.2, this Section 4.6, and Article XI (other than Section 11.3) and, to the extent necessary to effectuate the foregoing enumerated provisions, Article I, will survive any such termination and will be enforceable hereunder; provided, further, that nothing in this Section 4.6 will be deemed to release any Party from Liability for any breach of this Agreement prior to termination and nothing in this Section 4.6 will be deemed to interfere with Sellers' rights to retain the Deposit Amount or Sellers' obligation to return the Deposit Amount to Purchaser, in each case as provided in Section 3.2.

(b) Notwithstanding Section 4.6(a), (i) if this Agreement is terminated other than pursuant to Sections 4.4(b), 4.4(d) or 4.4(f) and (ii) at the time of such termination, Purchaser is not then in material breach of any of its representations, warranties, covenants or agreements contained in this Agreement that would result in a failure of a condition set forth in Sections 9.2 or 9.3, then Sellers will pay the Expense Reimbursement Amount to Purchaser by wire transfer of immediately available funds, without further order of the Bankruptcy Court, within three Business Days following such termination of this Agreement.

(c) Notwithstanding Section 4.6(a), (i) if this Agreement is terminated pursuant to Section 4.4(f) and (ii) at the time of such termination, Purchaser is not then in material breach of any of its representations, warranties, covenants or agreements contained in this Agreement that would result in a failure of a condition set forth in Sections 9.2 or 9.3, then Sellers will pay the Break-Up Fee to Purchaser by wire transfer of immediately available funds, without further order of the Bankruptcy Court, concurrently with the consummation of any Alternative Transaction.

(d) Sellers will pay the Expense Reimbursement Amount to Purchaser by wire transfer of immediately available funds, without further order of the Bankruptcy Court, within three Business Days following the execution by the Sellers of a definitive agreement for an Alternative Transaction (including entry into a plan support agreement or filing a plan of reorganization before the Termination Date) or approval by the Bankruptcy Court of an Alternative Transaction.

(e) The obligation of Sellers to pay the Expense Reimbursement Amount and the Break-Up Fee is subject to approval by the Bankruptcy Court as part of the Stalking Horse Order and/or Bidding Procedures Order and shall survive the termination of this Agreement.

**V. REPRESENTATIONS AND WARRANTIES OF SELLERS**

Except as set forth in the Schedules, only effective as of the date hereof, or in the Company SEC Documents (other than any forward-looking disclosures set forth in any risk

factor section, any disclosure in any section relating to forward-looking statements and any other similar disclosures included therein, in each case, to the extent such disclosures are primarily predictive or forward-looking in nature and do not consist of statements of present fact) filed prior to the Effective Date, as of the date hereof (other than Section 5.1 and Section 5.2, which are made as of the Effective Date), Sellers hereby represent and warrant to Purchaser that:

5.1 Organization and Good Standing. Each Seller is an entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization and, subject to any limitations that may be imposed on such Seller as a result of filing a petition for relief under the Bankruptcy Code, has the requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted.

5.2 Authorization of Agreement. Subject to entry of the Approval Order, as applicable, each Seller has the requisite power and authority to execute and deliver this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party and to perform its respective obligations hereunder and thereunder. The execution and delivery of this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party and the consummation of the Transactions have been duly authorized by all requisite corporate or similar action on the part of each Seller. This Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party has been duly and validly executed and delivered, and each agreement, document or instrument contemplated hereby or thereby to be delivered at or prior to Closing will be duly and validly executed and delivered, by the applicable Seller and (assuming the due authorization, execution and delivery by the other Parties and the entry of the Approval Order) this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party constitutes legal, valid and binding obligations of each applicable Seller enforceable against such Seller in accordance with its respective terms, subject to equitable principles of general applicability (whether considered in a proceeding at law or in equity).

5.3 No Violation. Except as set forth in Schedule 5.3 and assuming (i) the accuracy of Purchaser's representations and warranties set forth in Article VI, (ii) the making of the notices, reports and filings and the obtaining of consents and approvals referred to in Section 5.4 of this Agreement and Schedule 5.4, and (iii) the Approval Order is entered, neither the execution and delivery of this Agreement and the other documents to be delivered pursuant to this Agreement to which any Seller is a party, nor the performance by Sellers of their respective obligations hereunder and thereunder, nor the consummation by Sellers of the transactions contemplated hereby and thereby, do or will (a) violate, conflict with or result in any breach of any provision of the certificate of incorporation or formation, bylaws, operating agreement or other organizational document of any Seller, (b) violate, conflict with or result in a violation or breach of or default under (either immediately or upon notice, lapse of time or both), or constitute a default (with or without due notice or lapse of time or both) under the terms, conditions or provisions of any Purchased Contract to which any Seller is a party in a manner that would give rise to any right of termination, cancellation or result in the acceleration of any material obligation under any Purchased Contract, or (c) violate any Law applicable to any such Seller or by which any of the Purchased Assets or the Assumed Liabilities is subject, except, in the case of clauses (b) and (c), for any such violation, conflict, breach, default, acceleration, right

or other occurrence which would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

5.4 Governmental Consents. Except as set forth on Schedule 5.4 and except to the extent not required if the Approval Order is entered, no consent, waiver, approval, Order or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of any Seller in connection with the execution and delivery of this Agreement or any other agreement, document or instrument contemplated hereby or thereby to which any Seller is a party, the compliance by Sellers with any of the provisions hereof or thereof, the consummation of the Transactions or the taking by Sellers of any other action contemplated hereby or thereby (with or without notice or lapse of time, or both), except for (a) the entry of the Approval Order and (b) immaterial consents, waivers, approvals, Orders, authorizations, declarations, filings and notifications.

5.5 Title to Purchased Assets. Except as set forth on Schedule 5.5, subject to Section 2.7 and (a) bankruptcy, insolvency, or other similar Laws affecting the enforcement of creditors' rights generally, and (b) equitable principles of general applicability (whether considered in a proceeding at law or in equity), Sellers have good and valid title to, or in the case of leased assets, have good and valid leasehold interests in, the Purchased Assets free and clear of all Liens (other than Transferred Exceptions) and, at the Closing, Purchaser will be vested with good and valid title to, or in the case of leased assets, good and valid leasehold interest in, such Purchased Assets, free and clear of all Liens (other than Transferred Exceptions) and Excluded Liabilities, to the fullest extent permissible under Law, including Section 363(f) of the Bankruptcy Code.

5.6 Validity of Purchased Contracts.

(a) Schedule 5.6(a) sets forth a true, complete and accurate list, as of the date hereof and as of the Closing Date (provided, that Sellers will be permitted to deliver the copy of Schedule 5.6(a) as of the Closing Date up until the date that is five Business Days prior to the Closing) of all Contracts to which any Seller is a party that are (i) related in any material respect to the license (by or to any Seller) of, the use by any third party of, or the rights of any third party with respect to, the Purchased Intellectual Property or (ii) material to the Acquired Business, which list includes with respect to each such Contract the Cure Costs that would be included in the applicable notice to the non-debtor counterparty if such Contract were a Purchased Contract. A true and correct copy of each such Contract has been provided to Purchaser.

(b) Each Purchased Contract is in full force and effect and is a valid and binding obligation of Seller party thereto and, to the Knowledge of Sellers, the other parties thereto in accordance with its terms and conditions, except as such validity and enforceability may be limited by (a) bankruptcy, insolvency, or other similar Laws affecting the enforcement of creditors' rights generally, (b) equitable principles of general applicability (whether considered in a proceeding at law or in equity), and (c) the obligation to pay Cure Costs (if any) under Section 2.5. As of the date hereof, no Seller has Knowledge of the intention of any third party to terminate any Purchased Contract. As of the date hereof, to the Knowledge of Sellers, no event has occurred which, with the passage of time or the giving of notice, or both, would constitute a default under or a violation of any such Purchased Contract or would cause the acceleration of

any obligation of any Seller or the creation of a Lien upon any Purchased Asset, except for such events that would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

5.7 Litigation. Except for Legal Proceedings that do not have, and would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect, as of the date hereof, there are no Legal Proceedings or Orders pending or, to the Knowledge of Sellers, threatened against any Seller that involves or relates to the Acquired Business, any of the Transactions, or affects any of the Purchased Assets.

5.8 Compliance with Laws. Sellers are and, since June 30, 2016, have been in compliance with all applicable Laws and Orders, except for failures to comply or violations that would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect. Sellers hold all governmental licenses, authorizations, permits, consents and approvals necessary for the operation of the Acquired Business as presently conducted, taken as a whole (the "Company Permits"), except where such failure would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect. Sellers are in compliance with the terms of the Company Permits, except for failures to comply that would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

5.9 Employee Compensation and Benefit Plans; ERISA.

(a) As used herein, the term "Company Plan" will mean each material "employee benefit plan" (within the meaning of Section 3(3) ERISA) and each other material equity incentive, compensation, severance, employment, company stock plan, change-in-control, retention, fringe benefit, bonus, incentive, savings, retirement, deferred compensation or other Benefit Plan, agreement, program, policy or Contract, whether or not subject to ERISA, in each case other than a "multiemployer plan," as defined in Section 3(37) of ERISA, under which any current or former employee, officer, director, contractor (who is a natural Person) or consultant (who is a natural Person) of Sellers has any present or future right to benefits and which are entered into, contributed to, sponsored by or maintained by Sellers.

(b) Except as would not, individually or in the aggregate, have a Seller Material Adverse Effect:

(i) Each Company Plan is in material compliance with all applicable Laws, including ERISA and the Code.

(ii) Each Company Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination or opinion letter to that effect from the IRS and, to the Knowledge of Sellers, no event has occurred since the date of such determination or opinion that would reasonably be expected to adversely affect such determination or opinion.

(iii) To the Knowledge of Sellers, no condition exists that is reasonably likely to subject Sellers to any direct or indirect liability under Title IV of ERISA.

(iv) No Legal Proceeding (other than routine claims for benefits in the Ordinary Course of Business) are pending or, to the Knowledge of Sellers, threatened with respect to any Company Plan.

5.10 Labor and Employment Matters.

(a) Labor Matters. Except as would not have, individually or in the aggregate, a Seller Material Adverse Effect:

(i) None of Sellers are party to, or bound by, any labor agreement, collective bargaining agreement, work rules or practices, or any other labor-related Contract with any labor union, trade union or labor organization. Other than as required by operation of applicable Law, no employees of Sellers are represented by any labor union, trade union or labor organization with respect to their employment with Sellers. No labor union, trade union, labor organization or group of employees of Sellers has made a pending demand for recognition or certification, and there are no representation or certification proceedings or petitions seeking a representation proceeding presently pending or threatened in writing to be brought or filed with the National Labor Relations Board or any other Governmental Body. To the Knowledge of Sellers, there are no organizing activities with respect to any employees of Sellers. There has been no actual or, to the Knowledge of Sellers, threatened material arbitrations, material grievances, labor disputes, strikes, lockouts, slowdowns or work stoppages against or affecting Sellers. None of Sellers are engaged in, or since December 31, 2016 have engaged in, any unfair labor practice, as defined in the National Labor Relations Act or other applicable Laws.

(ii) None of Sellers have received since December 31, 2016 any written notice of intent by any Governmental Body responsible for the enforcement of labor or employment Laws to conduct an investigation relating to Sellers and, to the Knowledge of Sellers, no such investigation is in progress.

(iii) Except as set forth on Schedule 5.10(a)(iii), none of Sellers have effectuated (i) a “plant closing” (as defined in the Worker Adjustment and Retraining Notification Act (or any similar state or local law, the “WARN Act”)) in connection with the Acquired Business; or (ii) a “mass layoff” (as defined in the WARN Act) of individuals employed at or who primarily provided service to the Acquired Business. The Sellers have heretofore made available to Purchaser a true and complete list of layoffs, by location, implemented by the Sellers or any of their Subsidiaries in the 90-day period preceding the Closing Date at any location employing any individuals employed by the Acquired Business.

(b) Personnel Matters.

(i) Sellers have provided to Purchaser an accurate and complete list of the names, job classifications, dates of hire, base compensation, and any supplemental or bonus compensation (including any retention bonus arrangements) for all salaried Business Employees.

(ii) To the Knowledge of Sellers and except as to matters which would not reasonably be expected to have a Seller Material Adverse Effect, all Sellers are currently complying and have for the past five years complied with all Laws and Orders of any Governmental Body relating to, touching upon or concerning the employment of the Business Employees, including relating to the hiring, firing and treatment of employees, or any legal obligation or duty regarding employment practices, terms and conditions of employment, equal opportunity, non-discrimination, discharge, immigration, anti-harassment, anti-retaliation, whistle blowing, compensation, wages, overtime payments, hours, benefits, collective bargaining, income tax withholding, the payment of Social Security and other similar Taxes, pension plans, the modification or termination of Benefit Plans and retiree health insurance plans, policies, programs, agreements, occupational safety and health, workers compensation or other similar benefits and payments on account of occupational illness and injuries, employment Contracts, collective bargaining agreements, grievances originating under the collective bargaining agreements, wrongful discharge, torts such as invasion of privacy, infliction of emotional distress, defamation, and slander (collectively, "Employment Laws").

(iii) To the Knowledge of Sellers, there are no threatened or pending charges, complaints, demands, lawsuits, or petitions against, or investigations being conducted of any Sellers concerning or relating to any alleged violations of, or failure to comply with, any Employment Laws, except for such matters that would not reasonably be expected to have a Seller Material Adverse Effect.

#### 5.11 Intellectual Property.

(a) Intellectual Property. Except as set forth on Schedule 5.11(a), to the Knowledge of Sellers, (a) Sellers own all right, title and interest in, or has the right to use, pursuant to a license or otherwise, all Intellectual Property required to operate the Acquired Business as presently conducted, in each case, (i) free and clear of all Liens except Transferred Exceptions, and (ii) other than non-exclusive licenses of, or covenants with respect to, Intellectual Property granted in the Ordinary Course of Business, and (b) as of the date hereof, there are no pending, and Sellers have not received, since December 31, 2016, any written notice of any actual or threatened Legal Proceedings alleging a violation, misappropriation or infringement of the Intellectual Property of any other Person by Sellers except for any of the foregoing that have since been resolved except as would not reasonably be expected to result in a Seller Material Adverse Effect.

#### (b) Trademarks.

(i) Schedule 5.11(b)(i) contains a complete and accurate list of all registered, and as of the date hereof pending applications for, Trademarks included in the Purchased Intellectual Property, including for each the applicable trademark or service mark, application numbers, filing dates, trademark registration numbers and registration dates, as applicable.

(ii) Except as set forth on Schedule 5.11(b)(ii), all of the registered Trademarks included in the Purchased Intellectual Property are subsisting and in full

force and effect. To the Knowledge of Sellers, each of the United States registered Trademarks included in the Purchased Intellectual Property for which filings based on continuous use have been made by a Seller have been in continuous use in the United States or had been in continuous use in the United States at the time such filings were made. Except as set forth in Schedule 5.11(b)(ii), none of the trademark registrations included in the Purchased Intellectual Property (for Purchased Intellectual Property owned by Sellers) are subject to any maintenance fees or renewal actions from the date hereof to September 30, 2019.

(iii) No Trademark included in the Purchased Intellectual Property has been or is now the subject of in any opposition, invalidation or cancellation proceeding, in each case which is pending and unresolved, and, to the Knowledge of Sellers, no such action is threatened in each case, except as would not reasonably be expected to result in a Seller Material Adverse Effect.

(c) Copyrights.

(i) Schedule 5.11(c) contains a complete and accurate list of all registered copyrights owned by Sellers and included in the Purchased Intellectual Property, including title, registration number and registration date.

(ii) All of such registered copyrights included in the Purchased Intellectual Property are in full force and effect, except where the failure to be in full force and effect would not reasonably be expected to result in a Seller Material Adverse Effect.

(iii) To the Knowledge of Sellers, all works encompassed by the U.S. registered copyrights included in the Purchased Intellectual Property have been marked with the copyright notice to the extent required by applicable Law.

(d) Patents.

(i) Schedule 5.11(d) contains a complete and accurate list of all issued patents included in the Purchased Intellectual Property, including title, patent number and issuance date.

(ii) All of the issued patents included in the Purchased Intellectual Property are subsisting and in full force and effect except where the failure to be in full force and effect would not reasonably be expected to result in a Seller Material Adverse Effect. Except as set forth in Schedule 5.11(d), none of the issued patents included in the Purchased Intellectual Property are subject to any maintenance fees or renewal actions in the 90 days after the date hereof.

(e) To the Knowledge of Sellers, except as set forth on Schedule 5.11(e), all registered or issued Purchased Intellectual Property that is material to the Acquired Business is valid and enforceable.

(f) Except as set forth on Schedule 5.11(f), to the Knowledge of Sellers, during the past three years, there has not been and there is not now any unauthorized use, infringement or misappropriation of any of the Purchased Intellectual Property that is material to the Acquired Business by any third party.

(g) During the past three years, Sellers have not brought any actions or lawsuits alleging: (i) infringement, misappropriation or other violation of any of the Purchased Intellectual Property; or (ii) breach of any agreement authorizing another party to use the Purchased Intellectual Property. Except as set forth on Schedule 5.11(g), to the Knowledge of Sellers, there do not exist any facts or dispute, including any claim or threatened claim, that could form the basis of any such action or lawsuit. Sellers have not entered into any Contract granting any third party the right to bring infringement actions with respect to any of the Purchased Intellectual Property that will survive the Closing.

(h) To the Knowledge of Sellers, there is no pending dispute, including any claim or threatened claim, with respect to the Purchased Intellectual Property:

(i) contesting the right of Sellers to use, exercise, sell, license, transfer or dispose of any of the Purchased Intellectual Property or any Acquired Business products or services; or

(ii) challenging the ownership, validity or enforceability of any of the Purchased Intellectual Property. No Purchased Intellectual Property that is material to the Acquired Business is subject to any outstanding Order, stipulation or agreement related to or restricting in any manner the licensing, assignment, transfer or conveyance thereof by Sellers.

(i) Schedule 5.11(i) contains a listing of all Contracts to which Sellers are a party and pursuant to which any third party is licensed to use any Purchased Intellectual Property material to the Acquired Business, other than Contracts (e.g., information technology, e-commerce, marketing) entered into in the Ordinary Course of Business pursuant to which Purchased Intellectual Property is licensed to any counterparty to such Contracts in the performance of such counterparty's services to Sellers and/or their Subsidiaries thereunder. Schedule 5.11(i) also contains a listing of all Contracts to which Sellers are a party that relates to the settlement of any claims related to the Purchased Intellectual Property (such as a co-existence agreement). To the Knowledge of Sellers, except in connection with the Bankruptcy Case, there is no pending dispute, including any claim or threatened claim or the existence of any facts, indicating that Sellers or any other party thereto is in breach of any terms or conditions of such Contracts.

(j) Except as set forth on Schedule 5.11(j), to the Knowledge of Sellers, the operation and conduct of the Acquired Business as currently conducted by Sellers, including the marketing, license, sale or use of any products or services anywhere in the world in connection with the Acquired Business has not, in the last three years, and does not as of the Closing Date, (i) violate in any material respect any license or agreement with any third party to which a Seller is bound; or (ii) infringe, misappropriate or violate in any material respect any Intellectual Property right of any third party. None of Sellers have any liability for, and have not given

indemnification for, Intellectual Property infringement to any third-party. To the Knowledge of Sellers, there is no dispute, including any claim or threatened claim or the existence of any facts, to the effect that the marketing, license, sale or use of any product or service of the Acquired Business as currently conducted by Sellers infringes, misappropriates or otherwise violates any Intellectual Property of any third party or violates any license or agreement with any third party to which a Seller is bound. Except as would not reasonably be expected to result in a Seller Material Adverse Effect, Sellers have not received service of process or been charged in writing as a defendant, in the last three years, in any claim, suit, action or proceeding that alleges that any of the Purchased Intellectual Property infringes any Intellectual Property right of any third party, which has not been finally adjudicated prior to the Closing Date.

(k) Except as set forth in Schedule 5.5 or Schedule 5.11, Sellers have the full right, power and authority to sell, assign, transfer and convey all of their right, title and interest in and to the Purchased Intellectual Property to Purchaser, and upon Closing, Purchaser will acquire from Sellers good and marketable title to the Purchased Intellectual Property, free of Liens (other than Transferred Exceptions), other than non-exclusive licenses of, or covenants with respect to, the Purchased Intellectual Property granted in the Ordinary Course of Business.

(l) No domain names included in the Purchased Intellectual Property have been, during the past three years, or are now involved in any dispute, opposition, invalidation or cancellation proceeding and, to the Knowledge of Sellers, no such action is threatened with respect to any domain names included in the Purchased Intellectual Property.

5.12 Financial Advisors. Sellers have not incurred any obligation or Liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement or Transactions for which Purchaser is or will become liable.

5.13 Taxes.

(a) Each Seller has timely and properly filed (or had timely and properly filed on its behalf) all material Tax Returns (each, a "Seller Return") that it was required to file in respect of the Purchased Assets or the Acquired Business and all such Seller Returns were accurate, correct and complete in all material respects. Other than as excused or prohibited from being paid as a result of the Bankruptcy Code or the Bankruptcy Court, with respect to the Purchased Assets and the Acquired Business, each Seller has paid (or had paid on its behalf) all material Taxes for which such Seller may be liable for (whether or not shown on any Seller Return) with respect or relating to the Purchased Assets or the Acquired Business or pursuant to any assessment received by such Seller from any Tax Authority for any Pre-Closing Tax Period. Other than as excused or prohibited from being withheld, collected or paid as a result of the Bankruptcy Code or the Bankruptcy Court, all material Taxes that each Seller is or was required by Law to withhold or collect with respect to the Purchased Assets and the Acquired Business have been duly withheld or collected and, to the extent required, have been paid or will be paid to the proper Tax Authority or set aside in accounts for such purpose, or accrued, reserved against and entered upon the books of the applicable Seller. No claim has ever been made in writing by a Tax Authority in a jurisdiction where any Seller has never paid Taxes or filed Tax

Returns asserting that such Seller, with respect to the Acquired Business or Purchased Assets, is or may be subject to Taxes assessed by such jurisdiction.

(b) There are no pending, proposed in writing or threatened in writing Legal Proceedings with respect to any Taxes payable by or asserted against any Seller related to the Purchased Assets or the Acquired Business and all material deficiencies asserted or assessments made as a result of any examination of the Seller Returns have been paid in full.

(c) No Seller is currently the beneficiary of any extension of time within which to file any Tax Return required to be filed in respect of the Acquired Business or the Purchased Assets (other than automatic extensions of time to file Tax Returns obtained in the Ordinary Course of Business)

(d) There are no outstanding (i) agreements or waivers that would extend the statutory period in which a Tax Authority may assess or collect a Tax related to the Purchased Assets or the Acquired Business or (ii) requests to waive any such statutory period.

(e) There are no Liens with respect to Taxes (other than Transferred Exceptions and Liens that will be released by the Approval Order) upon the Purchased Assets or the Acquired Business.

(f) No Seller is a party to any Tax indemnity, Tax allocation or Tax sharing agreement, other than any such agreement entered into in the Ordinary Course of Business the principal purpose of which is not related to Tax, that could result in a Lien upon the Purchased Assets or the Acquired Business.

(g) There are no Tax rulings, requests for rulings or closing agreements relating to the Acquired Business or the Purchased Assets.

5.14 Environmental Matters. Except as would not reasonably be expected to result in a Seller Material Adverse Effect, (a) Sellers are in compliance in all material respects with all Environmental Laws applicable to the ownership of the Purchased Assets and the operation of the Acquired Business, (b) no Seller has received any unresolved notice from any Governmental Body asserting or alleging any material violation by any Seller of, or material Liability of any Seller under, Environmental Laws with respect to the Purchased Assets or Assumed Liabilities and (c) no Seller is subject to an outstanding Order or pending Legal Proceeding, in each case under Environmental Laws, with respect to the Purchased Assets or Assumed Liabilities.

5.15 Real Property.

(a) Owned Real Property. Sellers have made available to Purchaser copies of the deeds and other instruments (as recorded) by which the applicable Seller acquired the Owned Real Property, and copies of all title insurance policies, opinions, abstracts and surveys in the possession of Sellers with respect to the Owned Real Property. With respect to the Owned Real Property and except as would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect:

Exceptions; (i) Florists' Transworld Delivery, Inc. has good and fee simple title, free and clear of all Liens, except Transferred

(ii) No Seller nor any Affiliate of a Seller has leased or otherwise granted to any Person the right to use or occupy such Owned Real Property or any portion thereof; and

(iii) there are no options, rights of first offer or rights of first refusal to purchase such Owned Real Property or any portion thereof or interest therein.

(b) Leased Real Property. Schedule 5.15(b) sets forth a true and complete list of all leases, subleases, licenses, concessions and other agreements (whether written or oral), including all amendments, extensions renewals, guaranties and other agreements with respect thereto, pursuant to which any Seller holds any Leased Real Property (collectively, the "Leases"). Seller has made available to Purchaser a true and complete copy of each Lease. With respect to each Lease and except as would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect:

(i) such Lease is valid, binding, enforceable and in full force and effect, except as such validity and enforceability may be limited by (A) bankruptcy, insolvency, or other similar Laws affecting the enforcement of creditors' rights generally, and (B) equitable principles of general applicability (whether considered in a proceeding at law or in equity), and the applicable Seller party thereto enjoys peaceful and undisturbed possession of the Leased Real Property;

(ii) The applicable Seller party thereto is not in material breach or default under such Lease, and to Sellers' Knowledge, no event has occurred or circumstance exists which, with the delivery of notice, passage of time or both, would constitute such a material breach or default;

(iii) No Seller has 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 Leases and, to the Knowledge of Seller, no other party is in material default thereof, and no party to any Lease has exercised any termination rights with respect thereto;

(iv) No Seller has subleased, assigned or otherwise granted to any Person the right to use or occupy the Leased Real Property or any portion thereof; and

(v) No Seller has pledged, mortgaged or otherwise granted a Lien on its leasehold interest in any Leased Real Property.

(c) Except as would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect, no Seller has received any written notice of (i) material violations of building codes and/or zoning ordinances or other governmental or regulatory Laws affecting the Real Property, or (ii) existing, pending or threatened condemnation proceedings affecting the Real Property. In the past three years neither the whole nor any material portion of any Real Property has been damaged or destroyed by fire or other casualty.

5.16 Absence of Certain Changes. Except as set forth in Schedule 5.16, since December 31, 2018 until the Effective Date, (a) there has not been any Seller Material Adverse Effect, and (b) except for the (i) solicitation of, discussions and negotiations with, presentations and provision of other diligence to and similar engagement with other potential bidders for the Purchased Assets, and the negotiation and execution of this Agreement and (ii) preparation and commencement of the Bankruptcy Case and Sellers' debtor-in-possession financing in the Bankruptcy Case, the Acquired Business has been conducted, and the Purchased Assets and the Assumed Liabilities have been used in the Ordinary Course of Business.

5.17 Data Privacy. Except as would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect, in connection with its collection, storage, transfer (including transfer across national borders) and/or use of any personally identifiable information from any individuals, including any customers, prospective customers, employees and/or other third parties (collectively "Personal Information"), (a) each Seller is in material compliance with all applicable Laws in all relevant jurisdictions, (b) each Seller has commercially reasonable physical, technical, organizational and administrative security measures in place to protect all Personal Information collected by it or on its behalf from and against unauthorized access, use and/or disclosure in accordance with applicable Law, and (c) to the Knowledge of Sellers, there has been no security breach relating to, or unauthorized access of, personal information in the possession or custody of any Seller.

5.18 Foreign Corrupt Practices Act. In the past three years, no Seller nor any of Sellers' directors, officers or, to the Knowledge of Sellers, Business Employees or any agents acting on behalf of the Acquired Business have, directly or knowingly indirectly, made, offered, promised or authorized any payment or gift of any money or anything of value to or for the benefit of any "foreign official" (as such term is defined in the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "FCPA")), foreign political party or official thereof or candidate for foreign political office for the purpose of (a) influencing any official act or decision of such official, party or candidate, (b) inducing such official, party or candidate to use his, her or its influence to affect any act or decision of a foreign Governmental Body, or (c) securing any improper advantage, in the case of (a), (b) and (c) above in order to assist any Acquired Business in obtaining or retaining business for or with, or directing business to, any Person. In the past three years, no Seller nor any of its directors, officers nor, to the Knowledge of Sellers, Business Employees or any agents acting on behalf of Sellers have made or authorized any bribe, rebate, payoff, influence payment, kickback or other unlawful payment of funds or received or retained any funds in violation of any Law, rule or regulation prohibiting bribery or corruption. Each Seller further represents that it maintains, and has caused each of its Subsidiaries to maintain, systems of internal controls (including accounting systems, purchasing systems and billing systems) reasonably designed to ensure compliance with the FCPA or any other applicable anti-bribery or anti-corruption Law. No Seller, or, to Knowledge of Sellers, any of its officers, directors or Business Employees are the subject of any allegation, voluntary disclosure, investigation, prosecution or other enforcement action related to the FCPA or any other anti-corruption Law.

5.19 International Trade. Except as would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect, no Sellers, nor any of their respective officers, directors or Business Employees, nor to the Knowledge of Sellers, any agent

or other third party Representative acting on behalf of the Acquired Business, is currently, or has been in the last three years: (a) a Sanctioned Person, (b) organized, resident or located in a Sanctioned Country, (c) engaging in any dealings or transactions with any Sanctioned Person or in any Sanctioned Country, to the extent such activities violate applicable Sanctions Laws or Ex-Im Laws, (d) engaging in any export, reexport, transfer or provision of any goods, Software, technology, data or service without, or exceeding the scope of, any required or applicable licenses or authorizations under all applicable Ex-Im Laws, or (e) otherwise in violation of applicable Sanctions Laws, Ex-Im Laws, or the anti-boycott Laws administered by the U.S. Department of Commerce and the U.S. Department of Treasury's Internal Revenue Service.

5.20 Transactions With Affiliates. No counterparty to any Purchased Contract is an Affiliate, directly or indirectly, of Sellers.

5.21 No Other Representations or Warranties: Schedules. Except for the representations and warranties contained in this Article V (as modified by the Schedules hereto), none of Sellers nor any other Person makes any other express or implied representation or warranty with respect to Sellers, the Purchased Assets, the Assumed Liabilities or the Transactions, and each Seller disclaims any other representations or warranties, whether made by Sellers, any Affiliate of Sellers, or any of Sellers' or their Affiliates' respective Representatives. Except for the representations and warranties contained in this Article V (as modified by the Schedules hereto), each Seller (a) expressly disclaims and negates any representation or warranty, expressed or implied, at common law, by statute, or otherwise, relating to the condition of the Purchased Assets (including any implied or expressed warranty of merchantability or fitness for a particular purpose, or of conformity to models or samples of materials) and (b) disclaims all liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to Purchaser or its Affiliates or Representatives (including any opinion, information, projection, or advice that may have been or may be provided to Purchaser by any Representative of Sellers or any of its Affiliates). Sellers make no representations or warranties to Purchaser regarding the probable success or profitability of the Acquired Business, the Purchased Assets or the use thereof. The disclosure of any matter or item in any Schedule hereto will not be deemed to constitute an acknowledgment that any such matter is required to be disclosed or is material or that such matter could result in a Seller Material Adverse Effect.

## **VI. REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Except as set forth in the Schedules from Purchaser, dated as of the Effective Date, Purchaser hereby represents and warrants to Sellers that:

6.1 Organization and Good Standing. Purchaser is a limited liability company organized, validly existing and in good standing under the Laws of the State of Delaware and has all requisite limited liability company power and authority to own, lease and operate its properties and to carry on its business as now being conducted, except where the failure to be so organized, existing and in good standing or to have such power and authority would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of Purchaser to consummate the Transactions. Purchaser is not in violation of its organizational or governing documents.

6.2 Authorization of Agreement. Purchaser has all necessary limited liability company power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery and performance by Purchaser of this Agreement, and the consummation by it of the Transactions, have been duly and validly authorized by the board of directors of Purchaser, and no other action on the part of Purchaser is necessary to authorize the execution, delivery and performance by Purchaser of this Agreement and the consummation of the Transactions. This Agreement has been duly executed and delivered by Purchaser and, assuming due and valid authorization, execution and delivery of this Agreement by Sellers, is a valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms, subject to equitable principles of general applicability (whether considered in a proceeding at law or in equity).

6.3 Consents and Approvals: No Violations.

(a) The execution, delivery and performance of this Agreement by Purchaser and the consummation by Purchaser of the Transactions do not and will not (i) conflict with or violate the certificate of incorporation or bylaws (or similar organizational documents) of Purchaser, (ii) assuming that all consents, approvals and authorizations contemplated by clauses (i) through (iii) of subsection (b) of this Section have been obtained, and all filings described in such clauses have been made, conflict with or violate any Law or Order applicable to Purchaser or by which Purchaser or any of its respective properties are bound, or (iii) result in any breach or violation of or constitute a default (or an event which with notice or lapse of time or both would become a default) or result in the loss of a benefit under, or give rise to any right of termination, cancellation, amendment or acceleration of, any Contracts to which Purchaser is a party or by which Purchaser or any of its respective properties are bound, except, in the case of clauses (ii) and (iii), for any such conflict, violation, breach, default, acceleration, loss, right or other occurrence which would not prevent or materially impair the ability of Purchaser to consummate the Transactions.

(b) The execution, delivery and performance of this Agreement by Purchaser and the consummation by Purchaser of the Transactions do not and will not require any consent, approval, authorization or permit of, action by, filing with or notification to, any Governmental Body, except for (i) the applicable requirements, if any, of the Exchange Act and state securities, takeover and "blue sky" Laws, (ii) the applicable requirements of the HSR Act and any foreign antitrust Laws, if applicable, and (iii) any such consent, approval, authorization, permit, action, filing or notification the failure of which to make or obtain would not impair the ability of Purchaser to consummate the Transactions.

6.4 Financial Capability. As of the Closing, Purchaser will have sufficient funds available to it in cash to pay or cause to be paid the Purchase Price and the fees and expenses required to be paid by Purchaser in connection with the Transactions, and to effect the Transactions. Upon the consummation of the Transactions, (a) Purchaser will not be insolvent as defined in Section 101 of the Bankruptcy Code, (b) Purchaser will not be left with unreasonably small capital, (c) Purchaser will not have incurred debts beyond its ability to pay such debts as they mature, and (d) the capital of Purchaser will not be impaired.

6.5 Condition of the Purchased Assets. Notwithstanding anything contained in this Agreement to the contrary, Purchaser acknowledges and agrees that Sellers are not making any representations or warranties whatsoever, express or implied, beyond those expressly given by Sellers in Article V (as modified by the Schedules hereto), and Purchaser acknowledges and agrees that, except for the representations and warranties contained therein, the Purchased Assets are being transferred on a “where is” and, as to condition, “as is” basis. Purchaser acknowledges that it has conducted to its satisfaction its own independent investigation of the Purchased Assets and, in making the determination to proceed with the Transactions, Purchaser has relied on the results of its own independent investigation.

6.6 Exclusivity of Representations and Warranties. Purchaser acknowledges that except for the representations and warranties made by Sellers in Article V, none of Sellers make (and neither Purchaser or any other Person has relied upon) any representations or warranties on behalf of Sellers. Purchaser further agrees that neither Sellers nor any other Person will have or be subject to any liability or indemnification obligation to Purchaser or any other Person resulting from the distribution to Purchaser, Purchaser’s use of, any such information, including any information, documents, projections, forecasts or other material made available to Purchaser in certain “data rooms” or management presentations in expectation of the Transactions. For the avoidance of doubt, Purchaser acknowledges that neither Sellers nor any of their Representatives make any express or implied representation or warranty with respect to “Confidential Information” as defined in the Confidentiality Agreement. Purchaser acknowledges and agrees that it (a) has had an opportunity to discuss the business of Sellers with the management of Sellers, (b) has had sufficient access to (i) the books and records of Sellers and (ii) the electronic data room maintained by Sellers for purposes of the Transactions, (c) has been afforded the opportunity to ask questions of and receive answers from officers and other key employees of Sellers and (d) has conducted its own independent investigation of the Acquired Business and the Transactions, and has not relied on any representation, warranty or other statement by any Person on behalf of Sellers, other than the representations and warranties of Sellers expressly contained in Article V, and that all other representations and warranties are specifically disclaimed. In connection with any investigation by Purchaser of Sellers or the Acquired Business, Purchaser has received or may receive from Sellers or its other Representatives on behalf of Sellers certain projections, forward-looking statements and other forecasts and certain business plan information in written or verbal communications. Purchaser acknowledges that there are uncertainties inherent in attempting to make such estimates, projections and other forecasts and plans, that Purchaser is familiar with such uncertainties, that Purchaser is taking full responsibility for making its own evaluation of the adequacy and accuracy of all estimates, projections and other forecasts and plans so furnished to Purchaser (including the reasonableness of the assumptions underlying such estimates, projections, forecasts or plans), and that Purchaser will have no claim against Sellers or any other Person with respect thereto. Accordingly, Purchaser acknowledges that neither Sellers nor any other Person on behalf of the Sellers make (and neither Purchaser or any other Person has relied upon) any representation or warranty with respect to such estimates, projections, forecasts or plans (including the reasonableness of the assumptions underlying such estimates, projections, forecasts or plans). Nothing contained in this Agreement shall limit Purchaser’s ability to rely on the representations and warranties made by Sellers in Article V and to bring a claim for fraud by Sellers against the Purchaser.

## VII. BANKRUPTCY COURT MATTERS

7.1 Submission for Bankruptcy Court Approval. As promptly as practicable after the execution of this Agreement, Sellers will file with the Bankruptcy Court a motion (the "Sale Motion") seeking (a) entry of an Order authorizing the observance and performance of the terms of Sections 4.6(b), 4.6(b), 4.6(d) and 4.6(e) by Sellers and Purchaser (the "Stalking Horse Order") and (b) the Approval Order, including the approval of this Agreement and the sale of the Purchased Assets to Purchaser on the terms and conditions hereof if determined to be the "highest or otherwise best offer" in accordance with the Bidding Procedures Order. Such motion must be reasonably acceptable to Purchaser.

### 7.2 Bankruptcy Process.

(a) Sellers and Purchaser acknowledge and agree that this Agreement, the sale of the Purchased Assets and the Transactions are subject to higher or otherwise better bids (in accordance with the Bidding Procedures Order) and Bankruptcy Court approval. Purchaser and Sellers acknowledge that Sellers must take reasonable steps to demonstrate that they have sought to obtain the highest or otherwise best offer for the Purchased Assets, including giving notice thereof to the creditors of Sellers and other interested parties, providing information about Sellers' business to prospective bidders, entertaining higher or otherwise better offers from such prospective bidders, and, in the event that additional qualified prospective bidders desire to bid for the Purchased Assets, conducting an auction in accordance with the Bidding Procedures Order.

(b) The bidding procedures to be employed with respect to this Agreement and any auction will be those reflected in the Bidding Procedures Order. Purchaser agrees and acknowledges that (i) prior to the entry of the Bidding Procedures Order, Sellers and their Affiliates will be permitted, and will be permitted to cause their Representatives, to initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, respond to any unsolicited inquiries, proposals or offers submitted by, supply information relating to the Business and the Purchased Assets to prospective bidders, and enter into any discussions or negotiations regarding any of the foregoing with, any Person (in addition to Purchaser and its Affiliates, agents and Representatives); and (ii) following the Bankruptcy Court's approval of the Bidding Procedures Order, the marketing activities described in the preceding sentence shall all occur in accordance with the bidding procedures set forth in the Bidding Procedures Order.

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

(d) If this Agreement and the sale of the Purchased Assets to Purchaser on the terms and conditions hereof are determined to be the "highest or otherwise best offer" in

accordance with the Bidding Procedures Order, Purchaser and Sellers agree to use commercially reasonable efforts to cause the Bankruptcy Court to enter the Approval Order.

(e) Sellers covenant and agree that if the Approval Order is entered, the terms of any plan submitted by Sellers to the Bankruptcy Court for confirmation will not conflict with, supersede, abrogate, nullify, modify or restrict the terms of this Agreement and the rights of Purchaser hereunder, or in any way prevent or interfere with the consummation or performance of the Transactions including any transaction that is contemplated by or approved pursuant to the Approval Order.

(f) If the Approval Order or any other orders of the Bankruptcy Court relating to this Agreement are appealed or petition for certiorari or motion for rehearing or reargument is filed with respect thereto, Sellers agree to take all action as may be commercially reasonable and appropriate to defend against such appeal, petition or motion and Purchaser agrees to cooperate in such efforts and each Party agrees to use its commercially reasonable efforts to obtain an expedited resolution of such appeal; provided, that the absence of an appeal of the Approval Order will not be a condition to any Party's obligation to consummate the Transactions at the Closing.

(g) For the avoidance of doubt, nothing in this Agreement will restrict Sellers or their Affiliates from selling, disposing of or otherwise transferring any Excluded Assets or from settling, delegating or otherwise transferring any Excluded Liabilities, or from entering into discussions or agreements with respect to the foregoing.

7.3 Additional Bankruptcy Matters. From and after the Effective Date and until the Closing Date (or any earlier date from and after any deadline for other potential purchasers to submit bids for the Purchased Assets if this Agreement is determined not to be the "highest or otherwise best offer" in accordance with the Bidding Procedures Order), to the extent reasonably practicable, Sellers will deliver to Purchaser drafts of any and all material pleadings, motions, notices, statements, applications, schedules, reports and other papers to be filed or submitted by Sellers in connection with this Agreement for Purchaser's prior review. Sellers will make reasonable efforts to consult and cooperate with Purchaser regarding (a) any such pleadings, motions, notices, statements, applications, schedules, reports or other papers, (b) any discovery taken in connection with the motions seeking approval of the Bidding Procedures Order, Stalking Horse Order or Approval Order (including, without limitation, any depositions) and (c) any hearing relating to the Stalking Horse Order, the Bidding Procedures Order or Approval Order, including, without limitation, the submission of any evidence, including witnesses testimony, in connection with such hearing.

## VIII. COVENANTS

8.1 Access to Information. From the Effective Date through the Closing Date, Purchaser will be entitled, through its Representatives and at Purchaser's exclusive expense, to make such investigation of the Purchased Assets and the Assumed Liabilities as it reasonably requests, including conducting environmental site assessments at the Real Property (including invasive or intrusive testing). Any such investigation and examination will be conducted upon reasonable advance notice and under reasonable circumstances, will occur only during normal

business hours and will be subject to restrictions under applicable Law. Sellers will direct their respective Representatives to cooperate with Purchaser and Purchaser's Representatives in connection with such investigation and examination, and Purchaser and its Representatives will cooperate with Sellers and their Representatives. Notwithstanding anything herein to the contrary, no such investigation or examination will be permitted to the extent that it would require Sellers to disclose information that would cause material competitive harm to a Seller or would violate attorney-client privilege. No investigation by Purchaser will affect or be deemed to modify any of the representations, warranties, covenants or agreements of Sellers contained in this Agreement. The failure of any such investigation to be completed by the Closing Date shall not in and of itself constitute the failure of any condition set forth in Article IX.

8.2 Actions Pending the Closing. Except (a) as required by applicable Law or by order of the Bankruptcy Court, (b) as otherwise expressly contemplated by this Agreement, or (c) with the prior written consent of Purchaser, during the period from the Effective Date to and through the Closing Date, Sellers will (taking into account the commencement of the Bankruptcy Cases, the anticipated sale, liquidation and shut-down of operations of Sellers other than the Acquired Business and other changes, facts and circumstances that customarily result from the events leading up to and following the commencement of bankruptcy proceedings) operate the Acquired Business and the Current Assets in the Ordinary Course of Business. Without limiting the generality of the foregoing, Sellers will: (i) use reasonable best efforts, in consultation with Purchaser and its advisors, to maintain and preserve the relationships of the Acquired Business with the members of the Florist Network, vendors, suppliers, and others having material business relationships with the Acquired Business, (ii) maintain the Purchased Assets in their current condition, ordinary wear and tear excepted (and excluding sales of inventory in the Ordinary Course of Business); (iii) not materially amend, modify, terminate, let lapse (other than the expiration of a contract pursuant to its terms) or waive any rights under, or create any Lien with respect to, any of the Purchased Contracts; (iv) use reasonable best efforts, in consultation with Purchaser and its advisors, to defend and protect the Purchased Assets from deterioration; (v) comply with applicable Laws with respect to the Purchased Assets in all material respects; (vi) enforce contractual obligations under the Purchased Contracts, and not voluntarily amend or terminate any Purchased Contract, (vii) not waive, release, assign, settle or compromise any material claim, litigation or arbitration to the extent relating to the Acquired Business that will bind Purchaser after the Closing Date; (viii) not make any loans or material advances related to the Acquired Business that would be Assumed Liabilities; (ix) not enter into any Contract that limits or restricts the conduct or operations of the Acquired Business; (x) not agree to amend, or, to the extent within Sellers' reasonable control, permit any amendment to, the articles of incorporation or bylaws of Interflora, Inc.; and (xi) not enter into any agreement or commitment to take any action prohibited by this Section 8.2.

8.3 Payables. The Sellers shall make all payments in respect of payables of the Acquired Business (including rent payments, sales Taxes, payments to Business Employees and payments to the Florist Network) due or arising after the Effective Date and through the Closing Date in all material respects on a timely basis and will otherwise manage the accounts payable of the Acquired Business in accordance with the Sellers' cash management policies and practices (as in effect prior to the commencement of the Bankruptcy Case) in the Ordinary Course of Business. The Sellers shall deliver to Purchaser all budget reports delivered to the lenders under Sellers' debtor-in-possession financing facility with respect to the Acquired Business substantially concurrently with their delivery to such lenders.

8.4 Consents. Sellers and Purchaser will use their reasonable best efforts to obtain at the earliest practicable date all consents and approvals contemplated by this Agreement, including the consents and approvals referred to in Section 5.4 and the Necessary Consents; provided, however, that none of Sellers or Purchaser (other than with respect to Assumed Cure Costs) will be obligated to pay any consideration therefor to any third party from whom consent or approval is requested or to initiate any litigation or proceedings to obtain any such consent or approval. For the avoidance of doubt, the Parties acknowledge and agree that obtaining any such authorizations, consents and approvals, giving such notices and making such filings will not be a condition to Closing.

8.5 Reasonable Best Efforts: Consents to Assignment.

(a) Upon the terms and subject to the conditions of this Agreement, each of the Parties will use its reasonable best efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective the Transactions as promptly as practicable and in no event later than the Termination Date, including the prompt preparation and filing of all forms, registrations and notices required to be filed to consummate the Transactions and the taking of such actions as are necessary to obtain any requisite approvals, consents, orders, exemptions or waivers by any Governmental Body or any other Person, including filings pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), and any actions necessary to cause the expiration of the notice periods under the HSR Act. Each Party will promptly consult with the others with respect to, provide any necessary information with respect to, and provide the other Parties (or their counsel) copies of, all filings made by such Party with any Governmental Body or any other Person or any other information supplied by such Party to a Governmental Body or any other Person in connection with this Agreement and the Transactions. Purchaser and Sellers will make all filings under the HSR Act as promptly as practicable, and no later than 10 Business Days, following the date the Stalking Horse Order is entered. Purchaser will be responsible for all filing fees under the HSR Act or any other competition Laws applicable to Purchaser. In addition, Purchaser shall seek to obtain, and Sellers shall reasonably cooperate with Purchaser in Purchaser's obtaining, an ALTA extended coverage owner's policy of title insurance with customary endorsements insuring fee simple title to the Owned Real Property, free and clear of all Liens other than Transferred Exceptions, vested in Purchaser (or its permitted designee) (the "Title Policy"), including by delivering an executed title affidavit to Purchaser's title company (the "Title Company") covering such customary matters as may be requested by the Title Company and in a form which enables the Title Company to issue the Title Policy. Purchaser shall keep Sellers reasonably informed as to the status of obtaining such Title Policy. Sellers further shall reasonably cooperate with Purchaser in connection with the making of any claims under insurance policies the proceeds of which would constitute a Purchased Asset and shall use its reasonable best efforts to pursue any such claims. As promptly as practicable, but in any event beginning no later than the third Business Day after the date hereof, Purchaser shall request issuance by the Title Company of a preliminary title report in preparation for issuance of the Title Policy at Closing.

(b) Each Party will promptly inform the others of any communication from any Governmental Body regarding any of the Transactions and promptly provide the others with copies of all related correspondence or filings. If any Party or Affiliate thereof receives a request

for additional information or documentary material from any such Governmental Body with respect to the Transactions, then such Party will endeavor in good faith to make, or cause to be made, as soon as reasonably practicable and after consultation with the other Party, an appropriate response in compliance with such request. Each Party will provide any necessary information and reasonable assistance as the others may request in connection with its preparation of any additional necessary filings or submissions to any Governmental Body, including any additional filings necessary under the HSR Act.

(c) Neither Sellers nor Purchaser will independently participate in any meeting with any Governmental Body (other than the Bankruptcy Court or the Office of the United States Trustee) in respect of any findings or inquiry in connection with the Transactions contemplated by this Agreement and the other agreements, documents or instruments contemplated hereby without giving, in the case of Sellers, Purchaser, and in the case of Purchaser, Sellers, prior notice of the meeting and, to the extent reasonably practicable and not prohibited by the applicable Governmental Body, the opportunity to attend and/or participate in such meeting.

(d) Each Party will use its reasonable best efforts to resolve objections, if any, as may be asserted by any Governmental Body with respect to the Transactions, including under the HSR Act. In connection therewith, if any administrative or judicial action or proceeding is instituted (or threatened to be instituted) challenging any Transaction as violative of the HSR Act, each of the Parties will cooperate and use its reasonable best efforts to contest and resist any such action or proceeding and to have vacated, lifted, reversed, or overturned any decree, judgment, injunction or other order, whether temporary, preliminary or permanent that is in effect and that prohibits, prevents, or restricts consummation of the Transactions, unless Sellers and Purchaser agree in writing that litigation is not in their respective best interests.

8.6 Publicity. With the exception of press releases issued by Sellers and Purchaser on the Effective Date and the Closing Date in forms mutually agreeable to the Company and Purchaser, Purchaser and Sellers will not issue any press release or public announcement concerning this Agreement or the Transactions without obtaining the prior written approval of the other Parties, which approval may not be unreasonably withheld, conditioned or delayed, except that such consent will not be required if disclosure is otherwise required by applicable Law or by the Bankruptcy Court; provided, however, that (a) Purchaser or Sellers, as applicable, will use its or their commercially reasonable efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other Parties with respect to the text of any such required disclosure; and (b) Sellers will make such announcements to vendors of the Acquired Business and members of the Florist Network as are reasonably requested by Purchaser from time to time.

8.7 Confidentiality. Purchaser acknowledges that Confidential Information (as defined in the Confidentiality Agreement) has been, and in the future will be, provided to it in connection with this Agreement, including under Section 8.1, and is subject to the terms of the confidentiality agreement dated March 29, 2019, between FTD Companies, Inc. and Purchaser (the "Confidentiality Agreement"), the terms of which are incorporated herein by reference. Purchaser acknowledges and understands that this Agreement and related documents may be publicly filed in the Bankruptcy Court and further made available by Sellers to prospective

bidders or contract counterparties and that, such disclosure will not be deemed to violate any confidentiality obligations owing to Purchaser, whether pursuant to this Agreement, the Confidentiality Agreement or otherwise. Sellers acknowledge that from and after the Closing, all non-public information relating to the Purchased Assets and the Assumed Liabilities will be valuable and proprietary to Purchaser and its Affiliates. Sellers agree that, from and after the Closing, no Seller will disclose to any Person any information relating to Purchaser and its Affiliates, the Purchased Assets or the Assumed Liabilities, except as required by Law or as otherwise becomes available in the public domain other than through any action by any Seller in violation of its obligations under this Section 8.7. Sellers acknowledge and agree that the remedies at law for any breach or threatened breach of this Section 8.7 by any Seller are inadequate to protect Purchaser and its Affiliates and that the damages resulting from any such breach are not readily susceptible to being measured in monetary terms. Accordingly, without prejudice to any other rights or remedies otherwise available to Purchaser or its Affiliates, each Party acknowledges and agrees that upon any breach or threatened breach by a Seller of the terms and conditions of this Section 8.7, Purchaser and its Affiliates, as applicable will be entitled to injunctive relief and to seek an order restraining any threatened or future breach from any court of competent jurisdiction without proof of actual damages or posting of any bond in connection with any such remedy. The provisions of this Section 8.7 will survive the Closing.

8.8 Post-Closing Access and Information.

(a) For a period of three years following the Closing Date, Purchaser will use commercially reasonable efforts to provide Sellers, through their respective Representatives, with reasonable access during normal business hours and upon reasonable advance notice, to Purchaser's or the Acquired Business' officers, employees, accountants, properties, offices and assets, and to books, records, work papers and other documents and information, in each case, to the extent related to the Acquired Business, in each case, to the extent related to administration of the Bankruptcy Case and to permit Sellers to wind down and liquidate the Sellers' Bankruptcy estates following the Closing. .

(b) For a period of three years following the Closing Date, Sellers will use commercially reasonable efforts to provide Purchaser, through its Representatives, with reasonable access during normal business hours and upon reasonable advance notice, to Sellers' officers, employees, accountants, properties, offices and assets, and to books, records, work papers and other documents and information, in each case, to the extent related to the Acquired Business, as is reasonably required to enable Purchaser to conduct the Acquired Business in the Ordinary Course of Business following the Closing and to prepare financial statements with respect to the Acquired Business.

8.9 Employee Matters.

(a) Sellers will, from time to time prior to the Closing Date, update the list of Business Employees on Schedule 1.1(a) to reflect employment terminations and new hires. Prior to the Closing Date, Purchaser will, or will cause one of its Affiliates to, offer employment to the Business Employees, such employment to commence immediately following the Closing. Sellers and their Affiliates will cooperate with and use their commercially reasonable efforts to assist Purchaser and its Affiliates in their efforts to secure the satisfactory transition of the

Business Employees to Purchaser. Without limiting the generality of the foregoing, Sellers and their Affiliates will provide all relevant information in their possession necessary to the hiring and transfer of the Transferred Employees, including all relevant payroll, compensation, benefits participation and withholding tax information with respect to the Transferred Employees; provided, that Purchaser will not have access to personnel records of any Seller the disclosure of which is prohibited by applicable Law. Business Employees who accept offers of employment from Purchaser or an Affiliate of Purchaser are referred to as "Transferred Employees". Seller and its Affiliates will terminate the employment of all Business Employees who agree to become Transferred Employees, effective immediately prior to the Closing; provided, however, that the Parties intend and will take commercially reasonable steps to ensure that the Transferred Employees have continuous employment through the Closing. Purchaser agrees, to the extent permissible under Purchaser's benefit plans, to provide credit to the Transferred Employees for all periods of service with Seller and their Affiliates upon commencing their employment with Purchaser for purposes of eligibility for and calculation of benefits, vacation, paid time off and participation under any benefit plans maintained by Purchaser, but not for purposes of calculating any severance amount. Subject to Schedule 8.9(a), for a 12-month period following the Closing, Purchaser will provide each Transferred Employee with (i) a base salary or standard hourly wage rate that is no less favorable to the Transferred Employees than that provided by Seller at the time of the Closing; and (ii) employee health and welfare benefits, viewed as a whole on an aggregate basis, that are no less favorable to Transferred Employees than under Seller's Benefit Plans in effect at the time of the Closing.

(b) Sellers will, to the extent reasonably requested by Purchaser, use commercially reasonable efforts to make each Business Employee reasonably available to Purchaser for the purpose of facilitating the transition of such Business Employee to Purchaser. Sellers will not, without Purchaser's consent, knowingly interfere with any negotiations by Purchaser to employ or retain the services of any Business Employee; provided, however, that Sellers will not be prohibited from negotiating and entering into an agreement for the sale of any Retained Business where such agreement permits a purchaser or its affiliates to offer employment to the Business Employees who are Shared Employees.

(c) Sellers hereby waive, either directly or by causing their Affiliates to waive, for the benefit of Purchaser and its Affiliates, any and all restrictions, if any, in any Benefit Plan or Contract relating to (i) noncompetition with Sellers or any of their Affiliates relating to the Acquired Business or (ii) maintenance of confidentiality of any information relating to the Acquired Business for the benefit of any Seller or any of its Affiliates, in each case, with or covering any Business Employee who becomes a director, employee, consultant or independent contractor of Purchaser or its Affiliates in connection with the Acquired Business.

(d) Sellers will be responsible for any notices required to be given under and will otherwise comply with all Liabilities arising under the WARN Act relating to any acts or omissions on or prior to the Closing, including as a result of the Transactions; provided, however, that in the event that Purchaser decides not to hire a sufficient number of Business Employees such that it would trigger a "plant closing" or "mass layoff" within the meaning of the WARN Act, Purchaser will provide notice of its decision to Sellers in sufficient time for Sellers to comply with the WARN Act's notice requirements prior to the Closing Date. If Purchaser does not provide sufficient time for Sellers to so comply, Purchaser agrees to

indemnify Sellers against and agrees to hold each of them harmless from any and all losses incurred or suffered by Sellers with respect to WARN Act Liabilities arising solely as a result thereof. Subject to the foregoing and Section 5.10(a)(iii), Purchaser will be responsible for any notices required to be given under and will otherwise comply with all Liabilities arising under the WARN Act relating to any acts or omissions after the Closing.

(e) Purchaser's employment of the Transferred Employees will be "at will" and may be terminated by Purchaser and/or any of its Affiliates at any time for any reason; provided, however, that for the 12-month period following the Closing, to the extent that the employment of any Transferred Employee is involuntarily terminated by Purchaser, Purchaser will pay, or will cause to be paid to such Transferred Employee the separation pay pursuant to the severance plan agreed to by Sellers and Purchaser in good faith as set forth on Schedule 8.9(e). Nothing in this Agreement will create any third-party rights in any Transferred Employees or any current or former employees or other service providers of any Seller or any Seller Affiliate (or any beneficiaries or dependents of the foregoing) or in any other person. Nothing contained herein will constitute an amendment to any Benefit Plan.

8.10 Transition Services. After the Closing, Purchaser will and will cause its Affiliates, and Seller will and will cause its Affiliates, to provide certain transition services to Sellers' Affiliates or the Retained Business or Purchaser's Affiliates or the Acquired Business, as applicable, such transition services to be agreed to between Seller and Sellers' Affiliates and Purchaser. The Parties will negotiate in good faith, prior to the Closing, a definitive transition services agreement reflecting such terms, with the definitive agreement to be in a form (i) customary for transactions of the type contemplated by this Agreement and (ii) reasonably acceptable to the Company and Purchaser, in their respective reasonable discretion. The transition services agreement will include access to books and records, and use of office space and office support for employees of Sellers or the Retained Business, as is reasonably necessary or appropriate in connection with the administration of the Bankruptcy Case and to permit Sellers to wind-down and liquidate the Sellers' bankruptcy estates following the Closing and/or the divestiture of any of the Retained Business or the assets thereof. The transition services agreement will also provide for the transfer by the Sellers to Purchaser or its designee of the registrations of any domain name registered in the name of any Seller (a) that is part of the Purchased Intellectual Property or (b) in connection with the FTD Florists Online (FOL) service. Sellers shall cause the terms of the transition services agreement to be binding on any acquiror or operator of any Retained Business. The Parties will also negotiate in good faith, prior to the Closing, covenants regarding Purchaser's rights and access to the PQAD system post-Closing, mutually acceptable to Purchaser and Seller or any acquiror or operator of any Retained Business and Seller shall cause the terms of such covenants to be binding on any acquiror or operator of any Retained Business that acquires the ownership of the PQAD system.

8.11 Bulk Transfer Laws. The Parties intend that pursuant to Section 363(f) of the Bankruptcy Code, the transfer of the Purchased Assets will be free and clear of any Liens in the Purchased Assets, including any Liens or claims arising out of the bulk transfer Laws, and the Parties will take such steps as may be necessary or appropriate to so provide in the Approval Order. In furtherance of the foregoing, each Party hereby waives compliance by the Parties with the "bulk sales," "bulk transfers" or similar Law in all applicable jurisdictions in respect of the Transactions (including under the applicable Tax Laws).

8.12 Transferred Employee Non-Solicit. For the period commencing as of the Closing Date and expiring on the two-year anniversary of the Closing Date, Sellers will not, and will cause their Subsidiaries not to (including through Representatives) solicit for employment (as an employee or independent contractor or otherwise) any Transferred Employees. The restrictions of this Section 8.12 will not apply to (a) the placement of any general solicitation or advertisement or the use of general search firm services that are not targeted, directly or indirectly, at any Transferred Employees or (b) any Transferred Employee who has been involuntarily terminated by Purchaser or any of its Affiliates.

8.13 Use of Names. As promptly as practicable following the Closing, but in any event within 15 days following the Closing, Sellers will deliver to Purchaser duly adopted and executed amendments and other name change documents to their and their Affiliates' respective organizational documents relative to the change of Sellers' and their Affiliates' names to some other names which are dissimilar to, and cannot be confused with, "FTD", "ProFlowers" or "roses.com" (along with all variations thereof, collectively, the "Protected Names") and which will be reasonably acceptable to Purchaser. As promptly as practicable following the Closing, but in any event within 15 days following the Closing, Sellers will cease and desist and will cause their Affiliates to cease and desist from the use of the Protected Names, including but not limited to the use of stationery, business cards, marketing materials, e-mail domains, and websites; provided, that Sellers will be permitted to use the Protected Names solely for purposes of transitioning the Acquired Business to Purchaser.

8.14 POS System Upgrade. Sellers will use commercially reasonable efforts to enter into a Contract with a mutually agreed upon vendor to implement the upgrade to the POS system for the Florist Network previously described to Purchaser.

## **IX. CONDITIONS TO CLOSING**

9.1 Conditions Precedent to Obligations of Purchaser. The obligation of Purchaser to consummate the Transactions is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Purchaser in whole or in part to the extent permitted by applicable Law):

(a) each of the representations and warranties of Sellers contained in this Agreement (disregarding all "materiality" or "Seller Material Adverse Effect" qualifications set forth therein) shall be true and correct as of the Closing, as if made on the Closing Date (except for any such representations and warranties that are made as of a specific date, which representations and warranties shall have been true and correct as of such specific date), except where the failure of the representations and warranties to be true and correct, individually or in the aggregate, has not had and would not reasonably be expected to have a Seller Material Adverse Effect (except for the representations and warranties in Sections 5.1, 5.2, and 5.12 (disregarding all "materiality" or "Seller Material Adverse Effect" qualifications set forth therein), which shall be true and correct in all material respects, and Purchaser shall have received a certificate signed by an authorized officer of each Seller on behalf of such Seller, dated the Closing Date, to the foregoing effect;

(b) Sellers shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by them prior to or on the Closing Date, and Purchaser shall have received a certificate signed by an authorized officer of each Seller on behalf of such Seller, dated the Closing Date, to the foregoing effect;

(c) Sellers shall have delivered, or caused to be delivered, to Purchaser all of the items set forth in Section 4.2;

(d) no Seller Material Adverse Effect shall have occurred since the date of this Agreement;

(e) the Stalking Horse Order and the Bidding Procedures Order shall have been entered by the Bankruptcy Court and shall not be subject to a stay or have been vacated or revoked;

(f) Sellers shall have delivered to Purchaser evidence reasonably satisfactory to Purchaser that the approval required by the bylaws of Interflora, Inc. with respect to the transfer of the shares of Interflora, Inc. contemplated by Section 2.1(b)(ix) (the “Interflora Shares”) has been obtained and will permit the transfer of the Interflora Shares as contemplated by Section 2.1(b)(ix) at the Closing;

(g) Purchaser shall have received an irrevocable commitment from the Title Company to issue the Title Policy at the Closing.

9.2 Conditions Precedent to Obligations of Sellers. The obligations of Sellers to consummate the Transactions are subject to the fulfillment, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by Sellers in whole or in part to the extent permitted by applicable Law):

(a) each of the representations and warranties of Sellers contained in this Agreement (disregarding all “materiality” or “Purchaser Material Adverse Effect” qualifications set forth therein) shall be true and correct as of the Closing, as if made on the Closing Date (except for any such representations and warranties that are made as of a specific date, which representations and warranties shall have been true and correct as of such specific date), except where the failure of the representations and warranties to be true and correct, individually or in the aggregate, has not had and would not reasonably be expected to have a Purchaser Material Adverse Effect (except for the representations and warranties in Sections 6.1 and 6.2 (disregarding all “materiality” or “Purchaser Material Adverse Effect” qualifications set forth therein), which shall be true and correct in all material respects), and Sellers shall have received a certificate signed by an authorized officer of Purchaser on behalf of Purchaser, dated the Closing Date, to the foregoing effect;

(b) Purchaser shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by Purchaser prior to or on the Closing Date, and Sellers shall have received a certificate signed by an authorized officer of Purchaser on behalf of Purchaser, dated the Closing Date, to the foregoing effect; and

(c) Purchaser shall have delivered to Sellers all of the items set forth in Section 4.3.

9.3 Conditions Precedent to Obligations of Purchaser and Sellers. The respective obligations of Purchaser and Sellers to consummate the Transactions are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Purchaser and Sellers in whole or in part to the extent permitted by applicable Law):

- (a) there shall not be in effect any Order by a Governmental Body restraining, enjoining or otherwise prohibiting the consummation of the Transactions;
- (b) the applicable waiting periods under the HSR Act will have expired or been terminated;
- (c) the Bankruptcy Court shall have entered the Approval Order and the Approval Order shall not be subject to a stay or have been vacated or revoked;
- (d) [Intentionally deleted.]
- (e) [Intentionally deleted.]

9.4 Frustration of Closing Conditions. No Party may rely on the failure of any condition set forth in Sections 9.1, 9.2 or 9.3, as the case may be, to terminate this Agreement under Section 4.4 if such failure was caused by such Party's breach of any provision of this Agreement.

## X. TAXES

10.1 Transfer Taxes. All documentary, stamp, transfer, motor vehicle registration, sales, use, value added, excise and other similar non-income Taxes and all filing and recording fees (and any penalties and interest associated with such Taxes and fees) arising from or relating to the consummation of the Transactions (collectively, "Transfer Taxes") will be borne exclusively by Purchaser to the extent such Transfer Taxes are set forth on Schedule 2.3(j), and will be borne equally by Purchaser and Sellers with respect to any other Transfer Taxes, in each case, regardless of the Party on whom liability is imposed under the provisions of the Laws relating to such Transfer Taxes. Sellers and Purchaser will consult and cooperate in timely preparing and making all filings, Tax Returns, reports and forms as may be required to comply with the provisions of the Laws relating to such Transfer Taxes and will cooperate and otherwise take commercially reasonable efforts to (a) obtain any available refunds for or exemptions from, or (b) otherwise reduce, such Transfer Taxes, including preparing exemption certificates and other instruments as are applicable to claim available exemptions from the payment of Transfer Taxes under applicable Law and executing and delivering such affidavits and forms as are reasonably requested by the other Party.

## 10.2 Purchase Price Allocation.

(a) As promptly as practicable after the Closing Date, but no later than 90 days thereafter, Purchaser will prepare and deliver to Sellers, an allocation schedule setting forth the amounts to be allocated among Sellers and among the Purchased Assets of each Seller, pursuant to (and to the extent necessary to comply with) Section 1060 of the Code and the applicable regulations promulgated thereunder (or, if applicable, any similar provision under state, local or foreign Law or regulation) (the “Proposed Allocation Statement”). Sellers will have 20 Business Days following delivery of the Proposed Allocation Statement during which to notify Purchaser in writing (an “Allocation Notice of Objection”) of any objections to the Proposed Allocation Statement, setting forth in reasonable detail the basis of their objections. If Sellers fail to deliver an Allocation Notice of Objection in accordance with this Section 10.2(a), the Proposed Allocation Statement will be conclusive and binding on all Parties and will become the “Final Allocation Statement.” If Sellers submit an Allocation Notice of Objection, then for 20 Business Days after the date Purchaser receives the Allocation Notice of Objection, Purchaser and Sellers will use their commercially reasonable efforts to agree on the allocations. Failing such agreement within 20 Business Days of such notice, the unresolved allocations will be submitted to the Neutral Firm for resolution in accordance with Section 3.4, which will apply *mutatis mutandis* to such disagreement. For the avoidance of doubt, in administering any Legal Proceeding, the Bankruptcy Court will not be required to apply the Final Allocation Statement in determining the manner in which the Purchase Price should be allocated as between Sellers and their respective estates.

(b) Sellers and Purchaser and their respective Affiliates will report, act, and file Tax Returns (including, but not limited to IRS Form 8594) in all respects and for all purposes consistent with the Final Allocation Statement. Neither Sellers nor Purchaser will take any position (whether in audits, Tax Returns, or otherwise) that is inconsistent with the Final Allocation Statement unless required to do so by applicable Law.

10.3 Cooperation and Audits. Purchaser, Sellers and their respective Affiliates will cooperate fully with each other regarding Tax matters and will make available to the other as reasonably requested all information, records and documents relating to Taxes governed by this Agreement until the expiration of the applicable statute of limitations or extension thereof or the conclusion of all audits, appeals or litigation with respect to such Taxes.

10.4 Tax Returns. From and after the Closing, with respect to the Acquired Business and/or the Purchased Assets, Sellers, at their sole cost and expense, will file (or cause to be filed) all Tax Returns that relate to any Retained Tax, and Purchaser, at its sole cost and expense, will file (or caused to be filed) all other Tax Returns. For the avoidance of doubt, to the extent any Tax Return relates solely to the Purchased Assets or the Acquired Business and is in respect of a Straddle Period, Purchaser will file (or caused to be filed) such Tax Return, at its sole cost and expense. All Tax Returns that a Seller is required to file or cause to be filed in accordance with this Section 10.4 will be prepared and filed in a manner consistent with past practice and, on such Tax Returns, no position will be taken, election made or method adopted that is inconsistent in any material respect with positions taken, elections made or methods used in preparing and filing similar Tax Returns in prior periods (including positions, elections or methods that would have the effect of deferring gain or income to periods ending after the Closing Date or accelerating credits or deductions to periods ending on or before the Closing Date).

## XI. GENERAL GOVERNING PROVISIONS

11.1 No Survival of Representations and Warranties. The Parties agree that the representations and warranties contained in this Agreement will not survive the Closing hereunder, and none of the Parties will have any Liability to each other after the Closing for any breach thereof. The Parties agree that the covenants contained in this Agreement to be performed at or after the Closing will survive the Closing hereunder until the expiration of the applicable statute of limitations or for such shorter period explicitly specified therein, and each Party will be liable to the other after the Closing for any breach thereof.

11.2 Expenses. Except for the Expense Reimbursement Amount (exclusively from and after the Bankruptcy Court's approval thereof) or as otherwise expressly provided in this Agreement, whether or not the Transactions are consummated, each of Sellers, on the one hand, and Purchaser, on the other hand, will bear its own expenses incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the Transactions and all proceedings incident thereto.

### 11.3 Injunctive Relief.

(a) The Parties agree that irreparable damages would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, and that damages at law may be an inadequate remedy for the breach of any of the covenants, promises and agreements contained in this Agreement, and, accordingly, any Party will be entitled to injunctive relief to prevent any such breach, and to specifically enforce specifically the terms and provisions of this Agreement, including without limitation specific performance of such covenants, promises or agreements or an Order enjoining a Party from any threatened, or from the continuation of any actual, breach of the covenants, promises or agreements contained in this Agreement. The rights set forth in this Section 11.3 will be in addition to any other rights which a Party may have at law or in equity pursuant to this Agreement.

(b) The Parties hereby agree not to raise any objections to the availability of the equitable remedy of specific performance to prevent or restrain breaches of this Agreement by Purchaser or Sellers, as applicable, and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the respective covenants and obligations of Purchaser or Sellers, as applicable, under this Agreement all in accordance with the terms of this Section 11.3.

### 11.4 Submission to Jurisdiction; Consent to Service of Process.

(a) Without limiting any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court will retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the Transactions, and (ii) any and all proceedings related to the foregoing will be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy

Court for such purposes and will receive notices at such locations as indicated in Section 11.8; provided, however, that if the Bankruptcy Cases have been closed pursuant to Section 350 of the Bankruptcy Code, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or in the event (but only in the event) that such court does not have subject matter jurisdiction over such Legal Proceeding in the United States District Court for the District of Delaware) and any appellate court from any thereof, for the resolution of any such claim or dispute. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(b) Each of the Parties hereby consents to process being served by any other Party in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 11.8; provided, however, that such service will not be effective until the actual receipt thereof by the Party being served.

11.5 Waiver of Right to Trial by Jury. Each Party to this Agreement waives any right to trial by jury in any action, matter or proceeding regarding this Agreement or any provision hereof.

11.6 Entire Agreement; Amendments and Waivers. This Agreement represents the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the Party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, will be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any Party of a breach of any provision of this Agreement will not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder will operate as a waiver thereof, nor will any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by Law.

11.7 Governing Law. This Agreement will be governed by and construed in accordance with federal bankruptcy Law, to the extent applicable, other federal Law, where applicable, and, where state Law is implicated, the Laws of the State of Delaware applicable to contracts made and performed in such State.

11.8 Notices. All notices and other communications under this Agreement will be in writing and will be deemed given (i) when delivered personally by hand, (ii) when sent by email (with written confirmation of transmission) or (iii) one Business Day following the day sent by

overnight courier (with written confirmation of receipt), in each case at the following addresses and email addresses (or to such other address or email address as a Party may have specified by notice given to the other Party pursuant to this provision):

If to Sellers, to:

c/o FTD Companies, Inc.  
3113 Woodcreek Rd.  
Downers Grove, IL 60515  
Attention: Scott Levin  
Email: XXXXXXXXX

With a copy (which will not constitute notice) to:

Jones Day  
77 W. Wacker Dr. Suite 3500  
Chicago, IL 60601  
Attention: Timothy P. FitzSimons  
Email: tfitzsimons@jonesday.com

And a copy (which will not constitute notice) to:

Jones Day  
901 Lakeside Avenue  
Cleveland, Ohio 44114  
Attention: Heather Lennox  
Email: hlennox@jonesday.com

If to Purchaser, to:

c/o Nexus Capital Management LP  
11100 Santa Monica Boulevard  
Suite 250  
Los Angeles, California 90025  
Attention: Damian Giangiacomo  
Email: XXXXXXXXX

With copies (which will not constitute notice) to:

Munger, Tolles & Olson LLP  
350 South Grand Avenue  
Suite 5000  
Los Angeles, California 90071  
Attention: Brett Rodda and Seth Goldman  
Email: brett.rodde@mto.com and seth.goldman@mto.com

11.9 Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any Law or public policy, all other terms or provisions of this

Agreement will nevertheless remain in full force and effect so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the Transactions are consummated as originally contemplated to the greatest extent possible.

11.10 Assignment. This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Nothing in this Agreement will create or be deemed to create any third party beneficiary rights in any Person or entity not a party to this Agreement. No assignment of this Agreement or of any rights or obligations hereunder may be made by either Sellers or Purchaser (by operation of law or otherwise) without the prior written consent of the other Parties and any attempted assignment without the required consents will be void; provided, however, that (a) Purchaser may assign some or all of its rights or delegate some or all of its obligations hereunder to one or more Affiliates and (b) Sellers may assign some or all of their rights or delegate some or all of their obligations hereunder to successor entities (including any liquidating trust) pursuant to a chapter 11 plan confirmed by the Bankruptcy Court, in the case of each clause (a) and (b) without any other Party's consent. No assignment of any obligations hereunder will relieve the Parties of any such obligations. Upon any such permitted assignment, the references in this Agreement to Sellers or Purchaser will also apply to any such assignee unless the context otherwise requires.

11.11 Non-Recourse. Any claim or cause of action based upon, arising out of, or related to this Agreement or any agreement, document or instrument contemplated hereby may only be brought against Persons that are expressly named as Parties or thereto, and then only with respect to the specific obligations set forth herein or therein. Other than the Parties, no other party will have any Liability or obligation for any of the representations, warranties, covenants, agreements, obligations or Liabilities of any Party under this Agreement or the agreements, documents or instruments contemplated hereby or of or for any Legal Proceeding based on, in respect of, or by reason of, Transactions (including the breach, termination or failure to consummate such transactions), in each case whether based on contract, tort, fraud, strict liability, other Laws or otherwise and whether by piercing the corporate veil, by a claim by or on behalf of a Party or another Person or otherwise. In no event will any Person be liable to another Person for any remote, speculative or punitive damages with respect to the Transactions.

11.12 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

*[Signature page follows]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the Effective Date.

PURCHASER:

**GATEWAY MERCURY HOLDINGS, LLC**

By: Nexus Special Situations II, L.P.  
Its: Sole Member

By: Nexus Special Situations GP II, L.P.  
Its: General Partner

By: Nexus Partners LLC  
Its: General Partner

By: /s/ Damian Giangiacomo  
Name: Damian Giangiacomo  
Title: Sole Member

[Signature Page to Amended and Restated Asset Purchase Agreement]

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COMPANY:

FTD, INC.

By: /s/ Scott D. Levin

Name: Scott D. Levin

Title: President and Chief Executive Officer and Secretary

[Signature Page to Amended and Restated Asset Purchase Agreement]

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OTHER SELLERS:

FLORISTS' TRANSWORLD DELIVERY, INC.

By: /s/ Scott D. Levin  
Name: Scott D. Levin  
Title: President and Chief Executive Officer and Secretary

FTD.COM INC.

By: /s/ Scott D. Levin  
Name: Scott D. Levin  
Title: President and Chief Executive Officer and Secretary

FTD.CA, INC.

By: /s/ Scott D. Levin  
Name: Scott D. Levin  
Title: President and Chief Executive Officer and Secretary

PROVIDE COMMERCE, LLC

By: /s/ Scott D. Levin  
Name: Scott D. Levin  
Title: President and Chief Executive Officer and Secretary

FLOWERFARM, INC.

By: /s/ Scott D. Levin  
Name: Scott D. Levin  
Title: President and Chief Executive Officer and Secretary

[Signature Page to Amended and Restated Asset Purchase Agreement]

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BLOOM THAT, INC.

By: /s/ Scott D. Levin

Name: Scott D. Levin

Title: President and Chief Executive Officer and Secretary

[Signature Page to Amended and Restated Asset Purchase Agreement]

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**ASSET PURCHASE AGREEMENT**

by and among

PLANETART, LLC

as Purchaser

and

PROVIDE CREATIONS, INC.

and the other Sellers party hereto

Dated as of June 23, 2019

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## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this “Agreement”), dated as of June 23, 2019 (the “Effective Date”), is by and among PlanetArt, LLC, a Delaware limited liability company (“Purchaser”), Provide Creations, Inc., a Delaware corporation (the “Company”), and other Affiliates listed on the signature pages to this Agreement (together with the Company, each a “Seller” and, collectively, “Sellers”). Certain capitalized terms used in this Agreement that are not otherwise defined are defined in Article I.

A. On June 3, 2019 (the “Petition Date”), each of Sellers filed a voluntary petition and commenced a case (the “Bankruptcy Cases”) under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

B. Sellers and certain of their Affiliates are engaged in the business of manufacturing and selling personalized gifts through the www.personalcreations.com website, the www.gifts.com website and other online retail channels using the PERSONAL CREATIONS, GIFTS.COM, RED ENVELOPE, and those trademarks listed on Schedule 2.1(b)(vi) (collectively, the “Business”).

C. Sellers desire to sell to Purchaser the Purchased Assets and assign to Purchaser the Assumed Liabilities, and Purchaser desires to purchase from Sellers the Purchased Assets and assume the Assumed Liabilities, in each case, upon the terms and conditions set forth in this Agreement.

D. On the terms and subject to the conditions set forth herein, following the commencement of the Bankruptcy Cases, Sellers intend to request that the Bankruptcy Court authorize and approve the transactions contemplated by this Agreement pursuant to Sections 105, 363 and 365 of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree:

### I. DEFINITIONS

1.1 Certain Definitions. For purposes of this Agreement, each of the following terms, when used herein with initial capital letters, has the meaning specified in this Section 1.1 or in the other Sections of this Agreement identified in Section 1.2:

“Adjustment Escrow Amount” means \$2,000,000.

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly, controls, 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 and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

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“Alternative Transaction” shall mean a transaction or series of related transactions pursuant to which Seller or any of its Affiliates (a) accepts a Qualified Bid, other than that of Purchaser, as the highest or best offer for all or any material portion of the Purchased Assets, or (b) sells, transfers, leases or otherwise disposes of, directly or indirectly, including through an asset sale, stock sale, merger, reorganization or other similar transaction (by Seller or otherwise), including pursuant to a stand-alone plan of reorganization or refinancing, all or any material portion of the Purchased Assets (or agrees to do any of the foregoing) in a transaction or series of transactions to a Person or Persons other than Purchaser on or before the Termination Date.

“Ancillary Documents” means one or more bills of sale, the Transition Services Agreement, intellectual property assignment agreement, the Legacy Business PQUAD Covenant Agreement, and the other agreements, instruments, and documents required to be delivered at the Closing.

“Approval Order” means an order entered by the Bankruptcy Court, pursuant to Sections 363 and 365 of the Bankruptcy Code, including but not limited to a sale of the Purchased Assets free and clear of all Liens and a finding of “good faith” pursuant to Section 363(m) in favor of the Purchaser, authorizing and approving, among other things, (a) the sale of the Purchased Assets (b) the assumption of the Assumed Liabilities by Purchaser and (c) the assumption and assignment of the Purchased Contracts, in accordance with the terms and conditions of this Agreement, reasonably acceptable to Purchaser in all respects.

“Benefit Plan” means each (a) employment, consulting, compensation, profit-sharing, thrift, savings, bonus, incentive, change in control, severance, retention, retirement, pension benefit or deferred compensation plan, program, policy, practice, contract, agreement or arrangement, and (b) fringe benefit, health, dental, vision, life, cafeteria, accident, hospitalization, insurance, disability, transportation, vacation, sabbatical, accidental death and dismemberment, workers’ compensation or supplemental unemployment benefit plan, program practice, contract, agreement or arrangement, or other employee benefits or remuneration of any kind, whether written or unwritten or otherwise, funded or unfunded, including without limitation any “employee benefit plan” within the meaning of Section 3(3) of ERISA (and any trust, escrow, funding, insurance or other agreement related to any of the foregoing), whether or not such plan is subject to ERISA.

“Bidding Procedures Order” means an order entered by the Bankruptcy Court (including any attachment thereto) approving, among other things, the (a) bidding procedures for conducting a sale and auction of the Purchased Assets and (b) procedures relating to the assumption and assignment of executory Contracts and unexpired leases, reasonably acceptable to Purchaser in all respects.

“Break-Up Fee Amount” means an amount equal to \$543,000.00.

“Business Day” means any day other than any of (a) a Saturday; (b) a Sunday; or (c) any other day on which commercial banks in Chicago, Illinois are authorized or required by Law to close.

“Business Employee” means each employee of a Seller or any Affiliate of a Seller who (a) provides services to such Seller in connection with the Business and (b) is listed on Schedule 1.1(a).

“Closing Working Capital Amount” means: (a) the value of Current Assets, less (b) the value of Current Liabilities, determined as of the close of business on the Closing Date.

“Company SEC Documents” means all forms, reports, schedules, statements and other documents filed with or furnished to the SEC on or after January 1, 2017 by FTD, Inc., a Delaware corporation, that are required to be filed or furnished by it under the Securities Act of 1933 or the Securities Exchange Act of 1934.

“Contract” means any contract, agreement, commitment, promise or undertaking (including any indenture, note, bond or other evidence of indebtedness, lease, sublease, instrument, license, purchase order or other legally binding agreement) whether written or oral.

“Credit Card Accounts Receivable” means each “Account” or “Payment Intangible” (each as defined in the Uniform Commercial Code as from time to time in effect in the State of Delaware) together with all income, payments and proceeds thereof, owed by a credit card payment processor or an issuer of credit cards to a Seller resulting from charges by a customer of a Seller on credit cards processed by such processor or issued by such issuer in connection with the gathering of orders by a Seller, in each case in the Ordinary Course of Business.

“Cure Costs” means monetary amounts that must be paid and obligations that otherwise must be satisfied under Sections 365(b)(1)(A) and (B) of the Bankruptcy Code in connection with the assumption and/or assignment of any Purchased Contract, as agreed upon by Purchaser and the non-debtor counterparty to the applicable Purchased Contract, or determined by the Bankruptcy Court pursuant to the procedures in the Bidding Procedures Order.

“Current Assets” means the current assets of Sellers with respect to the Business, which current assets will include only the line items, and reflect the exclusions, set forth on the form of Closing Working Capital Statement set forth as Schedule 3.4(a) and only to the extent acquired by Purchaser pursuant to the terms of this Agreement.

“Current Liabilities” means the current liabilities of Sellers with respect to the Business, which current liabilities will include only the line items, and reflect the exclusions, set forth on the form of Closing Working Capital Statement set forth as Schedule 3.4(a) and only to the extent assumed by Purchaser pursuant to the terms of this Agreement.

“Escrow Account” means the escrow account holding the Deposit Amount and the Adjustment Escrow Amount pursuant to the Escrow Agreement.

“Escrow Agreement” means the escrow agreement for the Escrow Account, by and among Purchaser, Company and U.S. Bank, in form and substance reasonably acceptable to Purchaser and Company.

“Escrow Amount” means the total of the Deposit Amount and the Adjustment Escrow Amount.

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

“Excluded Business” means any business owned or conducted by any Seller or any Affiliate of a Seller other than the Business.

“Excluded Names” means (a) any trademark, brand name, slogan, logo, internet domain name, corporate name, or other identifier of source or goodwill that includes the words “Florists’ Transworld Delivery”, “Provide” or the name or acronym “FTD” and (b) any and all other derivatives or variations thereof.

“Expense Reimbursement Amount” means an amount, not to exceed \$181,000.00, equal to Purchaser’s reasonable and documented out-of-pocket costs, fees, and expenses (including, costs, fees and expenses of counsel and accounting costs, fees and expenses) incurred by Purchaser in connection with this Agreement (including, the drafting, negotiation and implementation of this Agreement), the Transactions (including, relating to business, legal and accounting due diligence and all matters in connection with the Bankruptcy Cases), whether incurred before or after the commencement of the Bankruptcy Cases.

“Final Adjustment Amount” means the amount that the Closing Working Capital Amount exceeds, or is less than, as applicable, the Target Working Capital Amount, as calculated pursuant to Section 3.4(a).

“GAAP” means generally accepted accounting principles in the United States.

“Governmental Body” means any government or governmental or regulatory body thereof, or political subdivision thereof, or any agency, authority, department, commission, board, bureau, official or instrumentality of such body, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), whether foreign, federal, state, or local, or any agency, instrumentality or authority thereof, or any court or arbitrator thereof (public or private) of competent jurisdiction.

“Intellectual Property” means all intellectual property (by whatever name or term known or designated) now known or hereafter existing anywhere in the world, whether registered or unregistered, including without limitation (a) patents and patent applications, continuations, divisionals, continuations-in-part, reissues and reexaminations, (b) trademarks, service marks, trade dress, logos, corporate names, domain names (and related URLs), trade names and other designations of source or origin, including e-mail addresses, social media handles and accounts, advertising accounts, social media pages, together with the passwords required to access, and all goodwill associated with, any of the foregoing, and all applications and registrations therefor (“Trademarks”), (c) copyrights, copyrightable works, rights in databases, data collections, copyright registrations and copyright applications and corresponding rights in works of authorship, (d) trade secrets, (e) Software in any form, including internet websites, web content and links, source code, object code and mobile applications, and (f) rights of publicity and personality.

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

“IRS” means the Internal Revenue Service.

“Knowledge of Sellers” or “Sellers’ Knowledge” means the actual knowledge of those Persons identified on Schedule 1.1(b), and the knowledge a reasonable person in the position of such individuals would have after reasonable inquiry.

“Law” means any federal, state, local or foreign law, statute, code, ordinance, rule, regulation, Order, stipulation, award or common law requirement.

“Leased Real Property” means real property in the United States leased, subleased, or licensed by, or for which a right to use or occupy has been granted to, any Seller pursuant to a Lease.

“Leases” means the real property leases, subleases, licenses of access, or rights of use or occupancy listed on Schedule 1.1(c), together with the rights to any and all rights of way, easements, fixtures and improvements set forth in such leases and subleases.

“Legacy Business Owner” means the Person, or Persons, that purchase all, or substantially all, of the assets of FTD, Inc. or its Affiliates related to (a) the operation of a network of members consisting of florist retail and other retail locations for the purpose of sending and receiving floral orders, (b) providing goods and services to such members, and (c) gathering orders through the FTD.com business and the ProFlowers business.

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

“Liability” means any debt, loss, liability, claim (including “claim” as defined in the Bankruptcy Code), commitment, undertaking, damage, expense, fine, penalty, cost, royalty, deficiency or obligation (including those arising out of any action, such as any settlement or compromise thereof or judgment or award therein), of any nature, whether known or unknown, disclosed or undisclosed, express or implied, primary or secondary, direct or indirect, matured or unmatured, fixed, absolute, contingent, accrued or unaccrued, liquidated or unliquidated, and whether due or to become due, and whether in contract, tort or otherwise.

“Lien” as applied to any Person means any lien, encumbrance, pledge, mortgage, deed of trust, security interest, claim, lease, sublease, charge, option, right of first offer or first refusal, right of use or possession, restriction, easement, servitude, restrictive covenant, encroachment or encumbrance or any other similar encumbrance or restriction in respect of an asset of such Person, whether imposed by Law, Contract or otherwise.

“Mutual PQUAD Covenant Agreement” means that certain Mutual PQUAD Covenant Agreement entered into by and between Sellers and Shari’s Business Owner, dated June 23, 2019.

“Order” means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of, or entered, issued, made or rendered by, a Governmental Body.

“Ordinary Course of Business” means the ordinary and usual course of normal day-to-day operations of the Business consistent with past practice and taking into account the commencement of the Bankruptcy Cases.

“Party” or “Parties” means Purchaser and each Seller, as the case may be.

“Permitted Exceptions” means (A) any Lien that the Purchased Assets may not be sold free and clear of under Section 363(f) of the Bankruptcy Code to the extent (i) arising or incurred in the Ordinary Course of Business specifically permitted in the Approval Order and (ii) relating directly to an Assumed Liability; and (B) any Lien created under the Mutual PQAD Covenant Agreement.

“Person” means any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Body or other entity.

“Phoenix Facility” means the facility located at 615 North 48th Street, Phoenix, AZ 85008.

“Pre-Paid Expenses” means any of Sellers’ rights with respect to all deposits, including customer deposits and security deposits (whether maintained in escrow or otherwise) for rent, electricity, telephone or otherwise, advances, pre-paid expenses, prepayments, rights under warranties or guarantees, vendor rebates and other refunds of every kind and nature (whether or not known or unknown or contingent or non-contingent), to the extent related solely to the Business, except that (i) professional fee retainers, (ii) pre-paid deposits, and (iii) deposits made in connection with, or related to, the Bankruptcy Cases shall not be included in the definition of “Pre-Paid Expenses.”

“Purchaser Material Adverse Effect” means any event, change, effect, condition, state of facts or occurrence (regardless of whether such event, change, effect, condition, state of facts or occurrence constitutes a breach of any representation, warranty or covenant of Purchaser hereunder) which has had or would reasonably be expected to have, individually or when considered together with any other event, change, effect, condition, state of facts or occurrence, a material and adverse effect on the ability of Purchaser to consummate the Transactions or perform its obligations under this Agreement.

“Qualified Bid” means a competing bid submitted by a third party for any or all of the Purchased Assets submitted in accordance with the Bidding Procedures Order.

“Representative” means, with respect to any Person, any and all of its directors, officers, partners, managers, employees, consultants, financial advisors, counsel, accountants and other agents.

“Sale Hearing” means the hearing conducted by the Bankruptcy Court to approve the transactions contemplated by this Agreement.

“San Diego Facilities” means the facilities located at 4830 Eastgate Mall, Suite 100, 200 and 300, San Diego, California and 4840 Eastgate Mall, Suite 150, San Diego, California.

“Schedules” means the Schedules attached hereto, dated as of the date hereof, delivered by Sellers to Buyer in connection with this Agreement.

“SEC” means the United States Securities and Exchange Commission.

“Seller Material Adverse Effect” means any event, change, effect, condition, state of facts or occurrence (regardless of whether such event, change, effect, condition, state of facts or occurrence constitutes a breach of any representation, warranty or covenant of Sellers hereunder) which has had or would reasonably be expected to have, individually or when considered together with any other events, changes, effects, conditions, states of facts or occurrences, (a) a material adverse effect on or a material adverse change in or to the Purchased Assets, considered as a whole, (b) a material and adverse effect on the ability of Sellers to consummate the Transactions or perform their obligations under this Agreement or (c) the effect of preventing or materially delaying the consummation of the Transactions, other than, in the case of clause (a), will any of the following, alone or in combination, be deemed to constitute, nor will any of the following (including the effect of any of the following) be taken into account in determining whether there has been or will be, a “Seller Material Adverse Effect”: (i) any change in the United States or foreign economies or financial markets in general; (ii) any change that generally affects the businesses in which a Seller operates; (iii) any change arising in connection with earthquakes, hurricanes, tomadoes, fires, acts of God, hostilities, acts of war, sabotage or terrorism or military actions or any escalation or material worsening of any such hostilities, acts of war, sabotage or terrorism or military actions; (iv) any change in applicable Laws or accounting rules; (v) any actions taken by Purchaser or any of its Affiliates (other than those expressly permitted to be taken hereunder); (vi) any effect resulting from the public announcement of this Agreement or the Bankruptcy Cases; or (vii) any effect resulting from (1) the commencement or filing of the Bankruptcy Cases, (2) any concurrent ancillary filing by an Affiliate or Subsidiary of Sellers that is not a party to this Agreement under a similar foreign insolvency regime or (3) a Seller’s inability to pay certain prepetition obligations as a result of the commencement of the Bankruptcy Cases; provided, however, that with respect to clauses (i), (ii), (iii) and (iv), such effects will only be excluded from consideration to the extent it does not disproportionately and materially adversely affect the Business as compared to similarly situated businesses operating in the same industry and geographic areas in which Sellers operate.

“Shari’s Business Owner” means the Person, or Persons, that purchase all, or substantially all, of the assets of Provide Commerce LLC or its Affiliates related to its operation of an online retail gourmet foods and food gifting business on its www.berries.com and www.sharisgourmet.com websites under the “Shari’s Berries”, “Shari’s Gourmet” and other brands related to gourmet foods, featuring dipped strawberries, chocolates and other food gifting items, delivered direct to consumers throughout the United States.

“Software” means all computer software and code, including assemblers, applets, compilers, source code, object code, development tools, design tools, user interfaces, databases, data, application software, system software and firmware, in any form or format, however fixed, including any related documentation.

“Software System” means all Intellectual Property rights, source code and object code of the software platform owned by Sellers, commonly referred to as “PQUAD,” and used in the

Business as of the Effective Date to provide ecommerce functionality to consumers, wholesale management to businesses collecting orders for fulfillment, and back-office administrative customer support, including those applications and services providing content, product personalization/customization, checkout, order management, promotions/discounts management, product management, supplier and carrier management, inventory and SKU management, tax management, gift certificate management, and customer service handling.

“Subsidiary” means each corporation or other Person in which a Person owns or controls, directly or indirectly, capital stock or other equity interests representing more than 50% of the outstanding voting stock or other equity interests.

“Target Working Capital Amount” means \$5,813,000.00.

“Tax Authority” means any government, agency, or instrumentality thereof, charged with the administration of any Law or regulation relating to Taxes.

“Taxes” means (a) all federal, state, local, provincial, municipal, foreign or other taxes, charges or other assessments, including, without limitation, all income, alternative, minimum, add-on minimum, accumulated earnings, personal holding company, net worth, intangibles, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, intangibles, goods and services, customs duties, conveyance, mortgage, registration, documentary, recording, premium, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, unemployment insurance, severance, environmental (including taxes under Section 59A of the Internal Revenue Code), disability, workers’ compensation, health care natural resources, excise, severance, stamp, occupancy, rent, real property, personal property, estimated or other similar taxes, duties, levies or other governmental charges or assessments or deficiencies thereof, (b) any item described in clause (a) for which a taxpayer is liable as a transferee or successor, by reason of the regulations under Section 1502 of the Internal Revenue Code (or similar provisions of state, local, foreign or other law), or by contract, indemnity or otherwise, and (c) all interest, penalties, fines, additions to tax or additional amounts imposed by any Tax Authority in connection with any item described in clauses (a) or (b).

“Tax Returns” means any return, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto and any amendment thereof.

“Trademarks” has the meaning set forth in the definition of Intellectual Property.

“Transactions” means the transactions contemplated by this Agreement.

“Transferred Exception” means title of a lessor under a capital or operating lease if such lease is a Purchased Contract.

“Woodridge Facilities” means the facilities located at 10410 – 10450 Woodward Avenue, Woodridge, Illinois, and 1301 Internationale Parkway, Woodridge, Illinois.

1.2 Terms Defined Elsewhere in this Agreement. For purposes of this Agreement, the following terms have meanings set forth in the sections indicated:

<b>Term</b>	<b>Section</b>
“Agreement”	Preamble
“Allocation Schedule”	10.2(a)
“Allocation Notice of Objection”	10.2(a)
“Assignment and Assumption Agreements”	4.2(b)
“Assumed Cure Costs”	2.6
“Assumed Liabilities”	2.3
“Auction”	7.2(a)
“Bankruptcy Case”	Recitals
“Bankruptcy Code”	Recitals
“Bankruptcy Court”	Recitals
“Business”	Recitals
“Business Intellectual Property”	5.10
“Cash Amount”	3.1
“Closing”	4.1
“Closing Date”	4.1
“Closing Working Capital Statement”	3.4(a)
“Company”	Preamble
“Company Permits”	5.7
“Company Plan”	5.8(a)
“Competing Business”	8.16(b)
“Confidentiality Agreement”	8.7
“Deposit Amount”	3.2
“Effective Date”	Preamble
“Escrow Shortfall”	3.3
“Excess Severance Amount”	8.9(b)
“Excluded Assets”	2.2
“Excluded Liabilities”	2.4
“Final Adjustment Amount”	3.4(b)
“Final Allocation Statement”	10.2(a)
“Inventory”	2.1(b)(ii)
“Inventory Assessment”	2.8
“Inventory Assessment Date”	2.8
“Legacy Business PQUAD Covenant Agreement”	8.11
“Master List”	2.1(b)(x)
“Necessary Consent”	2.6(a)
“Non-Transferred Employees”	8.9(b)
“Omitted Contract Order”	2.5(e)
“Previously Omitted Contract”	2.5(e)
“Purchase Price”	3.1
“Proposed Allocation Statement”	10.2(a)
“Purchased Assets”	2.1(b)
“Purchased Contracts”	2.1(b)(iv)

<b>Term</b>	<b>Section</b>
“Purchased Intellectual Property”	2.1(b)(vi)
“Purchaser”	Preamble
“Purchaser Adjustment Amount”	3.4(c)
“Real Property”	2.1(b)(i)
“Resolution Period”	3.4(a)
“Restricted Area”	8.16(b)
“Restrictive Covenant Period”	8.16(a)
“Review Period”	3.4(a)
“Seller or Sellers”	Preamble
“Severance Cap”	8.9(b)
“Seller Adjustment Amount”	3.4(c)
“Stalking Horse Motion”	7.1
“Tangible Personal Property”	2.1(b)(iii)
“Termination Date”	4.4(a)
“Transfer Taxes”	10.1
“Transferred Employees”	8.9(a)
“Transition Services Agreement”	8.12
“WARN Act”	5.9(c)

### 1.3 Other Definitional and Interpretive Matters.

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

(i) Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period will be excluded. If the last day for the giving of any notice or the performance of any act required or permitted under this Agreement is a day that is not a Business Day, then the time for the giving of such notice or the performance of such action will be extended to the next succeeding Business Day.

(ii) Contracts. Reference to any Contract means such Contract as amended or modified and in effect from time to time in accordance with its terms.

(iii) Dollars. Any reference in this Agreement to Dollars or \$ will mean U.S. dollars.

(iv) Exhibits/Schedules. All Exhibits and 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 Schedule or Exhibit but not otherwise defined therein will be defined as set forth in this Agreement.

(v) GAAP. Terms used herein which are defined in GAAP are, unless specifically defined herein, used herein as defined in GAAP.

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

(vii) Headings. The division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and will not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any Article, Section, Recital, Exhibit or Schedule are to the corresponding Article, Section, Recital, Exhibit or Schedule of or to this Agreement unless otherwise specified.

(viii) Herein. The words such as “herein,” “hereinafter,” “hereof” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

(ix) Including. The word “including” or any variation thereof means “including, without limitation” and will not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(x) Law. Reference to any Law means such Law as amended, modified, codified, replaced or re-enacted, in whole or in part, and in effect from time to time, including any successor legislation thereto and any rules and regulations promulgated thereunder, and references to any section or other provision of a Law means that section or provision of such Law in effect from time to time and constituting the substantive amendment, modification, codification, replacement or re-enactment of such section or other provision.

(b) The Parties have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as jointly drafted by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

## **II. PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES**

### **2.1 Purchase and Sale of Assets**

(a) On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser or one or more of its designees will purchase, acquire and accept from the applicable Seller, and each applicable Seller will sell, transfer, convey and deliver to Purchaser or one or more of its designees, all of such Seller’s right, title and interest in, to and under the Purchased Assets, free and clear of all Liens (other than Liens created by Purchaser, Permitted Exceptions and Transferred Exceptions) and Excluded Liabilities.

(b) The term “Purchased Assets” means all of the following properties, assets, and rights of any Seller existing as of the Closing and not including any Excluded Asset:

- (i) all right, title and interest in and to the Leases and the Leased Real Property, but solely with respect to any Lease that is also a Purchased Contract (collectively, the “Real Property”);
- (ii) all raw materials, works in progress, finished goods, supplies, packaging materials and other inventories that, as of the close of business on the Closing Date, is used or held for use primarily in the Business (the “Inventory”), and all rights of Sellers to take delivery of any Inventory ordered by Sellers before the Closing Date, which Inventory has not been delivered to any of Sellers as of the Closing Date;
- (iii) all fixtures, furniture, furnishings, equipment, leasehold improvements and other tangible personal property owned by a Seller or leased by a Seller, subject to the terms of the relevant lease, and used or held for use primarily in the Business (collectively, the “Tangible Personal Property”);
- (iv) all right, title and interest of Sellers now or hereafter existing, in, to and under the Contracts that (A) are set forth on Schedule 2.1(b)(iv), (B) are unexpired as of the Closing Date (including those Contracts that have been previously unexpired) and (C) have not been rejected (or are the subject of a notice of rejection or a pending rejection motion) by any Seller (the “Purchased Contracts”);
- (v) all warranties, guarantees and similar rights related to the Purchased Assets, including warranties and guarantees made by suppliers, manufacturers and contractors under the Purchased Assets, and claims against suppliers and other third parties in connection with the Purchased Contracts;
- (vi) all Intellectual Property owned by Sellers relating primarily to the Business, including the Intellectual Property set forth on Schedule 2.1(b)(vi) (the “Purchased Intellectual Property”); provided, however, that the Purchased Intellectual Property shall not include the Software System or the Intellectual Property in the Software System;
- (vii) all originals and copies of all files and assignment documentation pertaining to existence, validity, availability, registrability, infringement, enforcement or ownership of any of the Purchased Intellectual Property and/or the Software System and documentation of the development, conception or reduction to practice thereof, in each case, under any Seller’s possession or control;
- (viii) an undivided one-third interest in, and all right, title, and interest in and to, the Software System, as further modified by Section 8.11 of this Agreement;
- (ix) all accounts receivable (whether billed or unbilled), including all Credit Card Accounts Receivable and payment processor receivables of Sellers arising primarily from the Business as of Closing Date;
- (x) all goodwill related to the Purchased Assets;

(xi) all rights, title and interests of Sellers in and to computers, computer hardware, firmware, middleware, servers, networks, workstations, routers, hubs, circuits, switches, data communications lines, telephones, telecommunications systems, interfaces, platforms, and all other information technology equipment, and all associated documentation ("IT Equipment"), solely with respect to: (A) IT Equipment that is set forth on Schedule 2.1(b)(xi); (B) IT Equipment located at the Phoenix Facility and necessary for the continued operation of the Business; or (C) IT Equipment that is (1) located at the Woodridge Facilities, San Diego Facilities, or Phoenix Facility and (2) used exclusively in the Business (collectively, the "Purchased IT Equipment");

(xii) (A) an exclusive excerpt of the master customer mailing list of FTD, Inc. (the "Master List"), reflecting customers of the Master List that have only placed orders for products marketed by the Business, and who have not placed orders for products from any Excluded Business; (B) a non-exclusive excerpt of the Master List, reflecting customers on the Master List that have placed orders for products from both the Business and any Excluded Business; and (C) to the extent not prohibited by applicable law or contract, and to the extent Sellers can appropriately segregate the Master List without creating an undue burden on Sellers, (1) an exclusive excerpt of the Master List reflecting voluntary subscribers to any mailing list related exclusively to the Business, but only if such voluntary subscribers have not subscribed to any mailing list of any Excluded Business, and (2) a non-exclusive excerpt of the Master List reflecting voluntary subscribers to any mailing list related exclusively to the Business, if such voluntary subscribers have also subscribed to any mailing list of any Excluded Business; in each case, including, all information regarding such customers maintained in the Ordinary Course of Business and contained in the Software System; provided that Purchased Assets will not include customers of the Master List that have not placed any order for products marketed by the Business;

(xiii) all books, records, files, invoices, inventory records, product specifications, cost and pricing information, business plans and quality control records and manuals, in each case primarily relating to any Purchased Asset, including all data and other information stored in any format or media, including on hard drives, hard copy or other media primarily relating to any Purchased Asset and all books and records relating to any Transferred Employees, including personnel files, in each case to the extent permitted by applicable Laws;

(xiv) all Company Permits held by Sellers in connection with the use, operation or ownership of the Purchased Assets and the conduct of the Business;

(xv) all rights, claims, causes of action and credits owned by a Seller to the extent relating to any Purchased Asset or Assumed Liability, including any such item arising under any guarantee, warranty, indemnity, right of recovery, right of setoff or similar right in favor of such Seller in respect of any Purchased Asset or Assumed Liability;

(xvi) all Pre-Paid Expenses associated with the Purchased Assets;

(xvii) all restrictive covenants, confidentiality and non-disclosure agreements and invention agreements to the benefit of Sellers related to the Business, including those with (A) any employee or former employee of Sellers, (B) any prior owners of all or any part of the Business to the extent the covenant relates to all or any part of the Business and (C) any Person that had access to the Business or any of the Purchased Assets in connection with evaluating a possible acquisition of all or any part of the Business; and

(xviii) all telephone and fax numbers for the Business.

2.2 **Excluded Assets.** Nothing herein contained will be deemed to constitute an agreement to sell, transfer, assign or convey the Excluded Assets to Purchaser, and Sellers will retain all right, title and interest to, in and under the Excluded Assets. The term "Excluded Assets" means all assets, properties and rights of any Seller other than the Purchased Assets specifically defined in Section 2.1(b), including, for the avoidance of doubt, all assets of Sellers' or their Affiliates' not used primarily in the Business.

2.3 **Assumption of Liabilities.** On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser will assume or will cause one or more of its designees to assume, effective as of the Closing, and will timely perform and discharge in accordance with their respective terms or such other terms as Purchaser may be able to negotiate with the Person to whom such Liability is owed, the following Liabilities existing as of the Closing Date and no other Liabilities of Sellers or any of their Affiliates (collectively, the "Assumed Liabilities"):

(a) all Liabilities from the ownership or operation of the Purchased Assets by Purchaser solely to the extent such Liabilities arise after the Closing;

(b) any Assumed Cure Costs that Purchaser is required to pay pursuant to Section 2.5;

(c) all Liabilities of Sellers under the Purchased Contracts;

(d) all Liabilities of Sellers for accrued and unpaid trade payables relating to the Business (whether billed or unbilled) that arise from and after the Petition Date and are administrative expenses under Section 503(b) of the Bankruptcy Code;

(e) all Liabilities of Sellers with respect to Groupon coupons and gift certificates related to the Business and all Liabilities for any unredeemed refund amounts issued to customers of the Business to the extent arising under Sellers refund policy in effect immediately prior to the date hereto;

(f) all Liabilities of Sellers in respect of ordinary-course wages and benefits of Transferred Employees for periods prior to the Closing Date;

(g) any Transfer Taxes; and

(h) the Liabilities set forth on Schedule 2.3(h).

2.4 Excluded Liabilities. Notwithstanding anything to the contrary set forth herein, the Parties expressly acknowledge and agree that Purchaser will not assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for Liabilities of any Seller, whether existing on the Closing Date or arising thereafter, including on the basis of any Law imposing successor liability, other than the Assumed Liabilities and the obligations of Purchaser under this Agreement (all such Liabilities that Purchaser is not assuming being referred to collectively as the “Excluded Liabilities”) The Excluded Liabilities include the following Liabilities (in each case to the extent such Liability is not an Assumed Liability):

(a) all Liabilities to the extent arising out of or relating to the operation or ownership of or conduct by Sellers or any of their Affiliates of the Excluded Assets;

(b) all Liabilities to the extent arising out of, relating to or in connection with any Legal Proceeding, including any pending or threatened Legal Proceeding against any Seller or relating to the Business;

(c) all Liabilities arising out of, relating to or in connection with Sellers’ Contracts and Contracts involving any Seller or their Affiliates, other than the Assumed Liabilities;

(d) all Liabilities, including any Legal Proceedings, relating to any employees of any Seller or any of their Affiliates, or any WARN Act payments (except as provided in Section 8.9(e)); provided, that any Liability relating to any Transferred Employee will be an Assumed Liability to the extent set forth on Schedule 2.4(d);

(e) all Liabilities of any Seller or any Affiliate of any Seller under any Benefit Plan; provided, that any Liability relating to any Transferred Employee will be an Assumed Liability to the extent set forth on Schedule 2.4(e);

(f) all Liabilities to any broker, finder or agent or similar intermediary for any broker’s fee, finders’ fee or similar fee or commission relating to the Transactions for which any Seller or its Affiliates are responsible;

(g) Liabilities relating to any Excluded Asset; and

(h) all costs and expenses incurred by any Seller in connection with the consummation of the Transactions.

2.5 Assignment of Purchased Contracts.

(a) As part of the Sale Motion, Sellers will seek approval by the Bankruptcy Court of the sale, assumption and assignment by Sellers to Purchaser of all Contracts. Subject to the other provisions of this Section 2.5, at the Closing and pursuant to Section 365 of the Bankruptcy Code and subject to the Approval Order, Sellers will assume the Purchased Contracts (to the extent not previously assumed) and, subject to the terms herein, assign the Purchased Contracts to Purchaser, subject to the provision of adequate assurance by the Purchaser as may be required under Section 365 of the Bankruptcy Code and payment by Purchaser, and not by Sellers, of all Cure Costs with respect to the Purchased Contracts (the

“Assumed Cure Costs”), as and when finally determined by the Bankruptcy Court or as agreed between Purchaser and the non-debtor counterparty to the Purchased Contract, pursuant to the procedures set forth in the Approval Order. Sellers will have no liability for any Assumed Cure Costs, subject to any adjustment set forth in Section 3.4. Notwithstanding the foregoing, Purchaser may identify any Purchased Contract that the Purchaser no longer desires to have assigned to it in accordance with Section 2.5(d) hereof.

(b) Schedule 2.5(b) sets forth the notice addresses for each non-Seller counterparty of each Contract of the Sellers relating to the Business and Sellers’ good-faith estimate of the Cure Cost with respect to such Contract. In accordance with the Bidding Procedures Order, Sellers will serve on all non-Seller counterparties to all Contracts set forth on Schedule 2.5(b) a notice stating that Sellers are or may (as applicable) be seeking the assumption and assignment of such Contracts, and will notify such non-Seller counterparties of the deadline for objecting to the cure costs relating to such Contracts, if any, which deadline will be not less than five Business Days prior to the Sale Hearing date designated in the Bidding Procedures Order.

(c) At any time no later than three Business Days prior to the Sale Hearing Date designated in the Bidding Procedures order, Purchaser may add to Schedule 2.1(b)(iv) any Contract set forth on Schedule 2.5(b) or any Contract used by the Business not previously rejected and not expired by its terms, which Contract shall be deemed to be a Purchased Contract, but any such addition will not affect the Purchase Price other than as explicitly set forth in this Agreement. Sellers will not reject or seek to reject any Contract listed on Schedule 2.5(b) without the prior written consent of Purchaser.

(d) At any time no later than three Business Days prior to the Sale Hearing Date designated in the Bidding Procedures order, Purchaser may remove from Schedule 2.1(b)(iv) any Contract for any reason in Purchaser’s sole discretion. Upon the removal of any Contract from Schedule 2.1(b)(iv), such Contract shall not be deemed to be a Purchased Contract under this Agreement.

(e) If it is discovered that a Contract should have been listed on Schedule 2.5(b) but was not listed on Schedule 2.5(b) (any such Contract, a “Previously Omitted Contract”), Sellers shall, promptly following the discovery thereof (but in no event later than five (5) Business Days following the discovery thereof), (x) notify Purchaser of such Previously Omitted Contract and all Cure Amounts (if any) for such Previously Omitted Contract, and (y) if requested by Purchaser, promptly file a motion with the Bankruptcy Court on notice to the counterparties to such Previously Omitted Contract seeking entry of an order (the “Omitted Contract Order”) fixing the Cure Amounts and approving the assumption and assignment of such Previously Omitted Contract in accordance with this Section 2.5(a), provided that no Previously Omitted Contract shall be a Purchased Contract unless so designated by Purchaser under Section 2.5(c) hereof.

## 2.6 Non-Assignment of Assets.

(a) Notwithstanding any other provision of this Agreement to the contrary, this Agreement will not constitute an agreement to assign or transfer and will not effect the

assignment or transfer of any Purchased Asset (including any Purchased Contract) if (i) (A) prohibited by applicable Law, (B) an attempted assignment or transfer of which would be reasonably likely to subject Purchaser, its Affiliates or any of its or their respective Representatives to civil or criminal Liability or (C) an attempted assignment or transfer of which, without the approval, authorization or consent of, or granting or issuance of any license or permit by, any third party thereto, would constitute a breach, default or violation thereof or of any Law or Order (each such action, a “Necessary Consent”), or in any way adversely affect the rights of Purchaser thereunder or (ii) the Bankruptcy Court has not entered an Order (including, for the avoidance of doubt, the Approval Order) approving such assignment or transfer. In such event, such assignment or transfer is subject to such Necessary Consent being obtained and Sellers and Purchaser will use their respective commercially reasonable efforts to obtain the Necessary Consents with respect to any such Purchased Asset (including any Purchased Contract) or any claim or right or any benefit arising thereunder for the assignment or transfer thereof to Purchaser as Purchaser may reasonably request; provided, however, that Sellers will not be obligated to pay any consideration therefor to any third party from whom consent or approval is requested or to initiate any litigation or Legal Proceedings to obtain any such consent or approval. If such Necessary Consent is not obtained, or if an attempted assignment or transfer thereof would give rise to any of the circumstances described in clauses (i) or (ii) of the first sentence of this Section 2.6(a), be ineffective or would adversely affect the rights of Purchaser to such Purchased Asset following the Closing, (x) Sellers and Purchaser will, and will cause their respective Affiliates to, (1) use commercially reasonable efforts (including cooperating with one another to obtain such Necessary Consents, to the extent feasible) as may be necessary so that Purchaser would obtain the benefits and assume the obligations thereunder in accordance with this Agreement, (2) complete any such assignments or transfers as soon as reasonably practicable, and (3) upon receipt of any applicable Necessary Consents, to transfer or assign the applicable Purchased Asset to Purchaser, and (y) Sellers will, and will cause their respective Affiliates to, cooperate with Purchaser in good faith without further consideration in any arrangement reasonably acceptable to Purchaser and Sellers intended to provide Purchaser with the benefit of any such Purchased Assets.

(b) Subject to Section 2.6(a), if after the Closing (i) Purchaser or its designee holds any Excluded Assets or Excluded Liabilities or (ii) any Seller holds any Purchased Assets or Assumed Liabilities, Purchaser or the applicable Seller will promptly transfer (or cause to be transferred) such assets or assume (or cause to be assumed) such Liabilities to or from (as the case may be) the other Party. Prior to any such transfer, the Party receiving or possessing any such asset will hold it in trust for such other Party.

(c) Notwithstanding anything herein to the contrary, at any time prior to the date that is five Business Days prior to the Closing Date, Purchaser will be entitled, in its sole and absolute discretion, to remove any Contract from Schedule 2.1(b)(iv) by providing written notice thereof to Sellers, and any Contract so removed will be deemed to be an “Excluded Asset” for all purposes hereunder and will not be deemed to be a Purchased Contract, and no liabilities arising thereunder shall be assumed or borne by Purchaser. Sellers will not reject or seek to reject any Contract that is a Purchased Contract without the prior written consent of Purchaser.

2.7 Further Conveyances and Assumptions. From time to time following the Closing, Sellers and Purchaser will, and will cause their respective Affiliates to, execute, acknowledge

and deliver all such further conveyances, notices, assumptions, assignments, releases and other instruments, and will take such further actions, as may be reasonably necessary or appropriate to assure fully to Purchaser and its respective successors or assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Purchaser under this Agreement and to assure fully to each Seller and its Affiliates and their respective successors and assigns, the assumption of the liabilities and obligations intended to be assumed by Purchaser under this Agreement, and to otherwise make effective the Transactions; provided that nothing in this Section 2.7 will require Purchaser or any of its Affiliates to assume any Liabilities other than the Assumed Liabilities.

2.8 Inventory. No earlier than four (4) Business Days and no later than two (2) Business Days prior to the Closing, Sellers will undertake in good faith to complete a sampling of the Inventory that is in the possession of Sellers as of the Closing Date (the "Inventory Assessment"), using commercially reasonable procedures, subject to the supervision of Purchaser and its accountants (such date of completion, the "Inventory Assessment Date"). Sellers shall deliver the results of the Inventory Assessment to Purchaser prior to the Closing.

### III. CONSIDERATION

3.1 Consideration. The aggregate consideration for the Purchased Assets (the "Purchase Price"), as adjusted pursuant to and in accordance with Section 3.4, will be: (a) \$18,100,000 in cash (the "Cash Amount"); plus (b) the assumption of the Assumed Liabilities, plus the Excess Severance Amount.

3.2 Purchase Price Deposit. On or before two Business Days after the Execution Date, Purchaser will deposited a sum equal to 10% (ten percent) of the Cash Amount (the "Deposit Amount") into the Escrow Account. The Deposit Amount shall be held in the Escrow Account and will either be delivered to Purchaser or remain in the Escrow Account and be applied toward the Adjustment Escrow Amount as follows: (a) if the Closing occurs, the Deposit Amount will remain in the Escrow Account and applied toward the Adjustment Escrow Amount pursuant to Section 3.3, (b) if this Agreement is terminated by the Company pursuant to Section 4.4(d), then the Deposit Amount will be released to the Sellers within three Business Days (and such Deposit Amount will be deemed fully earned by the Sellers as compensation and consideration for entering into this Agreement), or (c) if this Agreement is terminated for any reason other than by Sellers pursuant to Section 4.4(d), then the Deposit Amount will be released to Purchaser within three Business Days. The Company and Purchaser agree to deliver joint written instructions to the Escrow Agent to release funds from the Escrow Account in accordance with this Section 3.2.

3.3 Payment of Purchase Price. At the Closing, (a) Purchaser will pay to Sellers, in immediately available funds to the account or accounts designated by the Company, (i) the Cash Amount, (ii) minus the Deposit Amount, (iii) minus the amount by which the Adjustment Escrow Amount exceeds the Deposit Amount, if any (the "Escrow Shortfall"), (iv) plus the Excess Severance Amount; (b) Purchaser shall deposit the Escrow Shortfall into the Escrow Account; and (c) the Deposit Amount shall remain in the Escrow Account and shall be applied toward the Adjustment Escrow Amount per Section 3.2.

#### 3.4 Purchase Price Adjustment and Adjustment Escrow Amount.

(a) Within 60 calendar days after the Closing Date, Purchaser shall prepare and deliver to Sellers a statement setting forth its calculation of Closing Working Capital Amount, which statement shall be substantially in the form of Schedule 3.4(a) (the “Closing Working Capital Statement”). After receipt of the Closing Working Capital Statement, Seller shall have 60 calendar days (the “Review Period”) to review the Closing Working Capital Statement. On or prior to the last day of the Review Period, Sellers may object to the Closing Working Capital Statement by delivering to Purchaser a written statement setting forth Sellers’ objections in reasonable detail, indicating each disputed item or amount and the basis for Sellers’ disagreement therewith (the “Statement of Objections”). If Sellers fail to deliver the Statement of Objections before the expiration of the Review Period, the Closing Working Capital Statement and the Closing Working Capital Amount reflected in the Closing Working Capital Statement shall be deemed to have been accepted by Sellers. If Sellers deliver the Statement of Objections before the expiration of the Review Period, Purchaser and Sellers shall negotiate in good faith to resolve such objections within 30 calendar days after the delivery of the Statement of Objections (the “Resolution Period”), and, if the same are so resolved within the Resolution Period, the Closing Working Capital Statement with such changes as may have been previously agreed in writing by Purchaser and Sellers, shall be final and binding. If Sellers and Purchaser fail to reach an agreement with respect to all of the matters set forth in the Statement of Objections before expiration of the Resolution Period, then any amounts remaining in dispute shall be submitted for resolution to the Bankruptcy Court.

(b) If the Closing Working Capital Amount is less than the Target Working Capital Amount (such difference, the “Purchaser Adjustment Amount”), within three Business Days of the date on which the Final Adjustment Amount is so determined, Purchaser and the Company will deliver joint instructions to the Escrow Agent to deliver to Purchaser from the Escrow Account the Purchaser Adjustment Amount in cash by wire transfer of immediately available funds. If the Purchaser Adjustment Amount is less than the amount of funds then contained in the Escrow Account, then Purchaser and Company will deliver joint instructions to the Escrow Agent to deliver to the Company the difference in cash by wire transfer of immediately available funds. The Adjustment Escrow Amount shall serve as Purchaser’s sole and exclusive source of recovery for any Purchase Price adjustment under this Section 3.4.

(c) If the Closing Working Capital Amount is more than the Target Working Capital Amount (such difference, the “Seller Adjustment Amount”), within three Business Days of the date on which the Final Adjustment Amount is so determined, (i) Purchaser and the Company will execute joint instructions to the Escrow Agent to deliver to the Company the amount of funds then contained in the Escrow Account in cash by wire transfer of immediately available funds; and (ii) Purchaser will pay, or cause to be paid, to the Sellers, by wire transfer of immediately available funds to accounts designated by the Company, an amount equal to the Seller Adjustment Amount; provided, however, that Purchaser shall not pay more than \$500,000 to Sellers pursuant to this Section 3.4(c)(ii).

(d) Any payments made pursuant to Section 3.4 shall be treated as an adjustment to the Purchase Price by the parties for Tax purposes, unless otherwise required by Law.

#### IV. CLOSING AND TERMINATION

4.1 Closing Date. Subject to the satisfaction of the conditions set forth in Sections 9.1, 9.2 and 9.3 hereof (or the waiver thereof by the Party entitled to waive that condition), the closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities provided for in Article II (the "Closing") will take place at Jones Day, 77 W. Wacker Dr., Suite 3500 Chicago, Illinois 60601 at 10:00 a.m. (Central Standard time) on the date that is one Business Day following the satisfaction or waiver of the conditions set forth in Sections 9.1, 9.2 and 9.3 (other than conditions that by their nature are to be first satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), or at such other place and time as the Parties may designate in writing. The date on which the Closing is held is referred to in this Agreement as the "Closing Date."

4.2 Deliveries by Sellers. At the Closing, Sellers will deliver to Purchaser:

(a) the duly executed Ancillary Documents in a form to be reasonably agreed upon by the Parties, provided that Sellers will deliver the duly executed Transition Services Agreement in a form governed by the terms of Section 8.12 hereof;

(b) (i) one or more duly executed assignment and assumption agreements, in a form to be agreed upon by the Parties; (ii) duly executed assignments to Purchaser of the registered Trademarks and Trademark applications, issued patents and patents pending, and registered copyrights and copyright applications included in the Purchased Intellectual Property, in each case, in a form suitable for recording in the U.S. Patent and Trademark Office (and equivalent offices in jurisdictions outside the United States); and duly executed assignments to Purchaser of any URLs, including any domain names and an undivided one-third interest in all right, title and interest in and to the Software System as tenant-in-common with Legacy Business Owner and the Shari's Business Owner (the "Assignment and Assumption Agreements");

(c) the officer's certificate required to be delivered pursuant to Sections 9.1(a) and 9.1(b);

(d) a non-foreign affidavit from each Seller dated as of the Closing Date, sworn under penalty of perjury and in form and substance required under Treasury Regulations issued pursuant to Section 1445 of the Internal Revenue Code stating that it is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code;

(e) all other deeds, endorsements, assignments, company seals, instruments of transfer and other instruments of conveyance reasonably requested by Purchaser or required to convey and assign the Purchased Assets to Purchaser and vest title therein in Purchaser free and clear of all Liens (other than those Liens created by Purchaser and Transferred Exceptions).

4.3 Deliveries by Purchaser. At the Closing, Purchaser will deliver to the Company:

(a) the consideration specified in Section 3.1, as adjusted pursuant to Section 3.3;

- (b) the officer's certificate required to be delivered pursuant to Sections 9.2(a) and 9.2(b);
- (c) any and all Assignment and Assumption Agreements, duly executed by Purchaser; and
- (d) all such other documents, instruments and certificates, reasonably requested by Sellers, to evidence the assumption by Purchaser of the Assumed Liabilities.

4.4 Termination of Agreement. This Agreement may be terminated prior to the Closing as follows:

(a) by Purchaser or the Company, if the Closing has not occurred by 5:00 p.m. Chicago time on August 26, 2019 (the "Termination Date"), which date may be extended pursuant to Sections 4.4(c) and 4.4(d)(i); provided, however, that if the Closing has not occurred on or before the Termination Date due to a breach of any representations, warranties, covenants or agreements contained in this Agreement that has resulted in any of the conditions set forth in Sections 4.4(c) and 4.4(d)(i) not being satisfied by the Termination Date (i) by Purchaser, then Purchaser may not terminate this Agreement pursuant to this Section 4.4(a) or (ii) by any Seller, then the Company may not terminate this Agreement pursuant to this Section 4.4(a);

(b) by mutual written consent of the Company and Purchaser;

(c) by Purchaser; provided that Purchaser is not then in breach of any representation, warranty, covenant or agreement contained in this Agreement that would result in a failure of a condition set forth in Sections 9.2 or 9.3,

(i) if the Bidding Procedures Order is not entered by the Bankruptcy Court by July 8, 2019;

(ii) if the Approval Order is not entered by the Bankruptcy Court by August 12, 2019;

(iii) if any of Sellers breaches any representation or warranty or any covenant or agreement contained in this Agreement, such breach would result in a failure of a condition set forth in Sections 9.1 or 9.3 or breach of Section 4.1 and such breach has not been cured within 10 Business Days after the giving of written notice by Purchaser to the Company of such breach; provided, further, that in the event that Purchaser provides such written notice to the Company within 10 Business Days of the Termination Date, then the Termination Date shall be extended until the end of the 10 Business Day cure period set forth in this Section 4.4(c);

(iv) if the Bankruptcy Cases shall be dismissed or converted to cases under Chapter 7 of the Bankruptcy Code, or if any trustee is appointed in the Bankruptcy Cases; or

(v) if Purchaser does not obtain the Required Concessions (as defined in Schedule 4.4(c)(v)) relating to the Purchased Asset identified on Schedule 4.4(c)(v) (the “Specified Contract”) from the applicable counterparty.

(d) by the Company; provided that no Seller is then in breach of any representation, warranty, covenant or agreement contained in this Agreement that would result in a failure of a condition set forth in Sections 9.1 or 9.3,

(i) if Purchaser breaches any representation or warranty or any covenant or agreement contained in this Agreement, such breach would result in a failure of a condition set forth in Sections 9.2 or 9.3 or breach of Section 4.1 and such breach has not been cured within 10 Business Days after the giving of written notice by the Company to Purchaser of such breach; provided, that in the event that the Company provides such written notice to Purchaser within 10 Business Days of the Termination Date, then the Termination Date shall be extended until the end of the 10 Business Day cure period set forth in this Section 4.4(d);

(ii) if all of the conditions set forth in Section 9.1 have been satisfied (other than those conditions that by their nature can only be satisfied at the Closing), Sellers have given written notice to Purchaser that they are prepared to consummate the Closing and Purchaser fails to consummate the Closing within five Business Days after the date that the Closing should have occurred pursuant to Section 4.1.

(e) by Sellers or Purchaser, if there is in effect a final non-appealable Order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Transactions; it being agreed that Sellers will promptly appeal and use commercially reasonable efforts to seek to overturn any adverse determination which is not non-appealable and pursue such appeal with reasonable diligence unless and until this Agreement is terminated pursuant to this Section 4.4.

(f) automatically, upon the consummation of an Alternative Transaction.

4.5 Procedure Upon Termination. In the event of termination pursuant to Section 4.4 (other than Section 4.4(f), under which termination will take place automatically), the terminating Party will give written notice thereof to the other Party or Parties, and this Agreement will terminate as described in Section 4.6, and the purchase of the Purchased Assets and assumption of the Assumed Liabilities hereunder will be abandoned, without further action by Purchaser or any Seller.

4.6 Effect of Termination.

(a) In the event that this Agreement is terminated as provided herein, then each of the Parties will be relieved of its duties and obligations arising under this Agreement after the date of such termination and there will be no Liability or obligation on Purchaser, any Seller or any of their respective Affiliates or Representatives, except as specifically set forth in this Section 4.6; provided, however, that the provisions of Section 3.2, this Section 4.6, and Article XI (other than Section 11.3) and, to the extent necessary to effectuate the foregoing enumerated provisions, Article I, will survive any such termination and will be enforceable

hereunder; provided, further, that nothing in this Section 4.6 will be deemed to release any Party from Liability for any breach of this Agreement prior to termination and nothing in this Section 4.6 will be deemed to interfere with Sellers' rights to retain the Deposit Amount or Sellers' obligation to return the Deposit Amount to Purchaser, in each case as provided in Section 3.2.

(b) Notwithstanding Section 4.6(a), (i) if this Agreement is terminated other than pursuant to Sections 4.4(b), 4.4(c)(i), (ii), or (iv) or 4.4(d) and at the time of such termination, Purchaser is not then in material breach of any of its representations, warranties, covenants or agreements contained in this Agreement that would result in a failure of a condition set forth in Sections 9.2 or 9.3, then Sellers shall pay the Expense Reimbursement Amount to Purchaser by wire transfer of immediately available funds within three Business Days following such termination of this Agreement, unless this Agreement is terminated pursuant to Section 4.4(f), in which case Sellers shall pay the Expense Reimbursement Amount and Break-Up Fee Amount to Purchaser concurrently with the consummation of any Alternative Transaction.

## V. REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as set forth in the Schedules or in the Company SEC Documents (other than any forward-looking disclosures set forth in any risk factor section, any disclosure in any section relating to forward-looking statements and any other similar disclosures included therein, in each case, to the extent such disclosures are primarily predictive or forward-looking in nature and do not consist of statements of present fact) filed prior to the date of this Agreement, Sellers hereby represent and warrant to Purchaser that:

5.1 Organization and Good Standing. Each Seller is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and, subject to any limitations that may be imposed on such Seller as a result of filing a petition for relief under the Bankruptcy Code, has the requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted. No Seller is in material violation of its organizational or governing documents.

5.2 Authorization of Agreement. Subject to entry of the Approval Order, as applicable, each Seller has the requisite power and authority to execute and deliver this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party and to perform its respective obligations hereunder and thereunder. The execution and delivery of this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party and the consummation of the Transactions have been duly authorized by all requisite corporate or similar action on the part of each Seller. This Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party has been duly and validly executed and delivered, and each agreement, document or instrument contemplated hereby or thereby to be delivered at or prior to Closing will be duly and validly executed and delivered, by the applicable Seller and (assuming the due authorization, execution and delivery by the other Parties and the entry of the Approval Order) this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party constitutes legal, valid and binding obligations of each applicable Seller enforceable against such Seller in accordance with its respective terms, subject to

equitable principles of general applicability (whether considered in a proceeding at law or in equity).

5.3 Governmental Consents. Except as set forth on Schedule 5.3 and except to the extent not required if the Approval Order is entered, no consent, waiver, approval, Order or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of any Seller in connection with the execution and delivery of this Agreement or any other agreement, document or instrument contemplated hereby or thereby to which any Seller is a party, the compliance by Sellers with any of the provisions hereof or thereof, the consummation of the Transactions or the taking by Sellers of any other action contemplated hereby or thereby (with or without notice or lapse of time, or both), except for (a) the entry of the Approval Order and (b) immaterial consents, waivers, approvals, Orders, authorizations, declarations, filings and notifications.

5.4 Title to and Condition of Purchased Assets.

(a) Except as set forth on Schedule 5.4, subject to Section 2.7 and (i) bankruptcy, insolvency, or other similar Laws affecting the enforcement of creditors' rights generally, and (ii) equitable principles of general applicability (whether considered in a proceeding at law or in equity), Sellers have good and valid title to, or in the case of leased assets, have good and valid leasehold interests in, the Purchased Assets free and clear of all Liens (other than Permitted Exceptions) and, at the Closing, Purchaser will be vested with good and valid title to, or in the case of leased assets, good and valid leasehold interest in, such Purchased Assets, free and clear of all Liens (other than Transferred Exceptions) and Excluded Liabilities, to the fullest extent permissible under Law, including Section 363(f) of the Bankruptcy Code.

(b) The Purchased Assets are, as applicable, structurally sound, are in good operating condition and repair, and are adequate for the uses to which they are being put, and none of such Purchased Assets is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost. The Purchased Assets are sufficient for the continued fulfillment of customer orders after the Closing in substantially the same manner as conducted prior to the Closing.

5.5 Validity of Purchased Contracts. Each Contract set forth on Schedule 2.5(b) is in full force and effect and is a valid and binding obligation of Seller party thereto and, to the Knowledge of Sellers, the other parties thereto in accordance with its terms and conditions, except as such validity and enforceability may be limited by (a) bankruptcy, insolvency, or other similar Laws affecting the enforcement of creditors' rights generally, (b) equitable principles of general applicability (whether considered in a proceeding at law or in equity), and (c) the obligation to pay Cure Costs (if any) under Section 2.4. As of the date of this Agreement, no Seller has Knowledge of the intention of any third party to terminate any Purchased Contract or any other Contract set forth on Schedule 2.5(b). As of the date of this Agreement, except with respect to Necessary Consents necessary for Contracts set forth on Schedule 5.5, to the Knowledge of Sellers, no event has occurred which, with the passage of time or the giving of notice, or both, would constitute a default under or a violation of any such Purchased Contract or any Contract set forth on Schedule 2.5(b) or would cause the acceleration of any obligation of any Seller or the creation of a Lien upon any Purchased Asset, except for such events that would

not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

5.6 Litigation. Except for Legal Proceedings that do not have, and would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect, as of the date of this Agreement, there are no Legal Proceedings or Orders pending or, to the Knowledge of Sellers, threatened against any Seller that involves or relates to the Business, any of the Transactions, or affects any of the Purchased Assets.

5.7 Compliance with Laws. Sellers are in compliance with all applicable Laws and Orders, except for failures to comply or violations that would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect. Sellers hold all governmental licenses, authorizations, permits, consents and approvals necessary for the operation of the businesses of Sellers as presently conducted, taken as a whole (the "Company Permits"), except where such failure would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect. Sellers are in compliance with the terms of the Company Permits, except for failures to comply that would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

5.8 Employee Compensation and Benefit Plans; ERISA.

(a) As used herein, the term "Company Plan" shall mean each material "employee benefit plan" (within the meaning of Section 3(3) ERISA) and each other material equity incentive, compensation, severance, employment, company stock plan, change-in-control, retention, fringe benefit, bonus, incentive, savings, retirement, deferred compensation or other benefit plan, agreement, program, policy or Contract, whether or not subject to ERISA, in each case other than a "multiemployer plan," as defined in Section 3(37) of ERISA, under which any current or former employee, officer, director, contractor (who is a natural Person) or consultant (who is a natural Person) of Sellers has any present or future right to benefits and which are entered into, contributed to, sponsored by or maintained by Sellers.

(b) Except as would not, individually or in the aggregate, have a Seller Material Adverse Effect:

(i) Each Company Plan is in material compliance with all applicable Laws, including ERISA and the Internal Revenue Code.

(ii) Each Company Plan that is intended to be a qualified plan under Section 401(a) of the Internal Revenue Code has received a favorable determination or opinion letter to that effect from the IRS and, to the Knowledge of Sellers, no event has occurred since the date of such determination or opinion that would reasonably be expected to adversely affect such determination or opinion.

(iii) To the Knowledge of Sellers, no condition exists that is reasonably likely to subject Sellers to any direct or indirect liability under Title IV of ERISA.

(iv) No Legal Proceeding (other than routine claims for benefits in the ordinary course of business) are pending or, to the Knowledge of Sellers, threatened with respect to any Company Plan.

5.9 Labor Matters. Except as would not have, individually or in the aggregate, a Seller Material Adverse Effect:

(a) None of Sellers are party to, or bound by, any labor agreement, collective bargaining agreement, work rules or practices, or any other labor-related Contract with any labor union, trade union or labor organization. Other than as required by operation of applicable Law, no employees of Sellers are represented by any labor union, trade union or labor organization with respect to their employment with Sellers. No labor union, trade union, labor organization or group of employees of Sellers has made a pending demand for recognition or certification, and there are no representation or certification proceedings or petitions seeking a representation proceeding presently pending or threatened in writing to be brought or filed with the National Labor Relations Board or any other Governmental Body. To the Knowledge of Sellers, there are no organizing activities with respect to any employees of Sellers. There has been no actual or, to the Knowledge of Sellers, threatened material arbitrations, material grievances, labor disputes, strikes, lockouts, slowdowns or work stoppages against or affecting Sellers. None of Sellers are engaged in, or since December 31, 2016 have engaged in, any unfair labor practice, as defined in the National Labor Relations Act or other applicable Laws.

(b) None of Sellers have received since December 31, 2016 any written notice of intent by any Governmental Body responsible for the enforcement of labor or employment Laws to conduct an investigation relating to Sellers and, to the Knowledge of Sellers, no such investigation is in progress.

(c) Since December 31, 2016, none of Sellers have effectuated (i) a “plant closing” (as defined in the Worker Adjustment and Retraining Notification Act (or any similar state or local law, the “WARN Act”)) in connection with the Business; or (ii) a “mass layoff” (as defined in the WARN Act) of individuals employed at or who primarily provided service to the Business. Schedule 5.9(c) sets forth a true and complete list of reductions in force or layoffs, by location, implemented by the Sellers or any of their Subsidiaries in the 90-day period preceding the Closing Date at any location employing any individuals employed by the Business.

5.10 Intellectual Property.

(a) Except as set forth on Schedule 5.10(a), to the Knowledge of Sellers: (i) Sellers own all right, title and interest in, or have the right to use, pursuant to a license or otherwise, all Intellectual Property required to operate the Business as presently conducted (including for the avoidance of doubt the Software System), in each case, (x) free and clear of all Liens except Permitted Exceptions, and (y) other than non-exclusive licenses of, or covenants with respect to, Intellectual Property granted in the Ordinary Course of Business, and (b) as of the Effective Date, there are no pending, and Sellers have not received, since December 31, 2016, any written notice of any actual or threatened Legal Proceedings alleging a violation, misappropriation or infringement of the Intellectual Property of any other Person by Sellers

except for any of the foregoing that have since been resolved or as would not reasonably be expected to result in a Seller Material Adverse Effect.

(b) Trademarks.

(i) Schedule 5.10(b)(i) contains a complete and accurate list of all registered, and as of the Effective Date pending applications for, Trademarks included in the Purchased Intellectual Property or the Software System, including for each the applicable trademark or service mark, application numbers, filing dates, trademark registration numbers and registration dates, as applicable.

(ii) All of the registered Trademarks included in the Purchased Intellectual Property or the Software System are subsisting and in full force and effect. To the Knowledge of Sellers, each of the United States registered Trademarks included in the Purchased Intellectual Property or the Software System for which filings based on continuous use have been made by a Seller have been in continuous use in the United States or had been in continuous use in the United States at the time such filings were made. None of the trademark registrations included in the Purchased Intellectual Property (for Purchased Intellectual Property owned by Sellers) or the Software System are subject to any maintenance fees or renewal actions from the Effective Date to September 30, 2019.

(iii) No Trademark included in the Purchased Intellectual Property or the Software System has been or is now the subject of in any opposition, invalidation or cancellation proceeding, in each case which is pending and unresolved, and, to the Knowledge of Sellers, no such action is threatened in each case, except as would not reasonably be expected to result in a Seller Material Adverse Effect.

(c) Copyrights.

(i) Schedule 5.10(c) contains a complete and accurate list of all registered copyrights owned by Sellers and included in the Purchased Intellectual Property or the Software System, including title, registration number and registration date.

(ii) All of such registered copyrights included in the Purchased Intellectual Property or the Software System are in full force and effect, except where the failure to be in full force and effect would not reasonably be expected to result in a Seller Material Adverse Effect.

(iii) To the Knowledge of Sellers, all works encompassed by the U.S. registered copyrights included in the Purchased Intellectual Property or the Software System have been marked with the copyright notice to the extent required by applicable Law.

(d) Patents.

(i) Schedule 5.10(d) contains a complete and accurate list of all issued patents included in the Purchased Intellectual Property, including title, patent number and issuance date.

(ii) All of the issued patents included in the Purchased Intellectual Property are subsisting and in full force and effect except where the failure to be in full force and effect would not reasonably be expected to result in a Seller Material Adverse Effect. None of the issued patents included in the Purchased Intellectual Property are subject to any maintenance fees or renewal actions in the 90 days after the Effective Date.

(e) To the Knowledge of Sellers: (i) all registered or issued Purchased Intellectual Property that is material to the Business is valid and enforceable; and (ii) all registered or issued Intellectual Property included in the Software System is valid and enforceable.

(f) To the Knowledge of Sellers, since June 1, 2016, there has not been and there is not now any unauthorized use, infringement or misappropriation of any of the Purchased Intellectual Property or the Software System that is material to the Business by any third party.

(g) Since June 1, 2016, Sellers have not brought any actions or lawsuits alleging: (i) infringement, misappropriation or other violation of any of the Purchased Intellectual Property or the Software System; or (ii) breach of any agreement authorizing another party to use the Purchased Intellectual Property or the Software System. To the Knowledge of Sellers, there do not exist any facts or dispute, including any claim or threatened claim, that could form the basis of any such action or lawsuit. Sellers have not entered into any Contract granting any third party the right to bring infringement actions with respect to any of the Purchased Intellectual Property or the Software System that will survive the Closing, other than, with respect to the Software System, the Mutual PQUAD Covenant Agreement and the Legacy Business PQUAD Covenant Agreement.

(h) To the Knowledge of Sellers, there is no pending dispute, including any claim or threatened claim, with respect to the Purchased Intellectual Property or the Software System:

(i) contesting the right of Sellers to use, exercise, sell, license, transfer or dispose of any of the Purchased Intellectual Property or the Software System; or

(ii) challenging the ownership, validity or enforceability of any of the Purchased Intellectual Property or the Software System.

(i) None of the Purchased Intellectual Property that is material to the Business, nor the Software System is subject to any outstanding Order, stipulation or agreement related to or restricting in any manner the licensing, assignment, transfer or conveyance thereof by Sellers.

(j) Schedule 5.10(i) contains a listing of all Contracts to which Sellers are a party and pursuant to which any third party is licensed or otherwise permitted to use any Purchased Intellectual Property material to the Business, other than Contracts entered into in the Ordinary Course of Business. To the Knowledge of Sellers, except in connection with the Bankruptcy Case, there is no pending dispute, including any claim or threatened claim or the existence of any facts, indicating that Sellers or any other party thereto is in breach of any terms or conditions of such Contracts. No third party is licensed to use the Software System.

(k) To the Knowledge of Sellers, the operation and conduct of the Business as currently conducted by Sellers, has not, since June 1, 2016, and does not as of the Closing Date, (i) violate in any material respect any license or agreement with any third party to which a Seller is bound; or (ii) infringe, misappropriate or violate in any material respect any Intellectual Property right of any third party. To the Knowledge of Sellers, there is no dispute, including any claim or threatened claim that the marketing, license, sale or use of any material product or service of the Business, as currently conducted by Sellers, infringes, misappropriates or otherwise violates any Intellectual Property of any third party or violates any license or agreement with any third party to which a Seller is bound. Except as would not reasonably be expected to result in a Seller Material Adverse Effect, Sellers have not received service of process or been charged in writing as a defendant, since June 1, 2016, in any claim, suit, action or proceeding that alleges that any of the Purchased Intellectual Property or the Software System infringes any Intellectual Property right of any third party, which has not been finally adjudicated prior to the Effective Date.

(l) Except as set forth in Schedule 5.4 or Schedule 5.10(a), Sellers have the full right, power and authority to sell, assign, transfer and convey all of their right, title and interest in and to the Purchased Intellectual Property and an undivided one-third interest in all right, title and interest in and to the Software System to Purchaser as tenant-in-common with Legacy Business Owner and the Shari's Business Owner, and upon Closing, Purchaser will acquire from Sellers good and marketable title to the Purchased Intellectual Property and undivided one-third interest in all right, title and interest in and to the Software System as tenant-in-common with the Legacy Business Owner, the Shari's Business Owner, or one or more of Sellers, as the case may be, free of Liens (other than Permitted Exceptions), other than non-exclusive licenses of, or covenants with respect to, the Purchased Intellectual Property granted in the Ordinary Course of Business.

(m) No domain names included in the Purchased Intellectual Property have been, since June 1, 2016, or are now involved in any dispute, opposition, invalidation or cancellation proceeding and, to the Knowledge of Sellers, no such action is threatened with respect to any domain names included in the Purchased Intellectual Property.

5.11 Financial Advisors. Sellers have not incurred any obligation or Liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement or Transactions for which Purchaser is or will become liable.

5.12 Taxes.

(a) Each Seller has filed (or had filed on its behalf) all Tax Returns that it was required to file in respect to the Purchased Assets or the Business and all such Tax Returns were correct and complete in all material respects. Other than as excused or prohibited from being paid as a result of the Bankruptcy Code or the Bankruptcy Court, with respect to the Purchased Assets and the Business, each Seller has paid (or had paid on its behalf) all Taxes, whether or not shown to be due by such Seller on any such Tax Returns, or pursuant to any assessment received by such Seller from any Tax Authority for any period preceding the Closing Date. Other than as excused or prohibited from being withheld, collected or paid as a result of the Bankruptcy Code or the Bankruptcy Court, all Taxes that each Seller is or was required by Law to withhold or collect with respect to the Purchased Assets and the Business have been duly withheld or collected and, to the extent required, have been paid or will be paid to the proper Tax Authority.

(b) There are no pending, proposed in writing or threatened in writing Legal Proceedings with respect to any Taxes payable by or asserted against any Seller related to the Purchased Assets or the Business.

(c) Except as set forth on Schedule 5.12(c), there are no outstanding agreements or waivers that would extend the statutory period in which a Tax Authority may assess or collect a Tax that could result in a Lien upon the Purchased Assets or the Business.

(d) There are no Liens with respect to Taxes (other than Permitted Exceptions and Liens that will be released by the Approval Order) upon the Purchased Assets or the Business.

(e) No Seller is a party to any Tax indemnity, Tax allocation or Tax sharing agreement, other than any such agreement entered into in the Ordinary Course of Business the principal purpose of which is not related to Tax, that could result in a Lien upon the Purchased Assets or the Business.

(f) There are no requests for rulings pending between any Seller and any Tax Authority in respect of any Tax that could result in a Lien upon the Purchased Assets or the Business.

5.13 Due Notice. Seller has served notice of the Bankruptcy Cases on all parties in interest entitled to notice under the Bankruptcy Code or Federal Rules of Bankruptcy Procedure.

5.14 No Other Representations or Warranties; Schedules. Except for the representations and warranties contained in this Article V (as modified by the Schedules hereto or in the Company SEC Documents), none of Sellers nor any other Person makes any other express or implied representation or warranty with respect to Sellers, the Purchased Assets, the Assumed Liabilities or the Transactions, and each Seller disclaims any other representations or warranties, whether made by Sellers, any Affiliate of Sellers, or any of Sellers' or their Affiliates' respective Representatives. Except for the representations and warranties contained in this Article V (as modified by the Schedules hereto), each Seller (a) expressly disclaims and negates any representation or warranty, expressed or implied, at common law, by statute, or otherwise, relating to the condition of the Purchased Assets (including any implied or expressed

warranty of merchantability or fitness for a particular purpose, or of conformity to models or samples of materials) and (b) disclaims all liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to Purchaser or its Affiliates or Representatives (including any opinion, information, projection, or advice that may have been or may be provided to Purchaser by any Representative of Sellers or any of its Affiliates). Sellers make no representations or warranties to Purchaser regarding the probable success or profitability of the Business, the Purchased Assets or the use thereof. The disclosure of any matter or item in any Schedule hereto will not be deemed to constitute an acknowledgment that any such matter is required to be disclosed or is material or that such matter could result in a Seller Material Adverse Effect.

## VI. REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Sellers that:

6.1 Organization and Good Standing. Purchaser is a limited liability company organized, validly existing and in good standing under the Laws of the jurisdiction of its formation and has all requisite limited liability power and authority to own, lease and operate its properties and to carry on its business as now being conducted, except where the failure to be so organized, existing and in good standing or to have such power and authority would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of Purchaser to consummate the Transactions. Purchaser is not in violation of its organizational or governing documents.

6.2 Authorization of Agreement. Purchaser has all necessary limited liability power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery and performance by Purchaser of this Agreement, and the consummation by it of the Transactions, have been duly and validly authorized by the members or board of managers of Purchaser, and no other limited liability action on the part of Purchaser is necessary to authorize the execution, delivery and performance by Purchaser of this Agreement and the consummation of the Transactions. This Agreement has been duly executed and delivered by Purchaser and, assuming due and valid authorization, execution and delivery of this Agreement by Sellers, is a valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms, subject to equitable principles of general applicability (whether considered in a proceeding at law or in equity).

6.3 Consents and Approvals; No Violations.

(a) The execution, delivery and performance of this Agreement by Purchaser and the consummation Purchaser of the Transactions do not and will not (i) conflict with or violate the certificate of formation or operating agreement (or similar organizational documents) of Purchaser, (ii) assuming that all consents, approvals and authorizations contemplated by clauses (i) through (iii) of subsection (b) of this Section have been obtained, and all filings described in such clauses have been made, conflict with or violate any Law or Order applicable Purchaser or by which Purchaser or any of its respective properties are bound, or (iii) result in any breach or violation of or constitute a default (or an event which with notice or lapse of time or both would become a default) or result in the loss of a benefit under, or give rise to any right

of termination, cancellation, amendment or acceleration of, any Contracts to which Purchaser is a party or by which Purchaser or any of its respective properties are bound, except, in the case of clauses (ii) and (iii), for any such conflict, violation, breach, default, acceleration, loss, right or other occurrence which would not prevent or materially impair the ability of Purchaser to consummate the Transactions.

(b) The execution, delivery and performance of this Agreement by Purchaser and the consummation by Purchaser of the Transactions do not and will not require any consent, approval, authorization or permit of, action by, filing with or notification to, any Governmental Body, except for (i) the applicable requirements, if any, of the Securities and Exchange Act of 1934 and state securities, takeover and “blue sky” Laws, and (ii) any such consent, approval, authorization, permit, action, filing or notification the failure of which to make or obtain would not impair the ability of Purchaser to consummate the Transactions.

6.4 Financial Capability. Purchaser has sufficient funds available to it in cash to pay or cause to be paid the Purchase Price and the fees and expenses required to be paid by Purchaser in connection with the Transactions, and to effect the Transactions. Upon the consummation of the Transactions, (a) Purchaser will not be insolvent as defined in Section 101 of the Bankruptcy Code, (b) Purchaser will not be left with unreasonably small capital, (c) Purchaser will not have incurred debts beyond its ability to pay such debts as they mature, and (d) the capital of Purchaser will not be impaired.

6.5 Condition of the Purchased Assets. Notwithstanding anything contained in this Agreement to the contrary, Purchaser acknowledges and agrees that Sellers are not making any representations or warranties whatsoever, express or implied, beyond those expressly given by Sellers in Article V (as modified by the Schedules hereto), and Purchaser acknowledges and agrees that, except for the representations and warranties contained therein, the Purchased Assets are being transferred on a “where is” and, as to condition, “as is” basis. Purchaser acknowledges that it has conducted to its satisfaction its own independent investigation of the Purchased Assets and, in making the determination to proceed with the Transactions, Purchaser has relied on the results of its own independent investigation.

6.6 Exclusivity of Representations and Warranties. Purchaser acknowledges that except for the representations and warranties made by Sellers in Article V, none of Sellers make (and neither Purchaser or any other Person has relied upon) any representations or warranties on behalf of Sellers. Purchaser further agrees that except for the representations and warranties made by Sellers in Article V, neither Sellers nor any other Person will have or be subject to any liability or indemnification obligation to Purchaser or any other Person resulting from the distribution to Purchaser, Purchaser’s use of, any such information, including any information, documents, projections, forecasts or other material made available to Purchaser in certain “data rooms” or management presentations in expectation of the Transactions. For the avoidance of doubt, Purchaser acknowledges that neither Sellers nor any of their Representatives make any express or implied representation or warranty with respect to “Confidential Information” as defined in the Confidentiality Agreement. Purchaser acknowledges and agrees that it (a) has had an opportunity to discuss the business of Sellers with the management of Sellers, (b) has had sufficient access to (i) the books and records of Sellers and (ii) the electronic data room maintained by Sellers for purposes of the Transactions, (c) has been afforded the opportunity to

ask questions of and receive answers from officers and other key employees of Sellers and (d) has conducted its own independent investigation of Sellers, their respective businesses and the Transactions, and has not relied on any representation, warranty or other statement by any Person on behalf of Sellers, other than the representations and warranties of Sellers expressly contained in Article V, and that all other representations and warranties are specifically disclaimed. In connection with any investigation by Purchaser of Sellers, Purchaser has received or may receive from Sellers or its other Representatives on behalf of Sellers certain projections, forward-looking statements and other forecasts and certain business plan information in written or verbal communications. Purchaser acknowledges that there are uncertainties inherent in attempting to make such estimates, projections and other forecasts and plans, that Purchaser is familiar with such uncertainties, that Purchaser is taking full responsibility for making its own evaluation of the adequacy and accuracy of all estimates, projections and other forecasts and plans so furnished to Purchaser (including the reasonableness of the assumptions underlying such estimates, projections, forecasts or plans), and that Purchaser shall have no claim against Sellers or any other Person with respect thereto. Accordingly, Purchaser acknowledges that neither Sellers nor any other Person on behalf of the Sellers make (and neither Purchaser or any other Person has relied upon) any representation or warranty with respect to such estimates, projections, forecasts or plans (including the reasonableness of the assumptions underlying such estimates, projections, forecasts or plans). Notwithstanding the foregoing, nothing contained in this Section shall limit or otherwise impair in any manner Purchaser's right to make a claim for actual fraud or willful misconduct.

## VII. BANKRUPTCY COURT MATTERS

7.1 Submission for Bankruptcy Court Approval. As promptly as practicable after the execution of this Agreement, Sellers will file or cause to be filed with the Bankruptcy Court a motion seeking entry of an order approving the Expense Reimbursement and Break-Up Fee (the "Stalking Horse Motion")The Stalking Horse Motion and any order of the Bankruptcy Court approving the Stalking Horse Motion must be reasonably acceptable to Purchaser.

7.2 Bankruptcy Process.

(a) Sellers and Purchaser acknowledge and agree that this Agreement, the sale of the Purchased Assets and the Transactions are subject to higher or otherwise better bids (in accordance with the Bidding Procedures) and Bankruptcy Court approval. Purchaser and Sellers acknowledge that Sellers must take reasonable steps to demonstrate that they have sought to obtain the highest or otherwise best offer for the Purchased Assets, including giving notice thereof to the creditors of Sellers and other interested parties, providing information about Sellers' business to prospective bidders, entertaining higher or otherwise better offers from such prospective bidders, and, in the event that additional qualified prospective bidders desire to bid for the Purchased Assets and submit a Qualified Bid therefor, conducting an auction (the "Auction").

(b) The bidding procedures to be employed with respect to this Agreement and any Auction will be those reflected in the Bidding Procedures Order, which will be in a form and substance reasonably acceptable to the Parties. Purchaser agrees to be bound by and accept the terms and conditions of the Bidding Procedures Order as entered by the Bankruptcy Court.

Purchaser agrees and acknowledges that Sellers and their Affiliates will be permitted, and will be permitted to cause their Representatives, to initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, respond to any unsolicited inquiries, proposals or offers submitted by, and enter into any discussions or negotiations regarding any of the foregoing with, any Person (in addition to Purchaser and its Affiliates, agents and Representatives).

(c) Purchaser will provide adequate evidence and assurance under the Bankruptcy Code of the future performance by Purchaser of each Purchased Contract. Purchaser will take all actions reasonably required to assist in obtaining a Bankruptcy Court finding that there has been an adequate demonstration of adequate assurance of future performance under the Purchased Contracts, such as furnishing affidavits, non-confidential financial information and other documents or information for filing with the Bankruptcy Court and making Purchaser's Representatives available to testify before the Bankruptcy Court, provided that Purchaser's obligations under this Section 7.2(c) shall solely extend to evidence regarding adequate assurance of future performance under the Purchased Contracts.

(d) If this Agreement and the sale of the Purchased Assets to Purchaser on the terms and conditions hereof are determined to be the "highest or otherwise best offer" in accordance with the Bidding Procedures Order, Purchaser and Sellers agree to use commercially reasonable efforts to cause the Bankruptcy Court to enter the Approval Order in a form and substance reasonably acceptable to the Purchaser and Sellers.

(e) Sellers covenant and agree that if the Approval Order is entered, the terms of any plan submitted by Sellers to the Bankruptcy Court for confirmation, or the terms of any other sale of Sellers' or their Affiliates' assets submitted by Sellers to the Bankruptcy Court for approval, will not conflict with, supersede, abrogate, nullify, modify or restrict the terms of this Agreement and the rights of Purchaser hereunder, or in any way prevent or interfere with the consummation or performance of the Transactions including any transaction that is contemplated by or approved pursuant to the Approval Order.

(f) If the Approval Order or any other orders of the Bankruptcy Court relating to this Agreement are appealed or petition for certiorari or motion for rehearing or reargument is filed with respect thereto, Sellers agree to take all action as may be commercially reasonable and appropriate to defend against such appeal, petition or motion and Purchaser agrees to cooperate in such efforts and each Party agrees to use its commercially reasonable efforts to obtain an expedited resolution of such appeal; provided, that the absence of an appeal of the Approval Order will not be a condition to any Party's obligation to consummate the Transactions at the Closing; provided further, that nothing in this Section 7.2(f) shall be deemed to limit any right to Termination of this Agreement in accordance with Section 4.4 hereof.

(g) For the avoidance of doubt, nothing in this Agreement will restrict Sellers or their Affiliates from selling, disposing of or otherwise transferring any Excluded Assets or from settling, delegating or otherwise transferring any Excluded Liabilities, or from entering into discussions or agreements with respect to the foregoing.

7.3 Additional Bankruptcy Matters.

(a) From and after the date of this Agreement and until the Closing Date (or any earlier date from and after any deadline for other potential purchasers to submit bids for the Purchased Assets if this Agreement is determined not to be the “highest or otherwise best offer” in accordance with the Bidding Procedures Order), to the extent reasonably practicable, Sellers will deliver to Purchaser drafts of any and all material pleadings, motions, notices, statements, applications, schedules, reports and other papers to be filed or submitted by Sellers in connection with this Agreement for Purchaser’s prior review. Sellers will make commercially reasonable efforts to consult and cooperate with Purchaser regarding (i) any such pleadings, motions, notices, statements, applications, schedules, reports or other papers, (ii) any discovery taken in connection with the motions seeking approval of the Bidding Procedures Order or Approval Order (including, without limitation, any depositions) and (iii) any hearing relating to the Bidding Procedures Order or Approval Order, including, without limitation, the submission of any evidence, including witnesses testimony, in connection with such hearing.

(b) Sellers acknowledge and agree, and the Approval Order will provide that, on the Closing Date and concurrently with the Closing, all then existing or thereafter arising obligations, liabilities and Lien on, against or created by Sellers or their bankruptcy estates, shall be fully released from and with respect to the Purchased Assets, which will be transferred to Purchaser free and clear of all obligations, liabilities and Liens except for Assumed Liabilities and Permitted Exceptions.

**VIII. COVENANTS**

8.1 Access to Information. From the Effective Date through the Closing Date, Seller will provide Purchaser, through its Representatives, with opportunities to make such investigation of the Purchased Assets and the Assumed Liabilities as Purchaser reasonably requests. Any such investigation and examination will be conducted upon reasonable advance notice and under reasonable circumstances, will occur only during normal business hours and will be subject to restrictions under applicable Law. Sellers will direct their respective Representatives to cooperate with Purchaser and Purchaser’s Representatives in connection with such investigation and examination, and Purchaser and its Representatives will cooperate with Sellers and their Representatives. By no later than July 16, 2019, Sellers shall deliver to Purchaser a true and correct statement of Current Assets and Current Liabilities as of the month ended June 30, 2019, in the form of the Closing Working Capital Statement set forth as Schedule 3.4(a) hereto. Notwithstanding anything herein to the contrary, no such investigation or examination will be permitted to the extent that it would require Sellers to disclose information that would cause material competitive harm to a Seller or would violate attorney-client privilege. No investigation by Purchaser will affect or be deemed to modify any of the representations, warranties, covenants or agreements of Sellers contained in this Agreement.

8.2 Actions Pending the Closing. Except (a) as required by applicable Law or as required by order of the Bankruptcy Court, (b) as otherwise expressly contemplated by this Agreement, or (c) with the prior written consent of Purchaser, during the period from the Effective Date to and through the Closing Date, Sellers will (taking into account the commencement of the Bankruptcy Cases, the anticipated sale, liquidation and shut-down of

operations of Sellers other than the Business and other changes, facts and circumstances that customarily result from the events leading up to and following the commencement of bankruptcy proceedings): (i) use commercially reasonable efforts to carry on the Business in the Ordinary Course of Business of the Sellers and maintain the Purchased Assets in their current condition, ordinary wear and tear excepted (and excluding sales of inventory in the Ordinary Course of Business); (ii) not materially amend, modify, terminate, let lapse (other than the expiration of a contract pursuant to its terms) or waive any rights under, or create any Lien with respect to, any of the Contracts; (iii) use commercially reasonable efforts to defend and protect the Purchased Assets from deterioration; (iv) comply with applicable Laws with respect to the Purchased Assets, other than with respect to the failure of such compliance as would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect; (v) not terminate without cause, or materially alter the salary or benefits of, any Business Employee, provided, Sellers may promote non-executive level employees in the ordinary course of business, and (vi) not enter into any agreement or commitment to take any action prohibited by this Section 8.2.

8.3 Payables. Sellers shall make all payments in respect of payables of the Business (including rent payments, sales Taxes, and payments to Business Employees) due or arising after the Effective Date and through the Closing Date in all material respects on a timely basis and will otherwise manage the accounts payable of the Business in accordance with the Sellers' cash management policies and practices (as in effect prior to the commencement of the Bankruptcy Case) in the Ordinary Course of Business. The Sellers shall deliver to Purchaser all budget reports delivered to the lenders under Sellers' debtor-in-possession financing facility with respect to the Business substantially concurrently with their delivery to such lenders.

8.4 Consents. Sellers and Purchaser will use their commercially reasonable efforts to obtain at the earliest practicable date all consents and approvals contemplated by this Agreement, including the consents and approvals referred to in Section 5.3 and the Necessary Consents; provided, however, that none of Sellers or Purchaser (other than with respect to Assumed Cure Costs) will be obligated to pay any consideration therefor to any third party from whom consent or approval is requested or to initiate any litigation or proceedings to obtain any such consent or approval. For the avoidance of doubt, the Parties acknowledge and agree that obtaining any such authorizations, consents and approvals, giving such notices and making such filings shall not be a condition to Closing.

8.5 Commercially Reasonable Efforts; Consents to Assignment.

(a) Upon the terms and subject to the conditions of this Agreement, each of the Parties will use its commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective the Transactions as promptly as practicable, including the prompt preparation and filing of all forms, registrations and notices required to be filed to consummate the Transactions and the taking of such commercially reasonable actions as are necessary to obtain any requisite approvals, consents, orders, exemptions or waivers by any Governmental Body or any other Person. Each Party will promptly consult with the others with respect to, provide any necessary information with respect to, and provide the other Parties (or their counsel) copies of, all filings made by such party with any Governmental Body or any other

Person or any other information supplied by such Party to a Governmental Body or any other Person in connection with this Agreement and the Transactions.

(b) Each Party will promptly inform the others of any communication from any Governmental Body regarding any of the Transactions and promptly provide the others with copies of all related correspondence or filings. If any Party or Affiliate thereof receives a request for additional information or documentary material from any such Governmental Body with respect to the Transactions, then such Party will endeavor in good faith to make, or cause to be made, as soon as reasonably practicable and after consultation with the other Party, an appropriate response in compliance with such request. Each Party will provide any necessary information and reasonable assistance as the others may request in connection with its preparation of any additional necessary filings or submissions to any Governmental Body.

(c) Neither Sellers nor Purchaser will independently participate in any meeting with any Governmental Body (other than the Bankruptcy Court or the Office of the United States Trustee) in respect of any findings or inquiry in connection with the transactions contemplated by this Agreement and the other Transaction Agreements without giving, in the case of Sellers, Purchaser, and in the case of Purchaser, Sellers, prior notice of the meeting and, to the extent reasonably practicable and not prohibited by the applicable Governmental Body, the opportunity to attend and/or participate in such meeting.

(d) Each Party will use its commercially reasonable efforts to resolve objections, if any, as may be asserted by any Governmental Body with respect to the Transactions.

8.6 Publicity. With the exception of press releases issued by Sellers and Purchaser on the Effective Date and the Closing Date in forms mutually agreeable to the Company and Purchaser, Purchaser and Sellers will not issue any press release or public announcement concerning this Agreement or the Transactions without obtaining the prior written approval of the other Parties, which approval may not be unreasonably withheld, conditioned or delayed, except that such consent shall not be required if disclosure is otherwise required by applicable Law or by the Bankruptcy Court; provided, however, that Purchaser or Sellers, as applicable, will use its or their commercially reasonable efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other Parties with respect to the text of any such required disclosure.

8.7 Confidentiality. Purchaser acknowledges that Confidential Information (as defined in the Confidentiality Agreement) has been, and in the future will be, provided to it in connection with this Agreement, including under Section 8.1, and is subject to the terms of the confidentiality agreement dated April 27, 2018 between the FTD Companies, Inc., a Delaware corporation and Purchaser (the "Confidentiality Agreement"), the terms of which are incorporated herein by reference. Purchaser acknowledges and understands that this Agreement and related documents may be publicly filed in the Bankruptcy Court and further made available by Sellers to prospective bidders or contract counterparties and that, such disclosure will not be deemed to violate any confidentiality obligations owing to Purchaser, whether pursuant to this Agreement, the Confidentiality Agreement or otherwise. Sellers acknowledge that from and after the Closing, all non-public information relating to the Purchased Assets and the Assumed

Liabilities will be valuable and proprietary to Purchaser and its Affiliates. Sellers agree that, from and after the Closing, no Seller will disclose to any Person any information relating to Purchaser and its Affiliates, the Purchased Assets or the Assumed Liabilities, except as required by Law or as otherwise becomes available in the public domain other than through any action by any Seller in violation of its obligations under this Section 8.7. If any of Sellers or any of their Affiliates or their respective Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, such Seller shall promptly notify Purchaser in writing and shall disclose only that portion of such information which such Seller is advised by its counsel in writing is legally required to be disclosed, provided that Sellers shall use commercially reasonable efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information. Sellers acknowledge and agree that the remedies at law for any breach or threatened breach of this Section 8.7 by any Seller are inadequate to protect Purchaser and its Affiliates and that the damages resulting from any such breach are not readily susceptible to being measured in monetary terms. Accordingly, without prejudice to any other rights or remedies otherwise available to Purchaser or its Affiliates, each Party acknowledges and agrees that upon any breach or threatened breach by a Seller of the terms and conditions of this Section 8.7, Purchaser and its Affiliates, as applicable will be entitled to injunctive relief and to seek an order restraining any threatened or future breach from any court of competent jurisdiction without proof of actual damages or posting of any bond in connection with any such remedy. The provisions of this Section 8.7 will survive the Closing.

8.8 Access Agreements. Prior to the Closing, Sellers and Purchaser will negotiate mutually acceptable terms of an agreement providing Sellers with access, for a period of at least 12 months following the Closing Date, to Purchaser's personnel, including the Transferred Employees, information technology systems, including email, third party service providers and books and records, and use of office space and office support for employees of Sellers, as is reasonably necessary or appropriate in connection with the administration of the Bankruptcy Case and to permit Sellers to wind-down and liquidate the Sellers' Bankruptcy estates following the Closing.

8.9 Employee Matters.

(a) Sellers may, from time to time prior to the Closing Date, update the list of Business Employees on Schedule L.1(a) to reflect employment terminations and new hires solely to fill existing positions. Purchaser will offer employment, or cause one of its Affiliates to offer employment, to substantially all, and no fewer than two-thirds, of the Business Employees, such employment to commence immediately following the Closing. Sellers and their Affiliates will cooperate with and use their commercially reasonable efforts to assist Purchaser and its Affiliates in their efforts to secure the satisfactory transition of Business Employees to Purchaser. Without limiting the generality of the foregoing, Sellers and their Affiliates will provide all relevant information in their possession necessary to the hiring and transfer of the Transferred Employees, including all relevant payroll, compensation, benefits participation and withholding tax information with respect to the Transferred Employees; provided, that Purchaser shall not have access to personnel records of any Seller the disclosure of which is prohibited by applicable Law. Business Employees who are offered, and who accept offers of employment from Purchaser or an Affiliate of Purchaser are referred to as "Transferred Employees". Sellers and

their Affiliates will terminate the employment of all Transferred Employees, effective immediately prior to the Closing, provided, however, that the Parties intend and will take commercially reasonable steps to ensure that the Transferred Employees have continuous employment through the Closing. Purchaser agrees to provide credit to the Transferred Employees for all periods of service with Sellers and their Affiliates upon commencing their employment with Purchaser for purposes of eligibility for and calculation of benefits, vacation, paid time off and participation under any benefit plans maintained by Purchaser. For a 12-month period following the Closing, Purchaser (i) intends to provide to each Transferred Employee a base salary or standard hourly wage rate that, in each case, Purchaser reasonably determines is no less favorable to such Transferred Employee than that provided by Sellers at the time of the Closing; and (ii) will provide Transferred Employees with employee benefits (excluding equity and equity-linked compensation) that Purchaser reasonably determines are no less favorable on the whole than what Purchaser, or its Affiliates located in the United States, as applicable, provides to similarly-situated employees.

(b) No fewer than three Business Days prior to the Closing, Purchaser will deliver to Sellers a list of the Business Employees who will not be offered employment by Purchaser, or who have not, and Purchaser believes are not reasonably likely to, accept offers of employment from Purchaser (the “Non-Transferred Employees”). Sellers and their Affiliates will terminate the employment of all Non-Transferred Employees, effective immediately prior to the Closing and will be responsible for the cost of severance to the Non-Transferred Employees up to \$50,000 (“Severance Cap”). Any and all severance obligations of Sellers and their Affiliates to Non-Transferred Employees above the Severance Cap (the “Excess Severance Amount”) shall be paid by Purchaser pursuant to Section 3.3. Within one Business Day prior to Closing, Sellers will deliver to Purchaser the total severance amount for the Non-Transferred Employees, detailing the Excess Severance Amount payable by Purchaser.

(c) Sellers will to the extent reasonably requested by Purchaser, use commercially reasonable efforts to make each Business Employee reasonably available to Purchaser for the purpose of facilitating the transition of such Business Employee to Purchaser. Sellers will not, without Purchaser’s consent knowingly interfere with any negotiations by Purchaser to employ or retain the services of any Business Employee.

(d) Purchaser’s employment of the Transferred Employees will be “at will” and may be terminated by Purchaser and/or any of its Affiliates at any time for any reason; provided, however, that for the 12-month period following the Closing, to the extent that the employment of any Transferred Employee is involuntarily terminated by Purchaser, other than for cause, Purchaser will offer to such Transferred Employee the separation pay pursuant to Purchaser’s ordinary-course severance practices upon such employee’s execution of a separation agreement in accordance with Purchaser’s customary practices and policies. Nothing in this Agreement will create any third-party rights in any Transferred Employees or any current or former employees or other service providers of any Seller or any Seller Affiliate (or any beneficiaries or dependents of the foregoing) or in any other person. Nothing contained herein shall constitute an amendment to any Benefit Plan.

(e) The Sellers shall be responsible for any notices required to be given under and shall otherwise comply with all Liabilities arising under the WARN Act relating to any acts

or omissions prior to the Closing. Purchaser shall take no action within ninety days of Closing that would trigger a “plant closing” or “mass layoff” within the meaning of the WARN Act. Subject to the foregoing and [Section 5.9\(c\)](#), Purchaser shall be responsible for any notices required to be given under and shall otherwise comply with all Liabilities arising under the WARN Act relating to any acts or omissions on and after the Closing.

8.10 Releases. Effective upon the Closing, (a) Purchaser (individually and on behalf of its Affiliates) hereby releases and forever discharges each Seller and each of its Affiliates and their respective successors and assigns and all of their respective Representatives from any and all actual or potential claims, causes of action, proceedings, Liabilities, damages, expenses and/or losses of whatever kind or nature (including attorneys’ fees and costs), in law or equity, known or unknown, suspected or unsuspected, now existing or hereafter arising, whether contractual, in tort or otherwise, which such Party had, have, or may have in the future relating in any way to the Purchased Assets or the Assumed Liabilities and (b) each Seller (individually and on behalf of its Affiliates) hereby releases and forever discharges Purchaser and each of its Affiliates and their respective successors and assigns and all of their respective Representatives from any and all actual or potential claims, causes of action, proceedings, liabilities, damages, expenses and/or losses of whatever kind or nature (including attorneys’ fees and costs), in law or equity, known or unknown, suspected or unsuspected, now existing or hereafter arising, whether contractual, in tort or otherwise, which such Party had, have, or may have in the future relating in any way to the Excluded Assets or the Excluded Liabilities; provided that (i) nothing in this [Section 8.10](#) will constitute a release of any Person arising from conduct of such Person that is determined by a final order of a court of competent jurisdiction to have constituted an actual fraud, willful breach, knowing and intentional misrepresentation or criminal act by such Person and (ii) nothing in this Agreement will be construed to release any Person from any of its contractual obligations under this Agreement and the other agreements contemplated by the Transactions, including its obligations in respect of the Purchased Assets, Assumed Liabilities, Excluded Assets and Excluded Liabilities, as the case may be, each of which will remain fully effective and enforceable from and after the Closing Date.

8.11 Software System, Master List. With respect to the Software Systems, on and from the Closing Date, Purchaser, Legacy Business Owner, and Shari’s Business Owner shall be joint owners of the Software System, and each of Purchaser’s and Shari’s Business Owner’s rights, obligations and covenants shall be governed by the Mutual PQUAD Covenant Agreement and such other reasonable rights, obligations and covenants to be agreed upon with the Legacy Business Owner in a fully-executed, written agreement that is substantially in the form of the Mutual PQUAD Covenant Agreement, together with any modifications mutually agreed by the parties thereto (and, if Purchaser is not a party thereto at the time of such modifications, also agreed to by Purchaser) (the “Legacy Business PQUAD Covenant Agreement”). After the Closing, Sellers shall not retain, convey or purport to convey any interest in, or disclose to any third party, any excerpt of the Master List exclusively transferred to Purchaser pursuant to [Section 2.1\(b\)\(xii\)](#) hereof. Sellers shall not convey or purport to convey, or disclose to any third party, any portion of the excerpt of the Master List conveyed on a non-exclusive basis to Purchaser pursuant to [Section 2.1\(b\)\(xii\)](#) hereof except: (a) to Legacy Business Owner solely with respect to customers on the Master List that have placed orders for products of the business acquired by the Legacy Business Owner or are voluntary subscribers of the business acquired by the Legacy Business Owner; and (b) to Shari’s Business Owner solely with respect to customers

on the Master List that have placed orders for products of the business acquired by the Shari's Business Owner or are voluntary subscribers of the business acquired by the Shari's Business Owner. Sellers shall not convey any interest in any portion of the Master List that is a Purchased Asset other than in accordance with this Section 8.11.

8.12 Transition Services. After the Closing, Purchaser will and will cause its Affiliates, and Sellers will and will cause its Affiliates, to provide certain transition services to Seller, Sellers' Affiliates, the Legacy Business Owner, or the Shari's Business Owner, or Purchaser or Purchaser's Affiliates, as applicable, such transition services to be agreed to between Seller, Sellers' Affiliates, the Legacy Business Owner, the Shari's Business Owner, Purchaser, and Purchaser's Affiliates, as the case may be; provided that (a) Purchaser's obligations to provide transition services to Legacy Business Owner are conditioned upon Legacy Business Owner's agreement to provide transition services to Purchaser; and (b) Purchaser's obligations to provide transition services to Shari's Business Owner are conditioned upon Shari's Business Owner's agreement to provide transition services to Purchaser. The parties will negotiate in good faith, prior to the Closing, a definitive transition services agreement reflecting such terms (the "Transition Services Agreement"), with the definitive agreement to be in a form (i) customary for transaction of this type contemplated by this Agreement and (ii) reasonably acceptable to the Sellers, Seller's Affiliates, the Legacy Business Owner, the Shari's Business Owner, Purchaser, and Purchaser's Affiliates in their respective reasonable discretion.

8.13 Access to IT Equipment. Prior to the Closing, Purchaser and Sellers shall cooperate in good faith and Sellers shall make commercially reasonable efforts to provide Purchaser access to any IT Equipment that is used in connection with the Business but it not Purchased IT Equipment.

8.14 Bulk Transfer Laws. Purchaser acknowledges that Sellers will not comply with the provisions of any bulk transfer Laws of any jurisdiction in connection with the Transactions, and hereby waives all claims related to the non-compliance therewith. The Parties intend that pursuant to Section 363(f) of the Bankruptcy Code, the transfer of the Purchased Assets shall be free and clear of any Liens in the Purchased Assets, including any Liens arising out of the bulk transfer Laws.

8.15 Use of Names.

(a) Purchaser acknowledges that the Excluded Names are and shall remain the property of Sellers and their Affiliates and that nothing in this Agreement will be deemed to transfer to Purchaser or any of its Affiliates any right, title or interest in, or license to, the Excluded Names.

(b) Sellers shall, as promptly as practicable (but in no event later than twenty (20) Business Days) after the Closing Date, cease using and displaying any trademarks that are included in the Purchased Assets, and in accordance with such requirement, Sellers shall use commercially reasonable efforts to, no later than twenty (20) Business Days after the Closing, legally change their respective corporate and business names (to the extent such names include such trademarks or a confusingly similar trademarks) to names that are not confusingly similar to such trademarks, and file notices of such name changes with the Bankruptcy Court. Subject to

the approval of the Bankruptcy Court to change Sellers' name for purposes of the Bankruptcy Case (which approval Sellers shall seek and use commercially reasonable efforts to obtain promptly following the Closing Date), under no circumstance shall Sellers, after the Closing Date, use or otherwise exploit the trademarks included in the Purchased Assets or any other indicia confusingly similar to the trademarks included in the Purchased Assets, copyrights included in the Purchased Assets, or any work substantially similar to the copyrights included in the Purchased Assets, as a source identifier in connection with any Seller product, service or corporate, business or domain name.

8.16 Post-Closing Payments. On the Closing Date, Sellers shall appoint and authorize Purchaser to utilize Sellers' merchant account for purposes of collecting payment from customers of the Business and to collect any consideration, property or services to which Purchaser is entitled pursuant to the Transactions, including the Credit Card Accounts Receivable. Purchaser shall reimburse Sellers for out-of-pocket expenses actually incurred by Sellers for providing Purchaser with the use of Sellers' merchant account in the six calendar weeks from and after the Closing Date, and Purchaser agrees to pay to Sellers a reasonable fee typical for such services for the use of Sellers' merchant account from and after six calendar weeks after the Closing Date, if necessary. Following the Closing, Purchaser and Sellers each will remit, with reasonable promptness, to the other any payments received by them or their respective Affiliates, which payments are on or in respect of accounts or notes receivable owned by (or are otherwise payable to) the other party or its Affiliates.

## IX. CONDITIONS TO CLOSING

9.1 Conditions Precedent to Obligations of Purchaser. The obligation of Purchaser to consummate the Transactions is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Purchaser in whole or in part to the extent permitted by applicable Law):

(a) each of the representations and warranties of Sellers contained in this Agreement (disregarding all "materiality" or "Seller Material Adverse Effect" qualifications set forth therein) shall be true and correct as of the Closing, as if made on the Closing Date (except for any such representations and warranties that are made as of a specific date, which representations and warranties shall have been true and correct as of such specific date), except where the failure of the representations and warranties to be true and correct, individually or in the aggregate, has not had and would not reasonably be expected to have a Seller Material Adverse Effect, and Purchaser shall have received a certificate signed by an authorized officer of each Seller on behalf of such Seller, dated the Closing Date, to the foregoing effect;

(b) Sellers shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by them prior to or on the Closing Date, and Purchaser shall have received a certificate signed by an authorized officer of each Seller on behalf of such Seller, dated the Closing Date, to the foregoing effect;

(c) Sellers shall have delivered, or caused to be delivered, to Purchaser all of the items set forth in Section 4.2.

9.2 Conditions Precedent to Obligations of Sellers. The obligations of Sellers to consummate the Transactions are subject to the fulfillment, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by Sellers in whole or in part to the extent permitted by applicable Law):

(a) each of the representations and warranties of Sellers contained in this Agreement (disregarding any and all “materiality” or “Purchaser Material Adverse Effect” qualifications set forth therein) shall be true and correct as of the Closing, as if made on the Closing Date (except for any such representations and warranties that are made as of a specific date, which representations and warranties shall have been true and correct as of such specific date), except where the failure of the representations and warranties to be true and correct, individually or in the aggregate, has not had and would not reasonably be expected to have a Purchaser Material Adverse Effect, and Sellers shall have received a certificate signed by an authorized officer of Purchaser on behalf of Purchaser, dated the Closing Date, to the foregoing effect;

(b) Purchaser shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by Purchaser prior to or on the Closing Date, and Sellers shall have received a certificate signed by an authorized officer of Purchaser on behalf of Purchaser, dated the Closing Date, to the foregoing effect; and

(c) Purchaser shall have delivered to Sellers all of the items set forth in Section 4.3.

9.3 Conditions Precedent to Obligations of Purchaser and Sellers. The respective obligations of Purchaser and Sellers to consummate the Transactions are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Purchaser and Sellers in whole or in part to the extent permitted by applicable Law):

(a) there shall not be in effect any Order by a Governmental Body restraining, enjoining or otherwise prohibiting the consummation of the Transactions;

(b) the Bankruptcy Court shall have entered an order approving the Stalking Horse Motion.

(c) the Bankruptcy Court shall have entered the Procedures Order and the Procedures Order shall not be subject to a stay or have been vacated or revoked; and

(d) the Bankruptcy Court shall have entered the Approval Order and the Approval Order shall not be subject to a stay or have been vacated or revoked.

9.4 Frustration of Closing Conditions. No Party may rely on the failure of any condition set forth in Sections 9.1, 9.2 or 9.3, as the case may be, if such failure was caused by such Party’s breach of any provision of this Agreement.

## X. TAXES

10.1 Transfer Taxes. All documentary, stamp, transfer, motor vehicle registration, sales, use, value added, excise and other similar non-income Taxes and all filing and recording fees (and any penalties and interest associated with such Taxes and fees) arising from or relating to the consummation of the Transactions (collectively, "Transfer Taxes") will be borne by Purchaser, regardless of the Party on whom liability is imposed under the provisions of the Laws relating to such Transfer Taxes. Sellers and Purchaser will consult and cooperate in timely preparing and making all filings, Tax Returns, reports and forms as may be required to comply with the provisions of the Laws relating to such Transfer Taxes and will cooperate and otherwise take commercially reasonable efforts to obtain any available refunds for or exemptions from such Transfer Taxes, including preparing exemption certificates and other instruments as are applicable to claim available exemptions from the payment of Transfer Taxes under applicable Law and executing and delivering such affidavits and forms as are reasonably requested by the other Party.

### 10.2 Purchase Price Allocation.

(a) As promptly as practicable after the Closing Date, but no later than 30 days thereafter, Purchaser will prepare and deliver to Sellers, an allocation schedule setting forth the amounts to be allocated among Sellers and among the Purchased Assets of each Seller, pursuant to (and to the extent necessary to comply with) Section 1060 of the Internal Revenue Code and the applicable regulations promulgated thereunder (or, if applicable, any similar provision under state, local or foreign Law or regulation) (the "Proposed Allocation Statement"). Sellers will have 20 Business Days following delivery of the Proposed Allocation Statement during which to notify Purchaser in writing (an "Allocation Notice of Objection") of any objections to the Proposed Allocation Statement, setting forth in reasonable detail the basis of their objections. If Sellers fail to deliver an Allocation Notice of Objection in accordance with this Section 10.2(a), the Proposed Allocation Statement will be conclusive and binding on all Parties and will become the "Final Allocation Statement." If Sellers submit an Allocation Notice of Objection, then for 20 Business Days after the date Purchaser receives the Allocation Notice of Objection, Purchaser and Sellers will use their commercially reasonable efforts to agree on the allocations. Failing such agreement within 20 Business Days of such notice, the unresolved allocations will be submitted to an independent, internationally-recognized accounting firm mutually agreeable to Purchaser and Sellers, which firm will be instructed to determine its best estimate of the allocation schedule based on its determination of the unresolved allocations and provide a written description of the basis for its determination within 45 Business Days after submission, such written determination to be final, binding and conclusive. The fees and expenses of such accounting firm will be apportioned among Sellers and Purchaser equally. For the avoidance of doubt, in administering any Legal Proceeding, the Bankruptcy Court shall not be required to apply the Final Allocation Statement in determining the manner in which the Purchase Price should be allocated as between Sellers and their respective estates.

(b) Sellers and Purchaser and their respective Affiliates will report, act, and file Tax Returns (including, but not limited to IRS Form 8594) in all respects and for all purposes consistent with the Final Allocation Statement. Neither Sellers nor Purchaser will take any

position (whether in audits, Tax Returns, or otherwise) that is inconsistent with the Final Allocation Statement unless required to do so by applicable Law.

10.3 Cooperation and Audits. Purchaser, Sellers and their respective Affiliates will cooperate fully with each other regarding Tax matters and will make available to the other as reasonably requested all information, records and documents relating to Taxes governed by this Agreement until the expiration of the applicable statute of limitations or extension thereof or the conclusion of all audits, appeals or litigation with respect to such Taxes.

## XI. GENERAL GOVERNING PROVISIONS

11.1 No Survival of Representations and Warranties. The Parties agree that the representations and warranties contained in this Agreement will not survive the Closing hereunder, and none of the Parties will have any Liability to each other after the Closing for any breach thereof. The Parties agree that the covenants contained in this Agreement to be performed at or after the Closing will survive the Closing hereunder until the expiration of the applicable statute of limitations or for such shorter period explicitly specified therein, and each Party will be liable to the other after the Closing for any breach thereof.

11.2 Expenses. Except as otherwise expressly provided in this Agreement, whether or not the Transactions are consummated, each of Sellers, on the one hand, and Purchaser, on the other hand, will bear its own expenses incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the Transactions and all proceedings incident thereto.

### 11.3 Injunctive Relief.

(a) The Parties agree that irreparable damages would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, and that damages at law may be an inadequate remedy for the breach of any of the covenants, promises and agreements contained in this Agreement, and, accordingly, any Party will be entitled to injunctive relief to prevent any such breach, and to specifically enforce specifically the terms and provisions of this Agreement, including without limitation specific performance of such covenants, promises or agreements or an Order enjoining a Party from any threatened, or from the continuation of any actual, breach of the covenants, promises or agreements contained in this Agreement. The rights set forth in this Section 11.3 will be in addition to any other rights which a Party may have at law or in equity pursuant to this Agreement.

(b) The Parties hereby agree not to raise any objections to the availability of the equitable remedy of specific performance to prevent or restrain breaches of this Agreement by Purchaser or Sellers, as applicable, and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the respective covenants and obligations of Purchaser or Sellers, as applicable, under this Agreement all in accordance with the terms of this Section 11.3.

11.4 Submission to Jurisdiction; Consent to Service of Process.

(a) Without limiting any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court will retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the Transactions, and (ii) any and all proceedings related to the foregoing will be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court for such purposes and will receive notices at such locations as indicated in Section 11.8; provided, however, that if the Bankruptcy Cases have been closed pursuant to Section 350 of the Bankruptcy Code, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or in the event (but only in the event) that such court does not have subject matter jurisdiction over such Action in the United States District Court for the District of Delaware) and any appellate court from any thereof, for the resolution of any such claim or dispute. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(b) Each of the Parties hereby consents to process being served by any other Party in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 11.8; provided, however, that such service will not be effective until the actual receipt thereof by the Party being served.

11.5 Waiver of Right to Trial by Jury. Each Party to this Agreement waives any right to trial by jury in any action, matter or proceeding regarding this Agreement or any provision hereof.

11.6 Entire Agreement; Amendments and Waivers. This Agreement represents the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the Party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, will be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any Party of a breach of any provision of this Agreement will not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder will operate as a waiver thereof, nor will any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by Law.

11.7 Governing Law. This Agreement will be governed by and construed in accordance with federal bankruptcy Law, to the extent applicable, other federal Law, where applicable, and, where state Law is implicated, the Laws of the State of Delaware applicable to contracts made and performed in such State.

11.8 Notices. All notices and other communications under this Agreement will be in writing and will be deemed given (i) when delivered personally by hand, (ii) when sent by email (with written confirmation of transmission) or (iii) one Business Day following the day sent by overnight courier (with written confirmation of receipt), in each case at the following addresses and email addresses (or to such other address or email address as a Party may have specified by notice given to the other Party pursuant to this provision):

If to Sellers, to:

c/o FTD Companies, Inc.  
3113 Woodcreek Rd.  
Downers Grove, IL 60515  
Attention: Scott Levin  
Email: xxxxxxxx

With a copy (which will not constitute notice) to:

Jones Day  
77 W. Wacker Dr. Suite 3500  
Chicago, IL 60601  
Attention: Ismail H. Alsheik  
Email: ialsheik@jonesday.com

And a copy (which will not constitute notice) to:

Jones Day  
901 Lakeside Avenue  
Cleveland, Ohio 44114  
Attention: Heather Lennox  
Email: hlennox@jonesday.com

If to Purchaser, to:

PlanetArt LLC  
23801 Calabasas Road  
Calabasas, California 91302  
Attention: Roger Bloxberg and Todd Helfstein  
Emails: xxxxxxxx / xxxxxxxx

With copies (which will not constitute notice) to:

PlanetArt LLC  
23801 Calabasas Road  
Calabasas, California 91302  
Attention: Joe Bogdan, General Counsel  
Email: xxxxxxxx

And a copy (which will not constitute notice) to:

Bryan Cave Leighton Paisner LLP  
120 Broadway, Suite 300  
Santa Monica, California 90401  
Attention: David Andersen and Sharon Weiss

Emails: dgandersen@bclplaw.com / sharon.weiss@bclplaw.com

11.9 Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any Law or public policy, all other terms or provisions of this Agreement will nevertheless remain in full force and effect so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the Transactions are consummated as originally contemplated to the greatest extent possible.

11.10 Assignment. This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Nothing in this Agreement will create or be deemed to create any third party beneficiary rights in any Person or entity not a party to this Agreement. No assignment of this Agreement or of any rights or obligations hereunder may be made by either Sellers or Purchaser (by operation of law or otherwise) without the prior written consent of the other Parties and any attempted assignment without the required consents will be void; provided, however, that (a) Purchaser may assign some or all of its rights or delegate some or all of its obligations hereunder to one or more Affiliates and (b) Sellers may assign some or all of their rights or delegate some or all of their obligations hereunder to successor entities (including any liquidating trust) pursuant to a Chapter 11 plan confirmed by the Bankruptcy Court, in the case of each clause (a) and (b) without any other Party's consent. No assignment of any obligations hereunder will relieve the Parties of any such obligations. Upon any such permitted assignment, the references in this Agreement to Sellers or Purchaser will also apply to any such assignee unless the context otherwise requires.

11.11 Non-Recourse. No past, present or future director, officer, employee, incorporator, member, partner, equityholder, manager, agent, attorney, Representative or Affiliate of the Parties or any of their Affiliates will have any Liability for any obligations or Liabilities of Sellers or Purchaser, as applicable, under this Agreement or any agreement entered into in connection herewith or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby and thereby. Any claim or cause of action based upon, arising

out of, or related to this Agreement or any agreement, document or instrument contemplated hereby may only be brought against Persons that are expressly named as Parties or thereto, and then only with respect to the specific obligations set forth herein or therein. Other than the Parties, no other party will have any Liability or obligation for any of the representations, warranties, covenants, agreements, obligations or Liabilities of any Party under this Agreement or the agreements, documents or instruments contemplated hereby or of or for any Legal Proceeding based on, in respect of, or by reason of, Transactions (including the breach, termination or failure to consummate such transactions), in each case whether based on contract, tort, fraud, strict liability, other Laws or otherwise and whether by piercing the corporate veil, by a claim by or on behalf of a Party or another Person or otherwise. In no event will any Person be liable to another Person for any remote, speculative or punitive damages with respect to the Transactions.

11.12 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

*[Signature page follows]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the Effective Date.

PURCHASER:

PLANETART, LLC

By: /s/ Roger S. Bloxberg

Name: Roger S. Bloxberg

Title: CEO

[Signature Page – Asset Purchase Agreement]

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COMPANY:

PROVIDE CREATIONS, INC.

By: /s/ Scott Levin

Name: Scott Levin

Title: President and CEO

[Signature Page – Asset Purchase Agreement]

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OTHER SELLERS:

PROVIDE COMMERCE LLC

By: /s/ Scott Levin  
Name: Scott Levin  
Title: President and CEO

FTD, INC.

By: /s/ Scott Levin  
Name: Scott Levin  
Title: President and CEO

GIFTCO, LLC

By: /s/ Scott Levin  
Name: Scott Levin  
Title: President and CEO

[Signature Page – Asset Purchase Agreement]

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**ASSET PURCHASE AGREEMENT**

by and between

Farids & Co. LLC

as Purchaser

and

PROVIDE COMMERCE LLC,

as Seller

Dated as of June 23, 2019

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## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of June 23, 2019 (the "Effective Date"), is by and between Farids & Co. LLC, a Delaware limited liability company, or its designated Affiliate(s) ("Purchaser"), and Provide Commerce LLC, a Delaware limited liability company (the "Seller"). Certain capitalized terms used in this Agreement that are not otherwise defined are defined in Article I.

- A. On June 3, 2019 (the "Petition Date") Seller filed a voluntary petition for relief under Chapter 11 of Title 11 (the "Bankruptcy Case") of the United States Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").
- B. Seller operates an online retail gourmet foods and food gifting business on its www.berries.com and www.sharisgourmet.com websites under the "Shari's Berries", "Shari's Gourmet" and other brands related to gourmet foods, featuring dipped strawberries, chocolates and other food gifting items, delivered direct to consumers throughout the United States (the "Business").
- C. Seller desires to sell to Purchaser the Purchased Assets and assign to Purchaser the Assumed Liabilities and Purchaser desires to purchase from Seller the Purchased Assets and assume the Assumed Liabilities, in each case, upon the terms and conditions set forth in this Agreement.
- D. On the terms and subject to the conditions set forth herein, following the filing of the Bankruptcy Cases, Seller intends to request that the Bankruptcy Court authorize and approve the transactions contemplated by this Agreement pursuant to Sections 105, 363 and 365 of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree:

### I. DEFINITIONS

1.1 Certain Definitions. For purposes of this Agreement, each of the following terms, when used herein with initial capital letters, has the meaning specified in this Section 1.1 or in the other Sections of this Agreement identified in Section 1.2:

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly, controls, 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 and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

"Alternative Transaction" shall mean any transaction (or series of transactions) that results from a bid submitted in connection with the procedures established under the Bidding

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Procedures Order and involves the direct or indirect sale, transfer or other disposition of all, or a material portion of, the Purchased Assets to any Person other than Purchaser or its Affiliates, or any other going-concern transaction (including a plan under chapter 11 of the Bankruptcy Code) that is pursued prior to the Termination Date and the consummation of which would be substantially inconsistent with the Transactions.

“Approval Order” means an order entered by the Bankruptcy Court, pursuant to Sections 363 and 365 of the Bankruptcy Code, authorizing and approving, among other things, (a) the sale of the Purchased Assets (b) the assumption of the Assumed Liabilities by Purchaser and (c) the assumption and assignment of the Purchased Contracts, in accordance with the terms and conditions of this Agreement, which will be in a form and substance reasonably acceptable to the Parties.

“Benefit Plan” means each (a) employment, consulting, compensation, profit-sharing, thrift, savings, bonus, incentive, change in control, severance, retention, retirement, pension benefit or deferred compensation plan, program, policy, practice, contract, agreement or arrangement, and (b) fringe benefit, health, dental, vision, life, cafeteria, accident, hospitalization, insurance, disability, transportation, vacation, sabbatical, accidental death and dismemberment, workers’ compensation or supplemental unemployment benefit plan, program practice, contract, agreement or arrangement, or other employee benefits or remuneration of any kind, whether written or unwritten or otherwise, funded or unfunded, including without limitation any “employee benefit plan” within the meaning of Section 3(3) of ERISA (and any trust, escrow, funding, insurance or other agreement related to any of the foregoing), whether or not such plan or arrangement is subject to ERISA.

“Bidding Procedures Order” means an order of the Bankruptcy Court (including any attachment thereto) approving, among other things, the (a) bidding procedures for conducting a sale and auction of the Purchased Assets and (b) procedures relating to the assumption and assignment of executory Contracts and unexpired leases, which will be in a form and substance reasonably acceptable to the Parties.

“Break-Up Fee” means an amount in cash equal to \$137,500.

“Business Day” means any day other than a Saturday, a Sunday or any other day on which commercial banks in Chicago, Illinois are authorized or required by Law to close.

“Business Employee” means each employee of Seller whose duties primarily relate to the operation of the Business and who is listed on Schedule 1.1(a).

“Code” means the Internal Revenue Code of 1986.

“Company SEC Documents” means all forms, reports, schedules, statements and other documents filed with or furnished to the SEC by FTD, Inc., a Delaware corporation, that are required to be filed or furnished by it under the Securities Act of 1933 or the Securities Exchange Act of 1934.

“Contract” means any contract, agreement, commitment, promise or undertaking (including any indenture, note, bond or other evidence of indebtedness, lease, instrument, license, lease, purchase order or other legally binding agreement) whether written or oral.

“Cure Costs” means all monetary amounts payable under Sections 365(b)(1)(A) and (B) of the Bankruptcy Code in connection with the assumption and/or assignment of any Purchased Contract, as agreed upon by the Parties or determined by the Bankruptcy Court pursuant to the procedures in the Bidding Procedures Order.

“Environmental Law” means any federal, state, local or foreign Law, statute, code, ordinance, rule or regulation relating to the protection of the environment or natural resources.

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

“Escrow Account” means the escrow account maintained by the Escrow Agent for the purpose of holding the Deposit Amount pursuant to the Escrow Agreement.

“Escrow Agent” means U.S. Bank.

“Escrow Agreement” means the form of Escrow Agreement, attached hereto, by and between Purchaser, Seller and the Escrow Agent.

“Expense Reimbursement Amount” means an amount, not to exceed \$125,000, equal to Purchaser’s reasonable and documented out-of-pocket costs and expenses (including fees and expenses of counsel) incurred by Purchaser in connection with this Agreement and the Transactions.

“GAAP” means generally accepted accounting principles in the United States.

“Governmental Body” means any government or governmental or regulatory body thereof, or political subdivision thereof, or any agency, authority, department, commission, board, bureau, official or instrumentality of such body, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), whether foreign, federal, state, or local, or any agency, instrumentality or authority thereof, or any court or arbitrator thereof (public or private) of competent jurisdiction.

“Intellectual Property” means any and all worldwide rights in and to all intellectual property rights or assets (whether arising under statutory or common law), which include all of the following items: (i) inventions, discoveries, processes, designs, tools, molds, techniques, developments and related improvements whether or not patentable; (ii) patents, patent applications, industrial design registrations and applications therefor, divisions, divisionals, continuations, continuations-in-part, reissues, substitutes, renewals, registrations, confirmations, re-examinations, extensions and any provisional applications, and any foreign or international equivalent of any of the foregoing; (iii) Trademarks; (iv) databases; (v) technical scientific and other know-how and information (including promotional material), trade secrets, confidential information, methods, processes, practices, formulas, designs, design rights, patterns, assembly

procedures, and specifications; (vi) rights associated with works of authorship including copyrights, moral rights, design rights, rights in databases, copyright applications, copyright registrations, rights existing under any copyright laws and rights to prepare derivative works; (vii) Software in any form, including internet websites, web content and links, source code, object code and mobile applications, (xiii) rights of publicity and personality, (ix) all goodwill related to the foregoing; and (x) the right to sue for infringement and other remedies against infringement of any of the foregoing.

“IRS” means the Internal Revenue Service.

“Knowledge of Seller” or “Seller’s Knowledge” means the knowledge, after reasonable inquiry, of those Persons identified on Schedule 1.1(b).

“Law” means any federal, state, local, municipal, international, multinational, foreign or other law, statute, constitution, code, ordinance, rule, regulation, Order, stipulation, resolution, edict, decree, award or common law requirement.

“Leased Real Property” means the real property in the United States leased, subleased, or licensed by, or for which a right to use or occupy has been granted to, Seller set forth on Schedule 1.1(c).

“Legacy Business Owner” means the Person, or Persons, that purchase all, or substantially all, of the assets of FTD, Inc. related to (a) the operation of a network of members consisting of florist retail and other retail locations for the purpose of sending and receiving floral orders, (b) providing goods and services to such members, and (c) gathering orders through FTD.com business and the ProFlowers business (the “Legacy Business”).

“Legal Proceeding” means any judicial, administrative or arbitral actions, suits, proceedings (public or private), Order, inquiry, investigation or claims or any proceedings by or before a Governmental Body.

“Liability” means any debt, loss, liability, claim (including “claim” as defined in the Bankruptcy Code), commitment, undertaking, damage, expense, fine, penalty, cost, royalty, deficiency or obligation (including those arising out of any action, such as any settlement or compromise thereof or judgment or award therein), of any nature, whether known or unknown, disclosed or undisclosed, express or implied, primary or secondary, direct or indirect, matured or unmatured, fixed, absolute, contingent, accrued or unaccrued, liquidated or unliquidated, and whether due or to become due, and whether in contract, tort or otherwise.

“Lien” as applied to any Person means any lien, encumbrance, pledge, mortgage, deed of trust, security interest, claim, lease, sublease, charge, option, right of first offer or first refusal, right of use or possession, restriction (including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership, easement, servitude, hypothecation, license, preference, priority, right of recovery, Order, restrictive covenant, encroachment or encumbrance or any other similar encumbrance or restriction of any kind or nature (including (i) any conditional sale or other title retention agreement and any lease having substantially the same effect as any of the foregoing, (ii) any assignment or deposit arrangement in the nature of a security device, and (iii) any leasehold interest, license, or other right, in favor of a third party or

a Seller, to use any portion of the Purchased Assets), whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, known or unknown in respect of an asset of such Person, whether imposed by Law, Contract or otherwise.

“Mutual POUAD Covenant Agreement” means that agreement attached as Exhibit A.

“Order” means any order, injunction, judgment, decree, ruling, writ, assessment, determination or arbitration award of, or entered, issued, made or rendered by, a Governmental Body.

“Ordinary Course of Business” means the ordinary and usual course of normal day-to-day operations of the Business consistent with past practice, taking into account the filing of the Bankruptcy Cases.

“Party” or “Parties” means Purchaser and Seller, as the case may be.

“Permitted Exceptions” means any Lien that the Purchased Assets may not be sold free and clear of under Section 363(f) of the Bankruptcy Code.

“Person” means any individual, corporation, limited liability company, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, Governmental Body or other entity.

“Personal Creations Business Owner” means the Person, or Persons, that purchase all, or substantially all, of the assets of Provide Commerce LLC and its subsidiaries and Affiliates related to the manufacture and sale of personalized gifts through the www.personalcreations.com website, the www.gifts.com website and other online retail channels (the “Personal Creations Business”).

“Purchased Contracts” shall have the meaning set forth in Section 2.5.

“Purchaser Material Adverse Effect” means any event, change, effect, condition, state of facts or occurrence (regardless of whether such event, change, effect, condition, state of facts or occurrence constitutes a breach of any representation, warranty or covenant of Purchaser hereunder) which has had or would reasonably be expected to have, individually or when considered together with any other event, change, effect, condition, state of facts or occurrence, a material and adverse effect on the ability of Purchaser to consummate the Transactions or perform its material obligations under this Agreement.

“Reimbursement Costs” means the cost incurred by Seller to pack, move, ship and store the manufacturing equipment set forth on Schedule 2.1(b)(iii)(b) from Seller’s facilities to a storage facility, which Seller currently estimates to be \$110,000.

“Representative” means, with respect to any Person, any and all of its directors, officers, partners, managers, employees, consultants, financial advisors, counsel, accountants and other agents.

“Schedules” means the Schedules attached hereto, dated as of the date hereof, delivered by Seller to Purchaser in connection with this Agreement.

“Seller Material Adverse Effect” means any event, change, effect, condition, state of facts or occurrence (regardless of whether such event, change, effect, condition, state of facts or occurrence constitutes a breach of any representation, warranty or covenant of Seller hereunder) which has had or would reasonably be expected to have, individually or when considered together with any other events, changes, effects, conditions, states of facts or occurrences, (a) a material adverse effect on or a material adverse change in or to the Purchased Assets, Assumed Liabilities, or the condition (financial or otherwise) or results of operations of the Business, considered as a whole, (b) a material adverse effect on the ability of Seller to consummate the Transactions or perform its obligations under this Agreement or (c) the effect of preventing or materially delaying the consummation of the Transactions, other than, in the case of clause (a), will any of the following, alone or in combination, be deemed to constitute, nor will any of the following (including the effect of any of the following) be taken into account in determining whether there has been or will be, a “Seller Material Adverse Effect”: (i) any change in the United States or foreign economies or financial markets in general; (ii) any change in the economic business, financial or regulatory environment generally affecting the industries in which the Business operates; (iii) any change arising in connection with earthquakes, hurricanes, tornadoes, fires, acts of God, hostilities, acts of war, sabotage or terrorism or military actions or any escalation or material worsening of any such hostilities, acts of war, sabotage or terrorism or military actions; (iv) any change in applicable Laws or accounting rules; (v) any actions taken by Purchaser or any of its Affiliates (other than those expressly permitted to be taken hereunder or undertaken with the written consent of Seller); (vi) any effect resulting from the public announcement of this Agreement or the Bankruptcy Cases; or (vii) any effect resulting from (1) the commencement or filing of the Bankruptcy Cases, (2) any concurrent ancillary filing by an Affiliate of Seller that is not a party to this Agreement under a similar foreign insolvency regime; or (3) Seller’s inability to pay certain prepetition obligation as a result of the commencement of the Bankruptcy Cases; provided, however, that with respect to clauses (i), (ii), (iii) and (iv), such effects will only be excluded from consideration to the extent it does not disproportionately and materially adversely affect the Business as compared to similarly situated businesses operating in the same industry and geographic areas in which Seller operates.

“Seller Names” means (a) any trademark, brand name, slogan, logo, internet domain name, corporate name, or other identifier of source or goodwill that includes the words “Florists’ Transworld Delivery”, “Provide” or the name or acronym “FTD” and (b) any and all other derivatives or variations thereof.

“Software” means all computer software and code, including assemblers, applets, compilers, source code, object code, development tools, design tools, user interfaces, databases and data, in any form or format, however fixed, including any related documentation.

“Software System” means the software platform owned by Seller and used in the Business as of the date of the Agreement to provide ecommerce functionality to consumers, wholesale management to businesses collecting orders for fulfillment, and back-office administrative and customer support, including those applications and services providing content, product personalization/customization, checkout, order management,

promotions/discounts management, product management, supplier and carrier management, inventory and SKU management, tax management, gift certificate management, and customer service call handling.

“Subsidiary” means each corporation or other Person in which a Person owns or controls, directly or indirectly, capital stock or other equity interests representing more than 50% of the outstanding voting stock or other equity interests.

“Tax Authority” means any government, agency, or instrumentality thereof, charged with the administration of any Law or regulation relating to Taxes.

“Taxes” means (a) all federal, state, local, provincial, municipal, foreign or other taxes, charges or other assessments, including, without limitation, all income, alternative, minimum, add-on minimum, accumulated earnings, personal holding company, net worth, intangibles, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, intangibles, goods and services, customs duties, conveyance, mortgage, registration, documentary, recording, premium, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, unemployment insurance, severance, environmental (including taxes under Section 59A of the Code), disability, workers’ compensation, health care natural resources, excise, severance, stamp, occupancy, rent, real property, personal property, estimated or other similar taxes, duties, levies or other governmental charges or assessments or deficiencies thereof, (b) any item described in clause (a) for which a taxpayer is liable as a transferee or successor, by reason of the regulations under Section 1502 of the Code (or similar provisions of state, local, foreign or other law), or by contract, indemnity or otherwise, and (c) all interest, penalties, fines, additions to tax or additional amounts imposed by any Tax Authority in connection with any item described in clauses (a) or (b).

“Tax Returns” means any return, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule or attachment thereto and any amendment thereof.

“Trademarks” means all trademarks, service marks, trade dress, logos, distinguishing guises and indicia, trade names, corporate names, business names, domain names and social media accounts, and all associated goodwill, whether or not registered, including all common law rights, and registrations, applications for registration and renewals thereof, including all marks registered in the United States Patent and Trademark Office, the trademark offices of the states and territories of the United States of America, and the trademark offices of other nations throughout the world, all rights therein provided by multinational treaties, conventions or applicable Law, and all social media addresses and accounts.

“Transactions” means the transactions contemplated by this Agreement.

“Transferred Exception” means title of a lessor under a capital or operating lease if such lease is a Purchased Contract.

1.2 Terms Defined Elsewhere in this Agreement. For purposes of this Agreement, the following terms have meanings set forth in the sections indicated:

<b>Term</b>	<b>Section</b>
Agreement	Preamble
Allocation Notice of Objection	10.2(a)
Assignment and Assumption Agreements	4.2(b)
Assumed Cure Costs	2.6
Assumed Liabilities	2.3
Auction	7.2(a)
Bankruptcy Case	Recitals
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
Business	Recitals
Cash Amount	3.1
Closing	4.1
Closing Date	4.1
Company	Preamble
Company Permits	5.7
Company Plan	5.8(a)
Confidentiality Agreement	8.6
Deposit Amount	3.2
Effective Date	Preamble
Excess Severance Amount	8.8(b)
Excluded Assets	2.2
Excluded Liabilities	2.4
Final Allocation Statement	10.2(a)
Inventory	2.1(b)(ii)
Master List	2.1(b)(ix)
Necessary Consent	2.6(a)
Non-Transferred Employees	8.8(b)
Proposed Allocation Statement	10.2(a)
Purchase Price	3.1
Purchased Assets	2.1(b)
Purchased Contracts	2.1(b)(iv)
Purchased Intellectual Property	2.1(b)(vi)
Purchaser	Preamble
Real Property	2.1(b)(i)
Seller	Preamble
Severance Cap	8.8(b)
Tangible Personal Property	2.1(b)(iii)
Termination Date	4.4(a)
Transfer Taxes	10.1
Transferred Books and Records	2.1(b)(x)
Transferred Employees	8.8(a)
WARN Act	5.9(c)

1.3 Other Definitional and Interpretive Matters.

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

(i) Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period will be excluded. If the last day for the giving of any notice or the performance of any act required or permitted under this Agreement is a day that is not a Business Day, then the time for the giving of such notice or the performance of such action will be extended to the next succeeding Business Day.

(ii) Contracts. Reference to any Contract means such Contract as amended or modified and in effect from time to time in accordance with its terms.

(iii) Dollars. Any reference in this Agreement to Dollars or \$ will mean U.S. dollars.

(iv) Exhibits/Schedules. All Exhibits and 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 Schedule or Exhibit but not otherwise defined therein will be defined as set forth in this Agreement.

(v) GAAP. Terms used herein which are defined in GAAP are, unless specifically defined herein, used herein as defined in GAAP.

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

(vii) Headings. The division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and will not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any Article, Section, Recital, Exhibit or Schedule are to the corresponding Article, Section, Recital, Exhibit or Schedule of or to this Agreement unless otherwise specified.

(viii) Herein. The words such as “herein,” “hereinafter,” “hereof” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

(ix) Including. The word “including” or any variation thereof means “including, without limitation” and will not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(x) Law. Reference to any Law means such Law as amended, modified, codified, replaced or re-enacted, in whole or in part, and in effect from time to

time, including any successor legislation thereto and any rules and regulations promulgated thereunder, and references to any section or other provision of a Law means that section or provision of such Law in effect from time to time and constituting the substantive amendment, modification, codification, replacement or re-enactment of such section or other provision.

(b) The Parties have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as jointly drafted by the Parties and no presumption or burden of proof will arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement.

## II. PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

### 2.1 Purchase and Sale of Assets.

(a) On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser or one or more of its designees will purchase, acquire and accept from Seller, and Seller will sell, transfer, convey and deliver to Purchaser or one or more of its designees, all of Seller's right, title and interest in, to and under the Purchased Assets, free and clear of all Liens (other than Liens created by Purchaser, Permitted Exceptions and Transferred Exceptions) and Excluded Liabilities.

(b) The term "Purchased Assets" means all of the following properties, assets, and rights of Seller existing as of the Closing and not including any Excluded Assets:

- (i) all right, title and interest in and to the Leased Real Property (the "Real Property");
- (ii) all inventory that, as of the close of business on the Closing Date, is used or held for use primarily in the Business (the "Inventory");
- (iii) (A) the fixtures, furniture, furnishings, leasehold improvements and other tangible personal property owned by Seller or leased by Seller, subject to the terms of the relevant lease, and used or held for use primarily in the Business, and (B) the manufacturing equipment set forth on Schedule 2.1(b)(iii)(b) (collectively, the "Tangible Personal Property");
- (iv) all right, title and interest of Seller now or hereafter existing, in, to and under the Purchased Contracts;
- (v) all warranties, guarantees and similar rights related to the Purchased Assets, including warranties and guarantees made by suppliers, manufacturers and contractors under the Purchased Assets, and claims against suppliers and other third parties in connection with the Purchased Contracts;
- (vi) the Intellectual Property owned by Seller relating primarily to the Business, including the Intellectual Property set forth on Schedule 2.1(b)(vi) (the

“Purchased Intellectual Property”); provided, however, that the Purchased Intellectual Property shall not include the Software System or the Intellectual Property in the Software System;

- (vii) all right, title, and interest in and to an undivided one-third interest in the Software System;
- (viii) all accounts receivable (whether billed or unbilled) of Seller arising primarily from the Business;
- (ix) all goodwill related to the Purchased Assets;
- (x) a non-exclusive excerpt of the master customer mailing list of FTD, Inc. (the “Master List”), reflecting customers on the Master List that have placed orders for products marketed by the Business, including physical addresses, e-mail addresses, and phone numbers, in each case, to the extent (A) transferrable to Purchaser under applicable Law and (B) available;
- (xi) the customer service re-hire database;
- (xii) all rights, title and interests of Seller in and to computers, computer hardware, workstations and printers, solely to the extent the foregoing are used primarily in the Business by the Transferred Employees;
- (xiii) all books, records, files, invoices, inventory records, product specifications, cost and pricing information, business plans and quality control records and manuals, in each case primarily relating to the Business, including all data and other information stored in any format or media, including on hard drives, hard copy or other media primarily relating to the Business, in each case to the extent permitted by applicable Laws (the “Transferred Books and Records”); and
- (xiv) all rights, claims, causes of action and credits owned by Seller to the extent relating to any Purchased Asset or Assumed Liability, including any such item arising under any guarantee, warranty, indemnity, right of recovery, right of setoff or similar right in favor of Seller in respect of any Purchased Asset or Assumed Liability.

2.2 Excluded Assets. Nothing herein contained will be deemed to constitute an agreement to sell, transfer, assign or convey the Excluded Assets to Purchaser, and Seller will retain all right, title and interest to, in and under the Excluded Assets. The term “Excluded Assets” means all assets, properties and rights of Seller other than the Purchased Assets specifically defined in Section 2.1(b), including, for the avoidance of doubt, all assets related primarily to Seller:

- (a) all cash and cash equivalents, bank accounts and securities;
- (b) all Contracts that are not Purchased Contracts;

- (c) all Intellectual Property other than the Purchased Intellectual Property and Seller's one-third interest in the Software System;
- (d) all books and records other than the Transferred Books and Records, including the corporate seals, organizational documents, minute books, stock books, Tax Returns, books of account or other books and records having to do with the corporate organization of Seller, all employee-related or employee benefit-related books and records, other than personnel files of Transferred Employees, and all other books and records which Seller is otherwise prohibited from disclosing or transferring to Purchaser under applicable Laws or is required by applicable Laws to retain;
- (e) all insurance policies of Seller and all rights to applicable claims and proceeds thereunder;
- (f) all Benefit Plans and trusts or other assets attributable thereto;
- (g) all Tax assets (including duty and Tax refunds and prepayments) of Seller or any of its Affiliates;
- (h) all assets and rights used by Seller in its business other than the Business;
- (i) all assets and rights specifically set forth on Schedule 2.2(i); and
- (j) the rights which accrue or will accrue to Seller under the Transactions.

2.3 Assumption of Liabilities. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser will assume or will cause one or more of its designees to assume, effective as of the Closing, and will timely perform and discharge in accordance with their respective terms, the following Liabilities existing as of the Closing Date and no other Liabilities of Seller or any of its Affiliates (collectively, the "Assumed Liabilities"):

- (a) all Liabilities from the ownership or operation of the Purchased Assets by Purchaser solely to the extent such Liabilities arise after the Closing;
- (b) any Assumed Cure Costs that Purchaser is required to pay pursuant to Section 2.5;
- (c) all Liabilities of Seller under the Purchased Contracts;
- (d) all Liabilities under warranty obligations or arising under applicable Laws relating to product liability or food and drug in respect of any products manufactured or sold by the Business at, prior to or after the Closing;
- (e) all Liabilities of Seller for accrued and unpaid trade payables (whether billed or unbilled) (i) relating to the Business, (ii) which were delivered to Seller on or after the Petition Date, and (iii) that are administrative expenses under Section 503(b) of the Bankruptcy Code, other than any claims under Section 503(b)(9) of the Bankruptcy Code, as set forth on a detailed statement (including a good faith estimate for the Closing Date) provided to the

Purchaser at least five (5) Business Days prior to Closing, subject to a cap of \$910,000 for trade payables recorded as accounts payable related to the Business on Seller's books and records;

(f) all Liabilities of Seller with respect to Groupon coupons and gift certificates related to the Business and all Liabilities for any unredeemed refund amounts issued to customers of the Business to the extent arising under Seller's refund policy in effect immediately prior to the date hereto;

(g) all Liabilities of Seller in respect of accrued wages, vacation, sick leave and paid time off of Transferred Employees for periods prior to the Closing Date (the "Assumed Employee Liabilities"); and

(h) adjusted EBITDA losses incurred in operating the Business during the period between the Petition Date and the Closing Date, as set forth on a detailed statement (including a good faith estimate for the period from the date of delivery of such statement to the Closing Date) provided to the Purchaser at least three (3) Business Days prior to Closing, subject to a cap of \$1,000,000.

2.4 Excluded Liabilities. Notwithstanding anything to the contrary set forth herein, the Parties expressly acknowledge and agree that Purchaser will not assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for any Liabilities of Seller, whether existing on the Closing Date or arising thereafter, including on the basis of any Law imposing successor liability, other than the Assumed Liabilities and the obligations of Purchaser under this Agreement (all such Liabilities that Purchaser is not assuming being referred to collectively as the "Excluded Liabilities").

2.5 Assumption/Rejection of Certain Contracts.

(a) Schedule 2.5(a) sets forth a list, as of the date hereof, of all Contracts to which Seller is a party.

(b) From and after the date hereof until five (5) days prior to the Auction, Purchaser may, in its sole discretion, (i) designate a Contract listed on Schedule 2.5(a) for assumption and assignment to Purchaser, effective on and as of the Closing (such Contracts, the "Purchased Contracts"), or (ii) designate any Contract listed on Schedule 2.5(a) for rejection. The Purchased Contracts as of the date hereof are set forth on Schedule 2.5(b) hereto, which will be supplemented as additional Contracts are designated for assumption and assignment or rejection prior to the Auction as set forth in this Section 2.5(b).

(c) Seller shall take all actions reasonably required to assume and assign the Purchased Contracts to Purchaser, including taking all actions reasonably necessary to facilitate any negotiations with the counterparties to such Contracts and, if necessary, to obtain an order of the Bankruptcy Court containing a finding that the proposed assumption and assignment of the Contracts to Purchaser satisfies all applicable requirements of section 365 of the Bankruptcy Code.

(d) Purchaser shall take all actions reasonably required for Seller to assume and assign the Purchased Contracts to Purchaser, including taking all actions reasonably

necessary to facilitate any negotiations with the counterparties to such Contracts and, if necessary, to obtain an order of the Bankruptcy Court containing a finding that the proposed assumption and assignment of the Contracts to Purchaser satisfies all applicable requirements of section 365 of the Bankruptcy Code.

(e) Cure Amounts. At the Closing and pursuant to Section 365 of the Bankruptcy Code, Seller will assume the Purchased Contracts (to the extent not previously assumed) and, subject to the terms herein, assign the Purchased Contracts to Purchaser, and Purchaser, subject to the terms herein, will assume the Purchased Contracts. All Cure Costs with respect to the Purchased Contracts (the "Assumed Cure Costs") will be paid by Purchaser, as and when finally determined by the Bankruptcy Court pursuant to the procedures set forth in the Approval Order, and not by Seller, and Seller will have no liability for any Assumed Cure Costs. Seller will serve on all non-Seller counterparties to all Purchased Contracts set forth on Schedule 2.5(e) a notice stating that Seller is or may (as applicable) be seeking the assumption and assignment of such Contracts, and will notify such non-Seller counterparties of the deadline for objecting to the cure costs relating to such Contracts, if any, which deadline will be not less than three Business Days prior to the sale hearing date designated in the Bidding Procedures Order.

## 2.6 Non-Assignment of Assets.

(a) Notwithstanding any other provision of this Agreement to the contrary, this Agreement will not constitute an agreement to assign or transfer and will not effect the assignment or transfer of any Purchased Asset (including any Purchased Contract) if (i) (A) prohibited by applicable Law, (B) an attempted assignment or transfer thereof would reasonably likely to subject Purchaser, its Affiliates or any of its or their respective Representatives to civil or criminal Liability or (C) an attempted assignment or transfer thereof, without the approval, authorization or consent of, or granting or issuance of any license or permit by, any third party thereto, would constitute a breach, default or violation thereof or of any Law or Order (each such action, a "Necessary Consent"), or in any way adversely affect the rights of Purchaser thereunder or (ii) the Bankruptcy Court has not entered an Order (including, for the avoidance of doubt, the Approval Order) approving such assignment or transfer. In such event, such assignment or transfer is subject to such Necessary Consent being obtained and Seller and Purchaser will use their respective reasonable best efforts to obtain the Necessary Consents with respect to any such Purchased Asset (including any Purchased Contract) or any claim or right or any benefit arising thereunder for the assignment or transfer thereof to Purchaser as Purchaser may reasonably request; provided, however, that Seller will not be obligated to pay any consideration therefor to any third party from whom consent or approval is requested or to initiate any litigation or Legal Proceedings to obtain any such consent or approval. If such Necessary Consent is not obtained, or if an attempted assignment or transfer thereof would give rise to any of the circumstances described in clauses (i) or (ii) of the first sentence of this Section 2.6(a), be ineffective or would adversely affect the rights of Purchaser to such Purchased Asset following the Closing, (x) Seller and Purchaser will, and will cause their respective Affiliates to, (1) use commercially reasonable efforts (including cooperating with one another to obtain such Necessary Consents, to the extent feasible) as may be necessary so that Purchaser would obtain the benefits and assume the obligations thereunder in accordance with this Agreement, (2) complete any such assignments or transfers as soon as reasonably practicable, and (3) upon receipt of any applicable Necessary

Consents, to transfer or assign the applicable Purchased Asset to Purchaser, and (y) Seller will, and will cause its Affiliates to, cooperate with Purchaser in good faith without further consideration in any arrangement reasonably acceptable to Purchaser and Seller intended to provide Purchaser with the benefit of any such Purchased Assets.

(b) Subject to Section 2.6(a), if after the Closing (i) Purchaser or its designee holds any Excluded Assets or Excluded Liabilities or (ii) Seller holds any Purchased Assets or Assumed Liabilities, Purchaser or Seller will promptly transfer (or cause to be transferred) such assets or assume (or cause to be assumed) such Liabilities to or from (as the case may be) the other Party. Prior to any such transfer, the Party receiving or possessing any such asset will hold it in trust for such other Party.

(c) Notwithstanding anything herein to the contrary, at any time prior to the date that is the later of (but in no event later than five Business Days prior to the Closing) (i) five days after the resolution of any dispute with a non-debtor party to a Purchased Contract relating to the Cure Costs or adequate assurance of future performance required under Section 365 of the Bankruptcy Code and (ii) the conclusion of the cure objection hearing relating to any particular Purchased Contract as to which a cure objection has been timely filed, Purchaser will be entitled, in its sole and absolute discretion, to remove any Contract from Schedule 2.5(a) by providing written notice thereof to Seller and any Contract so removed will be deemed to be an "Excluded Asset" for all purposes hereunder. Seller will not reject or seek to reject any Contract that is a Purchased Contract without the consent of Purchaser.

2.7 Further Conveyances and Assumptions. From time to time following the Closing, Seller and Purchaser will, and will cause their respective Affiliates to, execute, acknowledge and deliver all such further conveyances, notices, assumptions, assignments, releases and other instruments, and will take such further actions, as may be reasonably necessary or appropriate to assure fully to Purchaser and its respective successors or assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Purchaser under this Agreement and to assure fully to Seller and its Affiliates and their respective successors and assigns, the assumption of the liabilities and obligations intended to be assumed by Purchaser under this Agreement, and to otherwise make effective the Transactions; provided that nothing in this Section 2.7 will require Purchaser or any of its Affiliates to assume any Liabilities other than the Assumed Liabilities.

### III. CONSIDERATION

3.1 Consideration. The aggregate consideration for the Purchased Assets (the "Purchase Price") will be: (a) \$5,000,000 in cash (the "Cash Amount"); plus (b) the Reimbursement Costs; plus (c) the assumption of the Assumed Liabilities; plus (d) the Excess Severance Amount.

3.2 Purchase Price Deposit. Within two (2) Business Days of the Effective Date, (a) the Parties shall execute and deliver the Escrow Agreement to the Escrow Agent, and (b) the Purchaser shall deposit a sum of \$1,000,000 (the "Deposit Amount") into the Escrow Account, which shall be held in the Escrow Account and shall be either delivered to Purchaser or paid to Seller, in each case pursuant to the Escrow Agreement, as follows: (x) if the Closing occurs, the

Deposit Amount shall be applied towards the Cash Amount payable by Purchaser pursuant to Section 3.3, (y) if this Agreement is terminated by Seller pursuant to Section 4.4(d), then the Deposit Amount shall promptly be released to Seller (and such Deposit Amount will be deemed fully earned by Seller as compensation and consideration for entering into this Agreement), or (z) if this Agreement is terminated for any reason other than by Seller pursuant to Section 4.4(d), then the Deposit Amount shall promptly be released to Purchaser.

3.3 Payment of Purchase Price. At the Closing, (a) Purchaser will pay to Seller, in immediately available funds to the account or accounts designated by Seller, (i) the Cash Amount less (ii) the Deposit Amount, plus (iii) the Reimbursement Costs, plus (iv) the Excess Severance Amount; and (b) the Deposit Amount shall be released to Seller.

#### IV. CLOSING AND TERMINATION

4.1 Closing Date. Subject to the satisfaction of the conditions set forth in Sections 9.1, 9.2 and 9.3 hereof (or the waiver thereof by the Party entitled to waive that condition), the closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities provided for in Article II (the "Closing") will take place at Jones Day, 77 W. Wacker Dr., Suite 3500 Chicago, Illinois 60601 at 10:00 a.m. (Central Standard time) on the date that is three Business Days following the satisfaction or waiver of the conditions set forth in Sections 9.1, 9.2 and 9.3 (other than conditions that by their nature are to be first satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), or at such other place and time as the Parties may designate in writing. The date on which the Closing is held is referred to in this Agreement as the "Closing Date."

4.2 Deliveries by Seller. At the Closing, Seller will deliver to Purchaser:

- (a) one or more duly executed bills of sale in a form to be reasonably agreed upon by the Parties;
- (b) (i) one or more duly executed assignment and assumption agreements, in a form to be agreed upon by the Parties and (ii) duly executed assignments to Purchaser of the registered Trademarks and Trademark applications and registered copyrights and copyright applications included in the Purchased Intellectual Property, in each case, in a form suitable for recording in the U.S. Patent and Trademark Office (and equivalent offices in jurisdictions outside the United States) (the "Assignment and Assumption Agreements");
- (c) the Mutual PQUAD Covenant Agreement, duly executed by Seller;
- (d) the officer's certificate required to be delivered pursuant to Sections 9.1(a) and 9.1(b);
- (e) a non-foreign affidavit from Seller dated as of the Closing Date, sworn under penalty of perjury and in form and substance required under Treasury Regulations issued pursuant to Section 1445 of the Internal Revenue Code stating that it is not a "foreign person" as defined in Section 1445 of the Internal Revenue Code;
- (f) a copy of the Approval Order;

(g) copies of all instruments, certificates, documents and other filings (if applicable) evidencing the release of the Purchased Assets from all Liens, including any applicable UCC termination statements and releases of mortgages, and all releases, instruments and documents necessary to release all Liens duly executed by the holder of such Lien, all in a form reasonably satisfactory to the Purchaser; and

(h) all other deeds, endorsements, assignments, company seals, instruments of transfer and other instruments of conveyance reasonably requested by Purchaser or required to convey and assign the Purchased Assets to Purchaser and vest title therein in Purchaser free and clear of all Liens (other than those Liens created by Purchaser and Transferred Exceptions).

4.3 Deliveries by Purchaser. At the Closing, Purchaser will deliver to Seller:

(a) the consideration specified in Section 3.1, as adjusted pursuant to Section 3.3;

(b) the officer's certificate required to be delivered pursuant to Sections 9.2(a) and 9.2(b);

(c) any and all Assignment and Assumption Agreements, duly executed by Purchaser; and

(d) the Mutual PQUAD Covenant Agreement, duly executed by Purchaser;

(e) all such other documents, instruments and certificates, reasonably requested by Seller, to evidence the assumption by Purchaser of the Assumed Liabilities.

4.4 Termination of Agreement. This Agreement may be terminated prior to the Closing as follows:

(a) by Purchaser or Seller, if the Closing has not occurred by 5:00 p.m. Chicago time on August 26, 2019 (the "Termination Date"), which date may be extended pursuant to Sections 4.4(c) and 4.4(d)(i); provided, however, that if the Closing has not occurred on or before the Termination Date due to a breach of any representations, warranties, covenants or agreements contained in this Agreement that has resulted in any of the conditions set forth in Sections 4.4(c) and 4.4(d)(i) not being satisfied by the Termination Date (i) by Purchaser, then Purchaser may not terminate this Agreement pursuant to this Section 4.4(a) or (ii) by Seller, then Seller may not terminate this Agreement pursuant to this Section 4.4(a);

(b) by mutual written consent of Seller and Purchaser;

(c) by Purchaser; provided that Purchaser is not then in breach of any representation, warranty, covenant or agreement contained in this Agreement that would result in a failure of a condition set forth in Sections 9.2 or 9.3, if Seller breaches any representation or warranty or any covenant or agreement contained in this Agreement, such breach would result in a failure of a condition set forth in Sections 9.1 or 9.3 or breach of Section 4.1 and such breach has not been cured within 10 Business Days after the giving of written notice by Purchaser to Seller of such breach; provided, further, that in the event that Purchaser provides such written

notice to Seller within 10 Business Days of the Termination Date, then the Termination Date shall be extended until the end of the 10 Business Day cure period set forth in this Section 4.4(c);

(d) by Seller; provided that Seller is then not in breach of any representation, warranty, covenant or agreement contained in this Agreement that would result in a failure of a condition set forth in Sections 9.1 or 9.3,

(i) if Purchaser breaches any representation or warranty or any covenant or agreement contained in this Agreement, such breach would result in a failure of a condition set forth in Sections 9.2 or 9.3 or breach of Section 4.1 and such breach has not been cured within 10 Business Days after the giving of written notice by Seller to Purchaser of such breach; provided, that in the event that Seller provides such written notice to Purchaser within 10 Business Days of the Termination Date, then the Termination Date shall be extended until the end of the 10 Business Day cure period set forth in this Section 4.4(d);

(ii) if all of the conditions set forth in Section 9.1 and Section 9.3 have been satisfied (other than those conditions that by their nature can only be satisfied at the Closing), Seller has given written notice to Purchaser that they are prepared to consummate the Closing and Purchaser fails to consummate the Closing within five Business Days after the date that the Closing should have occurred pursuant to Section 4.1;

(e) by Seller or Purchaser, if there is in effect a final non-appealable Order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Transactions; it being agreed that the Parties will promptly appeal and use reasonable best efforts to seek to overturn any adverse determination which is not non-appealable and pursue such appeal with reasonable diligence unless and until this Agreement is terminated pursuant to this Section 4.4;

(f) automatically, upon the consummation of an Alternative Transaction; and

(g) by Purchaser; provided that Purchaser is not then in breach of any representation, warranty, covenant or agreement contained in this Agreement that would result in a failure of a condition set forth in Sections 9.2 or 9.3, if (i) the Bankruptcy Court has not approved the Bidding Procedures Order on or prior to the date which is twenty-eight (28) days following the execution of this Agreement, (ii) the Auction (if necessary) shall not have been held on or prior to the date which is fifty (50) days following the execution of this Agreement, or (iii) the hearing to approve the Approval Order shall not have occurred on or prior to the date which is sixty (60) days following the execution of this Agreement.

4.5 Procedure Upon Termination. In the event of termination pursuant to Section 4.4 (other than Section 4.4(f), under which termination will take place automatically), the terminating Party will give written notice thereof to the other Party or Parties, and this Agreement will terminate as described in Section 4.6, and the purchase of the Purchased Assets and assumption of the Assumed Liabilities hereunder will be abandoned, without further action by Purchaser or Seller.

#### 4.6 Effect of Termination.

(a) In the event that this Agreement is terminated as provided herein, then each of the Parties will be relieved of its duties and obligations arising under this Agreement after the date of such termination and there will be no Liability or obligation on Purchaser, Seller or any of their respective Representatives, except as specifically set forth in this Section 4.6; provided, however, that the provisions of Section 3.2, this Section 4.6, and Article XI (other than Section 11.3) and, to the extent necessary to effectuate the foregoing enumerated provisions, Article I, will survive any such termination and will be enforceable hereunder; provided, further, that nothing in this Section 4.6 will be deemed to release any Party from Liability for any breach of this Agreement prior to termination and nothing in this Section 4.6 will be deemed to interfere with Seller's rights to retain the Deposit Amount to the extent provided in Section 3.2. In the event that the Deposit Amount is paid to the Seller pursuant to Section 3.2 and Section 4.4(d), the Seller's receipt of the Deposit Amount shall constitute liquidated damages (and not a penalty) in a reasonable amount that will compensate Seller in the circumstances in which this Agreement is terminated pursuant to Section 4.4(d), which amount would otherwise be impossible to calculate with precision, and be the sole and exclusive remedy (whether at law, in equity, in contract, in tort or otherwise) of the Seller against the Purchaser, and any of its former, current, or future general or limited partners, stockholders, managers, members, directors, officers, Affiliates or agents for any loss suffered as a result of any breach of any covenant, representation, warranty or agreement in this Agreement by Purchaser or the failure of the transactions contemplated hereby to be consummated, and upon payment of such amounts, none of Purchaser nor any of its former, current, or future general or limited partners, stockholders, managers, members, directors, officers, Affiliates or agents shall have any further liability or obligation relating to or arising out of this Agreement or the transactions contemplated hereby. In no event shall Purchaser's Liability under this Agreement prior to the Closing exceed an amount equal to the Deposit Amount.

(b) Notwithstanding Section 4.6(a), (i) if this Agreement is terminated other than pursuant to Sections 4.4(b) or 4.4(d) and (ii) at the time of such termination, Purchaser is not then in material breach of any of its representations, warranties, covenants or agreements contained in this Agreement that would result in a failure of a condition set forth in Sections 9.2 or 9.3, then Seller shall pay the Expense Reimbursement Amount to Purchaser by wire transfer of immediately available funds within three Business Days following such termination of this Agreement, unless this Agreement is terminated pursuant to Section 4.4(f), in which case Seller shall pay the Break-Up Fee and Expense Reimbursement to Purchaser concurrently with the consummation of any Alternative Transaction.

#### V. REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the Schedules or in the Company SEC Documents (other than any forward-looking disclosures set forth in any risk factor section, any disclosure in any section relating to forward-looking statements and any other similar disclosures included therein, in each case, to the extent such disclosures are primarily predictive or forward-looking in nature and do not consist of statements of present fact) filed prior to the date of this Agreement, Seller hereby represents and warrants to Purchaser that:

5.1 Organization and Good Standing. Seller is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and, subject to any limitations that may be imposed on Seller as a result of filing a petition for relief under the Bankruptcy Code, has the requisite power and authority to own, lease and operate its properties and to carry on its business as now conducted.

5.2 Authorization of Agreement. Subject to entry of the Approval Order, as applicable, Seller has the requisite power and authority to execute and deliver this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party and to perform its respective obligations hereunder and thereunder. The execution and delivery of this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party and the consummation of the Transactions have been duly authorized by all requisite corporate or similar action on the part of Seller. This Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party has been duly and validly executed and delivered, and each agreement, document or instrument contemplated hereby or thereby to be delivered at or prior to Closing will be duly and validly executed and delivered, by Seller and (assuming the due authorization, execution and delivery by the other Party and the entry of the Approval Order) this Agreement and each other agreement, document or instrument contemplated hereby or thereby to which it is a party constitutes legal, valid and binding obligations of Seller enforceable against Seller in accordance with its respective terms, subject to equitable principles of general applicability (whether considered in a proceeding at law or in equity).

5.3 Governmental Consents. Except as set forth on Schedule 5.3 and except to the extent not required if the Approval Order is entered, no consent, waiver, approval, Order or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of Seller in connection with the execution and delivery of this Agreement or any other agreement, document or instrument contemplated hereby or thereby to which Seller is a party, the compliance by Seller with any of the provisions hereof (including the assignments and assumptions referred to in Article II) or thereof, the consummation of the Transactions or the taking by Seller of any other action contemplated hereby or thereby (with or without notice or lapse of time, or both), except for (a) the entry of the Approval Order and (b) immaterial consents, waivers, approvals, Orders, authorizations, declarations, filings and notifications. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby (including the assignments and assumptions referred to in Article II), will conflict with or result in a material breach of the organizational documents of Seller.

5.4 Title to Purchased Assets. Except as set forth on Schedule 5.4, subject to Section 2.7 and (a) bankruptcy, insolvency, or other similar Laws affecting the enforcement of creditors' rights generally, and (b) equitable principles of general applicability (whether considered in a proceeding at law or in equity), Seller has good and valid title to, or in the case of leased assets, has good and valid leasehold interests in, the Purchased Assets free and clear of all Liens (other than Permitted Exceptions) and, at the Closing, Purchaser will be vested with good and valid title to, or in the case of leased assets, good and valid leasehold interest in, such Purchased Assets, free and clear of all Liens (other than Transferred Exceptions) and Excluded Liabilities, to the fullest extent permissible under Law, including Section 363(f) of the Bankruptcy Code.

5.5 Validity of Purchased Contracts. As of the date of this Agreement, each Purchased Contract is in full force and effect and is a valid and binding obligation of Seller and, to the Knowledge of Seller, the other parties thereto in accordance with its terms and conditions, except as such validity and enforceability may be limited by (a) bankruptcy, insolvency, or other similar Laws affecting the enforcement of creditors' rights generally, (b) equitable principles of general applicability (whether considered in a proceeding at law or in equity), and (c) the obligation to pay Cure Costs (if any) under Section 2.5. As of the date of this Agreement, Seller has no Knowledge of the intention of any third party to terminate any Purchased Contract. As of the date of this Agreement, except as set forth on Schedule 5.5, and to the Knowledge of Seller, no event has occurred which, with the passage of time or the giving of notice, or both, would constitute a material default under or a violation of any such Purchased Contract or would cause the material acceleration of any obligation of Seller or the creation of a material Lien upon any Purchased Asset, and Seller has no Knowledge of such an event. Seller has made available to Purchaser true, correct and complete copies of each of the Purchased Contracts.

5.6 Litigation. As of the date of this Agreement, there are no Legal Proceedings or Orders pending or, to the Knowledge of Seller, threatened against Seller that involves or relates to the Business, any of the Transactions, or affects any of the Purchased Assets and would reasonably be expected to have a material adverse effect on the Purchased Assets, the Transactions or the Business, respectively.

5.7 Compliance with Laws. Seller is and, since December 31, 2016, has been in compliance with all applicable Laws and Orders, except for failures to comply or violations that would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect. Seller holds all governmental licenses, authorizations, permits, consents and approvals necessary for the operation of the Business of Seller as presently conducted, taken as a whole (the "Company Permits"). Seller is in compliance with the terms of the Company Permits, except for failures to comply that would not reasonably be expected to be, individually or in the aggregate, material to the Business.

5.8 Employee Compensation and Benefit Plans: ERISA.

(a) As used herein, the term "Company Plan" shall mean each material "employee benefit plan" (within the meaning of Section 3(3) ERISA) and each other material equity incentive, compensation, severance, employment, company stock plan, change-in-control, retention, fringe benefit, bonus, incentive, savings, retirement, deferred compensation or other benefit plan, agreement, program, policy or Contract, whether or not subject to ERISA, in each case other than a "multiemployer plan," as defined in Section 3(37) of ERISA, under which any current or former employee, officer, director, contractor (who is a natural Person) or consultant (who is a natural Person) of Seller has any present or future right to benefits and which are entered into, contributed to, sponsored by or maintained by Seller.

(b) Except as would not, individually or in the aggregate, have a Seller Material Adverse Effect:

(i) Each Company Plan is in material compliance with all applicable Laws, including ERISA and the Code.

(ii) Each Company Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination or opinion letter to that effect from the IRS and, to the Knowledge of Seller, no event has occurred since the date of such determination or opinion that would reasonably be expected to adversely affect such determination or opinion.

(iii) To the Knowledge of Seller, no condition exists that is reasonably likely to subject Seller to any direct or indirect liability under Title IV of ERISA.

(c) No material Legal Proceeding (other than routine claims for benefits in the ordinary course of business) are pending or, to the Knowledge of Seller, threatened with respect to any Company Plan.

5.9 Labor Matters. Except as would not have, individually or in the aggregate, a Seller Material Adverse Effect:

(a) Seller is not party to, or bound by, any labor agreement, collective bargaining agreement, work rules or practices, or any other labor-related Contract with any labor union, trade union or labor organization. Other than as required by operation of applicable Law, no employees of Seller is represented by any labor union, trade union or labor organization with respect to their employment with Seller. No labor union, trade union, labor organization or group of employees of Seller has made a pending demand for recognition or certification, and there are no representation or certification proceedings or petitions seeking a representation proceeding presently pending or threatened in writing to be brought or filed with the National Labor Relations Board or any other Governmental Body. To the Knowledge of Seller, there are no organizing activities with respect to any employees of Seller. There has been no actual or, to the Knowledge of Seller, threatened material arbitrations, material grievances, labor disputes, strikes, lockouts, slowdowns or work stoppages against or affecting Seller. Seller is not engaged in, or since December 31, 2016 has engaged in, any unfair labor practice, as defined in the National Labor Relations Act or other applicable Laws.

(b) Seller has not received since December 31, 2016 any written notice of intent by any Governmental Body responsible for the enforcement of labor or employment Laws to conduct an investigation relating to Seller and, to the Knowledge of Seller, no such investigation is in progress.

(c) Since December 31, 2016, Seller has not effectuated (i) a "plant closing" (as defined in the Worker Adjustment and Retraining Notification Act (or any similar state or local law, the "WARN Act")) in connection with the Business; or (ii) a "mass layoff" (as defined in the WARN Act) of individuals employed at or who primarily provided service to the Business. Schedule 5.9(d) sets forth a true and complete list of reductions in force or layoffs, by location, implemented by the Seller or any of its Subsidiaries in the 90-day period preceding the Closing Date at any location employing any individuals employed by the Business.

5.10 Intellectual Property. Except as set forth on Schedule 5.10, and to the Knowledge of Seller, Seller owns all right, title and interest in and to the Purchased Intellectual Property, free and clear of all Liens other than (i) Permitted Exceptions, and (ii) non-exclusive licenses of,

or covenants with respect to, the Purchased Intellectual Property granted in the Ordinary Course of Business.

(a) Except as set forth on Schedule 5.10(a), Seller has not, to the Seller's Knowledge, interfered with, infringed upon, misappropriated, diluted, or violated the Intellectual Property of any other Person, and no written, or, to Seller's Knowledge, oral, claims have been asserted by any Person alleging such interference, infringement, misappropriation, dilution, or violation.

(b) Except as set forth on Schedule 5.10(b), neither Seller nor any of its Affiliates has, in the three (3) year period immediately preceding the date of this Agreement, notified any Person that it believes that such Person is interfering with, infringing upon, misappropriating, diluting, violating or otherwise acting in conflict with any Purchased Intellectual Property, or engaging in any act of unlawful use or unfair competition, or has done any of the foregoing and, to the Knowledge of the Seller, no Person is interfering with, infringing upon, misappropriating, diluting, violating or otherwise acting in conflict with any Purchased Intellectual Property.

(c) There is no Purchased Intellectual Property developed by any shareholder, director, officer, consultant or employee of the Seller or its Affiliates that has not been transferred to the Seller, or is not owned by the Seller free and clear of any Liens, other than Permitted Exceptions and/or non-exclusive licenses of, or covenants with respect to, the Purchased Intellectual Property granted in the Ordinary Course of Business.

(d) Seller has taken commercially reasonable steps to protect, maintain and preserve the confidentiality of any trade secrets included in the Purchased Intellectual Property. Any disclosure by Seller of such trade secrets to any third party has been pursuant to the terms of a written agreement with such Person.

(e) To the Knowledge of Seller, no Purchased Intellectual Property material to the Business was developed, in whole or in part (i) pursuant to or in connection with the development of Intellectual Property for any standards-setting bodies, industry groups, or other similar standards organizations, (ii) under contract with or using the resources of any Governmental Body, academic institution or other entity that would subject any Purchased Intellectual Property to the rights of any Governmental Body, academic institution or other entity, (iii) under any grants or other funding arrangements with third parties, or (iv) using any software, software development toolkits, databases, libraries, scripts, or other, similar modules of software that are subject to "open source" or similar license terms in a manner that subjects material proprietary software included in the Purchased Intellectual Property to any copyright license.

(f) All material software owned, licensed, used, or otherwise held for use in the Business is, to the Knowledge of Seller, in good working order and condition and is sufficient in all material respects for the purposes for which it is currently used in the Business. To the Knowledge of Seller, Seller has not experienced any material defects in design, workmanship or material in connection with the use of such software that have not been corrected. To the Knowledge of the Seller, no such software contains any computer code or any

other procedures, routines or mechanisms which may: (i) disrupt, disable, harm or impair in any material way such software's operation, (ii) cause such software to damage or corrupt any data, storage media, programs, equipment or communications of the Business or its clients, or otherwise interfere with the Business's operations as currently conducted, or (iii) permit any third party to access any such software to cause disruption, disablement, harm, impairment, damage erasure or corruption (sometimes referred to as "traps", "viruses", "access codes", "back doors" "Trojan horses," "time bombs," "worms," or "drop dead devices").

(g) Trademarks.

(i) Schedule 5.10(g)(i) contains a complete and accurate list of all registered, and as of the date of this Agreement pending applications for, Trademarks included in the Purchased Intellectual Property, including for each the applicable trademark or service mark, application numbers, filing dates, trademark registration numbers and registration dates, as applicable.

(ii) Except as set forth on Schedule 5.10(g)(ii), all of the registered Trademarks included in the Purchased Intellectual Property are subsisting and in full force and effect. To the Knowledge of Seller, each of the United States registered Trademarks included in the Purchased Intellectual Property for which filings based on continuous use have been made by Seller or any of its Affiliates have been in continuous use in the United States or had been in continuous use in the United States at the time such filings were made. Except as set forth in Schedule 5.10(g)(ii), none of the trademark registrations included in the Purchased Intellectual Property are subject to any maintenance fees or renewal actions in the sixty (60) days after the date hereof.

(iii) Except as set forth on Schedule 5.10(g)(iii), no Trademark included in the Purchased Intellectual Property has been or is now the subject of any opposition, invalidation or cancellation proceeding, in each case which is pending and unresolved, and to the Knowledge of Seller, no such action is threatened.

(iv) All products and materials containing a U.S. Federal Transferred Trademark bear the proper federal registration notice where required by Law.

(h) Copyrights.

(i) Schedule 5.10(h)(i) contains a complete and accurate list of all registered copyrights owned by Seller and included in the Purchased Intellectual Property, including title, registration number and registration date.

(i) Domain Names.

(i) Schedule 5.10(i)(i) contains a complete and accurate list of all Domain Names included in the Purchased Intellectual Property. No Domain Names material to the Business and included in the Purchased Intellectual Property have been, during the past three (3) years, or are now involved in any dispute, opposition, invalidation or cancellation proceeding and, to the Knowledge of Seller, no such action is threatened.

(j) Patents.

(i) Schedule 5.10(j)(i) contains a complete and accurate list of all issued patents included in the Purchased Intellectual Property, including title, patent number and issuance date.

(ii) All of the issued patents included in the Purchased Intellectual Property are subsisting and in full force and effect. Except as set forth in Schedule 5.10(j)(ii), none of the issued patents included in the Purchased Intellectual Property are subject to any maintenance fees or renewal actions in the ninety (90) days after the date hereof.

(iii) All products made, used or sold under the Patents have been marked with a patent notice to the extent required by applicable Law.

5.11 Financial Advisors. Except with respect to Piper Jaffray & Co., Seller has not incurred any obligation or Liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment in connection with this Agreement or Transactions. Purchaser is not and will not become obligated to pay any fee or commission or any like payment to any broker, finder or financial advisor as a result of the consummation of the transactions contemplated by this Agreement based upon any arrangement made by or on behalf of Seller or any of its Affiliates.

5.12 Taxes.

(a) Seller has filed (or had filed on its behalf) all material Tax Returns that it was required to file in respect to the Purchased Assets or the Business and all such Tax Returns were correct and complete in all material respects. Other than as excused or prohibited from being paid as a result of the Bankruptcy Code or the Bankruptcy Court, with respect to the Purchased Assets and the Business, Seller has paid (or had paid on its behalf) (i) all material Taxes that are shown to be due by Seller on any such Tax Returns or pursuant to any assessment received by Seller from any Tax Authority for any period preceding the Closing Date, and (ii) all other material Taxes due on or before the Closing Date (whether or not shown on a Tax Return). Other than as excused or prohibited from being withheld, collected or paid as a result of the Bankruptcy Code or the Bankruptcy Court, all material Taxes that Seller is or was required by Law to withhold or collect with respect to the Purchased Assets and the Business have been duly withheld or collected and, to the extent required, have been paid or will be paid to the proper Tax Authority.

(b) There are no pending, proposed in writing or threatened in writing Legal Proceedings with respect to any Taxes payable by or asserted against Seller related to the Purchased Assets or the Business.

(c) Except as set forth on Schedule 5.12(c), there are no outstanding agreements or waivers that would extend the statutory period in which a Tax Authority may assess or collect a Tax that could result in a Lien upon the Purchased Assets or the Business.

(d) There are no Liens with respect to Taxes (other than Permitted Exceptions and Liens that will be released by the Approval Order) upon the Purchased Assets or the Business.

(e) Seller is not a party to any Tax indemnity, Tax allocation or Tax sharing agreement, other than any such agreement entered into in the Ordinary Course of Business the principal purpose of which is not related to Tax, that could result in a Lien upon the Purchased Assets or the Business.

(f) There are no requests for rulings pending between Seller and any Tax Authority in respect of any Tax that could result in a Lien upon the Purchased Assets or the Business.

5.13 Real Property. Seller does not have any title interest in real property which is primarily related to the conduct of the Business. Schedule 5.13 sets forth the location of each of the two distribution centers located in Lincoln, California and Charlotte, North Carolina, respectively (each, a “DC”, and collectively, the “DCs”), each of which is leased to Seller by a third party, and a list of all Leases. Seller has no other real property primarily used or held primarily for use in the Business. Seller has made available to Purchaser a true and complete copy of each Lease. With respect to each Lease, (a) assuming due authorization and delivery by the other party thereto, such Lease constitutes the valid and legally binding obligation of the Seller and, to Seller’s Knowledge, the counterparty thereto, enforceable against Seller and, to Seller’s Knowledge, the counterparty thereto in accordance with its terms and conditions, subject to applicable bankruptcy, insolvency, moratorium or other similar laws relating to creditors’ rights and general principles of equity, and (b) neither Seller nor, to Seller’s Knowledge, the counterparty thereto is in breach or default under such Lease, except (i) for those defaults that will be cured in accordance with the Approval Order or waived in accordance with section 365 of the Bankruptcy Code (or that need not be cured under the Bankruptcy Code to permit the assumption and assignment of the Leases) or (ii) to the extent such breach or default would not reasonably be expected to have a Seller Material Adverse Effect.

5.14 Environmental Matters. The representations and warranties contained in this Section 5.14 are the sole and exclusive representations and warranties of the Seller with respect to environmental matters, including matters relating to Environmental Laws. Except as would not be reasonably likely to result in a Seller Material Adverse Effect:

(a) the operations of the Business are in compliance with all applicable Environmental Laws, which compliance includes obtaining, maintaining and complying with all permits issued pursuant to Environmental Laws necessary to operate the Business;

(b) with respect to the Business, Seller is not the subject of any outstanding Legal Proceedings with any Governmental Body with respect to Environmental Laws;

(c) Seller is not the subject of any pending, or to the Knowledge of the Seller, threatened Legal Proceeding alleging that the Seller or any of its Affiliates may (i) be in violation of any Environmental Law, or any permit issued pursuant to Environmental Law, or (ii) have any liability under any Environmental Law, in each case with respect to the Business; and

(d) to the Knowledge of the Seller, there are no pending or threatened investigations of the Seller, or currently or previously owned, operated or leased property of the Seller, which would reasonably be expected to result in the Seller incurring liability pursuant to any Environmental Law.

5.15 Inventory. The Inventory as a whole is of a quantity and quality historically useable or saleable in the conduct of the Business.

5.16 Sufficiency of Assets. The Purchased Assets are sufficient for the fulfillment of customer orders for berries and other goods manufactured in-house after the Closing in substantially the same manner as conducted prior to the Closing.

5.17 No Other Representations or Warranties; Schedules. Except for the representations and warranties contained in this Article V (as modified by the Schedules hereto), neither Seller nor any other Person makes any other express or implied representation or warranty with respect to Seller, the Purchased Assets, the Assumed Liabilities or the Transactions, and Seller disclaims any other representations or warranties, whether made by Seller, any Affiliate of Seller, or any of Seller's or its Affiliates' respective Representatives. Except for the representations and warranties contained in this Article V (as modified by the Schedules hereto), Seller (a) expressly disclaims and negates any representation or warranty, expressed or implied, at common law, by statute, or otherwise, relating to the condition of the Purchased Assets (including any implied or expressed warranty of merchantability or fitness for a particular purpose, or of conformity to models or samples of materials) and (b) disclaims all liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to Purchaser or its Affiliates or Representatives (including any opinion, information, projection, or advice that may have been or may be provided to Purchaser by any Representative of Seller or any of its Affiliates). Seller makes no representations or warranties to Purchaser regarding the probable success or profitability of the Business, the Purchased Assets or the use thereof. The disclosure of any matter or item in any Schedule hereto will not be deemed to constitute an acknowledgment that any such matter is required to be disclosed or is material or that such matter could result in a Seller Material Adverse Effect.

## **VI. REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser hereby represents and warrants to Seller that:

6.1 Organization and Good Standing. Purchaser is a limited liability company organized, validly existing and in good standing under the Laws of the jurisdiction of its organization and has all requisite limited liability company power and authority to own, lease and operate its properties and to carry on its business as now being conducted, except where the failure to be so organized, existing and in good standing or to have such power and authority would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on the ability of Purchaser to consummate the Transactions. Purchaser is not in violation of its organizational or governing documents.

6.2 Authorization of Agreement. Purchaser has all necessary limited liability company power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery and performance by Purchaser of this Agreement, and the consummation by it of the Transactions, have been duly and validly authorized by the members of Purchaser, and no other limited liability company action on the part of Purchaser is necessary to authorize the execution, delivery and performance by Purchaser of this Agreement and the consummation of the Transactions. This Agreement has been duly executed and delivered by Purchaser and, assuming due and valid authorization, execution and delivery of this Agreement by Seller, is a valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms, subject to equitable principles of general applicability (whether considered in a proceeding at law or in equity).

6.3 Consents and Approvals: No Violations.

(a) The execution, delivery and performance of this Agreement by Purchaser and the consummation by Purchaser of the Transactions do not and will not (i) conflict with or violate the certificate of formation or operating agreement (or similar organizational documents) of Purchaser, (ii) assuming that all consents, approvals and authorizations contemplated by clauses (i) through (iii) of subsection (b) of this Section have been obtained, and all filings described in such clauses have been made, conflict with or violate any Law or Order applicable Purchaser or by which Purchaser or any of its respective properties are bound, or (iii) result in any breach or violation of or constitute a default (or an event which with notice or lapse of time or both would become a default) or result in the loss of a benefit under, or give rise to any right of termination, cancellation, amendment or acceleration of, any Contracts to which Purchaser is a party or by which Purchaser or any of its respective properties are bound, except, in the case of clauses (ii) and (iii), for any such conflict, violation, breach, default, acceleration, loss, right or other occurrence which would not prevent or materially impair the ability of Purchaser to consummate the Transactions.

(b) The execution, delivery and performance of this Agreement by Purchaser and the consummation by Purchaser of the Transactions do not and will not require any consent, approval, authorization or permit of, action by, filing with or notification to, any Governmental Body, except for (i) the applicable requirements, if any, of the Securities and Exchange Act of 1934 and state securities, takeover and “blue sky” Laws, and (ii) any such consent, approval, authorization, permit, action, filing or notification the failure of which to make or obtain would not impair the ability of Purchaser to consummate the Transactions.

6.4 Financial Capability. Purchaser has sufficient funds available to it in cash to pay or cause to be paid the Purchase Price and the fees and expenses required to be paid by Purchaser in connection with the Transactions, and to effect the Transactions. Upon the consummation of the Transactions, (a) Purchaser will not be insolvent as defined in Section 101 of the Bankruptcy Code, (b) Purchaser will not be left with unreasonably small capital, (c) Purchaser will not have incurred debts beyond its ability to pay such debts as they mature, and (d) the capital of Purchaser will not be impaired.

6.5 Condition of the Purchased Assets. Notwithstanding anything contained in this Agreement to the contrary, Purchaser acknowledges and agrees that Seller is not making any

representations or warranties whatsoever, express or implied, beyond those expressly given by Seller in Article V (as modified by the Schedules hereto), and Purchaser acknowledges and agrees that, except for the representations and warranties contained therein, the Purchased Assets are being transferred on a “where is” and, as to condition, “as is” basis. Purchaser acknowledges that it has conducted to its satisfaction its own independent investigation of the Purchased Assets and, in making the determination to proceed with the Transactions, Purchaser has relied on the results of its own independent investigation.

6.6 Exclusivity of Representations and Warranties. Purchaser acknowledges that except for the representations and warranties made by Seller in Article V, Seller does not make (and neither Purchaser or any other Person has relied upon) any representations or warranties on behalf of Seller. Purchaser further agrees that neither Seller nor any other Person will have or be subject to any liability or indemnification obligation to Purchaser or any other Person resulting from the distribution to Purchaser, Purchaser’s use of, any such information, including any information, documents, projections, forecasts or other material made available to Purchaser in certain “data rooms” or management presentations in expectation of the Transactions. For the avoidance of doubt, Purchaser acknowledges that neither Seller nor any of its Representatives make any express or implied representation or warranty with respect to “Confidential Information” as defined in the Confidentiality Agreement. Purchaser acknowledges and agrees that it (a) has had an opportunity to discuss the business of Seller with the management of Seller, (b) has had sufficient access to (i) the books and records of Seller and (ii) the electronic data room maintained by Seller for purposes of the Transactions, (c) has been afforded the opportunity to ask questions of and receive answers from officers and other key employees of Seller and (d) has conducted its own independent investigation of Seller, the Business and the Transactions, and has not relied on any representation, warranty or other statement by any Person on behalf of Seller, other than the representations and warranties of Seller expressly contained in Article V, and that all other representations and warranties are specifically disclaimed. In connection with any investigation by Purchaser of Seller, Purchaser has received or may receive from Seller or its other Representatives on behalf of Seller certain projections, forward-looking statements and other forecasts and certain business plan information in written or verbal communications. Purchaser acknowledges that there are uncertainties inherent in attempting to make such estimates, projections and other forecasts and plans, that Purchaser is familiar with such uncertainties, that Purchaser is taking full responsibility for making its own evaluation of the adequacy and accuracy of all estimates, projections and other forecasts and plans so furnished to Purchaser (including the reasonableness of the assumptions underlying such estimates, projections, forecasts or plans), and that Purchaser shall have no claim against Seller or any other Person with respect thereto. Accordingly, Purchaser acknowledges that neither Seller nor any other Person on behalf of Seller make (and neither Purchaser or any other Person has relied upon) any representation or warranty with respect to such estimates, projections, forecasts or plans (including the reasonableness of the assumptions underlying such estimates, projections, forecasts or plans).

## VII. BANKRUPTCY COURT MATTERS

7.1 Submission for Bankruptcy Court Approval. As promptly as practicable after the execution of this Agreement, Seller will file with the Bankruptcy Court a motion seeking (a) entry of the Bidding Procedures Order and authorizing the observance and performance of the

terms of Section 4.6(b) and the Bidding Procedures Order by Seller and Purchaser and (b) the Approval Order, including the approval of this Agreement and the sale of the Purchased Assets to Purchaser on the terms and conditions hereof if determined to be the “highest or otherwise best offer” in accordance with the Bidding Procedures Order. Such motion must be reasonably acceptable to Purchaser.

## 7.2 Bankruptcy Process.

(a) Seller and Purchaser acknowledge and agree that this Agreement, the sale of the Purchased Assets and the Transactions are subject to higher or otherwise better bids (in accordance with the Bidding Procedures) and Bankruptcy Court approval. Purchaser and Seller acknowledge that Seller must take reasonable steps to demonstrate that they have sought to obtain the highest or otherwise best offer for the Purchased Assets, including giving notice thereof to the creditors of Seller and other interested parties, providing information about Seller’s business to prospective bidders, entertaining higher or otherwise better offers from such prospective bidders, and, in the event that additional qualified prospective bidders desire to bid for the Purchased Assets, conducting an auction (the “Auction”).

(b) The bidding procedures to be employed with respect to this Agreement and any Auction will be those reflected in the Bidding Procedures Order, which will be in a form and substance reasonably acceptable to the Parties. Purchaser agrees to be bound by and accept the terms and conditions of the Bidding Procedures Order as entered by the Bankruptcy Court. Purchaser agrees and acknowledges that (i) following the Bankruptcy Court’s entry into the Bidding Procedures Order, Seller and its Affiliates will be permitted, and will be permitted to cause their Representatives, to initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, respond to any unsolicited inquiries, proposals or offers submitted by, and enter into any discussions or negotiations regarding any of the foregoing with, any Person (in addition to Purchaser and its Affiliates, agents and Representatives). The obligations of Seller (if any) to pay the Expense Reimbursement and Break Up Fee (i) shall be entitled to administrative expense claim status under Sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code; (ii) shall not be subordinate to any other administrative expense claim against the Seller; and (iii) shall survive the termination of this Agreement in accordance with Section 4.6.

(c) Purchaser will provide adequate evidence and assurance under the Bankruptcy Code of the future performance by Purchaser of each Purchased Contract. Purchaser will, and will cause its Affiliates to, reasonably promptly take all actions reasonably required to assist in obtaining a Bankruptcy Court finding that there has been an adequate demonstration of adequate assurance of future performance under the Purchased Contracts, such as furnishing affidavits, non-confidential financial information and other documents or information for filing with the Bankruptcy Court and making Purchaser’s Representatives available to testify before the Bankruptcy Court. Subject to the other terms and conditions of this Agreement, Purchaser will, from and after the Closing Date, (i) assume all liabilities and obligations of Seller under the Purchased Contracts, to the extent Assumed Liabilities, and (ii) satisfy and perform all of the liabilities and obligations related to each of the Purchased Contracts when the same are due thereunder.

(d) If this Agreement and the sale of the Purchased Assets to Purchaser on the terms and conditions hereof are determined to be the “highest or otherwise best offer” in accordance with the Bidding Procedures Order, Purchaser and Seller agree to use commercially reasonable efforts to cause the Bankruptcy Court to enter the Approval Order with such changes or modifications as may be requested by Purchaser or Seller that are consented to in writing by the other party, with such consent not to be unreasonably withheld, conditioned or delayed.

(e) Seller covenants and agrees that if the Approval Order is entered, the terms of any plan submitted by Seller to the Bankruptcy Court for confirmation will not conflict with, supersede, abrogate, nullify, modify or restrict the terms of this Agreement and the rights of Purchaser hereunder, or in any way prevent or interfere with the consummation or performance of the Transactions including any transaction that is contemplated by or approved pursuant to the Approval Order.

(f) If the Approval Order or any other orders of the Bankruptcy Court relating to this Agreement are appealed or petition for certiorari or motion for rehearing or reargument is filed with respect thereto, Seller agrees to take all action as may be commercially reasonable and appropriate to defend against such appeal, petition or motion and Purchaser agrees to cooperate in such efforts and each Party agrees to use its commercially reasonable efforts to obtain an expedited resolution of such appeal; provided, that the absence of an appeal of the Approval Order will not be a condition to any Party’s obligation to consummate the Transactions at the Closing.

(g) For the avoidance of doubt, nothing in this Agreement will restrict Seller or its Affiliates from selling, disposing of or otherwise transferring any Excluded Assets or from settling, delegating or otherwise transferring any Excluded Liabilities, or from entering into discussions or agreements with respect to the foregoing.

### 7.3 Additional Bankruptcy Matters.

(a) From and after the date of this Agreement and until the Closing Date (or any earlier date from and after any deadline for other potential purchasers to submit bids for the Purchased Assets if this Agreement is determined not to be the “highest or otherwise best offer” in accordance with the Bidding Procedures Order), to the extent reasonably practicable, Seller will deliver to Purchaser drafts of any and all material pleadings, motions, notices, statements, applications, schedules, reports and other papers to be filed or submitted by Seller in connection with this Agreement for Purchaser’s prior review. Seller will make reasonable efforts to consult and cooperate with Purchaser regarding (i) any such pleadings, motions, notices, statements, applications, schedules, reports or other papers, (ii) any discovery taken in connection with the motions seeking approval of the Bidding Procedures Order or Approval Order (including, without limitation, any depositions) and (iii) any hearing relating to the Bidding Procedures Order or Approval Order, including, without limitation, the submission of any evidence, including witnesses testimony, in connection with such hearing.

(b) Seller acknowledges and agrees, and the Approval Order will provide that, on the Closing Date and concurrently with the Closing, all then existing or thereafter arising obligations, liabilities and Lien on, against or created by Seller or its bankruptcy estate, shall be

fully released from and with respect to the Purchased Assets, which will be transferred to Purchaser free and clear of all obligations, liabilities and Liens except for Assumed Liabilities and Permitted Exceptions.

## VIII. COVENANTS

8.1 Access to Information. From the Effective Date through the Closing Date, Purchaser will be entitled, through its Representatives, to make such investigation of the Purchased Assets and the Assumed Liabilities as it reasonably requests. Any such investigation and examination will be conducted upon reasonable advance notice, will occur only during normal business hours and will be subject to restrictions under applicable Law. Seller will, and will direct its respective Representatives to, cooperate with Purchaser and Purchaser's Representatives in connection with such investigation and examination, and Purchaser will and will direct its Representatives to cooperate with Seller and its Representatives. Notwithstanding anything herein to the contrary, no such investigation or examination will be permitted to the extent that it would require Seller to disclose information that would cause material competitive harm to Seller or would violate attorney-client privilege. No investigation by Purchaser will affect or be deemed to modify any of the representations, warranties, covenants or agreements of Seller contained in this Agreement. Purchaser shall upon reasonable notice to, and with the prior written consent of, Seller be permitted to contact vendors, suppliers, licensors and licensees. Seller or its Representatives shall be entitled to be present at any such meetings.

8.2 Actions Pending the Closing. Except (a) as required by applicable Law or by order of the Bankruptcy Court, (b) as otherwise expressly contemplated by this Agreement, or (c) with the prior written consent of Purchaser, during the period from the Effective Date to and through the Closing Date, Seller will (taking into account the commencement of the Bankruptcy Cases, the anticipated sale, liquidation and shut-down of operations of Seller other than the Business and other changes, facts and circumstances that customarily result from the events leading up to and following the commencement of bankruptcy proceedings): (i) maintain the Purchased Assets in their current condition, ordinary wear and tear excepted (and excluding sales of inventory in the Ordinary Course of Business); (ii) not materially amend, modify, terminate, let lapse (other than the expiration of a contract pursuant to its terms) or waive any rights under, or create any Lien with respect to, any of the Purchased Contracts; (iii) use commercially reasonable efforts to defend and protect the Purchased Assets from deterioration; (iv) comply in all material respects with applicable Laws with respect to the Purchased Assets; and (v) not enter into any agreement or commitment to take any action prohibited by this Section 8.2.

8.3 Consents. Seller and Purchaser will use their commercially reasonable efforts to obtain at the earliest practicable date all consents and approvals contemplated by this Agreement, including the consents and approvals referred to in Section 5.3 and the Necessary Consents; provided, however, that neither Seller nor Purchaser (other than with respect to Assumed Cure Costs) will be obligated to pay any consideration therefor to any third party from whom consent or approval is requested or to initiate any litigation or proceedings to obtain any such consent or approval. For the avoidance of doubt, the Parties acknowledge and agree that obtaining any such authorizations, consents and approvals, giving such notices and making such filings shall not be a condition of Closing.

8.4 Reasonable Best Efforts; Consents to Assignment.

(a) Upon the terms and subject to the conditions of this Agreement, each of the Parties will use its commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws to consummate and make effective the Transactions as promptly as practicable, including the prompt preparation and filing of all forms, registrations and notices required to be filed to consummate the Transactions and the taking of such commercially reasonable actions as are necessary to obtain any requisite approvals, consents, orders, exemptions or waivers by any Governmental Body or any other Person. Each Party will promptly consult with the others with respect to, provide any necessary information with respect to, and provide the other Party (or its counsel) copies of, all filings made by such party with any Governmental Body or any other Person or any other information supplied by such Party to a Governmental Body or any other Person in connection with this Agreement and the Transactions.

(b) Each Party will promptly inform the others of any communication from any Governmental Body regarding any of the Transactions and promptly provide the others with copies of all related correspondence or filings. If any Party or Affiliate thereof receives a request for additional information or documentary material from any such Governmental Body with respect to the Transactions, then such Party will endeavor in good faith to make, or cause to be made, as soon as reasonably practicable and after consultation with the other Party, an appropriate response in compliance with such request. Each Party will provide any necessary information and reasonable assistance as the others may request in connection with its preparation of any additional necessary filings or submissions to any Governmental Body.

(c) Neither Seller nor Purchaser will independently participate in any meeting with any Governmental Body (other than the Bankruptcy Court or the Office of the United States Trustee) in respect of any findings or inquiry in connection with the transactions contemplated by this Agreement and the other Transaction Agreements without giving, in the case of Seller, Purchaser, and in the case of Purchaser, Seller, prior notice of the meeting and, to the extent reasonably practicable and not prohibited by the applicable Governmental Body, the opportunity to attend and/or participate in such meeting.

(d) Each Party will use its reasonable best efforts to resolve objections, if any, as may be asserted by any Governmental Body with respect to the Transactions.

8.5 Publicity. With the exception of press releases issued by Seller and Purchaser on the Effective Date and the Closing Date in forms mutually agreeable to Seller and Purchaser, Purchaser and Seller will not issue any press release or public announcement concerning this Agreement or the Transactions without obtaining the prior written approval of the other Party, which approval may not be unreasonably withheld, conditioned or delayed, except that such consent shall not be required if disclosure is otherwise required by applicable Law or by the Bankruptcy Court; provided, however, that Purchaser or Seller, as applicable, will use its or their commercially reasonable efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other Party with respect to the text of any such required disclosure.

8.6 Confidentiality. Purchaser acknowledges that Confidential Information (as defined in the Confidentiality Agreement) has been, and in the future will be, provided to it in connection with this Agreement, including under Section 8.1, and is subject to the terms of the confidentiality agreement dated February 16, 2018 between FTD Companies, Inc., a Delaware corporation and Purchaser (the "Confidentiality Agreement"), the terms of which are incorporated herein by reference. Purchaser acknowledges and understands that this Agreement and related documents may be publicly filed in the Bankruptcy Court and further made available by Seller to prospective bidders or contract counterparties and that, such disclosure will not be deemed to violate any confidentiality obligations owing to Purchaser, whether pursuant to this Agreement, the Confidentiality Agreement or otherwise. Seller acknowledges that from and after the Closing, all non-public information relating to the Purchased Assets and the Assumed Liabilities will be valuable and proprietary to Purchaser and its Affiliates. Seller agrees that, from and after the Closing, Seller will not disclose to any Person any information relating to Purchaser and its Affiliates, the Purchased Assets or the Assumed Liabilities, except as required by Law or as otherwise becomes available in the public domain other than through any action by Seller in violation of its obligations under this Section 8.6. Seller acknowledges and agrees that the remedies at law for any breach or threatened breach of this Section 8.6 by Seller are inadequate to protect Purchaser and its Affiliates and that the damages resulting from any such breach are not readily susceptible to being measured in monetary terms. Accordingly, without prejudice to any other rights or remedies otherwise available to Purchaser or its Affiliates, each Party acknowledges and agrees that upon any breach or threatened breach by Seller of the terms and conditions of this Section 8.6, Purchaser and its Affiliates, as applicable will be entitled to injunctive relief and to seek an order restraining any threatened or future breach from any court of competent jurisdiction without proof of actual damages or posting of any bond in connection with any such remedy. The provisions of this Section 8.6 will survive the Closing.

8.7 Access Agreements. Prior to the Closing, Seller and Purchaser will negotiate mutually acceptable terms of an agreement providing Seller with access, for a period of at least 12 months following the Closing Date, to Purchaser's personnel, including the Transferred Employees, information technology systems, including email, third party service providers and books and records, and use of office space and office support for employees of Seller, as is reasonably necessary or appropriate in connection with the administration of the Bankruptcy Case and to permit Seller to wind-down and liquidate Seller's Bankruptcy estates following the Closing.

8.8 Employee Matters.

(a) Seller may, from time to time prior to the Closing Date, update the list of Business Employees on Schedule 1.1(a) to reflect employment terminations and new hires. Prior to the Closing Date, Purchaser will, or will cause one of its Affiliates to, offer employment to substantially all, and no fewer than two-thirds, of the Business Employees, such employment to commence immediately following the Closing contingent upon such employee's completion of Purchaser's standard employment documents. Seller and its Affiliates will cooperate with and use their commercially reasonable efforts to assist Purchaser and its Affiliates in their efforts to secure the satisfactory transition of Business Employees to Purchaser and will release each Transferred Employee from all employment agreements, non-competition agreements and similar agreements with Seller, effective upon the Closing. Without limiting the generality of the

foregoing, Seller and its Affiliates will provide all relevant information in their possession necessary to the hiring and transfer of the Transferred Employees, including all relevant payroll, compensation, benefits participation and withholding tax information with respect to the Transferred Employees; provided, that Purchaser shall not have access to personnel records of Seller the disclosure of which is prohibited by applicable Law. Business Employees who accept offers of employment from Purchaser or an Affiliate of Purchaser are referred to as "Transferred Employees". Seller and its Affiliates will terminate the employment of all Business Employees who agree to become Transferred Employees, effective immediately prior to the Closing, provided, however, that the Parties intend and will take commercially reasonable steps to ensure that the Transferred Employees have continuous employment through the Closing. Purchaser agrees to provide credit to the Transferred Employees for all periods of service with Seller and their Affiliates upon commencing their employment with Purchaser for purposes of eligibility for and calculation of vacation, sick leave, paid time off and participation under any benefit plans maintained by Purchaser. For a 12-month period following the Closing, Purchaser will provide each Transferred Employee with (i) a base salary or standard hourly wage rate and bonus opportunities that are no less favorable to the Transferred Employees than that provided by Seller at the time of the Closing; and (ii) employee benefits (excluding equity and equity-linked compensation) that are no less favorable to Transferred Employees than under Seller's Benefit Plans in effect at the time of the Closing.

(b) No fewer than three Business Days prior to the Closing, Purchaser will deliver to Seller a list of the Business Employees who will not be offered employment by Purchaser, or who have not, and Purchaser believes are not reasonably likely to, accept offers of employment from Purchaser (the "Non-Transferred Employees"). Sellers and their Affiliates will terminate the employment of all Non-Transferred Employees, effective immediately prior to the Closing and will be responsible for the cost of severance, calculated using Seller's severance policy, capped at four weeks severance, to the Non-Transferred Employees up to \$20,000 ("Severance Cap"). Any and all severance obligations of Seller and its Affiliates to Non-Transferred Employees above the Severance Cap (the "Excess Severance Amount") shall be paid by Purchaser pursuant to Section 3.3. Within one Business Day prior to Closing, Seller will deliver to Purchaser the total severance amount for the Non-Transferred Employees, detailing the Excess Severance Amount payable by Purchaser.

(c) Purchaser's employment of the Transferred Employees will be "at will" and may be terminated by Purchaser and/or any of its Affiliates at any time for any reason; provided, however, that for the 12-month period following the Closing, in the event that the employment of any Transferred Employee is involuntarily terminated by Purchaser, Purchaser will offer to such Transferred Employee separation pay pursuant to Purchaser's severance plan and any such terminated Transferred Employee shall receive credit under such plan for all periods of service with Seller and its Affiliates. Nothing in this Agreement will create any third-party rights in any Transferred Employees or any current or former employees or other service providers of Seller or any Seller Affiliate (or any beneficiaries or dependents of the foregoing) or in any other person. Nothing contained herein shall constitute an amendment to any Benefit Plan.

(d) The Seller shall be responsible for any notices required to be given under and shall otherwise comply with all Liabilities arising under the WARN Act relating to any acts

or omissions on or prior to the Closing, including as a result of the transactions contemplated by this Agreement; provided, however, that in the event that Purchaser decides not to hire a sufficient number of Business Employees such that it would trigger a “plant closing” or “mass layoff” within the meaning of the WARN Act, Purchaser shall provide notice of its decision to Seller in sufficient time for the Seller to comply with the WARN Act’s notice requirements prior to the Closing Date. If Purchaser does not provide sufficient time for Seller to so comply, Purchaser agrees to indemnify Seller against and agrees to hold each of them harmless from any and all losses incurred or suffered by Seller with respect to WARN Act Liabilities arising solely as a result thereof. Subject to the foregoing and Section 5.9(c), Purchaser shall be responsible for any notices required to be given under and shall otherwise comply with all Liabilities arising under the WARN Act relating to any acts or omissions after the Closing.

8.9 No Successor Liability. The parties intend that upon the Closing, Purchaser and its Affiliates shall not and shall not be deemed to: (a) be a successor (or other such similarly situated party), or otherwise be deemed a successor, to Seller, including, a “successor employer” for the purposes of the Internal Revenue Code of 1986, the Employee Retirement Income Security Act of 1974, or other applicable laws; (b) except as set forth herein, have any responsibility or liability for any obligations of Seller, or any affiliate of Seller based on any theory of successor or similar theories of liability; (c) have, de facto or otherwise, merged with or into any of Seller; (d) be an alter ego or a mere continuation or substantial continuation of any of Seller (and there is no continuity of enterprise between Purchaser and Seller), including, within the meaning of any foreign, federal, state or local revenue, pension, ERISA, tax, labor, employment, environmental, or other law, rule or regulation (including filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to Seller’s liability under such law, rule or regulation or doctrine; or (e) be holding itself out to the public as a continuation of Seller or its estate.

8.10 Software System. With respect to the Software System, as of the later of the Closing Date and the closing of the acquisition of the Legacy Business by Legacy Business Owner and the Personal Creations Business by the Personal Creations Owner, Purchaser, Legacy Business Owner and Personal Creations Business Owner shall be joint owners of the Software System. As of the Closing Date, Purchaser’s rights, obligations and covenants with respect to the Software System with be subject to the Mutual PQUAD Covenant Agreement and such additional covenants to be agreed upon by Purchaser and Legacy Business Owner; provided, that Seller will assign its rights and obligations under the Mutual PQUAD Covenant Agreement to the Personal Creations Business Owner as soon as practicable following the later of the Closing Date and the closing of the acquisition of the Personal Creations Business by the Personal Creations Business Owner. Prior to the Closing, Purchaser will negotiate in good faith with the Legacy Business Owner towards a mutually acceptable agreement with respect to the Software System containing rights, obligations and covenants which are substantially similar to the Mutual PQUAD Covenant Agreement.

8.11 Transition Services. After the Closing, Purchaser will and will cause its Affiliates, and Seller will and will cause its Affiliates, to provide certain transition services to Seller, Sellers’ Affiliates, the Legacy Business Owner, or the Personal Creations Business Owner, or Purchaser or Purchaser’s Affiliates, as applicable, such transition services to be agreed to between Seller, Sellers’ Affiliates, the Legacy Business Owner, the Personal Creations

Business Owner, Purchaser and Purchaser's Affiliates, as the case may be. The parties will negotiate in good faith, prior to the Closing, a definitive transition services agreement reflecting such terms, with the definitive agreement to be in a form (i) customary for transaction of this type contemplated by this Agreement and (ii) reasonably acceptable to the Sellers, Seller's Affiliates, the Legacy Business Owner, the Personal Creations Business Owner, Purchaser, and Purchaser's Affiliates in their respective reasonable discretion.

8.12 Continued Support. From the Effective Date until a reasonable time period after Closing, Seller will, and will cause its Affiliates and agents to, cooperate in good faith with Purchaser to assign and transfer to Purchaser all Purchased Contracts and other agreements or service arrangements that, in Purchaser's reasonable discretion, are needed to operate the Business in the ordinary course of business on the Closing Date and thereafter.

8.13 Bulk Transfer Laws. Purchaser acknowledges that Seller will not comply with the provisions of any bulk transfer Laws of any jurisdiction in connection with the Transactions, and hereby waives all claims related to the non-compliance therewith. The Parties intend that pursuant to Section 363(f) of the Bankruptcy Code, the transfer of the Purchased Assets shall be free and clear of any Liens in the Purchased Assets, including any Liens arising out of the bulk transfer Laws.

8.14 Seller Names. Purchaser acknowledges that the Seller Names are and shall remain the property of Seller and its Affiliates and that nothing in this Agreement will be deemed to transfer to Purchaser or any of its Affiliates any right, title or interest in, or license to, the Seller Names.

## **IX. CONDITIONS TO CLOSING**

9.1 Conditions Precedent to Obligations of Purchaser. The obligation of Purchaser to consummate the Transactions is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Purchaser in whole or in part to the extent permitted by applicable Law):

(a) each of the representations and warranties of Seller contained in this Agreement (disregarding all "materiality" or "Seller Material Adverse Effect" qualifications set forth therein) shall be true and correct as of the Closing, as if made on the Closing Date (except for any such representations and warranties that are made as of a specific date, which representations and warranties shall have been true and correct as of such specific date), except where the failure of the representations and warranties to be true and correct, individually or in the aggregate, has not had and would not reasonably be expected to have a Seller Material Adverse Effect, and Purchaser shall have received a certificate signed by an authorized officer of Seller on behalf of Seller, dated the Closing Date, to the foregoing effect;

(b) Seller shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by them prior to or on the Closing Date, and Purchaser shall have received a certificate signed by an authorized officer of Seller on behalf of Seller, dated the Closing Date, to the foregoing effect; and

(c) Seller shall have delivered, or caused to be delivered, to Purchaser all of the items set forth in Section 4.2.

9.2 Conditions Precedent to Obligations of Seller. The obligations of Seller to consummate the Transactions are subject to the fulfillment, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by Seller in whole or in part to the extent permitted by applicable Law):

(a) each of the representations and warranties of Purchaser contained in this Agreement (disregarding any and all “materiality” or “Purchaser Material Adverse Effect” qualifications set forth therein) shall be true and correct as of the Closing, as if made on the Closing Date (except for any such representations and warranties that are made as of a specific date, which representations and warranties shall have been true and correct as of such specific date), except where the failure of the representations and warranties to be true and correct, individually or in the aggregate, has not had and would not reasonably be expected to have a Purchaser Material Adverse Effect, and Seller shall have received a certificate signed by an authorized officer of Purchaser on behalf of Purchaser, dated the Closing Date, to the foregoing effect;

(b) Purchaser shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by Purchaser prior to or on the Closing Date, and Seller shall have received a certificate signed by an authorized officer of Purchaser on behalf of Purchaser, dated the Closing Date, to the foregoing effect; and

(c) Purchaser shall have delivered to Seller all of the items set forth in Section 4.3.

9.3 Conditions Precedent to Obligations of Purchaser and Seller. The respective obligations of Purchaser and Seller to consummate the Transactions are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by Purchaser and Seller in whole or in part to the extent permitted by applicable Law):

(a) there shall not be in effect any Order by a Governmental Body restraining, enjoining or otherwise prohibiting the consummation of the Transactions; and

(b) the Bankruptcy Court shall have entered the Approval Order and the Approval Order shall not be subject to a stay or have been vacated or revoked.

9.4 Frustration of Closing Conditions. No Party may rely on the failure of any condition set forth in Sections 9.1, 9.2 or 9.3, as the case may be, if such failure was caused by such Party’s breach of any provision of this Agreement.

## X. TAXES

10.1 Transfer Taxes. All documentary, stamp, transfer, motor vehicle registration, sales, use, value added, excise and other similar non-income Taxes and all filing and recording fees (and any penalties and interest associated with such Taxes and fees) arising from or relating

to the consummation of the Transactions (collectively, “Transfer Taxes”) will be borne by Purchaser, regardless of the Party on whom liability is imposed under the provisions of the Laws relating to such Transfer Taxes. Seller and Purchaser will consult and cooperate in timely preparing and making all filings, Tax Returns, reports and forms as may be required to comply with the provisions of the Laws relating to such Transfer Taxes and will cooperate and otherwise take commercially reasonable efforts to obtain any available refunds for or exemptions from such Transfer Taxes, including preparing exemption certificates and other instruments as are applicable to claim available exemptions from the payment of Transfer Taxes under applicable Law and executing and delivering such affidavits and forms as are reasonably requested by the other Party.

#### 10.2 Purchase Price Allocation.

(a) As promptly as practicable after the Closing Date, but no later than 30 days thereafter, Purchaser will prepare and deliver to Seller an allocation schedule setting forth the amounts to be allocated among Seller and among the Purchased Assets of Seller, pursuant to (and to the extent necessary to comply with) Section 1060 of the Code and the applicable regulations promulgated thereunder (or, if applicable, any similar provision under state, local or foreign Law or regulation) (the “Proposed Allocation Statement”). Seller will have 20 Business Days following delivery of the Proposed Allocation Statement during which to notify Purchaser in writing (an “Allocation Notice of Objection”) of any objections to the Proposed Allocation Statement, setting forth in reasonable detail the basis of its objections. If Seller fails to deliver an Allocation Notice of Objection in accordance with this Section 10.2(a), the Proposed Allocation Statement will be conclusive and binding on all Parties and will become the “Final Allocation Statement.” If Seller submits an Allocation Notice of Objection, then for 20 Business Days after the date Purchaser receives the Allocation Notice of Objection, Purchaser and Seller will use their commercially reasonable efforts to agree on the allocations. Failing such agreement within 20 Business Days of such notice, the unresolved allocations will be submitted to an independent, internationally-recognized accounting firm mutually agreeable to Purchaser and Seller, which firm will be instructed to determine its best estimate of the allocation schedule based on its determination of the unresolved allocations and provide a written description of the basis for its determination within 45 Business Days after submission, such written determination to be final, binding and conclusive. The fees and expenses of such accounting firm will be apportioned among Seller and Purchaser equally. For the avoidance of doubt, in administering any Legal Proceeding, the Bankruptcy Court shall not be required to apply the Final Allocation Statement in determining the manner in which the Purchase Price should be allocated as between Seller and its respective estates.

(b) Seller and Purchaser and their respective Affiliates will report, act, and file Tax Returns (including, but not limited to IRS Form 8594) in all respects and for all purposes consistent with the Final Allocation Statement. Neither Seller nor Purchaser will take any position (whether in audits, Tax Returns, or otherwise) that is inconsistent with the Final Allocation Statement unless required to do so by applicable Law.

10.3 Cooperation and Audits. Purchaser, Seller and their respective Affiliates will cooperate fully with each other regarding Tax matters and will make available to the other as reasonably requested all information, records and documents relating to Taxes governed by this

Agreement until the expiration of the applicable statute of limitations or extension thereof or the conclusion of all audits, appeals or litigation with respect to such Taxes.

## XI. GENERAL GOVERNING PROVISIONS

11.1 No Survival of Representations and Warranties. The Parties agree that the representations and warranties contained in this Agreement will not survive the Closing hereunder, and none of the Parties will have any Liability to each other after the Closing for any breach thereof. The Parties agree that the covenants contained in this Agreement to be performed at or after the Closing will survive the Closing hereunder until the expiration of the applicable statute of limitations or for such shorter period explicitly specified therein, and each Party will be liable to the other after the Closing for any breach thereof.

11.2 Expenses. Except as otherwise expressly provided in this Agreement, whether or not the Transactions are consummated, each of Seller, on the one hand, and Purchaser, on the other hand, will bear its own expenses incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the Transactions and all proceedings incident thereto.

### 11.3 Injunctive Relief.

(a) The Parties agree that irreparable damages would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached, and that damages at law may be an inadequate remedy for the breach of any of the covenants, promises and agreements contained in this Agreement, and, accordingly, any Party will be entitled to injunctive relief to prevent any such breach, and to specifically enforce specifically the terms and provisions of this Agreement, including without limitation specific performance of such covenants, promises or agreements or an Order enjoining a Party from any threatened, or from the continuation of any actual, breach of the covenants, promises or agreements contained in this Agreement. The rights set forth in this Section 11.3 will be in addition to any other rights which a Party may have at law or in equity pursuant to this Agreement.

(b) The Parties hereby agree not to raise any objections to the availability of the equitable remedy of specific performance to prevent or restrain breaches of this Agreement by Purchaser or Seller, as applicable, and to specifically enforce the terms and provisions of this Agreement to prevent breaches or threatened breaches of, or to enforce compliance with, the respective covenants and obligations of Purchaser or Seller, as applicable, under this Agreement all in accordance with the terms of this Section 11.3.

### 11.4 Submission to Jurisdiction; Consent to Service of Process.

(a) Without limiting any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court will retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the Transactions, and (ii) any and all proceedings related to the foregoing will be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy

Court for such purposes and will receive notices at such locations as indicated in Section 11.8; provided, however, that if the Bankruptcy Cases have been closed pursuant to Section 350 of the Bankruptcy Code, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the Delaware Court of Chancery and any state appellate court therefrom within the State of Delaware (or in the event (but only in the event) that such court does not have subject matter jurisdiction over such Action in the United States District Court for the District of Delaware) and any appellate court from any thereof, for the resolution of any such claim or dispute. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(b) Each of the Parties hereby consents to process being served by any other Party in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 11.8; provided, however, that such service will not be effective until the actual receipt thereof by the Party being served.

11.5 Waiver of Right to Trial by Jury. Each Party to this Agreement waives any right to trial by jury in any action, matter or proceeding regarding this Agreement or any provision hereof.

11.6 Entire Agreement; Amendments and Waivers. This Agreement represents the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the Party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party, will be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any Party of a breach of any provision of this Agreement will not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder will operate as a waiver thereof, nor will any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by Law.

11.7 Governing Law. This Agreement will be governed by and construed in accordance with federal bankruptcy Law, to the extent applicable, other federal Law, where applicable, and, where state Law is implicated, the Laws of the State of Delaware applicable to contracts made and performed in such State.

11.8 Notices. All notices and other communications under this Agreement will be in writing and will be deemed given (i) when delivered personally by hand, (ii) when sent by email (with written confirmation of transmission) or (iii) one Business Day following the day sent by

overnight courier (with written confirmation of receipt), in each case at the following addresses and email addresses (or to such other address or email address as a Party may have specified by notice given to the other Party pursuant to this provision):

If to Seller, to:

c/o FTD Companies, Inc.  
3113 Woodcreek Rd.  
Downers Grove, IL 60515  
Attention: Scott Levin  
Email: XXXXXXXXXXXX

With a copy (which will not constitute notice) to:

Jones Day  
77 W. Wacker Dr. Suite 3500  
Chicago, IL 60601  
Attention: Ismail H. Alsheik  
Email: ialsheik@jonesday.com

And a copy (which will not constitute notice) to:

Jones Day  
901 Lakeside Avenue  
Cleveland, Ohio 44114  
Attention: Heather Lennox  
Email: hlennox@jonesday.com

If to Purchaser, to:

Farids & Co. LLC  
980 Hammond Drive, Suite 1000  
Atlanta, Georgia 30028  
Attention: Thomas A. Simpson  
Email: XXXXXXXXXXXX

With copies (which will not constitute notice) to:

DLA Piper LLP (US)  
444 West Lake Street, Suite 900  
Chicago, IL 60606  
Attention: Richard A. Chesley  
Email: Richard.Chesley@dlapiper.com

11.9 Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any Law or public policy, all other terms or provisions of this

Agreement will nevertheless remain in full force and effect so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties will negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the Transactions are consummated as originally contemplated to the greatest extent possible.

11.10 Assignment. This Agreement will be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns. Nothing in this Agreement will create or be deemed to create any third party beneficiary rights in any Person or entity not a party to this Agreement. No assignment of this Agreement or of any rights or obligations hereunder may be made by either Seller or Purchaser (by operation of law or otherwise) without the prior written consent of the other Party and any attempted assignment without the required consents will be void; provided, however, that (a) Purchaser may assign some or all of its rights or delegate some or all of its obligations hereunder to one or more Affiliates and (b) Seller may assign some or all of its rights or delegate some or all of its obligations hereunder to successor entities (including any liquidating trust) pursuant to a Chapter 11 plan confirmed by the Bankruptcy Court, in the case of each clause (a) and (b) without any other Party's consent. No assignment of any obligations hereunder will relieve the Parties of any such obligations. Upon any such permitted assignment, the references in this Agreement to Seller or Purchaser will also apply to any such assignee unless the context otherwise requires.

11.11 Non-Recourse. No past, present or future director, officer, employee, incorporator, member, partner, equityholder, manager, agent, attorney, Representative or Affiliate of the Parties or any of their Affiliates will have any Liability for any obligations or Liabilities of Seller or Purchaser, as applicable, under this Agreement or any agreement entered into in connection herewith or for any claim based on, in respect of, or by reason of, the transactions contemplated hereby and thereby. Any claim or cause of action based upon, arising out of, or related to this Agreement or any agreement, document or instrument contemplated hereby may only be brought against Persons that are expressly named as Parties or thereto, and then only with respect to the specific obligations set forth herein or therein. Other than the Parties, no other party will have any Liability or obligation for any of the representations, warranties, covenants, agreements, obligations or Liabilities of any Party under this Agreement or the agreements, documents or instruments contemplated hereby or of or for any Legal Proceeding based on, in respect of, or by reason of, Transactions (including the breach, termination or failure to consummate such transactions), in each case whether based on contract, tort, fraud, strict liability, other Laws or otherwise and whether by piercing the corporate veil, by a claim by or on behalf of a Party or another Person or otherwise. In no event will any Person be liable to another Person for any remote, speculative or punitive damages with respect to the Transactions.

11.12 Counterparts. This Agreement may be executed in counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

*[Signature page follows]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the Effective Date.

PURCHASER:

FARIDS & CO. LLC

By: /s/ Tariq Farid \_\_\_\_\_  
Name: Tariq Farid  
Title: Chief Executive Officer & Manager

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SELLER:

PROVIDE COMMERCE LLC

By: /s/ Scott Levin

Name: Scott Levin

Title: President and CEO

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**FTD Companies, Inc. Provides Update on Court-Supervised Restructuring Process**

*Enters into Definitive Asset Purchase Agreement with PlanetArt for Personal Creations*

*Enters into Definitive Asset Purchase Agreement with Farids & Co., LLC, which is owned by Tariq Farid, founder of Edible Arrangements, LLC, for Shari's Berries*

*Enters Amended and Restated Asset Purchase Agreement with an Affiliate of Nexus Capital Management for North America and Latin America FTD Consumer and Florist Businesses, including ProFlowers*

*FTD and Other Floral and Gifting Businesses Continue to Operate in the Ordinary Course*

**DOWNERS GROVE, Ill. — June 24, 2019** — FTD Companies, Inc. (Nasdaq: FTD) (the “Company”), a premier floral and gifting company, today provided an update on its court-supervised restructuring process. The Company has:

- Entered into a definitive asset purchase agreement with PlanetArt to acquire Personal Creations for \$18.1 million in cash, subject to customary adjustments;
- Entered into a definitive asset purchase agreement with Farids & Co., LLC, which is owned by Tariq Farid, founder of Edible Arrangements, LLC, to acquire Shari's Berries for \$5.0 million in cash, subject to customary adjustments; and
- Entered into an amended and restated definitive asset purchase agreement with an affiliate of Nexus Capital Management LP to acquire FTD's North America and Latin America Consumer and Florist businesses, including ProFlowers, for \$95.0 million in cash, subject to customary adjustments. The amended and restated agreement eliminates certain closing conditions and termination rights included in the previously announced agreement.

The Company is operating in the ordinary course and remains focused on supporting its extensive network of member florists and business partners connected by its iconic FTD brand in North America and Latin America. The Company's other businesses, including ProFlowers, Shari's Berries and Personal Creations, are also continuing to provide floral, specialty food, gift and related products to consumers.

Scott Levin, FTD's President and Chief Executive Officer, said, “We are making progress implementing our strategic initiatives. Nexus Capital, PlanetArt and Farids would each bring stability and expertise to continue growing our businesses and providing customers the outstanding service they expect. As we move through this process, we continue to serve customers and support our member florists and business partners in the ordinary course.”

The asset purchase agreements are subject to certain customary closing conditions. The asset purchase agreements also remain subject to higher or better offers, as well as to approval of the Bankruptcy Court. The Company will seek to close the transactions as soon as possible and in accordance with milestones agreed to with its DIP lenders.

**Additional Information**

Additional information about the court-supervised restructuring process is available on the Company's restructuring website, [www.FTDrestructuring.com](http://www.FTDrestructuring.com). In addition, Bankruptcy Court filings and other information related to the court proceedings are available on a separate website administered by the Company's claims agent, Omni Management Group, at [www.omnimgt.com/FTD](http://www.omnimgt.com/FTD), or by calling Omni representatives toll-free at 1-866-205-3144 or 1-818-906-8300 for calls originating outside of the U.S.

Jones Day is serving as legal advisor to the Company, Moelis & Company LLC and Piper Jaffray & Co. are serving as its investment bankers and financial advisors, and AP Services, LLC, an affiliate of AlixPartners, is providing Chief Restructuring Officer services.

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## **About FTD Companies, Inc.**

FTD Companies, Inc. is a premier floral and gifting company. Through our diversified family of brands, we provide floral, specialty foods, gifts, and related products to consumers primarily in North America. We also provide floral products and services to retail florists and other retail locations throughout these same geographies. FTD has been delivering flowers since 1910, and the highly-recognized FTD® brand is supported by the iconic Mercury Man® logo, which is displayed in over 30,000 floral shops in more than 125 countries. In addition to FTD, our diversified portfolio of brands includes the following trademarks: ProFlowers®, Shari's Berries®, Personal Creations®, Gifts.com™, and ProPlants®. FTD Companies, Inc. is headquartered in Downers Grove, Ill. For more information, please visit [www.ftdcompanies.com](http://www.ftdcompanies.com).

## **Forward-Looking Statements**

This press release contains certain forward-looking statements within the meaning of the "safe harbor" provisions of the Private Securities Litigation Reform Act of 1995, as amended, based on our current expectations, estimates and projections about our operations, industry, financial condition, performance, results of operations, and liquidity. Statements containing words such as "may," "believe," "anticipate," "expect," "intend," "plan," "project," "projections," "business outlook," "estimate," or similar expressions constitute forward-looking statements. These forward-looking statements include, but are not limited to, statements regarding expectations about the timing and execution of the Company's strategic transactions (including the contemplated sales of substantially all of the Debtors' assets), the Company's future financial condition and future business plans and expectations, including statements related to the effect of, and our expectations with respect to, the operation of our business, adequacy of financial resources and commitments, and the operating expectations during the pendency of the Chapter 11 cases and impacts to its business related thereto. Potential factors that could affect such forward-looking statements include, among others, risks and uncertainties relating to the Chapter 11 cases, including, but not limited to, the Company's ability to obtain Bankruptcy Court approval of motions filed in the Chapter 11 cases (including, but not limited to, the DIP motion and the bidding procedures motion), the effects of the Chapter 11 cases on the Company and on the interests of various constituents, Bankruptcy Court rulings in the Chapter 11 cases and the outcome of the Chapter 11 cases in general, the length of time the Company will operate under the Chapter 11 cases, risks associated with third-party motions in the Chapter 11 cases, the potential adverse effects of the Chapter 11 cases on the Company's liquidity or results of operations and increased legal and other professional costs necessary to execute the Company's restructuring strategy; the conditions to which the Company's DIP financing is subject and the risk that these conditions may not be satisfied for various reasons, including for reasons outside of the Company's control; the Company's and the Debtors' ability to consummate sales of substantially all of the Debtors' assets consistent with the milestones set forth in the interim DIP order of the Bankruptcy Court and the terms and conditions of any such sales; the Company's ability to implement operational improvement efficiencies; uncertainty associated with evaluating and completing any further strategic or financial alternative as well as the Company's ability to implement and realize any anticipated benefits associated with any alternative that may be pursued; the consequences of the acceleration of our debt obligations; trading price and volatility of the Company's common stock and the risks related to the Company's delisting from Nasdaq and trading on the OTC Pink Market and the other factors disclosed in the section entitled "Risk Factors" in our most recent Annual Report on Form 10-K filed with the U.S. Securities and Exchange Commission ("SEC"), as updated from time to time in our subsequent filings with the SEC. Readers are cautioned not to place undue reliance on these forward-looking statements, which reflect management's analysis only as of the date hereof. Such forward-looking statements are not guarantees of future performance or results and involve risks and uncertainties that may cause actual performance and results to differ materially from those predicted. Reported results should not be considered an indication of future performance. Except as required by law, we undertake no obligation to publicly release the results of any revision to these forward-looking statements that may be made to reflect events or circumstances after the date hereof or to reflect the occurrence of unanticipated events.

## **Contacts**

Michael Freitag / Aaron Palash / Aura Reinhard  
Joele Frank, Wilkinson Brimmer Katcher  
212-355-4449

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