

# GORDMANS STORES, INC.

## **FORM 8-K** (Current report filing)

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Address	1926 SOUTH 67TH STREET OMAHA, NE 68106
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Sector	Consumer Cyclical
Fiscal Year	01/28

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**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington D.C. 20549

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**FORM 8-K**

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**CURRENT REPORT**  
Pursuant to Section 13 or 15(d) of the  
Securities Exchange Act of 1934

**Date of Report (date of earliest event reported): March 31, 2017**

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**GORDMANS STORES, INC.**

(Exact name of registrant as specified in its charter)

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**Delaware**  
(State or other jurisdiction of  
incorporation or organization)

**001-34842**  
(Commission  
File Number)

**26-3171987**  
(IRS Employer  
Identification No.)

**1926 South 67<sup>th</sup> Street**  
**Omaha, Nebraska 68106**  
(Address of principal executive offices, zip code)

**(402) 691-4000**  
(Registrant's telephone number, including area code)

(Former name or former address, if changed since last report)

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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))
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**Item 1.01 Entry Into a Material Definitive Agreement**

As previously reported on the current report on Form 8-K filed by Gordmans Stores, Inc. (the “Company”) on March 13, 2017, the Company and its subsidiaries (collectively, the “Debtors”) filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code (the “Chapter 11 Filings”) in the United States Bankruptcy Court for the District of Nebraska (the “Bankruptcy Court”) on March 13, 2017 (the “Petition Date”). The Chapter 11 cases are being jointly administered by the Bankruptcy Court under the caption *In re Gordmans Stores, Inc., et al.* Case No. 17-80304 (the “Chapter 11 Cases”).

On March 31, 2017, the Debtors entered into (i) an Asset Purchase Agreement (the “Purchase Agreement”) with Specialty Retailers, Inc. (“Purchaser”), a subsidiary of Stage Stores, Inc., and (ii) an Agency Agreement with Purchaser and a joint venture comprising Tiger Capital Group, LLC (“Tiger”) and Great American Group WF, LLC (“Great American” and together with Tiger, the “Liquidator”). On April 6, 2017, the Bankruptcy Court entered an order approving the Purchase Agreement and Agency Agreement, and the transaction contemplated thereby.

Pursuant to the Purchase Agreement, Purchaser will acquire (i) at least 50 of the Debtors’ store leases with rights to assume an additional seven store leases and a distribution center, and certain other contracts associated therewith, (ii) all of the Debtors’ inventory, furniture, fixtures, equipment and other assets at each such store locations and (iii) the Debtors’ trademarks and other intellectual property from the Debtors. Purchaser will also assume certain liabilities associated with the acquired assets. The closing of the transactions contemplated by the Purchase Agreement is subject to customary conditions, including the accuracy of representations and warranties made by the parties in the Purchase Agreement. The Purchase Agreement may also be terminated by either the Debtors or Purchaser upon the occurrence of specified events, including if the Agency Agreement is terminated for any reason.

The Agency Agreement provides for the sale in liquidation of the inventory, fixtures and other assets of all of the Debtors’ retail stores that are not acquired by Purchaser pursuant to the Purchase Agreement, as well as certain other assets of the Debtors that are not otherwise acquired by Purchaser. The Agency Agreement may be terminated by either the Debtors or Purchaser and Liquidator upon the occurrence of specified events, including if the Purchase Agreement is terminated for any reason.

The aggregate consideration payable to the Debtors under the Purchase Agreement and Agency Agreement is \$74.2 million, subject to adjustment as set forth in the Agency Agreement, plus a portion of the proceeds from sales of fixtures, furniture and equipment and sales of the Debtors’ e-commerce inventory.

The transactions contemplated by the Purchase Agreement and Agency Agreement supersede the transactions contemplated by the Stalking Horse Agency Agreement, dated March 13, 2017, between the Debtors and the Liquidator, as previously disclosed on the Company’s Current Report on Form 8-K filed March 13, 2017.

The foregoing description of the Purchase Agreement and Agency Agreement is qualified in its entirety by reference to the Purchase Agreement and the Agency Agreement, which are attached hereto as Exhibits 2.1 and 2.2, respectively, and are incorporated herein by reference.

*Cautionary Note Regarding the Chapter 11 Cases*

The Company’s security holders are cautioned that trading in securities of the Company during the pendency of the Chapter 11 Cases will be highly speculative and will pose substantial risks. It is possible some or all of the Company’s currently outstanding securities may be cancelled and extinguished upon confirmation of a restructuring plan by the Bankruptcy Court. In such an event, the Company’s security holders would not be entitled to receive or retain any cash, securities or other property on account of their cancelled securities. Trading prices for the Company’s securities may bear little or no relation to actual recovery, if any, by holders thereof in the Company’s Chapter 11 Cases. Accordingly, the Company urges extreme caution with respect to existing and future investments in its securities.

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## Forward Looking Statements

This Current Report on Form 8-K contains “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995. These forward-looking statements often include words such as “believe,” “expect,” “project,” “anticipate,” “intend,” “plan,” “estimate,” “seek,” “will,” “may,” “would,” “should,” “could,” “forecasts” or similar expressions. These statements about the Company’s expectations, beliefs, plans, objectives, assumptions and future events are not statements of historical fact and reflect only current expectations regarding these matters. The Company’s actual actions and results may differ materially from what is expressed or implied by these statements due to a variety of factors, including: (i) the potential adverse impact of the Chapter 11 Filings on the Company’s liquidity or results of operations; (ii) changes in the Company’s ability to meet financial obligations during the Chapter 11 Cases or to maintain contracts that are critical to its operations; (iii) the outcome or timing of the Chapter 11 Cases; (iv) the effect of the Chapter 11 Filings on the Company’s relationships with customers, vendors, employees and third parties; (v) the actions and decisions of creditors and other third parties that have an interest in the Chapter 11 Cases, including proceedings that may be brought by third parties in connection with the Chapter 11 Cases; (vi) the Debtors’ ability to obtain the approval of the Bankruptcy Court with respect to motions filed in the Chapter 11 Cases and the outcomes of Bankruptcy Court rulings and the Chapter 11 Cases in general, including approval of the Purchase Agreement and the Agency Agreement; (vii) restrictions on the Debtors due to restrictions imposed by the Bankruptcy Court; (viii) the increased administrative costs related to the Chapter 11 Cases; (ix) the Company’s ability to maintain adequate liquidity to fund operations during the Chapter 11 Cases; and (x) other factors listed from time to time in the Company’s filings with the Securities and Exchange Commission. Forward-looking statements speak only as of the date on which they are made and the Company undertakes no obligation to update or revise any forward-looking statements, whether as a result of new information, future events or otherwise, except as required by law.

### Item 9.01 Financial Statements and Exhibits

#### (d) Exhibits

<u>Exhibit Number</u>	<u>Description</u>
2.1	Asset Purchase Agreement, dated March 31, 2017, by and among Gordmans Stores, Inc., its subsidiaries, and Specialty Retailers, Inc.
2.2	Agency Agreement, dated March 31, 2017, by and between Gordmans Stores, Inc., its subsidiaries, Specialty Retailers, Inc., Tiger Capital Group, LLC and Great American Group WF, LLC

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**SIGNATURE**

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.

**GORDMANS STORES, INC.**

Date: April 6, 2017

By:           /s/ James B. Brown          

Name: James B. Brown

Title: Executive Vice President, Chief Financial Officer, Treasurer, and  
Assistant Secretary

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**EXHIBIT INDEX**

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**ASSET PURCHASE AGREEMENT**

**dated as of March 31, 2017**

**among**

**SPECIALTY RETAILERS, INC.,**

**as Purchaser**

**and**

**GORDMANS STORES, INC.,  
and the other Sellers identified herein,**

**as Sellers**

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**Exhibits**

- Exhibit A — Agency Agreement
- Exhibit B — Form of Sale Order

**Schedules**

- Schedule 1.1(a) — Acquired Intellectual Property
- Schedule 1.1(b) — Closing Stores
- Schedule 1.1(c) — Designation Rights Stores
- Schedule 1.1(d) — Estimated Cure Costs
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- Schedule 4.10(b) — Leases

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (including all the Exhibits and the Schedules (each as defined below) hereto, as the same may be amended, supplemented, amended and restated, or otherwise modified from time to time in accordance with its terms, this “Agreement”) is made and entered into as of this 31st day of March, 2017, by and among (i) Specialty Retailers, Inc., a Texas corporation (“Purchaser”), and (ii) Gordmans Stores, Inc., a Delaware corporation, Gordmans Intermediate Holding Corp., a Delaware corporation, Gordmans, Inc., a Delaware corporation, Gordmans Management Company, Inc., a Delaware corporation, Gordmans Distribution Company, Inc., a Kansas corporation, and Gordmans LLC, a North Dakota limited liability company (each, a “Seller”, and collectively, “Sellers”).

WHEREAS, Sellers filed voluntary petitions under Chapter 11 of Title 11 of the United States Code (as amended, the “Bankruptcy Code”) with the United States Bankruptcy Court for the District of Nebraska (the “Bankruptcy Court”) on March 13, 2017 (the “Petition Date”);

WHEREAS, on March 22, 2017, the Bankruptcy Court entered an order approving bidding procedures for a sale of all or substantially all of Sellers’ assets (the “Bidding Procedures Order”);

WHEREAS, Sellers, Purchaser, a joint venture consisting of Tiger Capital Group, LLC and Great American Group WF, LLC (such joint venture, the “JV Agent”) and Wells Fargo Bank, National Association (on behalf of itself and certain other lenders), are simultaneously entering into that certain Agency Agreement pursuant to which Sellers are to retain the JV Agent and Purchaser to serve as Sellers’ exclusive agent for the limited purpose of selling or otherwise disposing of certain of Sellers’ assets, a copy of which is attached hereto as Exhibit A (the “Agency Agreement”);

WHEREAS, Sellers and Purchaser are entering into this Agreement in accordance with the terms of the Agency Agreement;

WHEREAS, the parties to this Agreement intend to effectuate the transactions contemplated by this Agreement and the Agency Agreement through a sale pursuant to Section 363 of the Bankruptcy Code;

WHEREAS, Sellers desire to sell to Purchaser the Designation Rights and the Acquired Assets and Purchaser desires to purchase from Sellers the Designation Rights and the Acquired Assets, in each case upon the terms and conditions set forth herein and in the Agency Agreement; and

WHEREAS, the execution and delivery of this Agreement and Sellers’ and the JV Agent’s ability to consummate the transactions set forth herein and in the other Transaction Documents are subject to, *inter alia*, entry of an Order of the Bankruptcy Court approving this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations and warranties contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

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ARTICLE I

DEFINITIONS AND RULES OF CONSTRUCTION

**Section 1.1. Definitions.** Unless otherwise defined herein, terms used herein shall have the meanings set forth below:

“Acquired Assets” has the meaning set forth in Section 2.1(c) hereof.

“Acquired FF&E” means any and all “Owned FF&E” (as such term is defined in the Agency Agreement) located in, or otherwise held for sale at, any Designation Rights Store or the Nebraska Distribution Center.

“Acquired Intellectual Property” means all Intellectual Property owned or licensed by any Seller (excluding any licenses of commercially available Software), including Trademark rights in the Names and each Seller’s Intellectual Property listed on Schedule 1.1(a) but excluding any Contract.

“Acquired Inventory” means any and all Inventory located in, or otherwise held for sale at, any Designation Rights Store or the Nebraska Distribution Center.

“Acquired Lease” means any Lease which is assumed and assigned by any of Sellers to Purchaser pursuant to the exercise by Purchaser of the Designation Rights.

“Acquired Property” means any Designation Rights Property which is subject to an Acquired Lease.

“Acquired Property Assets” means, collectively, any and all fixtures, furnishings and equipment, leasehold improvements, IT Assets, Books and Records, cash, deposit and other accounts, receivables and all other tangible and intangible property owned by any Seller (other than any Contract or Lease), in each case, that is located within or at, or used primarily with respect to the operation of, any Acquired Property.

“Affiliate” of any particular Person means any other Person controlling, controlled by or under common control with such particular Person, where “control” means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether through the ownership of voting securities or otherwise.

“Agency Agreement” has the meaning set forth in the Preamble hereto.

“Agreement” has the meaning set forth in the Preamble hereto.

“Allocation” has the meaning set forth in Section 12.1(a) hereof.

“Alternative Transaction” means a sale, transfer or other disposition, directly or indirectly, whether by means of an asset sale, merger, sale of stock or otherwise, and including a plan of reorganization approved by the Bankruptcy Court, of any material portion of the Potential Acquired Assets (including any Potential Assigned Agreement) to a party other than Purchaser, whether in a single transaction or a series of transactions, other than sales of Inventory in the Ordinary Course of Business.

“Assigned Agreements” means (a) the Acquired Leases and (b) solely to the extent expressly designated for assignment to, and assumption by, Purchaser by a Purchaser Assumption Notice delivered to Sellers prior to the expiration of the applicable Designation Rights Period, any Designation Rights Contract, in each case, with respect to which an Order has been entered by the Bankruptcy Court (which may be the Sale Order) authorizing the assumption and assignment of such Lease or Contract.

“Assignment Agreement” has the meaning set forth in Section 2.4(b).

“Assignment and Assumption” has the meaning set forth in Section 10.2(d) hereof.

“Assignment Date” has the meaning set forth in Section 2.4(d).

“Assignment Order” means an Order of the Bankruptcy Court in form and substance (a) acceptable to Purchaser in its sole discretion and (b) reasonably acceptable to Sellers and in respect of a Lease (and any related Potential Acquired Assets) of a Designation Rights Property or a Designation Rights Contract.

“Assumed Obligations” has the meaning set forth in Section 2.7(a) hereof.

“Assumed Permits” means all Permits relating to any Acquired Property (or the operation of the Business therein) that are transferable in accordance with their terms and applicable Law.

“Bankruptcy Code” has the meaning set forth in the Recitals hereto.

“Bankruptcy Court” has the meaning set forth in the Recitals hereto.

“Benefit Plan” means any (a) “employee benefit plan” (as such term is defined in Section 3(3) of ERISA) or (b) other benefit or compensation plan, program, agreement, policy, arrangement or practice of any kind, whether or not subject to ERISA (including any funding mechanism therefor now in effect or required in the future), including any contemplated by this Agreement or otherwise), including any plan, program, agreement, arrangement, policy or practice that is a pension, profit-sharing, savings, retirement, employment, consulting, severance pay, termination, executive compensation, incentive compensation, deferred compensation, bonus, stock purchase, stock option, phantom stock or other equity-based compensation, change in control, retention, salary continuation, commission, Tax gross-up or reimbursement, vacation, holiday, sick leave, disability, death benefit, group insurance, hospitalization, medical, dental, life (including all individual life insurance policies as to which any Seller is the owner, the beneficiary, or both), Code Section 125 “cafeteria” or “flexible” benefit, employee loan, educational assistance or fringe benefit plan, program, agreement, policy, arrangement or practice of any kind, whether written or oral, in each case, that is sponsored, maintained or contributed to by any Seller, or for which a Seller has any obligation to sponsor, maintain or contribute to, or for which a Seller has any Liability.

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“Bidding Procedures Order” has the meaning set forth in the Preamble hereto.

“Books and Records” means, in any format (including written or electronic (and including on hard drives and those located on remote servers, whether operated by Sellers or third party providers)), the books, records (including Inventory records), Tax Returns, information (including cost and pricing information), Marketing Materials, ledgers, files, invoices, documents, work papers, correspondence, lists (including Customer Lists, supplier lists and mailing lists), plans (including business plans), drawings, designs, specifications, creative materials, advertising and promotional materials, studies, reports, catalogs, manuals, data and similar materials, in each case, relating to any Acquired Property (or, in each case, the operation of the Business therein); provided that “Books and Records” shall not include the originals of any Sellers’ minute books, stock books, personnel records pertaining to Employees who do not become Transferred Employees and Tax Returns.

“Business” means the activities carried on by Sellers relating to the operation of a hybrid of specialty, department store and off-price retailers featuring a wide merchandise assortment including apparel and footwear for men, women and children, accessories, fragrances and home fashions.

“Business Day” means each day other than a Saturday, a Sunday or a day on which banking institutions are not required to be open in the State of Nebraska.

“Cash Collateral Order” means any Order in respect of cash collateral usage approved by the Bankruptcy Court, including the interim Order of the Bankruptcy Court dated March 17, 2017.

“Cash Consideration” has the meaning set forth in Section 3.1 hereof.

“Chapter 11 Cases” means the cases to be commenced by Sellers under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court.

“Claim” has the meaning set forth in Section 101(5) of the Bankruptcy Code.

“Closing” has the meaning set forth in Section 10.1 hereof.

“Closing Date” has the meaning set forth in Section 10.1 hereof.

“Closing Store” means each of Sellers’ retail store locations described on Schedule 1.1(b) attached hereto.

“COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

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

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“Collective Bargaining Agreement” has the meaning set forth in Section 4.8(a) hereof.

“Consent” means any approval, consent, ratification, permission, clearance, designation, qualification, waiver or authorization, or an Order of the Bankruptcy Court that deems or renders unnecessary the same.

“Contract” means any agreement, contract, commitment, indenture, mortgage, instrument, guaranty, loan or credit agreement, note, bond, customer order, purchase order, sales order, or other binding arrangement, understanding or permission, whether written or oral, to which any Seller is a party and which such Seller is permitted to assign under the Bankruptcy Code and Purchaser to assume, other than any Lease.

“Copyright” means all United States and foreign copyrights and copyrightable subject matter, whether registered or unregistered, including all United States copyright registrations and applications for registration and foreign equivalents, all moral rights, all common law copyright rights, all renewals, extensions, restorations and reversions thereof, and all rights to register and obtain any of the foregoing, together with all copyright rights accruing by reason of any international copyright convention.

“Cure Costs” has the meaning set forth in Section 2.6(a) hereof.

“Customer Lists” means any and all lists and databases of current and past customers in the possession of, or under the control of, Sellers, including any and all information relating in any way to the use of such lists and databases, including (a) Personal Information and (b) customer purchase history at a transaction level (including with respect to dollar amounts, dates, and items purchased), but excluding from the foregoing any credit card numbers or other information to the extent transfer of such lists and databases is prohibited by any Data Security Requirements.

“Data Security Requirements” means, collectively, all of the following to the extent relating to privacy, security of data and databases, or security of Personal Information (including related security breach notification requirements): (a) each Seller’s own rules, policies and procedures; (b) all applicable Regulations; and (c) industry standards applicable to the industry in which the Business is conducted (including the Payment Card Industry Data Security Standard).

“Deposit” has the meaning set forth in Section 3.2 hereof.

“Designation Rights” means the exclusive right to select, identify and designate (on one or more occasions), as applicable (a) any Designation Rights Property in respect of which (i) Purchaser will acquire all of Sellers’ right, title and interest in and to the applicable Lease, together with all of Sellers’ right, title and interest in and to the related Potential Acquired Assets or (ii) the applicable Lease shall be rejected and (b) any Designation Rights Contract in respect of which (i) Purchaser will acquire all of Sellers’ right, title and interest in and to such Designation Rights Contract or (ii) such Designation Rights Contract shall be rejected, in each case (a) and (b), all in accordance with the terms and conditions of this Agreement; provided that Purchaser may not exercise the Designation Rights so as to cause the assumption, assignment or rejection of any Designation Rights Contract not exclusively related to the Designation Rights

Properties (without the consent of JV Agent (such consent not to be unreasonably withheld)) (i) prior to the Sale Termination Date with respect to all Closing Stores and the Indiana Distribution Center, to the extent such action would reasonably be expected to materially impair either JV Agent's conduct of liquidation sales at the Closing Stores or the Indiana Distribution Center or Sellers' ability to perform under the Agency Agreement or (ii) to the extent such action would reasonably be expected to materially impair JV Agent's sale of Owned FF&E (as defined in the Agency Agreement) at the Headquarters or Call Center (as defined in the Agency Agreement).

"Designation Rights Asset" means any Designation Rights Contract or Designation Rights Property.

"Designation Rights Contract" means any Contract to which any Seller is a party, other than any Contract exclusively related to any Closing Store or the Indiana Distribution Center (or the operation of the Business therein).

"Designation Rights Period" means, with respect to any Designation Rights Asset, the period commencing upon the Closing and ending on July 31, 2017; provided that the Designation Rights Period with respect to any Lease of a Designation Rights Property or any Designation Rights Contract shall be deemed terminated (i) five (5) business days after the delivery of a Purchaser Rejection Notice or (ii) the occurrence of the Assignment Date with respect thereto.

"Designation Rights Property" means any of the Designation Rights Stores and the Nebraska Distribution Center, each of which is subject to Designation Rights.

"Designation Rights Store" means each of Sellers' retail store locations described on Schedule 1.1(c) attached hereto.

"Disclosure Schedules" has the meaning set forth in Section 4.1 hereof.

"dollar" or "\$" means dollars in the lawful currency of the United States of America.

"Domain Names" means any alphanumeric designation registered with or assigned by a domain name register, registry or domain name registration authority as part of an electronic address on the Internet. For clarity, a Domain Name may also embody a Trademark.

"Electronic Delivery" has the meaning set forth in Section 13.5 hereof.

"Employee" means every officer or employee of any Seller who, as of the Closing Date, is employed by one of the Sellers, including any such employee who is on (a) temporary leave for purposes of jury or military duty, (b) vacation, (c) maternity or paternity leave, leave under the Family Medical Leave Act of 1993, approved personal leave or short term-disability or medical leave or (d) any other employer-approved leave of absence.

"Environmental, Health and Safety Requirements" means, as enacted and in effect on or prior to the Closing Date, all applicable Laws concerning Hazardous Substances, worker health and safety, pollution or the protection of the environment.

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“ERISA” means the United States Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means any Person that would be considered a single employer with any Seller under Section 4001 of ERISA or Section 414 of the Code.

“Excess Cure Cost” means, with respect to any individual Assigned Agreement, the amount of Cure Costs with respect to such Assigned Agreement as determined by the Bankruptcy Court that exceeds the expected amount of Cure Costs set forth on Schedule 1.1(d) with respect to such Assigned Agreement.

“Excluded Assets” means Sellers’ properties, assets, rights, titles and interests that are not Acquired Assets.

“Excluded Employee Liabilities” means each of the following:

(a) (i) any Seller’s or any of its Affiliates’ obligations to contribute to, make payments with respect to, or provide benefits under any Benefit Plan; (ii) any and all Liabilities of any Seller or its ERISA Affiliates arising out of, relating to, or resulting from any Title IV Plan or Multiemployer Plan, or any Benefit Plan providing for retiree health, welfare or other post-employment benefits; and (iii) any and all Liabilities of any Seller under or in respect of any employee benefit plan pursuant to any statute or regulation that imposes Liability on a “controlled group” or similar basis (as used in Section 4001 of ERISA or Section 414 of the Code or similar Law or Regulation), as a result of a Seller being an ERISA Affiliate (or term of like import) prior to the Closing Date with respect to any other Person;

(b) any and all Liabilities of any Seller or its Affiliates arising out of, relating to, or resulting from the services or termination of services with any Seller or its Affiliates of any Participant, or with respect to any applicant for employment or other prospective Participant, including (i) payments, benefits or entitlements that any Seller or any of its Affiliates owe to any such Participant, including (A) wages, salary, other remuneration, (B) insurance premiums and (C) benefits, insurance premiums, or other payments (statutory or otherwise) under any Benefit Plan; (ii) any and all Liabilities under the WARN Act or any other labor or employment laws arising out of, relating to, or resulting from actions, inactions or practices of any Seller or any of its Affiliates; (iii) any and all Liabilities to the extent arising out of, relating to, or resulting from workers’ compensation Claims and occupational health Claims against any Seller or any of its Affiliates or related to the Acquired Assets (including and with respect to Transferred Employees and former employees of any Seller who worked or who were employed at the Acquired Assets); and (iv) any misclassification prior to Closing of any such Participant as an independent contractor rather than as an employee;

(c) any and all Liabilities arising out of, relating to, or resulting from (i) any employment, severance, retention, termination or similar Contract with any Participant, including any obligation to provide any Tax gross-up or other payment as a result of the imposition of any excise Tax required by Section 4999 of the Code or any Taxes required by Section 409A of the Code; and (ii) any current, former or negotiated Collective Bargaining Agreement; and

(d) any and all Liabilities arising out of, relating to, or resulting from any lawsuits, grievances, unfair labor practice charges, arbitrations, charges, investigations, hearings, actions, Claims or proceedings (including any administrative investigations, charges, Claims, actions or proceedings) relating to any Liabilities described in clauses (a) through (c) above.

“Exhibits” means the exhibits hereto.

“GAAP” means, at a given time, United States generally accepted accounting principles, consistently applied.

“Governmental Authority” means any United States federal, state or local or any foreign government, governmental regulatory or administrative authority, agency or commission or any court, tribunal or judicial or arbitral body, including the Bankruptcy Court.

“Hazardous Substance” means any substance that is listed, defined, designated or classified as hazardous, toxic or otherwise harmful under applicable Laws or is otherwise regulated by a Governmental Authority, including petroleum products and byproducts, asbestos-containing material, polychlorinated biphenyls, lead-containing products and mold.

“Headquarters” means the corporate headquarters of Sellers located at 1926 South 67th Street, Omaha, NE 68106.

“Hire Date” has the meaning set forth in Section 6.5(a) hereto.

“Indiana Distribution Center” means the distribution center of the Business operated at 70 West Commerce Park, County Road 1000 S, Monrovia, Indiana.

“Intellectual Property” means any and all worldwide rights in and to all intellectual property (whether arising under statutory or common law, contract or otherwise), which includes all of the following: (a) inventions, discoveries, processes, designs, techniques, developments and related improvements whether or not patentable; (b) Patents; (c) Trademarks, trade dress, trade names, corporate names, fictitious names, translations of any of the foregoing or other source identifiers or indicia of origin, all applications to register any of the foregoing, together with all goodwill associated with any of the foregoing, and any foreign or international equivalent of any of the foregoing; (d) Domain Names and applications and/or registrations therefor; (e) Trade Secrets and know-how; (f) rights in Customer Lists; (g) rights associated with works of authorship (whether copyrightable or not), including Copyrights, design rights, rights in databases, and website and social media site content; (h) rights in social media accounts; and (i) rights in Software.

“Inventory” means “Merchandise” as such term is defined in the Agency Agreement (including, for the avoidance of doubt, all exceptions thereto contained therein).

“IT Assets” means rights, title and interests of Sellers in and to computers, computer hardware, Software, firmware, middleware, servers, networks, workstations, routers, hubs, circuits, switches, data communications lines, telephones, and all other information technology equipment and all associated documentation, but in all cases excluding any Contract.

“JV Agent” has the meaning set forth in the Preamble hereto.

“Knowledge of Sellers” means the actual knowledge, information and belief of Sellers’ senior executive officers, without inquiry, in their respective capacity as senior executive officers of Sellers only and not in their personal capacity or in any other capacity, and without personal Liability, as of the date of this Agreement.

“Law” means any federal, state, provincial, local, municipal, foreign or other law, statute, legislation, constitution, principle of common law, resolution, ordinance (including with respect to zoning or other land use matters), code, treaty, convention, rule, regulation, requirement, edict, directive, pronouncement, determination, proclamation or decree of any Governmental Authority.

“Lease” or “Leases” means all leases, subleases, licenses, concessions and other similar agreements, including all amendments, extensions, renewals, guarantees and other agreements with respect thereto, in each case pursuant to which any Seller holds any rights or obligations with respect to any Leased Real Property constituting a Designation Rights Property.

“Leased Real Property” means all leasehold or subleasehold estates and other rights to use or occupy any land, buildings, structures, improvements, fixtures or other interest in real property of Sellers or any of their Affiliates which is used in connection with the Business, including the Headquarters, the Nebraska Distributions Center, the Indiana Distribution Center and each store location.

“Liability” means a Claim of any kind or nature whatsoever (whether known or unknown, direct or indirect, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due).

“Lien” means any lien (statutory or otherwise), hypothecation, encumbrance, Claim, Liability, security interest, interest, mortgage, pledge, restriction, charge, instrument, license, preference, priority, security agreement, easement, covenant, encroachment, option, right of recovery or Order of any Governmental Authority.

“Marketing Materials” means all marketing materials, marketing research data, sales information, product literature, promotional materials and data, advertising and display materials (including all underlying designs, samples, charts, diagrams, photos and electronic files related to the foregoing) and all training materials, in each case in whatever form or medium (e.g., audio, visual, digital or print) owned by any Seller and related to any Acquired Asset as of the Closing Date.

“Material Adverse Effect” means any event, change, development, circumstance, effect, condition, state of facts or occurrence which has had or would reasonably be expected to have, individually or when considered together with any other events, changes, developments,

circumstances, effects, conditions, states of facts or occurrences, (a) a material adverse effect on or a material adverse change in or to the Acquired Assets, taken as a whole, or (b) a material adverse effect (including a material delay or impairment) on the ability of Sellers to consummate the transactions contemplated by this Agreement on the terms set forth herein and by the other Transaction Documents; provided that no event, change, development, circumstance, effect, condition, state of facts or occurrence related to any of the following shall be deemed to constitute, and none of the following shall be taken into account in determining whether there has been a 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, hostilities, acts of war, sabotage or terrorism or military actions or any escalation or material worsening of any such earthquakes, hostilities, acts of war, sabotage or terrorism or military actions; (iv) any change in applicable Laws, accounting rules, regulatory conditions or political conditions or any action of any Governmental Authority; (v) any effect resulting from the public announcement of this Agreement or the Chapter 11 Cases; (vi) any effect resulting from (A) the commencement or filing of the Chapter 11 Cases, (B) any Order of the Bankruptcy Court or any actions or omissions of Sellers in compliance therewith or (C) any objections in the Bankruptcy Court to (1) this Agreement or any Transaction Document or the transactions contemplated hereby or thereby, (2) the reorganization of Sellers and any related plan of reorganization or disclosure statement, (3) the assumption or rejection of any Contract; (vii) any effect resulting from Sellers taking actions required by the terms of this Agreement; or (viii) any effects resulting from the failure of Sellers to meet internal or public forecasts, projections, predictions, guidance, estimates, milestones or budgets (it being understood that other than as specifically excluded herein, the facts or occurrences giving rise to or contributing to such failure may be deemed to constitute, or be taken into account in determining whether there has been or will be, a Material Adverse Effect), except, in the case of clauses (i), (ii), (iii) and (iv), to the extent the same disproportionately adversely affects the Acquired Assets, taken as a whole, as compared to other similarly situated businesses.

“ Multiemployer Plan ” means a multiemployer plan as defined in Section 3(37) or 4001(a)(3) of ERISA.

“ Names ” means “ Gordmans ” and “ Gordmans Stores ” with and without design, and any variations of the foregoing, including any confusingly similar trade names, symbols, Trademarks, service marks, logos and trade dress owned or licensable as of immediately prior to the Closing by either Seller or any of their Affiliates engaged in the conduct of the Business.

“ Nebraska Distribution Center ” means the distribution center of the Business operated at 9202 F Street, Omaha, Douglas County, Nebraska 68127.

“ Occupancy Expenses ” has the meaning assigned to such term in the Agency Agreement.

“ Order ” means any decree, order, injunction, rule, judgment, or Consent of or by any Governmental Authority.

“ Ordinary Course of Business ” means the ordinary and usual course of normal day-to-day operations of the Business (including with respect to ordering and purchasing Inventory, and making capital, sales and marketing expenditures) consistent with past practice. For the avoidance of doubt, the “Ordinary Course of Business” shall not include any extraordinary discounting of Inventory.

“Participant” means any current or former officer, director, employee, leased employee, consultant, independent contractor, volunteer, or “temp” or other individual service provider (or their respective beneficiaries) of a Seller or its Affiliates.

“Patents” means United States and foreign patents, patent applications, patent registrations, provisional applications and patents issuing therefrom, as well as any continuations, continuations-in-part, divisions, extensions, reexaminations, supplemental examinations, inter partes reviews, post-grant oppositions, substitutions, reissues or renewals, patent disclosures, inventions, discoveries (whether or not patentable or reduced to practice) or improvements thereto and any foreign or international equivalent of any of the foregoing.

“PBGC” means the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

“Permit” means any franchise, approval, permit, license, order, registration, certificate, variance, Consent, exemption, authorization, plan or similar right issued, granted, given or otherwise obtained from or by any Governmental Authority, under the authority thereof or pursuant to any applicable Law.

“Permitted Liens” means (a) title of a lessor under a capital or operating Lease if such Lease is an Assigned Agreement and (b) non-exclusive licenses of Intellectual Property granted in the Ordinary Course of Business.

“Person” means any corporation, partnership, joint venture, limited liability company, organization, entity, authority or natural person.

“Personal Information” means a natural Person’s name, street address, zip code, telephone number, e-mail address, social security number, driver’s license number, passport number, credit card number, or user or account number, or any other piece of information (a) that, individually or when combined with other information in a Person’s possession or control or otherwise available to the public, allows such Person to specifically identify a natural Person or (b) that is otherwise considered personally identifiable information or personal data protected under any applicable Regulation.

“Petition Date” has the meaning set forth in the Recitals hereto.

“Potential Acquired Assets” means all assets of Sellers of any kind that either (a) constitute Acquired Assets or (b) will become Acquired Assets if the Designation Rights Property to which such assets relate becomes an Acquired Property.

“Potential Assigned Agreement” means all Leases of Designation Rights Properties and Designation Rights Contracts which Purchaser may designate for assignment and assumption pursuant to the terms of this Agreement.

“Pre-Assignment Period” has the meaning set forth in Section 2.7(b) hereof.

“Purchase Price” has the meaning set forth in Section 3.1 hereof.

“Purchaser” has the meaning set forth in the Preamble hereto.

“Purchaser Allocation” has the meaning set forth in Section 12.1(a) hereof.

“Purchaser Assumption Notice” has the meaning set forth in Section 2.4(a) hereof.

“Purchaser Cure Costs” means, with respect to any individual Assigned Agreement, the amount of Cure Costs with respect to such Assigned Agreement as determined by the Bankruptcy Court (or such lesser amount as may be mutually agreed between Purchaser and the counterparty to such Assigned Agreement); provided that, (i) other than with respect to the Potential Assigned Agreements set forth on Schedule 1.1(e), such amount does not exceed the expected amount of Cure Costs set forth on Schedule 1.1(d) with respect to such Assigned Agreement and (ii) if any individual Assigned Agreement does not appear on Schedule 1.1(d) or if the expected amount set forth on Schedule 1.1(d) with respect to any individual Assigned Agreement is listed as “\$ -”, the expected amount set forth on Schedule 1.1(d) with respect to such Assigned Agreement shall be deemed to be \$0.

“Purchaser Financial Advisor” means Barclays Capital Inc.

“Purchaser Rejection Notice” has the meaning set forth in Section 2.5(a) hereof.

“Regulation” means any Law, statute, regulation, ruling, or Order of, administered or enforced by or on behalf of, any Governmental Authority.

“Rejected Contract” has the meaning set forth in Section 2.5(a) hereof.

“Rejected Lease” has the meaning set forth in Section 2.5(a) hereof.

“Rejection Order” means an Order of the Bankruptcy Court in form and substance reasonably acceptable to Sellers and Purchaser, that for any Rejected Lease or Rejected Contract, as applicable, designated as such by Purchaser pursuant to Section 2.5, approves the rejection of such Rejected Lease or Rejected Contract, as applicable, pursuant to Section 365(a) of the Bankruptcy Code.

“Sale Order” means the Order of the Bankruptcy Court, substantially in the form of Exhibit B attached hereto and otherwise reasonably acceptable to each of Purchaser, JV Agent and Sellers.

“Schedules” means the schedules attached hereto (including, without limitation, the Disclosure Schedules).

“Seller” has the meaning set forth in the Preamble hereto.

“Seller-Registered IP” has the meaning set forth in Section 4.7(a) hereof.

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“Sellers Allocation” has the meaning set forth in Section 12.1(a) hereof.

“Sellers’ Privacy Policy” has the meaning set forth in Section 4.7(d) hereof.

“Software” means all computer software and programs, including application software, system software and firmware, including all source code and object code versions thereof, in any and all forms and media.

“Tax” means all federal, state, local, county, foreign, and other taxes, assessments or other governmental charges, in each case in the nature of a Tax and imposed by a Governmental Authority, including any interest, penalties or withholdings in respect of the foregoing.

“Tax Return” means any report, return, declaration or claim for refund relating to Taxes, including any schedules or attachments thereto and any amendments thereof, in each case required or permitted to be filed with any Governmental Authority.

“Title IV Plan” means any Benefit Plan subject to Title IV of ERISA.

“Trade Secrets” means trade secrets and other confidential or proprietary information, including confidential or proprietary methods, processes, practices, formulas, designs, assembly procedures, and specifications.

“Trademarks” means United States and foreign trademarks, service marks, designs, logos, brand names, product names, slogans and other indicia of source, including United States and foreign trademark registrations, applications for registration and renewals therefor, and foreign equivalents, all common law rights therein, and all rights to register and obtain renewals and extensions of trademark registrations, together with all goodwill associated with any of the foregoing, and all trademark rights accruing by reason of any international trademark treaty.

“Transaction Documents” means this Agreement, the Agency Agreement and all other agreements, instruments, certificates, and other documents to be entered into or delivered by any party in connection with the transactions contemplated to be consummated pursuant to this Agreement.

“Transfer Taxes” has the meaning set forth in Section 12.2 hereof.

“Transferred Employees” has the meaning set forth in Section 6.5(a) hereof.

“Union” has the meaning set forth in Section 4.8(a) hereof.

“WARN Act” means the Worker Adjustment and Retraining Notification Act of 1988, as amended, any similar state or local Law or Regulation.

**Section 1.2. Rules of Construction.** Unless the context otherwise clearly indicates, in this Agreement:

(a) accounting terms which are not otherwise defined in this Agreement have the meanings given to them under GAAP. To the extent that the definition of an accounting term defined in this Agreement is inconsistent with the meaning of such term under GAAP, the definition set forth in this Agreement will control;

(b) “hereof”, “herein” and “hereunder” and terms of similar import are references to this Agreement as a whole and not to any particular provision of this Agreement;

(c) “including” has the inclusive meaning frequently identified with the phrase “but not limited to” or “without limitation”;

(d) “may not” is prohibitive and not permissive;

(e) “or” is used in the inclusive sense of “or”;

(f) the singular includes the plural;

(g) references herein to a specific section, subsection, clause, recital, Schedule or Exhibit shall refer, respectively, to sections, subsections, clauses, recitals, Schedules or Exhibits of this Agreement, unless otherwise specified;

(h) all payments made pursuant to this Agreement shall be in United States dollars;

(i) references to any period of days shall be deemed to be the relevant number of calendar days, unless otherwise specified;

(j) 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 shall be extended to the next succeeding Business Day;

(k) with respect to the determination of any period of time, the word “from” or “since” means “from and including” or “since and including”, as applicable, and the words “to” and “until” each means “to and including”; and

(l) references herein to any gender shall include each other gender.

## ARTICLE II

### PURCHASE AND SALE; DESIGNATION RIGHTS; ASSUMPTION OF CERTAIN LIABILITIES

#### Section 2.1. Acquisition of Designation Rights; Purchase and Sale of Assets.

(a) Upon the terms and subject to the conditions of this Agreement and the Sale Order, upon the Closing, Sellers shall sell, transfer, assign and convey, or cause to be sold, transferred, assigned and conveyed, to Purchaser, and Purchaser shall purchase from Sellers, the

Designation Rights. For the avoidance of doubt, the sale, transfer, assignment and conveyance of the Designation Rights provided for herein upon the Closing shall not, in and of itself, effectuate a sale, transfer, assignment or conveyance of any Lease of a Designation Rights Property, any Designation Rights Contract or any other Potential Acquired Assets of Sellers to Purchaser, which shall only be effectuated on an Assignment Date. Subject to the terms and conditions of this Agreement, the Sale Order and the requirements of Section 365(b) of the Bankruptcy Code, Purchaser shall have the right to designate itself as the assignee to which any Lease of a Designation Rights Property or Designation Rights Contract is to be assumed and assigned pursuant to the terms of this Agreement. The Designation Rights with respect to each Designation Rights Asset shall terminate upon the expiration of the Designation Rights Period applicable to such Designation Rights Asset.

(b) Subject to the terms and conditions set forth in this Agreement (including the terms and entry of the Sale Order), (i) with respect to the Acquired Inventory, the Acquired Intellectual Property, Acquired FF&E and the related Acquired Assets, each as set forth below, on the Closing Date and (ii) with respect to each Acquired Property, any related Acquired Assets, and any Assigned Agreement, on the applicable Assignment Date, each Seller shall sell, contribute, convey, assign, transfer and deliver, or cause to be sold, contributed, conveyed, assigned, transferred and delivered, to Purchaser, free and clear of all Liens (except for the Assumed Obligations and Permitted Liens), whether arising prior to or subsequent to the Petition Date, and Purchaser shall purchase, acquire and take assignment and delivery of, for the consideration specified in Section 3.1, all of Sellers' rights, titles and interests in, to, and under the Acquired Assets.

(c) The term “ Acquired Assets ” means solely the following assets:

(i) all of Sellers' rights existing under the Assigned Agreements;

(ii) all Acquired Inventory;

(iii) all of Sellers' rights in and to the Acquired Intellectual Property (including, for the avoidance of doubt, Customer Lists) and all databases, telephone numbers, fax numbers, e-mail addresses, websites, URLs, social media tags and handles, and Domain Names owned or licensed by Sellers, including all rights and remedies related thereto;

(iv) all non-income Tax Books and Records of Sellers that are used or held for use in, or are arising out of, the operation of the Business at the Acquired Properties;

(v) all Books and Records pertaining to personnel files of Transferred Employees, to the extent not prohibited by applicable Law or Regulation;

(vi) all Assumed Permits applicable to the Acquired Properties; and

(vii) without duplication of the above, all Acquired Property Assets.

(d) Nothing herein shall be deemed to constitute an agreement to sell, transfer, assign or convey the Excluded Assets to Purchaser, and Sellers shall retain all right, title and interest to, in and under the Excluded Assets.

**Section 2.2. Deemed Consents and Cures.** For all purposes of this Agreement (including all representations and warranties of Sellers contained herein), Sellers shall be deemed to have obtained all required Consents in respect of the assignment of any Assigned Agreement if, and to the extent that, pursuant to the Sale Order or other Bankruptcy Court Order, Sellers are authorized to assume and assign to Purchaser such Assigned Agreement pursuant to Section 365 of the Bankruptcy Code and any Cure Cost applicable to such Assigned Agreement has been satisfied by Purchaser on behalf of Sellers, as provided herein.

**Section 2.3. Certain of Parties' Respective Obligations Before and During Designation Rights Period.**

(a) Sellers' Obligations.

(i) From the date hereof through the end of the Designation Rights Period, at Purchaser's request, and at Purchaser's sole cost and expense, Sellers shall reasonably cooperate with Purchaser to facilitate Purchaser negotiating with applicable counterparties to (A) enter into an amendment of any Potential Assigned Agreement upon assumption of such Potential Assigned Agreement by Purchaser on the applicable Assignment Date (and Sellers shall reasonably cooperate with Purchaser to the extent reasonably requested by Purchaser in negotiations with the landlords or other counterparties thereof) or (B) otherwise amend or modify any Potential Assigned Agreement to facilitate the transfer of all or any portion of the Potential Acquired Assets to Purchaser; provided that such amendments or modifications would not adversely affect any Seller and shall only be effective upon or after the applicable Assignment Date.

(ii) From the date hereof through the end of the Designation Rights Period, at Purchaser's sole cost and expense, Sellers shall make available to Purchaser a data room containing complete copies of all Potential Assigned Agreements as in effect on the date hereof or otherwise during the Designation Rights Period (including, without limitation, all material notices delivered by any Person pursuant thereto or in connection therewith to the extent such notices may relate to any Potential Assigned Agreement during the Designation Rights Period).

(iii) Purchaser and Sellers acknowledge and agree that, during the Designation Rights Period, subject to the terms of the Agency Agreement, (A) Purchaser shall operate the Designation Rights Stores as agent for Sellers and the JV Agent shall operate the Closing Stores as agent for Sellers, in each case, in accordance with the terms of the Agency Agreement and the Sale Order ( provided that Purchaser may elect to allow the JV Agent, subject to the consent of the JV Agent in its sole discretion, to operate the Designation Rights Stores on Purchaser's behalf) and (B) Purchaser, acting in its sole discretion, may elect either (1) to conduct liquidation sales at any or all of the Designation Rights Stores in accordance with the terms of the Agency Agreement or (2) to operate the Designation Rights Stores in the Ordinary Course of Business.

(b) Purchaser's Obligations. Purchaser shall pay (or reimburse Sellers) (i) in accordance with the terms of (and subject to the restrictions set forth in) Section 4 of the Agency Agreement, all Expenses (as defined in the Agency Agreement) incurred in connection with the operation of the Designation Rights Stores during the Designation Rights Period and (ii) all Distribution Center Expenses (as defined in the Agency Agreement) incurred in connection with the operation of the Nebraska Distribution Center during the Designation Rights Period. For the avoidance of doubt, Purchaser (as distinguished from the JV Agent) shall not have any obligation to pay any Expenses with respect to any Closing Stores or the Indiana Distribution Center.

**Section 2.4. Assumption during Designation Rights Period.**

(a) Following Closing, at any time on or prior to the date that is fifteen (15) Business Days prior to the last day of the Designation Rights Period with respect to any Lease of a Designation Rights Property or with respect to any Designation Rights Contract, Purchaser shall have the right, which right may be exercised at any time and from time to time in Purchaser's sole and absolute discretion, to designate such Lease or such Designation Rights Contract, as applicable, for assumption and assignment and shall provide notice to Sellers (each such notice, a "Purchaser Assumption Notice") of Purchaser's election to assume such Lease or such Designation Rights Contract, as applicable, and to require Sellers to assign the same to Purchaser; provided that such designation (and any obligation of Purchaser to consummate any such assumption and assignment) may be conditioned upon any condition identified by Purchaser, acting in its sole discretion, in such Purchaser Assumption Notice or the accompanying Assignment Agreement; provided that (i) Sellers shall not be required to take any actions not otherwise expressly required by the terms of such Lease or such Designation Rights Contract, as applicable, to be assumed and assigned to cause such conditions to be satisfied, (ii) Purchaser shall pay all Purchaser Cure Costs associated with any assumption and assignment of any such Lease or such Designation Rights Contract, as applicable, in accordance with the terms of Section 2.6 and (iii) Purchaser shall be required to provide Purchaser Assumption Notices no later than May 31, 2017 with respect to Leases for at least 50 Designation Rights Stores. Each Purchaser Assumption Notice shall identify the Leases of Designation Rights Properties and the Designation Rights Contracts, as applicable, being assumed and assigned pursuant to the terms of this Agreement.

(b) Within five (5) Business Days following the date upon which Purchaser delivers a Purchaser Assumption Notice to Sellers, together with an assignment agreement with respect to any Lease or any Designation Rights Contract, as applicable, in form and substance reasonably acceptable to Purchaser and Sellers (the "Assignment Agreement"), executed by Purchaser, Sellers shall (i) deliver to Purchaser a fully executed Assignment Agreement and (ii) file with the Bankruptcy Court and serve on the applicable lessor(s), Designation Rights Contract counterparty(ies) and any other appropriate notice parties, as applicable, an assignment notice of such Lease or such Designation Rights Contract, as applicable, in form and substance reasonably acceptable to Purchaser and Sellers, and shall seek entry by the Bankruptcy Court of an Assignment Order in respect of such Lease (and any related Potential Acquired Assets) or such Designation Rights Contract, as applicable, subject to such Purchaser Assumption Notice; provided that in no event shall any Assignment Date be prior to the date on which the Inventory Taking (as defined in the Agency Agreement) with respect to the Designation Rights Property related to such Lease has been completed pursuant to the Agency Agreement.

(c) Upon Purchaser's request, within five (5) Business Days following the entry of an Assignment Order (or, if earlier, not later than the last day of the Designation Rights Period), Sellers shall deliver to Purchaser any instruments reasonably necessary or desirable (in the reasonable judgment of Purchaser) for the due sale, transfer, assignment, conveyance and delivery to Purchaser of any applicable Lease of a Designation Rights Property (and any related Assigned Agreements to such Lease and any other related Acquired Assets) or any Designation Rights Contract, in each case, free and clear of all Liens, other than Permitted Liens, and shall otherwise promptly take (or cause to be taken) all actions (including, without limitation, payment of all Excess Cure Costs in accordance with the terms of this Agreement) reasonably necessary or desirable (in the reasonable judgment of Purchaser) in order to cause such sale, transfer, assignment, conveyance and delivery to become effective.

(d) The effective date of the sale, transfer, assignment, conveyance and delivery by Sellers to Purchaser of any Lease of a Designation Rights Property (and any related Acquired Assets) or any Designation Rights Contract that is subject to an applicable Purchaser Assumption Notice, pursuant to the terms of this Agreement and the applicable Assignment Agreement shall be the "Assignment Date" with respect to such Lease (and any related Acquired Assets) or such Designation Rights Contract, as applicable; provided that, if Purchaser and the landlord of the Designation Rights Property subject to such Lease shall have mutually agreed in writing to an alternate effective date, the Assignment Date with respect to such Lease shall be such alternate effective date.

(e) With respect to any Lease of a Designation Rights Property (and any related Acquired Assets) or any Designation Rights Contract designated in a Purchaser Assumption Notice:

(i) Sellers and Purchaser shall each use commercially reasonable efforts to accomplish, and shall cooperate in good faith with each other in, the resolution of any objections to the proposed assumption and assignment of such Lease (and any related Acquired Assets) or such Designation Rights Contract, as applicable;

(ii) Purchaser shall provide, to the extent not previously provided, evidence (A) of adequate assurance of future performance within the meaning of Section 365 of the Bankruptcy Code and (B) that Purchaser is a good faith purchaser for purposes of Section 363(m) of the Bankruptcy Code, including, in both cases, through the provision of such financial information and/or the filing of such affidavits or declarations with the Bankruptcy Court as may reasonably be requested by Sellers; and

(iii) Except as expressly provided herein or in the Agency Agreement, Purchaser shall have no Liability or obligations, other than for the payment of Purchaser Cure Costs and certain Expenses (as provided herein or in the Agency Agreement), with respect to any Liabilities, claims, damages or other obligations of any Seller under such Lease or otherwise with respect to the Designation Rights Property subject to such Lease or arising under such Designation Rights Contract (including, in each case, with respect to any related assets sold, transferred, assigned and conveyed together with such Lease or Designation Rights Contract), whether arising before or after the Petition Date; provided that Purchaser shall assume the Assumed Obligations in accordance with the terms of this Agreement.

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(f) Except as otherwise set forth in this ARTICLE II, each Person shall bear their own costs and expenses in respect of obtaining entry of an Assignment Order and otherwise implementing the sale, transfer, assignment, conveyance and delivery of any Lease (and any related Potential Acquired Assets) or any Designation Rights Contract, as applicable, that is subject to an applicable Purchaser Assignment Notice to Purchaser, including, without limitation, the filing and prosecution of any motions or other papers with respect to the same.

**Section 2.5. Rejection.**

(a) At any time on or prior to the end of the Designation Rights Period with respect to any Lease of a Designation Rights Property or any Designation Rights Contract, Purchaser shall have the right, which right may be exercised at any time and from time to time in Purchaser's sole and absolute discretion, to designate such Lease or such Designation Rights Contract for rejection and provide notice to Sellers (each such notice, a "Purchaser Rejection Notice") of Purchaser's election to require Sellers to reject such Lease (such Lease, a "Rejected Lease") or such Designation Rights Contract (such Designation Rights Contract, a "Rejected Contract") and terminate and surrender such Designation Rights Property to the lessor thereof or terminate such Designation Rights Contract, as applicable. Any Lease of a Designation Rights Property and any Designation Rights Contract that is not subject to a Purchaser Assumption Notice at the end of the Designation Rights Period shall be deemed to be a Rejected Lease or a Rejected Contract, respectively.

(b) Within five (5) Business Days following the date upon which Purchaser delivers a Purchaser Rejection Notice to Sellers, Sellers shall take all reasonable actions (including, without limitation, actions required under Section 365 of the Bankruptcy Code) to seek and obtain a Rejection Order from the Bankruptcy Court in respect of such Rejected Lease or Rejected Contract, as applicable, and, with respect to any Rejected Lease, Purchaser shall vacate the applicable Designation Rights Property and deliver to Sellers the keys to such Designation Rights Property and to leave such Designation Rights Property in "broom clean" condition, ordinary wear and tear excepted, if in the possession of Purchaser, to ensure Sellers' ability to surrender within the aforementioned five (5) Business Day period; provided that in no event shall the effective date of any Rejection Order applicable to a Rejected Lease be prior to the date on which the Inventory Taking with respect to the Designation Rights Property related to such Lease has been completed pursuant to the Agency Agreement. As of the date that is five (5) Business Days after the date of the Purchaser Rejection Notice, Purchaser shall have no further obligation or Liability with respect to the applicable Rejected Lease or the related Designation Rights Property (including any related Potential Acquired Asset), or the applicable Rejected Contract except with respect to obligations and Liabilities with respect to such Rejected Lease and the related Designation Rights Property, arising during the Designation Rights Period, and Sellers shall thereafter be solely responsible for all amounts payable or other obligations or Liabilities that may be owed in connection with such Rejected Lease and the related Designation Rights Property or such Rejected Contract, as applicable.

(c) Each Person shall bear their own costs and expenses in respect of obtaining entry of any Rejection Order, including, without limitation, the filing and prosecution of any motions or other papers with respect to the same.

**Section 2.6. Obligations in Respect of Cure Costs.**

(a) On March 21, 2017, Sellers filed with the Bankruptcy Court a Notice of Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with the Disposition of Certain of the Debtors' Assets and the Proposed Cure Costs containing a schedule (which is attached as Schedule 1.1(d) hereto) of the estimated amounts required to be paid with respect to certain Potential Assigned Agreements to cure all monetary defaults under such Potential Assigned Agreements to the extent required by Section 365(b) of the Bankruptcy Code and otherwise satisfy all requirements imposed by Section 365(d) of the Bankruptcy Code (the actual amounts of such costs, the "Cure Costs").

(b) On each Assignment Date, pursuant to Section 365 of the Bankruptcy Code, the Sale Order and the applicable Assignment Order, Sellers shall assume and assign to Purchaser the applicable Acquired Lease (and any related Acquired Assets) and any other Assigned Agreements, as applicable, that is subject to an applicable Purchaser Assumption Notice and shall (i) pay all undisputed Excess Cure Costs with respect to such Acquired Lease and Assigned Agreements to the appropriate counterparty and (ii) pay any disputed Excess Cure Costs into a segregated account for later determination by the Bankruptcy Court, each subject to provision of adequate assurance by Purchaser as may be required under Section 365 of the Bankruptcy Code and payment by Purchaser of the Purchaser Cure Costs in respect of such Acquired Lease and Assigned Agreements. Sellers shall be solely responsible for the payment, performance and discharge when due of all Liabilities under or relating to the Acquired Assets with respect to the applicable Acquired Property, including such Acquired Lease and any other Assigned Agreements, arising prior to such Assignment Date (other than such Purchaser Cure Costs and certain Expenses (as provided herein or in the Agency Agreement) and, for the avoidance of doubt, Assumed Obligations).

**Section 2.7. Assumption of Assumed Obligations.**

(a) Subject to the terms and conditions set forth in this Agreement (including Section 2.3 hereto), at the Closing or the applicable Assignment Date, as applicable, Purchaser shall assume and agree to discharge when due in accordance with their respective terms and subject to the respective conditions thereof the obligations under the Assigned Agreements (including Purchaser Cure Costs) (collectively, the "Assumed Obligations").

(b) Notwithstanding anything in this Agreement to the contrary, Sellers hereby acknowledge and agree that Purchaser is not assuming from Sellers, or in any way responsible for, any other obligations, Claims or Liabilities of Sellers that are not Assumed Obligations, including the Excluded Employee Liabilities (except to the extent constituting Expenses payable by Purchaser pursuant to the terms of the Agency Agreement). For the avoidance of doubt, (i) Purchaser (except to the extent such obligations constitute Purchaser Cure Costs) shall not have any obligations in respect of any portion of any year-end (or other) adjustment (including, without limitation, for royalties, rents, utilities, Taxes, insurance, fees,

any common area or other maintenance charges, promotion funds and percentage rent) arising under any Acquired Lease or other Assigned Agreement for the calendar year in which the applicable Assignment Date occurs attributable to the portion of such calendar year occurring prior to the applicable Assignment Date or for any previous calendar year (the “Pre-Assignment Period”), and Sellers shall fully indemnify and hold harmless Purchaser with respect thereto and (ii) to the extent there is a refund from any landlord in respect of the Pre-Assignment Period, Sellers shall be entitled to such refund.

**Section 2.8. Acquired Inventory.** The parties shall cause an Inventory Taking to be conducted by the Inventory Taker (each as defined in the Agency Agreement) in accordance with the terms of the Agency Agreement. At the Closing, in accordance with Section 3.1 and the Agency Agreement, Purchaser shall pay the applicable portion of the Cash Consideration to Sellers, which Cash Consideration includes the amount payable with respect to the Acquired Inventory.

### ARTICLE III

#### BASIC TRANSACTION

**Section 3.1. Purchase Price.** The aggregate purchase price for the sale, contribution, conveyance, assignment, transfer and delivery of the Designation Rights and Sellers’ right, title and interest in, to and under the Acquired Assets by Sellers to Purchaser under the terms of this Agreement (the “Purchase Price”) shall be (a) an amount in cash equal to the applicable portion of the Guaranteed Amount (as defined in the Agency Agreement) to be paid by Purchaser to Sellers in accordance with and subject to the terms of the Agency Agreement, (b) an amount equal in cash equal to the product of (i) the aggregate amount of net sale proceeds paid by JV Agent to Sellers from all sales of Owned FF&E located at the Closing Stores pursuant to Section 7.1 of the Agency Agreement, and (ii) a fraction, (x) the numerator of which is equal to the aggregate gross square footage of all of the Designation Rights Stores and (y) the denominator of which is equal to the aggregate gross square footage of all of the Closing Stores, to be paid by Purchaser to Sellers no later than five (5) days after the Final Reconciliation (as defined in the Agency Agreement) between Sellers and JV Agent pursuant to Section 8.7 of the Agency Agreement (the sum of the amounts set forth in clause (a) and (b), the “Cash Consideration”) and (c) the assumption by Purchaser of the Assumed Obligations in accordance with and subject to the terms of this Agreement. Other than the payment of the applicable Purchaser Cure Costs and the assumption of Assumed Obligations on any subsequent Assignment Date in accordance with the terms of this Agreement or as otherwise expressly provided in this Agreement or the other Transaction Documents, no additional consideration shall be required to be paid by Purchaser to Sellers in connection with any exercise by Purchaser of the Designation Rights or the sale, transfer, assignment, conveyance and delivery to Purchaser of the Acquired Assets at the Closing or any applicable Assignment Date.

**Section 3.2. Deposit.** Upon the execution hereof, Purchaser has made a deposit in the aggregate amount equal to \$3,500,000 by wire transfer of immediately available funds into an account designated by Sellers pursuant to the Bidding Procedures (the “Deposit”), to be released and delivered (together with all accrued investment income thereon) to Purchaser, or Sellers, as applicable, in accordance with the Bidding Procedures and the Agency Agreement.

**Section 3.3. Further Assurances.** From time to time after the Closing and without further consideration, (a) Sellers, upon the request of Purchaser, shall execute and deliver such documents and instruments of conveyance and transfer, which are in a form reasonably acceptable to Sellers and Purchaser, as Purchaser may reasonably request in order to consummate the purchase and sale of the Acquired Assets as contemplated hereby and (b) Purchaser, upon the request of Sellers, shall execute and deliver such documents and instruments of contract assumption, which are in a form reasonably acceptable to Sellers and Purchaser, as Sellers may reasonably request in order to confirm Purchaser's Liability for the obligations specifically assumed hereunder. From and after the date hereof until the end of the Designation Rights Period, Sellers, upon the written request of Purchaser, shall provide Purchaser with reasonable access to, and use of, the Headquarters and the Nebraska Distribution Center and any assets therein, and cause the respective employees and representatives of Sellers, to the extent such employees and representatives are still employed or retained by Sellers after the Closing, to cooperate with all reasonable requests of Purchaser, in all cases in order to assist Purchaser to effectively transfer all and any portion of the Acquired Assets to Purchaser (e.g., transferring data files and other information technology files). For clarity, Sellers shall not be responsible for any costs or expenses (including filing fees and attorneys' or other professional fees) associated with recording or perfecting (a) the transfer and assignment of the Acquired Intellectual Property from Sellers to Purchaser or (b) any loan documents evidencing or securing a loan made to Purchaser by Purchaser's lender(s).

**Section 3.4. Withholding.** Notwithstanding anything to the contrary in this Agreement, Purchaser shall be entitled to deduct and withhold from the amounts otherwise payable pursuant to this Agreement such amounts as Purchaser is required to deduct and withhold under applicable Law. To the extent amounts are so deducted and withheld on payments made by Purchaser, such deducted and withheld amounts (a) shall be remitted to the applicable Governmental Authority and (b) shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such deduction and withholding was made. The applicable payor shall provide Sellers with a written notice of such payor's intention to withhold at least five (5) Business Days prior to Closing, and the parties hereto shall reasonably cooperate to reduce or eliminate amounts deducted and withheld from payments made pursuant to this Agreement.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES OF SELLERS

**Section 4.1. Sellers' Representations and Warranties.** Sellers jointly and severally represent and warrant to Purchaser that the statements contained in this ARTICLE IV are correct and complete as of the date of this Agreement, except as expressly set forth in the disclosure schedules delivered by Sellers to Purchaser on the date hereof (the "Disclosure Schedules"). The information disclosed in any numbered part of the Disclosure Schedules is intended to relate to and to qualify the particular representation or warranty set forth in the corresponding numbered section in this Agreement; provided that any event, fact or circumstance disclosed in the Disclosure Schedules shall be deemed to be a disclosure for each other section of this Agreement to the extent it is reasonably apparent from the face of such disclosure that it would also qualify such other section.

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**Section 4.2. Power and Authority; Validity of Agreement.** Subject to entry of the Sale Order or any other necessary authorization of the Bankruptcy Court, each Seller has full power and authority to execute and deliver the Transaction Documents to which it is a party and to consummate the transactions contemplated thereby. No other corporate or organizational proceedings on the part of any Seller are necessary to approve and authorize the execution and delivery of the Transaction Documents to which such Seller is a party and the consummation of the transactions contemplated thereby. All Transaction Documents to which any Seller is a party have been duly executed and delivered by such Seller, except such Transaction Documents that are required by the terms hereof to be executed and delivered by such Seller after the date hereof, in which case such Transaction Documents shall be duly executed and delivered by such Seller at or prior to the Closing, and, subject to any necessary authorization from the Bankruptcy Court and to the due authorization, execution and delivery of such Transaction Documents by the other parties thereto, all such Transaction Documents constitute, or will constitute, as the case may be, the valid and binding agreements of such Seller, enforceable against such Seller in accordance with their terms.

**Section 4.3. Organization and Standing.** Each Seller is a corporation or other entity duly organized, validly existing and in good standing under the Laws of the state of its formation and, except where the failure to obtain such qualification would not reasonably be expected to have a Material Adverse Effect, has full power and authority to own, lease and operate its properties and assets and to conduct its business in every jurisdiction as presently conducted.

**Section 4.4. No Conflicts or Violations.** Subject to any necessary authorization of the Bankruptcy Court, and except to the extent any of the following is not enforceable due to operation of the Sale Order, the execution, delivery and performance of the Transaction Documents to which any Seller is a party and the consummation of the transactions contemplated thereby by such Seller do not and shall not (a) require any authorization, Consent, approval, exemption or other action by or notice or declaration to, or filing with, any Governmental Authority or (b) (i) conflict with or result in any breach of any of the terms, conditions or provisions of, (ii) constitute a default under or (iii) result in a violation of the provisions of the articles of formation, the limited liability company agreement or other constitutive documents of Sellers.

**Section 4.5. Title to Assets.**

(a) Sellers have title to, or a leasehold interest in or all rights to use, the Potential Acquired Assets.

(b) Subject to entry of the Sale Order, (i) Sellers have the power and the right to sell, assign and transfer the Potential Acquired Assets and (ii) upon the Closing or the applicable Assignment Date, as applicable, Sellers will sell and deliver to Purchaser, and Purchaser will acquire, title to or rights in the applicable Acquired Assets, free and clear of all Liens (except for the Assumed Obligations and Permitted Liens).

**Section 4.6. Contracts.** Schedule 4.6 includes an accurate list of the material Contracts as of the date hereof to which a Seller is a party that are necessary to operate the

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Business as presently conducted by Sellers (other than (i) any Contracts exclusively related to any Closing Store or the Indiana Distribution Center and (ii) the Leases set forth on Schedule 4.10(b)), and Sellers have made available, or within five (5) days after the date hereof shall make available, true and complete copies of all such Contracts, including all amendments thereto, set forth on Schedule 4.6.

**Section 4.7. Intellectual Property.**

(a) Schedule 4.7(a) sets forth an accurate list of all United States and foreign (i) issued Patents and pending applications for Patents, (ii) registered Trademarks and pending applications for Trademarks, (iii) material registered Copyrights, (iv) Domain Names and (v) social media accounts, in each case which is owned by, or registered in the name of, a Seller (collectively, the “Seller-Registered IP”) (indicating for each, as applicable, the owner(s), jurisdiction and, as applicable, the application or registration number and date of filing). Except as set forth on Schedule 4.7(a), Sellers are the sole and exclusive owners (or registered users, as applicable) of all right, title and interest in all of the Seller-Registered IP that constitutes Intellectual Property related to any Potential Assigned Agreement.

(b) Sellers have taken commercially reasonable measures to (i) protect the confidentiality of the material Trade Secrets and Customer Lists of Sellers and (ii) prevent the unauthorized use, disclosure, loss, processing, transmission or destruction of or access to any such information.

(c) Each Seller has, at all times since January 1, 2015, operated and conducted its business in material compliance with all Data Security Requirements.

(d) Each Seller has adopted or is otherwise subject to a written privacy policy (the “Sellers’ Privacy Policy”) with respect to protection of the confidentiality of Personal Information collected from customers of each such Seller. The transfer of such Personal Information to Purchaser pursuant to the terms of this Agreement is consistent with, and will not violate, Sellers’ Privacy Policy as currently in effect and applicable Law.

**Section 4.8. Labor Matters.**

(a) None of Sellers are party to or subject to any collective bargaining agreements, works council agreements, labor union contracts, trade union agreements and other similar agreements (each, a “Collective Bargaining Agreement”) with any union, works council, or labor organization (each, a “Union”, and collectively “Unions”).

(b) To the Knowledge of Sellers, in the past three (3) years, (i) no Union or group of employees (or former employees) of any Seller has organized any employees for purposes of collective bargaining, sought to bargain collectively with any of Sellers, made a demand for recognition or certification as an employee representative for purposes of collective bargaining or filed a petition for recognition with any Governmental Authority; (ii) as of this date, no Collective Bargaining Agreement is being negotiated by any of Sellers; and (iii) in the past three (3) years, there have been no material strikes, lockouts, slowdowns, work stoppages, boycotts, handbilling, picketing, walkouts, demonstrations, leafleting, sit-ins, sick-outs or other material forms of organized labor disruption with respect to any of Sellers.

(c) Within the past three (3) years, Sellers have not failed to provide advance notice of layoffs or terminations as required by, or incurred any material Liability under the WARN Act. Except as (i) would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or (ii) pursuant to procedures established in connection with the Chapter 11 Cases: (A) within the past three (3) years, Sellers have been in compliance with all applicable Laws and Regulations relating to labor and employment, including all Laws and Regulations relating to employment practices; (B) there are no pending, or to the Knowledge of Sellers, threatened, lawsuits, grievances, unfair labor practice charges, arbitrations, charges, investigations, hearings, actions, Claims or proceedings (including any administrative investigations, charges, Claims, actions or proceedings), against Sellers or their Affiliates alleging violation of any labor or employment Law or Regulation or breach of any Collective Bargaining Agreement; and (C) each employee of each Seller has all work permits, immigration permits, visas or other authorizations required by any applicable Law or Regulation for such employee given the duties and nature of such employee's employment.

**Section 4.9. Employee Benefits.**

(a) No Benefit Plan: (i) is, or has been within the past six (6) years, a Title IV Plan or subject to Section 412 of the Code; (ii) is maintained by more than one employer within the meaning of Section 413(c) of the Code; (iii) is subject to Sections 4063 or 4064 of ERISA; (iv) a "multiple employer welfare arrangement" as defined in Section 3(40) of ERISA; or (v) an "employee pension benefit plan" (within the meaning of Section 3(2) of ERISA) that is not intended to be qualified under Section 401(a) of the Code. No Seller has terminated any Title IV Plan within the last six (6) years or incurred any outstanding Liability under Section 4062 of ERISA to the PBGC, or to a trustee appointed under Section 4042 of ERISA.

(b) None of the Sellers or any of their respective ERISA Affiliates contributes to, or is obligated to contribute to or has any Liability with respect to any Multiemployer Plan, including any Liability due to a "complete withdrawal" or a "partial withdrawal" as defined in Sections 4203 and 4205 of ERISA.

(c) No Seller or any organization to which such Seller is a successor or parent corporation, within the meaning of Section 4069(b) of ERISA, has engaged in any transaction described in Sections 4069 or 4212(c) of ERISA.

(d) Except for any payment that is otherwise excused as a result of the Chapter 11 Cases, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (either alone or in combination with another event) result in any payment becoming due and payable, or increase the amount of any compensation due and payable, or accelerate the time of payment or vesting of any compensation or benefits provided, to any Participant.

(e) Except in connection with the Chapter 11 Cases, Sellers have no plan, contract or commitment, whether legally binding or not, to create any new employee benefit or compensation plans, policies or arrangements for any Transferred Employee.

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**Section 4.10. Real Property.**

- (a) Sellers do not own any real property.
- (b) Schedule 4.10(b) sets forth the address of each Leased Real Property, and a true and complete list of all Leases for such Leased Real Property.
- (c) Sellers have all material Permits required in connection with the operation of all each Designation Rights Property.
- (d) Each Designation Rights Property is supplied with utilities and other services necessary for the operation of said properties.

**Section 4.11. Brokers.** Other than Duff & Phelps, no Seller has incurred any Liability to any broker, finder or agent with respect to the payment of any commission regarding the consummation of the transactions contemplated hereby and in the other Transaction Documents.

**Section 4.12. Environmental, Health and Safety Matters.**

(a) To the Knowledge of Sellers, each Seller is in compliance with all applicable Environmental, Health and Safety Requirements with respect to the Business and the Leased Real Property, except in any such case where the failure to be in compliance would not have a Material Adverse Effect, and there are no Liabilities under any Environmental, Health and Safety Requirements with respect to the Business which would have a Material Adverse Effect.

(b) To the Knowledge of Sellers, there has been no release, threatened release, contamination or disposal of Hazardous Substances at any Leased Real Property, or waste generated by any Seller or any legally responsible predecessor corporation thereof, that has given or could reasonably be expected to give rise to any Liability under any Environmental, Health and Safety Requirement that would have a Material Adverse Effect.

**Section 4.13. No Other Representations or Warranties.**

(a) Except for the representations and warranties contained in this ARTICLE IV, Purchaser acknowledges and agrees that no Seller nor any other Person (including Sellers) on behalf of any Seller makes, and Purchaser is not relying on, any other express or implied representation or warranty with respect to Sellers (including representations and warranties as to the condition of the Acquired Assets or the Business) or with respect to any other information provided to Purchaser. No 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, or use by Purchaser of, and Purchaser is not relying on, any such information, including any information, documents, projections, forecasts or other material made available to Purchaser in certain “data rooms”, confidential information memoranda or management presentations in expectation of the transactions contemplated by this Agreement.

(b) In connection with the investigation by Purchaser, Purchaser has received or may receive from Sellers or Persons (including Sellers and Sellers’ other representatives) on

behalf of Sellers certain projections, forward-looking statements and other forecasts and certain business plan information. Purchaser acknowledges and agrees that (i) there are uncertainties inherent in attempting to make such estimates, projections and other forecasts and plans, (ii) Purchaser is familiar with such uncertainties, (iii) 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 it (including the reasonableness of the assumptions underlying such estimates, projections, forecasts or plans) and (iv) Purchaser shall have no claim against any Person (including Sellers) with respect thereto. Accordingly, Purchaser acknowledges and agrees that no Seller and no Person (including Sellers) on behalf of Sellers makes, and Purchaser is not relying on, 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).

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Sellers as follows as of the date of this Agreement:

**Section 5.1. Power and Authority; Validity of Agreement.** Purchaser has full power and authority to execute and deliver the Transaction Documents to which it is a party and to consummate the transactions contemplated thereby. No other corporate or organizational proceedings on the part of Purchaser are necessary to approve and authorize the execution and delivery of the Transaction Documents to which Purchaser is a party and the consummation of the transactions contemplated thereby. All Transaction Documents to which Purchaser is a party have been duly executed and delivered by Purchaser, except such Transaction Documents that are required by the terms hereof to be executed and delivered by Purchaser after the date hereof, in which case such Transaction Documents shall be duly executed and delivered by Purchaser at or prior to the Closing, and, subject to any necessary authorization from the Bankruptcy Court and to the due authorization, execution and delivery of such Transaction Documents by the other parties thereto, all such Transaction Documents constitute, or will constitute, as the case may be, the valid and binding agreements of Purchaser, enforceable against Purchaser in accordance with their terms.

**Section 5.2. Organization.** Purchaser is a corporation duly organized, validly existing and in good standing under the Laws of the State of Texas.

**Section 5.3. No Conflicts or Violations.** Subject to any necessary authorization of the Bankruptcy Court, and except to the extent any of the following is not enforceable due to operation of the Sale Order, the execution, delivery and performance of the Transaction Documents to which Purchaser is a party and the consummation of the transactions contemplated thereby by Purchaser do not and shall not (a) require any authorization, Consent, approval, exemption or other action by or notice or declaration to, or filing with, any Governmental Authority or (b) (i) conflict with or result in any breach of any of the terms, conditions or provisions of, (ii) constitute a default under or (iii) result in a violation of (A) the provisions of the articles of incorporation, by-laws or other constitutive documents of Purchaser or (B) any material indenture, mortgage, lease, loan agreement or other material agreement or

instrument to which Purchaser is bound or affected or any Law, statute, rule, Regulation or Order to which Purchaser is subject, except in clause (B), as would not reasonably be expected to have a material adverse effect (including a material delay or impairment) on Purchaser's ability to consummate the transactions contemplated hereby and by the other Transaction Documents.

**Section 5.4. Brokers.** Purchaser has incurred no Liability to any broker, finder or agent (other than Purchaser Financial Advisor) with respect to the payment of any commission regarding the consummation of the transactions contemplated hereby and in the other Transaction Documents.

**Section 5.5. Purchaser's Acknowledgment.** Purchaser is not aware of any facts or circumstances, which (with or without notice or lapse of time or both) would cause any representations or warranties of any Seller to be untrue or incorrect in any respect.

**Section 5.6. Acquired Assets "AS IS", Purchaser's Acknowledgment Regarding Same.** Purchaser agrees, warrants and represents that, except as set forth in this Agreement, (a) Purchaser is purchasing the Acquired Assets on an "AS IS" and "WITH ALL FAULTS" basis based solely on Purchaser's own investigation of the Acquired Assets and (b) none of the Sellers, nor any broker, agent, officer, employee, servant, attorney or representative of Sellers has made, and Purchaser is not relying on, any warranties, representations or guarantees, express, implied or statutory, written or oral, with respect to the Acquired Assets or the Business or any part of the Acquired Assets, the Business or the physical condition of the Acquired Assets. Purchaser further acknowledges and agrees that the Purchase Price has been agreed upon by Sellers and Purchaser after good-faith, arms-length negotiation in light of Purchaser's agreement to purchase the Acquired Assets "AS IS" and "WITH ALL FAULTS". Purchaser agrees, warrants, and represents that, except as set forth in this Agreement, Purchaser has relied, and shall rely, solely upon Purchaser's own investigation of all such matters and that Purchaser assumes all risks with respect thereto. EXCEPT AS SET FORTH IN THIS AGREEMENT, NO PERSON (INCLUDING SELLERS) ON BEHALF OF ANY SELLER MAKES, AND PURCHASER IS NOT RELYING ON, ANY EXPRESS WARRANTY, WARRANTY OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR ANY IMPLIED OR STATUTORY WARRANTY WHATSOEVER WITH RESPECT TO ANY REAL OR PERSONAL PROPERTY, ANY FIXTURES OR THE ACQUIRED ASSETS OR THE BUSINESS.

**Section 5.7. Financial Capability.** Purchaser (a) has, as of the date of this Agreement, and will have at Closing, sufficient cash funds or cash financing available to pay the Cash Consideration and any expenses incurred or payable by Purchaser in connection with the transactions contemplated by this Agreement and the Transaction Documents, (b) has, as of the date of this Agreement, and will have at Closing, the resources and capabilities (financial and otherwise) to perform Purchaser's obligations hereunder and to consummate the transactions contemplated by this Agreement and the Transaction Documents and (c) has not incurred any obligation, commitment, restriction or Liability of any kind, that would impair or adversely affect such resources and capabilities.

**Section 5.8. Privacy.** Purchaser has adopted a written privacy policy with respect to protection of the confidentiality of Personal Information regarding the customers and employees of Purchaser, and such policy complies with all applicable Laws.

## ARTICLE VI

### COVENANTS OF SELLERS; OTHER AGREEMENTS BY BOTH PARTIES

#### **Section 6.1. Consents and Approvals; Access.**

(a) Each of the parties hereto shall use commercially reasonable efforts to obtain any authorizations, Consents and approvals of any Governmental Authority in connection with the matters contemplated by this Agreement and the other Transaction Documents.

(b) From the date of this Agreement until the end of the Designation Rights Period or earlier termination of this Agreement, each Seller shall provide, and shall cause its employees and representatives to provide, during regular business hours and upon reasonable notice (to the extent such employees and representatives are still employed or retained by Sellers at such time), all reasonable cooperation in connection with the following, to the extent and only to the extent related to the Potential Acquired Assets (including, for the purposes of this Section 6.1, any Potential Assigned Agreement) and the consummation of the transactions contemplated hereby: (i) knowledge transfer from the employees and representatives of Sellers to Purchaser and its employees and representatives that is reasonably requested to expedite and implement the successful transfer of the Potential Acquired Assets; (ii) providing copies of documentation (such as training manuals and procedures) needed to use or exploit the Potential Acquired Assets; and (iii) coordinating with Purchaser's selected vendors to communicate any information that is required by such vendors to support any necessary requirements for new systems to operate the Potential Acquired Assets after the Closing or the applicable Assignment Date, as applicable. For clarity, Sellers shall not be responsible for any costs or expenses (including filing fees and attorneys' or other professional fees) associated with recording or perfecting the transfer and assignment of the Acquired Intellectual Property from Sellers to Purchaser.

(c) From the date of this Agreement until the end of the Designation Rights Period or earlier termination of this Agreement, each Seller shall use commercially reasonable efforts to remain in material compliance with Sellers' Privacy Policy and shall reasonably cooperate with Purchaser to ensure that the transfer of all Personal Information to Purchaser in connection with the transactions contemplated hereby will be consistent with Sellers' Privacy Policy and permitted under the Bankruptcy Code and any other applicable Law.

#### **Section 6.2. Further Assurances.**

(a) Sellers will use commercially reasonable efforts to timely obtain any Consent required for the consummation of the transactions contemplated by this Agreement as soon as practicable; provided that nothing herein shall require Sellers to make any payments to obtain any Consents.

(b) Sellers and Purchaser shall execute such documents, which are in a form reasonably acceptable to Sellers and the Purchaser, and use commercially reasonable efforts to

take or cause to be taken all action and do or cause to be done all things necessary or proper to consummate the transactions contemplated by this Agreement and the other Transaction Documents (including to address matters related to the conveyance of any Customer List identified by the Sale Order). Sellers and Purchaser shall use commercially reasonable efforts to fulfill or obtain the fulfillment of the conditions set forth in ARTICLE VIII and ARTICLE IX, respectively, of this Agreement; provided that nothing herein shall require Sellers to incur any costs or expenses or make any payments to cure any breaches of the representations and warranties set forth in ARTICLE IV.

(c) Without the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed), from the date hereof until the end of the Designation Rights Period or earlier termination of this Agreement, none of the Sellers shall: (i) sell, assign, transfer, convey, pledge, mortgage, lease, license or otherwise dispose of or encumber any of the Potential Acquired Assets (including, prior to the end of the Designation Rights Period, any Potential Assigned Agreement) or any interests therein, other than the sale of Inventory in the Ordinary Course of Business; (ii) grant any licenses or other rights to or under any Acquired Intellectual Property (including, for purposes of this Section 6.2(c), any Intellectual Property related to any Potential Assigned Agreement) other than in the Ordinary Course of Business or pursuant to the terms of the Agency Agreement or abandon, permit to lapse or otherwise dispose of any such Intellectual Property except for such Intellectual Property that is not, in Sellers' reasonable business judgment, material to the Business; or (iii) amend, modify, terminate, permit to lapse or otherwise waive any rights under any Potential Assigned Agreement.

**Section 6.3. Bankruptcy Actions.**

(a) Sellers shall provide appropriate notice of any applicable hearings, as is required by the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure, to all Persons entitled to notice. Sellers shall be responsible for making all appropriate filings relating thereto with the Bankruptcy Court, which filings shall be submitted to Purchaser prior to their filing with the Bankruptcy Court for Purchaser's review.

(b) Sellers shall use their reasonable best efforts to file and have entered the Sale Order on or before April 6, 2017.

(c) The parties shall consult with each other regarding pleadings that any of them intends to file with the Bankruptcy Court in connection with, or which might reasonably affect the Bankruptcy Court's approval of the Sale Order, including, with respect to Sellers, sharing in advance any drafts thereof for Purchaser's review and comment. Each Seller shall promptly provide Purchaser and its counsel with copies of all notices, filings and Orders of the Bankruptcy Court that such Seller has in its possession (or receives) pertaining to any Order related to any of the Transactions. No Seller shall seek any modification to the Bidding Procedures Order or the Sale Order by the Bankruptcy Court or any other Governmental Authority of competent jurisdiction to which a decision relating to the Chapter 11 Cases have been appealed, in each case, without the prior written consent of Purchaser (not to be unreasonably withheld).

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

(e) Notwithstanding anything expressed or implied herein to the contrary, other than in the Ordinary Course of Business, Sellers shall not consent or agree to the allowance of any Claim to the extent it would constitute an Assumed Obligation without the prior written consent of Purchaser. Each Seller shall use reasonable best efforts to cause the Sale Order to provide that Purchaser will have standing in the Chapter 11 Cases to object to the amount of any Claim to the extent it would constitute an Assumed Obligation and that the Bankruptcy Court will retain the right to hear and determine such objections.

(f) Sellers shall cause any plan of reorganization or liquidation approved in the Chapter 11 Cases to permit assumption and rejection of Sellers' executory Contracts and unexpired Leases of real property through the end of the Designation Rights Period.

**Section 6.4. Conduct of the Business.**

(a) Sellers and Purchaser acknowledge and agree that Purchaser will act as Sellers' exclusive agent for the purposes of conducting sales in the ordinary course of business in the Designation Rights Stores pursuant to the terms of the Agency Agreement; provided that, for the avoidance of doubt, except (i) as may be required by the terms of this Agreement, (ii) as may be required, authorized or restricted pursuant to the Bankruptcy Code, pursuant to an Order of the Bankruptcy Court upon motion by Sellers with Purchaser's consent (which consent shall not be unreasonably withheld, conditioned or delayed) or pursuant to the terms of any Cash Collateral Order or (iii) as otherwise agreed to in writing by Purchaser (including, without limitation, pursuant to the Agency Agreement), from the date hereof until the end of the Designation Rights Period, Sellers shall not undertake or permit (x) any extraordinary discounting of Inventory or (y) any other material change to the use, occupancy, maintenance and operation (including hours of operation) of the Designation Rights Properties.

(b) Without limiting (i) the generality of the foregoing or (ii) the obligations of the JV Agent or Purchaser under the Agency Agreement, Sellers shall pay when due any and all, and shall perform all maintenance and other obligations encompassed by, Occupancy Expenses and Distribution Center Expenses, as applicable, with respect to each Designation Rights Property and the related Lease solely to the extent arising during the period commencing on the Petition Date through the end of the Designation Rights Period at such times, to such extent or standard, and in such amounts as are required under the terms of the applicable Lease and any other applicable agreement pertaining to such Designation Rights Property or Lease; provided that Sellers shall be entitled to reimbursement for such Occupancy Expenses from the Purchaser and the JV Agent as and to the extent provided in Section 4 of the Agency Agreement and Section 2.3(b) hereof. Sellers shall not pay any amount due from Sellers pursuant to any provision of this Agreement using any security deposit associated with any Designation Rights Asset, Lease or other related Potential Assigned Agreement. For the avoidance of doubt, no such post-Petition Date obligations in respect of Leases or any other Potential Assigned Agreements shall be considered Cure Costs under this Agreement.

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**Section 6.5. Employee Matters.**

(a) Purchaser shall determine which Employees, if any, to offer employment to, in its sole discretion, and shall thereafter promptly notify Sellers in writing of such determination. Only Employees who are offered and accept such offers of employment with Purchaser based on the initial terms and conditions set by Purchaser and then actually commence employment with Purchaser will become “Transferred Employees” as of the applicable Assignment Date or such other date after the Assignment Date but prior to the end of the Designation Rights Period as may be determined by Purchaser (such date, the “Hire Date”). Sellers shall terminate, or shall cause to be terminated, on the applicable Hire Date, the employment of such Employees who are offered and accept offers of employment with Purchaser as of such Hire Date pursuant to this Section 6.5(a). Notwithstanding the foregoing, nothing herein will impose on Purchaser any obligation to retain any Transferred Employee in its employment for any amount of time or on any terms and conditions of employment after the applicable Hire Date. The employment of each such Transferred Employee with Purchaser (including any Transferred Employee who may be on leave of absence) will commence on the applicable Hire Date. Purchaser shall not be obligated to provide any severance, separation pay, or other payments or benefits, including any key employee retention payments, to any Employee on account of any termination of such Employee’s employment on the applicable Hire Date or in connection with any offer of employment from Purchaser, and such benefits (if any) shall remain obligations of Sellers.

(b) From and after the date hereof, Sellers shall provide Purchaser, its Affiliates, and their representatives with reasonable access to the Employees and with information, including employee records and Benefit Plan data, reasonably requested by Purchaser and such Affiliates, except as otherwise prohibited by applicable Law or Regulation.

(c) For purposes of payroll Taxes with respect to the Transferred Employees, Sellers shall treat the transactions contemplated by this Agreement, as a transaction described in Treasury Regulation Sections 31.3121(a)(1)-1(b)(2) and 31.3306(b)(1)-(b)(2); and as such, Sellers and Purchaser shall report on a basis as set forth under the “Standard Procedure” provided in Section 4 of Revenue Procedure 2004-53, 2004-2 C.B. 320.

(d) With respect to Transferred Employees, Purchaser will have full responsibility under the WARN Act relating to any act or omission of Purchaser after the applicable Hire Date. With respect to the Employees, Sellers will have full responsibility under the WARN Act relating to any act or omission of Sellers prior to and on the applicable Hire Date. Sellers shall be responsible for all other WARN Act Liabilities relating to the periods prior to and on the applicable Hire Date, including any such Liabilities that result from Employees’ separation of employment from Sellers and/or Employees not becoming Transferred Employees pursuant to this Section 6.5. Sellers have issued prior to the date of this Agreement, all WARN Act notices to the applicable Employees and all other parties required to receive notice under the WARN Act.

(e) For the avoidance of doubt and without limiting the generality of Section 2.1(d), Purchaser will not assume or be liable for any Excluded Employee Liabilities (except to the extent constituting Expenses payable by Purchaser pursuant to the terms of the Agency Agreement). Purchaser does not accept or assume any Collective Bargaining Agreements to which any Seller is a party to or subject to, and expressly declines to be bound by or accept the terms of any such Collective Bargaining Agreements. Purchaser shall not be obligated to, and does not, accept or adopt any wage rates, employee benefits, employee policies, or any other terms and conditions of employment.

(f) All provisions contained in this Agreement with respect to employee benefit plans or compensation of Transferred Employees are included for the sole benefit of the respective parties hereto. Nothing contained herein: (i) shall confer upon any former, current or future employee of Sellers or Purchaser, or any other Participant, or any legal representative or beneficiary thereof any rights or remedies, including any right to employment or continued employment, of any nature, for any specified period; (ii) shall cause the employment status of any former, present or future employee to be other than terminable at will; or (iii) shall confer any third party beneficiary rights upon any Transferred Employee or any dependent or beneficiary thereof or any heirs or assigns thereof. This Agreement is not intended to and shall not be construed to amend, modify or terminate any employee benefit plan (including, without limitation, as such term is defined under Section 3(3) of ERISA), program or arrangement.

**Section 6.6. No Successor Liability.** The parties intend that, except as included in the Assumed Obligations, upon the Closing, Purchaser shall not be deemed to: (a) be the successor of or successor employer to Sellers, including with respect to COBRA, any Collective Bargaining Agreements, any Benefit Plans (including with respect to any withdrawal Liability) and any common law successor Liability; (b) have, *de facto*, or otherwise, merged with or into Sellers; (c) be a mere continuation or substantial continuation of Sellers or the enterprise(s) of Sellers; or (d) be liable for any acts or omissions of Sellers in the conduct of the Business or arising under or related to the Acquired Assets other than as set forth in this Agreement. Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, the parties intend that Purchaser shall not be liable for any Liens (other than Assumed Obligations and Permitted Liens) against any Seller or any of its predecessors or Affiliates, and that Purchaser have no successor or vicarious Liability of any kind or character whether known or unknown as of the Closing Date or whether fixed or contingent, existing or hereafter arising, with respect to the Business, the Acquired Assets or any Liabilities of any Seller arising prior to the Closing Date. The parties agree that the provisions substantially in the form of this Section 6.6 shall be reflected in the Sale Order.

**Section 6.7. Name Changes.** No later than twenty (20) Business Days following the Closing Date, each Seller shall: (a) change its corporate name to a name which does not use the name “Gordmans Stores”, “Gordmans” or any other name that incorporates any of the foregoing or is otherwise confusingly similar to the foregoing in any manner whatsoever; and (b) use its reasonable best efforts to change the caption of the Chapter 11 Cases to names that are not similar to any of the foregoing names. Following such period, none of Sellers shall use, or file any motion to change the caption of the Chapter 11 Cases to, any Trademark, including any name, slogan or logo, which is similar or confusingly or deceptively similar to any of the Names, Trademarks or service marks included in the Acquired Intellectual Property.

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## ARTICLE VII

### COVENANTS OF PURCHASER

**Section 7.1. Further Assurances.** Purchaser shall execute such documents and use commercially reasonable efforts to take or cause to be taken such further actions as may be reasonably requested by Sellers to carry out the provisions of this Agreement and the transactions contemplated hereby. Purchaser shall use commercially reasonable efforts to fulfill or obtain the fulfillment of the conditions set forth in ARTICLE IX of this Agreement.

**Section 7.2. Adequate Assurance Regarding Assigned Agreements.** As adequate assurance of the future performance of the Assigned Agreements, Purchaser covenants (a) to perform following the Closing the obligations arising after the Closing (except with respect to Cure Costs other than Purchaser Cure Costs) under each Assigned Agreement and (b) as Sellers may reasonably request prior to the assignment of the Assigned Agreements to Purchaser, to provide reasonably requested evidence sufficient to demonstrate Purchaser's ability to perform such obligations under the Assigned Agreements.

**Section 7.3. Intellectual Property License.** Purchaser hereby grants to Sellers and their Affiliates, effective immediately upon the Closing, a non-exclusive, worldwide, royalty-free, fully paid-up, non-sublicensable, license to the Acquired Intellectual Property (subject to applicable Data Security Requirements) solely in connection with (a) the marketing, promotion, distribution (through multiple tiers) and sale of any Inventory that is not Acquired Inventory and (b) the winding down of the Business and the other operations of Sellers and their Affiliates, in each case, effective upon the Closing or the applicable Assignment Date, as applicable, and continuing for a period of six (6) months thereafter.

## ARTICLE VIII

### CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

The obligations of Purchaser under this Agreement are, at the option of Purchaser, subject to satisfaction or waiver of the following conditions precedent on or before the Closing Date.

**Section 8.1. Representations and Warranties; Performance of Obligations.**

(a) (i) Each of the representations and warranties of Sellers contained in Section 4.2, Section 4.3 and Section 4.4 (the "Specified Representations") shall be true and correct (without giving effect to any qualifications or limitations as to "materiality" or words of similar import set forth therein) in all material respects on and as of the Closing Date (except for representations and warranties made as of a specified date, which shall be true and correct in all material respects as of that date) with the same force and effect as though made by Sellers on and as of the Closing Date, and (ii) each of the representations and warranties of Sellers contained herein (other than the Specified Representations) shall be true and correct (without giving effect to any qualifications or limitations as to "materiality" or words of similar import set forth therein) on and as of the Closing Date (except for representations and warranties made as of a

specified date, which shall be true and correct as of that date) with the same force and effect as though made by Sellers on and as of the Closing Date, except where the failure of such representations or warranties to be so true and correct has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) Sellers shall have performed and complied in all material respects with the obligations and covenants required by this Agreement to be performed or complied with by Sellers on or prior to the Closing Date.

**Section 8.2. Bankruptcy Condition.** The Bankruptcy Court shall have entered the Sale Order (as provided in ARTICLE VI).

**Section 8.3. No Order.** No Governmental Authority shall have enacted, issued, promulgated or entered any Order which is in effect and has the effect of making illegal or otherwise prohibiting the consummation of the transactions contemplated hereby.

**Section 8.4. [Reserved].**

**Section 8.5. Closing Deliveries.** Sellers shall have delivered to Purchaser a certificate signed by an authorized officer of each Seller, dated the Closing Date (in form and substance reasonable satisfactory to Purchaser), certifying that the conditions specified in Section 8.1(a) and Section 8.1(b) have been satisfied as of the Closing.

**Section 8.6. Agency Agreement.** All conditions to the obligations of the JV Agent and Purchaser set forth in Section 10(a) of the Agency Agreement shall have been satisfied (or waived in accordance with the Agency Agreement).

## ARTICLE IX

### CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLERS

The obligations of Sellers under this Agreement are, at the option of Sellers, subject to the satisfaction or waiver of the following conditions precedent on or before the Closing Date.

**Section 9.1. Representations and Warranties; Performance of Obligations.**

(a) Each of the representations and warranties of Purchaser contained herein shall be true and correct (without giving effect to any qualifications or limitations as to “materiality” or words of similar import set forth therein) on and as of the Closing Date (except for representations and warranties made as of a specified date, which shall be true and correct as of that date) with the same force and effect as though by Purchaser made on and as of the Closing Date, except where the failure of such representations or warranties to be so true and correct has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on Purchaser’s ability to consummate the transactions contemplated by this Agreement.

(b) Purchaser shall have performed and complied in all material respects with the obligations and covenants required by this Agreement to be performed or complied with by Purchaser on or prior to the Closing Date.

**Section 9.2. Bankruptcy Court Approval.** The Bankruptcy Court shall have entered the Sale Order (as provided in ARTICLE VI) and the Sale Order shall be in form and substance reasonably satisfactory to Sellers.

**Section 9.3. No Order.** No Governmental Authority shall have enacted, issued, promulgated or entered any Order which is in effect and has the effect of making illegal or otherwise prohibiting the consummation of the transactions contemplated hereby.

**Section 9.4. Closing Deliveries.** Purchaser shall have delivered to Sellers a certificate signed by an authorized officer of Purchaser, dated the Closing Date (in form and substance reasonably satisfactory to Sellers), certifying that the conditions specified in Section 9.1(a) and Section 9.1(b) have been satisfied as of the Closing.

**Section 9.5. Agency Agreement.** All conditions to the obligations of Sellers set forth in Section 10(b) of the Agency Agreement shall have been satisfied (or waived in accordance with the Agency Agreement).

## ARTICLE X

### CLOSING

**Section 10.1. Closing.** Upon the terms and subject to the satisfaction of the conditions set forth in ARTICLE VIII and ARTICLE IX, the closing of the transaction contemplated by this Agreement (the “Closing”) will take place at the offices of Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654 on the Sale Commencement Date (as defined in the Agency Agreement) (so long as the conditions set forth in ARTICLE VIII and ARTICLE IX have been satisfied or waived), or on such other date or place as Purchaser and Sellers may determine (the date on which the Closing occurs, the “Closing Date”).

**Section 10.2. Deliveries by Seller.** At the Closing, Sellers shall deliver or procure delivery to Purchaser of each of the following:

(a) physical possession (or access to physical possession) of all of the Acquired Inventory, Acquired FF&E and related Acquired Assets (other than any Intellectual Property);

(b) one or more bills of sale, in customary form reasonably satisfactory to the parties hereto, conveying in the aggregate all of the owned personal property of Sellers included in the Acquired Inventory, Acquired FF&E and related Acquired Assets, duly executed by Sellers;

(c) one or more assignments of the Acquired Intellectual Property, including for registered Intellectual Property set forth on Schedule 1.1(a), in customary form reasonably satisfactory to the parties hereto, duly executed by the relevant Seller or Sellers;

(d) one or more assignments and assumptions of the Assumed Obligations being assumed by Purchaser at the Closing in accordance with this Agreement (collectively, the “Assignment and Assumption”), in customary form reasonably satisfactory to the parties hereto, duly executed by the relevant Seller or Sellers;

(e) a copy of the certificate set forth in Section 8.5;

(f) a certified copy of the Sale Order as entered by the Bankruptcy Court; and

(g) certificates, duly executed and acknowledged, certifying that any payments made pursuant to this Agreement are exempt from withholding pursuant to Section 1445 of the Code.

**Section 10.3. Deliveries by Purchaser and the JV Agent.** At the Closing, Purchaser and the JV Agent shall deliver or procure delivery to Sellers of each of the following:

(a) the Assignment and Assumption, in form reasonably satisfactory to the parties hereto, duly executed by Purchaser;

(b) the payment of the applicable portion of the Cash Consideration to be paid at the Closing in accordance with the Agency Agreement; and

(c) a copy of the certificate set forth in Section 9.4.

**Section 10.4. Form of Instruments.** To the extent that a form of any document to be delivered hereunder is not attached as an Exhibit hereto, such documents shall be in form and substance, and shall be executed and delivered in a manner, reasonably satisfactory to Purchaser and Sellers.

## ARTICLE XI

### TERMINATION

**Section 11.1. Termination.** This Agreement may be terminated prior to the Closing as follows:

(a) by mutual written agreement of Purchaser and Sellers;

(b) by either Purchaser or Sellers if there shall be in effect an applicable Law or Order restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby (it being understood that the lack of entry of the Sale Order shall not permit termination of this Agreement except as set forth in Section 11.1(g)); provided that the right to terminate this Agreement under this Section 11.1(b) shall not be available to any party whose breach of this Agreement shall have been the cause of, or shall have resulted in such applicable Law or Order that restrains, enjoins or prohibits the consummation of the transactions contemplated hereby;

(c) by Purchaser (provided that Purchaser is not then in material breach of any representation, warranty, covenant, or other agreement contained herein), if there shall have been a material breach or misrepresentation of any of the representations or warranties or a material breach of any of the covenants set forth in this Agreement on the part of Sellers, which breach is not cured within seven (7) days following written notice to Sellers or which breach, by its nature, cannot be cured prior to the Closing;

(d) by Sellers (provided that no Seller is then in material breach of any representation, warranty, covenant, or other agreement contained herein), if there shall have been a material breach or misrepresentation of any of the representations or warranties or a material breach of any of the covenants set forth in this Agreement on the part of Purchaser, which breach is not cured within seven (7) days following written notice to Purchaser or which breach, by its nature, cannot be cured prior to the Closing;

(e) automatically, upon an Order of the Bankruptcy Court to approve an Alternative Transaction (other than with Purchaser or an Affiliate of Purchaser);

(f) by Purchaser, if the Bidding Procedures Order shall fail to be in full force and effect or shall have been stayed, reversed or modified without Purchaser's written consent;

(g) by Purchaser, if the Sale Order shall not have been entered by the Bankruptcy Court by April 6, 2017 (or by such later date as shall be mutually agreed to by Purchaser and Sellers in writing);

(h) by either Purchaser or Sellers on any day if the Closing shall not have been consummated by April 7, 2017 (or by such later date as shall be mutually agreed to by Purchaser and Sellers in writing), provided that the right to terminate this Agreement under this Section 11.1(h) shall not be available to any party whose failure to fulfill any material obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur on or before such date;

(i) by Purchaser, in the event that any Chapter 11 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 beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code is appointed in any Chapter 11 Case; and

(j) by either Purchaser or Sellers if the Agency Agreement is terminated in accordance with its terms for any reason whatsoever.

**Section 11.2. Effect of Termination.** In the event of termination of this Agreement by Purchaser or Sellers, except as otherwise expressly provided in this Section 11.2, all rights and obligations of the parties under this Agreement shall terminate without any Liability of any party to any other party. The provisions of Section 3.2, Section 13.1, Section 13.7, Section 13.8, Section 13.9, Section 13.10, Section 13.11, Section 13.12, Section 13.14 and Section 13.16 shall expressly survive the termination or expiration of this Agreement.

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**ARTICLE XII**

**TAX MATTERS**

**Section 12.1. Allocation of Purchase Price.**

(a) Within sixty (60) days after the Closing Date, Purchaser shall prepare and deliver to Sellers a proposed allocation of the purchase price and assumed obligations (as determined for U.S. Federal income Tax purposes) among the Acquired Assets and Designation Rights (as well as any other assets deemed acquired by Purchaser for U.S. Federal income Tax purposes) in accordance with the relevant Tax laws, including Section 1060 of the Code (the “Purchaser Allocation”). If Sellers disagree with the Purchaser Allocation, Sellers may, within thirty (30) days of receipt of the Purchaser Allocation, deliver a revised draft of the allocation to Purchaser, specifying those items of the Purchaser Allocation to which Sellers disagree and setting forth Sellers’ proposed allocation (the “Sellers Allocation”). If Sellers deliver the Sellers Allocation during such period, Purchaser and Sellers shall, during the thirty (30) days following such delivery, cooperate in good faith to reach a mutually agreeable allocation on the disputed items. If Purchaser and Sellers are unable to reach such agreement, they shall submit for resolution the items remaining in dispute to the Bankruptcy Court, unless otherwise agreed to by Purchaser and Sellers. The allocation, as prepared by Purchaser if no Sellers Allocation has been timely delivered, as adjusted pursuant to any agreement between Sellers and Purchaser or determined by the Bankruptcy Court, shall be the “Allocation”.

(b) To the extent payments are made that are characterized as adjustments to the purchase price for U.S. Federal income Tax purposes after the Allocation has been determined pursuant to Section 12.1(a), Purchaser and Sellers shall cooperate in good faith to revise the Allocation as appropriate to reflect such payments.

(c) Purchaser and Sellers shall report and file all Tax Returns (including amended Tax Returns and Claims for refund) consistent with the Allocation (as adjusted under Section 12.1(b)), and shall take no position contrary thereto or inconsistent therewith (including, without limitation, in any audits or examinations by any Governmental Authority or any other proceeding), except as required by applicable Law.

**Section 12.2. Transfer Taxes.** Any sales, use, purchase, transfer, deed, fixed asset, stamp, documentary stamp or other similar Taxes imposed in connection with the transactions contemplated by this Agreement (“Transfer Taxes”) shall be borne and timely paid by Purchaser. Purchaser and Sellers shall use commercially reasonable efforts to obtain any available exemption from any Transfer Taxes and shall cooperate with each other in providing information and documentation that may be necessary to obtain such an exemption. Purchaser and Sellers shall cooperate in timely making all filings, returns, reports and forms as may be required in connection with the payment of Transfer Taxes. Purchaser or Sellers, as applicable, shall execute and file all necessary Tax Returns and other documentation with respect to all such Transfer Taxes. If required by applicable Law, any other party will join in the execution of any Tax Returns and other documentation.

**Section 12.3. Cooperation.** Purchaser and Sellers shall reasonably cooperate, and shall cause their Affiliates, managers, officers, directors, employees, agents and representatives to reasonably cooperate, with respect to the filing of any Tax Returns and the conduct of any Tax examinations, audits, contests or other Tax proceedings relating to the Business.

**Section 12.4. Survival.** Notwithstanding any other provision of this Agreement, the terms and provisions of ARTICLE XII shall survive the Closing.

### ARTICLE XIII

#### MISCELLANEOUS

**Section 13.1. Expenses.** Except as otherwise provided herein or the other Transaction Documents, each party hereto shall bear its own costs and expenses, including attorneys' fees, with respect to the transactions contemplated hereby.

**Section 13.2. Amendment.** Except as provided herein, any provision of this Agreement, the Disclosure Schedules or the Exhibits may be amended or waived only in a writing signed by Purchaser and Sellers and, to the extent that any such amendment or waiver would adversely affect the JV Agent in any material respect, by the JV Agent.

**Section 13.3. Notices.** Except as otherwise expressly provided herein, all notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (a) when personally delivered, (b) when transmitted by electronic mail if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), (c) the day following the day (except if not a Business Day, then the next Business Day) on which the same has been delivered prepaid to a reputable national overnight air courier service or (d) the third (3rd) Business Day following the day on which the same is sent by certified or registered mail, postage prepaid, in each case to the respective parties hereto at the address set forth below, or at such other address as such party may specify by written notice to the other party hereto:

To Seller:           Gordmans Stores, Inc.  
                          1926 South 67th Street  
                          Omaha, NE 68106  
                          Attn: Andrew T. Hall  
                          Email: andy.hall@gordmans.com

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

Kirkland & Ellis LLP  
300 North LaSalle Street  
Chicago, IL 60654  
Attn: Patrick J. Nash, P.C.; Gerald T. Nowak, P.C.; Bradley C. Reed; Brad Weiland  
E-mail: patrick.nash@kirkland.com; gerald.nowak@kirkland.com; bradley.reed@kirkland.com;  
brad.weiland@kirkland.com

To Purchaser: Specialty Retailers, Inc.  
c/o Stage Stores, Inc.  
2425 West Loop South  
Houston, TX 77027  
Attn: Chadwick P. Reynolds  
Email: creynolds@stagestores.com

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

Cravath, Swaine & Moore LLP  
Worldwide Plaza  
825 Eighth Avenue  
New York, NY 10019  
Attn: Eric L. Schiele; Paul H. Zumbro; David J. Perkins  
Email: eschiele@cravath.com; pzumbro@cravath.com; dperkins@cravath.com

and:

McAfee & Taft A Professional Corporation  
10th Floor, Two Leadership Square  
211 N. Robinson  
Oklahoma City, OK 73102  
Attn: N. Martin Stringer  
E-mail: martin.stringer@mcafeetaft.com

**Section 13.4. Waivers.** The failure of a party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term, covenant, representation or warranty contained in this Agreement shall be effective unless in writing by Sellers, in the case of a waiver by any Seller, or Purchaser, in the case of any waiver by Purchaser, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach of other instances or a waiver of any other condition or breach of any other term, covenant, representation or warranty.

**Section 13.5. Electronic Delivery; Counterparts.** This Agreement and any signed agreement or instrument entered into in connection with this Agreement, and any

amendments hereto or thereto, may be executed in one (1) or more counterparts, all of which shall constitute one and the same instrument. Any such counterpart, to the extent delivered by .pdf, .tif, .gif, .jpeg or similar attachment to electronic mail (any such delivery, an “Electronic Delivery”) shall be treated in all manner and respects as an original executed counterpart and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto, each other party hereto or thereto shall re-execute the original form of this Agreement and deliver such form to all other parties hereto. No party hereto shall raise the use of Electronic Delivery to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of Electronic Delivery as a defense to the formation of a contract, and each such party forever waives any such defense, except to the extent such defense relates to lack of authenticity.

**Section 13.6. Headings.** The headings preceding the text of the Articles and Sections of this Agreement and the Exhibits and the Schedules are for convenience only and shall not be deemed part of this Agreement.

**Section 13.7. SUBMISSION TO JURISDICTION; WAIVER OF JURY TRIAL.**

(a) THE PARTIES HEREBY AGREE THAT ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, SUITS AND PROCEEDINGS RELATING TO THIS AGREEMENT OR THE OTHER AGREEMENTS CONTEMPLATED HEREIN SHALL BE FILED AND MAINTAINED ONLY IN THE BANKRUPTCY COURT, AND THE PARTIES HEREBY CONSENT TO THE JURISDICTION OF THE BANKRUPTCY COURT; PROVIDED, HOWEVER, THAT IF THE BANKRUPTCY COURT IS UNWILLING OR UNABLE TO HEAR ANY SUCH DISPUTE, THE COURTS OF THE STATE OF NEW YORK AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE COUNTY OF NEW YORK, NEW YORK WILL HAVE SOLE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER AT LAW OR IN EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT.

(b) EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

**Section 13.8. Specific Performance.** Each party acknowledges and agrees that (a) irreparable damage would occur in the event that any of the provisions of this Agreement are not performed in accordance with specific terms or are otherwise breached and (b) remedies at Law would not be adequate to compensate the other party. Accordingly, each party agrees that the other party shall have the right, in addition to any other rights and remedies existing in its favor (including the release of the Deposit to Sellers, if applicable), to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce its rights and obligations hereunder not only by an action or actions for damages but also by an action or actions for specific performance, injunctive relief and/or other equitable relief. The right to equitable relief, including specific performance or injunctive relief, shall exist notwithstanding,

and shall not be limited by, any other provision of this Agreement. Each party hereby waives any defense that a remedy at Law is adequate and any requirement to post bond or other security in connection with actions instituted for injunctive relief, specific performance or other equitable remedies.

**Section 13.9. Governing Law.** All issues and questions concerning the construction, validity, interpretation and enforceability of this Agreement and the Exhibits and Schedules hereto, and all Claims and disputes arising hereunder or thereunder or in connection herewith or therewith, whether purporting to sound in contract or tort, or at Law or in equity, shall be governed by, and construed in accordance with, the Laws of the State of New York, without giving effect to any choice of Law or conflict of Law rules or provisions (whether of the State of New York or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of New York.

**Section 13.10. Binding Nature; Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without the prior written consent of the other parties (which consent shall not be unreasonably withheld or delayed).

**Section 13.11. No Third Party Beneficiaries.** Except as set forth herein, this Agreement is solely for the benefit of the parties hereto and nothing contained herein, express or implied, is intended to confer on any Person other than (a) the parties hereto or their successors and permitted assigns, any rights, remedies, obligations, Claims, or causes of action under or by reason of this Agreement and (b) the JV Agent.

**Section 13.12. Materiality; Disclosure Schedules.** As used in this Agreement, unless the context would require otherwise, the terms “material” or “material to Sellers” and the concept of a “material” nature of an effect upon Sellers shall be measured relative to the entire Business, taken as a whole. There likely will be, however, included in the Disclosure Schedules and may be included elsewhere in this Agreement items which are not “material” within the meaning of the immediately preceding sentence, and such inclusion shall not be deemed to be an agreement by Sellers that such items are “material” or to further define the meaning of such term for purposes of this Agreement.

**Section 13.13. Construction.** The language used in this Agreement will be deemed to be the language chosen by the parties to this Agreement to express their mutual intent, and no rule of strict construction shall be applied against any party. The headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions hereof. The Recitals form an integral part of this Agreement and are incorporated by reference into this Agreement as if they were fully restated herein. The specification of any dollar amount or the inclusion of any item in the representations and warranties contained in this Agreement, the Disclosure Schedules or the Exhibits is not intended to imply that the amounts, or higher or lower amounts, or the items so included, or other items, are or are not required to be disclosed (including whether such amounts or items are required to be disclosed as material or threatened) or are within or outside of the Ordinary Course of Business, and no party shall use the fact of the setting of the amounts

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or the fact of the inclusion of any item in this Agreement, the Disclosure Schedules or the Exhibits in any dispute or controversy between the parties hereto as to whether any obligation, item or matter not set forth or included in this Agreement, the Disclosure Schedules, or Exhibits is or is not required to be disclosed (including whether the amount or items are required to be disclosed as material or threatened) or is within or outside of the Ordinary Course of Business for purposes of this Agreement. In addition, matters reflected in the Disclosure Schedules are not necessarily limited to matters required by this Agreement to be reflected in the Disclosure Schedules. Such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature. The information contained in this Agreement, in the Disclosure Schedules and the Exhibits is disclosed solely for purposes of this Agreement, and no information contained herein or therein shall be deemed to be an admission by any party hereto to any third party of any matter whatsoever (including any violation of Law or breach of contract). Any reference to any federal, state, local or foreign statute or Law shall be deemed also to refer to all rules and Regulations promulgated thereunder, unless the context requires otherwise.

**Section 13.14. Entire Understanding.** This Agreement, the Exhibits, the Schedules, the Agency Agreement and the other Transaction Documents set forth the entire agreement and understanding of the parties hereto in respect to the transactions contemplated hereby (other than any agreement between the JV Agent and Purchaser, which shall not in any way affect any of Sellers' rights or expand its obligations hereunder), and this Agreement, the Exhibits, the Schedules, the Agency Agreement and the other Transaction Documents supersede all prior agreements, arrangements and understandings relating to the subject matter hereof and are not intended to confer upon any other Person any rights or remedies hereunder.

**Section 13.15. Closing Actions.** All deliveries, payments and other transactions and documents relating to the Closing shall be interdependent, and none shall be effective unless and until all are effective (except to the extent that the party entitled to the benefit thereof has waived satisfaction or performance thereof as a condition precedent to the Closing).

**Section 13.16. Conflict Between Transaction Documents.** The parties hereto agree and acknowledge that to the extent any terms and provisions of this Agreement are in any way inconsistent with or in conflict with any term, condition or provision of (a) the Sale Order or Agency Agreement, the Sale Order or Agency Agreement, as applicable, shall govern and control or (b) any other agreement or document referred to herein (other than the Sale Order and the Agency Agreement), this Agreement shall govern and control.

**Section 13.17. No Survival.** The representations, warranties and covenants which require performance prior to the Closing of Sellers and Purchaser contained in this Agreement or in any instrument delivered in connection herewith shall not survive the Closing. Notwithstanding the foregoing, the covenants and agreements that by their terms are to be satisfied after the Closing Date, shall survive until satisfied or performed in accordance with their terms.

**Section 13.18. Bulk Sale Laws.** The parties intend that pursuant to Section 363(f) of the Bankruptcy Code, the transfer of the Acquired Assets shall be free and clear of any security interests in the Acquired Assets, including any Liens or claims arising out of the bulk

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transfer laws, and the parties shall take such steps as may be necessary or appropriate to so provide in the Sale Order. In furtherance of the foregoing, each party hereby waives compliance by the parties with the “*bulk sales*,” “*bulk transfers*” or similar Laws and all other similar Laws in all applicable jurisdictions in respect of the transactions contemplated by this Agreement or the other Transaction Documents. For the avoidance of doubt, this Section 13.18 shall not limit the obligations of the parties hereto with respect to Transfer Taxes as described in Section 12.2.

\* \* \* \* \*

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IN WITNESS WHEREOF, the parties hereto have caused this Asset Purchase Agreement to be executed and delivered on the date first above written.

PURCHASER :

SPECIALTY RETAILERS, INC.

By: /s/ Michael L. Glazer

Name: Michael L. Glazer

Title: President and Chief Executive Officer

*[Signature Page to Asset Purchase Agreement]*

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SELLERS :

GORDMANS STORES, INC.

By: /s/ Andrew T. Hall  
Name: Andrew T. Hall  
Title: President, Chief Executive Officer and Secretary

GORDMANS INTERMEDIATE HOLDING CORP.

By: /s/ Andrew T. Hall  
Name: Andrew T. Hall  
Title: President, Chief Executive Officer and Secretary

GORDMANS, INC.

By: /s/ Andrew T. Hall  
Name: Andrew T. Hall  
Title: President, Chief Executive Officer and Secretary

GORDMANS MANAGEMENT COMPANY, INC.

By: /s/ Andrew T. Hall  
Name: Andrew T. Hall  
Title: President, Chief Executive Officer and Secretary

*[Signature Page to Asset Purchase Agreement]*

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GORDMANS DISTRIBUTION COMPANY, INC.

By: /s/ Andrew T. Hall  
Name: Andrew T. Hall  
Title: President, Chief Executive Officer and Secretary

GORDMANS LLC

By: /s/ Andrew T. Hall  
Name: Andrew T. Hall  
Title: President, Chief Executive Officer and Secretary

*[Signature Page to Asset Purchase Agreement]*

**AGENCY AGREEMENT**

This Agency Agreement (“Agreement”) is made as of March 31, 2017, by and between Gordmans Stores, Inc. and each of its subsidiaries (collectively, the “Merchant”), a joint venture comprising Tiger Capital Group, LLC and Great American Group WF, LLC (collectively, “JV Agent”) and Specialty Retailers, Inc., a Texas corporation (“Purchaser”).

Section 1. Recitals.

WHEREAS, Merchant operates retail stores and desires that the Agent (as defined below) act as Merchant’s exclusive agent for the limited purposes of: (a) selling all of the Merchandise (as defined below) and E-Commerce Inventory (as defined below) from (i) Merchant’s retail store locations identified on Exhibit 1A attached hereto (each individually, a “Closing Store,” and, collectively, the “Closing Stores”) through the Closing Stores by means of a “store closing,” “sale on everything,” “everything must go” or similar-themed sale (a sale conducted in such fashion, a “Liquidation Sale”) and (ii) Merchant’s retail store locations identified on Exhibit 1B attached hereto (each individually, a “Designation Rights Store” and, collectively, the “Designation Rights Stores”; each of the Closing Stores and Designation Rights Stores, a “Store” and, collectively, the “Stores”) by means of sales in the ordinary course of business (unless and to the extent that Purchaser elects, in its sole discretion, to conduct such sales as Liquidation Sales) (the sales described in this clause (a), as further described below, the “Sale”); and (b) disposing of the Owned FF&E (as defined below) in the Stores, Merchant’s distribution center operated at 9202 F Street, Omaha, Douglas County, Nebraska 68127 (the “Nebraska Distribution Center”) and Merchant’s distribution center operated at 70 West Commerce Park, County Road 1000 S, Monrovia, Indiana (the “Indiana Distribution Center”, and each individually, a “Distribution Center” and, collectively, the “Distribution Centers”), Merchant’s corporate headquarters located at 1926 South 67th Street, Omaha, NE 68106 (the “Headquarters”) and Merchant’s call center located at 2336 South 156th Circle, Omaha, NE 68130 (the “Call Center”).

WHEREAS, on March 13, 2017, Merchant filed voluntary petitions for relief and commenced cases (the “Bankruptcy Case”) 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 Nebraska (the “Bankruptcy Court”).

WHEREAS, on March 22, 2017, the Bankruptcy Court entered an Order (I) Establishing Bidding Procedures and Granting Related Relief and (II) Approving the Bid Protections Related to the Disposition of Certain Assets Free and Clear of Liens, Claims and Encumbrances and Interests [Docket No. 159] (the “Bid Procedures Order” and the bidding procedures approved thereby, the “Bid Procedures”) in the Bankruptcy Case.

WHEREAS, contemporaneously herewith, Purchaser and Merchant have entered into that certain Asset Purchase Agreement, dated as of the date hereof (the “APA”), pursuant to which Purchaser intends (i) to acquire designation rights with respect to the leases relating to the Designation Rights Stores and the Nebraska Distribution Center and any contract to which Merchant is a party other than any contract exclusively relating to any Closing Store or the Indiana Distribution Center and (ii) to acquire certain assets of, and certain rights from, and to assume certain liabilities of, Merchant, as specified therein.

WHEREAS, “ Agent ” shall mean (i) with respect to the Closing Stores and the Indiana Distribution Center (including Expenses (as defined below) payable and obligations under this Agreement with respect thereto) and the Merchandise and Owned FF&E located therein and in the Headquarters and the Call Center, JV Agent, (ii) with respect to the Designation Rights Stores and the Nebraska Distribution Center (including Expenses payable and other obligations under this Agreement with respect thereto) and the Merchandise and Owned FF&E located therein, Purchaser and (iii) for all other purposes (including all Expenses other than those payable with respect to the Closing Stores or the Designation Rights Stores), both JV Agent and Purchaser, jointly and severally.

WHEREAS, pursuant to the APA, Purchaser and Merchant have acknowledged and agreed that the consideration to be paid by Purchaser in respect of the transactions contemplated by the APA shall be paid at such times and in such a manner as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Agent and Merchant hereby agrees as follows:

Section 2. Appointment of Agent/Approval Order.

(a) Effective on the date hereof, but subject to the terms hereof and the entry of the Approval Order, the Merchant hereby irrevocably appoints Agent, and Agent hereby agrees to serve, as Merchant’s exclusive agent for the limited purpose of conducting the Sale in accordance with the terms and conditions of this Agreement.

(b) In connection with the transactions contemplated by this Agreement and the APA, Merchant shall seek entry of an order, substantially in the form of Exhibit 2(b) attached hereto, approving this Agreement and the APA and authorizing Merchant and Agent to conduct the Sale and consummate the other transactions contemplated hereby and by the APA in accordance with the terms hereof and thereof (the “ Approval Order ”). The Approval Order shall provide, inter alia, as follows (and shall otherwise be in form and substance reasonably acceptable to each of JV Agent, Purchaser and Merchant): (i) this Agreement and the APA (and each of the transactions contemplated hereby and thereby, including, without limitation, the Sale) are approved in their entirety; (ii) the Bankruptcy Court finds that Merchant’s decisions to (A) enter into this Agreement and the APA and (B) perform under and make payments required by this Agreement and the APA are reasonable exercises of Merchant’s sound business judgment consistent with its fiduciary duties and are in the best interests of the Merchant, its estate, its creditors, and other parties in interest; (iii) Merchant and Agent shall be authorized to take any and all actions as may be necessary or desirable to implement this Agreement and the APA and each of the transactions contemplated hereby and thereby; (iv) Agent shall be entitled to sell all Merchandise, Additional Agent Merchandise, Merchant’s Consignment Goods, DSW Merchandise and Owned FF&E hereunder free and clear of all liens, claims, interests or encumbrances thereon (including, without limitation, any liens in favor of the Administrative

Agent or any Lender), with any liens, claims, interests or encumbrances encumbering all or any portion of the Merchandise, Additional Agent Merchandise, Merchant's Consignment Goods, DSW Merchandise or Owned FF&E, the Proceeds (as defined below) or any proceeds of any of the foregoing attaching only to the Guaranteed Amount and other amounts to be received by Merchant under this Agreement (provided that the Debtors shall remain obligated to pay to DSW any portion of the receipts of sales of DSW Merchandise (exclusive of Sales Taxes) required to be paid to DSW under the terms of agreements with DSW as in existence on the date hereof); (v) Agent shall have the right to use the Stores and Distribution Centers and all related Store and Distribution Center services, furniture, fixtures, equipment and other assets of the Merchant as designated hereunder for the purpose of conducting the Sale, free of any interference from any entity or person, subject to compliance with the Sale Guidelines (as defined below and solely with respect to the Stores) and the Approval Order; (vi) except as otherwise agreed between JV Agent and Purchaser, Agent, as agent for Merchant, is authorized to conduct, advertise, post signs, utilize signwalkers, and otherwise promote the Sale (including without limitation by means of media advertising, interior and exterior banners, A-frames and similar signage) (A) at the Closing Stores (and, at Purchaser's election, in its sole discretion, at the Designation Rights Stores) as a "store closing", "sale on every-thing", "everything must go", or similar themed sale and (B) at the Designation Rights Stores (unless Purchaser makes the election set forth in clause (A)), consistent with such Designation Rights Stores being operated in the ordinary course of business (but, in the case of each of clauses (A) and (B), shall not refer to any such sale as a "going out of business", "total liquidation", "bankruptcy ordered" or "bankruptcy liquidation" sale), in each case without further consent of any person, in accordance with the Sale Guidelines (as the same may be modified and approved by the Bankruptcy Court) and without compliance with the Liquidation Sale Laws (as defined below), subject to compliance with the Sale Guidelines and the Approval Order; (vii) except as otherwise agreed between JV Agent and Purchaser, Agent shall be granted a limited royalty-free license and right to use until the Sale Termination Date the trademarks, trade names, logos, e-mail lists, mailing lists, customer lists, websites, URLs, domain names, and social media sites (including, without limitation, Facebook and Twitter) relating to and used in connection with the operation of the Stores (notwithstanding that any of the foregoing is acquired by Purchaser pursuant to the APA) solely for the purposes of advertising the Sale, selling Merchandise, Additional Agent Merchandise, Merchant's Consignment Goods, DSW Merchandise and Owned FF&E and otherwise conducting the Sale in accordance with the terms of the Agreement; (viii) all newspapers and other advertising media in which the Sale is advertised shall be directed to accept the Approval Order as binding and to allow Merchant and Agent to consummate the transactions provided for in this Agreement and the APA, including, without limitation, the conducting and advertising of the Sale in the manner contemplated by this Agreement; (ix) all utilities, landlords, creditors and other interested parties (including, without limitation, internet service providers and website hosting and servicing providers) and all persons acting for or on their behalf shall not interfere with or otherwise impede the conduct of the Sale, or institute any action in any court (other than in the Bankruptcy Court) or before any administrative body which in any way directly or indirectly interferes with or obstructs or impedes the conduct or advertising of the Sale; (x) the Bankruptcy Court shall retain jurisdiction over all parties to this Agreement and the APA (including, without limitation, the Administrative Agent and the Lenders) to enforce this Agreement and the APA; (xi) Agent shall not be the successor to Merchant or any predecessor or affiliate of Merchant and Agent will not assume, or in any way be liable or responsible for, any claim or liability, whether known or

unknown, whether asserted or unasserted, whether accrued or unaccrued, whether contingent or not, whether at law or in equity or otherwise, whether existing on the date hereof or arising thereafter and whether relating to or arising out of Merchant's business, the Merchandise or otherwise, other than as expressly provided for in this Agreement or the APA; (xii) Agent shall be authorized to include Additional Agent Merchandise in the Sale; (xiii) subject to Agent having satisfied its obligations to tender payment of the Initial Guaranty Payment and to deliver the Letter of Credit, any amounts owed by Merchant to Agent under this Agreement shall be granted the status of superpriority claims in the Bankruptcy Case pursuant to the Bankruptcy Code senior to all other superpriority claims, including, without limitation, to the superpriority claims of the Administrative Agent and the Lenders; provided that until Merchant receives payment in full of the Guaranteed Amount and any other amounts payable by Agent to Merchant hereunder, any superpriority claim granted to Agent hereunder shall be junior and subordinate in all respects to the superpriority claims of the Administrative Agent and the Lenders under Merchant's Existing Credit Facility but solely to the extent of the amount of the unpaid portion of the Guaranteed Amount and all other amounts payable by Agent to Merchant hereunder; (xiv) each of JV Agent and Purchaser shall be granted a valid, binding, enforceable and perfected security interest as provided for in Section 15 hereof (without the necessity of filing financing statements to perfect such security interest); (xv) the Bankruptcy Court finds that time is of the essence in effectuating this Agreement and the APA and proceeding with the Sale at the Stores uninterrupted; (xvi) the Bankruptcy Court finds that this Agreement and the APA were negotiated in good faith and at arms' length between the Merchant and Agent and that Agent is entitled to the protection of section 363(m) of the Bankruptcy Code; (xvii) the Bankruptcy Court finds that Agent's performance under this Agreement and the APA will be, and payment of the Guaranteed Amount and any other amounts payable by Agent to Merchant under this Agreement and the APA will be made, in good faith and for valid business purposes and uses, as a consequence of which Agent is entitled to the protection and benefits of sections 363(m) and 364(e) of the Bankruptcy Code; (xviii) in the event any of the provisions of the Approval Order are modified, amended or vacated by a subsequent order of the Bankruptcy Court or any other court, Agent shall be entitled to the protections provided in Bankruptcy Code sections 363(m) and 364(e) and, no such appeal, modification, amendment or vacatur shall affect the validity and enforceability of the sale or the liens or priority authorized or created under this Agreement, the APA or the Approval Order; (xix) (A) the terms of this Agreement and the APA shall be binding on any trustee appointed for the Merchant under any provision of the Bankruptcy Code, whether the Bankruptcy Case of the Merchant is proceeding under Chapter 7 or Chapter 11 of the Bankruptcy Code (the "Trustee"); (B) any such Trustee shall be authorized and directed to operate the business of Merchant to the fullest extent necessary to permit compliance with the terms of this Agreement and the APA; and (C) Agent and any such Trustee shall be authorized to perform under this Agreement and the APA upon the appointment of a Trustee without the need for further order of the Bankruptcy Court; (xx) the application of any automatic stay of enforcement of the Approval Order is waived; (xxi) Agent shall be entitled to be heard on all issues in the Bankruptcy Case related to this Agreement and the APA or the transactions contemplated hereby and thereby; (xxii) nothing contained in this Agreement and none of Agent's actions taken in respect of this Agreement and the APA or the transactions contemplated hereby and thereby shall be deemed to constitute an assumption by Agent of any of Merchant's obligations relating to any of Merchant's employees (except for Agent's obligations to pay Expenses), nor shall Agent become liable under any collective bargaining or employment

agreement or be deemed a joint or successor employer with respect to such employees; (xxiii) Merchant shall retain sufficient funds, or make other arrangements satisfactory to Merchant and Agent, to enable Merchant to fully satisfy and perform its obligations under this Agreement and the APA and Merchant shall be authorized and directed to use those funds to fully satisfy and perform its obligations under this Agreement and the APA; (xxiv) in the event Merchant or the Administrative Agent notifies Agent of its intention to draw on the Letter of Credit, Agent shall be entitled to an emergency hearing by the Bankruptcy Court sufficient to determine whether such draw is permitted under the terms of this Agreement prior to the occurrence of such draw; (xxv) during the Sale Term applicable to any Store or Distribution Center and for purposes of conducting the Sale at such Store or Distribution Center, (A) Agent shall have the right to the unencumbered use and occupancy of, and peaceful and quiet possession of, such Store or Distribution Center and the assets currently located at such Store or Distribution Center, in each case subject to the extent of Merchant's rights and entitlement to use the same, and the services provided at such Store to the extent Merchant is entitled to such services and (B) Merchant shall not assign, reject, terminate or vacate any lease relating to any such Store or Distribution Center where such assignment, rejection, termination or vacatur would have an effective date on or prior to the applicable Sale Termination Date or Vacate Date for such Store or Distribution Center; (xxvi) if, and only to the extent, Agent over-funds any amounts in respect of the Guaranteed Amount or any Expenses that Agent pre-funds pursuant to the terms of Section 4.1 (it being understood that amounts pre-funded in respect of Expenses shall not be subject to this clause (xxvi) once the applicable Expenses have been reconciled and any overfunding in respect thereof either returned to Agent or applied to other amounts payable by Agent to Merchant) and such over-funding cannot be recovered by Agent from Merchant under Section 3.3(b) or Section 3.3(d) by means of an offset or otherwise, then Merchant shall (or if Merchant shall be unable to or otherwise for any reason fails to, and the Administrative Agent or any Lender has received any funds in respect of such overfunding, the Administrative Agent, on behalf of the Lenders, shall) disgorge and remit such overfunded amount to Agent within two (2) business days of written demand thereof by Agent (with respect to the Administrative Agent, not to exceed the amounts actually received by the Administrative Agent and the Lenders in connection with the Sale, the sale or other disposition of the Merchant's Consignment Goods, the sale or other disposition of the DSW Merchandise, the sale or other disposition of the Additional Agent Merchandise and the sale or other disposition of the Owned FF&E); and (xxvii) so long as the Liquidation Sale is conducted in accordance with the Sale Guidelines and the Approval Order and in a safe and professional manner, Agent shall be deemed to be in compliance with any Applicable General Laws.

(c) Merchant shall use reasonable best efforts to obtain entry of the Approval Order on or prior to April 6, 2017 (the "Approval Order Deadline").

(d) Subject to entry of the Approval Order, Agent shall be authorized to advertise the Sale (i) at the Closing Stores (and, at Purchaser's election, in its sole discretion, at the Designation Rights Stores), as a "store closing", "sale on everything", "everything must go", or similar-themed sale and (B) at the Designation Rights Stores (unless Purchaser makes the election set forth in clause (i)), consistent with such Designation Rights Stores operated in the ordinary course of business (but, in the case of each of clauses (i) and (ii), shall not refer to any such sale as a "going out of business", "total liquidation", "bankruptcy ordered" or "bankruptcy liquidation" sale), and the Approval Order shall provide that Agent shall be required to comply

with applicable federal, state and local laws, regulations and ordinances, including, without limitation, all laws and regulations relating to advertising, permitting, privacy, consumer protection, occupational health and safety and the environment, together with all applicable statutes, rules, regulations and orders of, and applicable restrictions imposed by, governmental authorities (collectively, the “Applicable General Laws”), other than all applicable laws, rules and regulations in respect of “store closing”, “sale on everything”, “everything must go” or similar-themed sales, including laws restricting safe, professional and non-deceptive, customary advertising such as signs, banners, posting of signage, and use of sign-walkers solely in connection with the Sale and including ordinances establishing license or permit requirements, waiting periods, time limits or bulk sale restrictions that would otherwise apply to the Sale, but excluding those designed to protect public health and safety (collectively, the “Liquidation Sale Laws”); provided that Agent shall conduct the Sale in accordance with the terms of this Agreement (subject to any side letter between JV Agent and Purchaser, which shall not in any way affect Merchant’s rights or expand its obligations hereunder), the Sale Guidelines (with respect to any Liquidation Sale and subject to any side letter entered into with any landlord for a Store as provided in the Approval Order) and the Approval Order.

Section 3. Consideration to Merchant and Agent.

3.1 Payments to Merchant.

(a) As a guaranty of Purchaser and JV Agent’s performance hereunder (including, without limitation, in their respective capacities as Agent) and as consideration under the APA, Purchaser and JV Agent jointly and severally guarantee that Merchant shall receive \$74,150,000.00 (the “Guaranteed Amount”). Agent shall pay to Merchant the Guaranteed Amount due to Merchant (if any) in the manner and at the times specified in Section 3.3.

(b) The Guaranteed Amount has been fixed based upon the aggregate Retail Price of the Merchandise included in the Sale being at least \$145,000,000.00 (the “Merchandise Threshold”). To the extent that the aggregate Retail Price of the Merchandise included in the Sale is less than the Merchandise Threshold, the Guaranteed Amount shall be adjusted in accordance with Exhibit 3.1(b) annexed hereto. The aggregate Retail Price of the Merchandise included in the Sale shall be calculated based upon (A) the Final Inventory Report, (B) the aggregate Retail Price of the Distribution Center Merchandise included in the Sale, (C) the aggregate Retail Price of Merchandise subject to Gross Rings (as adjusted for shrinkage per this Agreement), (D) the aggregate Retail Price of On-Order Merchandise included in the Sale, (E) the aggregate Retail Price of Returned Merchandise and (F) any other adjustments to Retail Price as expressly contemplated by this Agreement (in the case of the foregoing clauses (B) through (F), not otherwise included in the Inventory Taking or the calculation of the aggregate Retail Price of the Merchandise included in the Sale). Any adjustment to the Guaranteed Amount provided for under this Section 3.1(b) shall be cumulative with, and in addition to, any other adjustment provided for under this Agreement.

3.2 Compensation to Agent.

(a) After Proceeds are used to repay Agent for amounts paid on account of the Guaranteed Amount and to pay Expenses, all remaining Proceeds shall be allocated to Purchaser

and JV Agent (as separately agreed by Purchaser and JV Agent) (“Agent’s Fee”). In addition, subject to payment of the E-Commerce Inventory Fee (as defined below) in accordance with Section 3.2(b), all proceeds of the disposition of E-Commerce Inventory (or, in the event of a loss to E-Commerce Inventory on or after the date of this Agreement, the proceeds of any insurance attributable to E-Commerce Inventory) shall be allocated to JV Agent.

(b) In addition to the Guaranteed Amount, JV Agent shall pay to Merchant (i) an amount equal to five percent (5%) of the gross proceeds (net of Sales Taxes) of the sale of Additional Agent Merchandise by JV Agent (the “Additional Agent Merchandise Fee”) and (ii) an amount equal to twenty-five percent (25%) of the Retail Price of all E-Commerce Inventory (the “E-Commerce Inventory Fee”). All proceeds of the sale of (i) Additional Agent Merchandise by JV Agent in excess of the Additional Agent Merchandise Fee shall be retained by JV Agent and (ii) Additional Agent Merchandise by Purchaser shall be retained by Purchaser (in each case, the “Additional Agent Merchandise Proceeds”).

(c) To the extent that there is Merchandise remaining at the Sale Termination Date (the “Remaining Merchandise”), and subject to Agent’s performance of its material obligations under this Agreement, such Remaining Merchandise shall, solely to the extent requested by the applicable Agent in its sole discretion, be deemed transferred to such Agent (to the extent not already sold to Purchaser pursuant to the terms of the APA) free and clear of all liens, claims, interests and encumbrances of any kind or nature (including, without limitation, any liens in favor of the Administrative Agent or any Lender). Such Agent and its affiliates shall be authorized to sell or otherwise dispose of the Remaining Merchandise with all logos, brand names, and other intellectual property on the Merchandise intact, and shall be authorized, subject to any agreement between JV Agent and Purchaser, to advertise the sale of the Remaining Merchandise using Merchant’s name and logo. The gross proceeds received by such Agent from any such disposition (net of applicable Sales Taxes) shall constitute Proceeds hereunder.

### 3.3 Proceeds; Time of Payments; Control of Proceeds.

(a) For purposes of this Agreement, “Proceeds” shall mean the aggregate of (a) the total amount (in dollars) of all sales of Merchandise made under this Agreement and all service revenue received by Merchant, in each case during the Sale Term and exclusive of Sales Taxes; (b) the portion of all sales of DSW Merchandise (exclusive of Sales Taxes) that Merchant is entitled to retain pursuant to existing consignment arrangements with DSW; (c) all proceeds of Merchant’s insurance for loss or damage to Merchandise arising from events occurring during the Sale Term; (d) all amounts received from customers or other third parties on account of postage, courier, overnight mail or other shipping charges related to the delivery of Merchandise; and (e) any and all proceeds received by Agent from the disposition of Remaining Merchandise (exclusive of Sales Taxes). For the avoidance of doubt: (1) proceeds from the sales at the Stores for periods prior to the Sale Commencement Date; (2) all proceeds from the sale of Merchant’s Consignment Goods pursuant to Section 5.4 hereof; (3) all proceeds from the sale of Additional Agent Merchandise pursuant to Section 8.9 hereof; (4) all proceeds of Merchant’s insurance for loss or damage to Merchandise arising from events occurring prior to the Sale Commencement Date; (5) all proceeds from the sale or other disposition of Owned FF&E; and (6) all payments made by Agent on account of the Guaranteed Amount, Expenses, and the Letter of Credit, shall, in each case, not constitute “Proceeds” hereunder.

(b) On the Sale Commencement Date, Purchaser and JV Agent shall pay ( by wire transfer to an account designated in writing by Merchant (“Merchant’s Account”)) to Merchant an aggregate amount (the “Initial Guaranty Payment”) equal to the excess of (i) \$49,618,750.00 ( *i.e.* , eighty-five percent (85%) of the estimated Guaranteed Amount (based upon an expected aggregate Retail Price of Merchandise included in the Sale of \$130,000,000.00)) (the “Estimated Guaranteed Amount”) over (ii) the deposit of \$3,500,000.00 paid by Purchaser in order to participate in the Auction (as defined in the Bid Procedures) (the “Deposit”), which deposit shall be released to Merchant concurrently with such payment. The balance of the Guaranteed Amount, if any, shall be paid by Purchaser and JV Agent by wire transfer to the Merchant’s Account on the second business day following the issuance of the final report of the aggregate Retail Price of the Merchandise included in the Sale by the Inventory Taking Service, after review, reconciliation and mutual written verification thereof by Agent and Merchant (the “Final Inventory Report” with the date of completion of such reconciliation and issuance of such Final Inventory Report to be referred to as the “Inventory Reconciliation Date”). To the extent that the Guaranteed Amount has not been paid in full by the date of the Final Reconciliation, Purchaser and JV Agent shall pay the unpaid portion of the Guaranteed Amount to Merchant as part of the Final Reconciliation. In the event that the sum of (x) the Initial Guaranty Payment and (y) the Deposit exceeds the Guaranteed Amount, Merchant shall pay to JV Agent the amount by which such sum exceeds the Guaranteed Amount on the second business day following the issuance of the Final Inventory Report (and Purchaser and JV Agent shall allocate such payment between them as separately agreed between them).

(c) All Proceeds shall be controlled by Agent in the manner provided for below.

(i) Agent may (but shall not be required to) establish its own accounts (including without limitation credit card accounts and systems), dedicated solely for the deposit of the Proceeds (including, without limitation, credit card Proceeds) and other amounts contemplated by this Agreement and the disbursement of amounts payable to Agent hereunder (the “Agency Accounts”), and Merchant shall promptly, upon Agent’s reasonable request, execute and deliver all necessary documents to open and maintain the Agency Accounts; provided, however, Agent shall have the right, in its sole and absolute discretion, to continue to use Merchant’s Designated Deposit Accounts (as defined below) as the Agency Accounts in which case Merchant’s Designated Deposit Accounts shall be deemed to be Agency Accounts. Agent shall exercise sole signatory authority and control with respect to the Agency Accounts; provided that Merchant shall retain sole signatory authority and control over all of Merchant’s Designated Deposit Accounts notwithstanding Agent’s designation thereof as Agency Accounts. The Agency Accounts shall be dedicated solely to the deposit of Proceeds (including, without limitation, credit card Proceeds) and other amounts contemplated by this Agreement and the distribution of amounts payable hereunder. Upon request, Agent shall deliver to Merchant copies of all bank statements and other information relating to such accounts; provided that, in the event Agent elects to continue to use Merchant’s Designated Deposit Accounts as the Agency Accounts, Merchant shall deliver to Agent copies of all bank statements and other information relating to such accounts to enable Agent to track and trace deposited funds that constitute Proceeds (including, without limitation, credit card Proceeds) and other amounts contemplated by this Agreement. Merchant shall not be responsible for, and Agent shall pay as an Expense hereunder, all bank fees and charges, including wire transfer charges, related to the

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Sale with respect to the Agency Accounts (including any such bank fees and charges, including wire transfer charges, related to the Sale with respect to any Merchant Designated Deposit Account that is designated by Agent as an Agency Account), whether received during or after the Sale Term. Upon Agent's notice to Merchant of Agent's designation of the Agency Accounts (other than Merchant's Designated Deposit Accounts), all Proceeds of the Sale (including, without limitation, credit card Proceeds) and other amounts contemplated by this Agreement shall be deposited into the Agency Accounts.

(ii) Agent shall have the right to use Merchant's credit card facilities, including Merchant's credit card terminals and processor(s), credit card processor coding, Merchant's identification number(s) and existing bank accounts for credit card transactions relating solely to the Sale and for processing transactions relating to Additional Agent Merchandise, Merchant's Consignment Goods, DSW Merchandise and Owned FF&E. In the event that Agent elects to use Merchant's credit card facilities, Merchant shall process credit card transactions on behalf of Agent and for Agent's account, applying customary practices and procedures. Without limiting the foregoing, Merchant shall cooperate with Agent to download data from all credit card terminals each day during the Sale Term to effect settlement with Merchant's credit card processor(s), and shall take such other actions necessary to process credit card transactions on behalf of Agent under Merchant's identification number(s). At Agent's request, Merchant shall cooperate with Agent to establish Merchant's identification numbers under Agent's name to enable Agent to process all such credit card Proceeds (and proceeds from Additional Agent Merchandise, Merchant's Consignment Goods, DSW Merchandise and Owned FF&E) for Agent's account. Merchant shall not be responsible for, and Agent shall pay as an Expense hereunder, all credit card fees, charges, and chargebacks related to the Sale, whether received during or after the Sale Term. Agent shall not be responsible for, as an Expense or otherwise, (i) any credit card fees, charges, or chargebacks that do not relate to the Sale, whether received prior to, during or after the Sale Term or (ii) any holdbacks against credit card Proceeds (and proceeds from Additional Agent Merchandise, E-Commerce Inventory, Merchant's Consignment Goods, DSW Merchandise and Owned FF&E) implemented by any applicable credit card company.

(iii) Unless and until Agent establishes its own Agency Accounts (other than Merchant's Designated Deposit Accounts), all Proceeds (including, without limitation, credit card Proceeds) and other amounts contemplated by this Agreement shall be collected by Merchant and deposited on a daily basis into depository accounts designated by, owned and in the name of, Merchant for the Stores, which accounts shall be designated solely for the deposit of Proceeds (including, without limitation, credit card Proceeds) and other amounts contemplated by this Agreement, and the disbursement of amounts payable to or by Agent hereunder (the "Designated Deposit Accounts"). The Designated Deposit Accounts shall be cash collateral accounts, with all cash, credit card payments, checks and similar items of payment, deposits and any other amounts in such accounts being Proceeds or other amounts contemplated hereunder, and Merchant hereby grants to Agent a senior security interest in each Designated Deposit Account and all Proceeds (including, without limitation, credit card Proceeds) and other amounts contemplated by this Agreement in such accounts from and after the Sale Commencement Date, which security interest shall be subject to the terms set forth in Section 15. If, notwithstanding the provisions of this Section, Merchant, the Administrative Agent or any Lender receives or otherwise has dominion over or control of any Proceeds, or other amounts due to Agent

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(including proceeds from the sale of Additional Agent Merchandise, Merchant's Consignment Goods, DSW Merchandise and Owned FF&E), Merchant, the Administrative Agent or such Lender, as applicable, shall hold the same and other amounts in trust for Agent, and shall promptly deposit such Proceeds or other amounts due Agent hereunder in a Designated Deposit Account or as otherwise instructed by Agent.

(iv) Following payment of the Initial Guaranty Payment, on each business day Merchant shall reconcile with Purchaser, with respect to the Designation Rights Stores, or JV Agent, with respect to the Closing Stores, the amount of, and, following delivery of the Letter of Credit, shall promptly pay to Purchaser or JV Agent, as applicable, by wire transfer of immediately available funds, all funds attributable to Proceeds (including, without limitation, credit card Proceeds) of Purchaser or JV Agent, as applicable or other amounts property of or payable to Purchaser or JV Agent, as applicable, hereunder deposited into the applicable Designated Deposit Accounts for the prior day(s) without any offset or netting of Expenses or other amounts that may be due to Merchant. Purchaser or JV Agent, as applicable, shall, within a reasonable period of time after the date of each such payment by Merchant, notify Merchant and the Administrative Agent of any shortfall in such payment setting forth the amount and calculation thereof in reasonable detail, in which case, Merchant shall promptly pay to Purchaser or JV Agent, as applicable, funds in the amount of such shortfall.

(d) Merchant, Purchaser and JV Agent further agree that if at any time during the Sale Term, (i) Purchaser or JV Agent holds any amounts due to Merchant under this Agreement, Purchaser or JV Agent (as applicable) may, in its discretion, after two (2) business days' notice to Merchant and the Administrative Agent, offset such amounts being held by Agent against any undisputed amounts due and owing by, or required to be paid by, Merchant to such party hereunder, and (ii) Merchant holds any amounts due to Purchaser or JV Agent under this Agreement, Merchant may, in its discretion, after two (2) business days' notice to such party, offset such amounts being held by Merchant against any undisputed amounts due and owing by, or required to be paid by, such party to Merchant hereunder.

(e) In addition to the Guaranteed Amount and the Additional Agent Merchandise Fee, (i) JV Agent shall purchase all cash in the Closing Stores on and as of the start of business on the Sale Commencement Date, and (ii) Purchaser shall purchase all cash in all Designation Rights Stores assumed and assigned to Purchaser pursuant to the APA on and as of the start of business on the applicable Assignment Date (as defined in the APA) with respect to such Designation Rights Stores, in each case, on a dollar for dollar basis and such payment shall be made as part of the first Weekly Sale Reconciliation.

(f) If, and only to the extent, Purchaser or JV Agent, as applicable, over-funds any amounts in respect of the Guaranteed Amount or any Expenses that Purchaser or JV Agent, as applicable, prefunds pursuant to the terms of Section 4.1 (it being understood that amounts prefunded in respect of Expenses shall not be subject to this Section 3.3(f) once the applicable Expenses have been reconciled and any overfunding in respect thereof either returned to Purchaser or JV Agent, as applicable, or applied to other amounts payable by Purchaser or JV Agent, as applicable, to Merchant) and such over-funding cannot be recovered by Purchaser or JV Agent, as applicable, from Merchant under Section 3.3(b) or Section 3.3(d) by means of an offset or otherwise, then Merchant agrees (or if Merchant shall be unable to or otherwise for any

reason fails to, and the Administrative Agent or any Lender has received any funds in respect of such overfunding, the Administrative Agent, on behalf of itself and the Lenders, agrees) to disgorge and remit such overfunded amount to Purchaser or JV Agent, as applicable, within two (2) business days of written demand thereof by Purchaser or JV Agent (with respect to the Administrative Agent, not to exceed the amounts actually received by the Administrative Agent and the Lenders in connection with the transactions contemplated by this Agreement and the APA).

3.4 Security. In order to secure Agent's obligations under this Agreement to pay the balance of the Guaranteed Amount and Expenses, no later than the second business day following the Sale Commencement Date, Purchaser and JV Agent shall furnish to Merchant or the Administrative Agent, as Merchant's designee, one or more irrevocable standby letter(s) of credit, substantially in the form of Exhibit 3.4, naming Wells Fargo Bank, N.A. (the "Administrative Agent"), as administrative agent and term agent for the lenders and term lenders (and other secured parties) under that certain Loan, Guaranty and Security Agreement, dated as of February 20, 2009 (as amended, supplemented or otherwise modified from time to time prior to the date hereof, the "Existing Credit Facility"), among Merchant, the lenders and term lenders from time to time party thereto and the Administrative Agent (and, to the extent incurred, any postpetition financing facility) (collectively, the "Lenders"), and Merchant as co-beneficiaries (each, a "Beneficiary") in the aggregate original face amount equal to the sum of: (a) \$8,756,250.00 (i.e., fifteen percent (15%) of the Estimated Guaranteed Amount (based upon an expected aggregate Retail Price of Merchandise included in the Sale of \$130,000,000.00)), plus (b) the parties' mutually agreed upon estimate of three (3) weeks of Expenses (such letters of credit, collectively, the "Letter of Credit"). The Letter of Credit shall have an expiry date of (i) with respect to the letter of credit furnished by JV Agent, no earlier than sixty (60) days after the Sale Termination Date and (ii) with respect to the letter of credit furnished by Purchaser, August 1, 2017. Upon Lenders' receipt of payment in full of their claims against the Merchant under Merchant's prepetition credit facilities (and, to the extent incurred, any postpetition financing facility), the Administrative Agent shall promptly deliver the Letter of Credit to Merchant and take all steps necessary to remove itself as a named co-beneficiary thereunder. Unless the parties shall have mutually agreed that they have completed the Final Reconciliation under this Agreement, then, at least ten (10) days prior to the initial or any subsequent expiry date, the Beneficiaries shall receive an amendment to the Letter of Credit solely extending (or further extending, as the case may be) the expiry date by at least thirty (30) days. If the Beneficiaries do not receive such amendment to the Letter of Credit on or prior to the date that is ten (10) days before the expiry date, then the Beneficiaries shall be permitted to draw under the Letter of Credit an amount equal to the amount(s) Merchant asserts are then owing to Merchant (or, if less, the full amount of the Letter of Credit) to hold as security for amounts that may become due and payable to Merchant. In the event that Purchaser or JV Agent, after receipt of five (5) business days' written notice to each of Purchaser and JV Agent, fails to pay any undisputed portion of the Guaranteed Amount or Expenses, the Beneficiaries may draw on the Letter of Credit in an amount equal to the unpaid, past due, amount of the Guaranteed Amount or Expenses that is not the subject of a reasonable dispute. The Administrative Agent, Merchant, Purchaser and JV Agent agree that, from time to time upon Purchaser or JV Agent's request, the face amount of the Letter of Credit shall be reduced in an amount equal to (x) the aggregate amount of payments (other than the Initial Guaranty Payment and the Deposit) made by Purchaser or JV Agent on account of the Guaranteed Amount to the time of each such request and (y) the amount of three

(3) weeks of estimated Expenses with respect to any Designation Rights Store that has been assumed or rejected by Purchaser pursuant to the APA on or prior to the time of such request (and Merchant and the Administrative Agent shall cooperate with respect to each such request); provided, however, until the Final Reconciliation has been completed, in no event shall the face amount of the Letter of Credit be reduced to an amount less than the parties' mutually agreed upon estimate of three (3) weeks of estimated Expenses (excluding any Expenses for the Designation Rights Stores that have been assumed or rejected by Purchaser). After completion of the Final Reconciliation and payment in full of all amounts owing by Purchaser and JV Agent under this Agreement, Merchant and the Administrative Agent shall surrender the original Letter of Credit to the issuer thereof together with written notification that the Letter of Credit may be terminated. Notwithstanding anything to the contrary herein or otherwise, neither Merchant nor the Administrative Agent may draw on the Letter of Credit if Merchant, the Administrative Agent and/or any Lender is in material default of any of their respective obligations under this Agreement. Notwithstanding anything to the contrary contained herein, to the extent Merchant and the Administrative Agent shall be entitled under this Agreement to draw on the Letter of Credit in respect of the balance of the Guaranteed Amount or other amounts owing by JV Agent and Purchaser jointly and severally hereunder, Merchant and the Administrative Agent shall be entitled to draw on the Letter of Credit without regard to whether the amount being drawn represents amounts owing hereunder by Purchaser or JV Agent or whether the letter of credit being drawn on was delivered by Purchaser or JV Agent; provided, however, that to the extent that Merchant or the Administrative Agent shall be entitled under this Agreement to draw on the Letter of Credit in respect of any amount owing hereunder by Purchaser or JV Agent on a several, and not joint, basis, Merchant and the Administrative Agent shall be entitled to draw only on letter(s) of credit comprising the Letter of Credit delivered by the party owing such amount.

#### Section 4. Expenses of the Sale.

4.1 Expenses. Subject to and only upon entry of the Approval Order, Purchaser severally and not jointly (with respect to the Designation Rights Stores and the Nebraska Distribution Center and the Merchandise and Owned FF&E located in the Designation Rights Stores and the Nebraska Distribution Center), JV Agent severally and not jointly (with respect to the Closing Stores and the Indiana Distribution Center and the Merchandise and Owned FF&E located in the Closing Stores, the Indiana Distribution Center, the Call Center and the Headquarters) or Purchaser and JV Agent jointly and severally (with respect to other Expenses) shall be responsible for all "Expenses," which expenses shall be paid by Purchaser and/or JV Agent, as applicable, in accordance with Section 4.2 below. Purchaser and JV Agent, as applicable, shall be obligated to pre-fund any payroll-related expenses solely pertaining to work during the Sale Term consistent with Merchant's customary payroll funding practices and timing. As used herein, "Expenses" shall mean the operating expenses of the Sale or the designation rights granted to Purchaser in accordance with the terms of the APA, in each case which arise during the Sale Term (except (i) to the extent expressly stated below to include expenses regardless of whether incurred prior to the Sale Commencement Date or (ii) solely with respect to the Designation Rights Stores and the Nebraska Distribution Center, during the Designation Rights Period (as defined in the APA), to the extent the Designation Rights Period extends beyond the Sale Term) and are attributable to the Sale, limited to the following:

- (a) actual payroll (including wages, commissions and overtime pay) with respect to all Store-level Retained Employees used in connection with conducting the Sale for actual days/hours worked at a Store during the Sale Term (including hours worked during the Inventory Taking); provided that, Purchaser or JV Agent, as applicable, shall only be obligated to pay 50% of the payroll wages for Store-level Retained Employees used during the Inventory Taking, and Merchant shall pay the remaining 50% of the wages for Retained Employees used during the Inventory Taking;
- (b) (i) prior to June 1, 2017, actual amounts payable by Merchant for benefits (including FICA, unemployment taxes, workers' compensation and healthcare insurance, but excluding Excluded Payroll Benefits) for Store-level Retained Employees used in the Sale (such amounts, the "Payroll Benefits Expenses"), in an amount not to exceed 20.0% of the base payroll for all Store-level Retained Employees (the "Payroll Benefits Cap") and (ii) from and after June 1, 2017 to the termination of the Designation Rights Period, actual Payroll Benefits Expenses for any remaining Designation Rights Stores;
- (c) (i) prior to June 1, 2017, actual Occupancy Expenses categorized on Exhibit 4.1(c) on a per category, per Store, and per diem basis in an amount up to the respective per category per Store per diem amounts shown on Exhibit 4.1(c) for all Stores in which the Sale has not been terminated on such date and (ii) from and after June 1, 2017 to the termination of the Designation Rights Period, actual Occupancy Expenses for any remaining Designation Rights Stores;
- (d) Retention Bonuses for Retained Employees, as provided for in Section 9.4 below;
- (e) regardless of whether incurred prior to the Sale Commencement Date, promotional costs including, without limitation, email blasts, television, and any other advertising and/or direct mail attributable to the Sale and ordered or requested by Purchaser or JV Agent;
- (f) regardless of whether incurred prior to the Sale Commencement Date, the costs and expenses associated with all signage, banners, sign walkers, and interior and exterior signs that are produced for the Sale;
- (g) credit card fees, bank card fees, chargebacks and credit/bank card discounts with respect to Merchandise, Additional Agent Merchandise, DSW Merchandise and Merchant's Consignment Goods sold in the Sale;
- (h) bank service charges (for Store, corporate accounts, and Agency Accounts), check guarantee fees, and bad check expenses to the extent attributable to the Sale;
- (i) costs for additional Supplies at the Stores necessary to conduct the Sale as requested by Purchaser or JV Agent;
- (j) all fees and charges required to comply with Applicable General Laws and, unless and until entry of the Approval Order, Liquidation Sale Laws in connection with the Sale as agreed to by Purchaser and JV Agent;

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(k) Store cash theft and other store cash shortfalls in the registers;

(l) regardless of whether incurred prior to the Sale Commencement Date, all costs and expenses associated with Purchaser's and JV Agent's, as applicable, on-site supervision of the Stores and Distribution Centers, including (but not limited to) any and all fees, wages, bonuses, taxes, third party payroll costs and expenses, and deferred compensation of Purchaser's and JV Agent's, as applicable, field personnel, travel to, from or between the Stores, Distribution Centers, the Headquarters and the Call Center, and costs and expenses relating thereto (including reasonable and documented corporate travel to monitor and manage the Sale);

(m) postage, courier and overnight mail charges requested by Purchaser or JV Agent to the extent relating to the Sale, including all amounts incurred in respect of postage, courier, overnight mail or other shipping charges related to the delivery of Merchandise to customers;

(n) fifty percent (50%) of the third-party fees and costs of the Inventory Taking;

(o) regardless of whether incurred prior to the Sale Commencement Date, Purchaser's and JV Agent's reasonable out-of-pocket costs and expenses, including, without limitation, (i) legal fees and expenses (not to exceed \$250,000.00; provided that such cap shall not apply to any legal fees and expenses incurred in connection with any good faith dispute with any person or entity (1) arising under this Agreement, (2) in connection with Purchaser or JV Agent's performance under this Agreement or (3) in connection with the Bankruptcy Court's entry of the Bid Procedures Order or the Approval Order) incurred in connection with the review of data, preparation, negotiation, execution of and performance under this Agreement, the Approval Order, the Letter of Credit and any ancillary documents, (ii) Purchaser's and JV Agent's actual cost of capital (including, without limitation, any letter of credit fees and expenses and any structuring fees, arrangement fees, upfront fees, other fees, interest and other amounts payable to Purchaser's or JV Agent's lenders) and (iii) Purchaser's and JV Agent's insurance costs;

(p) third party payroll processing expenses associated with the Sale;

(q) costs of transfers initiated by Purchaser or JV Agent of Merchandise between and among the Stores during the Sale Term, including delivery and freight costs, it being understood that Purchaser or JV Agent, as applicable, shall be responsible for coordinating such transfer of Merchandise, subject, however, to the provisions of Section 4.3 below;

(r) (i) prior to June 1, 2017, Central Service Expenses equal to \$25,000.00 per week for the Sale Term (prorated for partial weeks) with respect to the Stores so long as Purchaser and JV Agent shall not have vacated all of the Stores and (ii) from and after June 1, 2017 to the termination of the Designation Rights Period, all actual Central Service Expenses with respect to any remaining Designation Rights Stores;

(s) Distribution Center Expenses relating to the Nebraska Distribution Center, to the extent provided for in the APA;

(t) costs and expenses associated with temporary labor requested or obtained by Purchaser or JV Agent for purposes of the Sale (provided any temporary labor shall not be included in Merchant's payroll system);

(u) actual costs and expenses associated with maintaining the Merchant's website or social media accounts, to the extent Purchaser or JV Agent requests the usage of the website or applicable social media account giving rise to such costs and expenses;

(v) costs and expenses associated with security and guard services (including armored vehicles) in connection with the Sale (prior to June 1, 2017, subject to the limitations set forth in Section 4.1(c), and on or after June 1, 2017, solely with respect to any remaining Designation Rights Stores);

(w) costs and expenses associated with local and long-distance telephone and internet/wifi expenses (prior to June 1, 2017, subject to the limitations set forth in Section 4.1(c), and on or after June 1, 2017, solely with respect to any remaining Designation Rights Stores);

(x) a pro rata portion for the Sale Term or Designation Rights Period, if longer, of Merchant's premiums in respect of general liability, casualty, property, inventory, and other insurance policies attributable to the Merchandise and, prior to June 1, 2017, the Stores and thereafter, the remaining Designation Rights Stores;

(y) costs and expenses associated with Store data lines, point of sale maintenance and management of point of sale systems) (prior to June 1, 2017, subject to the limitations set forth in Section 4.1(c), and on or after June 1, 2017, solely with respect to any remaining Designation Rights Stores); and

(z) the actual costs and expenses of Purchaser and JV Agent providing such additional services as Purchaser or JV Agent reasonably deems appropriate for the Sale.

Notwithstanding anything herein to the contrary, to the extent that any Expense category listed in Section 4.1 is also an Occupancy Expense, prior to June 1, 2017, the caps set forth in Section 4.1(c) shall control and such Expenses shall not be double counted. There will be no double counting or payment of Expenses to the extent that Expenses appear or are contained in more than one Expense category.

As used herein, the following terms have the following respective meanings:

(i) "Central Service Expenses" means costs and expenses for Merchant's central administrative services necessary for the conduct and support of the Sale, including, but not limited to, inventory control systems, payroll systems, MIS and POS services, cash and inventory reconciliation, data processing and reporting, email preparation and distribution, information technology and e-commerce site updates and maintenance, accounting, office facilities at Merchant's central office, central administrative services and personnel to process and perform sales audit, banking, and other normal course administrative services customarily provided to or for the benefit of operating the Distribution Centers and/or the Stores, hosting and maintaining Merchant's website and such other central office services reasonably necessary (in the reasonable judgment of Purchaser or JV Agent) for the Sale, (collectively, "Central Services").

(ii) “Distribution Center Expenses” means all costs and expenses of operating the Distribution Centers, including, but not limited to, use and occupancy expenses, Distribution Center employee payroll and other obligations, and/or processing, transferring, consolidating, shipping, and/or delivering goods within or from the Distribution Centers; provided that Central Services Expenses shall not constitute Distribution Center Expenses.

(iii) “Excluded Payroll Benefits” means (i) the following benefits arising, accruing or attributable to the period prior to, during, or after the Sale Term: (w) vacation days or vacation pay, (x) sick days or sick leave or any other form of paid time off, (y) maternity leave or other leaves of absence and (z) ERISA coverage and similar contributions and/or (ii) any other benefits in excess of the Payroll Benefits Cap, including, without limitation, any payments due under the WARN Act.

(iv) “Occupancy Expenses” means, with respect to the Stores, base rent, percentage rent, HVAC, utilities, CAM, storage costs, real estate and use taxes, other taxes and licensing fees, Merchant’s association dues and expenses, landlord promotional fees, utilities expenses, point-of-sale systems maintenance, routine repairs, building maintenance, trash and snow removal, housekeeping and cleaning expenses, pest control services, local and long-distance telephone and internet/wifi expenses, security (including, without limitation, security systems, courier and guard service, building alarm service and alarm service maintenance), rental for furniture, fixtures and equipment and any other categories of expenses at the Stores set forth on Exhibit 4.1(c) attached hereto.

(v) “Third Party” means, with reference to any Expenses to be paid to a Third Party, a party which is not affiliated with or related to the Merchant.

(vi) Notwithstanding any other provision of this Agreement to the contrary, “Expenses” shall not include: (i) Excluded Payroll Benefits; (ii) other than as provided in Section 4.1(r), Central Service Expenses or any expenses of any kind relating to or arising from Merchant’s Headquarters, Call Center or other corporate offices, (iii) Occupancy Expenses or any occupancy-related expenses of any kind or nature in excess of the respective per category per Store per diem amounts expressly provided for as an Expense under Section 4.1(c); (iv) other than as provided in Section 4.1(s), Distribution Center Expenses or any other expenses of any kind relating to or arising from the Distribution Centers, and/or (v) any other costs, expenses or liabilities payable by Merchant not expressly provided for herein, which, subject to the terms of the APA, shall be paid solely by Merchant. All costs or expenses related to the Sale or the designation rights granted to Purchaser in accordance with the terms of the APA not included as Expenses (or otherwise designated as an obligation of JV Agent or Purchaser hereunder or as an obligation of Purchaser pursuant to the APA) shall be paid by Merchant promptly when due during the Sale Term (or, solely with respect to the Designation Rights Stores, the Designation Rights Period), subject to the provisions of the Bankruptcy Code and the Approval Order. Notwithstanding anything herein to the contrary, Agent shall not have any obligation to pay any Expenses (including, without limitation, Occupancy Expenses) with respect to any Store or Distribution Center arising after the Outside Date with respect to such Store or Distribution

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Center (or, solely with respect to the Designation Rights Stores and the Nebraska Distribution Center, the end of the end of the applicable Designation Rights Period (if later)). Nothing in Section 4.1(s) or clause (iv) of the first sentence of this paragraph shall limit the obligations of Agent to pay the costs and expenses related to, or incurred in connection with, the marketing and sale of the Additional Agent Merchandise to the extent required by Section 8.9.

#### 4.2 Payment of Expenses.

(a) Subject to and only upon entry of the Approval Order, Purchaser and JV Agent, as applicable, shall be responsible for the payment of all Expenses out of Proceeds (or from Purchaser's and JV Agent's, as applicable, own accounts if and to the extent there are insufficient Proceeds) after the payment of the Guaranteed Amount. All Expenses incurred during each week of the Sale (*i.e.* Sunday through Saturday) shall be paid by Purchaser and JV Agent, as applicable, to or on behalf of Merchant, or paid by Merchant and thereafter reimbursed by Purchaser and JV Agent, as applicable, as provided for herein, immediately following the Weekly Sale Reconciliation; provided, however, in the event that the actual amount of an Expense is unavailable on the date of the reconciliation (such as payroll), Merchant and Purchaser and JV Agent, as applicable, shall agree to an estimate of such amounts, which amounts will be reconciled once the actual amount of such Expense becomes available. Purchaser, JV Agent and/or Merchant may review or audit the Expenses at any time.

#### 4.3 Distribution Centers

From and after the date of this Agreement, Purchaser and JV Agent shall be responsible for allocating and designating the shipment of Merchandise from the Merchant's Distribution Centers to the Stores; provided that Merchant, Purchaser and JV Agent shall cooperate with each other and shall mutually agree upon a schedule and allocation to the Stores of the Merchandise located at the Distribution Centers and On-Order Merchandise; provided further that all Distribution Center Merchandise in the Nebraska Distribution Center shall be allocated to the Designation Rights Stores and all Distribution Center Merchandise in the Indiana Distribution Center shall be allocated to the Closing Stores; provided that all On-Order Merchandise shall be allocated to the Stores consistent with Merchant's ordinary course of business consistent with past practices. Agent may terminate the Sale and vacate any Distribution Center as if it were a Store in accordance with the terms of Section 6. Agent shall have no obligations with respect to any other expenses of any kind relating to or arising from such Distribution Center thereafter. Notwithstanding anything in this Agreement to the contrary, Merchant shall not be required to keep, operate or maintain, and Agent shall not have the right to use, the Indiana Distribution Center from and after May 1, 2017 (except as may be agreed between Merchant and JV Agent).

### Section 5. Gross Rings; Merchandise .

#### 5.1 Inventory Taking.

(a) Commencing on the Sale Commencement Date, Merchant and Agent shall use commercially reasonable efforts to cause to be taken a SKU level Retail Price physical inventory of the Merchandise located in the Stores (collectively, the "Inventory Taking"), which

Inventory Taking shall be completed in each of the Stores as soon as practicable (the date of the Inventory Taking at each Store being the “Inventory Date” for each such Store), but in any event no later than fourteen (14) days after the Sale Commencement Date (subject to the availability of the Inventory Taking Service). Merchant and Agent shall jointly employ RGIS or other mutually agreed upon national inventory taking service (the “Inventory Taking Service”) to conduct the Inventory Taking. The Inventory Taking shall be conducted in accordance with customary procedures and instructions, which shall be reasonably satisfactory to Agent and Merchant (the “Inventory Taking Instructions”). As an Expense, in accordance with Section 4.1, Agent shall be responsible for fifty percent (50%) of cost of the Inventory Taking Service. Merchant shall be responsible for fifty percent (50%) of cost of the Inventory Taking Service. Except as provided in the immediately preceding two sentences and in Section 4.1, Merchant and Agent shall each bear their respective costs and expenses relative to the Inventory Taking; provided that, in accordance with Section 4.1, Agent shall be obligated to pay fifty percent (50%) of the payroll and related benefit costs (subject to the Benefits Cap) for Retained Employees used during the Inventory Taking, and Merchant shall pay the remaining fifty percent (50%) of the payroll and related benefit costs for Retained Employees used during the Inventory Taking. Merchant, the Administrative Agent, Purchaser and JV Agent may each have representatives present during the Inventory Taking, and shall each have the right to review and verify the listing and tabulation of the Inventory Taking Service. Merchant agrees that during the conduct of the Inventory Taking, the applicable Store shall be closed to the public, and no sales or other transactions shall be conducted within the applicable Store. The Inventory Taking shall not take place on Saturdays, Sundays and federal holidays. Merchant and Agent further agree that until the Inventory Taking in a particular Store is completed, neither Merchant nor Agent shall: (i) move Merchandise within or about the Store so as to make any such items unavailable for counting as part of the Inventory Taking; (ii) remove or add any hang tags, price tickets, inventory control tags affixed to any Merchandise or any other kind of in-store pricing signage within the Store; (iii) transfer any Merchandise to or from that Store (other than Distribution Center Merchandise or On-Order Merchandise, which, in each case, is distinctly tagged or otherwise marked as such or recorded in Agent’s transfer log); or (iv) deliver any Additional Agent Merchandise to such Store (unless distinctly tagged or otherwise marked as such or recorded in Agent’s transfer log). Merchant agrees to cooperate with Agent to conduct the Inventory Taking (including without limitation by making available to Agent information relating to sales, units, costs, Retail Price, and making available to Agent Merchant’s books, records, work papers and personnel to the extent reasonably necessary to calculate the Retail Price of the Merchandise). Each Store will be closed during the Inventory Taking; provided, however, that the parties agree that the Inventory Taking will commence at a time that will minimize the number of hours that the Stores will be closed for business. The Inventory Taking, including, but not limited to the Final Inventory Report, shall be reviewed, reconciled, and mutually verified by the Merchant, JV Agent and Purchaser in writing as soon as practicable following the Inventory Taking.

(b) At each Store, for the period from the Sale Commencement Date until the Inventory Date for such Store, Agent and Merchant shall jointly keep (i) a strict count of gross register receipts less applicable Sales Taxes but excluding any prevailing discounts (“Gross Rings”), and (ii) cash reports of sales within such Store. Register receipts shall show for each item sold the Retail Price for such item and the markdown or discount, if any, specifically granted by Agent in connection with such Sale. Any Merchandise included in the Sale using the

Gross Rings method shall be included in Merchandise using the actual Retail Price of the Merchandise sold plus one and sixty-eight hundredths percent (1.68%) of the actual sales proceeds of the sale of such Merchandise to account for shrinkage. All such records and reports shall be made available to Agent and Merchant during regular business hours upon reasonable notice. Any Merchandise included in the Sale using the Gross Rings method shall be included as Merchandise.

(c) Distribution Center Merchandise and On-Order Merchandise received at a Store after the Inventory Date for Store shall be counted and reconciled within five (5) business days after receipt of such goods at such Store in accordance with the procedures set forth below. Absent prior notification and agreement of Merchant, failure to report within such five (5) business day period any variance between the received shipment from the applicable shipping documents (each a “Shipping Variance”), shall result in such receipts being deemed confirmed received consistent with the applicable shipping documents. Merchant shall have five (5) business days to verify a timely issued Shipping Variance (each a “Shipping Variance Response”), and absent prior notification and agreement of Agent, failure to respond to an asserted Shipping Variance within such five (5) business day period shall result in such Shipping Variance being deemed valid. If Merchant timely issues a Shipping Variance Response that disputes the asserted Shipping Variance, Merchant and Agent shall cooperate with each other to verify and resolve such dispute; provided that, in the event Merchant and Agent are unable to resolve such dispute within ten (10) business days from Agent’s receipt of a Shipping Variance Response from Merchant (or such greater period as Merchant and Agent may mutually agree), such dispute shall be resolved by the Bankruptcy Court. Distribution Center Merchandise and/or On-Order Merchandise (where applicable) received at a Store prior to the Inventory Date for such Store shall be counted as part of the Inventory Taking or, to the extent sold prior to the Inventory Taking at such location, using Gross Rings.

## 5.2 Merchandise Subject to This Agreement.

(a) For purposes of this Agreement, “Merchandise” shall mean all (i) new, finished, first quality goods owned by Merchant saleable in the ordinary course of business located at the Stores as of the Sale Commencement Date (including Merchandise subject to Gross Rings), (ii) Defective Merchandise (to the extent Merchant and Agent can mutually agree on the Retail Price applicable thereto and excluding Excluded Defective Merchandise) and goods reflected on Exhibit 5.2(b)(i) (which shall be deemed to have a Retail Price equal to fifty percent (50%) of the Retail Price as ordinarily calculated pursuant to this Agreement), (iii) Returned Merchandise, subject to Section 8.5 and (iv) Distribution Center Merchandise and On-Order Merchandise received at the Stores in store-ready form no later than seven (7) days after the Sale Commencement Date, provided that if such goods are received at the Stores after such 7-day period, but on or before twenty-one (21) days after the Sale Commencement Date (the “Receipt Deadline”), such goods shall be included in the Sale as Merchandise at the Retail Price of each such item multiplied by a factor equal to the difference of 100% minus the prevailing Sale discount at the applicable Store. Notwithstanding the foregoing, “Merchandise” shall not include: (1) goods which belong to sublessees, licensees, department lessees, or concessionaires of Merchant; (2) goods held by Merchant on memo, on consignment, or as bailee; (3) Excluded Defective Merchandise; (4) Merchant’s Consignment Goods; (5) DSW Merchandise; (6) furniture, furnishings, trade fixtures, machinery, equipment, office supplies, Supplies, conveyor

systems, racking, rolling stock, improvements and other personal property (collectively, “FF&E”) or improvements to real property; provided that Agent shall be permitted to sell Owned FF&E as set forth in Section 7 below; (7) Distribution Center Merchandise, On Order Merchandise, or goods in the Distribution Centers, in-transit or on order received at the Stores after the Receipt Deadline or other than in a store-ready form; (8) Additional Agent Merchandise; (9) any inventory of any kind or nature that is held for rental or lease; (10) greeting cards, gift cards (third-party or Merchant branded) and (11) E-Commerce Inventory.

(b) As used in this Agreement, the following terms have the respective meanings set forth below:

“Defective Merchandise” means any item of Merchandise which is not new, finished, first-quality, saleable goods sold in the ordinary course. Examples of Defective Merchandise include but are not limited to goods that are used, damaged, defective, scratched, soiled, ripped, torn, stained, faded, discolored, dented, shopworn, out of box (if normally sold as new in-the-box, but excluding display items which are not otherwise damaged or defective and for which the box, all related packaging and all accompanying directions and warranty information are on hand), missing pieces, mismatched, mismated or near-sized, parts, items typically sold as a set which are incomplete, gift with purchase items and Out-of-Season Goods.

“Distribution Center Merchandise” means all new, finished, first-quality goods owned by Merchant and saleable in the ordinary course of business located at the Distribution Centers and reflected on Exhibit 5.2(b).

“Excluded Defective Merchandise” means (a) any item of Defective Merchandise that is (1) not saleable in the ordinary course because it is so damaged or defective that it cannot reasonably be used for its intended purpose or (2) mismatched, mismated or near-sized, (b) any item of Defective Merchandise for which the parties cannot mutually agree upon a Retail Price, and (c) inventory of any kind or nature, wherever located, that was, is or becomes during the Sale Term subject to a bona fide, credible, written claim of trademark (or other intellectual property) infringement by any third party. Excluded Defective Merchandise shall be identified as such during the Inventory Taking. Excluded Defective Merchandise located in the Stores shall be identified and counted during the Inventory Taking and thereafter removed from the sales floor and segregated. To the extent that goods in the Distribution Centers or on-order goods constitute Excluded Defective Merchandise and such goods arrive at the Stores despite Merchant’s covenant not to ship such goods to the Stores, such goods shall be identified during the Inventory Taking or, to the extent such goods arrive in a Store after the Inventory Date for such Store, such goods shall be reasonably identified by Agent within five (5) business days of receipt of at such Store and thereafter removed from the sales floor and/or segregated.

“Merchandise File” means Merchant’s “SKULocationBySubclass.txt” file, together with all updated files received on or prior to the Sale Commencement Date.

“On-Order Merchandise” means all new, finished, first-quality goods owned by Merchant and saleable in the ordinary course of business that are on-order or in-transit and reflected on Exhibit 5.2(b).

“Out-of-Season Goods” means goods specifically related to holidays occurring outside the Sale Term, such as Christmas, New Year’s Day, Valentine’s Day, St. Patrick’s Day, Easter, Bastille Day, Independence Day, Halloween and Thanksgiving. For the avoidance of doubt, the Merchandise reflected on Exhibit 5.2(b)(i) shall not be deemed Out-of-Season Goods.

### 5.3 Valuation.

(a) For purposes of this Agreement, “Retail Price” shall mean with respect to each item of Merchandise and E-Commerce Inventory, determined on an SKU basis as of the Sale Commencement Date, the lowest of the lowest ticketed price, file price (as reflected on the Merchandise File), marked price, shelf price, hang-tag price, stickered price, PLU price, or other hard-marked price, excluding, however, all Excluded Pricing Adjustments. For purposes of calculating Retail Price, if an item of Merchandise or E-Commerce Inventory of the same SKU has more than one ticketed price, file price (as reflected on the Merchandise File), marked price, shelf price, hang-tag price, stickered price, PLU price, or other hard-marked price, or if multiple items of the same SKU have different ticketed, file (as reflected on the Merchandise File), marked, shelf, hang-tag, stickered, PLU, or other hard-marked prices and such pricing does not otherwise qualify as an Excluded Pricing Adjustment, the lowest ticketed price, file price (as reflect on the Merchandise File), marked price, shelf price, hang-tag price, stickered price, PLU price, or other hard-marked price on any such item shall prevail for such item or for all such items within the same SKU, as the case may be, that are located within the same location (as the case may be, the “Lowest Location Price”), unless it is reasonably determined by Merchant and Agent that the applicable Lowest Location Price was mismarked, normal course markdowns had not been reflected or taken, or such item was priced because it was damaged or marked as “as is,” in which case the correct price shall control; provided, however, in determining the Lowest Location Price with respect to any item of Merchandise or E-Commerce Inventory at a Store, the Lowest Location Price shall be determined based upon the lowest Retail Price of such item on a per location basis. No adjustment to Retail Price shall be made with respect to different Retail Prices for items located in different locations.

(b) Notwithstanding the provisions of Section 5.3(a), Excluded Pricing Adjustments shall not be taken into account in determining the Retail Price of any item of Merchandise or E-Commerce Inventory. For purposes of this Agreement, the term “Excluded Pricing Adjustments” means the following discounts or price adjustments offered by Merchant: (i) temporary point of sale discounts or similar temporary adjustments; (ii) employee discounts; (iii) member or customer appreciation points or coupons; (iv) multi-unit purchase discounts; (v) adjustments for damaged, defective or “as is” items; (vi) coupons (Merchant’s or competitors), catalog, website, or circular prices, or “buy one get one” type discounts; (vii) customer savings pass discounts or “bounce back” coupons, or discounts for future purchases based on dollar value of past purchases; (viii) obvious ticketing or marking errors; (ix) instant (in store) or mail in rebates; or (x) similar customer specific, temporary, or employee non-product specific pricing or accommodations.

5.4 Excluded Goods. Subject to the terms of the APA, Merchant shall retain all responsibility for any goods not included as Merchandise, E-Commerce Inventory or DSW Merchandise hereunder. If Merchant elects at the beginning of the Sale Term, Agent shall accept goods not included as Merchandise, E-Commerce Inventory or DSW Merchandise hereunder for

sale at prices mutually agreed upon by Agent and Merchant (such goods, “Merchant’s Consignment Goods”). Agent shall retain 20% of the receipts (net of Sales Taxes) for all sales of Merchant’s Consignment Goods, and Merchant shall receive 80% of the receipts (net of Sales Taxes) in respect of such sales. Merchant shall receive its share of the receipts of sales of Merchant’s Consignment Goods on a weekly basis, immediately following the Weekly Sale Reconciliation. If Merchant does not elect to have Agent sell goods not included as Merchandise, E-Commerce Inventory or DSW Merchandise or Merchant and Agent are unable to agree upon prices, then all such items will be removed by Merchant from the Stores at Merchant’s expense as soon as practicable and shall not be shipped to the Stores from the Distribution Centers absent Agent’s express written consent. Agent shall have no cost, expense or responsibility in connection with any goods not included in Merchandise or E-Commerce Inventory.

5.5 DSW Merchandise. Agent shall accept for sale all new, finished, first quality goods held by Merchant pursuant to consignment arrangements with DSW Inc. or its subsidiaries (collectively “DSW”) that are saleable in the ordinary course of business and located at the Stores as of the Sale Commencement Date (the “DSW Merchandise”); provided that, for the avoidance of doubt, Purchaser’s obligations hereunder with respect to DSW Merchandise held by Merchant in a Designation Rights Store shall terminate upon the assumption of the lease of such Designation Rights Store in accordance with the APA. For the avoidance of doubt, goods subject to such consignment arrangements shall be treated as DSW Merchandise (and not as Merchandise) regardless of whether DSW’s consignment interest is legal, valid or binding or has been properly perfected. The portion of all receipts of sales of DSW Merchandise (exclusive of Sales Taxes) that Merchant is entitled to retain pursuant to all such existing consignment arrangements with DSW shall be treated as Proceeds hereunder (it being agreed that nothing in this Agreement shall prohibit Merchant from paying to DSW any portion of the receipts of sales of DSW Merchandise (exclusive of Sales Taxes) required to be paid to DSW under the terms of agreements with DSW as in existence on the date hereof).

5.6 E-Commerce Inventory. For purposes of this Agreement, “E-Commerce Inventory” shall mean all “Location 61” e-commerce goods set forth on Exhibit 5.6 received at the Closing Stores in store-ready form no later than seven (7) days after the Sale Commencement Date, provided that if such goods are received at the Stores after such 7-day period, but on or before the Receipt Deadline, such goods shall be included in E-Commerce Inventory at the Retail Price of each such item multiplied by a factor equal to the difference of 100% minus the then-prevailing Sale discount at the applicable Closing Store. E-Commerce Inventory shall be counted in accordance with the procedures for counting Merchandise set forth in Section 5.1 hereof. For the avoidance of doubt, any such goods not received at the Closing Stores in store-ready form on or before the Receipt Deadline shall not constitute E-Commerce Inventory, and Merchant shall retain all responsibility for any such goods.

#### Section 6. Sale Term.

6.1 Term. Subject to satisfaction of the conditions precedent set forth in Section 10 hereof (including, without limitation, the entry of the Approval Order), the Sale shall commence at each Store on the first business day following the entry of the Approval Order, but no later than April 7, 2017 (the date on which the Sale commences, the “Sale Commencement”).

Date”). Agent shall complete the Sale at each Store no later than May 31, 2017 (the “Sale Termination Date”), and the period from the Sale Commencement Date to the Sale Termination Date as to each Store being the “Sale Term”); provided that, to the extent that the lease with respect to any Designation Rights Store is assumed and assigned in accordance with the terms of the APA, the Sale Term with respect to such Designation Rights Store shall terminate no later than the date of such assignment, Merchant shall have no further obligations hereunder with respect to such Store and the applicable assignee may waive all obligations of Agent arising under this provision without the consent of any other party (including Merchant). Notwithstanding the foregoing, but subject to Section 2.5(b) of the APA with respect to any Designation Rights Stores, Agent may, in its discretion, earlier terminate the Sale on a Store-by-Store basis upon not less than seven (7) days’ prior written notice (a “Vacate Notice”) to Merchant. In the event Agent fails to provide Merchant with such timely notice, Agent shall be liable for and pay Occupancy Expenses for the days by which notice of a Store closing was less than seven (7) days. The “Vacate Date” with respect to any Store shall be the later of (i) the date on which Agent actually vacates such Store in accordance with the provisions of Section 6.2 (or, solely with respect to any Designation Rights Store, Section 2.5(b) of the APA) and (ii) the date that is seven days after the date on which a Vacate Notice with respect to such Store is delivered to Merchant.

6.2 Vacating the Store. At the conclusion of the Sale (including upon the rejection of any Lease of a Designation Rights Property in accordance with Section 2.5(b) of the APA), Agent agrees to leave each Store in “broom clean” condition, ordinary wear and tear excepted, except for unsold items of Owned FF&E which may be abandoned by Agent in place in a neat and orderly manner pursuant to Section 7 below; provided that, to the extent that the lease with respect to any Designation Rights Store is assumed and assigned in accordance with the terms of the APA, Merchant shall have no further obligations hereunder with respect to such Store and the applicable assignee may waive this requirement without the consent of any other party (including Merchant). Agent shall vacate each Store on or before the Sale Termination Date as provided for herein, at which time Agent shall surrender and deliver the Store premises, and Store keys, to Merchant; provided that, to the extent that the lease with respect to any Designation Rights Store is assumed and assigned in accordance with the terms of the APA, the applicable assignee may waive this requirement without the consent of any other party (including Merchant). Purchaser’s and JV Agent’s, as applicable, obligations to pay all Expenses, including Occupancy Expenses, for each Store to the extent required by Section 4.1 shall continue until the date (the “Outside Date”) that is the earlier of (a) the Sale Termination Date (or, solely with respect to any Designation Rights Store, to the extent later, the end of the Designation Rights Period) and (b) the later of (i) the applicable Vacate Date for such Store and (ii) the fifteenth (15<sup>th</sup>) day of the calendar month in which the Vacate Date for such Store occurs; provided, however, during the period between the Vacate Date with respect to any Store, on the one hand, and the fifteenth (15<sup>th</sup>) day of the calendar month during which such Vacate Date occurs (or, solely with respect to any Designation Rights Store, the end of the Designation Rights Period with respect to such Designation Rights Store), on the other hand, Purchaser or JV Agent’s, as applicable, obligation to pay Expenses with respect to such Store shall be limited to payment of Occupancy Expenses actually payable by Merchant with respect to such Store. All assets of Merchant used by Purchaser or JV Agent, as applicable, in the conduct of the Sale ( e.g. , FF&E (other than Owned FF&E), supplies, etc.) shall be returned by Purchaser or JV Agent, as applicable, to Merchant or left at the Stores, as applicable, to the extent same have not been

consumed in the conduct of the Sale or have not been otherwise disposed of through no fault of the Agent. Where reference is made in this Section 6 to vacating the Stores, such shall mean vacating the Stores in favor of Merchant, its representatives or assignee and shall not mean vacating possession or disclaimer of lease in favor of the landlord or owner of the Store premises. Each of Purchaser and JV Agent agrees that it shall be obligated to repair (or cause to be repaired) any damage caused by it (or any representative, agent or licensee thereof) to any Store during the Sale Term, ordinary wear and tear excepted.

Section 7. FF&E.

7.1 Owned FF&E. (a) JV Agent shall sell all FF&E that is owned by Merchant (the “Owned FF&E”) and located at the Closing Stores, the Indiana Distribution Center, the Headquarters and the Call Center pursuant to a commission structure whereby JV Agent shall be entitled to receive a commission equal to eighteen percent (18.0%) of the gross proceeds (net only of sales taxes) from the sale of any Owned FF&E; provided, however, that Merchant shall be responsible for the payment of all expenses (including reimbursement to Agent where applicable) incurred in connection with the disposition of such Owned FF&E in accordance with a budget to be mutually agreed upon between the Merchant and JV Agent following execution of this Agreement; provided further that all such sales by JV Agent shall be at arms’ length and not, for the avoidance of doubt, to an affiliate of JV Agent or Purchaser, without the prior written consent of Merchant (in consultation with the Consultation Parties (as defined in the Bid Procedures)).

(b) Purchaser will purchase all Owned FF&E located in, or otherwise held for sale at, the Designation Rights Stores and the Nebraska Distribution Center from Merchant pursuant to the terms of the APA.

7.2 Abandonment of FF&E. Agent shall be authorized to abandon any and all sold and unsold Owned FF&E in place without any cost or liability to any party. Agent shall have no responsibility whatsoever with respect to any FF&E located at the Stores, the Distribution Centers, the Headquarters or the Call Center which is not owned by Merchant.

7.3 Representations. Merchant hereby represents to Agent that (i) subject to the Sale Order, all Owned FF&E may be sold by Agent on Merchant’s behalf, free and clear of all claims, liens and encumbrances of any kind and (ii) all such Owned FF&E is devoid of Hazardous Materials. Anything in this Agreement to the contrary notwithstanding, Agent will not have any obligation whatsoever to purchase, sell, make, store, handle, treat, dispose, generate, transport or remove any Hazardous Materials that may be located at the Stores, the Distribution Centers, the Headquarters, the Call Center or Merchant’s other corporate offices. Agent shall have no liability to any party for any environmental action brought (i) that is related to the storage, handling, treatment, disposition, generation, or transportation of Hazardous Materials, or (ii) in connection with any remedial actions associated therewith or the Stores, the Distribution Centers, the Headquarters, the Call Center or Merchant’s other corporate offices. Merchant (and not Agent) shall be solely responsible to remove from the Stores, the Distribution Centers, the Headquarters, the Call Center and Merchant’s other corporate offices all Hazardous Materials. For purposes of this Agreement, the term “Hazardous Materials” means, collectively, any chemical, solid, liquid, gas, or other substance having the characteristics identified in, listed

under, or designated pursuant to (i) the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C.A. 9601(14), as a “hazardous substance”, (ii) the Resource Conservation and Recovery Act, 42 U.S.C.A. 6903(5) and 6921, as a “hazardous waste”, or (iii) any other laws, statutes or regulations of a government or political subdivision or agency thereof, as presenting an imminent and substantial danger to the public health or welfare or to the environment or as otherwise requiring special handling, collection, storage, treatment, disposal, or transportation.

Section 8. Conduct of the Sale.

8.1 Rights of Agent. In addition to any other rights granted to Agent elsewhere in this Agreement, Agent shall be permitted to conduct the Sale (x) at the Closing Stores (and, at Purchaser’s election, in its sole discretion, at the Designation Rights Stores), as a “store closing”, “sale on everything”, “everything must go” or similar-themed sale and (ii) at the Designation Rights Stores (unless Purchaser makes the election in clause (x)), consistent with such Designation Rights Stores being operated in the ordinary course of business (but, in the case of each of clauses (x) and (y), shall not refer to any such sale as a “going out of business”, “total liquidation”, “bankruptcy ordered” or “bankruptcy liquidation” sale) throughout the Sale Term without compliance with any Liquidation Sale Laws. Agent shall conduct the Sale in the name of and on behalf of the Merchant in a commercially reasonable manner and in compliance with the terms of this Agreement and subject to the Approval Order. Agent shall conduct the Liquidation Sale in accordance with the sale guidelines attached hereto as Exhibit 8.1 (the “Sale Guidelines”). In addition to any other rights granted to Agent hereunder in conducting the Sale the Agent, in the exercise of its reasonable discretion shall have the right:

(a) to establish Sale prices and discounts and Store hours;

(b) except as otherwise expressly included as an Expense, to use without charge during the Sale Term all FF&E, bank accounts, computer hardware and software, existing Supplies, intangible assets (including, except as otherwise agreed between Purchaser and JV Agent, Merchant’s trademarks, trade names, logos and tax identification numbers), Store keys, case keys, security codes and safe and lock combinations required to gain access to and operate the Stores and the Distribution Centers, and any other assets of the Merchant located at the Stores or the Distribution Centers (whether owned, leased, or licensed);

(c) except as otherwise expressly included as an Expense, (i) to be provided by Merchant with central office facilities, central administrative services and personnel to process and perform Central Services and provide other central office services reasonably necessary for or incident to the Sale or the exercise of the designation rights pursuant to the APA (including, but not limited to, use of Merchant’s central office facilities, central administrative services, and personnel to process payroll, perform MIS, and provide other central office services necessary for the Sale to the extent that such services are normally provided by Merchant in house); (ii) to use reasonably sized offices located at Merchant’s central office facility to effect the Sale; and (iii) except as otherwise agreed between Purchaser and JV Agent, to use all customer lists, mailing lists, email lists, and web and social networking sites utilized by Merchant in connection with its business (but solely in connection with the Sale and pursuant to such reasonable restrictions requested by Merchant in order for Merchant to comply with its

privacy policy and applicable laws governing the use and dissemination of confidential consumer personal data (provided that, subject to the terms of the APA and the Approval Order, such restrictions shall not apply to Purchaser from and after the transfer of ownership of the applicable intellectual property and information to Purchaser));

(d) except as otherwise agreed between Purchaser and JV Agent, to establish and implement advertising, signage and promotion programs consistent with the (i) at the Closing Stores (and, at Purchaser's election, in its sole discretion, at the Designation Rights Stores), "store closing", "sale on everything", "everything must go", or similar theme and (ii) at the Designation Rights Stores (unless Purchaser makes the election in clause (i)), consistent with such Designation Rights Stores being operated in the ordinary course of business (but, in the case of each of clauses (i) and (ii), not referring to any such sale as a "going out of business", "total liquidation", "bankruptcy ordered" or "bankruptcy liquidation" sale), including without limitation by means of media advertising, interior and exterior signs and banners, A-frames, sign walkers and similar signage;

(e) to transfer Merchandise between and among the Stores at Agent's expense; provided, however, the Agent shall not transfer Merchandise between and among Stores so as to make the Merchandise unavailable for purposes of the Inventory Taking; provided further that no Merchandise shall be transferred between the Closing Stores, on the one hand, and the Designation Rights Stores, on the other hand, unless mutually agreed by each of JV Agent and Purchaser;

(f) to transfer Merchandise from the Distribution Center to the Stores;

(g) to supplement the Merchandise at the Stores with Additional Agent Merchandise in accordance with Section 8.9 hereof; and

(h) to conduct the Sale in accordance with the Sale Guidelines.

8.2 Terms of Sales to Customers: Final/As Is Sales. All sales of Merchandise at the Closing Stores (and, at Purchaser's election, in its sole discretion, at the Designation Rights Stores) will be "final sales" and "as is," and appropriate signage and sales receipts will reflect the same. Agent shall not warrant the Merchandise in any manner, but will, to the extent legally permissible, pass on all manufacturers' warranties to customers; provided, however, that Purchaser may elect in its sole discretion to warrant the Merchandise at the Designation Rights Stores in its sole discretion so long as neither Merchant nor JV Agent shall have any liability for any such warranty. All sales will be made only for cash, nationally recognized bank credit and debit cards. Through the date that is thirty (30) days following the Sale Commencement Date, Agent shall accept or honor employee discounts, coupons, or other customer loyalty programs, rewards or other discounts that were in effect immediately prior to the Sale Commencement Date (collectively, the "Pre-Sale Customer Rewards Programs"). Merchant shall reimburse Agent in cash for discounts and other amounts incurred in connection with honoring or accepting such Pre-Sale Customer Rewards Programs during such period as part of the weekly sale reconciliation provided for in Section 8.7(a). Agent shall clearly mark all receipts for the Merchandise sold at the Stores during the Sale Term so as to distinguish such Merchandise from the goods sold prior to the Sale Commencement Date.

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### 8.3 Sales Taxes.

(a) During the Sale Term, all sales, excise, gross receipts and other taxes attributable to sales of Merchandise, Additional Agent Merchandise, Merchant's Consignment Goods, DSW Merchandise and/or Owned FF&E (except to the extent such sales are exempt) as indicated on Merchant's point of sale equipment (other than taxes on income, but specifically including, without limitation, gross receipts taxes) payable to any taxing authority having jurisdiction (collectively, "Sales Taxes") shall be added to the sales price of Merchandise, Additional Agent Merchandise, Merchant's Consignment Goods, DSW Merchandise and/or Owned FF&E and collected by Agent, on Merchant's behalf, at the time of sale. All Sales Taxes shall be deposited into a segregated account designated by Merchant and Agent solely for the deposit of such Sales Taxes (the "Sales Taxes Account"). Merchant shall prepare and file all applicable reports and documents required by the applicable taxing authorities, and Merchant shall promptly pay all Sales Taxes from the Sales Taxes Account. Merchant will be given access to the computation of gross receipts for verification of all such tax collections. Provided that Agent performs its responsibilities in accordance with this Section 8.3, Agent shall have no further obligation to the Merchant, the Administrative Agent, the Lenders, any taxing authority, or any other party, and Merchant (and the Administrative Agent to the extent the Administrative Agent or any Lender has received any funds on account of Sales Taxes) shall indemnify and hold harmless Agent and its officers, directors, employees, agents, representatives, independent contractors and supervisors (collectively, "Agent Indemnified Parties") from and against any and all costs, including, but not limited to, reasonable attorneys' fees, assessments, fines or penalties which Agent or any Agent Indemnified Party sustains or incurs as a result or consequence of the failure by Merchant to promptly pay such taxes to the proper taxing authorities and/or the failure by Merchant to promptly file with such taxing authorities all reports and other documents required by applicable law to be filed with or delivered to such taxing authorities. If Agent fails to perform its responsibilities in accordance with this Section 8.3, and provided Merchant complies with its obligations under this Section 8.3, Agent shall indemnify and hold harmless Merchant from and against any and all costs, including, but not limited to, reasonable attorneys' fees, assessments, fines or penalties which Merchant sustains or incurs as a result or consequence of the failure by Agent to collect Sales Taxes and/or the failure by Agent to promptly deliver any and all reports and other documents required to enable Merchant to file any requisite returns with such taxing authorities. Notwithstanding the foregoing, however, the procedures of this Section 8.3(a) shall not apply with respect to sales conducted by Purchaser in any capacity other than as agent for Merchant.

(b) Without limiting the generality of Section 8.3(a) hereof but except to the extent Purchaser makes a payment to Merchant as consideration under the APA, it is hereby agreed that, as each of Purchaser and JV Agent is conducting the Sale solely as agent for the Merchant, various payments that this Agreement contemplates that one party may make to the other party (including the payment by Purchaser and JV Agent of the Guaranteed Amount) do not represent the sale of tangible personal property and, accordingly, are not subject to Sales Taxes. For the avoidance of doubt, Section 12.2 of the APA will govern Purchaser and Merchant's obligations with respect to Transfer Taxes (as defined in the APA) imposed in connection with Purchaser's acquisition of the designation rights and certain other assets pursuant to the APA.

8.4 Supplies. Agent shall have the right to use, without charge, all existing supplies located at the Stores, Distribution Centers, the Headquarters and the Call Center, including, without limitation, boxes, bags, paper, twine and similar sales materials (collectively, “Supplies”). In the event that additional Supplies are required in any of the Stores during the Sale, Merchant agrees to promptly provide the same to Agent, if available, for which Agent shall reimburse the Merchant at Merchant’s cost therefor; provided, however, that if reasonably requested by Agent, Merchant shall assist Agent in obtaining supplies, at Agent’s expense, from Merchant’s vendors at Merchant’s usual and customary costs for such supplies.

8.5 Returns of Merchandise. Agent shall accept returns of goods sold by Merchant prior to the Sale Commencement Date (“Returned Merchandise”) for thirty (30) days following the Sale Commencement Date, provided that such return is in compliance with Merchant’s return policy in effect immediately prior to the Sale Commencement Date. If such Returned Merchandise is otherwise “Merchandise” it shall be included in the Sale at its Retail Price multiplied by a factor equal to the difference of 100% minus the then prevailing Sale discount on the date of the return. Subject to Merchant’s reimbursement to Agent in accordance with the terms of this Section 8.5, the aggregate Retail Price of the Merchandise shall be increased by the adjusted Retail Price of any Returned Merchandise included in Merchandise (determined in accordance with this Section 8.5). In addition, Merchant shall reimburse Agent in cash for any refunds or credits Agent is required to issue to customers in respect of any Returned Merchandise during each Weekly Sale Reconciliation provided for in Section 8.7. Any increases in the Guaranteed Amount as a result of Returned Merchandise shall be paid by Agent as part of the Final Reconciliation.

8.6 Gift Certificates. Through the date that is fourteen (14) days following the Sale Commencement Date, Agent shall accept Merchant’s gift certificates, gift cards, return credits, and similar merchandise credits issued by Merchant (collectively, the “Gift Certificates”). Merchant shall reimburse Agent in cash for such amounts during the Weekly Sale Reconciliation provided for in Section 8.7. Neither Agent nor Merchant shall sell any Gift Certificates.

8.7 Sale Reconciliation. On each Wednesday during the Sale Term (or, solely with respect to the Designation Rights Stores, the Designation Rights Period), Purchaser, JV Agent and Merchant shall cooperate to reconcile Expenses of the Sale, make payments/setoffs on account of the Guaranteed Amount, Agent’s Fee, E-Commerce Inventory Fee, sales of Owned FF&E, and reconcile such other Sale-related items as any such party shall reasonably request, in each case for the prior week or partial week (i.e. Sunday through Saturday), all pursuant to procedures agreed upon by Merchant, Purchaser and JV Agent (the “Weekly Sale Reconciliation”). Within thirty (30) days after the end of the Sale Term (or, if later, the Designation Rights Period), or as soon as practicable thereafter, Purchaser, JV Agent and Merchant shall complete a final reconciliation of the Sale (the “Final Reconciliation”), the written results of which shall be certified by representatives of each of Merchant, Purchaser and JV Agent as a final settlement of accounts between Merchant, on the one hand, and Purchaser and JV Agent, on the other hand, and a copy of which shall be promptly delivered to Purchaser and shall include the net sale proceeds paid by JV Agent to Sellers from all sales of Owned FF&E located at the Closing Stores. Within five (5) days after the completion of the Final Reconciliation and execution of a settlement letter including an appropriate mutual release,

Purchaser and JV Agent (as applicable) shall pay to Merchant, or Merchant shall pay to Purchaser and JV Agent (as applicable), as the case may be, any and all amounts due the other pursuant to the Final Reconciliation. Such settlement and Final Reconciliation shall be deemed approved pursuant to section 105(a) of the Bankruptcy Code and rule 9019 of the Federal Rules of Bankruptcy Procedure without further order of the Bankruptcy Court (other than the Approval Order). In the absence of an order of the Bankruptcy Court to the contrary, no disputed amounts owing hereunder shall be paid until the dispute has been resolved by agreement of Merchant, on the one hand, and Purchaser and JV Agent (as applicable), on the other hand, or as determined by the Bankruptcy Court. During the Sale Term (or, solely with respect to the Designation Rights Stores, the Designation Rights Period), and thereafter until all of Merchant's and Agent's obligations under this Agreement have been satisfied, Merchant, Purchaser and JV Agent shall have reasonable access to each other's records with respect to the Sale (including, but not limited to, Retail Price, Merchandise, Expenses, and Proceeds) to review and audit such records.

8.8 Force Majeure. If any casualty, act or threatened act of terrorism, or act of God prevents or substantially inhibits the conduct of business in the ordinary course at any of the Stores for a period of four (4) days, the Merchandise located at such Store shall, in Agent's reasonable discretion (after consultation with the Merchant), be eliminated from the Sale and considered to be deleted from this Agreement as of the date of such event, and Agent and Merchant shall have no further rights or obligations hereunder with respect thereto; provided, however, that (i) the proceeds of any insurance attributable to such Merchandise shall constitute Proceeds hereunder, and (ii) the Guaranteed Amount shall be reduced to account for any Merchandise eliminated from the Sale which is not the subject of insurance proceeds, and Merchant shall within five (5) days following written demand by Agent reimburse Agent for the amount the Guaranteed Amount is so reduced.

8.9 Additional Agent Merchandise.

(a) Agent shall be entitled to include in the Sale supplemental merchandise procured by Agent which is of like kind, and no lesser quality to the Merchandise located in the Stores as of the Sale Commencement Date ("Additional Agent Merchandise"). Agent shall be responsible for payment of the costs associated with procuring any Additional Agent Merchandise and all costs and expenses related to, or incurred in connection with, the marketing and sale of the Additional Agent Merchandise, which costs shall not constitute Expenses hereunder; provided, however, that such costs shall not include any occupancy expenses related to the Indiana Distribution Center. Notwithstanding anything to the contrary in this Agreement or the Sale Guidelines, Purchaser shall have the right to supplement the Merchandise in the Sale at the Designation Rights Stores with Additional Agent Merchandise procured by Purchaser in any manner it determines, without adherence to any restrictions set forth in this Section 8.9, the second sentence of Section 11.2(f) or the Sale Guidelines; provided that Purchaser shall not deliver Additional Agent Merchandise to any Designation Rights Store until the Inventory Taking at such Designation Rights Store is complete; provided further that, to the extent Purchaser elects not to use a "dummy" SKU in connection with such Additional Agent Merchandise, Merchant shall have no obligation to account for the processing thereof.

(b) The Additional Agent Merchandise shall at all times and for all purposes be the exclusive property of, and subject to the control of, Agent. Merchant, the Administrative

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Agent and the Lenders shall cooperate with Agent with respect to all filings (including, without limitation, UCC-1 financing statements) and other actions to the extent reasonably requested by Agent in connection with the Additional Agent Merchandise. If requested by Agent, Merchant shall, at Agent's sole expense (and not as an Expense hereunder), insure the Additional Agent Merchandise and, if required, promptly file any proofs of loss with regard to same with Merchant's insurers.

(c) Any transactions relating to the Additional Agent Merchandise are, and shall be construed as, a true consignment from Agent to Merchant. Merchant acknowledges, and the Approval Order (as and when applicable) shall provide, that the Additional Agent Merchandise shall be consigned to Merchant as a true consignment under Article 9 of the Uniform Commercial Code (the "UCC"). Each of Purchaser and JV Agent, as applicable, is hereby granted a legal, valid and binding first priority security interest in (i) the Additional Agent Merchandise and (ii) the Additional Agent Merchandise proceeds, which security interest Agent shall be authorized to perfect prior to entry of the Approval Order, but which security interest shall, if not sooner perfected, be deemed perfected pursuant to the Approval Order without the requirement of filing UCC financing statements or providing notifications to any prior secured parties (provided that each of Purchaser and JV Agent, as applicable, is hereby authorized to deliver any notices and file any financing statements and amendments thereof under the applicable UCC identifying Purchaser or JV Agent's, as applicable, interest in the Additional Agent Merchandise (and any proceeds from the sale thereof) as consigned goods thereunder and the Merchant as the consignee therefor, and Purchaser or JV Agent's, as applicable, security interest in such Additional Agent Merchandise and Additional Agent Merchandise proceeds). The Administrative Agent, on behalf of itself and the Lenders, hereby consents to the payment to Agent of Additional Agent Merchandise Proceeds (subject to Agent's obligation with respect to the Additional Agent Merchandise Fee payable hereunder).

(d) In order to distinguish the Additional Agent Merchandise from the Merchandise located in the Stores, Agent shall mark the Additional Merchandise using either a "dummy" SKU or department number, or in such other manner as shall enable Merchant and Agent to distinguish sales of the Additional Agent Merchandise from sales of the Merchandise. Additionally, Agent shall provide signage in the Stores notifying customers that the Additional Agent Merchandise has been included in the Sale.

8.10 Right to Monitor. Merchant shall have the right to monitor the Sale and activities attendant thereto and to be present in the Stores during the hours when the Stores are open for business; provided that Merchant's presence does not unreasonably disrupt the conduct of the Sale. Merchant shall also have a right of access to the Stores at any time in the event of an emergency situation and shall promptly notify Agent of such emergency.

#### Section 9. Employee Matters.

9.1 Merchant's Employees. Agent may use Merchant's Store employees in the conduct of the Sale to the extent Agent deems expedient, and Agent may select and schedule the number and type of Merchant's Store employees required for the Sale. Agent shall identify any such Store employees to be used in connection with the Sale (each such employee, a "Retained Employee"). Notwithstanding the foregoing, Merchant's employees shall at all times

remain employees of the Merchant. Agent's selection and scheduling of Merchant's employees shall at all times comply with all applicable laws and regulations. Merchant and Agent agree that, except to the extent that wages and benefits of Retained Employees constitute Expenses hereunder, nothing contained in this Agreement and none of Agent's actions taken in respect of the Sale shall be deemed to constitute an assumption by Agent of any of Merchant's obligations relating to any of Merchant's employees including, without limitation, Excluded Payroll Benefits, Worker Adjustment Retraining Notification Act ("WARN Act") claims and other termination type claims and obligations, or any other amounts required to be paid by statute or law; nor shall JV Agent or Purchaser become liable under any employment agreement, collective bargaining agreement, or be deemed a joint or successor employer with respect to such employees. Merchant shall not, without the prior consent of Agent, raise the salary or wages or increase the benefits for, or pay any bonuses or other extraordinary payments to, any Store employees prior to the Sale Termination Date. Merchant shall not transfer any employee in anticipation of the Sale nor any Retained Employee during the Sale Term, in each case without Agent's prior consent.

9.2 Termination of Employees. Agent may in its discretion stop using any Retained Employee at any time during the Sale, subject to the conditions provided for herein. In the event that Agent desires to cease using any Retained Employee, Agent shall notify Merchant at least seven (7) days prior thereto; provided, however, that, in the event that Agent determines to cease using an employee "for cause" (such as dishonesty, fraud or breach of employee duties), the seven (7) day notice period shall not apply; provided, further, however, that Agent shall immediately notify Merchant of the basis for such "cause." From and after the date of this Agreement and until the Sale Termination Date, Merchant shall not transfer or dismiss employees of the Stores except "for cause" without Agent's prior consent. Notwithstanding the foregoing, Agent shall not have the right to terminate the actual employment of any employee, but rather may only cease using such employee in the Sale and paying any Expenses with respect to such employee (and all decisions relating to the termination or non-termination of such employees shall at all times rest solely with Merchant).

9.3 Payroll Matters. During the Sale Term, Merchant shall process the payroll for all Retained Employees and any former employees and temporary labor engaged for the Sale. Each Wednesday (or such other date as may be reasonably requested by Merchant to permit the funding of the payroll accounts before such payroll is due and payable) during the Sale Term, Agent shall transfer to Merchant's payroll accounts an amount equal to the base payroll for Retained Employees plus related payroll taxes, workers' compensation and benefits for such week, to the extent such amount constitutes Expenses hereunder.

9.4 Employee Retention Bonuses. Agent may pay, as an Expense, retention bonuses ("Retention Bonuses") (which bonuses shall be inclusive of payroll taxes, but as to which no benefits shall be payable), up to a maximum of ten percent (10%) of base payroll for all Retained Employees, to certain Retained Employees who do not voluntarily leave employment and are not terminated "for cause," as Agent may determine in its discretion. The amount of such Retention Bonuses shall be in an amount to be determined by Agent, in its discretion, and shall be payable within thirty (30) days after the Sale Termination Date, and shall be processed through Merchant's payroll system.

Section 10. Conditions Precedent and Subsequent.

(a) The willingness of Agent to enter into the transactions contemplated under this Agreement is directly conditioned upon the satisfaction of the following conditions at the time or during the time periods indicated, unless specifically waived in writing by Agent:

(i) All representations and warranties of the Merchant hereunder shall be true and correct in all material respects and no Event of Default shall have occurred at and as of the date hereof and on the Sale Commencement Date;

(ii) No injunction, stay or restraining order shall be in effect prohibiting the consummation of the transactions contemplated by this Agreement (including, without limitation, the Sale);

(iii) The Bankruptcy Court shall have entered the Approval Order, in form and substance meeting the standards set forth in Section 2(b), on or before April 6, 2017;

(iv) The Bankruptcy Court shall have entered one or more interim and/or final orders, inter alia, approving Merchant's use of cash collateral;

(v) All parties to this Agreement (including, without limitation, the Administrative Agent, on behalf of itself and the Lenders) shall have executed this Agreement in the space provided therefor; and

(vi) All conditions to the obligations of Purchaser and Merchant set forth in ARTICLE VIII and ARTICLE IX, respectively, of the APA shall have been satisfied (or waived in accordance with the APA).

(b) The willingness of Merchant to enter into the transactions contemplated under this Agreement is directly conditioned upon the satisfaction of the following conditions at the time or during the time periods indicated, unless specifically waived in writing by the Merchant:

(i) All representations and warranties of Agent hereunder shall be true and correct in all material respects and no Event of Default shall have occurred at and as of the date hereof and on the Sale Commencement Date;

(ii) No injunction, stay or restraining order shall be in effect prohibiting the consummation of the transactions contemplated by this Agreement (including, without limitation, the Sale);

(iii) The Bankruptcy Court shall have entered the Approval Order; and

(iv) All parties to this Agreement (including, without limitation, the Administrative Agent, on behalf of itself and the Lenders) shall have executed this Agreement in the space provided therefor.

Section 11. Representations, Warranties and Covenants.

11.1 Merchant's Representations, Warranties and Covenants. Merchant hereby represents, warrants and covenants in favor of Agent as follows:

(a) Merchant (i) is a corporation or limited liability company duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or formation; (ii) has all requisite corporate or limited liability power and authority to own, lease and operate its assets and properties and to carry on its business as presently conducted and to grant the rights intended to be granted herein as provided herein (it being understood that, from and after the date on which Merchant commences a Chapter 11 case, this representation shall be subject to the entry of the Approval Order); and (iii) is, and during the Sale Term will continue to be, duly authorized and qualified to do business and in good standing in each jurisdiction where the nature of its business or properties requires such qualification, including all jurisdictions in which any Store or Distribution Center is located, except, in each case, to the extent that the failure to be in good standing or so qualified could not reasonably be expected to have a material adverse effect on the ability of the Merchant to execute and deliver this Agreement and perform fully its obligations hereunder.

(b) Subject to entry of the Approval Order, Merchant has the right, power and authority to execute and deliver this Agreement and each other document and agreement contemplated hereby (collectively, together with this Agreement, the "Agency Documents") and to perform fully its obligations hereunder and thereunder. Subject to entry of the Approval Order, Merchant has taken all necessary actions required to authorize the execution, delivery and performance of the Agency Documents, and no further consent or approval is required for Merchant to enter into and deliver the Agency Documents, to perform its obligations thereunder and to consummate the Sale, except for any such consent the failure of which to be obtained could not reasonably be expected to have a material adverse effect on the ability of Merchant to execute and deliver this Agreement and perform fully its obligations hereunder. Subject to entry of the Approval Order, each of the Agency Documents has been duly executed and delivered by the Merchant and constitutes the legal, valid and binding obligation of the Merchant enforceable in accordance with its terms.

(c) Merchant owns, and will own at all times during the Sale Term, good and marketable title to all of the Merchandise, Merchant's Consignment Goods, E-Commerce Inventory and Owned FF&E, free and clear of all security interests, liens, claims and encumbrances of any nature (other than (i) the security interests and liens of the Agent hereunder and (ii) the security interests and liens set forth on Exhibit 11.1(c)). Merchant shall not create, incur, assume or suffer to exist any security interest, lien, claim or encumbrance upon or with respect to any of the Merchandise, Merchant's Consignment Goods, DSW Merchandise, Additional Agent Merchandise, Proceeds, E-Commerce Inventory, Owned FF&E or any proceeds of any of the foregoing other than (i) as provided herein and (ii) except with respect to the Additional Agent Merchandise and its proceeds, as set forth on Exhibit 11.1(c). Subject to the entry of the Approval Order, all Merchandise, Merchant's Consignment Goods, DSW Merchandise, Additional Agent Merchandise, E-Commerce Inventory and Owned FF&E may be sold by Agent free and clear of all security interests, liens, claims and encumbrances of any nature; provided that (i) any security interests, liens, claims or encumbrances that may have

attached to any of the foregoing prior to such sale shall attach only to the Guaranteed Amount and such other amounts due by Agent to Merchant hereunder and (ii) Merchant shall remain obligated to pay to DSW any portion of the receipts of sales of DSW Merchandise (exclusive of Sales Taxes) required to be paid to DSW under the terms of agreements with DSW as in existence on the date hereof.

(d) Merchant has maintained its pricing files (including, without limitation, the Merchandise File) and records in the ordinary course of business, and prices charged to the public for goods (whether in-Store, by advertisement, online or otherwise) are the same in all material respects as set forth in such pricing files for the periods indicated therein (without consideration of any Excluded Pricing Adjustments). All pricing files (including, without limitation, the Merchandise File) and records are true and accurate in all material respects as to the actual cost to Merchant for purchasing the goods referred to therein and as to the selling price to the public for such goods without consideration of any Excluded Pricing Adjustments, as of the dates and for the periods indicated therein. Merchant represents that (i) the ticketed prices of all items of Merchandise do not and shall not include any Sales Taxes and (ii) all registers located at the Stores are programmed to correctly compute all Sales Taxes required to be paid by the customer under applicable law, as such calculations have been identified to Merchant by its retained service provider.

(e) Through the Sale Commencement Date, Merchant has ticketed or marked, and shall continue to ticket or mark, all items of inventory received at the Stores in a manner consistent with similar Merchandise located at the Stores, and in accordance with Merchant's ordinary course past practices and policies relative to pricing and marking inventory.

(f) Since February 1, 2017, Merchant has not, and through the Sale Commencement Date Merchant shall not, purchase for or transfer to or from any of the Stores any merchandise or goods outside the ordinary course.

(g) To Merchant's knowledge, all Merchandise and E-Commerce Inventory is in compliance with all applicable federal, state and local product safety laws, rules and standards. Merchant shall provide Agent with its historic policies and practices, if any, regarding product recalls prior to the Sale Commencement Date. Merchant owns or possesses all right, title and interest in and to all material permits, licenses, franchises, orders, consents, authorizations, registrations, certificates, variances, exceptions, approvals and similar rights obtained from governments and governmental agencies relating to the Stores or the operations conducted at the Stores, and all deposits or bonds in connection therewith (collectively, the "Permits") that are necessary to own and operate the Stores, including, without limitation, all Permits required under any federal, state or local law relating to public health and safety, employee health and safety, pollution or protection of the environment, other than in each case failures to so own or possess all right, title and interest that would not prevent or materially impair Merchant's consummation of the transactions contemplated by this Agreement. Merchant is in compliance with the terms and conditions of such material Permits and has received no notices within the past year (nor does it have any knowledge of any threatened notice) that it is in violation of any of the terms or conditions of such Permits, except for any noncompliance or violation that would not prevent or materially impair the Merchant's consummation of the transactions contemplated by this Agreement. Merchant has conducted and continues to conduct its business, in all material

respects, in accordance with all applicable laws and governmental orders applicable to Merchant or any of its assets or properties, and to the best of its knowledge Merchant is not in material violation of any such law or governmental order, including, without limitation, any law, now in effect, and any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, relating to the environment, labor, health, safety or hazardous materials, except for any noncompliance or violation that would not prevent or materially impair the Merchant's consummation of the transactions contemplated by this Agreement.

(h) Subject to the provisions of the Approval Order, Agent shall have the right during the Sale Term to the unencumbered use and occupancy of, and peaceful and quiet possession of, the Stores and the Distribution Centers, the assets currently located at the Stores and the Distribution Centers, and the utilities and other services provided at the Stores and the Distribution Centers. Merchant shall, throughout the Sale Term, maintain in good working order, condition and repair (at its own expense, except as expressly set forth herein) all cash registers, heating systems, air conditioning systems, alarm systems, elevators, escalators and all other mechanical devices necessary or appropriate for the conduct of the Sale at the Stores and the Distribution Centers. Except as otherwise restricted by the Bankruptcy Code upon filing of the Bankruptcy Case, and absent a bona fide dispute, throughout the Sale Term, Merchant shall remain current on all expenses and payables necessary or appropriate for the conduct of the Sale.

(i) Subject to approval by the Bankruptcy Court, Merchant has paid, and will continue to pay throughout the Sale Term, all self-insured or Merchant-funded employee benefit programs for Store employees, including health and medical benefits and insurance and all proper claims made or to be made in accordance with such programs.

(j) Since February 1, 2017, Merchant has not taken, and shall not throughout the Sale Term take, any actions with the intent of increasing the Expenses of the Sale, including without limitation increasing salaries or other amounts payable to employees; except to the extent an employee was due an annual raise in the ordinary course.

(k) Prior to the execution of this Agreement, Merchant has provided Agent reasonable access to all pricing and cost files, computer hardware, software and data files, inter-Stores transfer logs, markdown schedules, invoices, style runs and all other documents relative to the price, mix and quantities of inventory located at the Stores and the Distribution Centers or on order or in transit.

(l) To Merchant's knowledge, all documents, information and supplements provided by Merchant to Agent in connection with Agent's due diligence and the negotiation of this Agreement were true and accurate in all material respects at the time provided.

(m) Other than filing the Bankruptcy Case, no action, arbitration, suit, notice, or legal, administrative or other proceeding before any court or governmental body has been instituted by or against the Merchant, or has been settled or resolved, or to Merchant's knowledge, is threatened against or affects Merchant, relative to Merchant's business or properties, which questions the validity of this Agreement, or that if adversely determined, would materially and adversely affect the conduct of the Sale.

(n) Supplies have not been, since February 1, 2017, and shall not be, prior to the Sale Commencement Date, transferred by Merchant to or from the Stores so as to alter the mix or quantity of supplies at the Stores from that existing on such date, other than in the ordinary course of business.

(o) Since February 1, 2017, Merchant (i) has not (and shall not, up to the Sale Commencement Date) marked up or raised the price of any items of Merchandise, (ii) has not reduced the price of any items of Merchandise, (iii) has sold inventory during such period at customary prices consistent with the ordinary course of business, and has not offered any promotions or discounts or promoted or advertised any sales or in-store promotions (including POS promotions) to the public other than as described on Exhibit 11.1(o) (in all cases whether or not consistent with Merchant's ordinary course of business consistent with historic periods) and (iv) has not removed or altered any tickets or any indicia of clearance merchandise or POS promotion. Since February 1, 2017, Merchant has operated, and, except as provided herein, through the Sale Commencement Date, Merchant covenants to continue to operate, the Stores in all material respects in the ordinary course of business including without limitation by: (i) selling inventory during such period at customary prices consistent with the ordinary course of business and not offering any promotions or discounts or promoting or advertising any sales or in-store promotions (including POS promotions) to the public other than as described on Exhibit 11.1(o) (in all cases whether or not consistent with Merchant's ordinary course of business consistent with historic periods); (ii) not returning inventory, supplies, fixtures, furniture or equipment to vendors and not transferring inventory, supplies, fixtures, furniture or equipment out of or to the Stores; or (iii) except as may occur in the ordinary course of business, not making any management personnel moves or changes at the Stores; subject in each case to the Merchant's filing of the Bankruptcy Cases. Since February 1, 2017, Merchant has not transferred, and will not transfer, any inventory to or from any of Merchant's retail locations other than the Stores and the Distribution Centers from or to any Store or Distribution Center. Merchant acknowledges and agrees that, on or after the Sale Commencement Date, it shall not offer any promotions or discounts at the Stores.

(p) Merchant is not a party to any collective bargaining agreements with its employees. No labor unions represent Merchant's employees at any Store. There are currently no strikes, work stoppages, or other labor disturbances affecting any Distribution Center or any Store, or Merchant's central office facilities.

(q) No Store lease or similar occupancy agreement has expired, nor shall expire at any time until the conclusion of the Sale Term in such Store (by its terms or otherwise).

(r) Merchant has not since February 1, 2017, knowingly shipped any Excluded Defective Merchandise from the Distribution Centers to the Stores. Merchant will not knowingly ship any Excluded Defective Merchandise from the date of this Agreement from the Distribution Centers to the Stores.

(s) During the Sale Term applicable to any Store or, to the extent a notice is delivered pursuant to Section 4.1(s), Distribution Center, and for purposes of conducting the Sale at such Store or Distribution Center, (A) Agent shall have the right to the unencumbered use and occupancy of, and peaceful and quiet possession of, such Store or Distribution Center and the

assets currently located at such Store or Distribution Center, in each case subject to the extent of Merchant's rights and entitlement to use the same, and the services provided at such Store to the extent Merchant is entitled to such services and (B) Merchant shall not assign, reject, terminate or vacate any lease relating to any such Store or Distribution Center where such assignment, rejection, termination or vacatur would have an effective date on or prior to the applicable Sale Termination Date or Vacate Date for such Store or Distribution Center

(t) Merchant agrees and covenants that it shall retain sufficient funds, or make other arrangements satisfactory to Merchant and Agent, to enable Merchant to fully satisfy and perform its obligations under this Agreement and Merchant shall use those funds to fully satisfy and perform its obligations under this Agreement.

(u) No investigation or due diligence conducted by Agent shall limit, modify or negate any of the foregoing representations or warranties.

11.2 Agent's Representations, Warranties and Covenants. Each of Purchaser and JV Agent hereby represents, warrants and covenants in favor of Merchant as follows:

(a) Agent: (i) is a limited liability company duly and validly existing and in good standing under the laws of the state of its organization; (ii) has all requisite power and authority to carry on its business as presently conducted and to consummate the transactions contemplated hereby; (iii) is, and during the Sale Term will continue to be, duly authorized and qualified to do business and in good standing in each jurisdiction where the nature of its business or properties requires such qualification, including all jurisdictions in which the Stores are located, except, in each case, to the extent that the failure to be in good standing or so qualified could not reasonably be expected to have a material adverse effect on the ability of Agent to execute and deliver this Agreement and perform fully its obligations hereunder.

(b) Agent has the right, power and authority to execute and deliver each of the Agency Documents to which it is a party and to perform fully its obligations thereunder. Agent has taken all necessary actions required to authorize the execution, delivery and performance of the Agency Documents, and no further consent or approval is required on the part of Agent for Agent to enter into and deliver the Agency Documents, to perform its obligations thereunder and to consummate the Sale. Each of the Agency Documents has been duly executed and delivered by the Agent and constitutes the legal, valid and binding obligation of Agent enforceable in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, reorganization, moratorium or other similar laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforceability is considered in a proceeding in equity or at law). No court order or decree of any federal, state or local governmental authority or regulatory body is in effect that would prevent or impair, or is required for, Agent's consummation of the transactions contemplated by this Agreement, and no consent of any third party which has not been obtained is required therefor, other than as provided herein. No contract or other agreement to which Agent is a party or by which Agent is otherwise bound will prevent or impair the consummation of the transactions contemplated by this Agreement.

(c) No action, arbitration, suit, notice or legal administrative or other proceeding before any court or governmental body has been instituted by or against Agent, or has been settled or resolved or, to Agent's knowledge, has been threatened against or affects Agent, which questions the validity of this Agreement or any action taken or to be taken by Agent in connection with this Agreement or which, if adversely determined, would have a material adverse effect upon Agent's ability to perform its obligations under this Agreement.

(d) The Sale shall be conducted in compliance with all applicable state and local laws, rules and regulations and Merchant's leases and other agreements, except as otherwise provided in this Agreement or the Approval Order.

(e) Absent prior consent by the Merchant, except to the extent otherwise required by this Agreement, Agent will not cause any non-emergency repairs or maintenance (emergency repairs are repairs necessary to preserve the security of a Store premise or to ensure customer safety) to be conducted at the Stores.

(f) To the best of Agent's knowledge, all Additional Agent Merchandise are in compliance with all applicable federal, state or local product safety laws, rules and standards. All Additional Agent Merchandise shall be of like kind and no lesser quality to the Merchandise located in the Stores on the Sale Commencement Date.

## Section 12. Insurance.

12.1 Merchant's Liability Insurance. Merchant shall continue at its cost and expense (subject to Section 4.1(x)) until the Sale Termination Date, in such amounts as it currently has in effect, all of its liability insurance policies, including, but not limited to, commercial general liability, products liability, comprehensive public liability, auto liability and umbrella liability insurance, covering injuries to persons and property in, or in connection with, Merchant's operation of the Stores; and Merchant shall cause each of Purchaser and JV Agent to be named as additional insureds or loss payees (as its interest may appear) with respect to all such policies. Merchant shall deliver to Purchaser and JV Agent certificates evidencing such insurance setting forth the duration thereof and naming Purchaser and JV Agent as additional insureds or loss payees (as its interest may appear), in form reasonably satisfactory to Purchaser and JV Agent. All such policies shall require at least thirty (30) days' prior notice to Purchaser and JV Agent of cancellation, non-renewal or material change. In the event of a claim under any such policies, Merchant shall be responsible for the payment of all deductibles, retentions or self-insured amounts thereunder, unless it is determined that liability arose by reason of the willful misconduct or grossly negligent acts or omissions of Agent, or Agent's employees, independent contractors or agents. Merchant shall not make any change in the amount of any deductibles, retentions or self-insurance amounts prior to the Sale Termination Date without Purchaser's and JV Agent's prior written consent.

12.2 Merchant's Casualty Insurance. Merchant shall provide, as an Expense, throughout the Sale Term fire, flood, theft and extended coverage casualty insurance covering the Merchandise (and, if requested, at Agent's expense not as an Expense hereunder, the Additional Agent Merchandise) in a total amount equal to no less than the retail value thereof. From and after the date of this Agreement until the Sale Termination Date, all such policies will

also name Purchase and JV Agent as additional insureds or loss payees (as its interest may appear). In the event of a loss to the Merchandise on or after the date of this Agreement, the Proceeds of such insurance attributable to the Merchandise shall constitute Proceeds hereunder (net of any applicable deductible). Prior to the Sale Commencement Date, Merchant shall deliver to Purchaser and JV Agent certificates evidencing such insurance, setting forth the duration thereof and naming Purchaser and JV Agent as additional insureds or loss payees (as its interest may appear), in form and substance reasonably satisfactory to Purchaser and JV Agent. All such policies shall require at least thirty (30) days' prior notice to the Agent of cancellation, non-renewal or material change. Merchant shall not make any change in the amount of any deductibles or self-insurance amounts prior to the Sale Termination Date without Purchaser's and JV Agent's prior written consent.

12.3 Agent's Insurance. Purchaser and JV Agent shall each maintain at such party's cost as an Expense hereunder throughout the Sale Term, in such amounts as it currently has in effect, commercial general liability policies covering injuries to persons and property in or in connection with Purchaser's and JV Agent's agency at the Stores, and shall cause Merchant to be named as an additional insured with respect to such policies. Purchaser and JV Agent shall deliver to Merchant certificates evidencing such insurance policies setting forth the duration thereof and naming Merchant as an additional insured, in form and substance reasonably satisfactory to Merchant. In the event of a claim under any such policies, Purchaser or JV Agent, as applicable, shall be responsible as an Expense hereunder for the payment of all deductibles, retentions or self-insured amounts thereunder, unless it is determined that liability arose by reason of the willful misconduct or grossly negligent acts or omissions of Merchant or Merchant's employees, independent contractors or agents (other than Agent or Agent's employees, agents or independent contractors). All such policies shall require at least thirty (30) days' prior notice to the Merchant of cancellation, non-renewal or material change. Purchaser and JV Agent shall not make any change in the amount of any deductibles or self-insurance amounts prior to the Sale Termination Date without Merchant's prior written consent.

12.4 Worker's Compensation Insurance. Subject to approval by the Bankruptcy Court, Merchant shall at all times during the Sale Term maintain in full force and effect workers' compensation insurance (including employer liability insurance) covering all Retained Employees in compliance with all statutory requirements and in such amounts as it currently has in effect. Prior to the Sale Commencement Date, Merchant shall deliver to Purchase and JV Agent certificates evidencing such insurance.

### Section 13. Indemnification.

13.1 Merchant's Indemnification. Merchant shall indemnify and hold any Agent Indemnified Party harmless from and against all claims, causes of action, demands, penalties, losses, liability, damage, or other obligations, including, without limitation, reasonable attorneys' fees and expenses, directly or indirectly asserted against, resulting from or related to: (i) Merchant's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained in any Agency Document; (ii) subject to Agent's compliance with its obligations under Section 8.3 hereof, any failure by Merchant to pay any Sales Taxes to the proper taxing authorities or to properly file with any taxing authorities any reports or documents required by applicable law to be filed in respect thereof; (iii) subject to

Agent's satisfaction of its obligations pursuant to Sections 4.1(a) and (b) hereof, any failure of Merchant to pay to its employees any wages, salaries or benefits due to such employees during the Sale Term or other claims asserted against Agent by Merchant's employees resulting from Merchant's (and not Agent's) treatment of its employees; (iv) any consumer warranty or products liability claims relating to Merchandise; (v) any liability or other claims asserted by customers, any of Merchant's employees, or any other person against any Agent Indemnified Party (including, without limitation, claims by employees arising under collective bargaining agreements, worker's compensation or under the WARN Act), other than any such matter arising from the willful misconduct or gross negligence of Agent or its officers, directors, employees, agents or supervisors; (vi) any harassment or any other unlawful, tortious, or otherwise actionable treatment of any customers, employees or agents of Agent by Merchant or any of its representatives; (vii) so long as Agent complies with its obligations under Sections 4.1 and 4.2, any failure of Merchant to pay any Occupancy Expenses or Central Services Expenses during the Sale Term; (viii) the gross negligence (including omissions) or willful misconduct of the Merchant, its officers, directors, employees, agents (other than Agent) or representatives.

13.2 Agent Indemnification. Each of Purchaser and JV Agent shall indemnify and hold the Merchant and its officers, directors, employees, agents and representatives harmless from and against all claims, causes of action, demands, penalties, losses, liability, damage, or other obligations, including, without limitation, reasonable attorneys' fees and expenses, directly or indirectly asserted against, resulting from, or related to: (i) Purchaser's or JV Agent's, as applicable, material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained in any Agency Document; (ii) any claims by any party engaged by Purchaser or JV Agent, as applicable, as an employee or independent contractor arising out of such employment; (iii) any harassment or any other unlawful, tortious or otherwise actionable treatment of any customers, employees or agents of the Merchant by Purchaser or JV Agent, as applicable, or any of its representatives; (iv) as set forth in Section 8.3 above; (v) any consumer warranty or product liability claims relating to Additional Agent Merchandise included by Purchaser or JV Agent, as applicable; and (vi) the gross negligence (including omissions) or willful misconduct of Purchaser or JV Agent, as applicable, its officers, directors, employees, agents or representatives.

Section 14. Defaults. The following shall constitute "Events of Default" hereunder:

- (a) The Merchant or Agent shall fail to perform any material obligation hereunder if such failure remains uncured five (5) days after receipt of written notice thereof;
- (b) Any representation or warranty made by the Merchant or Agent proves untrue in any material respect as of the date made and, to the extent curable, continues uncured five (5) days after written notice to the defaulting party; or
- (c) The granting of a motion by any party to convert the Merchant's bankruptcy case to a case under another chapter of the Bankruptcy Code (other than chapter 11) or to appoint a chapter 11 trustee.
- (d) The Sale is terminated prior to the Sale Termination Date or materially interrupted or impaired for any reason other than (i) an Event of Default by Agent, (ii) any other

material breach or action by Agent not authorized hereunder or (iii) events or circumstances described in Section 8.8; provided that it shall be an Event of Default if the Sale is terminated prior to Sale Termination Date or materially interrupted or impaired at more than ten (10) Stores for a period of at least four (4) days at each such Store as a result of one or more events or circumstances described in Section 8.8).

Upon an Event of Default, the non-defaulting party (in the case of (a) or (b) above), or Agent (in the case of (c) or (d) above) may in its discretion elect to terminate this Agreement, and any party's damages or entitlement to equitable relief on account of an Event of Default shall (in addition to the right to terminate as provided above) be determined by the Bankruptcy Court

Section 15. Agent's Security Interest.

(a) Effective upon payment by Agent of the Initial Guaranty Payment and issuance of the Letter of Credit, Merchant hereby grants to JV Agent first priority (subject to Section 15(b) below), senior security interests in and liens upon: (i) the Merchandise and E-Commerce Inventory located at the Closing Stores and the Distribution Center Merchandise and On-Order Merchandise delivered thereto; (ii) all Proceeds (including, without limitation, credit card Proceeds and the Designated Deposit Accounts) from the sale thereof and all proceeds from the sale of E-Commerce Inventory; (iii) the Owned FF&E located at the Closing Stores, the Indiana Distribution Center, the Headquarters and the Call Center; (iv) all proceeds from the sale or other disposition of such Owned FF&E; (v) Agent's commission regarding the sale or other disposition of Merchant's Consignment Goods under Section 5.4 hereof at the Closing Stores; and (vi) all "proceeds" (within the meaning of Section 9-102(a)(64) of the Code) of each of the foregoing (all of which are collectively referred to herein as the "JV Agent Collateral"), to secure the full payment and performance of all obligations of Merchant to Agent hereunder. Effective upon payment by Agent of the Initial Guaranty Payment and issuance of the Letter of Credit, Merchant hereby grants to Purchaser first priority (subject to Section 15(b) below), senior security interests in and liens upon: (i) the Merchandise located at the Designation Rights Stores, and the Distribution Center Merchandise and On-Order Merchandise delivered thereto; (ii) all Proceeds (including, without limitation, credit card Proceeds and the Designated Deposit Accounts) from the sale thereof; (iii) the Owned FF&E located at the Designation Rights Stores and the Nebraska Distribution Center; (iv) all proceeds from the sale or other disposition of such Owned FF&E; (v) Agent's commission regarding the sale or other disposition of Merchant's Consignment Goods under Section 5.4 hereof at the Designation Rights Stores; and (vi) all "proceeds" (within the meaning of Section 9-102(a)(64) of the Code) of each of the foregoing (all of which are collectively referred to herein as the "Purchaser Collateral"), to secure the full payment and performance of all obligations of Merchant to Agent hereunder. Upon occurrence of all of the entry of the Approval Order, payment of the Initial Guaranty Payment, and issuance of the Letter of Credit, the security interests and liens granted to JV Agent and Purchaser hereunder shall be deemed properly perfected without the necessity of filing UCC-1 financing statements or any other documentation.

(b) Without any further act by or on behalf of Purchaser or JV Agent or any other party (including, without limitation, the Administrative Agent or any Lender), Purchaser's and JV Agent's respective security interests in and liens upon Purchaser Collateral and the JV Agent Collateral created hereunder are (i) validly created, (ii) effective upon the occurrence of

all of the entry of the Approval Order, payment of the Initial Guaranty Payment, and issuance of the Letter of Credit, perfected, and (iii) senior to all other liens and security interests, provided, however, that (i) until the Merchant receives payment in full of the Guaranteed Amount and all other amounts required to be paid by Purchaser or JV Agent, as applicable, to Merchant hereunder, the security interest and lien granted to Purchaser or JV Agent, as applicable, hereunder shall remain junior and subordinate in all respects to the security interests and lien of the Administrative Agent, on behalf of the Lenders, in the Agent Collateral but solely to the extent and amount of the unpaid portion of the Guaranteed Amount and other amounts payable hereunder by Purchaser or JV Agent, applicable, and (ii) upon payment in full of the Guaranteed Amount and all other amounts payable hereunder, any security interest or lien of the Administrative Agent or any of the Lenders in Purchaser Collateral or the JV Agent Collateral, as applicable, shall be junior and subordinate in all respects to the security interests and liens of Purchaser or JV Agent, as applicable. Merchant, the Administrative Agent and the Lenders shall cooperate with Purchaser and JV Agent with respect to all filings (including (without limitation) UCC-1 financing statements) and other actions to the extent reasonably requested by Purchaser and JV Agent in connection with the security interests and liens granted under this Agreement.

(c) Merchant will not sell, grant, assign or transfer any security interest in, or permit to exist any lien or encumbrance on, any of Purchaser Collateral or the JV Agent Collateral other than in favor of Purchaser or JV Agent, as applicable, and as set forth on Exhibit 11.1(c).

(d) In the event of an occurrence of an Event of Default by the Merchant hereunder, in any jurisdiction where the enforcement of its rights hereunder is sought, Purchaser and JV Agent shall have, in addition to all other rights and remedies, the rights and remedies of a secured party under the Code.

(e) “Code” shall mean the Uniform Commercial Code as the same may be in effect from time to time in the State of Delaware.

#### Section 16. Termination.

16.1 Termination. This Agreement may be terminated prior to the Sale Commencement Date as follows:

(a) by mutual written agreement of Purchaser, JV Agent and Merchant;

(b) by any of Purchaser, JV Agent or Merchant if there shall be in effect an applicable law or order restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby (it being understood that the lack of entry of the Approval Order shall not permit termination of this Agreement except as set forth in Section 16.1(g)); provided that the right to terminate this Agreement under this Section 16.1(b) shall not be available to any party whose breach of this Agreement shall have been the cause of, or shall have resulted in such applicable law or order that restrains, enjoins or prohibits the consummation of the transactions contemplated hereby;

(c) by Purchaser or JV Agent ( provided that such party is not then in material breach of any representation, warranty, covenant, or other agreement contained herein), if there

shall have been a material breach or misrepresentation of any of the representations or warranties or a material breach of any of the covenants set forth in this Agreement on the part of Merchant, which breach is not cured within seven (7) days following written notice to Merchant or which breach, by its nature, cannot be cured prior to the Sale Commencement Date;

(d) by Merchant ( provided that Merchant is not then in material breach of any representation, warranty, covenant, or other agreement contained herein), if there shall have been a material breach or misrepresentation of any of the representations or warranties or a material breach of any of the covenants set forth in this Agreement on the part of Purchaser or JV Agent, which breach is not cured within seven (7) days following written notice to Purchaser and JV Agent or which breach, by its nature, cannot be cured prior to the Sale Commencement Date;

(e) by Purchaser or JV Agent, upon an order of the Bankruptcy Court approving, or the filing by or on behalf of Merchant of a motion or other request to approve, any financing, refinancing, acquisition, divestiture, public offering, recapitalization, business combination or reorganization of or involving all or a material portion of, collectively, the Merchandise and the Owned FF&E (other than any transaction with JV Agent or Purchaser or an affiliate of JV Agent or Purchaser) or any standalone plan of reorganization for Merchant involving the retention of all or a material portion of, collectively, the Merchandise and the Owned FF&E;

(f) by Purchaser or JV Agent, if the Bid Procedures Order shall fail to be in full force and effect or shall have been stayed, reversed or modified without such party's written consent;

(g) by Purchaser or JV Agent, if the Approval Order shall not have been entered by the Bankruptcy Court on or prior to April 6, 2017 (or by such later date as shall be mutually agreed to by Purchaser, JV Agent and Merchant in writing);

(h) by any of Purchaser, JV Agent or Merchant, if the Sale Commencement Date shall not have occurred by April 7, 2017 (or by such later date as shall be mutually agreed to by Purchaser, JV Agent and Merchant in writing), provided that the right to terminate this Agreement under this Section 16.1(h) shall not be available to any party whose failure to fulfill any material obligation under this Agreement has been the cause of, or resulted in, the failure of the Sale Commencement Date to occur on or before such date;

(i) by Purchaser or JV Agent, in the event that 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 beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code is appointed in the Bankruptcy Case; and

(j) by any of Purchaser, JV Agent or Merchant if the APA is terminated in accordance with its terms for any reason whatsoever.

In the event that this Agreement is validly terminated as provided herein, then each of the parties to this Agreement shall be relieved of its duties and obligations arising under this Agreement after the date of such termination; provided, however, that the provisions of Sections 16 and 17 shall survive any such termination and shall be enforceable hereunder; provided further, however, that nothing in this Section 16.1 shall be deemed to release any party from liability for any breach of its obligations under this Agreement.

Section 17. Miscellaneous.

17.1 Notices. All notices and communications provided for pursuant to this Agreement shall be in writing and sent by email, by hand, by facsimile or by Federal Express or other recognized overnight delivery service, as follows:

If to JV Agent:

Tiger Capital Group, LLC  
340 N. Westlake Boulevard, Suite 260  
Westlake Village, CA 91362  
Attn: Dan Kane  
Facsimile: (805) 497-2211  
Email: DKane@TigerGroup.com

Great American Group  
21860 Burbank Blvd  
Woodland Hills, CA 91367  
Attn: Scott Carpenter, President GA Retail  
Alan N. Forman, EVP & GC  
Facsimile: (818) 746-9170  
Email: scarpenter@greatamerican.com;  
aforman@brileyfin.com

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

Wachtell, Lipton, Rosen & Katz  
51 West 52nd Street  
New York, NY 10019  
Attn: Scott K. Charles, Esq.;  
Neil M. Snyder, Esq.  
Facsimile: (212) 403-2000  
Email: skcharles@wlrk.com;  
nmsnyder@wlrk.com

If to Purchaser:

Specialty Retailers, Inc.  
c/o Stage Stores, Inc.  
2425 West Loop South  
Houston, TX 77027  
Attn: Chadwick P. Reynolds  
Email: creynolds@stagesstores.com

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

Cravath, Swaine & Moore LLP  
Worldwide Plaza

825 Eighth Avenue  
New York, NY 10019  
Attn: Eric L. Schiele; Paul H. Zumbro; David J. Perkins  
Email: [eschiele@cravath.com](mailto:eschiele@cravath.com);  
[pzumbro@cravath.com](mailto:pzumbro@cravath.com); [dperkins@cravath.com](mailto:dperkins@cravath.com)

If to the Merchant:

Gordmans Stores, Inc.  
1926 South 67th Street  
Omaha, NE 68106  
Attn: Andrew T. Hall  
Facsimile: (402) 691-4269  
Email: [andy.hall@gordmans.com](mailto:andy.hall@gordmans.com)

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

Kirkland & Ellis LLP  
300 N. LaSalle  
Chicago, IL 60654  
Attn: Patrick J. Nash, P.C.;  
Gerald T. Nowak, P.C.  
Brad Weiland  
Bradley Reed  
Facsimile: (312) 862-2200  
Email: [patrick.nash@kirkland.com](mailto:patrick.nash@kirkland.com);  
[gerald.nowak@kirkland.com](mailto:gerald.nowak@kirkland.com);  
[brad.weiland@kirkland.com](mailto:brad.weiland@kirkland.com)  
[bradley.reed@kirkland.com](mailto:bradley.reed@kirkland.com)

If to the Administrative Agent or any Lender:

Wells Fargo Capital Finance  
One Boston Place, 19<sup>th</sup> Floor  
Boston, MA 02108  
Attn: D. Michael Murray  
Facsimile: (855) 471-2616  
Email: [donald.m.murray@wellsfargo.com](mailto:donald.m.murray@wellsfargo.com)

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

Riemer & Braunstein LLP  
7 Times Square Tower, Suite 2506  
New York, NY 10036

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Attn: Steven E. Fox  
Facsimile: (212) 789-3195  
Email: SFox@riemerlaw.com

Greenberg Traurig, LLP  
One International Place  
Boston, Massachusetts 02110  
Attn: Jeffrey M. Wolf  
Facsimile: (617) 279-8447  
Email: wolfje@gtlaw.com

17.2 Governing Law/Exclusive Jurisdiction. This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York, without reference to any conflict of laws provisions thereof, except where governed by the Bankruptcy Code. Each of the parties hereto irrevocably and unconditionally submits, for itself and its properties, to the exclusive jurisdiction of the Bankruptcy Court, in any action or proceeding arising out of or relating to this Agreement.

17.3 Amendments. This Agreement may not be modified except in a written instrument executed by each of Merchant and Agent; provided, however, that no modification may be made to Sections 3.1, 3.2, 3.3 or 15 or this Section 17.3, or modify or amend any other provision of this Agreement as to obligations of the Administrative Agent or any Lender, or limit or eliminate any rights expressly granted hereunder to the Administrative Agent or any Lender, in each case without the written consent of the Administrative Agent.

17.4 No Waiver. No consent or waiver by any party, express or implied, to or of any breach or default by the other in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligation of such party. Failure on the part of any party to complain of any act or failure to act by the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder.

17.5 Currency. All reference to dollars in this Agreement and all schedules, exhibits, and ancillary documents related to this Agreement shall refer to US dollars.

17.6 Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of Agent and Merchant, including but not limited to any chapter 11 or chapter 7 trustee. No party to this Agreement shall be permitted to assign its obligations under this Agreement; provided that any entity comprising Agent may assign its rights and obligations under this Agreement to one or more persons affiliated with, or formed by, such entity without consent of any other party hereto (but with prior written notice to Merchant), provided such assigning entity shall remain obligated hereunder; provided, further, that any entity comprising Agent may assign its right to receive payments under this Agreement collaterally to its lender as security. Any assignee of any lease for any Designation Rights Store is an intended third-party beneficiary of Sections 6.1 and 6.2 as they relate to the rights of such assignee.

17.7 Execution in Counterparts. This Agreement may be executed in one or more counterparts. Each such counterpart shall be deemed an original but all such counterparts together shall constitute one and the same agreement. This Agreement, to the extent signed and delivered by means of a facsimile machine, electronic mail or other electronic transmission in which the actual signature is evident, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto, each other party hereto or thereto shall re-execute original forms hereof and deliver them to all other parties. No party hereto shall raise the use of a facsimile machine, electronic mail, or other electronic transmission in which the actual signature is evident to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine, electronic mail or other electronic transmission in which the actual signature is evident as a defense to the formation of a contract and each party forever waives such defense. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart signed by the party against which enforcement is sought.

17.8 Section Headings. The headings of Sections of this Agreement are inserted for convenience only and shall not be considered for the purpose of determining the meaning or legal effect of any provisions hereof.

17.9 Wiring of Funds. All amounts required to be paid by Agent or the Merchant under any provision of this Agreement shall be made by wire transfer of immediately available funds which shall be wired by Agent or Merchant, as applicable, no later as 2:00 p.m. (Eastern Time) on the date that such payment is due; provided, however, that all of the information necessary to complete the wire transfer has been received by Agent or Merchant, as applicable, by 10:00 a.m. (Eastern Time) on the date that such payment is due. In the event that the date on which any such payment is due is not a business day, then such payment shall be made by wire transfer on the next business day.

17.10 Nature of Remedies. Except to the extent expressly set forth herein, all rights, remedies, powers, privilege and adjustments under Sections 3.1(b), 3.1(c), 3.4 and 11.1(o) shall be in addition to and not in limitation of those provided elsewhere in this Agreement or by applicable law. No failure to exercise and no delay in exercising, on the part of the Agent, any right, remedy, power, privilege or adjustment hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, privilege, or adjustment hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, privilege, or adjustment.

17.11 Further Assurances. From time to time, and without further consideration, each of Merchant and Agent covenants and agrees that each such party shall execute and deliver, or shall cause to be executed and delivered, such other instruments of transfer and conveyance and other documents and take such other actions as the other party may reasonably request as necessary, proper or advisable under applicable laws and regulations to consummate and make effective the transactions contemplated by this Agreement (including satisfaction of all closing conditions that are within the control of Merchant or Agent, as applicable, and reasonably cooperating with the Sale), and shall lend all reasonable assistance to the other party in conducting the Sale and otherwise in the carrying out of the intentions and purposes of this Agreement. Each of Merchant and Agent further covenants and agrees that it shall promptly deliver to the other party all such information and documents as such party shall reasonably request in connection with the Sale.

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17.12 Bid Protections. Nothing in this Agreement, the APA or the Approval Order shall constitute a waiver of JV Agent's right to receive the Bid Protections (as defined in the Bid Procedures) or any other rights of JV Agent under the Bid Procedures Order or the Bid Procedures. Accordingly, JV Agent shall be entitled to receive (and Merchant shall pay to JV Agent on the Sale Commencement Date), all Bid Protections to which JV Agent is entitled under the Bid Procedures Order and the Bid Procedures given that JV Agent is participating in a Joint Bid (as defined in the Bid Procedures) that is the Successful Bid (as defined in the Bid Procedures).

17.13 Agent. Each party hereto acknowledges and agrees that (A) (i) on the one hand, the obligations of JV Agent for the Closing Stores and the Indiana Distribution Center (including, without limitation, obligations arising from the conduct of the Sale at the Closing Stores and the Indiana Distribution Center), the Expenses payable with respect to the Closing Stores and the Indiana Distribution Center and any indemnification obligations arising from the actions of JV Agent and its officers, directors, employees, agents or representatives and (ii) on the other hand, the obligations of Purchaser for the Designation Rights Stores and the Nebraska Distribution Center (including, without limitation, obligations arising from the conduct of the Sale at the Designation Rights Stores), the Expenses payable with respect to the Designation Rights Stores and the Nebraska Distribution Center, any indemnification obligations arising from the actions of Purchaser and its officers, directors, employees, agents or representatives and any amounts payable by Purchaser under the APA shall be several, and not joint and (B) solely with respect to the Guaranteed Amount and Expenses other than those that are payable with respect to the Closing Stores, the Designation Rights Stores, the Indiana Distribution Center and the Nebraska Distribution Center, Purchaser and JV Agent shall be jointly and severally responsible.

17.14 Entire Agreement. This Agreement, the APA and any separate agreements between JV Agent and Purchaser (which separate agreements shall not in any way affect any of Merchant's rights or expand its obligations hereunder) contain the entire agreement between the parties hereto with respect to the transactions contemplated hereby and supersedes and cancels all prior agreements, including, but not limited to, all proposals, letters of intent or representations, written or oral, with respect thereto.

IN WITNESS WHEREOF, the Agent and the Merchant hereby execute this Agreement by their duly authorized representatives as a sealed instrument as of the day and year first written above.

**GORDMANS STORES, INC.**

By: /s/ Andrew T. Hall  
Name: Andrew T. Hall  
Title: President, Chief Executive Officer and Secretary

**GORDMANS INTERMEDIATE HOLDING CORP.**

By: /s/ Andrew T. Hall  
Name: Andrew T. Hall  
Title: President, Chief Executive Officer and Secretary

**GORDMANS, INC.**

By: /s/ Andrew T. Hall  
Name: Andrew T. Hall  
Title: President, Chief Executive Officer and Secretary

**GORDMANS MANAGEMENT COMPANY, INC.**

By: /s/ Andrew T. Hall  
Name: Andrew T. Hall  
Title: President, Chief Executive Officer and Secretary

*Signature Page to Agency Agreement*

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**GORDMANS DISTRIBUTION COMPANY, INC.**

By: /s/ Andrew T. Hall  
Name: Andrew T. Hall  
Title: President, Chief Executive Officer and Secretary

**GORDMANS LLC**

By: /s/ Andrew T. Hall  
Name: Andrew T. Hall  
Title: President, Chief Executive Officer and Secretary

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**TIGER CAPITAL GROUP, LLC**

By: /s/ Michael McGrail  
Name: Michael McGrail  
Title: Chief Operating Officer

**GREAT AMERICAN GROUP WF, LLC**

By: /s/ Scott K. Carpenter  
Name: Scott K. Carpenter  
Title: President, GA Retail Solutions

**SPECIALTY RETAILERS, INC.**

By: /s/ Michael L. Glazer  
Name: Michael L. Glazer  
Title: President and Chief Executive Officer

**ACKNOWLEDGED AND AGREED:**

**WELLS FARGO BANK, N.A.,  
on behalf of itself and the Lenders**

By: /s/ Michael Watson  
Name: Michael Watson  
Title: Duly Authorized Signatory

*Signature Page to Agency Agreement*