

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM604360

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	Bankruptcy Court Sale Order 24 Sept 2020 terminating security interest recorded at R/F 5604/0631		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
GOLDMAN SACHS BANK USA, AS ADMINISTRATIVE AGENT		09/24/2020	STATE CHARTERED BANK: NEW YORK
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	CATHERINES, INC.		
<b>Street Address:</b>	3750 STATE ROAD		
<b>City:</b>	BENSALEM		
<b>State/Country:</b>	PENNSYLVANIA		
<b>Postal Code:</b>	19020		
<b>Entity Type:</b>	Corporation: DELAWARE		
<b>PROPERTY NUMBERS Total: 7</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	4411677		
<b>Registration Number:</b>	1343457	CATHERINES	
<b>Registration Number:</b>	3006871	CATHERINES	
<b>Registration Number:</b>	3345802	CATHERINES	
<b>Registration Number:</b>	2380746	CATHERINES PLUS SIZES	
<b>Registration Number:</b>	2813914	SERENADA	
<b>Registration Number:</b>	4456033	ANYWEAR BY CATHERINES	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>			
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Phone:</b>	212-813-5900		
<b>Email:</b>	anicolescu@fzllz.com		
<b>Correspondent Name:</b>	Allison Strickland Ricketts		
<b>Address Line 1:</b>	Fross Zelnick Lehrman & Zissu, P.C.		
<b>Address Line 2:</b>	151 West 42nd Street, 17th Floor		
<b>Address Line 4:</b>	New York, NEW YORK 10036		
<b>ATTORNEY DOCKET NUMBER:</b>	FBRD 2009764		

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exhibits, and ancillary documents related thereto, the “Agreements”<sup>2</sup> attached to this Sale Order as **Exhibit 1**, (b) authorizing and approving the sale of the Catherines Assets free and clear of liens, claims, encumbrances, and other interests to the extent set forth in the Agreements, and (c) granting related relief (collectively, the “Transaction”); and this Court having entered the *Order (I) Approving the Stalking Horse Protections, (II) Approving Bidding Procedures for the Sale of the Catherines Assets, and (III) Approving Contract Assumption and Assignment Procedures* [Docket No. 455] (the “Bidding Procedures Order”) approving, among other things, the proposed form of notice of the Sale Hearing and appointing City Chic Collective USA Incorporated as the Stalking Horse Bidder (as defined in the Bidding Procedures Order); and the Debtors having determined, after an extensive marketing process, that FullBeauty Brands Operations, LLC (the “Purchaser”) has submitted the highest or otherwise best bid for the Catherines Assets; and upon adequate and sufficient notice of the Motion, the Agreements, and all other related transactions contemplated thereunder and in this Sale Order; and all interested parties having been afforded an opportunity to be heard with respect to the Motion and all relief related thereto; and the Court having reviewed and considered the Motion and all relief related thereto and any objections thereto; and upon the full record in support of the relief requested by the Debtors in the Motion; and this Court having jurisdiction over this matter; and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this District is proper; and it further appearing that the legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests

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<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings given to them in the Motion, the Agreements, or the Bidding Procedures Order, as applicable.

of the Debtors, their estates, their creditors, and all other parties in interest; and upon the full record of these chapter 11 cases and all other pleadings and proceedings, including the Motion; and after due deliberation thereon, and good and sufficient cause appearing therefor, **THE COURT HEREBY FINDS THAT:**<sup>3</sup>

**I. Jurisdiction, Final Order, and Statutory Predicates.**

A. This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) that this Court can decide by final order under the United States Constitution. Venue is proper in this District and in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The statutory predicates for the relief requested in the Motion are sections 105(a), 363, and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”) and Bankruptcy Rules 2002, 6004, and 6006, and Rule 9013-1 of the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia (the “Local Bankruptcy Rules”).

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

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<sup>3</sup> All findings of fact and conclusions of law announced by the Court at the Hearing in relation to the Motion are hereby incorporated herein to the extent not inconsistent herewith.

**II. Notice of the Motion and Cure Amounts.**

D. Notice of the Sale Hearing and Transaction was timely, proper, and reasonably calculated to provide interested parties with timely and proper notice of the Transaction and the Sale Hearing, and no other or further notice of the Motion, the Transaction, and the Sale Hearing is, or shall be, required. The requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules are satisfied by such notice.

E. A reasonable opportunity to object and be heard with respect to the Transaction and the Motion and the relief requested therein has been afforded to all interested persons and entities, including the Notice Parties.

**III. Good Faith of the Purchaser.**

F. The Agreements were negotiated, proposed, and entered into by the Debtors and the Purchaser without collusion, in good faith, and from arm's-length bargaining positions. Neither the Debtors nor the Purchaser has engaged in any conduct that would cause or permit the Transaction to be avoided under Bankruptcy Code section 363(n). The Purchaser is consummating the Transaction in good faith and is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code and is not an "insider" of any Debtor (as defined under section 101(31) of the Bankruptcy Code). The Purchaser has proceeded in good faith in all respects in connection with the Transaction. The Purchaser is therefore entitled to all of the protections afforded under section 363(m) of the Bankruptcy Code. Other than agreements among the Debtors and the Purchaser, as reflected in the Definitive Purchase Agreement and herein, the Purchase Price in respect of the Catherines Assets was not controlled by any agreement among potential bidders. Neither the Debtors nor the Purchaser have engaged in any conduct that would cause or permit the Definitive Purchase Agreement to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code. The Agreements were not entered into and the Transaction is not



being consummated for the purpose of hindering, delaying, or defrauding present or future creditors of the Debtors. All consideration to be provided by the Purchaser in connection with the Transaction has been disclosed. Neither the Debtors nor the Purchaser is entering into the Agreements, or proposing to consummate the Transaction, fraudulently, for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims whether under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Columbia.

G. The sale of the Catherines Assets is consistent with the Debtors' policy concerning the transfer of personally identifiable information and the Debtors have, to the extent necessary, satisfied section 363(b)(1) of the Bankruptcy Code. Accordingly, the appointment of a consumer ombudsman pursuant to section 363(b)(1) or section 332 of the Bankruptcy Code is not required with respect to the relief requested in the Motion.

**IV. Fair Consideration.**

H. The consideration to be provided by Buyer under the Asset Purchase Agreement is fair and reasonable consideration for the Acquired Assets and constitutes (i) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act, (ii) fair consideration under the Uniform Fraudulent Conveyance Act, and (iii) reasonably equivalent value, fair consideration and fair value under any other applicable laws of the United States, any state, territory or possession and the District of Columbia.

**V. Highest or Otherwise Best Offer.**

I. The Debtors' marketing process with respect to the Catherines Assets, including the Debtors' prepetition marketing process with respect to the Catherines Assets, afforded a full, fair, and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase the Catherines Assets. The Agreements constitute the highest and best offer for the

Catherines Assets and there was no other transaction available or presented that would have yielded as favorable an economic result for the Catherines Assets. The Debtors' determination that the Agreements constitute the highest and best offer for the Assets constitutes a valid and sound exercise of the Debtors' business judgment.

J. Approval of the Motion and the Agreements and the consummation of the Transaction is in the best interests of the Debtors' chapter 11 estates, their creditors, and other parties in interest. The Transaction should be approved.

**VI. No Successor or Other Derivative Liability.**

K. Except as otherwise expressly provided herein, upon Closing, and to the greatest extent allowed by applicable law, the Purchaser shall not have any liability (including, but not limited to, any successor liability) or other obligation of any of the Debtors, including any liability or obligation arising under or related to the sale and transfer of the Catherines Assets owned by the Debtors to the Purchaser or with respect to the Excluded Liabilities (as defined in the Definitive Purchase Agreement), provided that, upon Closing, the Purchaser shall remain liable for any Assumed Liabilities. The Purchaser is not, and the consummation of the Transaction will not render the Purchaser, a mere continuation, and the Purchaser is not holding itself out as a mere continuation, of any of the Debtors or their respective estates, enterprise, or operations, and there is no continuity or common identity between the Purchaser and the Debtors. Accordingly, the Transaction does not amount to a consolidation, merger, or de facto merger of the Purchaser with or into any of the Debtors or their estates and the Purchaser is not, and shall not be deemed, as a result of the consummation of the Transaction: (i) to be a successor to any of the Debtors or their estates, (ii) to be a mere continuation or substantial continuation of the Debtors or the enterprise(s) of the Debtors, or (iii) to be liable for any acts or omissions of the Debtors in the conduct of the business or arising under or related to the Catherines Assets owned by the Debtors, other than as

set forth in the Definitive Purchase Agreement. Without limiting the generality of the foregoing, and except as otherwise provided in the Definitive Purchase Agreement, the parties intend that the Purchaser shall not be liable for any Claims (other than Assumed Liabilities) against any Debtor, or any of its predecessors or Affiliates, and the Purchaser shall have no successor or vicarious liability of any kind or character whatsoever, whether known or unknown as of the Closing, whether now existing or hereafter arising, whether asserted or unasserted, or whether fixed or contingent, with respect to the business, the Catherines Assets owned by the Debtors or any Liabilities of any Debtor. The Purchaser would not have acquired the Catherines Assets but for the foregoing protections against potential claims based upon “successor liability” theories.

**VII. Validity of Transfer.**

L. The Agreements were not entered into for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession, or the District of Columbia. None of the Debtors or the Purchaser is entering into the transactions contemplated by the Agreements fraudulently for the purpose of statutory or common law fraudulent conveyance or fraudulent transfer claims.

M. The consummation of the Transaction is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105(a), 363(b), 363(f), and 363(m) of the Bankruptcy Code, and all of the applicable requirements of such sections have been complied with in respect of the Transaction.

N. The Debtors are the sole and lawful owners of the Catherines Assets. The Catherines Assets constitute property of the Debtors’ estates and title thereto is vested in the Debtors’ estates within the meaning of section 541(a) of the Bankruptcy Code. Subject to section 363(f) of the Bankruptcy Code, the transfer of each of the Catherines Assets to the Purchaser will be, as of the Closing Date, a legal, valid, and effective transfer of the Catherines Assets, which

transfer vests or will vest the Purchaser with all and any legal, equitable and beneficial right, title, and interest of the Debtors in and to the Catherines Assets free and clear of (a) all liens (including any liens as that term is defined in section 101(37) of the Bankruptcy Code) and encumbrances relating to, accruing, or arising at any time prior to the Closing Date (collectively, the "Liens"), and (b) all debts arising under, relating to, or in connection with any act of the Debtors or claims (as that term is defined in section 101(5) of the Bankruptcy Code), liabilities, obligations, demands, guaranties, options in favor of third parties, rights, contractual commitments, restrictions, interests, mortgages, hypothecations, charges, indentures, loan agreements, instruments, collective bargaining agreements, leases, licenses, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, judgments, claims for reimbursement, contribution, indemnity, exoneration, infringement, products liability, alter-ego, and matters of any kind and nature, whether arising prior to or subsequent to the commencement of these cases, and whether imposed by agreement, understanding, law, equity, or otherwise (including, without limitation, rights with respect to Claims (as defined below) and Liens (i) that purport to give to any party a right of setoff or recoupment against, or a right or option to effect any forfeiture, modification, profit sharing interest, right of first refusal, purchase or repurchase right or option, or termination of, any of the Debtors' or the Purchaser's interests in the Catherines Assets, or any similar rights, or (ii) in respect of taxes, restrictions, rights of first refusal, charges of interests of any kind or nature, if any, including, without limitation, any restriction of use, voting, transfer, receipt of income or other exercise of any attributes of ownership) (collectively, as defined in this clause (b), the "Claims"), relating to, accruing or arising any time prior to entry of this Sale Order, with the exception of any such Liens or Claims that are expressly assumed by the Purchaser under the Definitive Purchase Agreement (the "Permitted Obligations").

O. Subject to the entry of this Sale Order, each Debtor: (a) has full requisite corporate or other organizational power and authority to execute, deliver, and perform its obligations under the Agreements and all other documents contemplated thereby, and (b) has taken all requisite corporate or other organizational action and formalities necessary to authorize and approve the execution, delivery, and performance of its obligations under the Agreements and to consummate the Transaction, including as required by their respective organizational documents, and, upon execution thereof, the Agreements and the related documents were or will be duly and validly executed and delivered by such Debtor and enforceable against such Debtor in accordance with their terms and, assuming due authorization, execution, and delivery thereof by the other parties thereto, constituted or will constitute a valid and binding obligation of such Debtor. No government, regulatory, or other consents or approvals, other than those expressly provided for in the Agreements, were required for the execution, delivery, and performance by the Debtors of the Agreements or the consummation of the Transaction contemplated thereby. No consents or approvals of the Debtors, other than those expressly provided for in the Agreements or this Sale Order, are required for the Debtors to consummate the Transaction.

**VIII. Section 363(f) is Satisfied.**

P. The conditions of section 363(f) of the Bankruptcy Code have been satisfied in full; therefore, the Debtors may sell the Catherines Assets free and clear of any interest in the property, unless otherwise set forth in this Order.

Q. The Purchaser would not have entered into the Agreements and would not consummate the transactions contemplated thereby if the sale and/or transfer of the Catherines Assets to the Purchaser were not free and clear of all Liens and Claims, or if the Purchaser would, or in the future could, be liable for any of such Liens and Claims (other than the Permitted Obligations in the case of the Purchaser).

R. The Debtors may sell the Catherines Assets free and clear of all Liens and Claims against the Debtors, their estates, or any of the Catherines Assets (except the Permitted Obligations) because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Liens or Claims against the Debtors, their estates, or any of the Catherines Assets who did not object, or who withdrew their objections, to the Transaction or the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. All other holders of Liens or Claims (except to the extent that such Liens or Claims are Permitted Obligations) are adequately protected by having their Liens or Claims, if any, in each instance against the Debtors, their estates, or any of the Catherines Assets, attach to the net cash proceeds of the Purchase Price ultimately attributable to the Catherines Assets in which such creditor alleges a Lien or Claim, in the same order of priority, with the same validity, force, and effect that such Liens or Claims had prior to the Transaction, subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

**IX. Compliance with Bidding Procedures Order.**

S. On August 27, 2020, this Court entered the Bidding Procedures Order approving the Bidding Procedures for, among other things, the Catherines Assets. The Bidding Procedures provided a full, fair, and reasonable opportunity for any entity or Person to make an offer to purchase the Catherines Assets. The Debtors and the Purchaser complied with the Bidding Procedures and the Bidding Procedures Order in all respects except as properly waived in the exercise of the Debtors' fiduciary duties in accordance with the Bidding Procedures. The Purchaser subjected its bid to competitive bidding in accordance with the Bidding Procedures and was designated the Successful Bidder (as defined in the Bidding Procedures) for the Catherines Assets in accordance with the Bidding Procedures and the Bidding Procedures Order.

**X. Compelling Circumstances for an Immediate Sale.**

T. Good and sufficient reasons for approval of the Agreements and the Transaction have been articulated. The relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest. The Debtors have demonstrated both (a) good, sufficient, and sound business purposes and justifications for approving the Agreements, and (b) compelling circumstances for the Transaction outside the ordinary course of business, pursuant to section 363(b) of the Bankruptcy Code before, and outside of, a plan of reorganization, in that, among other things, the immediate consummation of the Transaction with the Purchaser is necessary and appropriate to maximize the value of the Debtors' estates and the Transaction will provide the means for the Debtors to maximize distributions to creditors.

**XI. Waiver of Bankruptcy Rules 6004(h) and 6006(d).**

U. The sale of the Catherines Assets must be approved and consummated promptly in order to preserve the value of the Catherines Assets. Therefore, time is of the essence in consummating the Transaction, and the Debtors and the Purchaser intend to close the Transaction as soon as reasonably practicable. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the immediate approval and consummation of the Transaction as contemplated by the Definitive Purchase Agreement. Accordingly, there is sufficient cause to lift the stay contemplated by Bankruptcy Rules 6004(h) and 6006(d) with regard to the transactions contemplated by this Order.

**THE COURT HEREBY ORDERS THAT:**

**I. General Provisions.**

1. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to these chapter 11 cases pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact

constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. The relief requested in the Motion and the transactions contemplated thereby and by the Agreements are approved as set forth in this Sale Order and on the record of the Sale Hearing, which is incorporated herein as if set forth fully in this Sale Order, and the Transaction contemplated thereby is approved.

3. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled as announced to the Court at the Sale Hearing or by stipulation filed with the Court, and all reservations of rights included in such objections or otherwise, are hereby denied and overruled on the merits with prejudice. Those parties who did not object or withdrew their objections to the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code.

4. Notice of the Sale Motion and Sale Hearing was adequate, appropriate, fair and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 6006 and the Bidding Procedures Order.

## **II. Approval of the Agreements.**

5. The Agreements and all other ancillary documents, and all of the terms and conditions thereof, are hereby approved, pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 6006.

6. Pursuant to sections 363(b) and (f) of the Bankruptcy Code, the Debtors are authorized and empowered to take any and all actions necessary or appropriate to (a) consummate the Transaction pursuant to and in accordance with the terms and conditions of the Agreements, (b) close the Transaction as contemplated in the Agreements and this Sale Order, and (c) execute and deliver, perform under, consummate, implement, and fully close the Agreements, together



with all additional instruments and documents that may be reasonably necessary or desirable to implement the Agreements and the Transaction.

7. Subject to the restrictions set forth in this Sale Order and the Agreements, the Debtors and the Purchaser are hereby authorized to take any and all actions as may be necessary or desirable to implement the Transaction, and any actions taken by the Debtors and/or the Purchaser necessary or desirable to implement the Transaction prior to the date of this Sale Order, are hereby approved and ratified.

8. This Sale Order and the terms and provisions of the Agreements shall be binding in all respects upon the Debtors, their affiliates, their estates, all creditors of and holders of equity interests in any Debtor, any holders of Liens, Claims, or other interests (whether known or unknown) in, against, or on all or any portion of the Catherines Assets, all counterparties to any executory contract of the Debtors, the Purchaser and all successors and assigns of the Purchaser, the Catherines Assets, and any trustees, examiners, or receivers, if any, subsequently appointed in any of the Debtors' chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code of any of the Debtors' cases. The Agreements shall not be subject to rejection or avoidance by the Debtors, their estates, their creditors, their equity holders, or any trustees, examiners, or receivers. Any trustee appointed in these cases (including a Chapter 7 trustee, if applicable) shall be and hereby is authorized to operate the business of the Debtors to the fullest extent necessary to permit compliance with the terms of this Sale Order. This Sale Order and the Agreements shall inure to the benefit of the Debtors, their estates and creditors, the Purchaser, and the respective successors and assigns of each of the foregoing.

**III. Transfer of the Assets.**

9. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, the Debtors are authorized to transfer the Catherines Assets to the Purchaser in accordance with the terms of the Agreements and such transfer shall constitute a legal, valid, binding, and effective sale and shall vest the Purchaser with title to the Catherines Assets, and, other than the Permitted Obligations with respect to the Catherines Assets, the Catherines Assets shall be free and clear of all Liens, Claims, and other interests of any kind or nature whatsoever, with all such Liens, Claims, or other interests to attach to the cash proceeds of the Purchase Price ultimately attributable to the property against or in which such Liens, Claims, or other interests are asserted, subject to the terms thereof, with the same validity, force, and effect, and in the same order of priority, which such Liens, Claims, or other interests had prior to the Transaction, subject to any rights, claims, and defenses the Debtors or their estates, as applicable, may possess with respect thereto.

10. The Debtors are hereby authorized to take any and all actions necessary to consummate the Agreements, including any actions that otherwise would require further approval by shareholders, members, or their board of directors, as the case may be, without the need of obtaining such approvals.

11. The sale of the Catherines Assets to the Purchaser pursuant to the Agreements and the consummation of the transactions contemplated by the Agreements do not require any consents other than as specifically provided for in the Agreements. Each and every federal, state, and local governmental agency or department is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreements. A certified copy of this Sale Order may be filed with the appropriate clerk or recorded with the recorder of any state, county, or local authority to act to cancel any of the Liens, Claims, and other encumbrances of record, except those assumed as Permitted Obligations.

12. If any person or entity that has filed statements or other documents or agreements evidencing Claims or Liens on, or interests in, all or any portion of the Catherines Assets (other than statements or documents with respect to Permitted Obligations) shall not have delivered to the Debtors, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary for the purpose of documenting the release of all Claims, Liens, or interests which the person or entity has or may assert with respect to all or any portion of the Catherines Assets, the Debtors and the Purchaser are hereby authorized, on behalf of the Debtors and the Debtors' creditors, to execute and file such statements, instruments, releases, and other documents on behalf of such person or entity with respect to the Catherines Assets. The Debtors and the Purchaser are each authorized to file a copy of this Sale Order, which, upon filing, shall be conclusive evidence of the release and termination of such Claim, Lien, or interest.

13. This Sale Order is and shall be binding upon and govern the acts of all persons and entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease, and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreements.

**IV. Prohibition of Actions Against the Purchaser.**

14. All persons and entities that are presently, or on the Closing Date may be, in possession of some or all of the Catherines Assets to be sold, transferred, or conveyed to or by the Purchaser pursuant to the Agreements are hereby directed to surrender possession of the Catherines Assets to the Purchaser on the Closing Date unless prior to the Closing Date such person or entity was a good faith, *bona fide* purchaser of the Catherines Assets without notice of the Debtors' rights in such property. Subject to the terms, conditions, and provisions of this Sale Order, all persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtors to sell and/or transfer the Catherines Assets to the Purchaser in accordance with the terms of the Agreements and this Sale Order.

15. By virtue of the Transaction, neither the Purchaser nor any of its Affiliates shall be deemed to: (i) be a legal successor, or otherwise deemed to be a successor, to any of the Debtors under any theory of law or equity; (ii) have, de facto or otherwise, merged with or into any or all Debtors or their estates; (iii) have a common identity or a continuity of enterprise with the Debtors; or (iv) be a mere continuation or substantial continuation, or be holding itself out as a mere continuation, of the Debtors or any business, enterprise, or operation of the Debtors, or (v) to be liable for any acts or omissions of the Debtors in the conduct of the business or arising under or related to the Catherines Assets, other than as set forth in the Definitive Purchase Agreement. To the maximum extent available under applicable law, the Purchaser's acquisition of the Catherines Assets owned by the Debtors shall be free and clear of any "successor liability" claims and other types of transferee liability of any nature whatsoever, whether known or unknown and whether asserted or unasserted at the time of the Closing Date (other than, to the extent applicable, any Assumed Liabilities), and the Catherines Assets shall not be subject to any Claims arising under or in connection with any Excluded Liability. The operations of the Purchaser and its Affiliates

shall not be deemed a continuation of the Debtors' business as a result of the acquisition of the Catherines Assets.

16. To the maximum extent permitted by applicable law, and in accordance with the *Agreements*, the Purchaser shall be authorized, as of the Closing Date, to operate under any license, permit, registration, and governmental authorization or approval (collectively, the "Licenses") of the Debtors with respect to the Catherines Assets and the Sale. To the extent the Purchaser cannot operate under any Licenses in accordance with the previous sentence, such Licenses shall be in effect while the Purchaser, with assistance from the Debtors, works promptly and diligently to apply for and secure all necessary government approvals for new issuance of Licenses to the Purchaser.

17. Notwithstanding anything in this Sale Order, subject to section 525(a) of the Bankruptcy Code, no governmental unit may revoke or suspend any right, license, trademark or other permission relating to the use of the Catherines Assets sold, transferred, or conveyed to the Purchaser on account of the filing or pendency of these Chapter 11 Cases, the conduct of the Sale, or the consummation of the Transaction contemplated by the *Agreements*.

18. The consideration provided by the Purchaser to the Debtors pursuant to the *Agreements* for the Catherines Assets constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and under the laws of the United States, any state, territory, possession, and the District of Columbia.

19. The transactions contemplated by the *Agreements* are undertaken by the Purchaser without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and, accordingly, the reversal or modification on appeal of the authorization provided herein

to consummate the Transaction shall not affect the validity of the Transaction unless such authorization and such Transaction are duly stayed pending such appeal. The Purchaser is a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

20. Neither the Debtors nor the Purchaser has engaged in any conduct that would cause or permit the Definitive Purchase Agreement to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code. Accordingly, the Definitive Purchase Agreement and the Transaction shall not be avoidable under section 363(n) of the Bankruptcy Code, and no party shall be entitled to any damages or other recovery pursuant to section 363(n) of the Bankruptcy Code in respect of the Definitive Purchase Agreement or the Transaction.

21. Unless otherwise agreed to by Comenity Bank f/k/a World Financial Network National Bank ("Comenity") in a separate written agreement, the private label credit cards offered by Comenity to qualifying customers of Catherines Stores Corporation ("CSC") pursuant to that certain Private Label Credit Card Plan Agreement For Catherines by and between Comenity, CSC, and Sierra Nevada Factoring, Inc. dated as of August 12, 2009 (the "Plan Agreement") shall immediately cease being accepted for the purchase or return of any merchandise or inventory immediately upon the Closing Date of the sale. Additionally, Comenity shall be permitted to continue the use of CSC's trademarks and service marks as provided under the existing Plan Agreement and as necessary to administer the private label credit card accounts (including, but not limited to collections) until such time as all the accounts are fully processed, collected, and closed.

22. Notwithstanding anything to the contrary in this Order or the Asset Purchase Agreement, no contract between the Debtors and Oracle America, Inc., successor in interest to Responsys, Inc., Hyperion Solutions Corporation, Stellant, ClearApps, Thor Technology,

360Commerce, Retek, Endeca Technologies, ATG Technology, and Sun Microsystems, Inc. ("Oracle"), will be assumed and/or assigned without: (1) Oracle's prior written consent; (2) cure of any default under such contract; (3) the provision to Oracle of satisfactory adequate assurance of future performance by the assignee; and (4) execution by the Debtors or its successor and the assignee of mutually agreeable assignment documentation in a final form to be negotiated after entry of this Order. In addition, no provision of this Order or any proposed Transition Services Agreement shall authorize: (1) the transfer of any Oracle license agreement to any third party; or (2) use of any Oracle license agreement that is inconsistent with the relevant license grant including, but not limited to, exceeding the number of authorized users, or, to the extent prohibited by the applicable license agreement, shared use or license splitting, absent Oracle's express prior written consent.

23. Nothing in the preceding paragraph limits the Debtors' obligations under the Transition Services Agreement (as defined in the Agreements), including to pay the costs of the relevant licenses required to provide the Services under the Transition Services Agreement.

24. The Debtors are not assuming and assigning their contracts with Kobie Marketing, Inc. ("Kobie") to the Purchaser in connection with the Closing. This Order does not expand, limit or modify the terms of such contracts (including any such modification with respect to Kobie's obligation to provide services, products, or technology or otherwise perform under and in accordance with the terms of such contracts). This Order also does not expand, limit, or modify any rights Kobie has pursuant to the Bankruptcy Code concerning such contracts. Kobie agrees to engage in good faith discussions with the Purchaser regarding a new direct agreement between Kobie and the Purchaser related to the services provided by Kobie with respect to the Acquired Assets (as defined in the Definitive Purchase Agreement), where time is of the essence to conclude

such discussions regarding the new direct agreement prior to the Closing. Nothing in this paragraph limits the Debtors' obligations under the Agreements, including to deliver the Acquired Assets to the Purchaser.

25. Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d) or any applicable provisions of the Local Rules, this Order shall not be stayed after the entry hereof, but shall be effective and enforceable immediately upon entry, and the 14-day stay provided in Bankruptcy Rules 6004(h) and 6006(d) is hereby expressly waived and shall not apply. Time is of the essence in closing the Transaction and the Debtors and the Purchaser intend to close the Transaction as soon as practicable. Any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay within the time prescribed by law and prior to Closing, or risk its appeal will be foreclosed as moot.

26. The failure to specifically include any particular provision of the Agreements in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Agreements be authorized and approved in their entirety; *provided* that this Sale Order shall govern if there is any inconsistency between the Agreements (including all ancillary documents executed in connection therewith) and this Sale Order.

27. The Agreements and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court.

28. The Court shall retain exclusive jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Sale Order and the Agreements, all amendments thereto and any waivers and consents thereunder and each of the Agreements executed in connection therewith to which any Debtor is a party or which has been assigned by



the Debtors to the Purchaser, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Transaction, including, but not limited to, retaining jurisdiction to: (a) compel delivery of the Catherines Assets to the Purchaser; (b) interpret, implement, and enforce the provisions of this Sale Order; and (c) protect the Purchaser against any Liens, Claims, or other interest in or against the Sellers or the Catherines Assets of any kind or nature whatsoever, attaching to the proceeds of the Transaction (other than the Permitted Obligations as set forth in this Order).

29. To the extent that this Sale Order is inconsistent with any prior order or pleading with respect to the Motion in these chapter 11 cases, the terms of this Sale Order shall govern.

Dated: Sep 24 2020  
Richmond, Virginia

/s/ Kevin R Huennekens  
United States Bankruptcy Judge

Entered on Docket: Sep 24 2020

WE ASK FOR THIS:

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**CERTIFICATION OF ENDORSEMENT**  
**UNDER LOCAL BANKRUPTCY RULE 9022-1(C)**

Pursuant to Local Bankruptcy Rule 9022-1(C), I hereby certify that the foregoing proposed order has been endorsed by or served upon all necessary parties.

/s/ Cullen D. Speckhart

**Exhibit 1**

**The Agreements**

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**ASSET PURCHASE AGREEMENT**

**DATED AS OF SEPTEMBER 16, 2020**

**BY AND BETWEEN**

**FULLBEAUTY BRANDS OPERATIONS, LLC, AS PURCHASER,**

**AND**

**ASCENA RETAIL GROUP, INC., AS THE COMPANY,**

**AND**

**THE OTHER SELLERS NAMED HEREIN**

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## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of September 16, 2020, by and among FullBeauty Brands Operations, LLC, an Indiana limited liability company ("Purchaser"), Ascena Retail Group, Inc., a Delaware corporation (the "Company"), and the Subsidiaries of the Company that are indicated on the signature pages attached hereto (together with the Company, each a "Seller" and collectively "Sellers"). Purchaser and Sellers are referred to herein individually as a "Party" and collectively as the "Parties." Capitalized terms used herein shall have the meanings set forth herein or in Article XI.

WHEREAS, the Company and the other Sellers filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Eastern District of Virginia (Richmond Division) (the "Bankruptcy Court"), which chapter 11 cases will be jointly administered for procedural purposes (collectively, the "Bankruptcy Case"); and

WHEREAS, Purchaser desires to purchase assets related to the Sellers' E-Commerce Business, specifically the Acquired Assets, and assume the Assumed Liabilities from Sellers, and Sellers desire to sell, convey, assign, and transfer to Purchaser the Acquired Assets together with the Assumed Liabilities, in a sale authorized by the Bankruptcy Court pursuant to, *inter alia*, sections 105, 363 and 365 of the Bankruptcy Code, in accordance with the other applicable provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and the local rules for the Bankruptcy Court, all on the terms and subject to the conditions set forth in this Agreement and subject to entry of the Sale Order.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants, and agreements set forth herein, and intending to be legally bound hereby, Purchaser and Sellers hereby agree as follows.

### ARTICLE I

#### PURCHASE AND SALE OF THE ACQUIRED ASSETS; ASSUMPTION OF ASSUMED LIABILITIES

1.1 Purchase and Sale of the Acquired Assets. Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, on the terms and subject to the conditions set forth herein and in the Sale Order, at the Closing, Sellers shall sell, transfer, assign, convey, and deliver to Purchaser, and Purchaser shall purchase, acquire, and accept from Sellers, all of Sellers' right, title and interest in and to the Acquired Assets, free and clear of all Encumbrances other than Permitted Encumbrances. "Acquired Assets" means the following assets of Sellers (but excluding in all cases the Excluded Assets):

(a) all Contracts listed on Schedule I.1(a), to the extent assignable under applicable Law (collectively, the "Assigned Contracts");

(b) (i) all Copyrights owned by the Seller and used or held for use in connection with the Acquired Inventory or any products promoted through the E-Commerce Business,

including those copyright registrations set forth on Schedule 1.1(b)(i); (ii) internet domain name registrations and social media accounts set forth on Schedule 1.1(b)(ii); (iii) (A) patents and patent applications listed on Schedule 1.1(b)(iii) (all such patents and patent applications, collectively, "Scheduled Patents"); and (B) reissues, reexaminations, continuations, continuations in part (only with respect to subject matter disclosed in the Scheduled Patents), divisionals, requests for continuing examinations or continuing prosecution applications, or design registrations of any Scheduled Patent; (iv) Trademark registrations and applications for registration set forth on Schedule 1.1(b)(iv) and all common law rights therein (together with the Catherines Marks (as defined below), the "Transferred Trademarks"), including, to the extent in Sellers' possession, the historical trademark file for each; (v) the name and Trademark "Catherines" and any name or Trademark consisting of, containing or incorporating "Catherines", all designs and logos associated therewith, and all variations thereof, in each case whether registered or unregistered (the "Catherines Marks"), (vi) all Intellectual Property used or held for use in connection with the E-Commerce Business, including software (excluding, for the avoidance of doubt, any third party software) and designs, and (vii) the goodwill of the business symbolized by or associated with the Trademarks described in the foregoing subclauses (iv)-(vi) (the assets described in the foregoing subclauses (i) through (vi) collectively, the "Transferred Intellectual Property");

(c) all rights to collect royalties and proceeds in connection with the Transferred Intellectual Property with respect to the period from and after the Closing, all rights to sue and recover for past, present and future infringements, dilutions, misappropriations of, or other conflicts with, the Transferred Intellectual Property and any and all corresponding rights that, now or hereafter, may be secured throughout the world with respect to the Transferred Intellectual Property;

(d) all Inventory of Sellers that was exclusively held or otherwise exclusively designated for sale via the E-Commerce Business as of the date hereof (other than such Inventory that is sold in the Ordinary Course between the date hereof and the Closing) and all Inventory of Sellers that is acquired exclusively for the E-Commerce Business in the Ordinary Course between the date hereof and the Closing (the "Acquired Inventory");

(e) to the extent transferable under applicable Law (including, to the extent applicable, as an asset that is part of an acquisition, bankruptcy, or other transaction under the exemption from the definition of "sale" set forth in California Civ. Code Section 1798.140(t)(2)(D)) and Sellers' privacy policy, the Customer Data (for clarity, it is understood and agreed by Purchaser that Sellers and their Affiliates (other than Catherines, Inc.) may have, now or in the future, certain data, pertaining to current, former or prospective customers of one or more of such Sellers or Affiliates that is similar or identical to certain Customer Data (e.g., an individual may be a customer or prospective customer of both the E-Commerce Business and Sellers' or one or more of their Affiliates' other businesses) and nothing in this Agreement shall be deemed to transfer, assign or convey any rights to Purchaser with respect to such data (such data of Sellers and such Affiliates of Sellers being referred to as "Other Data") or to in any way restrict the use of any Other Data by any Seller or Affiliates of Sellers (or by their successors or assigns));

(f) all Documents, including as set forth on Schedule 1.1(q), (except as expressly excluded in Section 1.2 hereof) to the extent related to the E-Commerce Business, and all of the following Documents to the extent they relate to the Catherines brick-and-mortar stores or

E-Commerce Business: (i) all customer records and relevant transaction history including credit card customers and relevant history; (ii) all web analytics data; (iii) all customer opt-in phone numbers for text messaging program; and (iv) all buyer information for mobile application users; and

(g) all assets listed on Schedule 1.1(g) owned by Sellers.

1.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, in no event shall Sellers be deemed to sell, transfer, assign, or convey, and Sellers shall retain all right, title and interest to, in and under all assets, properties, interests and rights of such Sellers that are not expressly included in the Acquired Assets (collectively, the "Excluded Assets"), including the following:

(a) all assets expressly excluded from the definition of Acquired Assets pursuant to Section 1.1;

(b) all Cash and Cash Equivalents, all bank accounts, and all deposits (including maintenance deposits, customer deposits, and security deposits for rent, electricity, telephone or otherwise) or prepaid or deferred charges and expenses, including all lease and rental payments, that have been prepaid by any Seller, and any retainers or similar amounts paid to Advisors or other professional service providers;

(c) all Contracts of Sellers other than the Assigned Contracts (the "Excluded Contracts");

(d) all Documents (i) to the extent they relate to any of the Excluded Assets or Excluded Liabilities (including information stored on the computer systems, data networks or servers of any Seller), other than, for the avoidance of doubt, any Customer Data and any Transferred Intellectual Property; (ii) that are Sellers' financial accounting Documents, all minute books, organizational documents, stock registers and such other books and records of any Seller as pertaining to ownership, organization or existence of such Seller, Tax Returns (and any related work papers) and any other Tax information or records, corporate seal, checkbooks, and canceled checks; (iii) that any Seller is required by Law to retain, provided that, to the extent not prohibited by applicable Law, Purchaser shall have the right to make copies of any portions of such Documents;

(e) all Documents prepared or received by any Seller or any of its Affiliates in connection with the sale of the Acquired Assets, this Agreement, or the transactions contemplated hereby, including (i) all records and reports prepared or received by Sellers, any of their respective Affiliates or Advisors in connection with the sale of the Acquired Assets and the transactions contemplated hereby, including all analyses relating to the business of Purchaser or its Affiliates so prepared or received; (ii) all bids and expressions of interest received from third parties with respect to the acquisition of any of Sellers' businesses or assets; or (iii) all privileged materials, documents and records of a Seller or any of its Affiliates; and (iv) copies of documents, materials and data to the extent related to the Acquired Assets prior to the Closing Date;

(f) all current and prior insurance policies of any of Sellers, including for the avoidance or doubt all director and officer insurance policies, and all rights and benefits of any

nature of Sellers with respect thereto, including all insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries;

(g) all membership interests or other equity interests of any Seller or any of their respective Subsidiaries or securities convertible into, exchangeable, or exercisable for any such membership interests or other equity interests;

(h) the sponsorship of all benefits plans, and any right, title or interest in any of the assets thereof or relating thereto;

(i) (i) all preference or avoidance claims or actions arising under the Bankruptcy Code or applicable Law, (ii) all other rights, claims, causes of action, rights of recovery, rights of set-off, and rights of recoupment as of the Closing of any Seller, in each case, arising out of or relating to events occurring on or prior to the Closing Date, and (iii) all claims that any of Sellers may have against any Person with respect to any other Excluded Assets or any Excluded Liabilities;

(j) Sellers' claims or other rights under this Agreement, including the Purchase Price hereunder, or any agreement, certificate, instrument, or other document executed and delivered between any Seller and Purchaser in connection with the transactions contemplated hereby, or any other agreement between any Seller and Purchaser entered into on or after the date hereof;

(k) all Tax Refunds and Tax attributes or any rights with respect thereto;

(l) all real estate and all interests in real estate;

(m) except as set forth in Section 1.1(c), all demands, allowances, refunds, rebates (including any vendor or supplier rebates), rights (including under or with respect to express or implied guarantees, warranties, representations, covenants and indemnities), claims, counterclaims, defenses, credits, causes of action, rights of set off, rights of recovery or rights of recoupment relating to or arising against suppliers, vendors, merchants, manufacturers and counterparties to leases, licenses or any Contract, arising out of or relating to events occurring on or prior to the Closing Date;

(n) Other Data; and

(o) the properties and assets set forth on Schedule 1.2(o).

1.3 Assumption of Certain Liabilities. On the terms and subject to the conditions set forth herein and in the Sale Order, effective as of the Closing, Purchaser shall irrevocably assume from Sellers (and from and after the Closing pay, perform, discharge, or otherwise satisfy in accordance with their respective terms), and Sellers shall irrevocably convey, transfer, and assign to Purchaser, only the following Liabilities, without duplication and only to the extent not paid prior to the Closing (collectively, the "Assumed Liabilities"):

(a) all Liabilities of Sellers under the Assigned Contracts that become due from and after the Closing;

(b) all cure costs required to be paid pursuant to section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Assigned Contracts (the "Cure Costs");

(c) all Gift Card Liabilities;

(d) the Liabilities in connection with the Customer Loyalty Programs, other than any Liabilities to the extent arising from any Excluded Asset;

(e) all Liabilities arising out of the ownership or operation of the Acquired Assets by Purchaser from and after the Closing Date;

(f) all Liabilities, including, for the avoidance of doubt, all Taxes other than income Taxes of Sellers, with respect to the Acquired Assets attributable to any Post-Closing Tax Period, including all Liabilities for Transfer Taxes;

(g) all Liabilities agreed to be assumed by Purchaser or for which Purchaser has agreed to be responsible, in each case pursuant to this Agreement; and

(h) all Liabilities set forth on Schedule 1.3(h).

1.4 Excluded Liabilities. Purchaser shall not assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for any Liabilities of, or Action against, Sellers or relating to the Acquired Assets, of any kind or nature whatsoever, whether absolute, accrued, contingent or otherwise, liquidated or unliquidated, due or to become due, known or unknown, currently existing or hereafter arising, matured or unmatured, direct or indirect, and however arising, whether existing on the Closing Date or arising thereafter as a result of any act, omission, or circumstances taking place prior to the Closing, other than the Assumed Liabilities, including any additional duties, penalties, adjustments, fines or other Liabilities that relate to Acquired Assets for which customs duties have already been assessed and/or paid as of or prior to the Closing (all such Liabilities that are not Assumed Liabilities being referred to collectively herein as the "Excluded Liabilities").

#### 1.5 Assumption/Rejection of Certain Contracts.

(a) Assumption and Assignment of Executory Contracts. Sellers shall provide timely and proper written notice of the motion seeking entry of the Sale Order to all parties to any executory Contracts or unexpired leases to which any Seller is a party that are Assigned Contracts and take all other actions reasonably necessary to cause such Contracts to be assumed by Sellers and assigned to Purchaser pursuant to section 365 of the Bankruptcy Code to the extent that such Contracts are Assigned Contracts at Closing. The Sale Order shall provide that as of and conditioned on the occurrence of the Closing, Sellers shall assign or cause to be assigned to Purchaser, as applicable, the Assigned Contracts, each of which shall be identified by the name or appropriate description and date of the Assigned Contract (if available), the other party to the Assigned Contract and the address of such party for notice purposes, all included on an exhibit attached to either a notice filed in connection with the motion for approval of the Sale Order or a separate motion for authority to assume and assign such Assigned Contracts. Such exhibit shall also set forth Sellers' good faith estimate of the amounts necessary to cure any defaults under each of

the Assigned Contracts as determined by Sellers based on Sellers' books and records or as otherwise determined by the Bankruptcy Court. At the Closing, Sellers shall, pursuant to the Sale Order and the Assignment and Assumption Agreement(s), assume and assign to Purchaser (the consideration for which is included in the Purchase Price), all Assigned Contracts that may be assigned by any such Seller to Purchaser pursuant to sections 363 and 365 of the Bankruptcy Code, subject to adjustment pursuant to Section 1.5(b). At the Closing, Purchaser shall (i) pay all Cure Costs and (ii) assume, and thereafter in due course and in accordance with its respective terms pay, fully satisfy, discharge and perform all of the obligations under each Assigned Contract pursuant to section 365 of the Bankruptcy Code.

(b) Excluding or Adding Assigned Contracts Prior to Closing. Purchaser shall have the right to notify Sellers in writing of any Assigned Contract (other than any purchase orders) that it does not wish to assume or a Contract to which any Seller is a party that is used exclusively in the E-Commerce Business or with respect to the Catherines brick-and-mortar retail stores that Purchaser wishes to add as an Assigned Contract up to one (1) Business Day prior to the Closing Date, and (i) any such previously considered Assigned Contract that Purchaser no longer wishes to assume shall be automatically deemed removed from the Schedules related to Assigned Contracts and automatically deemed added to the Schedules related to Excluded Contracts, in each case, without any adjustment to the Purchase Price, and (ii) any such previously considered Excluded Contract that Purchaser wishes to assume as an Assigned Contract shall be automatically deemed added to the Schedules related to Assigned Contracts, automatically deemed removed from the Schedules related to Excluded Contracts, and assumed by Sellers to sell and assign to Purchaser, in each case, without any adjustment to the Purchase Price. Purchaser shall be solely responsible for the payment, performance and discharge when due of the Liabilities under the Assigned Contracts arising or that are otherwise payable from the time of and after the Closing.

(c) Non-Assignment. Notwithstanding the foregoing, a Contract shall not be an Assigned Contract hereunder and shall not be assigned to, or assumed by, Purchaser to the extent that such Contract (i) is rejected by a Seller or terminated by a Seller or any other party thereto, or terminates or expires by its terms, on or prior to such time as it is to be assumed by Purchaser as an Assigned Contract hereunder and is not continued or otherwise extended upon assumption or (ii) requires a Consent or Governmental Authorization (other than, and in addition to, that of the Bankruptcy Court) in order to permit the sale or transfer to Purchaser of the applicable Seller's rights under such Contract, and such Consent or Governmental Authorization has not been obtained prior to such time as it is to be assumed by Purchaser as an Assigned Contract hereunder. In addition, no Acquired Asset shall be assigned to, or assumed by, Purchaser to the extent that such Acquired Asset requires a Consent or Governmental Authorization (other than, and in addition to, that of the Bankruptcy Court) in order to permit the sale or transfer to Purchaser of the applicable Seller's rights with respect to such Acquired Asset, and no such Consent or Governmental Authorization has been obtained prior to the Closing. In the event that any Acquired Asset is deemed not to be assigned pursuant to clause (ii) of the first sentence of this Section 1.5(b) or the immediately preceding sentence, the Closing shall nonetheless take place subject to the terms and conditions set forth herein and, thereafter, through the earlier of such time as such Consent or Governmental Authorization is obtained and six (6) months following the Closing (or the remaining term of any such Acquired Asset that is a Contract or the closing of the Bankruptcy Case, if shorter), Sellers and Purchaser shall (A) use reasonable best efforts to secure such Consent or Governmental Authorization as promptly as practicable after the Closing (which reasonable best efforts shall not

require any payment or other consideration from the Sellers or Purchaser (other than the Cure Costs, which shall be the responsibility of Purchaser) and (B) cooperate in good faith in any lawful and commercially reasonable arrangement reasonably proposed by Purchaser, including subcontracting, licensing, or sublicensing to Purchaser any or all of any Seller's rights and obligations with respect to any such Acquired Asset, under which (1) Purchaser shall obtain (without infringing upon the legal rights of such third party or violating any Law) the economic rights and benefits (net of the amount of any related Tax costs imposed on Sellers or their respective Affiliates) under such Acquired Asset with respect to which the Consent and/or Governmental Authorization has not been obtained and (2) Purchaser shall assume any related burden and obligation (including performance) with respect to such Acquired Asset. Upon satisfying any requisite Consent or Governmental Authorization requirement applicable to such Acquired Asset after the Closing, such Acquired Asset shall promptly be transferred and assigned to Purchaser in accordance with the terms of this Agreement, the Sale Order and the Bankruptcy Code.

## ARTICLE II

### CONSIDERATION; CLOSING

#### 2.1 Consideration; Payment.

(a) The aggregate consideration (collectively, the "Purchase Price") to be paid by Purchaser for the purchase of the Acquired Assets shall be: (i) the assumption of Assumed Liabilities and (ii) the payment in cash of an amount equal to the sum of (A) \$40,800,000 (the "Base Amount"), plus (B) the Inventory Surplus, minus (C) the Inventory Deficit minus (D) the Break-Up Fee Difference (such sum, the "Cash Purchase Price").

(b) At the Closing, (i) Purchaser shall pay to the Sellers an amount equal to (A) the sum of (x) the Base Amount, plus (y) the Estimated Inventory Surplus, minus (z) the Estimated Inventory Deficit (such sum, the "Estimated Cash Purchase Price"), minus (B) the Deposit (the "Closing Date Payment"), and (ii) the Deposit shall be credited to the Estimated Cash Purchase Price. The Closing Date Payment and any payment required to be made pursuant to any other provision hereof shall be made in cash by wire transfer of immediately available funds to such bank account as shall be designated in writing by the applicable Party to (or for the benefit of) whom such payment is to be made at least two (2) Business Days prior to the date such payment is to be made.

#### 2.2 Deposit.

(a) Purchaser has, on or prior to the date hereof, made an earnest money deposit, by wire transfer of immediately available funds, into the escrow account identified and established by Sellers pursuant to the bid procedures set forth in the Bidding Procedures Order in the amount of ten percent (10%) of the Base Amount (the "Deposit"). The Deposit shall not be subject to any lien, attachment, trustee process, or any other judicial process of any creditor of any of Sellers or Purchaser and shall be applied against payment of the Estimated Cash Purchase Price on the Closing Date.

(b) If this Agreement has been terminated by the Company pursuant to Section 8.1(g) or 8.1(i) (or pursuant to Section 8.1(b) or 8.1(c)), in each case in circumstances where the Company would also be entitled to terminate this Agreement pursuant to Section 8.1(g) or 8.1(i)), then the Company shall retain the Deposit together with all received investment income, if any.

(c) If this Agreement has been terminated by any Party, other than as contemplated by Section 2.2(b), then the Deposit, together with all received investment income, if any, shall be returned to Purchaser within five (5) Business Days after such termination.

(d) The Parties agree that the Company's right to retain the Deposit, as set forth in Section 2.2(b), is not a penalty, but rather is liquidated damages in a reasonable amount that will compensate Sellers for their respective efforts and resources expended and the opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the transactions contemplated hereby, which amount would otherwise be impossible to calculate with precision.

(e) If the Closing occurs, the Deposit shall be transferred to the Company.

### 2.3 Purchase Price Adjustment.

(a) Estimated Purchase Price. The Sellers shall, at least two (2) Business Days prior to the Closing Date, prepare and deliver to Purchaser a written statement (the "Estimated Inventory Statement") setting forth a good faith estimate of each of the Closing Inventory Amount, the Inventory Surplus (the "Estimated Inventory Surplus"), the Inventory Deficit (the "Estimated Inventory Deficit"), and the resulting Estimated Cash Purchase Price. All calculations relating to the Estimated Inventory Statement, the Purchaser Closing Inventory Statement, and the amounts set forth therein, shall be made and prepared in accordance with the applicable definitions and terms of this Agreement and, to the extent not inconsistent with such definitions and terms, the past procedures, practices, methodologies and standards used by the Sellers in maintaining their financial books and records and preparing their financial statements.

(b) Post-Closing Adjustment. Not later than fifteen (15) days following the Closing Date, Purchaser shall prepare and deliver to the Sellers a statement certified by a duly authorized officer of Purchaser (the "Purchaser Closing Inventory Statement") setting forth in reasonable detail Purchaser's good faith calculation of the Closing Inventory Amount, the Inventory Surplus, the Inventory Deficit and the resulting Cash Purchase Price. If the Purchaser fails to timely deliver the Purchaser Closing Inventory Statement before the expiration of the Review Period, the Estimated Inventory Statement and the amounts set forth therein shall be deemed final and binding on all Parties.

(c) Examination. After receipt of the Purchaser Closing Inventory Statement, the Sellers shall have thirty (30) days (the "Review Period") to review the Purchaser Closing Inventory Statement. During the Review Period, the Sellers shall have full access to the books and records, personnel, advisors and work papers of Purchaser and its Affiliates, in each case to the extent that they relate to the Purchaser Closing Inventory Statement and to such historical financial information (to the extent accessible by or in the possession of Purchaser or its Affiliates, personnel



or advisors) relating to the Purchaser Closing Inventory Statement as Sellers may reasonably request for the purpose of reviewing and responding to the Purchaser Closing Inventory Statement and to prepare any Statement of Objections.

(d) Objection. On or prior to the last day of the Review Period, the Sellers may object to all or any portion of the Purchaser Closing Inventory Statement by delivering to Purchaser a written statement setting forth Sellers' objections to the amounts set forth therein in reasonable detail, indicating each disputed item or amount and the basis for Sellers' disagreement therewith (the "Statement of Objections"). If the Sellers fail to deliver the Statement of Objections before the expiration of the Review Period, the Purchaser Closing Inventory Statement and the amounts set forth therein shall be deemed final and binding on all Parties. To the extent any amounts or items set forth in the Purchaser Closing Inventory Statement are not disputed in the Statement of Objections, such amounts or items shall be deemed final and binding on all Parties. If the Sellers deliver the Statement of Objections before the expiration of the Review Period, the Sellers and Purchaser shall negotiate in good faith to resolve any objections set forth therein within fifteen (15) days after the delivery of the Statement of Objections (the "Resolution Period"), and, to the extent any or all of such objections are so resolved within the Resolution Period, the Purchaser Closing Inventory Statement shall be amended to reflect the resolution so obtained and agreed to in writing by the Parties. If all such objections have been resolved during the Resolution Period and agreed to in writing by the Parties, the Purchaser Closing Inventory Statement (as amended in accordance with the immediately preceding sentence) and the amounts set forth therein shall be final and binding on all Parties.

(e) Resolution of Disputes. If the Sellers and Purchaser fail to reach an agreement with respect to all of the matters set forth in the Statement of Objections before expiration of the Resolution Period, then any such items or amounts then remaining in dispute ("Disputed Items") shall be submitted for resolution to an independent nationally recognized firm of independent certified public accountants, other than Sellers' accountants or Purchaser's accountants, mutually agreeable to the Sellers and Purchaser (the "Independent Accountant") who, acting as an expert and not as an arbitrator, shall resolve the Disputed Items only, in accordance with the terms and conditions of this Agreement, and the Purchaser Closing Inventory Statement (as the same may theretofore have been amended pursuant to Section 2.3(e)) shall be amended to reflect the Independent Accountant's resolution of the Disputed Items, and the Purchaser Closing Inventory Statement and the items set forth therein, each as so amended, shall be final and binding on all Parties. Each Party shall give the Independent Accountant access to all information that in the reasonable opinion of the Independent Accountant is necessary to resolve the Disputed Items and shall cause such information to be provided promptly. The Independent Accountant shall decide only the Disputed Items, and its decision for each Disputed Item must be within the range of values assigned to each such item in the Purchaser Closing Inventory Statement and the Statement of Objections, respectively. The Cash Purchase Price set forth in the Purchaser Closing Inventory Statement, as amended as necessary to reflect the final and binding determinations of the amounts therein pursuant to Sections 2.3(c), 2.3(d) or 2.3(e), as applicable, is referred to herein as the "Final Cash Purchase Price."

(f) Fees of the Independent Accountant. The fees and expenses of the Independent Accountant shall be paid by Sellers, on the one hand, and by Purchaser, on the other hand, based upon the percentage that the amount actually contested but not awarded to Sellers, on

the one hand, or Purchaser, on the other hand, respectively, bears to the aggregate amount actually contested by Sellers and Purchaser.

(g) Determination by Independent Accountant. The Independent Accountant shall be instructed by Purchaser and the Sellers to make its determination with respect to the Disputed Items as soon as practicable, and in any event within fifteen (15) days (or such other time as the Parties shall agree in writing) after the Independent Accountant's engagement hereunder.

(h) Payments of Post-Closing Adjustment. If the Estimated Cash Purchase Price is more than the Final Cash Purchase Price, Purchaser shall be entitled to collect from the Sellers an amount equal to such excess, and such amount shall be an allowed administrative claim under Section 503(a) of the Bankruptcy Code. If the Final Cash Purchase Price is more than the Estimated Cash Purchase Price, Purchaser shall pay to the Sellers an amount equal to such excess. Any payment to be made pursuant to this Section 2.3(g) shall be due within five (5) Business Days after the final and binding determination of each of the amounts and items set forth in the Purchaser Closing Inventory Statement pursuant to this Section 2.3.

(i) Adjustments for Tax Purposes. Any payments made pursuant to Section 2.3 shall be treated as an adjustment to the Purchase Price by the Parties for Tax purposes, unless otherwise required by Law.

2.4 Closing. The closing of the purchase and sale of the Acquired Assets, the delivery of the Closing Date Payment, the assumption of the Assumed Liabilities and the consummation of the other transactions contemplated by this Agreement (the "Closing") will take place by telephone conference and electronic exchange of documents (or, if the Parties agree to hold a physical closing, at the offices of Kirkland & Ellis LLP, located at 300 North LaSalle, Chicago, Illinois 60654) at 8:00 a.m. Chicago time on the second (2nd) Business Day following full satisfaction or due waiver (by the Party entitled to the benefit of such condition) of the closing conditions set forth in Article VII (other than conditions that by their terms or nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions), or at such other place and time as the Parties may agree. The date on which the Closing actually occurs is referred to herein as the "Closing Date."

2.5 Closing Deliveries by Sellers. At or prior to the Closing, Sellers shall deliver to Purchaser:

(a) a bill of sale and assignment and assumption agreement substantially in the form of Exhibit A (the "Assignment and Assumption Agreement") duly executed by Sellers;

(b) a U.S. assignment agreement with respect to the Transferred Intellectual Property substantially in the form of Exhibit B ( the "IP Assignment Agreement"), duly executed by the Seller(s) party thereto;

(c) a copy of the Sale Order, as entered by the Bankruptcy Court, which Sale Order has either become final and non-appealable, or contains an express waiver of Bankruptcy Rule 6004(h);

(d) a duly executed IRS Form W-9 with respect to each Seller (or, in the case of any disregarded entity, the regarded parent entity of such Seller); provided that the sole remedy of the Purchaser for the failure of any Seller to deliver such certificate and notice shall be the withholding of Tax as provided in Section 2.3(i) and the delivery of such certificate and notice shall in no event be a condition to the Closing;

(e) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of the Company certifying that the conditions set forth in Sections 7.2(b) and 7.2(c) have been satisfied;

(f) a transition services agreement substantially in the form of Exhibit C hereto (the "Transition Services Agreement"), duly executed by the Sellers party thereto; and

(g) electronic data files containing all IP Embodiments, the Customer Data set forth on Schedule 11.1(o) and the Documents set forth on Schedule 11.1(q); in each case as they exist as of September 16, 2020, provided, however that for the purpose of this Section 2.5(g) the Sellers shall not be required to digitize any IP Embodiments that as of September 16, 2020 are solely in non-digital form.

2.6 Closing Deliveries by Purchaser. At the Closing, Purchaser shall deliver to (or at the direction of) the Company:

- (a) the Closing Date Payment;
- (b) the Assignment and Assumption Agreement, duly executed by Purchaser;
- (c) the IP Assignment Agreement, duly executed by Purchaser;
- (d) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of Purchaser certifying that the conditions set forth in Sections 7.3(a), 7.3(b) and 7.3(c) have been satisfied; and
- (e) the Transition Services Agreement, duly executed by Purchaser.

2.7 Withholding. Purchaser shall not be entitled to deduct and withhold from any amounts otherwise payable pursuant to this Agreement, except to the extent resulting from a Seller's failure to satisfy its obligations under Section 2.5(d). In the event that any such withholding is made, Purchaser shall give Sellers at least five (5) Business Days' prior written notification of its intention to make any such deduction or withholding and shall cooperate with Sellers to mitigate, reduce or eliminate any such deduction or withholding. To the extent Purchaser deducts or withholds any amount from Sellers that was not required to be deducted or withheld, Purchaser shall promptly return such amount to the Sellers, as applicable, within 10 days of a reasonable good faith determination by Purchaser that such amount was improperly deducted or withheld.

## ARTICLE III

### REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as disclosed in any forms, statements or other documents filed with the Bankruptcy Court or as set forth in the Schedules delivered by the Company concurrently herewith (subject to Sections 6.5(a) and 10.10), the Sellers represent and warrant to Purchaser as follows as of the date hereof and as of the Closing Date:

3.1 Organization and Qualification. Each of the Sellers (a) is an entity duly incorporated or organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization, as applicable, (b) has all requisite power and authority to own and operate its properties and to carry on its businesses as now conducted, subject to the provisions of the Bankruptcy Code, and (c) is qualified to do business and is in good standing (or its equivalent) in every jurisdiction in which its ownership of property or the conduct of its business as now conducted requires it to qualify, except where the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect.

3.2 Authorization of Agreement. The execution, delivery, and performance of this Agreement by each Seller, and the consummation by such Seller of the transactions contemplated hereby, subject to requisite Bankruptcy Court approvals, have been duly and validly authorized by all requisite corporate or similar organizational action, and no other corporate or similar organizational proceedings on its part are necessary to authorize the execution, delivery or performance of this Agreement by such Seller. Subject to requisite Bankruptcy Court approvals, this Agreement has been duly and validly executed and delivered by such Seller, and, assuming this Agreement is a valid and binding obligation of Purchaser, this Agreement constitutes a valid and binding obligation of such Seller, enforceable against such Seller in accordance with its terms, except as limited by the application of bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium, or other Laws relating to or affecting creditors' rights or general principles of equity (whether considered in a proceeding in equity or at law) (the "Enforceability Exceptions").

#### 3.3 Conflicts; Consents.

(a) Except as set forth on Schedule 3.3(a) and assuming that (x) requisite Bankruptcy Court approvals are obtained and (y) the notices, authorizations, approvals, Orders, permits or consents set forth on Schedule 3.3(b) are made, given or obtained (as applicable), the execution, delivery and performance by Sellers of this Agreement and the consummation by Sellers of the transactions contemplated hereby, do not: (i) violate the certificate of formation, limited liability company agreement or equivalent organizational documents of the Company or any of its Subsidiaries; (ii) violate any Law applicable to the Company or any of its Subsidiaries or by which any of the Acquired Assets is bound; or (iii) result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, create in any party thereto the right to terminate or cancel, or require any consent under, or result in the creation or imposition of any Encumbrance (other than a Permitted Encumbrance) on any property or asset of the Company or any of its Subsidiaries under, any Assigned Contracts; except, in each case, for any

such violations, breaches, defaults or other occurrences that are not material to the Acquired Assets and Assumed Liabilities, taken as a whole.

(b) Except as set forth on Schedule 3.3(b), Sellers are not required to file, seek or obtain any notice, authorization, approval, Order, permit, or consent of or with any Governmental Body in connection with the execution, delivery and performance by Sellers of this Agreement or the consummation by Sellers of the transactions contemplated hereby, except (i) requisite Bankruptcy Court approvals, (ii) such filings as may be required by any applicable federal or state securities or "blue sky" Laws, (iii) where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, is not material to the Acquired Assets and Assumed Liabilities taken as a whole, or (iv) as may be necessary as a result of any facts or circumstances relating to Purchaser or any of its Affiliates.

3.4 Title to Properties. Subject to requisite Bankruptcy Court approvals, and assumption by the applicable Seller of the applicable Contract in accordance with applicable Law (including satisfaction of any applicable Cure Costs) and except as a result of the commencement of the Bankruptcy Case, the Company and its Subsidiaries own good title to all of the Acquired Assets, free and clear of all Encumbrances, except for Permitted Encumbrances, other than any failure to own or hold such Acquired Assets that is not material to the Acquired Assets taken as a whole.

3.5 Insurance. Each material insurance policy maintained by the Company and its Subsidiaries on the Acquired Assets is legal, valid, binding, enforceable on the Company or its Subsidiaries, as applicable, and in full force and effect, and all premiums with respect thereto covering all periods up to and including the date hereof have been paid, and no notice of cancellation, termination or denial of coverage for any material claim has been received with respect to any such insurance policy.

3.6 Contracts. Subject to requisite Bankruptcy Court approvals, and assumption by the applicable Seller of the applicable Contract in accordance with applicable Law (including satisfaction of any applicable Cure Costs) and except as a result of the commencement of the Bankruptcy Case, each of the Assigned Contracts is in full force and effect and is a valid, binding and enforceable obligation of the Company and its Subsidiaries and, to the knowledge of the Company, each of the other parties thereto, except as may be limited by the Enforceability Exceptions. Except as a result of the commencement of the Bankruptcy Case or as would not reasonably be expected to be material to the Acquired Assets and Assumed Liabilities, taken as a whole, neither the Company nor any of its Subsidiaries, as applicable, is in material default, or is alleged in writing by the counterparty thereto to have materially breached or to be in material default, under any Assigned Contract, and, to the knowledge of the Company, the other party to each Assigned Contract is not in material default thereunder. The Company has made available to Purchaser complete and correct copies of all Assigned Contracts, each as amended to the date hereof. None of the Assigned Contracts has been canceled or otherwise terminated, and neither the Company nor its Subsidiaries has received any written notice from any Person regarding any such cancellation or termination.

3.7 Litigation. Except as set forth on Schedule 3.7 and other than the Bankruptcy Case, there are, and during the prior two (2) years there have been, no Actions pending against or by the

Company or any of its Subsidiaries with respect to the Acquired Assets or the Assumed Liabilities, at law or in equity, or before or by any Governmental Body, other than any Action pursuant to which no injunctive or equitable relief is sought and where the monetary damages are covered by insurance or would not reasonably be expected to be material to the E-Commerce Business or the ownership or operation of the Acquired Assets and Assumed Liabilities, taken as a whole. Except as set forth on Schedule 3.7 and other than in connection with the Bankruptcy Case, neither the Company nor any of its Subsidiaries is, or during the prior two (2) years has been, subject to any outstanding Order with respect to the Acquired Assets or the Assumed Liabilities, other than any such Order where no injunctive or equitable relief was granted and where the monetary damages were covered by insurance or were not be material to the E-Commerce Business or the ownership or operation of the Acquired Assets and Assumed Liabilities, taken as a whole.

3.8 Permits; Compliance with Laws. Except as set forth on Schedule 3.8:

(a) Each of the Company and its Subsidiaries holds and is in compliance, in all material respects, with all material permits, certificates, licenses, approvals, registrations and authorizations that are required in connection with the ownership, operation and use of the Acquired Assets and Assumed Liabilities under applicable Laws (the "Permits"). All of the Permits are valid and in full force and effect.

(b) The Company and its Subsidiaries are, and have been during the prior two (2) years, in compliance, in all material respects, with all Laws applicable to the ownership, operation and use of the Acquired Assets, Assumed Liabilities and E-Commerce Business, and during the prior two (2) years neither the Company nor any of its Subsidiaries has received any written notice of any Action or proceeding against it alleging any failure to comply in any material respect with any such Laws, except in each case as would not reasonably be expected to be material to the E-Commerce Business or the ownership or operation of the Acquired Assets and Assumed Liabilities, taken as a whole. No investigation by any Governmental Body with respect to the Company's or any of its Subsidiaries' ownership, operation and use of the Acquired Assets, Assumed Liabilities and E-Commerce Business is pending or, to the Company's knowledge, threatened, and during the prior two (2) years neither the Company nor any of its Subsidiaries has received any written notice of any such investigation, except, in each case, for any such investigation that would not reasonably be expected to be material to the E-Commerce Business or the ownership or operation of the Acquired Assets and Assumed Liabilities taken as a whole.

3.9 Intellectual Property.

(a) Schedule 3.9(a) sets forth a correct and complete list of all copyright registrations, internet domain name registrations, social media account handles, Scheduled Patents, and Transferred Trademarks, in each case, included in the Transferred Intellectual Property. The Company or one or more of its Subsidiaries owns the Transferred Intellectual Property, free and clear of all Encumbrances, other than Permitted Encumbrances, and, to the knowledge of the Company, the material Transferred Trademarks are valid and enforceable.

(b) Except as set forth on Schedule 3.9(b), to the knowledge of the Company, neither the Company's nor any of its Subsidiaries' operation of the E-Commerce Business or the Acquired Assets infringes, misappropriates or otherwise violates any Intellectual Property of any

other Person, except where such infringement, misappropriation or violation is not material to the E-Commerce Business or the ownership or operation of the Acquired Assets and Assumed Liabilities, taken as a whole.

(c) Except as set forth on Schedule 3.9(c), to the knowledge of the Company, no third party infringes, misappropriates or otherwise violates any Transferred Intellectual Property, except where such infringement, misappropriation or violation is not material to the ownership or operation of the Acquired Assets and the Assumed Liabilities taken as a whole. The Company and its Subsidiaries have used efforts that are reasonable under the circumstances to maintain the secrecy of their material trade secrets included in the Acquired Assets, except where such failure to maintain such material trade secrets would not be material to the ownership or operation of the Acquired Assets and Assumed Liabilities taken as a whole.

(d) During the prior three (3) years, no claim by any third party contesting the validity or enforceability of any of the Transferred Intellectual Property has been made or threatened against the Company or any of its Subsidiaries, in each case in writing.

(e) Schedule 3.9(e) sets forth a correct and complete list of all Contracts pursuant to which any Seller (i) is granted any license to use any material Intellectual Property in connection with the E-Commerce Business (other than off-the-shelf, non-customized computer programs) or (ii) grants any Person a license under any Transferred Intellectual Property (other than non-exclusive licenses to suppliers, vendors and other service providers of Sellers entered into in the Ordinary Course).

(f) This Section 3.9 contains the sole and exclusive representations and warranties of the Company with respect to Intellectual Property.

3.10 Data Privacy. With respect to the E-Commerce Business, Acquired Assets and Assumed Liabilities, the Company and its Subsidiaries maintain commercially reasonable policies and procedures regarding data privacy, protection and security designed to protect any personally identifiable information from any individuals, including any customers, prospective customers, employees and/or other third parties collected by it. To the knowledge of the Company, the Company and its Subsidiaries and the conduct of their businesses, in each case with respect to the E-Commerce Business, Acquired Assets and Assumed Liabilities, are in compliance with, and at all times during the prior two (2) years have been in compliance with, all applicable Privacy Laws and their applicable published privacy policies, except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. The transactions contemplated by this Agreement will not result in a breach of the Company's published privacy policies in effect as of the date hereof. During the prior three (3) years, there have been no (i) material unauthorized intrusions or breaches of the security of the IT Systems (including any material successful ransomware attack) or (ii) material loss or breach of, or unauthorized access to, any data that relate to the E-Commerce Business. Sellers and their Affiliates have the right to use the Customer Data, including for marketing purposes, subject to the Customer Data Use Requirements. Following the Closing, Purchaser will have the right to use the Customer Data on the same terms Sellers and their Affiliates had the right to use the Customer Data immediately prior to Closing, including for marketing purposes, subject to the Customer Data Use Requirements. This Section 3.10, together

with Section 3.8(b), contains the sole and exclusive representations and warranties of the Company with respect to data privacy, protection, and security.

3.11 Brokers. Except as set forth on Schedule 3.11, there is no investment banker, broker, finder or other such intermediary that has been retained by, or has been authorized to act on behalf of, the Company or any of its Subsidiaries and is entitled to a fee or commission in connection with the transactions contemplated by this Agreement from the Company or any of its Subsidiaries.

3.12 Inventory. To the knowledge of the Company, the Acquired Inventory, taken as a whole, consists of a quality and quantity salable in the Ordinary Course in all material respects, except for obsolete, damaged or defective items that the Company has written off or written down to fair market value or for which adequate reserves have been established by the Company. None of the Acquired Inventory is held on a consignment basis.

3.13 Customer Data. Without limiting Section 1.1(e), as of February 1, 2020, the Customer Data included the following categories of data, each within a 15% range of above or less than the applicable numbers stated below: (a) 275,000 phone numbers of Persons who had agreed to be contacted by the Company or its Subsidiaries via email for marketing purposes; and (b) 2.7 million email addresses of Persons who had agreed to be contacted by the Company or its Subsidiaries via SMS or text message for marketing purposes, (i) 725,000 of which were provided by customers who had transacted with the Company or its Subsidiaries in the previous 12 months, (ii) 177,000 of which were attributable to customers who had transacted with the Company or its Subsidiaries in the previous 12 months via the E-Commerce Business only, (iii) 192,000 of which were attributable to customers who had transacted with the Company or its Subsidiaries in the previous 12 months via the E-Commerce Business and the Catherines brick-and-mortar retail stores, and (iv) 645,000 of which were attributable to customers who had transacted with the Company or its Subsidiaries in the previous 12 months via the Catherines brick-and-mortar retail stores only. The rate at which customers of the E-Commerce Business returned Inventory (including returns made to distribution centers and to stores) for the 12 month period ending February 1, 2020 was not materially more or less than approximately 15%.

## ARTICLE IV

### REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to the Company as follows as of the date hereof and as of the Closing Date.

4.1 Organization and Qualification. Purchaser (a) is an entity duly incorporated or organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization, as applicable, (b) has all requisite power and authority to own and operate its properties and to carry on its businesses as now conducted, and (c) is qualified to do business and is in good standing (or its equivalent) in every jurisdiction in which its ownership of property or the conduct of its business as now conducted requires it to qualify, except where the failure to be so qualified 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 hereby.

4.2 Authorization of Agreement. The execution, delivery and performance of this Agreement by Purchaser, and the consummation by Purchaser of the transactions contemplated hereby, have been duly and validly authorized by all requisite corporate or similar organizational action, and no other corporate or similar organizational proceedings on its part are necessary to authorize the execution, delivery or performance of this Agreement by Purchaser. This Agreement has been duly and validly executed and delivered by Purchaser, and, assuming this Agreement is a valid and binding obligation of Sellers, this Agreement constitutes a valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except as limited by the Enforceability Exceptions.

4.3 Conflicts; Consents.

(a) Except as set forth on Schedule 4.3(a) and assuming that the notices, authorizations, approvals, Orders, permits or consents set forth on Schedule 4.3(b) are made, given or obtained (as applicable), the execution, delivery and performance by Purchaser of this Agreement and the consummation by Purchaser of the transactions contemplated hereby, do not: (i) violate the certificate of formation, limited liability company agreement or equivalent organizational documents of Purchaser; (ii) violate any Law applicable to Purchaser or by which any property or asset of Purchaser is bound; or (iii) result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under, create in any party thereto the right to terminate or cancel, or require any consent under, or result in the creation or imposition of any Encumbrance on any property or asset of Purchaser under, any Contract; except, in each case, for any such violations, breaches, defaults or other occurrences that would not, individually or in the aggregate, reasonably be expected to prevent or materially delay the ability of Purchaser to consummate the transactions contemplated hereby.

(b) Except as set forth on Schedule 4.3(a), Purchaser is not required to file, seek or obtain any notice, authorization, approval, Order, permit or consent of or with any Governmental Body in connection with the execution, delivery and performance by Purchaser of this Agreement or the consummation by Purchaser of the transactions contemplated hereby, except (i) such filings as may be required by any applicable federal or state securities or "blue sky" Laws, or (ii) where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not, individually or in the aggregate, reasonably be expected to prevent or materially delay the ability of Purchaser to consummate the transactions contemplated hereby.

4.4 Financing. Purchaser has, and will have at the Closing, sufficient funds in an aggregate amount necessary to pay the Purchase Price, to perform the Assumed Liabilities as they become due in accordance with their terms and to consummate all of the other transactions contemplated by this Agreement, including the payment of the Purchase Price and all fees, expenses of, and other amounts required to be paid by, Purchaser in connection with the transactions contemplated by this Agreement. Purchaser is and shall be capable of satisfying the conditions contained in sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Assigned Contracts and the related Assumed Liabilities.

4.5 Brokers. There is no investment banker, broker, finder, or other intermediary which has been retained by or is authorized to act on behalf of Purchaser that might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

4.6 No Litigation. There are no Actions pending or, to Purchaser's knowledge, threatened against or affecting Purchaser that will adversely affect Purchaser's performance under this Agreement or the consummation of the transactions contemplated by this Agreement.

4.7 Certain Arrangements. As of the date hereof, there are no Contracts, undertakings, commitments, agreements or obligations, whether written or oral, between any member of the Purchaser Group, on the one hand, and any member of the management or board of directors (or applicable governing body) of the Company or its Subsidiaries, any holder of equity or debt securities of the Company or its Subsidiaries, or any lender or creditor of the Company or its Subsidiaries, on the other hand, (a) relating in any way to the acquisition of the Acquired Assets or the other transactions contemplated by this Agreement or (b) that would be reasonably likely to prevent, restrict, impede or affect adversely the ability of the Company to entertain, negotiate or participate in any such transactions.

4.8 Customer Data. Notwithstanding anything contained in this Agreement to the contrary, Purchaser further acknowledges and agrees that (a) the Customer Data transferred to Purchaser hereunder must be used in compliance with all applicable Laws and (b) except to the extent that Purchaser obtains, or receives notice from any Seller that a consumer has previously provided, any necessary consents, any Customer Data transferred to Purchaser hereunder must be used in compliance in all material respects with Seller's privacy policy (including the privacy policy update notification with respect to Customer Data collected prior to such notification) attached hereto as Schedule 4.8 (the requirements set forth in the foregoing (a) and (b), collectively, the "Customer Data Use Requirements").

4.9 No Additional Representations or Warranties. Except for the representations and warranties contained in this Article IV, each of Sellers acknowledges that neither Purchaser nor any other Person on behalf of Purchaser makes any other express or implied representation or warranty with respect to Purchaser or with respect to any other information provided to any Seller by Purchaser.

4.10 No Outside Reliance. Notwithstanding anything contained in this Article IV or any other provision of this Agreement to the contrary, Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that the representations and warranties made by Sellers to Purchaser in Article III (as qualified by the Schedules and in accordance with the express terms and conditions (including limitations and exclusions) of this Agreement) (the "Express Representations") are the sole and exclusive representations, warranties and statements of any kind made to Purchaser or any member of the Purchaser Group and on which Purchaser and the Purchaser Group may rely in connection with the transactions contemplated by this Agreement. Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that (other than solely to the extent expressly set forth in the Express Representations) all other representations, warranties and statements of any kind or nature expressed or implied, whether in written, electronic or oral form, including (a) with respect to the completeness or accuracy of, or any omission to state or to disclose, any information, including in the Projections, the confidential

information presentation prepared by Guggenheim Securities, LLC (the "Information Presentation"), in that certain datasite administered by Intralinks (the "Dataroom"), any Projections or in any meetings, calls or correspondence with management of the Company and its Subsidiaries or any other Person on behalf of the Company, its Subsidiaries or any of their respective Affiliates or Advisors and (b) the historical, current or future business, financial condition, results of operations, assets, liabilities, properties, contracts, or prospects of the Company or any of its Subsidiaries, or the quality, quantity or condition of the Company's or its Subsidiaries' assets, in each case, are specifically disclaimed by Sellers, and that neither Purchaser nor any member of the Purchaser Group has relied on any such representations, warranties or statements. Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that it has conducted to its full satisfaction an independent investigation and verification of the business, financial condition, results of operations, assets, liabilities, properties, contracts and prospects of the Company and its Subsidiaries, and, in making its determination to proceed with the transactions contemplated by this Agreement, Purchaser has relied solely on the results of the Purchaser Group's own independent investigation and verification, and has not relied on, is not relying on, and will not rely on, the Information Presentation, any Projections or any information, statements, disclosures, documents, projections, forecasts or other material made available to Purchaser or any of its Affiliates or Advisors in the Dataroom or otherwise, in each case, whether written or oral, made or provided by, or as part of, any of the foregoing or the Company, its Subsidiaries or any of their respective Affiliates or Advisors, or any failure of any of the foregoing to disclose or contain any information, except to the extent express set forth in the Express Representations (it being understood that Purchaser and the Purchaser Group have relied only on the Express Representations).

## ARTICLE V

### BANKRUPTCY COURT MATTERS

#### 5.1 Bankruptcy Actions.

(a) As promptly as practicable after the date hereof, but in any event no later than five (5) Business Days hereafter, the Company shall seek approval of the form of this Agreement and Sellers' authority to enter into this Agreement.

(b) If an Auction is conducted, and Purchaser is not the prevailing party at the conclusion of such Auction (such prevailing party, the "Successful Bidder") but is the next highest bidder at the Auction, Purchaser shall be required to serve as a back-up bidder (the "Backup Bidder") and keep Purchaser's bid to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be revised in the Auction) open and irrevocable until this Agreement is otherwise terminated. If the Successful Bidder fails to consummate the applicable Alternative Transaction, the Backup Bidder will be deemed to have the new prevailing bid, and the Company may consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement as such terms may have been improved upon in the Auction. For the avoidance of doubt, nothing herein shall bind Purchaser to serve as the Successful Bidder or the Backup Bidder beyond the Outside Date.

(c) The Company and Purchaser acknowledge that this Agreement and the sale of the Acquired Assets are subject to higher and better bids and Bankruptcy Court approval. The Company and Purchaser acknowledge that Sellers must take reasonable steps to demonstrate that they have sought to obtain the highest or otherwise best price for the Acquired Assets, including giving notice thereof to the creditors of Sellers and other interested parties, providing information about the Company to prospective bidders, entertaining higher and better offers from such prospective bidders, and, in the event that additional qualified prospective bidders desire to bid for the Acquired Assets, conducting an Auction. The bidding procedures to be employed with respect to this Agreement and any Auction shall be those approved in the Bidding Procedures Order.

(d) Notwithstanding any other provision of this Agreement to the contrary, Purchaser acknowledges that Sellers and their Affiliates and Advisors are and may continue soliciting inquiries, proposals, or offers for the Acquired Assets in connection with any Alternative Transaction.

(e) Purchaser shall provide adequate assurance of future performance as required under section 365 of the Bankruptcy Code for the Assigned Contracts. Purchaser agrees that it will take all actions reasonably required to assist in obtaining a Bankruptcy Court finding that there has been an adequate demonstration of adequate assurance of future performance under the Assigned Contracts, such as furnishing affidavits, non-confidential financial information, and other documents or information for filing with the Bankruptcy Court and making Purchaser's Advisors available to testify before the Bankruptcy Court.

(f) Nothing in this Section 5.1 shall prevent Sellers from modifying the bidding procedures as necessary or appropriate to maximize value for Sellers' estates in accordance with each Seller's fiduciary obligations; provided, however, that this Section 5.1(f) shall not be construed as a waiver of Purchaser's right to terminate this Agreement in accordance with Section 8.1.

5.2 Cure Costs. Subject to entry of the Sale Order, Purchaser shall, on or prior to the Closing (or, in the case of any Contract that is to be assigned following the Closing pursuant to Section 1.5, on or prior to the date of such assignment), pay the Cure Costs and cure any and all other defaults and breaches under the Transferred Contracts so that such Contracts may be assumed by the applicable Seller and assigned to Purchaser in accordance with the provisions of section 365 of the Bankruptcy Code and this Agreement.

5.3 The Sale Order. The Sale Order shall, among other things, (a) approve, pursuant to sections 105, 363, and 365 of the Bankruptcy Code, (i) the execution, delivery and performance by Sellers of this Agreement, (ii) the sale of the Acquired Assets to Purchaser on the terms set forth herein and free and clear of all Encumbrances (other than Encumbrances included in the Assumed Liabilities and Permitted Encumbrances), and (iii) the performance by Sellers of their respective obligations under this Agreement; (b) authorize and empower Sellers to assume and assign to Purchaser the Assigned Contracts; (c) find that Purchaser is a "good faith" buyer within the meaning of section 363(m) of the Bankruptcy Code, find that Purchaser is not a successor to any Seller, and grant Purchaser the protections of section 363(m) of the Bankruptcy Code; (d) find that Purchaser shall have no Liability or responsibility for any Liability or other obligation of any Seller arising under or related to the Acquired Assets other than as expressly set forth in this Agreement, including successor or vicarious Liabilities of any kind or character, including any

theory of antitrust, successor, or transferee Liability, labor law, de facto merger, or substantial continuity; (e) find that Purchaser has provided adequate assurance (as that term is used in section 365 of the Bankruptcy Code) of future performance in connection with the assumption of the Assigned Contracts; and (f) find that Purchaser shall have no Liability for any Excluded Liability. Purchaser agrees that it will promptly take such actions as are reasonably requested by the Company to assist in obtaining Bankruptcy Court approval of the Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of (x) demonstrating that Purchaser is a “good faith” purchaser under section 363(m) of the Bankruptcy Code and (y) establishing adequate assurance of future performance within the meaning of section 365 of the Bankruptcy Code.

5.4 Approval. Sellers’ obligations under this Agreement and in connection with the transactions contemplated hereby are subject to entry of and, to the extent entered, the terms of any Orders of the Bankruptcy Court (including entry of the Sale Order). Nothing in this Agreement shall require the Company or its Affiliates to give testimony to or submit a motion to the Bankruptcy Court that is untruthful or to violate any duty of candor or other fiduciary duty to the Bankruptcy Court or its stakeholders.

## ARTICLE VI

### COVENANTS AND AGREEMENTS

6.1 Conduct of Business of Sellers. Until the earlier of the termination of this Agreement and the Closing, except (v) for any limitations on operations imposed by the Bankruptcy Court or the Bankruptcy Code or the Sellers’ debtor-in-possession financing, (w) as required by applicable Law, (x) as otherwise required by or reasonably necessary to carry out the terms of this Agreement or as set forth on Schedule 6.1, (y) actions taken in good faith business judgement in response to the “coronavirus” or “COVID-19” and any Laws or government action taken in connection therewith or (z) with the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed), the Sellers shall conduct their business with respect to the ownership, operation and use of the Acquired Assets and Assumed Liabilities only in the Ordinary Course and shall not:

(a) terminate (other than by expiration), or amend or modify (other than by automatic extension or renewal) in any material respect the terms of any Assigned Contract (other than any purchase orders);

(b) settle or compromise any pending or threatened Action that would reasonably be expected to give rise to Liabilities that are not Excluded Liabilities;

(c) sell, assign, license, abandon, let lapse, transfer, convey, lease, surrender, relinquish or otherwise dispose of any material portion of the Acquired Assets, other than (i) sales of Inventory in the Ordinary Course, (ii) licenses of Intellectual Property granted on a non-exclusive basis in the Ordinary Course, or (iii) pursuant to existing Contracts;

(d) subject any material portion of the Acquired Assets, taken as a whole, to any Encumbrance, except for Permitted Encumbrances;

(e) authorize any of, or commit or agree, in writing or otherwise, to take any of, the foregoing actions.

Nothing contained in this Agreement is intended to give Purchaser or its Affiliates, directly or indirectly, the right to control or direct the business of the Sellers prior to the Closing.

6.2 Access to Information.

(a) From the date hereof until the Closing (or the earlier termination of this Agreement pursuant to Article VIII), the Company (in its discretion) will provide Purchaser and its authorized Advisors with reasonable access and upon reasonable advance notice and during regular business hours to the books and records of the Company and its Subsidiaries with respect to the ownership, operation and use of the Acquired Assets and Assumed Liabilities, in order for Purchaser and its authorized Advisors to access such information regarding the Acquired Assets and Assumed Liabilities as Purchaser reasonably deems necessary in connection with effectuating the transactions contemplated by this Agreement, including such information regarding the attributes and structure of data maintained by the Sellers with respect to the E-Commerce Business as Purchaser shall reasonably request in writing in order to establish its own platform from which to operate the E-Commerce Business in the manner in which it is operated by the Sellers; provided that (i) such access does not unreasonably interfere with the normal operations of the Company and its Subsidiaries, (ii) such access will occur in such a manner as the Company reasonably determines to be appropriate to protect the confidentiality of the transactions contemplated by this Agreement, (iii) all requests for access will be directed to Michael Gottlieb or such other Person(s) as the Company may designate in writing from time to time and (iv) nothing herein will require the Company to provide access to, or to disclose any information to, Purchaser if such access or disclosure (A) would cause significant competitive harm to the Company or any of its Subsidiaries if the transactions contemplated by this Agreement are not consummated, (B) would require the Company or any of its Subsidiaries to disclose any financial or proprietary information of or regarding the Affiliates of the Company (other than the Subsidiaries of the Company) or otherwise disclose information regarding the Affiliates of the Company (other than the Subsidiaries of the Company) that the Company deems to be commercially sensitive, (C) would waive any legal privilege or (D) would be in violation of applicable Laws or the provisions of any agreement to which the Company or any of its Subsidiaries is bound or would violate any fiduciary duty; provided that, in the event that the Company withholds access or information in reliance on the foregoing clause (C) or (D), the Company shall provide (to the extent possible without waiving or violating the applicable legal privilege or Law) notice to Purchaser that such access or information is being so withheld and shall use commercially reasonable efforts to provide such access or information in a way that would not risk waiver of such legal privilege or applicable Law.

(b) From the date hereof until the Closing, the Company will provide reasonable assistance to Purchaser with respect to contacting the Company's existing stock vendors to enable Purchaser to build a direct relationship with such vendors in furtherance of potential future orders. Such assistance shall be requested upon reasonable advance notice and during regular business hours and (i) such assistance shall not unreasonably interfere with the normal operations of the Company and its Subsidiaries, (ii) such assistance will occur in such a manner as the Company reasonably determines to be appropriate to protect the confidentiality of the transactions contemplated by this Agreement, (iii) all requests for such assistance will be directed to Michael

Gottlieb or such other Person(s) as the Company may designate in writing from time to time and (iv) nothing herein will require the Company to provide assistance to, or to disclose any information to, Purchaser if such assistance or disclosure (A) would cause significant competitive harm to the Company or any of its Subsidiaries if the transactions contemplated by this Agreement are not consummated, (B) would require the Company or any of its Subsidiaries to disclose any financial or proprietary information of or regarding the Affiliates of the Company (other than the Subsidiaries of the Company) or otherwise disclose information regarding the Affiliates of the Company (other than the Subsidiaries of the Company) that the Company deems to be commercially sensitive, (C) would waive any legal privilege or (D) would be in violation of applicable Laws or the provisions of any agreement to which the Company or any of its Subsidiaries is bound or would violate any fiduciary duty; provided that, in the event that the Company withholds assistance or information in reliance on the foregoing clause (C) or (D), the Company shall provide (to the extent possible without waiving or violating the applicable legal privilege or Law) notice to Purchaser that such assistance or information is being so withheld and shall use commercially reasonable efforts to provide such access or information in a way that would not risk waiver of such legal privilege or applicable Law.

(c) In the event Purchaser is the Successful Bidder at the Auction, Sellers shall, from the conclusion of the Auction through the Closing Date, use reasonable best efforts to reasonably cooperate with Purchaser in its preparation in order to minimize the services to be provided under the Transition Services Agreement, including preparation for moving the Acquired Inventory out of Sellers' distribution center and preparation for transfer of the Documents and Customer Data upon the Closing.

(d) The information provided pursuant to this Section 6.2 will be used solely for the purpose of effecting the transactions contemplated hereby, and will be governed by all the terms and conditions of the Confidentiality Agreement, which Confidentiality Agreement shall not terminate upon the execution of this Agreement notwithstanding anything to the contrary therein. Purchaser will, and will cause its Advisors to, abide by the terms of the Confidentiality Agreement with respect to such access and any information furnished to Purchaser or any of its Advisors. Neither the Company nor any of Sellers makes any representation or warranty as to the accuracy of any information, if any, provided pursuant to this Section 6.2, and Purchaser may not rely on the accuracy of any such information, in each case, other than the Express Representations.

(e) From and after the Closing for a period of three (3) years following the Closing Date (or, if later, the closing of the Bankruptcy Case), Purchaser will provide Sellers and their Advisors with reasonable access, during normal business hours, and upon reasonable advance notice, to the books and records, including work papers, schedules, memoranda, Tax Returns, Tax schedules, Tax rulings, and other documents (for the purpose of examining and copying) relating to the Acquired Assets, the Excluded Assets, the Assumed Liabilities or the Excluded Liabilities with respect to periods or occurrences prior to the Closing Date, and reasonable access, during normal business hours, and upon reasonable advance notice, to employees, officers, Advisors, accountants, offices and properties of Purchaser (including for the purpose of better understanding the books and records). Unless otherwise consented to in writing by the Company, Purchaser will not, for a period of three (3) years following the Closing Date, destroy, alter or otherwise dispose of any of the books and records without first offering to surrender to the Company such books and records or any portion thereof that Purchaser may intend to destroy, alter or dispose of. From and

after the Closing, Purchaser will, and will cause its employees to, provide Sellers with reasonable assistance, support and cooperation with Sellers' wind-down and related activities (e.g., helping to locate documents or information related to preparation of Tax Returns or prosecution or processing of insurance claims).

(f) Purchaser will not, and will not permit any member of the Purchaser Group to, contact any officer, manager, director, employee, customer, supplier, lessee, lessor, lender, licensee, licensor, distributor, noteholder or other material business relation of the Company or its Subsidiaries prior to the Closing with respect to the Company, its Subsidiaries, their business or the transactions contemplated by this Agreement without the prior written consent of the Company for each such contact, which consent shall not be unreasonably withheld.

### 6.3 Regulatory Approvals.

(a) The Company will (i) make or cause to be made all filings and submissions required to be made by the Company or its Subsidiaries under any applicable Laws for the consummation of the transactions contemplated by this Agreement set forth on Schedule 6.3, (ii) cooperate with Purchaser in exchanging such information and providing such assistance as Purchaser may reasonably request in connection with the foregoing and (iii) (A) supply promptly any additional information and documentary material that may be requested in connection with such filings and (B) use reasonable best efforts to take all actions necessary to obtain all required clearances in connection with such filings.

(b) The Purchaser will, and will cause its Affiliates and Advisors to, (i) make or cause to be made all filings and submissions required to be made by any member of the Purchaser Group under any applicable Laws for the consummation of the transactions contemplated by this Agreement, (ii) cooperate with the Company in exchanging such information and providing such assistance as the Company may reasonably request in connection with all of the foregoing, and (iii) (A) supply promptly any additional information and documentary material that may be requested in connection with such filings and (B) use reasonable best efforts to take all actions necessary to obtain all required clearances.

### 6.4 Reasonable Efforts; Cooperation.

(a) Subject to the other terms of this Agreement provisions hereof, each Party shall, and shall cause its Advisors to, use its reasonable best efforts to perform its obligations hereunder and to take, or cause to be taken, and do, or cause to be done, all things necessary, proper, advisable or permitted under applicable Law to cause the transactions contemplated herein to be effected as soon as practicable, but in any event on or prior to the Outside Date, in accordance with the terms hereof and to cooperate with each other Party and its Advisors in connection with any step required to be taken as a part of its obligations hereunder. The "reasonable best efforts" of the Company will not require the Company or any of its Subsidiaries, Affiliates or Advisors to expend any money, to remedy any breach of any representation or warranty, to commence any Action, to waive or surrender any right, to modify any Contract or to waive or forego any right, remedy or condition hereunder.



(b) The obligations of the Company pursuant to this Agreement, including this Section 6.4, shall be subject to any Orders entered, or approvals or authorizations granted or required, by or under the Bankruptcy Court or the Bankruptcy Code (including in connection with the Bankruptcy Case), the Sellers' debtor-in-possession financing, and each of Sellers' obligations as a debtor-in-possession to comply with any Order of the Bankruptcy Court (including the Bidding Procedures Order and the Sale Order) and Sellers' duty to seek and obtain the highest or otherwise best price for the Acquired Assets as required by the Bankruptcy Code.

#### 6.5 Notification of Certain Matters.

(a) The Company will promptly notify Purchaser of: (i) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement; (ii) any notice or other communication from any Governmental Body related to or in connection with the transactions contemplated by this Agreement; and (iii) promptly upon discovery thereof, any variances from, or the existence or occurrence of any event, fact or circumstance arising after the execution of this Agreement that would reasonably be expected to cause, any of the representations and warranties contained in Article III to be untrue or inaccurate such that the condition set forth in Section 7.2(b) not to be satisfied. If the subject matter of any such notification required by the previous sentence requires any change in the Schedules, the Company shall deliver to Purchaser prior to the Closing a supplement to such Schedule (the "Updated Schedules") with such change; provided that in no event will any Updated Schedule serve to amend, supplement or modify the Schedules for purposes of Section 7.2(b); provided further that if the Closing occurs, the Updated Schedules will be considered and deemed to be part of the Schedules for all purposes under this Agreement, and each reference in this Agreement to a particular Schedule will mean such Schedule in, or as updated by, the Updated Schedules.

(b) Purchaser will promptly notify the Company of: (i) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement; (ii) any notice or other communication from any Governmental Body related to or in connection with the transactions contemplated by this Agreement; (iii) any Actions relating to or involving or otherwise affecting Purchaser or its Affiliates that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 4.6 or that relate to the transactions contemplated by this Agreement; and (iv) any breach or inaccuracy of any representation or warranty contained in this Agreement at any time during the term hereof that could reasonably be expected to cause the conditions set forth in Article VII not to be satisfied; provided that the delivery of any notice pursuant to this Section 6.5(a) will not limit the remedies available to Sellers under or with respect to this Agreement.

6.6 Licenses to Intellectual Property. Sellers agree to provide Purchaser with reasonable assistance and cooperation necessary to (i) identify any Contracts pursuant to which any Seller received a license to use any Intellectual Property that is used or has been used by any Seller in connection with the E-Commerce Business (other than any such license to third party software), as well as any images licensed thereunder, and (ii) to the extent permitted, assign such *Contracts that are used exclusively in the E-Commerce Business or with respect to the Catherines brick-and-mortar retail stores* to Purchaser.

6.7 Further Assurances. From time to time from and after Closing, as and when requested by any Party and at such requesting Party's expense, any other Party will execute and deliver, or cause to be executed and delivered, all such documents and instruments and take, or cause to be taken, all such further or other actions (including, for the avoidance of doubt, with respect to the Sellers, taking all steps reasonably requested by Purchaser to deliver the Acquired Assets to or as directed by Purchaser) as such requesting Party may reasonably deem necessary or desirable to evidence and effectuate the transactions contemplated by this Agreement, including (i) executing assignment agreements in respect of Trademarks registered or applied-for outside of the United States as necessary to record a change of ownership with the applicable foreign office and (ii) delivering to Purchaser as promptly as reasonably practicable after (but in any event at or prior to the date that is 30 days after) the Closing data files containing all IP Embodiments, Documents and data included in the Acquired Assets, including Customer Data, that are not required to be transferred to Purchaser at or prior to the Closing in accordance with Section 2.5(g).

6.8 Insurance Matters. Purchaser acknowledges that, upon Closing, all nontransferable insurance coverage provided in relation to Sellers and the Acquired Assets that is maintained by any Seller or its Affiliates (whether such policies are maintained with third party insurers or with such Seller or its Affiliates) shall cease to provide any coverage to Purchaser and the Acquired Assets and no further coverage shall be available to Purchaser or the Acquired Assets under any such policies.

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

6.10 Acknowledgment by Purchaser.

(a) Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that it has conducted to its full satisfaction an independent investigation and verification of the business, financial condition, results of operations, assets, Liabilities, properties, Contracts and prospects of the Company and its Subsidiaries and the Acquired Assets and the Assumed Liabilities, and, in making its determination to proceed with the transactions contemplated by this Agreement, Purchaser and the Purchaser Group have relied solely on the results of the Purchaser Group's own independent investigation and verification and have not relied on, are not relying on, and will not rely on, any information, statements, disclosures, documents, projections, forecasts or other material made available to Purchaser or any of its Affiliates or Advisors in the Dataroom, the Information Presentation, or the Projections or any information, statements, disclosures or materials, in each case, whether written or oral, made or provided by, or as part of, any of the foregoing or any other Seller Party, or any failure of any of the foregoing to disclose or

contain any information, except to the extent expressly set forth in the Express Representations (it being understood that Purchaser and the Purchaser Group have relied only on the Express Representations). Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that (i) the Express Representations are the sole and exclusive representations, warranties and statements of any kind made to Purchaser or any member of the Purchaser Group and on which Purchaser or any member of the Purchaser Group may rely in connection with the transactions contemplated by this Agreement; and (ii) (other than solely to the extent expressly set forth in the Express Representations) all other representations, warranties and statements of any kind or nature expressed or implied, whether in written, electronic or oral form, including (1) with respect to the completeness or accuracy of, or any omission to state or to disclose, any information including in the Dataroom, Information Presentation, Projections, meetings, calls or correspondence with management of the Company and its Subsidiaries, any of the Seller Parties or any other Person on behalf of the Company, its Subsidiaries or any of the Seller Parties or any of their respective Affiliates or Advisors and (2) the historical, current or future business, financial condition, results of operations, assets, Liabilities, properties, contracts, or prospects of the Company or any of its Subsidiaries, or the quality, quantity or condition of the Company's or its Subsidiaries' assets, in each case, are specifically disclaimed by the Company, on its behalf and on behalf of the Seller Parties, and each Seller. Purchaser, on its own behalf and on behalf of the Purchaser Group: (x) disclaims reliance on the items in clause (ii) in the immediately preceding sentence and (y) acknowledges and agrees that it has relied on, is relying on and will rely on only the items in clause (i) in the immediately preceding sentence. Without limiting the generality of the foregoing, Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that neither the Company, nor any other Person (including the Seller Parties), has made, is making or is authorized to make, and Purchaser, on its own behalf and on behalf of the Purchaser Group, hereby waives, all rights and claims it or they may have against any Seller Party with respect to the accuracy of, any omission or concealment of, or any misstatement with respect to, (A) any potentially material information regarding the Company, its Subsidiaries or any of their respective assets (including the Acquired Assets), Liabilities (including the Assumed Liabilities) or operations and (B) any warranty or representation (whether in written, electronic or oral form), express or implied, as to the quality, merchantability, fitness for a particular purpose, or condition of the Company's or its Subsidiaries' business, operations, assets, Liabilities, prospects or any portion thereof, except, in each case, solely to the extent expressly set forth in the Express Representations.

(b) Without limiting the generality of the foregoing, in connection with the investigation by the Purchaser Group of the Company and its Subsidiaries, Purchaser and the members of the Purchaser Group, and the Advisors of each of the foregoing, have received or may receive, from or on behalf of the Company, certain projections, forward-looking statements and other forecasts (whether in written, electronic, or oral form, and including in the Information Presentation, Dataroom, management meetings, etc.) (collectively, "Projections"). Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that (i) such Projections are being provided solely for the convenience of Purchaser to facilitate its own independent investigation of the Company and its Subsidiaries, (ii) there are uncertainties inherent in attempting to make such Projections, (iii) Purchaser is familiar with such uncertainties, and (iv) Purchaser is taking full responsibility for making their own evaluation of the adequacy and accuracy of all Projections (including the reasonableness of the assumptions underlying such Projections).

(c) Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that it will not assert, institute, or maintain, and will cause each member of the Purchaser Group not to assert, institute or maintain, any Action that makes any claim contrary to the agreements and covenants set forth in this Section 6.10, including any such Action with respect to the distribution to Purchaser or any member of the Purchaser Group, or Purchaser's or any member of the Purchaser Group's use, of the information, statements, disclosures or materials in the Information Presentation, the Dataroom or Projections or any other information, statements, disclosures, or materials, in each case whether written or oral, provided by them or any other Seller Party or any failure of any of the foregoing to disclose any information.

(d) Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that the covenants and agreements contained in this Section 6.10 (i) require performance after the Closing to the maximum extent permitted by applicable Law and will survive the Closing for five (5) years; and (ii) are an integral part of the transactions contemplated by this Agreement and that, without these agreements set forth in this Section 6.10, Sellers would not enter into this Agreement.

6.11 Use of Customer Data after Closing. From and after the Closing Date, Purchaser shall at all times use the Customer Data transferred to Purchaser hereunder in compliance in all material respects with the Customer Data Use Requirements, and Purchaser shall defend, indemnify and hold harmless Sellers and their Affiliates, from and against any and all losses, liabilities, costs and expenses (including reasonable attorneys' fees) to the extent arising out of any breach of this Section 6.11.

6.12 Wind Down License. From and after the Closing Date, Purchaser hereby grants to each Seller and its Affiliates a non-exclusive, royalty-free, fully paid-up, worldwide, irrevocable right and license (with the right to sublicense in the ordinary course of business), under the Transferred Intellectual Property (other than Trademarks), to use, copy, modify, create derivative works of, or display such Transferred Intellectual Property in connection with the administration of the Bankruptcy Case, until the later of (a) the entry of an Order closing the Bankruptcy Case and (b) the closing of all brick-and-mortar retail stores operated under or with respect to a Transferred Trademark; provided, however, that in no event shall such license be provided for a period of time exceeding two (2) months after the Closing Date. In addition to the foregoing, Sellers may continue to use the Transferred Trademarks and, subject to Sellers' compliance with the Customer Data Use Requirements, Customer Data following the Closing (i) for billing and collections purposes in connection with the wind down of Sellers' private label consumer credit and debit cards until such wind down is completed, (ii) in connection with the administration of the Bankruptcy Case until the later of (x) the entry of an Order closing the Bankruptcy Case and (y) the closing of all brick-and-mortar retail stores operated under or with respect to a Transferred Trademark, and (iii) as required by applicable Law; in each case of the foregoing (i)-(iii) with respect to the Transferred Trademarks, solely in a descriptive manner as necessary to accurately refer to Sellers, including accurately stating the historical relationship between Sellers and the E-Commerce Business. For the avoidance of doubt, nothing in this Agreement shall prohibit or otherwise restrict the Company and its Affiliates from winding down their respective operations and affairs or dissolving their respective business entities following the Closing Date.

6.13 Non-Solicitation.

(a) From the Closing Date until the first (1st) anniversary of the Closing Date (the "Restricted Period"), without the prior written consent of the Company, the Purchaser shall not (and shall cause each of its Affiliates not to) directly or indirectly through another Person, (i) induce or attempt to induce any employee or individual independent contractor of the Company or any of its Affiliates (each, an "Employee") to leave the employment or services of the Company or any such Affiliate or (ii) hire any person who was an Employee at any time during the twelve (12) month period immediately prior to the date on which such hiring would take place; provided that nothing herein shall prohibit the Purchaser from (x) soliciting, employing or otherwise engaging any Employee (A) after his or her employment or engagement to provide services is terminated by the Company or such Affiliate or (B) whose services as an Employee are primarily or all or substantially all dedicated to the E-Commerce Business, the Catherines brick-and-mortar retail business or the "Catherines" brand or (y) placing general advertisements that are not specifically targeted toward any Employee.

(b) If any court of competent jurisdiction holds that the duration or scope of any of the restrictions set forth in Section 6.13(a) are unreasonable under applicable circumstances, the Parties agree that the maximum duration or scope under such circumstances shall be substituted for the stated duration or scope, and such court shall be allowed and directed to revise such restrictions contained herein to cover the maximum period, scope and area permitted by Law. Each of the Parties has consulted with legal counsel regarding the terms of Section 6.13(a) and based on such consultation has determined and hereby acknowledges that such terms are reasonable in terms of duration and scope and are necessary to protect the goodwill of the Company's and its Subsidiaries' ongoing businesses.

(c) Without limitation on Section 10.12, if Purchaser breaches, or threatens to commit a breach of, any of the terms of Section 6.13(a), the Company shall have the right and remedy (in addition to and not in lieu of any other rights and remedies available to such Parties at law or in equity) to require the Purchaser to have the terms of Section 6.13(a) specifically enforced by any court of competent jurisdiction, it being agreed that any breach or threatened breach of Section 6.13(a) would cause irreparable injury to the Company and that money damages would not provide an adequate remedy to the Company.

## ARTICLE VII

### CONDITIONS TO CLOSING

7.1 Conditions Precedent to the Obligations of Purchaser and Sellers. The respective obligations of each Party to this Agreement to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or to the extent permitted by Law, written waiver by each of Sellers and Purchaser) on or prior to the Closing Date, of each of the following conditions:

(a) no court or other Governmental Body has issued, enacted, entered, promulgated or enforced any Law or Order (that has not been vacated, withdrawn or overturned) restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement;

(b) the Bankruptcy Court shall have entered the Sale Order; and

(c) Sellers shall have completed an Inventory taking in order to prepare and deliver the Estimated Inventory Statement to Purchaser.

7.2 Conditions Precedent to the Obligations of Purchaser. The obligations of Purchaser to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or to the extent permitted by Law, written waiver by Purchaser in its sole discretion), on or prior to the Closing Date, of each of the following conditions:

(a) Sellers shall have delivered to Purchaser a certified copy of the Sale Order;

(b) the representations and warranties made by Sellers in Article III shall be true and correct as of the Closing Date (disregarding all qualifications or limitations as to “materiality” or “Material Adverse Effect” and words of similar import set forth therein), as though such representations and warranties had been made on and as of the Closing Date (except that representations and warranties that are made as of a specified date need be true and correct only as of such date), except where the failure of such representations and warranties to be true and correct has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; provided that the representations set forth in Sections 3.1, 3.2, and 3.11 will be true and correct in all material respects;

(c) Sellers shall have performed or caused to be performed, in all material respects, all of the obligations and covenants required by this Agreement to be performed by Sellers by the Closing; and

(d) Sellers shall have delivered, or caused to be delivered, to Purchaser all of the items set forth in Section 2.5.

7.3 Conditions Precedent to the Obligations of the Company. The obligations of Sellers to consummate the transactions contemplated by this Agreement are subject to the satisfaction (or to the extent permitted by Law, written waiver by Sellers in their sole discretion), on or prior to the Closing Date, of each of the following conditions:

(a) the representations and warranties made by Purchaser in Article IV shall be true and correct in all material respects (without giving effect to any materiality or similar qualification contained therein), in each case as of the date hereof and as of the Closing Date, with the same force and effect as though all such representations and warranties had been made as of the Closing Date (other than representations and warranties that by their terms address matters only as of another specified date, which shall be so true and correct only as of such other specified 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 hereby;

(b) Purchaser shall have performed or caused to be performed, in all material respects, all of the obligations and covenants required by this Agreement to be performed by Purchaser by the Closing; and

(c) Purchaser shall have delivered, or caused to be delivered, to Sellers all of the items set forth in Section 2.6.

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

## ARTICLE VIII

### TERMINATION

8.1 Termination of Agreement. This Agreement may be terminated only in accordance with this Section 8.1. This Agreement may be terminated at any time prior to the Closing:

- (a) by the mutual written consent of the Company and Purchaser;
- (b) by written notice of either Purchaser or the Company, upon the issuance by any Governmental Body of an Order restraining, enjoining, or otherwise prohibiting the consummation of the transactions contemplated by this Agreement or declaring unlawful the transactions contemplated by this Agreement, and such Order having become final, binding and non-appealable; provided that no termination may be made by a Party under this Section 8.1(b) if the issuance of such Order was caused by the breach or action or inaction of such Party;
- (c) by written notice of either Purchaser or the Company, if the Closing shall not have occurred on or before October 15, 2020 (the "Outside Date"); provided that a Party shall not be permitted to terminate this Agreement pursuant to this Section 8.1(c) if the failure of the Closing to have occurred by the Outside Date was caused by the breach or action or inaction of such Party;
- (d) by written notice of either Purchaser or the Company, if the Bankruptcy Case is dismissed or converted to a case or cases under Chapter 7 of the Bankruptcy Code, or if a trustee or examiner with expanded powers to operate or manage the financial affairs or reorganization of the Company is appointed in the Bankruptcy Case;
- (e) by written notice from Purchaser to the Company, if Sellers announce any stand-alone plan of reorganization or liquidation (or support any such plan filed by any other party), other than a wind-down plan of Sellers' estates post-Closing;
- (f) by written notice from Purchaser to the Company delivered within one (1) Business Day after delivery of the Estimated Inventory Statement, if the Estimated Acquired Inventory Amount set forth on the Estimated Inventory Statement is less than \$4,000,000;
- (g) by written notice from the Company to Purchaser, upon a breach of any covenant or agreement on the part of Purchaser, or if any representation or warranty of Purchaser will have become untrue, in each case, such that the conditions set forth in Section 7.3(a) or 7.3(b) would not be satisfied, including a breach of Purchaser's obligation to consummate the Closing; provided that (i) if such breach is curable by Purchaser then the Company may not terminate this Agreement under this Section 8.1(e) unless such breach has not been cured by the date which is the

earlier of (A) two (2) Business Days prior to the Outside Date and (B) thirty (30) days after the Company notifies Purchaser of such breach and (ii) the right to terminate this Agreement pursuant to this Section 8.1(e) will not be available to the Company at any time that the Company is in material breach of, any covenant, representation or warranty hereunder;

(h) by written notice from Purchaser to the Company, upon a breach of any covenant or agreement on the part of any Seller, or if any representation or warranty of any Seller will have become untrue, in each case, such that the conditions set forth in Section 7.2(b) or 7.2(c); provided that (i) if such breach is curable by such Seller then Purchaser may not terminate this Agreement under this Section 8.1(h) unless such breach has not been cured by the date which is the earlier of (A) two (2) Business Days prior to the Outside Date and (B) thirty (30) days after Purchaser notifies the Company of such breach and (ii) the right to terminate this Agreement pursuant to this Section 8.1(h) will not be available to Purchaser at any time that Purchaser is in material breach of, any covenant, representation or warranty hereunder;

(i) by written notice from the Company to Purchaser, if all of the conditions set forth in Sections 7.1 and 7.2 have been satisfied (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions at the Closing) or waived and Purchaser fails to complete the Closing at the time required by Section 2.2(e);

(j) by written notice from the Company to Purchaser, if any Seller or the board of directors (or similar governing body) of any Seller determines that proceeding with the transactions contemplated by this Agreement or failing to terminate this Agreement would be inconsistent with its or such Person's or body's fiduciary duties;

(k) by written notice of either Purchaser or the Company, if (i) any Seller enters into one or more Alternative Transactions with one or more Persons other than Purchaser or the Successful Bidder or the Backup Bidder at the Auction or (ii) the Bankruptcy Court approves an Alternative Transaction other than with the Successful Bidder or the Backup Bidder; or

(l) by written notice from Purchaser to the Company, if Purchaser is not the Successful Bidder or the Backup Bidder at the Auction.

8.2 Effect of Termination. In the event of termination of this Agreement pursuant to Section 8.1, this Agreement shall forthwith become void and there shall be no liability on the part of any Party or any of its partners, officers, directors or shareholders; provided that Section 2.2, Section 1.1, this Section 8.2 and Article X shall survive any such termination; provided further that no termination will relieve either Party from any Liability for damages (including damages based on the loss of the economic benefits of the transactions contemplated by this Agreement, including receipt of the Cash Purchase Price, to Sellers), losses, costs, or expenses (including reasonable legal fees and expenses) resulting from any willful breach of this Agreement prior to the date of such termination (which, for the avoidance of doubt, will be deemed to include any failure by Purchaser to consummate the Closing if and when it is obligated to do so hereunder).



## ARTICLE IX

### TAXES

9.1 Transfer Taxes. Any sales, use, purchase, transfer, franchise, deed, fixed asset, stamp, documentary stamp, use, or other Taxes and recording charges payable by reason of the sale of the Acquired Assets or the assumption of the Assumed Liabilities under this Agreement or the transactions contemplated hereby (the "Transfer Taxes") shall be borne and timely paid by Purchaser, and Purchaser shall timely file all Tax Returns related to any Transfer Taxes. Sellers and Purchaser shall use commercially reasonable efforts and cooperate in good faith to exempt all such transactions from any Transfer Taxes.

9.2 Allocation of Purchase Price. For U.S. federal and applicable state and local income Tax purposes, Purchaser, Sellers, and their respective Affiliates shall allocate the Purchase Price (and any Assumed Liabilities or other items treated as part of the purchase price for applicable income Tax purposes) among the Acquired Assets in accordance with the methodology set forth in Schedule 9.2 (the "Allocation Methodology"). As soon as commercially practicable, but no later than sixty (60) days following the determination of the final Purchase Price, Purchaser shall provide a proposed allocation to Sellers setting forth the allocation of the Purchase Price (and other amounts treated as Purchase Price for U.S. federal income Tax purposes) among the Acquired Assets in accordance with the Allocation Methodology (the "Allocation"). If Sellers deliver a written objection within thirty (30) days after receipt of the draft Allocation proposed by Purchaser, then Purchaser and Sellers shall negotiate in good faith to resolve any such objection, and, if Sellers and Purchaser cannot resolve such dispute within thirty (30) days of Purchaser's receipt of Sellers' objection, then a nationally recognized accounting firm mutually acceptable to Purchaser and Sellers shall resolve such dispute and the resolution of such dispute shall be final and binding on the Parties. The Parties and their respective Affiliates shall file all Tax Returns in accordance with such Allocation (as finally determined under this Section 9.2) and not take any Tax related action inconsistent with the Allocation, in each case, unless otherwise required by a "determination" within the meaning of Section 1313(a) of the Code.

9.3 Cooperation. Purchaser and Sellers shall reasonably cooperate, as and to the extent reasonably requested by the other Party, in connection with the filing of Tax Returns and any Action, audit, litigation, or other proceeding with respect to Taxes.

9.4 Preparation of Tax Returns and Payment of Taxes.

(a) Except as otherwise provided by Section 9.1, Sellers shall prepare and timely file (i) all Tax Returns for any Tax period ending on or before the Closing Date and (ii) all income Tax Returns of Sellers. Except to the extent any Tax reflected on a return required to be prepared and filed by Sellers pursuant to this Section 9.4 is otherwise reflected as an adjustment to Purchase Price or constitutes an Assumed Liability, Sellers shall be responsible for paying any Taxes reflected on any Tax Return that Sellers are obligated to prepare and file under this Section 9.4(a).

(b) Purchaser shall prepare and timely file all other Tax Returns with respect to the Acquired Assets that are not addressed by Section 9.4(a). With respect to any Straddle Period,

Purchaser shall prepare such Tax Returns consistent with past practice, and shall provide Sellers with a draft of such Tax Returns at least thirty days prior to the filing of any such Tax Return. Purchaser shall incorporate any changes reasonably requested by Sellers with respect to such Tax Returns. Purchaser shall be responsible for paying any Taxes reflected on any Tax Return that Purchaser is obligated to prepare and file under this Section 9.4(b).

(c) Purchaser shall not file any Tax Return, file an amendment to any previously-filed Tax Return, or otherwise take any Tax position that has the effect of increasing any Tax due for a Pre-Closing Tax Period or portion of a Straddle Period ending on the Closing.

9.5 Wage Reporting. Purchaser and Sellers agree to utilize, or cause their respective Affiliates to utilize, the “alternate procedure” set forth in Revenue Procedure 2004-53 with respect to wage reporting.

## ARTICLE X

### MISCELLANEOUS

10.1 Non-Survival of Representations and Warranties and Certain Covenants; Certain Waivers. Each of the representations and warranties and the covenants and agreements (to the extent such covenant or agreement contemplates or requires performance by such Party prior to the Closing) of the Parties set forth in this Agreement or in any other document contemplated hereby, or in any certificate delivered hereunder or thereunder, will terminate effective immediately as of the Closing such that no claim for breach of any such representation, warranty, covenant or agreement, detrimental reliance or other right or remedy (whether in Contract, in tort or at law or in equity) may be brought with respect thereto after the Closing. Each covenant and agreement that explicitly contemplates performance after the Closing, will, in each case and to such extent, expressly survive the Closing in accordance with its terms, and if no term is specified, then for five (5) years following the Closing Date, and nothing in this Section 10.1 will be deemed to limit any rights or remedies of any Person for breach of any such surviving covenant or agreement. Purchaser and Sellers Parties acknowledge and agree, on their own behalf and on behalf of the Purchaser Group or the Seller Parties, as the case may be, that the agreements contained in this Section 10.1 (a) require performance after the Closing to the maximum extent permitted by applicable Law and will survive the Closing for five (5) years; and (b) are an integral part of the transactions contemplated hereby and that, without the agreements set forth in this Section 10.1, none of the Parties would enter into this Agreement.

10.2 Expenses. Whether or not the Closing takes place, except as otherwise provided herein (including, for the avoidance of doubt, Section 8.2), all fees, costs and expenses (including fees, costs and expenses of Advisors) incurred in connection with the negotiation of this Agreement and the other agreements contemplated hereby, the performance of this Agreement and the other agreements contemplated hereby and the consummation of the transactions contemplated hereby and thereby will be paid by the Party incurring such fees, costs and expenses; it being acknowledged and agreed that all Transfer Taxes will be allocated pursuant to Section 9.1 and all Cure Costs will be allocated pursuant to Section 5.2.

10.3 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 will be in writing and will be deemed to have been given (a) when personally delivered, (b) when transmitted by electronic mail, (c) the day following the day on which the same has been delivered prepaid to a reputable national overnight air courier service or (d) the third (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 Party at the number, electronic mail address or street address, as applicable, set forth below, or at such other number, electronic mail address or street address as such Party may specify by written notice to the other Party.

Notices to Purchaser:

Jim Fogarty, CEO  
FullBeauty Brands Operations, LLC  
One New York Plaza  
New York, NY 10004  
Email: jfogarty@fbbrands.com

General Counsel  
FullBeauty Brands Operations, LLC  
One New York Plaza  
New York, NY 10004  
Email: generalcounsel@fbbrands.com

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

Cleary Gottlieb Steen & Hamilton LLP  
One Liberty Plaza  
New York, New York 10006  
Attention: Lisa M. Schweitzer  
E-mail: lschweitzer@cgsh.com

Notices to Sellers:

Gary Muto, CEO  
Ascena Retail Group, Inc.  
7 Times Square  
New York, NY 10036  
Email: gary.muto@ascenaretail.com

Dan Lamadrid, CFO  
Ascena Retail Group, Inc.  
933 MacArthur Boulevard  
Mahwah, NJ 07430  
Email: dan.lamadrid@ascenaretail.com

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

Ascena Retail Group, Inc.  
933 MacArthur Boulevard  
Mahwah, NJ 07430  
Attention: Michael Veitenheimer  
Gary Holland  
Email: michael.veitenheimer@ascenaretail.com  
gary.holland@ascenaretail.com

Kirkland & Ellis LLP  
300 North LaSalle Street  
Chicago, Illinois 60654  
Attention: Steve Toth  
Mariska S. Richards  
John R. Luze  
Email: steve.toth@kirkland.com  
mariska.richards@kirkland.com  
john.luze@kirkland.com

and

Kirkland & Ellis LLP  
601 Lexington Avenue  
New York, NY 10022  
Attention: Steven N. Serajeddini  
Email: steven.serajeddini@kirkland.com

10.4 Binding Effect; Assignment. This Agreement shall be binding upon Purchaser and, subject to the terms of the Bidding Procedures Order (with respect to the matters covered thereby) and the entry and terms of the Sale Order, Sellers, and shall inure to the benefit of and be so binding on the Parties and their respective successors and permitted assigns, including any trustee or estate representative appointed in the Bankruptcy Case or any successor Chapter 7 case; provided that neither this Agreement nor any of the rights or obligations hereunder may be assigned or delegated without the prior written consent of Purchaser and the Company, and any attempted assignment or delegation without such prior written consent shall be null and void.

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

10.6 Third Party Beneficiaries. Except as otherwise expressly provided herein, nothing expressed or referred to in this Agreement will be construed to give any Person other than the Parties any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement.

10.7 Non-Recourse. This Agreement may only be enforced against, and any Action based upon, arising out of or related to this Agreement may only be brought against, the Persons that are expressly named as parties to this Agreement. Except to the extent named as a party to this Agreement, and then only to the extent of the specific obligations of such parties set forth in this Agreement, no past, present or future shareholder, member, partner, manager, director, officer, employee, Affiliate, agent or Advisor of any Party or any Subsidiary of Sellers will have any liability (whether in Contract, tort, equity or otherwise) for any of the representations, warranties, covenants, agreements or other obligations or Liabilities of any of the parties to this Agreement or for any Action based upon, arising out of or related to this Agreement.

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

10.9 Construction. The language used in this Agreement will be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction will be applied against any Person. The headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and will in no way restrict or otherwise modify any of the terms or provisions hereof.

10.10 Schedules. The Schedules have been arranged for purposes of convenience in separately numbered sections corresponding to the sections of this Agreement; however, each section of the Schedules will be deemed to incorporate by reference all information disclosed in any other section of the Schedules. Capitalized terms used in the Schedules and not otherwise defined therein have the meanings given to them in this Agreement. The specification of any dollar amount or the inclusion of any item in the representations and warranties contained in this Agreement, the Schedules or the attached 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, and no Party will use the fact of the setting of the amounts or the fact of the inclusion of any item in this Agreement, the Schedules, Updated Schedules, or exhibits in any dispute or controversy between the Parties as to whether any obligation, item or matter not set forth or included in this Agreement, the 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 are within or outside of the Ordinary Course. In addition, matters reflected in the Schedules are not necessarily limited to matters required by this Agreement to be reflected in the Schedules. Such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature. No information set forth in the Schedules will be deemed to broaden in any way the scope of the Parties' representations and warranties. Any description of any agreement, document, instrument, plan, arrangement or other item set forth on any Schedule is a summary only and is qualified in its entirety by the terms of such agreement, document, instrument, plan, arrangement, or item which terms will be deemed disclosed for all purposes of this Agreement. The information contained in this Agreement, in the Schedules and exhibits hereto is disclosed solely for purposes of this Agreement, and no information contained herein or therein will be deemed to be an admission by any Party to any third party of any matter whatsoever, including any violation of Law or breach of Contract.

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

10.12 Specific Performance. The Parties agree that irreparable damage, for which monetary relief, even if available, would not be an adequate remedy, would occur in the event that any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached, including if any of the Parties fails to take any action required of it hereunder to consummate the transactions contemplated by this Agreement. It is accordingly agreed that (a) the Parties will be entitled to an injunction or injunctions, specific performance or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in the courts described in Section 10.13 without proof of damages or otherwise, this being in addition to any other remedy to which they are entitled under this Agreement, and (b) the right of specific performance and other equitable relief is an integral part of the transactions contemplated by this Agreement and without that right, neither Sellers nor Purchaser would have entered into this Agreement. The Parties acknowledge and agree that any Party pursuing an injunction or injunctions or other Order to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in accordance with this Section 10.12 will not be required to provide any bond or other security in connection with any such Order. The remedies available to Sellers pursuant to this Section 10.12 will be in addition to any other remedy to which they were entitled at law or in equity, and the election to pursue an injunction or specific performance will not restrict, impair or otherwise limit any Seller from seeking to collect or collecting damages. If, prior to the Outside Date, any Party brings any action, in each case in accordance with Section 10.12, to enforce specifically the performance of the terms and provisions

hereof by any other Party, the Outside Date will automatically be extended (y) for the period during which such action is pending, plus ten (10) Business Days or (z) by such other time period established by the court presiding over such action, as the case may be. In no event will this Section 10.2 be used, alone or together with any other provision of this Agreement, to require any Seller to remedy any breach of any representation or warranty of any Seller made herein.

10.13 Jurisdiction and Exclusive Venue. Each of the Parties irrevocably agrees that any Action that may be based upon, arising out of, or related to this Agreement or the negotiation, execution or performance of this Agreement and the transactions contemplated hereby brought by any other Party or its successors or assigns will be brought and determined only in (a) the Bankruptcy Court and any federal court to which an appeal from the Bankruptcy Court may be validly taken or (b) if the Bankruptcy Court is unwilling or unable to hear such Action, in the Delaware Chancery Court and any state court sitting in the State of Delaware to which an appeal from the Delaware Chancery Court may be validly taken (or, if the Delaware Chancery Court declines to accept jurisdiction over a particular matter, any state or federal court within the state of Delaware) ((a) and (b), the "Chosen Courts"), and each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the Chosen Courts for itself and with respect to its property, generally and unconditionally, with regard to any such Action arising out of or relating to this Agreement and the transactions contemplated hereby. Each of the Parties agrees not to commence any Action relating thereto except in the Chosen Courts, other than Actions in any court of competent jurisdiction to enforce any Order, decree or award rendered by any Chosen Court, and no Party will file a motion to dismiss any Action filed in a Chosen Court on any jurisdictional or venue-related grounds, including the doctrine of *forum non-conveniens*. The Parties irrevocably agree that venue would be proper in any of the Chosen Courts, and hereby irrevocably waive any objection that any such court is an improper or inconvenient forum for the resolution of such Action. Each of the Parties further irrevocably and unconditionally consents to service of process in the manner provided for notices in Section 10.3. Nothing in this Agreement will affect the right of any Party to this agreement to serve process in any other manner permitted by Law.

10.14 Governing Law; Waiver of Jury Trial.

(a) Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement, and any Action that may be based upon, arising out of or related to this Agreement or the negotiation, execution or performance of this Agreement or the transactions contemplated hereby will be governed by and construed in accordance with the internal Laws of the State of Delaware applicable to agreements executed and performed entirely within such State without regards to conflicts of law principles of the State of Delaware or any other jurisdiction that would cause the Laws of any jurisdiction other than the State of Delaware to apply.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT, THE DOCUMENTS AND AGREEMENTS CONTEMPLATED HEREBY AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND THEREFORE HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION BASED ON, ARISING OUT OF OR RELATED TO THIS AGREEMENT, ANY DOCUMENT OR AGREEMENT CONTEMPLATED HEREBY OR THE

TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY. EACH OF THE PARTIES AGREES AND CONSENTS THAT ANY SUCH ACTION WILL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE PARTIES THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THE IRREVOCABLE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. EACH PARTY (I) CERTIFIES THAT NO ADVISOR OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

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

10.16 Counterparts and PDF. This Agreement and any other agreements referred to herein or therein, and any amendments hereto or thereto, may be executed in multiple counterparts, any one of which need not contain the signature of more than one party hereto or thereto, but all such counterparts taken together will constitute one and the same instrument. Any counterpart, to the extent signed and delivered by means of a facsimile machine, .PDF or other electronic transmission, will be treated in all manner and respects as an original Contract and will be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person. Minor variations in the form of the signature page to this Agreement or any agreement or instrument contemplated hereby, including footers from earlier versions of this Agreement or any such other document, will be disregarded in determining the effectiveness of such signature. At the request of any party or pursuant to any such Contract, each other party hereto or thereto will re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such Contract will raise the use of a facsimile machine, .PDF or other electronic transmission to deliver a signature or the fact that any signature or Contract was transmitted or communicated through the use of facsimile machine, .PDF or other electronic transmission as a defense to the formation of a Contract and each such party forever waives any such defense.

10.17 Publicity. Neither the Company nor Purchaser shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other Party, which approval will not be unreasonably withheld or delayed, unless, in the reasonable judgment of Purchaser or the Company, disclosure is otherwise required by applicable Law or by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement or by the applicable rules of any stock exchange on which Purchaser or the Company lists securities, provided that the Party intending to make such release shall use its best efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other Party with respect to the text thereof.



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

10.19 Fiduciary Obligations. Nothing in this Agreement, or any document related to the transactions contemplated hereby, will require any Seller or any of their respective directors, officers or members, in each case, in their capacity as such, to take any action, or to refrain from taking any action, to the extent inconsistent with their fiduciary obligations. For the avoidance of doubt, Sellers retain the right to pursue any transaction or restructuring strategy that, in Sellers’ business judgment, will maximize the value of their estates.

## ARTICLE XI

### ADDITIONAL DEFINITIONS AND INTERPRETIVE MATTERS

#### 11.1 Certain Definitions.

(a) “Action” means any action, claim (including a counterclaim, cross-claim, or defense), complaint, grievance, summons, suit, litigation, arbitration, mediation, audit, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding), prosecution, contest, hearing, inquiry, inquest, audit, examination or investigation, of any kind whatsoever, regardless of the legal theory under which such Liability or obligation may be sought to be imposed, whether sounding in Contract or tort, or whether at law or in equity, or otherwise under any legal or equitable theory, commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Body or arbitrator.

(b) “Advisors” means, with respect to any Person, any directors, officers, employees, investment bankers, financial advisors, accountants, agents, attorneys, consultants, or other representatives of such Person.

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

(d) “Alternative Transaction” means any transaction (or series of transactions) with a Person or Persons other than Purchaser in which any Seller sells, transfers or otherwise disposes of, whether directly or indirectly, through a sale, merger, acquisition, issuance, financing, recapitalization, reorganization, liquidation or disposition, any of the Acquired Assets held thereby

(in any form of transaction, whether by merger, sale of assets or equity or otherwise); provided, however, that the foregoing shall not include sales of Inventory in the Ordinary Course.

(e) “Auction” shall have the meaning ascribed to such term in the Bidding Procedures Order.

(f) “Bidding Procedures Order” means an Order entered by the Bankruptcy Court on August 27, 2020, approving the bidding procedures for the sale of the Acquired Assets.

(g) “Break-Up Fee Difference” means an amount equal to \$600,000 minus the Break-Up Fee (as described in the Bidding Procedures Order paragraph 2(i)) actually paid to City Chic in accordance with the terms of the Bidding Procedures Order.

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

(i) “Cash and Cash Equivalents” means all of the Company’s cash (including petty cash and checks received on the Closing Date), checking account balances, marketable securities, certificates of deposits, time deposits, bankers’ acceptances, commercial paper, security entitlements, securities accounts, commodity Contracts, commodity accounts, government securities, credit card receivables and any other cash equivalents, whether on hand, in transit, in banks or other financial institutions, or otherwise held.

(j) “Closing Inventory Amount” means the cost of the Acquired Inventory other than damaged or defective Inventory not salable in the Ordinary Course, calculated as of 12:01 AM on the Closing Date in a manner consistent with Sellers’ past accounting practices and principles.

(k) “Code” means the United States Internal Revenue Code of 1986.

(l) “Confidentiality Agreement” means that certain letter agreement, dated as of May 28, 2020, by and between the Company and Purchaser.

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

(n) “Contract” means any contract, purchase order, service order, sales order, indenture, note, bond, lease, sublease, mortgage, agreement, guarantee, purchase order, license or other agreement that is binding upon a Person or its property.

(o) “Customer Data” means (i) information pertaining to current or former customers, or prospective customers, used or held for use in, or collected in connection with, the E-Commerce Business, including email addresses and other contact information and (ii) information pertaining to current or former customers, or prospective customers, of the Catherines brick-and-mortar retail stores (for the avoidance of doubt, expressly not limited to the E-Commerce Business), in each case of the foregoing (i) and (ii), including (A) email addresses and other contact information, (B) information pertaining to the Customer Loyalty Program, the Company’s and its

Affiliates' gift card programs that are accepted as a form of payment by the E-Commerce Business and customer file information and associated transaction data (where applicable), including any such information collected in connection with any Contract related to the Customer Loyalty Program or such gift card programs, regardless of whether such Contract constitutes an Excluded Asset, and including Facebook contact information and Instagram contact information; (C) information pertaining to customer complaints and returns and (D) as set forth on Schedule 11.1(o).

(p) "Customer Loyalty Programs" means those customer loyalty programs set forth on Schedule 11.1(p).

(q) "Documents" means all of the Company's written files, documents, instruments, papers, books, reports, records, invoices, tapes, microfilms, photographs, letters, budgets, forecasts, plans, operating records, safety and environmental reports, data, studies, and documents, Tax Returns, ledgers, journals, title policies, customer lists, regulatory filings, operating data and plans, research material, technical documentation (design specifications, engineering information, test results, maintenance schedules, functional requirements, operating instructions, logic manuals, processes, flow charts, etc.), fit components (fit, approved fit mannequins, tech packs, patterns and pattern blocks, etc.), CADs, prints, product catalogs and manuals, digital content and assets, user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, web pages, labeling and marketing materials, etc.), and other similar materials, in each case whether or not in electronic form.

(r) "E-Commerce Business" means Sellers' business of marketing and selling products to consumers who place orders for such products through the "www.catherines.com" (and similar permutations thereof) website, the operation of the Customer Loyalty Program and related internet or mobile application based sales, marketing, advertising and social media channels.

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

(t) "Expense Reimbursement" means an amount, not to exceed \$200,000, of Purchaser's actual, reasonable, documented out-of-pocket expenses incurred in connection with the transactions contemplated by this Agreement, including professional fees.

(u) "GAAP" means United States generally accepted accounting principles as in effect from time to time.

(v) "Gift Card Liabilities" means any and all outstanding pre-funded monetary value issued under the Company's and its Affiliates' gift card programs that, in accordance with the terms of such programs, are accepted as a form of payment by the E-Commerce Business, subject to the terms of such gift card programs and the redemption policies of the Company and its Affiliates.

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

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

(y) “Intellectual Property” means (i) all intellectual property and other similar proprietary rights anywhere in the world, whether registered or unregistered, including all such rights in the following: (A) patents, patent applications, inventions and invention disclosures; (B) trademarks, service marks, logos, trade dress, trade names, corporate names and other source identifiers, registrations and applications for any of the foregoing, together with all goodwill associated with each of the foregoing (collectively, “Trademarks”); (C) copyrights, works of authorship, designs and registrations and applications therefor (collectively, “Copyrights”); (D) internet domain name registrations, URLs, IP addresses and social media accounts and handles; (E) computer programs and applications, software, URLs, IP addresses and (F) trade secrets, know-how and confidential information and (ii) all tangible embodiments of any such intellectual property and similar proprietary rights, including software source code and object code, drawings, designs, specifications and creative materials (the “IP Embodiments”).

(z) “Inventory” means all inventory (including finished goods, supplies, raw materials, work in progress, spare, replacement and component parts) maintained or held by, stored by or on behalf of, or in transit to, any of Sellers.

(aa) “Inventory Deficit” means the amount by which the Lower Target Inventory Amount exceeds the Closing Inventory Amount; provided that the “Inventory Deficit” shall be \$0 if the Closing Inventory Amount is equal to or greater than the Lower Target Inventory Amount.

(bb) “Inventory Surplus” means the amount by which the Closing Inventory Amount exceeds the Upper Target Inventory Amount; provided that the “Inventory Surplus” shall be \$0 if the Upper Target Inventory Amount is equal to or greater than the Closing Inventory Amount.

(cc) “IT Systems” means, collectively, any servers, computer hardware, networks, software, databases, telecommunications systems, interfaces or related systems used in the E-Commerce Business.

(dd) “knowledge of the Company,” “Company’s knowledge” and words of similar import mean the actual knowledge of Scott Glaser and Eric Hunter.

(ee) “Law” means any federal, state, provincial, local, municipal, foreign or international, multinational or other law, statute, legislation, constitution, principle of common law, resolution, ordinance, code, edict, decree, proclamation, treaty, convention, rule, regulation, ruling, directive, pronouncement, determination, decision, opinion or requirement issued, enacted,

adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body.

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

(gg) “Lower Target Inventory Amount” means \$6,250,000.

(hh) “Material Adverse Effect” means any event, change, occurrence, or effect (each, an “Effect”) that, individually or in the aggregate with all other Effects, has had, or would reasonably be expected to have, a material adverse effect on the Acquired Assets and Assumed Liabilities, taken as whole; provided that none of the following shall constitute, or be taken into account in determining whether or not there has been, a Material Adverse Effect: (i) Effects in, arising from or relating to general business or economic conditions affecting the industry in which the Company and its Subsidiaries operate, (ii) Effects in, arising from or relating to national or international political or social conditions, including the engagement by the United States in hostilities or the escalation thereof, whether or not pursuant to the declaration of a national emergency or war, or the occurrence or the escalation of any military or terrorist attack upon the United States, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, asset, equipment or personnel of the United States, (iii) Effects in, arising from or relating to financial, banking, or securities markets (including (A) any disruption of any of the foregoing markets, (B) any change in currency exchange rates, (C) any decline or rise in the price of any security, commodity, Contract or index and (D) any increased cost, or decreased availability, of capital or pricing or terms related to any financing for the transactions contemplated by this Agreement), (iv) Effects in, arising from or relating to changes in, GAAP, (v) Effects in, arising from or relating to changes in, Laws or other binding directives or determinations issued or made by or agreements with or consents of any Governmental Body, (vi) Effects in, arising from or relating to (A) the taking of any action permitted or contemplated by this Agreement or at the request of Purchaser or its Affiliates, (B) the failure to take any action if such action is prohibited by this Agreement, (C) Purchaser’s failure to consent to any of the actions restricted in Section 6.1 or (D) the negotiation, announcement or pendency of this Agreement or the transactions contemplated hereby or the identity, nature or ownership of Purchaser, including the impact thereof on the relationships, contractual or otherwise, of the business of the Company or any of its Subsidiaries with employees, customers, lessors, suppliers, vendors or other commercial partners, (vii) Effects in, arising from or relating to any existing event, occurrence, or circumstance with respect to which Purchaser has knowledge as of the date hereof, including any matter set forth in the Schedules, (viii) Effects that arise from any seasonal fluctuations in the business, (ix) any failure, in and of itself, to achieve any budgets, projections, forecasts, estimates, plans, predictions, performance metrics or operating statistics or the inputs into such items (whether or not shared with Purchaser or its Affiliates or Advisors) (but, for the avoidance of doubt, not the underlying causes of any such failure to the extent such underlying cause is not otherwise excluded from the definition of Material Adverse Effect), (x) the effect of any action taken by Purchaser or its Affiliates with

respect to the transactions completed by this Agreement or the financing thereof or any breach by Purchaser of the Agreement, (xi) (A) the commencement or pendency of the Bankruptcy Case; (B) any objections in the Bankruptcy Court to (1) this Agreement or any of the transactions contemplated hereby or thereby, (2) the reorganization of Sellers, (3) the Bidding Procedures Order or (4) the assumption or rejection of any Assigned Contract; (C) any Order of the Bankruptcy Court or any actions or omissions of Sellers or their Subsidiaries in compliance therewith, or (xii) any fire, flood, hurricane, earthquake, tornado, windstorm, other calamity or act of God, global or national health concern, epidemic, pandemic (whether or not declared as such by any Governmental Body), viral outbreak (including the "Coronavirus" or "COVID-19") or any quarantine or trade restrictions related thereto or any other *force majeure*; except in the case of the clauses (i), (ii) or (iii), to the extent such Effects have a materially disproportionate impact on the Acquired Assets, as compared to other participants engaged in the industries and geographies in which Sellers operate.

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

(jj) "Ordinary Course" means the ordinary and usual course of operations of the business of the Company and its Subsidiaries taken as a whole consistent with past practice and taking into account the commencement and pendency of the Bankruptcy Case.

(kk) "Upper Target Inventory Amount" means \$6,750,000.

(ll) "Permitted Encumbrances" means (i) Encumbrances for utilities and current Taxes not yet due and payable, being contested in good faith, or the nonpayment of which is permitted or required by the Bankruptcy Code; (ii) easements, rights of way, restrictive covenants, encroachments and similar non-monetary encumbrances or non-monetary impediments against any of the Acquired Assets which do not, individually or in the aggregate, adversely affect the operation of the Acquired Assets, (iii) applicable zoning Laws, building codes, land use restrictions and other similar restrictions imposed by Law, (iv) materialmans', mechanics', artisans', shippers', warehousemans' or other similar common law or statutory liens incurred in the Ordinary Course for amounts not yet due and payable, (v) licenses granted on a non-exclusive basis in the Ordinary Course, (vi) such other Encumbrances or title exceptions as Purchaser may approve in writing in its sole discretion or which do not, individually or in the aggregate, materially and adversely affect the operation of the Acquired Assets, (vii) any Encumbrances set forth on Schedule 11.1(II), and (viii) any Encumbrances that will be removed or released by operation of the Sale Order.

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

(nn) "Post-Closing Tax Period" means (1) any taxable period beginning after the Closing Date and (2) the portion of any Straddle Period beginning after the Closing Date.

(oo) “Pre-Closing Tax Period” means any Tax period ending on or before the Closing Date.

(pp) “Privacy Laws” means all applicable Laws concerning data protection, privacy or security.

(qq) “Purchaser Group” means Purchaser, any Affiliate of Purchaser and each of their respective former, current or future Affiliates, officers, directors, employees, partners, members, managers, agents, Advisors, successors or permitted assigns.

(rr) “Sale Order” means an Order of the Bankruptcy Court reasonably acceptable to the Parties approving this Agreement and authorizing the Sellers to undertake the transactions contemplated hereunder.

(ss) “Seller Parties” means Sellers and the Company’s Subsidiaries and each of their respective former, current, or future Affiliates, officers, directors, employees, partners, members, equityholders, controlling or controlled Persons, managers, agents, Advisors, successors or permitted assigns.

(tt) “Straddle Period” means any Tax period beginning before, and ending after, the Closing Date.

(uu) “Subsidiary” or “Subsidiaries” means, with respect to any Person, any corporation of which a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person or a combination thereof or any partnership, association or other business entity of which a majority of the partnership or other similar ownership interest is at the time owned or controlled, directly or indirectly, by such Person or one or more Subsidiaries of such Person or a combination thereof.

(vv) “Tax” or “Taxes” means any federal, state, local, provincial, foreign or other income, accumulated earnings, personal holding company, net worth, capital, intangibles, windfall profits, goods and services, excise, customs duties, conveyance, mortgage, registration, documentary, recording, premium, severance, environmental, natural resources, intangibles, rent, occupancy, license, employment, workers’ compensation, payroll, health care, gross receipts, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, ad valorem/personal property, stamp, excise, occupation, sales, use, transfer, value added, import, export, alternative minimum or estimated other similar tax, duty, levy, or other governmental charge or assessment or deficiency thereof (including all interest, penalties thereon and additions thereto, whether disputed or not).

(ww) “Tax Refund” means any Tax refund, credit or similar benefit with respect to or related to Taxes (including any interest paid or credited with respect thereto).

(xx) “Tax Return” means any return, declaration, claim for refund, report, statement or information return or other document (including any related or supporting estimates, elections, schedules, statements, information or amendments) filed or required to be filed in

connection with the determination, assessment, or collection of any Tax or the administration of any laws, regulations or administrative requirements, including any schedule or attachment thereto, and including any amendments thereof.

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Estimated Cash Payment.....	12	Transition Services Agreement.....	16
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Estimated Inventory Statement.....	13		

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

(a) Accounting terms which are not otherwise defined in this Agreement have the meanings given to them under GAAP consistently applied. 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) The terms “hereof,” “herein” and “hereunder” and terms of similar import are references to this Agreement as a whole and not to any particular provision of this Agreement. Section, clause, schedule and exhibit references contained in this Agreement are references to sections, clauses, schedules and exhibits in or to this Agreement, unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

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

(d) The words “to the extent” shall mean “the degree by which” and not “if.”

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

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

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

(h) All references to “\$” and dollars will be deemed to refer to United States currency unless otherwise specifically provided.

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

(j) Any document or item will be deemed “delivered,” “provided” or “made available” by the Company, within the meaning of this Agreement if such document or item (a) is included in the Dataroom, (b) actually delivered or provided to Purchaser or any of Purchaser’s Advisors or (c) made available upon request, including at the Company’s or any of its Subsidiaries’ offices.

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

(l) Any reference to any particular Code section or any Law will be interpreted to include any amendment to, revision of or successor to that section or Law regardless of how it is numbered or classified; provided that, for the purposes of the representations and warranties set forth herein, with respect to any violation of or non-compliance with, or alleged violation of or non-compliance, with any Code section or Law, the reference to such Code section or Law means such Code section or Law as in effect at the time of such violation or non-compliance or alleged violation or non-compliance.

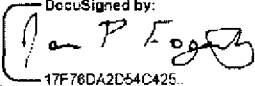
(m) All references to a day or days shall be deemed to refer to a calendar day or calendar days, as applicable, unless otherwise specifically provided.

(n) A reference to any Party to this Agreement or any other agreement or document shall include such Party's successors and permitted assigns.

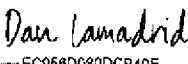
*[Signature page(s) follow.]*

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

**FullBeauty Brands Operations, LLC**

DocuSigned by:  
  
By: \_\_\_\_\_  
Name: Jim Fogarty  
Title: CEO

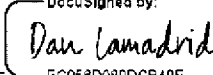
**ASCENA RETAIL GROUP, INC.**

DocuSigned by:  
  
By: EC958DC80DCB49E...  
Name: Dan Lamadrid  
Title: Executive Vice President, Chief Financial Officer and Assistant Treasurer

*Signature Page to Asset Purchase Agreement*

**TRADEMARK**  
**REEL: 007082 FRAME: 0973**

**CATHERINES STORES CORP.**

DocuSigned by:  
By:   
Name: Dan Lamadrid  
Title: Executive Vice President, Chief  
Financial Officer

*Signature Page to Asset Purchase Agreement*

**CATHERINES INC.**

DocuSigned by:  
By: Dan Lamadrid  
EC958D680DCB49E  
Name: Dan Lamadrid  
Title: Executive Vice President, Chief  
Financial Officer

*Signature Page to Asset Purchase Agreement*

**CHARMING SHOPPES, INC.**

DocuSigned by:  
By:           Dan Lamadrid            
Name: Dan Lamadrid  
Title: Executive Vice President, Chief  
Financial Officer

*Signature Page to Asset Purchase Agreement*

## FORM OF BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT

This BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is executed as of [•], 2020 (the "Closing Date"), by and among (i) FullBeauty Brands Operations, LLC, an Indiana limited liability company ("Assignee") and (ii) Ascena Retail Group, Inc., a Delaware corporation (the "Company"), and the subsidiaries of the Company that are indicated on the signature pages attached hereto (together with the Company, each an "Assignor" and collectively "Assignors"). Assignors and Assignee may be referred to herein, individually, as a "Party" and, collectively, as the "Parties."

WHEREAS, this Agreement is being delivered in connection with the Closing of the transactions contemplated by that certain Asset Purchase Agreement, dated as of September 16, 2020, by and among the Assignors and Assignee (the "Purchase Agreement");

WHEREAS, pursuant to the Purchase Agreement, each Assignor has agreed to sell, transfer, assign and convey to Assignee, and Assignee has agreed to purchase, acquire and accept from such Assignors, all of such Assignors' direct or indirect right, title and interest in, to and under certain assets and liabilities;

WHEREAS, this Agreement, as duly executed by Assignee and each Assignor, is being delivered as of the date hereof by each Party to the other Parties effective as of the Closing.

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements herein contained and intending to be legally bound hereby, Assignee and Assignors do hereby agree as follows:

### I.

#### BILL OF SALE; ASSIGNMENT AND ASSUMPTION

1.1. Definitions. Capitalized terms used but not defined in this Agreement have the meanings given to such terms in the Purchase Agreement.

1.2. Assignment. On the terms and subject to the conditions set forth in the Purchase Agreement, effective as of the Closing, Assignors hereby irrevocably, absolutely and unconditionally sell, transfer, assign and convey to Assignee, and Assignee hereby accepts, all of the Assignors' rights, titles and interests in, to and under the Acquired Assets. For the avoidance of doubt, the assignment of any rights, title or interests in Transferred Intellectual Property pursuant to this Section 1.2 shall include the rights, as applicable: (i) to sue and recover damages and obtain other equitable relief for past, present and future infringement, dilution, misappropriation or other violation or conflict associated with such Transferred Intellectual Property, (ii) to collect future royalties and other payments under such Transferred Intellectual Property, (iii) to claim priority based on such Transferred Intellectual Property under the laws of any jurisdiction and/or under international conventions or treaties, (iv) to prosecute, register, maintain and defend such Transferred Intellectual Property before any public or private agency, office or registrar and (v) to fully and entirely stand in the place of the Assignors and their Affiliates, as applicable, in all matters related to such Transferred Intellectual Property.

1.3. Excluded Assets. Assignors except, reserve, and exclude all of Assignors' rights, titles and interests in, to and under the Excluded Assets, as provided in the Purchase Agreement. Without limiting the foregoing, Assignors do not hereby sell, transfer, assign and convey to Assignee any right, title or interest in any assets, properties and rights of Assignors that are not Acquired Assets.



1.4. Assumed Liabilities. On the terms and subject to the conditions set forth in Section 1.3 of the Purchase Agreement, effective as of the Closing, Assignee will assume and become responsible for the Assumed Liabilities. Assignee agrees to pay, perform, honor and discharge, or cause to be paid, performed, honored and discharged, all Assumed Liabilities in a timely manner in accordance with the terms thereof.

1.5. Excluded Liabilities. Assignee shall not assume, be deemed to have assumed or be liable or obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for the Excluded Liabilities, as provided in the Purchase Agreement.

## II.

### MISCELLANEOUS

2.1. Purchase Agreement. This Agreement is expressly made subject to the terms of the Purchase Agreement. The delivery of this Agreement shall not amend, affect, enlarge, diminish, supersede, modify, replace, rescind, waive or otherwise impair any of the representations, warranties, covenants, indemnities, terms or provisions of the Purchase Agreement or any of the rights, remedies or obligations of any Assignor or Assignee provided for therein or arising therefrom in any way, all of which shall remain in full force and effect in accordance with their terms. The representations, warranties, covenants, indemnities, terms and provisions contained in the Purchase Agreement shall not be merged with or into this Agreement but shall survive the execution and delivery of this Agreement to the extent, and in the manner, set forth in the Purchase Agreement. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms of this Agreement (including the schedules hereto), the terms of the Purchase Agreement shall control.

2.2. Successors and Assigns. The provisions of this Agreement shall bind and inure to the benefit of Assignors and Assignee and their respective successors and permitted assigns.

2.3. Amendment and Waiver. Any provision of this Agreement may be (a) amended only in a writing signed by Assignors and Assignee or (b) waived only in a writing executed by the Person against which enforcement of such waiver is sought. No waiver of any provision hereunder or any breach or default thereof will extend to or affect in any way any other provision or prior or subsequent breach or default.

2.4. Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be invalid, illegal or unenforceable in any jurisdiction, such provision shall be ineffective as to such jurisdiction to the extent of such invalidity, illegality or unenforceability without invalidating or affecting the remaining provisions hereof or affecting the validity, legality or enforceability of such provision in any other jurisdiction. Upon such a determination, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties hereto as closely as possible in a reasonably acceptable manner in order that the transactions contemplated hereby may be consummated as originally contemplated to the fullest extent possible.

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

(a) Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement, and any Action that may be based upon, arise out of or relate to this

Agreement or the negotiation, execution or performance of this Agreement or the transactions contemplated hereby will be governed by and construed in accordance with the internal Laws of the State of Delaware applicable to agreements executed and performed entirely within such State without regards to conflicts of law principles of the State of Delaware or any other jurisdiction that would cause the Laws of any jurisdiction other than the State of Delaware to apply.

(b) Each of the Parties irrevocably agrees that any Action that may be based upon, arising out of or related to this Agreement or the negotiation, execution or performance of this Agreement and the transactions contemplated hereby brought by any other Party or its successors or assigns will be brought and determined only in (a) the Bankruptcy Court and any federal court to which an appeal from the Bankruptcy Court may be validly taken or (b) in the event the Bankruptcy Case is closed, or if the Bankruptcy Court is unwilling or unable to hear such Action, in the Delaware Chancery Court or any state court sitting in the State of Delaware to which an appeal from the Delaware Chancery Court may be validly taken (or, if the State of Delaware Chancery Court declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware) ((a) and (b), the "Chosen Courts"), and each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the Chosen Courts for itself and with respect to its property, generally and unconditionally, with regard to any such Action arising out of or relating to this Agreement and the transactions contemplated hereby. Each of the Parties agrees not to commence any Action relating thereto except in the Chosen Courts, other than Action in any court of competent jurisdiction to enforce any judgment, decree or award rendered by any Chosen Court, and no Party will file a motion to dismiss any Action filed in a Chosen Court on any jurisdictional or venue-related grounds, including the doctrine of forum non-conveniens. The Parties irrevocably agree that venue would be proper in any of the Chosen Courts, and hereby irrevocably waive any objection that any such court is an improper or inconvenient forum for the resolution of such Action. Each of the Parties further irrevocably and unconditionally consents to service of process in the manner provided for notices in Section 10.3 of the Purchase Agreement. Nothing in this Agreement will affect the right of any Party to this Agreement to serve process in any other manner permitted by Law.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT, THE DOCUMENTS AND AGREEMENTS CONTEMPLATED HEREBY AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND THEREFORE HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION BASED ON, ARISING OUT OF OR RELATED TO THIS AGREEMENT, ANY DOCUMENT OR AGREEMENT CONTEMPLATED HEREBY OR THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY. EACH OF THE PARTIES AGREES AND CONSENTS THAT ANY SUCH ACTION WILL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE PARTIES TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THE IRREVOCABLE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. EACH PARTY (I) CERTIFIES THAT NO ADVISOR OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE

EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 2.5(c).

2.6. Captions. The captions and article and section numbers in this Agreement are for convenience only and do not constitute a part of this Agreement and shall not affect in any way the meaning or interpretation of this Agreement. References in this Agreement to articles and sections are to articles and sections of this Agreement unless otherwise specified.

2.7. Counterparts and PDF. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. This Agreement or any counterpart may be executed and delivered by facsimile copies or delivered by electronic communications by portable document format (.pdf), each of which shall be deemed an original. At the request of any Party, each other Party hereto will re-execute original forms of this Agreement and deliver them to all other parties. No Party will raise the use of a facsimile machine, .PDF or other electronic transmission to deliver a signature or the fact that any signature or contract was transmitted or communicated through the use of facsimile machine, .PDF or other electronic transmission as a defense to the formation of a contract and each such Party forever waives any such defense.

*[Signature Pages Follow]*

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

**ASSIGNORS:**

**ASCENA RETAIL GROUP, INC.**

By: \_\_\_\_\_

Name:

Title:

**CATHERINES STORES CORP.**

By: \_\_\_\_\_  
Name:  
Title:

*Signature page to Bill of Sale, Assignment and Assumption Agreement*

**TRADEMARK  
REEL: 007082 FRAME: 0982**

**CATHERINES INC.**

By: \_\_\_\_\_  
Name:  
Title:

*Signature page to Bill of Sale, Assignment and Assumption Agreement*

**TRADEMARK  
REEL: 007082 FRAME: 0983**

**CHARMING SHOPPES, INC.**

By: \_\_\_\_\_  
Name:  
Title:

**ASSIGNEE:**

**FULLBEAUTY BRANDS OPERATIONS,  
LLC**

By: \_\_\_\_\_  
Name:  
Title:

*Signature page to Bill of Sale, Assignment and Assumption Agreement*

**TRADEMARK  
REEL: 007082 FRAME: 0985**



**EXHIBIT B**

**FORM OF U.S. IP ASSIGNMENT AGREEMENT**

This IP ASSIGNMENT AGREEMENT (this "Agreement"), dated as of [•], 2020 (the "Effective Date"), is by and between Catherines, Inc., a Delaware corporation ("Assignor") and FullBeauty Brands Operations, LLC, an Indiana limited liability company ("Assignee").

WHEREAS, Assignor is the owner of trademarks and service marks, including those trademark registrations and applications listed on Attachment 1 hereto (such trademarks and service marks, common law or otherwise, registered or not registered, registrations and, to the extent assignable, applications therefor (including intent to use applications), as well as all goodwill appurtenant thereto, being referred to herein as the "Trademarks");

WHEREAS, Assignee is the successor of the ongoing and existing business or portion thereof of Assignor's business to which the Trademarks pertain; and

WHEREAS, Assignor wishes to assign such Trademarks to Assignee;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. As of the Effective Date, Assignor hereby assigns and transfers to Assignee, all of its right, title and interest in all Trademarks owned by Assignor, together with all registrations that have been or may be granted thereon, all applications for registrations thereof, all common law rights thereto and the goodwill of the business symbolized by and appurtenant to the Trademarks, including those listed in Attachment 1 hereto, free and clear of any charge, lien, claim, security interest or other similar restriction, and including Assignor's right to all income, royalties and payments due or payable with respect thereto, the right to sue for and collect damages and other recoveries for past, present and future infringement thereof and the right to prosecute and maintain trademark applications and the registrations for the Trademarks. The assignment contemplated herein is meant to be an absolute assignment and not by way of security.

2. Assignor hereby authorizes and requests the U.S. Patent and Trademark Office, and the corresponding entities or agencies in any applicable foreign countries, to record Assignee as the assignee and owner of the Trademarks, and to issue all corresponding registrations to the Assignee, its successors, legal representatives and assigns, in accordance with the terms of this Agreement. Assignee shall be responsible for any and all costs and expenses associated with recording this Agreement with the applicable trademark office(s). Assignor agrees to take all reasonable actions and execute and deliver all documents that Assignee may reasonably request to effect the terms of this Agreement and to perfect Assignee's title in, to and under the Trademarks.

3. The terms of this Agreement shall be binding upon, and inure to the benefit of and be enforceable by the respective successors and permitted assigns of the parties hereto.

4. This Agreement, the Asset Purchase Agreement by and between Ascena Retail Group, Inc., Assignor, Assignee and certain other subsidiaries of Ascena Retail Group, Inc. dated September 16, 2020 and the schedules and exhibits thereto contain the entire agreement between the parties and supersede any previous communications, representations, or agreements, verbal or

written, relating to the subject matter of this Agreement. This Agreement may only be amended by a writing signed by both parties.

5. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

[Signatures follow on next page]

**CATHERINES, INC.**

**FULLBEAUTY BRANDS OPERATIONS,  
LLC**

By:

By:

\_\_\_\_\_

\_\_\_\_\_

Name:

Name:

\_\_\_\_\_

\_\_\_\_\_

Title:

Title:

\_\_\_\_\_

\_\_\_\_\_

Dated:

Dated:

\_\_\_\_\_

\_\_\_\_\_

*Signature Page to IP Assignment Agreement*

ATTACHMENT 1

<b>Trademark</b>	<b>Jurisdiction</b>	<b>App. No./ Reg. No.</b>	<b>Owner</b>
Flower design (the flourish)	US	85-510615 4411677	Catherines, Inc.
CATHERINES	US	73-373286 1343457	Catherines, Inc.
CATHERINES	US	76-489579 3006871	Catherines, Inc.
CATHERINES	US	78-826417 3345802	Catherines, Inc.
CATHERINE'S PLUS SIZES	US	75-639863 2380746	Catherines, Inc.
SECRET SLIMMER	US	87-904281 6119460	Catherines, Inc.
SERENADA	US	76-448660 2813914	Catherines, Inc.
ANYWEAR BY CATHERINES	US	85-692193 4456033	Catherines, Inc.
RIGHT FIT	US	77-227669 3526381	Catherines, Inc.