

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re:

PERFECT BROW ART, INC., *et al.*

Debtors.<sup>1</sup>

)  
) Chapter 11  
)  
) Case No. 19-01811  
) (Jointly Administered)  
)  
) Honorable Donald R. Cassling  
)

**NOTICE OF MOTION**

PLEASE TAKE NOTICE that on **June 6, 2019 at 1:00 p.m.**, or as soon thereafter as counsel may be heard, we will appear before the Honorable Donald R. Cassling, or any judge sitting in his stead, in Room 619 of the Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, Illinois 60602, and then and there present the ***Debtors' Motion for Entry of (a) an Order (i) Approving Procedures for the Sale of Substantially all of the Debtors' Assets Free and Clear of all Liens, Claims, Encumbrances, and Other Interests; (ii) Scheduling an Auction; (iii) Establishing Procedures for the Assumption and Assignment of Certain Contracts and Leases; (iv) Approving Form and Manner of Notices associated with the Auction and the Assumption and Assignment of Contracts and Leases; and (v) Setting a Final Hearing; (b) an Order Approving the Sale to the Successful Bidder; and (c) Granting Related Relief.***

Dated: May 30, 2019

Respectfully submitted,

**PERFECT BROW ART, INC., *ET AL.***

By: /s/ Harold D. Israel

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: (i) Perfect Brow Art, Inc. (5731), (ii) Perfect Brow Florida, Inc. (5602), (iii) Perfect Brow Puerto Rico, Inc. (3497), (iv) Perfect Brow New York, Inc. (2041), (v) Locks Rock, Inc. (5046), (vi) P.B. Art Franchise, Inc. (0026), (vii) Perfect Brow Oakland, Inc. (5727), and (viii) Ooh La La Beauty Bar Franchise, Inc. (0714).

**CERTIFICATE OF SERVICE**

I, Harold D. Israel, the undersigned attorney, hereby certify that on May 30, 2019, I caused a copy of the *Notice of Motion* and *Debtors' Motion for Entry of (a) an Order (i) Approving Procedures for the Sale of Substantially all of the Debtors' Assets Free and Clear of all Liens, Claims, Encumbrances, and Other Interests; (ii) Scheduling an Auction; (iii) Establishing Procedures for the Assumption and Assignment of Certain Contracts and Leases; (iv) Approving Form and Manner of Notices associated with the Auction and the Assumption and Assignment of Contracts and Leases; and (v) Setting a Final Hearing; (b) an Order Approving the Sale to the Successful Bidder; and (c) Granting Related Relief* to be filed via the Court's ECF system and served upon the parties registered to receive ECF notice as indicated below.

**VIA CM/ECF**

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/s/ Harold D. Israel

Harold D. Israel

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re: )  
 ) Chapter 11  
 )  
PERFECT BROW ART, INC., *et al.* ) Case No. 19-01811  
 ) (Jointly Administered)  
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Debtors.<sup>1</sup> ) Honorable Donald R. Cassling  
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**DEBTORS' MOTION FOR ENTRY OF (A) AN ORDER (I) APPROVING  
PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS'  
ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND  
OTHER INTERESTS; (II) SCHEDULING AN AUCTION; (III) ESTABLISHING  
PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF CERTAIN  
CONTRACTS AND LEASES; (IV) APPROVING FORM AND MANNER OF NOTICES  
ASSOCIATED WITH THE AUCTION AND THE ASSUMPTION AND ASSIGNMENT  
OF CONTRACTS AND LEASES; AND (V) SETTING A FINAL HEARING; (B) AN  
ORDER APPROVING THE SALE TO THE SUCCESSFUL BIDDER;  
AND (C) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “*Debtors*”) hereby move this Court (the “*Motion*”) pursuant to sections 363, 365, 1107(a), and 1108 of title 11 of the United States Code (the “*Bankruptcy Code*”) and Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) for entry of (a) an order (the “*Bidding Procedures Order*”) (i) approving procedures (the “*Bidding Procedures*”) for the sale (the “*Sale*”) of substantially all of the Debtors’ assets (the “*Purchased Assets*”) to the Successful Bidder (“*Successful Bidder*”); (ii) scheduling an auction (the “*Auction*”); (iii) establishing procedures for the assumption and assignment of Assumed Contracts and Leases (as

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal taxpayer-identification number, are: (i) Perfect Brow Art, Inc. (5731), (ii) Perfect Brow Florida, Inc. (5602), (iii) Perfect Brow Puerto Rico, Inc. (3497), (iv) Perfect Brow New York, Inc. (2041), (v) Locks Rock, Inc. (5046), (vi) P.B. Art Franchise, Inc. (0026), (vii) Perfect Brow Oakland, Inc. (5727), and (viii) Ooh La La Beauty Bar Franchise, Inc. (0714).

defined herein) (the “*Assumption and Assignment Procedures*”); (iv) approving the form and manner of notices associated with the Sale and Assumption and Assignment Procedures; and (v) scheduling a final hearing (the “*Final Hearing*”) to consider approval of the Sale of the Purchased Assets; (b) entry of an order (the “*Sale Order*”) approving the Sale of the Purchased Assets to the Successful Bidder; and (c) granting related relief.

### **JURISDICTION AND VENUE**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

### **BACKGROUND**

3. On January 22, 2019 (the “*Petition Date*”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code (the “*Chapter 11 Cases*”) in the United States Bankruptcy Court for the Northern District of Illinois (the “*Court*”). The Debtors are operating their businesses and managing their properties as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. On February 13, 2019, the United States Trustee (the “*UST*”) appointed the Official Committee of Unsecured Creditors (the “*Committee*”) [Docket No. 96]. No trustee or examiner has been appointed in these chapter 11 cases.

5. Factual background relating to the Debtors’ business and its commencement of these Chapter 11 Cases is set forth in the *Declaration of Elizabeth Porikos-Gorgees in Support of Debtors’ Chapter 11 Petitions and First Day Motions* filed on the Petition Date and incorporated herein by reference [Docket No. 3].

6. On or about March 5, 2019, the Court entered an order [Docket No. 153]

approving the Debtors' application to employ Ravinia Capital, LLC ("*Ravinia*") as its investment banker. Since that time, working with the Debtors, their counsel and the estates' neutral financial advisor, Ravinia:

- put together a data room;
- sent teasers via email on March 15, 2019 to 809 parties and sent a follow up e-mail on April 1, 2019 to parties that did not respond to the first email;
- received 215 responses to its emails; and
- received 25 executed non-disclosure agreements and provided access to the virtual data room to the parties executing such agreements.

Ravinia received indications of interest from three parties, two of which are actively conducting due diligence. In addition, Ravinia will be mailing (via U.S. Mail) an updated teaser to approximately 120 "top" prospects on May 31, 2019 and will send, during the first week of June, an email to approximately 600 parties that did not negatively respond to the initial teaser.

7. The Debtors, after consulting with the Committee, determined that in light of the maximum 210-day deadline for a debtor to assume or reject non-residential real estate leases in §365(d)(4) of the Bankruptcy Code without landlord consent, that it was in the best interests of the Debtors' estates to move forward without a stalking horse purchase agreement at this time. In that light, the Debtors prepared the Purchase Agreement ("*Purchase Agreement*"), attached to the Bidding Procedures (attached hereto as **Exhibit A**) as **Exhibit 1**, to be used by potential bidders when submitting an offer for the Purchased Assets.

8. If, on or before June 14, 2019 (the "*Stalking Horse Designation Date*"), an entity (a "*Stalking Horse Bidder*") submits a noncontingent asset purchase agreement acceptable to the Debtors, after consulting with the Committee, the Debtors may designate such agreement as the *Stalking Horse Agreement*. The Debtors would file such Stalking Horse Agreement with the

Bankruptcy Court on or before June 14, 2019 and Ravinia would notify all parties that have signed a non-disclosure agreement of the Stalking Horse Purchase Agreement. The Debtors request that the Court hold a status hearing on the Motion on June 18, 2019 in the event that the Committee does not approve the Stalking Horse Purchase Agreement. The Debtors and the Committee will contact the Court in the event that such hearing is unnecessary.

9. The primary terms of the Purchase Agreement<sup>2</sup> are as follows:

<b>Purchaser</b>	To be determined
<b>Seller</b>	PERFECT BROW ART, INC., an Illinois corporation, together with its affiliates PERFECT BROW FLORIDA, INC., a Florida corporation, PERFECT BROW PUERTO RICO, INC., a Puerto Rico Corporation, PERFECT BROW NEW YORK, INC., an Illinois corporation, PERFECT BROW OAKLAND, INC., an Illinois corporation, P.B. ART FRANCHISE, INC., a Florida corporation and LOCKS ROCKS, INC., an Illinois corporation
<b>Purchase Price</b>	To be determined
<b>Purchased Assets</b>	All of Seller's right, title and interest in and to all of the domestic assets owned by or leased or licensed to Seller and used or held for use by Seller in the conduct of its business excepting the Excluded Assets; <i>See Purchase Agreement at § 1.2.</i>
<b>Assumed Liabilities</b>	All Liabilities under the Assumed Contracts and Assumed Leases to the extent such Liabilities arise from and after the Closing Date; all Liabilities relating to or arising out of the ownership or operation of the Owned Stores operating under an Assumed Lease or any Purchased Asset as of and after the Closing; all Liabilities for gift cards and gift certificates. <i>See Purchase Agreement at § 3.1.</i>

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<sup>2</sup> The forgoing summary is subject in all respects to the Purchase Agreement. In the event of a conflict, the terms of the Purchase Agreement shall govern. Any capitalized term not defined in the Motion shall have the meaning attributed to such term in the Purchase Agreement.

<b>Assumed Contracts and Leases</b>	On or prior to the Bid Deadline, Buyer may, in its sole discretion, (i) designate a Contract listed on <u>Schedule 1.4(a)</u> for assumption and assignment to Buyer, effective on and as of the Closing (such Contracts, the “ <i>Assumed Contracts</i> ”) or (ii) designate a Lease listed on <u>Schedule 1.4(a)</u> for assumption and assignment to Buyer, effective on and as of the Closing (such Leases, the “ <i>Assumed Leases</i> ,” and collectively with the Assumed Contracts, the “ <i>Assumed Contracts and Leases</i> ”). See <i>Purchase Agreement at § 1.4(b)</i> .
<b>Designation Rights</b>	During the Designation Rights Period, the Buyer may, in its sole discretion, designate any Contract (a “ <i>Designated Contract</i> ”) or Lease (a “ <i>Designated Lease</i> ”) listed on <u>Schedule 1.4(a)</u> that has not previously been assumed and assigned pursuant to Section 1.4(b) (or not otherwise rejected by Seller) for assumption and assignment to Buyer or a third party designee, by providing written notice to Seller (the “ <i>Designation Notice</i> ”) and otherwise complying with Section 1.4(c) of the Purchase Agreement. See <i>Purchase Agreement at § 1.4(g)</i>
<b>Cure Costs</b>	Cure Costs (if any) shall be paid for at Closing from the Sale Proceeds, or reserved by Seller, if disputed (until fully resolved), in connection with such assumption and assignment. If a Contract or Lease is assumed after the Closing, Buyer shall as promptly as reasonably practicable (but in any event within five (5) Business Days) pay all Cure Costs (if any) in connection with such assumption and assignment. See <i>Purchase Agreement at § 1.4(g)</i> .
<b>Good Faith Deposit</b>	2.5% of the Purchase Price (the “ <i>Good Faith Deposit</i> ”). See <i>Purchase Agreement at § 2.2</i> .
<b>Closing</b>	Not later than 10 days after all conditions of Purchase Agreement are met and following the entry of an order of the United States Bankruptcy Court for the Northern District of Illinois approving the Purchase Agreement (the “ <i>Closing Date</i> ”). See <i>Purchase Agreement at § 5.1</i> .
<b>Bidding Procedures</b>	As set forth in the Bidding Procedures attached hereto as <b>Exhibit A</b> . If there is a Stalking Horse Bidder, such bid for the Purchased Assets will be subject to higher and better bids, and if any qualified bids are received, an Auction will be held. If there is not a Stalking Horse Bidder, the Debtors, after consulting with the

	Committee, will select the highest or best offer received prior to the Bid Deadline as the “baseline bid” for the Auction.
<b>Termination Fee</b>	If there is a Stalking Horse Purchase Agreement submitted prior to the Stalking Horse Designation Date, the Debtors propose to pay the Stalking Horse Bidder a termination fee of 3% of the Purchase Price plus expense reimbursement for Buyer’s reasonable, documented expenses and fees incurred in connection with this transaction, not to exceed \$50,000.00. <i>See Purchase Agreement at § 13.1(e).</i>
<b>Employment of Insider</b>	Both parties that have submitted indications of interest indicated that they intend to employ the Debtors’ sole shareholder. Neither party has indicated the terms of such employment. The Debtors will file a supplement to this Motion when the terms become available.

### **RELIEF REQUESTED**

10. By this Motion, the Debtors respectfully request that this Court enter (a) the Bidding Procedures Order; (b) the Sale Order; and (c) grant related relief.

### **BASIS FOR RELIEF**

#### **A. Proposed Bidding Procedures for the Sale of the Purchased Assets**

11. In order to ensure the likelihood of a competitive Auction, encourage other potential bidders and set a floor for bids, the Debtors request through and including June 14, 2019 to obtain a stalking horse offer, subject to higher and better offers.

12. The Bidding Procedures contemplate an Auction with, or without, a stalking horse offer. The Bidding Procedures are designed to create a controlled, but also fair and open, bidding process that promotes interest in the Purchased Assets by financially capable, motivated bidders who are likely to close a transaction, while simultaneously discouraging non-serious offers and offers from entities whom the Debtors do not believe are sufficiently capable or likely to consummate a transaction. The Debtors therefore respectfully request that the Court approve the Bidding Procedures at the initial hearing on the Motion.



13. In the event that a Stalking Horse Purchase Agreement is received on or prior to the Stalking Horse Designation Date, the Debtors also seeks approval of a break-up fee in the amount of the Termination Fee.

14. Approval of the Termination Fee is governed by standards for determining the appropriateness of bidding incentives in the bankruptcy context established by the Third Circuit in *Calpine Corp. v. O'Brien Env'tl. Energy, Inc. (In re O'Brien Env'tl. Energy, Inc.)*, 181 F.3d 527 (3d Cir. 1999). In other words, the allowability of break-up fees “. . . depends upon the requesting party's ability to show that the fees were actually necessary to preserve the value of the estate.” *In re O'Brien*, 181 F.3d at 535.

15. After considering the reasonableness of bidding incentives, courts have approved a range of termination fees and/or expenses as a percentage of the purchase price as being appropriate under the facts and circumstances of the case. *See, e.g., In re Fairview Ministries, Inc.*, Case No. 11-04386 (SPS) (Bankr. N.D. Ill. Mar. 17, 2011) (approving a 2.9% break-up fee); *In re Brown's Chicken & Pasta, Inc.*, Case No. 09-49094 (JPC) (Bankr. N.D. Ill. Oct. 20, 2010) (approving a 3.5% break-up fee); *In re SK Hand Tool Corp.*, Case No. 10-28882 (ERW) (Bankr. N.D. Ill. July 9, 2010) (approving break-up fee of up to 4.4%); *In re Hartmarx Corp.*, Case No. 09-02046 (BWB) (Bankr. N.D. Ill. June 2, 2009) (approving a 3.1% break-up fee); *In re 800 South Wells Phase II, LLC* Case No. 13-36880 (JPC) (Bankr. N.D. Ill. Nov. 5, 2014) (approving a 3% break-up fee). The Termination Fee proposed in this matter, three percent (3%) of the Stalking Horse Bid plus reasonable, documented expenses and fees incurred in connection with this transaction, not to exceed \$50,000.00, is within the range of acceptable break-up fees in this district.

16. Further, the Termination Fee was negotiated at arms-length in the indications of interest, would be a material part of the inducement for the Stalking Horse Bidder's willingness to undertake the diligence necessary to act as a stalking horse bidder here, and approval of the Termination Fee is critical to obtaining a Stalking Horse Purchase Agreement. Moreover, the only situation where the Termination Fee would be paid is a situation where an alternative bidder closes on a transaction where it paid at least the Termination Fee plus \$50,000 more than the Stalking Horse Bidder offers for the Purchased Assets, meaning that the excess proceeds would more than cover the Termination Fee. Thus, the Debtors respectfully submit that the Termination Fee is reasonable under the circumstances and should be approved.

17. The Debtors reserve the right to cancel the Auction in the event that a Stalking Horse Purchase Agreement is received on or prior to the Stalking Horse Designation Date, and no Qualified Bid is submitted prior to the Bid Deadline

**B. Scheduling Auction, Approving the Form and Manner of Notice, and Scheduling a Final Hearing**

18. The Debtors also respectfully request that the Court schedule the Auction, approve the notices associated with the Sale and Auction, and schedule the Final Hearing.

19. The Debtors propose the following dates related to the Auction:

<b>Bid Deadline</b>	June 24, 2019
<b>Deadline to object to cure amounts</b>	June 24, 2019
<b>Auction Date</b>	June 28, 2019
<b>Sale Hearing</b>	July 2, 2019

20. No later than three days after entry of the Bidding Procedures Order, the Debtors propose to cause a notice (substantially in the form attached hereto as **Exhibit B**) (the “*Auction Notice*”) to be sent by first-class mail, postage pre-paid, to all of the creditors listed in the Debtors’ creditor matrix, all entities known to have expressed an interest in purchasing the Purchased Assets (or that the Debtors reasonably believe might have an interest in purchasing the Purchased Assets), taxing authorities reasonably known to have an interest in the relief requested, the Office of the United States Trustee, the Committee, and all parties who have requested notice of pleadings in the Debtors’ bankruptcy cases. The Debtors believe that the Auction Notice and Bidding Procedures have the potential to increase the price of the Purchased Assets, and request that such notice be deemed sufficient notice of the Auction and Bidding Procedures.

**C. The Purchased Assets May be Sold Free and Clear Under Section 363(f) of the Bankruptcy Code**

21. The Purchased Assets are being sold free and clear of all liens, claims, and encumbrances pursuant to section 363(f) of the Bankruptcy Code. The Debtors believe that the anticipated Purchase Price will be in excess of the amounts needed to satisfy any alleged liens on the Purchased Assets. The Debtors therefore believe that the requirements of section 363(f)(3) of the Bankruptcy Code are satisfied.

**D. The Sale is Supported by the Debtors’ Reasonable Business Judgment**

22. This Court’s power to authorize a sale under section 363(b) of the Bankruptcy Code is to be exercised at its discretion, utilizing a flexible, case by case approach. *In re Efoora, Inc.*, 472 B.R. 481, 489 (Bankr. N.D. Ill. 2012). The Court must find that a good business reason exists for the sale. *In re Schipper*, 933 F.2d 513 (7th Cir. 1991); *Stephens Industries, Inc. v.*

*McClung*, 789 F.2d 386 (6th Cir. 1986). As noted in *In re Walter*, 83 B.R. 14, 19-20 (9th Cir. BAP 1988), citing *In re Lionel Corporation*, 722 F.2d 1063, 1070-71 (2d Cir. 1983):

[T]here must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business . . . Whether the proffered business justification is sufficient depends on the case. As the Second Circuit held in *Lionel*, the bankruptcy judge should consider all salient factors pertaining to the proceeding and, accordingly, act to further the diverse interests of the Debtor, creditors and equity holders alike. He might, for example, look to such relevant factors as the proportionate value of the assets of the estate as a whole, the amount of elapsed time since the filing, the likelihood that a plan of reorganization will be proposed and confirmed in the near future, the effect of the proposed disposition on future plan of reorganization, the proceeds to be obtained from the disposition vis-a-vis any appraisals of the property, which of the alternatives of use, sale or lease the proposal envisions and, most importantly perhaps, whether the asset is increasing or decreasing in value. This list is not intended to be exclusive, but merely to provide guidance to the bankruptcy judge.

23. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See, e.g., Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 564-65 (8th Cir. 1997) (In bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate at hand.”); *see also In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 793 (Bankr. N.D. Ill. 1985) (policy underlying the Code is to maximize “the value of the estate for the benefit of all creditors”) (citations omitted).

24. Once a valid business justification is established, the business judgment rule “is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was taken in the best interests of the company.” *In re S.N.A. Nut Company*, 186 B.R. 98, 102 (Bankr. N.D. Ill. 1995) (citing *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)); *Official Committee of*

*Subordinated Bondholders v. Integrated Resources, Inc. (In re Integrated Resources, Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992). Therefore, the relief requested in this Motion should be granted if the Debtors demonstrate a sound business justification for the request. *See Schipper*, 933 F.2d at 515; *In re Lionel Corp.*, 722 F.2d at 1071.

25. Here, in order to maximize value for the estate, the Debtors believe that it is crucial to sell the Purchased Assets. The Debtors believe that the Sale proposed herein, including the time in which they will attempt to find a Stalking Horse Bidder, the proposed Auction and Bidding Procedures, will provide the maximum possible recovery to the Debtors' estates.

26. Further, any Stalking Horse Purchase Agreement must be made subject to higher and better offers. Therefore, if the Debtors obtain a Stalking Horse Bidder, but a third party is willing to pay significantly more for the Purchased Assets, the Bidding Procedures and Auction proposed herein should facilitate that transaction. Accordingly, the Debtors respectfully submit that the Sale-related relief proposed herein reflects a sound exercise of their business judgment and should be approved.

**E. Assumption & Assignment of Executory Contracts and Unexpired Leases**

27. The Sale of the Purchased Assets contemplates the assumption of certain Contracts and Leases. *See* Ex. A at Ex. 1, section 1.4.

28. Therefore, as part of the Sale Order, the Debtors request approval, under section 365 of the Bankruptcy Code, for the assumption and assignment of the Assumed Contracts and Leases to the Successful Bidder to the extent such Contracts are executory contracts or the leases are unexpired leases.

29. In order to facilitate the assumption and assignment of the Contracts and Leases, the Debtors are seeking approval of the *Assumption and Assignment Procedures* attached hereto

as **Exhibit C**. Further, in addition to the Auction Notice, the Debtors will serve the *Notice of Assumption and Assignment of Contracts and Leases* (the “Cure Notice”) in the form attached hereto as **Exhibit D** upon all counterparties to the Contracts and Leases by first-class mail, postage pre-paid on or before the third day after the entry of the Bidding Procedures Notice. Inclusion of a counterparty receiving the Cure Notice shall not constitute an admission that its contract is an executory contract or lease is an unexpired lease.

30. The Debtors further request that the final sale order provide that the Assumed Contracts and Leases will be transferred to, and remain in full force and effect for the benefit of the Successful Bidder, notwithstanding any provisions in the Contracts and Leases, including those described in sections 365(b)(2), (c)(1)(A) and (c)(1)(B) of the Bankruptcy Code, that prohibit such assignments.

31. Section 365(f) of the Bankruptcy Code provides, in pertinent part, that:

The trustee may assign an executory contract or unexpired lease of the debtor only if –

- (A) the trustee assumes such contract or lease in accordance with the provisions in this section; and
- (B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2). Under Section 365(a) of the Bankruptcy Code, a debtor “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.”

11 U.S.C. § 365(a). Section 365(b)(1) of the Bankruptcy Code, in turn, codifies the requirements for assuming an unexpired lease or executory contract of a debtor provided that:

- (b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1). Although section 365 of the Bankruptcy Code does not set forth standards for courts to apply in determining whether to approve a debtor in possession's decision to assume an unexpired lease, courts have consistently applied a "business judgment" test when reviewing such decision. *See e.g., Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific Railroad Co.*, 318 U.S. 523, 550 (1953); *Matter of Talco, Inc.*, 558 F.2d 1369, 1173 (10th Cir. 1977). A debtor satisfies the "business judgment" test when it determines, in good faith, that assumption of an unexpired lease will benefit the estate and the unsecured creditors. *In re FCX, Inc.*, 60 B.R. 405, 411 (Bankr. E.D.N.Y. 1986). The assumption and assignment of the Contracts and Leases is a necessary part of the Sale.

32. The meaning of "adequate assurance of future performances" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." *See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1989); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985). Debtors anticipate being able to establish at the Sale Hearing that the Successful Bidder is sufficiently capitalized and able to perform the obligations under the Contracts and Leases. Consequently, assumption and assignment of the Contracts and Leases is appropriate under the circumstances.

**NOTICE**

33. Notice of this Motion has been provided to: (a) the Office of the United States Trustee for the Northern District of Illinois; (b) counsel to the Committee; and (c) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, and the Auction Notice and the Cure Notice, the Debtors submit that no further notice is required.

**WHEREFORE**, the Debtors respectfully request that the Court enter an order granting the Motion in its entirety; (a)(i) entering the Bidding Procedures Order for the Sale of the Purchased Assets to the Successful Bidder; (ii) scheduling the Auction; (iii) approving the Assumption and Assignment Procedures; (iv) approving the form and manner of notices associated with the Sale and Assumption and Assignment Procedures; (v) scheduling the Final Hearing to consider approval of the Sale of the Purchased Assets; (b) entering the Sale Order approving the Sale of the Purchased Assets to the Successful Bidder; and (c) granting related relief.

Dated: May 30, 2019

Respectfully submitted,

**PERFECT BROW ART, INC., *ET AL.***

By: /s/ Harold D. Israel

Harold D. Israel  
Jamie L. Burns  
**LEVENFELD PEARLSTEIN, LLC**  
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*Attorneys for the Debtor*



## EXHIBIT A

### BIDDING PROCEDURES

1. Assets to be Sold. Seller is offering for sale, the assets described in the Purchase Agreement or the stalking horse purchase agreement (the “**Stalking Horse Agreement**”)<sup>1</sup> if submitted on or before June 14, 2019.

2. Stalking Horse Bid. \_\_\_\_\_ (the “**Stalking Horse Bidder**”), has submitted to the Seller an initial stalking horse bid of \$\_\_\_\_\_ (the “**Stalking Horse Bid**”), which will serve as the minimum bid at the Auction, which Stalking Horse Bid is reflected in the Stalking Horse Agreement executed by the Stalking Horse Bidder and Seller and will be attached hereto as Exhibit 1 if a Stalking Horse Bid is received on or before June 14, 2019.

3. Deadline for Bid Submissions. Bids shall be due on or before \_\_\_\_\_, 2019 at 5:00 p.m. CST (the “**Bid Deadline**”).

4. Required Submissions for Bidding. In order to submit a bid, each person (each a “**Potential Bidder**”) must deliver to the Seller (via overnight mail or courier to Levenfeld Pearlstein, LLC, 2 N. LaSalle, Suite 1300 Chicago, Illinois 60602, Attention: Harold D. Israel, or via electronic mail to [hisrael@lplegal.com](mailto:hisrael@lplegal.com)), with a copies to Schoenberg Finkel Newman & Rosenberg, LLC via electronic mail to [michael.friman@SFNR.com](mailto:michael.friman@SFNR.com) and to Ravinia Capital via electronic mail to [jwk@raviniacapitalllc.com](mailto:jwk@raviniacapitalllc.com), and to (i) financial advisor to the Seller and the Committee, via overnight mail or courier to CBIZ Corporate Recovery Services, 1065 Avenue of the Americas, 11<sup>th</sup> Floor, New York, NY 10018, Attention Charles M. Berk or via electronic mail to [cberk@cbiz.com](mailto:cberk@cbiz.com)); and (ii) counsel to the Committee (via overnight mail or courier to Sugar Felsenthal Grais & Helsinger LLP , 30 N. LaSalle St, Suite 3000 Chicago, Illinois 60602, Attention: Jonathan P. Friedland, Elizabeth B. Vandesteeg and Michael A. Brandess, or via electronic mail to [jfriedland@sfgh.com](mailto:jfriedland@sfgh.com); [evandesteeg@sfgh.com](mailto:evandesteeg@sfgh.com); [mbrandess@sfgh.com](mailto:mbrandess@sfgh.com)) the following, on or before the Bid Deadline

(i) if there is a Stalking Horse Agreement:

- a. an executed agreement (the “**Competing Purchase Agreement**”) (hard copy and electronic Microsoft Word document) for the purchase of the Purchased Assets upon the same or better terms and conditions than those set forth in the Stalking Horse Agreement, as determined by the Seller in its sole discretion, after consulting with the Committee, with such Competing Purchase Agreement substantially in the form to be attached hereto as Exhibit 1, and an electronic markup of the Potential Bidder’s Competing Purchase Agreement showing any and all amendments and modifications from the Stalking Horse Agreement, including, but not limited to, purchase price and contact information of the Potential Bidder;

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<sup>1</sup> Capitalized terms used but not defined herein have the meanings assigned thereto in the Stalking Horse Agreement.

- b. the Potential Bidder's Competing Purchase Agreement provides that the Potential Bidder is (i) willing to purchase the Purchased Assets for at least the Minimum Overbid and (ii) prepared to consummate the transaction contemplated by the Stalking Horse Agreement no later than the Closing Date;
- c. an initial deposit (the "**Potential Bidder Good Faith Deposit**") in the form of a cashier's check, cash, or otherwise immediately available funds in the amount of 2.5% of the Purchase Price set forth in the Competing Purchase Agreement payable to the Seller, to be submitted along with the bid (funds to be delivered to Seller, with proof of payment delivered to the Stalking Horse Bidder);
- d. written evidence satisfactory to the Seller of the Potential Bidder's chief executive officer's or other appropriate senior executive's approval of the contemplated transaction and that no other consents are required;
- e. financial statements (or other financial information acceptable to the Seller in its sole and absolute discretion, after consulting with the Committee) showing that the Potential Bidder has the financial ability to close on the Purchased Assets by the Closing Date;
- f. a signed statement indicating that the Competing Purchase Agreement is irrevocable until (i) the Auction has taken place and the Potential Bidder is not approved as the Successful Bidder or Back-up Bidder whether due to the Potential Bidder being not selected by the Seller in its sole discretion or for any other reason whatsoever, in which case the Potential Bidder Good Faith Deposit will be refunded unless otherwise forfeited pursuant to paragraph 10 below or (ii) one business day following the closing of the Sale, in the event the Potential Bidder is selected as the Successful Bidder or Back-up Bidder, in which case, the Potential Bidder Good Faith Deposit shall not be refunded until the Potential Bidder or another bidder has consummated the transaction; and
- g. a signed statement acknowledging the prohibition against collusive bidding.

Seller will not consider any offer that requires payment of a Termination Fee (except to the Stalking Horse Bidder) or other "stalking horse" protections or requires due diligence or financing contingencies of any kind.

- (ii) if there is not a Stalking Horse Agreement:
  - a. an executed Purchase Agreement (hard copy and electronic Microsoft Word document) for the purchase of the Purchased Assets, with such Purchase Agreement substantially in the form attached hereto as Exhibit 1, and an electronic markup of the Potential Bidder's Purchase Agreement showing any and all amendments and modifications from the form of Purchase Agreement, including, but not limited to, purchase price and contact information of the Potential Bidder;

- b. the Potential Bidder's Purchase Agreement provides that the Potential Bidder is prepared to consummate the transaction contemplated by the Purchase Agreement no later than the Closing Date;
- c. The Potential Bidder Good Faith Deposit in the form of a cashier's check, cash, or otherwise immediately available funds in the amount of 2.5% of the Purchase Price set forth in the Purchase Agreement payable to the Seller, to be submitted along with the bid (funds to be delivered to Seller).
- d. written evidence satisfactory to the Seller of the Potential Bidder's chief executive officer's or other appropriate senior executive's approval of the contemplated transaction and that no other consents are required;
- e. financial statements (or other financial information acceptable to the Seller in its sole and absolute discretion, after consulting with the Committee) showing that the Potential Bidder has the financial ability to close on the Purchased Assets by the Closing Date;
- f. a signed statement indicating that the Purchase Agreement is irrevocable until (i) the Auction has taken place and the Potential Bidder is not approved as the Successful Bidder or Back-up Bidder whether due to the Potential Bidder being not selected by the Seller in its sole discretion or for any other reason whatsoever, in which case the Potential Bidder Good Faith Deposit will be refunded unless otherwise forfeited pursuant to paragraph 10 below or (ii) one business day following the closing of the Sale, in the event the Potential Bidder is selected as the Successful Bidder or Back-up Bidder, in which case, the Potential Bidder Good Faith Deposit shall not be refunded until the Potential Bidder or another bidder has consummated the transaction; and
- g. a signed statement acknowledging the prohibition against collusive bidding.

Seller will not consider any offer that requires payment of a Termination Fee or other "stalking horse" protections or requires due diligence or financing contingencies of any kind.

5. Determination of Qualified Bids. A bid that complies with the requirements of and be accompanied by the information set forth in Paragraph 4 above, as determined in the sole discretion of the Seller, after consulting with the Committee, will be deemed a "**Qualified Bid.**" A "**Qualified Bidder**" is a Potential Bidder that submits a Qualified Bid and, in the Seller's sole discretion (after consulting with the Committee), is determined to demonstrate the financial capability to consummate the purchase of the Purchased Assets that is the subject of its Qualified Bid.

6. Impact of Bid Rejection. If Seller determines that a Potential Bidder is not a Qualified Bidder, the Seller shall return the Potential Bidder Good Faith Deposit to the Potential Bidder promptly upon such determination. At the Auction, only the Stalking Horse Bidder and Qualified Bidders who have submitted Qualified Bids for the Purchased Assets shall have the

right to bid on the Purchased Assets. If there are no Qualified Bids and a Stalking Horse Agreement was submitted on or before the Stalking Horse Designation Date, the Auction shall be canceled, and Seller shall proceed with Closing of the purchase and sale of the Purchased Assets to the Stalking Horse Bidder on the Closing Date.

7. Timing and Location of Auction. The Auction shall be conducted on [June 28, 2019] (the “**Auction Date**”) at 10:00 a.m. CST. The Auction will be held at the offices of Levenfeld Pearlstein, LLC, 2 North LaSalle Street, Suite 1300, Chicago, Illinois 60602 or such other location designed by Seller in advance of the Bid Deadline. In addition to the Seller and its counsel and other advisors, representatives of the Committee, only the Stalking Horse Bidder (if any) and Qualified Bidders that submitted a Qualified Bid, along with their respective professionals and advisors, will be permitted to attend the Auction. In the event of a change in time or place of the Auction, the Seller shall use its commercially reasonable efforts to notify the Stalking Horse Bidder and all Qualified Bidders who have timely submitted Qualified Bids on or before the Bid Deadline.

8. Minimum Overbid and Bid Increments. The initial overbid (the “**Minimum Overbid**”) must be (i) if a Stalking Horse Agreement was submitted on or before the Stalking Horse Designation Date and another Qualified Bidder bids on the Purchased Assets, equal to the sum of the Stalking Horse Bid **plus** the Termination Fee **plus** \$50,000 or (ii) if a Stalking Horse Agreement was not submitted on or before the Stalking Horse Designation Date, \$50,000 greater than the offer the Seller designates, after consulting with the Committee, containing the highest or best offer for the Purchased Assets.

9. Procedures for the Auction. The Auction shall be conducted in accordance with commercially reasonable procedures as shall be established by Seller and its legal counsel, after consulting with the Committee. Seller reserves its right to modify the Auction procedures at any time in its sole and absolute discretion.

10. Determination of Successful Bid. Upon completion of the Auction, the Seller, in its sole discretion (after consulting with Committee), shall select the Qualified Bid that will maximize the value of the Purchased Assets and is in the best interest of the Seller’s bankruptcy estate (the “**Successful Bid**”). The Good Faith Deposit and the Potential Bidder Good Faith Deposit, as the case may be, for any Qualified Bidder shall be non-refundable until the Closing. If the party submitting the Successful Bid (the “**Successful Bidder**”) fails to close the sale (other than as a result of the Seller’s breach), such party’s Good Faith Deposit or Potential Bidder Good Faith Deposit, as the case may be, shall be retained by Seller as its sole and exclusive damages resulting from such failure to close.

11. Right to Select Back-Up Bidder(s). At the conclusion of the Auction, the Seller may designate a “Back-Up Bidder” or multiple Back-Up Bidders (each a “**Back-Up Bidder**”), if necessary, provided that each Back-Up Bidder is willing to purchase the Purchased Assets for at least the Back-Up Bidder’s last bid at the Auction. If, for any reason, the party that submits the Successful Bid fails to consummate the purchase of the Purchased Assets:

- a. the Back-Up Bidder designated by Seller shall be deemed to have submitted the highest and best bid, and shall be deemed the Successful Bid, and the Successful Bidder; and
- b. Seller shall have the right to effectuate the sale of the Purchased Assets to the Back-Up Bidder as soon as is commercially reasonable. Such Back-Up Bidder's Good Faith Deposit or Potential Bidder Good Faith Deposit, as the case may be, shall be held in escrow until the closing of the transaction with the Successful Bidder.

12. Termination Fee. If a Stalking Horse Agreement was submitted on or before the Stalking Horse Designation Date and such Stalking Horse Bidder is not the Successful Bidder at the Auction and an alternative transaction is consummated, the Stalking Horse Bidder shall become entitled to a Termination Fee in accordance with the Stalking Horse Agreement.

13. Closing of Sale. Closing of the purchase and sale of the Purchased Assets to the Successful Bidder shall be on the Closing unless otherwise agreed to by the parties. The Closing Date may be extended by written agreement of the Seller and the Successful Bidder.

**EXHIBIT 1**

**FORM OF PURCHASE AGREEMENT**

## **ASSET PURCHASE AGREEMENT**

This ASSET PURCHASE AGREEMENT (“**Purchase Agreement**”) is entered into as of \_\_\_\_\_, 2019, by and among \_\_\_\_\_, an \_\_\_\_\_ (“**Buyer**”) and PERFECT BROW ART, INC., an Illinois corporation, together with its affiliates PERFECT BROW FLORIDA, INC., a Florida corporation, PERFECT BROW PUERTO RICO, INC., a Puerto Rico Corporation, PERFECT BROW NEW YORK, INC., an Illinois corporation, PERFECT BROW OAKLAND, INC., an Illinois corporation, P.B. ART FRANCHISE, INC., a Florida corporation and LOCKS ROCKS, INC., an Illinois corporation (collectively, “**Seller**”); collectively the “**Parties**” and each a “**Party**.”

WHEREAS, the Seller operates 119 “Brow Art 23” locations (collectively, the “**Owned Stores**”) and has franchised 50 additional locations (collectively, the “**Franchised Stores**”) throughout the United States and Puerto Rico (the “**Territory**”); and

WHEREAS, on January 22, 2019, the Seller filed a voluntary petition for relief (“**Bankruptcy Case**”) in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division (“**Bankruptcy Court**”) pursuant to chapter 11 of title 11 of the United States Code, 11 U.S.C. sections 101 et seq. (the “**Bankruptcy Code**”), Case No. 19-01811 (jointly administered); and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, substantially all of the domestic assets and rights of Seller as set forth in this Purchase Agreement and in accordance with sections 105, 363 and 365 of the Bankruptcy Code; and

WHEREAS, on May \_\_, 2019, Seller filed a motion under sections 363 and 365 of the Bankruptcy Code (“**Sale Motion**”) seeking entry of an (i) order (“**Bidding Procedures Order**”) (a) approving the bidding procedures set forth on Schedule 4.1(b) (the “**Bidding Procedures**”) of the Purchase Agreement and the form of Purchase Agreement; (b) setting a date for an auction (the “**Auction**”) of the Purchased Assets and (c) setting a date for a hearing (“**Sale Hearing**”) to approve the sale contemplated hereby; and (ii) order (the “**Sale Order**”) approving the transactions contemplated by this Purchase Agreement.

WHEREAS, on June \_\_, 2019, the Bankruptcy Court entered the Bidding Procedures Order attached hereto as Exhibit A [Docket No. \_\_\_\_].

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

### **ARTICLE I PURCHASE AND SALE OF ASSETS**

1.1 Defined Terms. Unless otherwise defined in this Purchase Agreement, capitalized terms not defined herein shall have the meaning attributed to such terms on Schedule 1.1.

1.2 Purchased Assets. Upon the terms and subject to the conditions set forth in this Purchase Agreement, at the Closing, Seller shall sell, transfer, convey, assign and deliver to Buyer, and Buyer shall purchase and acquire from Seller, free and clear of Liens (other than rights of owners of any equipment leased and licensed Intellectual Property pursuant to Assumed Contracts, with respect to obligations accruing from and after the Closing Date) and except for the Permitted Liens, all of Seller's right, title and interest in and to all of the domestic assets owned by or leased or licensed to Seller and used or held for use by Seller in the conduct of its business, whether real, personal or mixed, tangible or intangible, and wheresoever situated, whether or not reflected on Seller's books and records excepting only the Excluded Assets (collectively, "**Purchased Assets**").

Without limiting the generality of the foregoing, the Purchased Assets shall include all of Seller's right, title and interest in, to and under:

(a) all tangible personal property owned by Seller, including, without limitation, all furniture, fixtures (to the extent not subject to the lease applicable to such fixtures) and furnishings, machinery and equipment of any nature;

(b) all inventory on hand as of 5:00 p.m. local time with respect to each Owned Store on the Closing Date;

(c) all exterior and interior signage, display and marketing materials;

(d) the Assumed Contracts and Leases, to the extent assigned to Buyer in accordance with the procedures set forth in this Purchase Agreement;

(e) all permits, licenses (other than licenses of Intellectual Property governed by clause (f) below) and authorizations required, necessary or desirable in the operation of Seller and its locations and assignable as a matter of applicable law ("**Licenses**"), to the extent assigned to Buyer in accordance with the procedures set forth in this Purchase Agreement;

(f) all of the Seller's domestic rights and interests in and to any computer software; URL's, websites, telephone numbers, trade names, trademarks, copyrights, and other intellectual property owned, licensed, or sub-licensed by the Seller ("**Intellectual Property**") excluding Intellectual Property licensed to Seller pursuant to Contracts listed on Schedule 1.4(a) that are not Assumed Contracts;

(g) all of the Seller's customer records, including Seller's e-mail lists; and

(h) all goodwill of the Seller and all rights of the Seller as a franchisor that may be assigned to the Buyer.

1.3 Excluded Assets. Buyer shall purchase and acquire only the Purchased Assets, and no other assets, properties, rights, contracts or leases of Seller. Without limiting the foregoing, the assets listed and/or described on the attached Schedule 1.3, or which are indicated in Section 1.3 as excluded, are not to be purchased or sold under this Purchase Agreement. All such other assets,



properties, rights, contracts or leases of Seller which are not to be purchased or sold hereunder are hereinafter referred to as the “**Excluded Assets**.”

1.4 Assumption of Certain Contracts and Leases and Designation Rights.

(a) Schedule 1.4(a) sets forth a list, as of the date hereof, of all executory Contracts and unexpired Leases to which any Seller is a party.

(b) From and after the date hereof until the Bid Deadline, Buyer may, in its sole discretion, (i) designate a Contract listed on Schedule 1.4(a) for assumption and assignment to Buyer, effective on and as of the Closing (such Contracts, the “**Assumed Contracts**”) or (ii) designate a Lease listed on Schedule 1.4(a) for assumption and assignment to Buyer, effective on and as of the Closing (such Leases, the “**Assumed Leases**,” and collectively with the Assumed Contracts, the “**Assumed Contracts and Leases**”), provided that Buyer shall designate for assumption Leases for no fewer than \_\_\_% of the Owned Stores and \_\_\_% of the Franchised Stores pursuant to this Section 1.4(b). The Assumed Contracts and Assumed Leases as of the date hereof are set forth on Schedule 1.4(b) hereto, which will be supplemented as additional Leases and Contracts are (y) designated by Buyer for assumption and assignment prior to the Sale Hearing as set forth in this Section 1.4(b), and (z) assumed and assigned as set forth in Section 1.4(c).

(c) During the Designation Rights Period, the Buyer may, in its sole discretion, designate any Contract (a “**Designated Contract**”) or Lease (a “**Designated Lease**”) listed on Schedule 1.4(a) that has not previously been assumed and assigned pursuant to Section 1.4(b) (or not otherwise rejected by Seller) for assumption and assignment to Buyer or a third party designee, by providing written notice to Seller (the “**Designation Notice**”); provided further that Buyer shall determine whether any Designated Contract or Designated Lease will be (y) assumed and assigned and shall provide Seller with a Designation Notice with respect thereof or (z) not be assumed and assigned, at least ten (10) days prior to expiration of the Designation Rights Period. Within three (3) Business Days of Seller’s receipt of a Designation Notice, Seller shall provide written notice to the counterparty to such Designated Contract or Designated Lease (such counterparty, the “**Designation Counterparty**”) of Seller’s intent to assume and assign such Designated Contract or Designated Lease under this Purchase Agreement, which notice shall, with respect to any Designated Contract or Designated Lease to be assumed and assigned, include (i) the proposed Cure Costs associated with such Designated Contract or Designated Lease, (ii) information supplied by Buyer intended to provide such Designation Counterparty with adequate assurance of future performance, and (iii) the deadline to object to the assumption and assignment of such Designated Contract or Designated Lease (the “**Objection Deadline**”), which shall be no less than ten (10) calendar days from service of such notice. The assumption and assignment of a Designated Contract or Designated Lease shall be effective without further order of the Bankruptcy Court upon expiration of the applicable Objection Deadline unless the Designation Counterparty timely serves an objection upon the Buyer and Seller; provided, however, that a Designation Counterparty may only object

to the proposed assumption and assignment of a Designated Contract or Designated Lease to the extent such objection relates to adequate assurance of future performance or a cure issue that could not have been raised in an objection to the applicable Cure Notice prior to the Sale Hearing and pertains to matters arising after the Closing. If the Buyer, Seller and Designation Counterparty are unable to resolve such objection, Seller shall schedule the matter for hearing on no less than seven (7) days' notice. The Seller shall have the right to assume and assign to a party other than Buyer, or reject, any Contract or Lease that is not assumed and assigned after the expiration of the Designation Rights Period. For the avoidance of doubt, all Designated Contracts assumed and assigned to Buyer pursuant to this Section 1.4(c) shall be Assumed Contracts, and all Designated Leases assumed and assigned to Buyer pursuant to this Section 1.4(c) shall be Assumed Leases.

(d) Buyer shall be responsible for any amounts due and payable under the Designated Contracts and Designated Leases after Closing through the effective date of such Designated Contract's or Designated Lease's assumption and assignment in accordance with the Sale Order.

(e) Seller shall take all actions reasonably required to assume and assign the Assumed Contracts and Leases to Buyer, including taking all actions reasonably necessary to facilitate any negotiations with the counterparties to such Contracts or Leases and, if necessary, to obtain an order of the Bankruptcy Court containing a finding that the proposed assumption and assignment of the Contracts or Leases to Buyer satisfies all applicable requirements of section 365 of the Bankruptcy Code.

(f) Buyer shall take all actions reasonably required for Seller to assume and assign the Assumed Contracts and Leases to Buyer, including taking all actions reasonably necessary to facilitate any negotiations with the counterparties to such Contracts or Leases and, if necessary, to obtain an order of the Bankruptcy Court containing a finding that the proposed assumption and assignment of the Contracts or Leases to Buyer satisfies all applicable requirements of section 365 of the Bankruptcy Code.

(g) Cure Costs (if any) shall be paid for at Closing from the Sale Proceeds, or reserved by Seller, if disputed (until fully resolved), in connection with such assumption and assignment. If a Contract or Lease is assumed after the Closing, Buyer shall as promptly as reasonably practicable (but in any event within five (5) Business Days) pay all Cure Costs (if any) in connection with such assumption and assignment.

(h) During the Designation Rights Period, Seller shall not terminate, amend, supplement, modify, waive any rights under, or create any adverse interest with respect to any Contract or Lease, or take any affirmative action not required thereby, without the prior written consent of Buyer (not to be unreasonably withheld or delayed) unless Buyer has provided written notice to Seller of its intention not to seek assignment or assumption pursuant to this Section 1.4.

1.5 Conveyance of Purchased Assets. The sale, transfer, conveyance, assignment and delivery of the Purchased Assets provided for in this Article I shall be made by good and sufficient instruments of conveyance, in form reasonably satisfactory to Buyer, to vest in Buyer all of Seller's right, title and interest in and to the Purchased Assets as of the Closing Date, free and clear of all Liens other than the Permitted Liens.

## ARTICLE II PURCHASE PRICE

2.1 Purchase Price. The purchase price ("**Purchase Price**") for the Purchased Assets shall be the sum of \_\_\_\_\_ AND NO/100 DOLLARS (\$\_\_\_\_\_) (the "**Sale Proceeds**") payable in accordance with Sections 2.2 and 2.3 below plus the Assumed Liabilities.

2.2 Deposit. Within two (2) Business Days of the execution and delivery of this Purchase Agreement by the parties hereto, Buyer shall deliver to Seller an amount in cash in immediately available funds equal to 2.5% of the Purchase Price (the "**Good Faith Deposit**") to a separate, non-interest-bearing deposit account designated by Seller to be held in trust for the benefit of the parties hereto by Seller in accordance with the terms hereof and subject to the terms of the Bidding Procedures. The Good Faith Deposit shall be applied to the Purchase Price at Closing. If the Closing fails to occur because Seller terminates this Purchase Agreement pursuant to Section 13.1(c)(i) or Section 13.1(c)(iii) of this Purchase Agreement, then Seller is hereby authorized and entitled to retain the Good Faith Deposit as its sole and exclusive damages resulting from such failure. If the Closing fails to occur for any reason other than Seller's termination of this Purchase Agreement pursuant to Section 13.1(c)(i) or Section 13(c)(iii) of this Purchase Agreement, the Good Faith Deposit shall be refunded to Buyer as its sole and exclusive remedy for any failure or termination of this Purchase Agreement (except that Buyer's right to receive the Termination Fee, if applicable, shall continue).

2.3 Payment of Purchase Price. On the Closing Date, Buyer, Buyer shall wire transfer immediately available funds in the amount of \$\_\_\_\_\_ to the Seller, consisting of the Sale Proceeds less the Good Faith Deposit;

2.4 Allocation of Purchase Price. The Buyer and Seller agree to allocate, for tax purposes only, the Purchase Price as follows:

a. The Purchase Price shall be allocated to classes of assets of Seller constituting the Purchased Assets as mutually agreed by Buyer and Seller consistent with IRS Form 8594 and the instructions and regulations with respect thereto. All tax returns and reports filed by Buyer and Seller with respect to the transactions contemplated by this Purchase Agreement shall be consistent with such allocation.

b. Any taxes associated with the Purchased Assets shall be prorated at Closing as of the Closing Date as follows: Seller shall bear the proportion of such taxes equal to a fraction, the numerator of which is equal to the number of days that shall have elapsed from the beginning of the applicable tax period through the Closing Date, and the

denominator of which is the number of days in the entire applicable tax period, and Buyer shall be responsible for the remainder. Unless otherwise provided to the contrary in this Purchase Agreement, Buyer shall be solely responsible for taxes relating to the Purchased Assets applicable to or arising from the period after the Closing Date, and Seller shall be solely responsible for taxes relating to the Purchased Assets applicable to or arising on or prior to the Closing Date.

### ARTICLE III ASSUMPTION OF CERTAIN LIABILITIES

3.1 Assumption of Certain Liabilities. Effective as of the Closing, Buyer shall assume and hereby agrees to perform and discharge all of Seller's executory obligations under the Assumed Contracts and Leases (and only such obligations) and such other Liabilities as set forth on Schedule 3.1 ("**Assumed Liabilities**"). Buyer 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, including funding all Cure Costs. For the avoidance of doubt, all Cure Costs shall be paid from the Sale Proceeds unless otherwise set forth in this Purchase Agreement.

3.2 No Assumption of Other Liabilities. Except for the Assumed Contract and Leases expressly identified on Schedule 1.4(b) or the Liabilities set forth in Schedule 3.1, Buyer does not assume and shall not in any manner become responsible or liable for, and Seller shall retain and be responsible and liable for, all other debts, obligations or Liabilities of Seller, of any nature whatsoever, whether known or unknown, fixed, contingent or otherwise, including, without limitation, any debts, obligations, or other liabilities directly or indirectly arising out of, or resulting from Seller's ownership or use of the Purchased Assets or operation of Seller prior to the Closing Date. Buyer shall use commercially reasonable efforts to remove Porikos or any Seller as a guarantor or obligor on any Assumed Leases, with proof thereof delivered to Seller at Closing.

3.3 Assignment of Contracts and Leases. Notwithstanding anything in this Purchase Agreement to the contrary, in the event and to the extent that any of the Assumed Contracts and Leases cannot be assumed and assigned to Buyer under section 365 of the Bankruptcy Code, then this Purchase Agreement shall not constitute an agreement to assign any such particular Assumed Contract or Lease or any claim or right or any benefit arising thereunder or resulting therefrom if the agreement to assign or attempt to assign, without the consent of a third party, would constitute a breach thereof, accelerate any obligations thereunder, permit the termination thereof or in any other way adversely affect the rights of Buyer or Seller thereunder. Until such consent is obtained, or if an attempted assignment thereof would be ineffective or would affect the rights of Seller thereunder so that Buyer would not, in fact, receive all such rights, Buyer and Seller will cooperate with each other in any arrangement reasonably requested by Buyer and designed to provide for Buyer the benefits of, and to permit Buyer to assume, insofar as expressly set forth herein, the stated liabilities under such particular Assumed Contract and Lease, including enforcement at the request and expense and for the benefit of Buyer of any and all rights of Seller against a third party thereof arising out of the breach or cancellation thereof by such third party or otherwise. Any transfer or assignment to Buyer by Seller of any property or property rights or any contract or

agreement which shall require the consent or approval of any third party shall be made subject to such consent or approval being obtained.

#### **ARTICLE IV ADDITIONAL COVENANTS OF PARTIES**

##### **4.1 Bankruptcy Actions.**

(a) Designation of Stalking Horse Bidder. Seller shall file with the Bankruptcy Court the Stalking Horse Agreement, if any, on or before June 14, 2019 (the “**Stalking Horse Designation Date**”).

(b) Auction. The Auction shall be conducted in accordance with the Bidding Procedures set forth in the Bidding Procedures Order.

(c) Employment of Porikos. Seller shall file a supplement to the Sale Motion if the Stalking Horse Bidder and/or the Successful Bidder decides to employ Porikos, which supplement shall include the terms of such employment to the extent available.

(d) Sale Order. In addition to the conditions set forth herein, the obligation of Buyer to purchase and pay for the Purchased Assets at Closing shall be subject to and conditioned upon the timely entry of the Sale Order.

4.2 Operation in the Ordinary Course. Buyer’s obligations hereunder shall also be subject to and conditioned on Seller continuing to operate the business in the ordinary course through the date of Closing, subject to the limitations placed on Seller as a result of the Bankruptcy Case.

4.3 Access. From the date of this Purchase Agreement through the earlier of (i) the termination of this Purchase Agreement pursuant to Article XIII hereof and (ii) the day before the Auction Date, Seller agrees to:

(a) provide Buyer and its representatives, attorneys, consultants and advisors with reasonable access upon reasonable notice during normal business hours to the Purchased Assets, to senior management, operations and store employees, and to financial information, books, business records and other information relating to the Purchased Assets, the Assumed Liabilities and the Company;

(b) provide all necessary authorizations or consents reasonably required by Buyer to perform its governmental inquiries with respect to the Purchased Assets, the Assumed Liabilities and the Company.

#### **ARTICLE V CLOSING**

5.1 **The Closing.** The consummation of the transactions contemplated in this Purchase Agreement (the “**Closing**”) shall take place on a date not later than 10 days after that date on which all of the conditions set forth in Article X and Article XI and any other conditions set forth in this Purchase Agreement are met and the Bankruptcy Court has entered the Sale Order (the “**Closing Date**”), but in any event no later than July 10, 2019 (“**Drop Dead Date**”), in the offices of Seller’s counsel in Chicago, Illinois or on such other date and at such other location as is mutually agreed by the Parties. The Parties agree that the Closing shall be deemed effective as of 12:00 a.m. (prevailing Central Standard Time) on the Closing Date. In the event the Closing Date does not occur prior to the Drop Dead Date, either Party may terminate this Purchase Agreement, in which event this Purchase Agreement shall be void and of no further force or effect (except for any liability of a Party then in breach and for Seller’s obligation, if any, under Article XI).

## **ARTICLE VI REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller represents and warrants to Buyer as follows, which representations and warranties shall be true and correct as of the date hereof and true and correct as of the Closing:

6.1 Organization and Standing of Seller. Each Seller is a corporation duly organized and validly existing and in good standing under the laws of the state in which it was incorporated, with full corporate power and authority to own its assets and to conduct its business subject to the limitations imposed on Seller as a result of the Bankruptcy Case.

6.2 Authorization. Upon entry of the Sale Order, this Purchase Agreement will have been duly executed and delivered by Seller and shall constitute the legal, valid and binding obligations of Seller enforceable in accordance with its terms, except as such enforceability may be limited by any bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect relating to creditors' rights and except as may be limited by principles of equity. Following the entry of the Sale Order, Seller will have full power and authority, corporate or otherwise, to enter into and deliver this Purchase Agreement and to execute and deliver all the agreements and documents provided in this Purchase Agreement and perform the transactions contemplated herein.

6.3 Non-contravention. At Closing subject to entry of a Sale Order, to Seller’s knowledge, no consent, approval or authorization of, or declaration, filing or registration with any federal, state or other governmental or regulatory authority or other person or entity is required to be made or obtained by Seller in connection with the execution, delivery and performance of this Purchase Agreement and the consummation of the transactions contemplated hereby. To Seller’s knowledge, the execution and delivery of this Purchase Agreement, the consummation of the transactions contemplated by this Purchase Agreement, and the fulfillment of and compliance with the terms and provisions hereof by the Seller do not conflict with or violate any judicial or administrative order, award, judgment or decree applicable to Seller.

6.4 Purchased Assets. At the Closing, Seller shall transfer to Buyer all of Seller’s right, title and interest in and to substantially all of the Purchased Assets, except the Excluded Assets, free and clear of all Liens except the Permitted Liens. At the Closing, Seller shall have the right to

freely assign all of its rights and interests in the Purchased Assets (including, without limitation, the Assumed Contracts and Leases) to Buyer free and clear of all Liens except for the Permitted Liens and the rights of the owners of the personal and real property leased by Seller pursuant to the Assumed Contracts and Leases from and after the Closing Date.

6.5 Contracts. Each of the Assumed Contracts and Leases is in full force and effect and is a valid and binding obligation of Seller and, to Seller's knowledge, the other parties thereto, enforceable in accordance with its terms and conditions, in each case except (a) as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium, or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity, or (b) as set forth on Schedule 1.4(b). Upon entry of the Sale Order and payment of the Cure Costs, the Assumed Contracts and Leases shall be assigned by Seller to Buyer.

6.6 Intellectual Property. Seller owns all right, title and interest in and to all conveyed Intellectual Property, free and clear of all encumbrances other than the Intellectual Property licensed to Seller pursuant to Contracts, which Intellectual Property is subject to the Assumed Contracts. All of the trademark applications, if any, within the conveyed Intellectual Property have been duly filed in the jurisdiction named in each such application, are being actively prosecuted and have not been abandoned or allowed to lapse. The domain name has been validly registered with an authorized domain name registrar and the registration therefor is current through the Closing Date. There is no action that is pending or, to the knowledge of Seller, threatened that challenges the rights of Seller in respect of any conveyed Intellectual Property or the validity, enforceability or effectiveness thereof. Seller has not received any written communication alleging that the business has infringed the Intellectual Property rights of any third party and there are no actions that are pending or, to the knowledge of Seller, threatened against Seller with respect thereto. There is no unauthorized use, infringement or misappropriation of the conveyed Intellectual Property by any third party and there is no action that is pending or threatened by Seller with respect thereto. Notwithstanding anything to the contrary, this representation shall not limit or restrict the transfer to Buyer pursuant to this Purchase Agreement of all right, title and interest in and to the conveyed Intellectual Property owned by Seller.

6.7 Brokers. Except with respect to Ravinia Capital, LLC, Seller has no obligation or liability to pay any fees or commissions to any broker, finder, or agent with regard to the transactions contemplated by this Purchase Agreement.

6.8 No Other Representations and Warranties. Except for the representations and warranties contained in this Article VI, neither Seller nor any other person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Seller, including any representation or warranty as to the accuracy or completeness of any information regarding Seller and the Purchased Assets furnished or made available to Buyer and its representatives (including management presentations or in any other form in expectation of the transactions contemplated hereby) or as to the future revenue, profitability or success of Seller, or any representation or warranty arising from statute or otherwise in law.

## **ARTICLE VII REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to Seller as follows; which representations and warranties shall be true and collect as of the date hereof and true and correct as of the Closing:

7.1 Organization and Standing of Buyer: Buyer is a duly organized and validly existing corporation in good standing under the laws of the state that it is incorporated. Buyer has full power and authority to own the Purchased Assets following the Closing. Buyer is not required to be qualified as a foreign corporation under the laws of any other jurisdiction where the failure to so qualify would have a material adverse effect upon Buyer.

7.2 Authorizations. This Purchase Agreement has been duly executed and delivered by Buyer and constitutes the legal, valid and binding obligations of Buyer enforceable in accordance with its terms. Buyer has full power and authority to enter into and deliver this Purchase Agreement and to execute and deliver all contemplated agreements and documents provided in this Purchase Agreement and perform the transactions contemplated therein. Buyer is not required to obtain the consent, approval or waiver of any person not a party to this Purchase Agreement to consummate the transactions contemplated hereby.

7.3 Non-contravention. At Closing, no consent, approval or authorization of, or declaration, filing or registration with any federal, state or other governmental or regulatory authority or other person or entity is required to be made or obtained by Buyer in connection with the execution, delivery and performance of this Purchase Agreement and the consummation of the transactions contemplated hereby. The execution and delivery of this Purchase Agreement, the consummation of the transactions contemplated by this Purchase Agreement, and the fulfillment of and compliance with the terms and provisions hereof by Buyer do not: (i) conflict with or violate any judicial or administrative order, award, judgment or decree applicable to Buyer, (ii) conflict with any of the terms, conditions or provisions of the charter documents or By-Laws of Buyer, or (iii) at the Closing conflict with any instrument, mortgage, agreement or contract to which Buyer is a party, or by it is bound.

7.4 Availability of Funds. Buyer has, or will have at Closing, sufficient cash in immediately available funds, available lines of credit, or other sources of funds to satisfy all of its obligations hereunder so as to permit Buyer to consummate the transactions contemplated by this Purchase Agreement and the Transaction Documents.

7.5 Assumed Contracts. Buyer is and will be capable of satisfying the conditions contained in section 365(f)(2)(B) of the Bankruptcy Code with respect to the Assumed Contracts and Leases and shall, consistent with Section 3.3, cooperate with Seller to provide proof of such capability as is necessary to satisfy counterparties to such Assumed Contracts and Leases or to satisfy the Bankruptcy Court.

7.6 Brokers. Buyer has carried on all negotiations relating to this Purchase Agreement and the transactions contemplated in this Purchase Agreement directly and without the intervention on its behalf of any other party in such manner as to give rise to any valid claim for a brokerage commission, finder's fee or other like payment.



## ARTICLE VIII COVENANTS

8.1 Further Actions. Upon the terms and subject to the conditions hereof, each of the Parties agree to use commercially reasonable efforts to take or cause to be taken all actions and to do or cause to be done all things necessary, proper and advisable to consummate the transactions contemplated by this Purchase Agreement, the related agreements and other documents necessary to close this transaction, and shall use commercially reasonable efforts to obtain all necessary waivers, consents and approvals and to effect all necessary registrations and filings.

8.2 Press Releases. Except in connection with the Sale Order or as otherwise required by the Bankruptcy Court, permitted by this Purchase Agreement or required by applicable law or in connection with the performance of a Party's obligations and/or the exercise or enforcement of a Party's rights under this Purchase Agreement, prior to Closing, no general public announcement or release as to any of the matters set forth herein may be made by Seller or Buyer to any third party, including the press or other media, without consulting with each other and obtaining the prior written consent of each other as to the identity of such third party and the timing and content of any such announcement or release.

8.3 Personal Property Taxes. Seller shall retain all liability for all personal property taxes and assessments relating to the Purchased Assets and either accruing or payable prior to the Closing Date (whether such taxes are paid in arrears or in advance), and Seller shall take all necessary actions to release all liens for all such personal property taxes and assessments from the Purchased Assets.

8.4 Employees. Buyer intends to hire no less than \_\_\_ percentage or \_\_\_ number of employees at the Owned Stores.

8.5 Employee Benefits. Buyer will not assume or have any liability, responsibility or obligation under (a) any employee benefit plans of any kind or nature whatsoever sponsored, maintained, contributed to, or under which Seller is liable, including, but not limited to any "employee welfare benefit plan" (as defined in Section 3(1) of the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**")), any "employee pension benefit plan" (as defined in Section 3(2) of ERISA and not exempted under Section 4(b) or 201 of ERISA), including any "**multi-employer pension plan**" (as defined in Section 3(37) of ERISA), or any other bonus, incentive, deferred compensation, severance, change in control, stock purchase, stock option, stock appreciation right, restricted stock, group insurance, indemnification, or severance pay plan, policy, agreement or arrangement (each a "**Benefit Plan**" and collectively the "**Benefits Plans**" or (b) Non-ERISA commitments of Seller. Seller will be liable for all obligations to, for or on behalf of all employees under any Benefit Plans or Non-ERISA commitments, including, without limitation, if applicable, the cost of accrued and unpaid wages, unpaid bonuses, stock options, severance pay, accrued personal days, unpaid holidays, and sick leave, the cost of funding retirement benefits and pensions, withdrawal liabilities, the cost of payroll taxes, including FICA, Federal Unemployment Insurance, State Unemployment Insurance and Federal and State withholding, and the cost of health insurance, dental insurance, disability insurance, life insurance and the like arising out of any employee's employment with Seller or the consummation of the

transaction contemplated hereunder. Seller also will be liable for the costs of administration and compliance with the Consolidated Omnibus Budget Reconciliation Act of 1985 (“**COBRA**”) for any qualifying event or as required under applicable state law or similar group health contribution coverage benefits under federal and state law with respect to the termination by Seller of any of Seller’s employees.

8.6 Employee’s Compensation and Withholding. Seller shall retain sole liability for all employee benefits, including, but not limited to the benefits identified in Section 8.5, vacation benefits and compensation earned and accrued (including, without limitation, applicable tax and benefit withholdings) but unpaid as of the Closing.

## **ARTICLE IX CLOSING DELIVERIES**

At Closing:

9.1 Seller and Buyer shall execute and deliver the conveyance and other documents described in this Purchase Agreement (“**Transaction Documents**”).

9.2 Buyer shall pay the Purchase Price as set forth in Article II of this Purchase Agreement adjusted for real and personal property tax prorations and other customary closing adjustments.

9.3 Buyer and Seller shall execute an assignment and assumption agreement in a form mutually agreed upon by Buyer and Seller (the “**Assignment and Assumption Agreement**”) and duly executed by Seller, effecting the assignment to and assumption by Buyer of the Purchased Assets (including any Intellectual Property and other intangible assets but excluding any Intellectual Property and other intangible assets subject to a Contract that is not an Assumed Contract) and the Assumed Liabilities.

9.4 Buyer and Seller shall execute, with respect to each Lease, an Assignment and Assumption of Lease substantially in a form mutually agreed upon by Buyer and Seller (each, an “**Assignment and Assumption of Lease**”).

9.5 Buyer and Seller shall execute, with respect to each Lease, an Assignment and Assumption of Lease substantially in a form mutually agreed upon by Buyer and Seller (each, an “**Assignment and Assumption of Contract**”).

9.6 [Buyer and Porikos intend to enter into an Employment Agreement with the Buyer (the “**Employment Agreement**”), to act as a consultant to Buyer for a period of not less than \_\_\_\_ (\_\_\_\_) years, with successive one (\_\_\_\_) year renewal options and with annual compensation of not less than \$\_\_00,000 per year. The Employment Agreement will include restrictive covenants, mutually acceptable to Porikos and Buyer.]

9.7 Seller and Buyer shall execute and deliver any and all other documents, agreements, instruments and other writings and have taken all actions necessary to carry out the transactions

contemplated in this Purchase Agreement or as otherwise may be reasonably requested in furtherance of the transactions contemplated in this Purchase Agreement, including (without limitation), as to Buyer, all actions set forth and required by Article X hereof, and as to Seller, all actions set forth in and required by Article XI hereof.

## **ARTICLE X BUYER'S CONDITIONS**

The obligation of Buyer to purchase and pay for the Purchased Assets at Closing shall be subject to the satisfaction, prior to or concurrently with the Closing Date, of each of the following express conditions precedent, unless waived by Buyer:

10.1 Bankruptcy Approval. Entry of the Sale Order, in form and substance reasonably acceptable to the Buyer;

10.2 Compliance with Laws. Compliance with all applicable federal and state laws by Buyer and Seller as necessary to complete the transactions contemplated under this Purchase Agreement;

10.3 Other Necessary Actions. As reasonably requested by Buyer, the Seller taking such further action as necessary to cause Buyer to hold all rights, title and interest in and to the Purchased Assets;

10.4 Sale Order. The Sale Order shall have been entered by the Bankruptcy Court and shall not be subject to any stay pending appeal (unless waived by Buyer in its sole discretion);

10.5 Accuracy of Representations and Warranties. The representations and warranties of Seller shall be true and correct in all material respects at the Closing Date, and Seller shall have complied in all material respects with all of its covenants set forth in this Purchase Agreement;

10.6 Closing Documents Delivered. Seller shall have executed and delivered the documents, certificates, instruments and agreements and done the acts required of Seller in connection with the Closing, as described in this Purchase Agreement.

10.7 Secretary's Certificate. Buyer shall have received a certificate of the Secretary (or equivalent officer) of Seller certifying (i) that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Seller authorizing the execution, delivery, and performance of this Purchase Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby and (ii) names and signatures of the officers of Seller authorized to sign this Purchase Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder.

10.8 FIRPTA Certificate. Buyer shall have received a certificate pursuant to Treasury Regulations Section 1.1445-2(b) (the “**FIRPTA Certificate**”) that Seller is not a foreign person within the meaning of Section 1445 of the Internal Revenue Code duly executed by Seller.

10.9 No Prohibition. No order, statute, rule, regulation, executive order, injunction, stay, decree or restraining order, shall have been enacted, entered, promulgated, or enforced by any U.S. Governmental Authority that prohibits the consummation of the transactions contemplated hereby. For purposes of this Purchase Agreement, “**U.S. Governmental Authority**” shall mean (a) any governmental or administrative agency of the United States and (b) any federal court.

10.10 No Dissolution; No Material Adverse Effect. Seller shall not have dissolved or terminated its existence or entered into any merger or amalgamation. No Material Adverse Effect with respect to Seller shall have occurred between the date of this Purchase Agreement and on or prior to the Closing Date. For purposes of this Purchase Agreement, “Material Adverse Effect” shall mean and be limited to a material adverse change in the physical condition of the Purchased Assets taken as a whole and in the aggregate, normal wear and tear excepted, which occurs after the date of this Purchase Agreement and which materially interferes with the operation of Seller as presently conducted by Seller.

## **ARTICLE XI SELLER’S CONDITIONS**

The obligation of Seller to sell and convey the Purchased Assets at the Closing shall be subject to the satisfaction, prior to or concurrently with the Closing Date, of each of the following express conditions precedent, unless waived by Seller:

11.1 Purchase Price. Buyer shall, concurrently with the Closing, pay the Purchase Price set forth in Section 2.1 of this Purchase Agreement.

11.2 Sale Order. The Sale Order shall have been entered by the Bankruptcy Court.

11.3 Accuracy of Representations and Warranties. The representations and warranties of Buyer shall be true and correct in all material respects at the Closing Date, and Buyer shall have complied in all materials respects with all of its covenants set forth in this Purchase Agreement.

11.4 Closing Documents Delivered. Buyer shall have executed and delivered the documents, certificates, instruments and agreements and done the acts required of Buyer in connection with the Closing, as described in this Purchase Agreement.

11.5 Secretary Certificate. Seller shall have received a certificate of the Secretary (or equivalent officer) of Buyer certifying (i) that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Buyer authorizing the execution, delivery and performance of this Purchase Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby; and (ii). the names and signatures of the officers of Buyer

authorized to sign this Purchase Agreement, the Transaction Documents and the other documents to be delivered hereunder and thereunder.

11.6 No Prohibition. No order, statute, rule, regulation, executive order, injunction, stay, decree or restraining order shall have been enacted, entered, promulgated or enforced by any court of competent jurisdiction or governmental or regulatory authority or instrumentality that prohibits the consummation of the transactions contemplated hereby.

## **ARTICLE XII OTHER AGREEMENTS**

### **12.1 No Other Representations or Warranties.**

a. Buyer agrees that, except for the representations and warranties contained in Article VI, neither Seller nor any Person on behalf of Seller makes any express or implied representation or warranty with respect to Seller or any of the Purchased Assets (including any representations and warranties as to the condition of any of the Purchased Assets or their fitness for a particular purpose) or with respect to any information provided by or on behalf of Seller to Buyer.

b. Buyer agrees that (i) Buyer is purchasing the Purchased Assets on an “AS IS” and “WITH ALL FAULTS” basis based solely on Buyer’s own investigation of the Purchased Assets and the representations and warranties set forth in Article VI and (ii) neither Seller nor any broker or other representative of Seller has made any warranties or representations, express, implied, or statutory, written or oral, respecting the Purchased Assets, any part of the Purchased Assets, the financial performance of the Purchased Assets, or the physical condition of any of the Purchased Assets other than the representations and warranties set forth in Article VI. Buyer further acknowledges that the consideration for the Purchased Assets specified in this Purchase Agreement has been agreed upon by Seller and Buyer after good faith arms-length negotiation in light of Buyer’s agreement to purchase the Purchased Assets “AS IS” and “WITH ALL FAULTS”. EXCEPT AS SET FORTH IN THIS AGREEMENT, SELLER MAKES NO EXPRESS WARRANTY, NO WARRANTY OF MERCHANTABILITY, NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND NO IMPLIED OR STATUTORY WARRANTY WHATSOEVER WITH RESPECT TO ANY REAL OR PERSONAL PROPERTY OR ANY FIXTURES OR THE PURCHASED ASSETS.

12.2 Bulk Sales Laws. The Parties hereby waive compliance with the provisions of any bulk sales, bulk transfer, or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer.

12.3 Further Assurances. Following the Closing, each of Parties shall, and shall cause their respective affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Purchase Agreement and the other Transaction Documents.

### **ARTICLE XIII TERMINATION**

13.1 Termination. This Purchase Agreement may be terminated at any time prior to the Closing:

a. by the mutual written consent of Seller and Buyer;

b. by Buyer if:

i. Buyer is not then in material breach of any provision of this Purchase Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Seller pursuant to this Purchase Agreement that would render any of the conditions specified in Article X incapable of being satisfied and such breach, inaccuracy or failure cannot be cured by Seller by the Drop Dead Date or is not cured within ten (10) Business Days (whichever is later), provided that that Drop Dead Date shall be extended for such ten (10) Business Day period if such date is later;

ii. if Buyer is not the successful bidder at the Auction; provided that if Buyer is the only Back-Up Bidder, then Buyer shall not be permitted to terminate this Purchase Agreement pursuant to this 13.1(b)(ii) until after the earlier of (A) the closing of an Alternative Transaction or (B) the Drop Dead Date; provided, however, that Buyer shall be permitted to terminate this Purchase Agreement pursuant to this 12.3b.ii) only if Buyer is not in material breach of any of its representations, warranties, covenants, or agreements contained herein;

iii. if Buyer is the successful bidder at the Auction and the Closing does not occur on or before the Drop Dead Date; provided, however, that Buyer shall not be permitted to terminate this Purchase Agreement pursuant to this 13.1(b)(iii) if (I) the failure of the Closing to occur is caused by the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing or (II) Buyer is in material breach of any of its representations, warranties, covenants, or agreements contained herein;

iv. there has been a material breach by Seller of any representation or warranty contained herein or in the due and timely performance of any covenant or agreement contained herein, Buyer has notified the Seller of such breach in writing, and the breach has not been cured within five (5) Business Days after delivery of such notice (or such longer notice and cure period as may be set forth in any other provision of this Purchase Agreement); or

v. if the Seller has filed any pleading or entered into any agreement (other than this Purchase Agreement and motions for the entry of orders of the Bankruptcy Court consistent with the transactions contemplated hereby) relating to or otherwise regarding the sale, transfer, lease or other disposition, directly or indirectly, of all or a material portion of the Purchased Assets or regarding an Alternative Transaction (including in either instance, for the avoidance of doubt, a credit bid, deed in lieu, exercise of rights and remedies or foreclosure with respect to some or all of the Purchased Assets).

c. by Seller if:

i. Seller is not then in material breach of any provision of this Purchase Agreement and there has been a material breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Purchase Agreement that would render any of the conditions specified in Article XI incapable of being satisfied and such breach, inaccuracy or failure cannot be cured by Buyer by the Drop Dead Date or is not cured within ten (10) Business Days (whichever is later), provided that that Drop Dead Date shall be extended for such ten (10) Business Day period if such date is later;

ii. if Buyer is not the successful bidder at the Auction; or

iii. if the Closing shall not have occurred and an Alternative Transaction shall not have closed on or before the Drop Dead Date, provided, however, that Seller shall be permitted to terminate this Purchase Agreement pursuant to this 13.1(c)(iii) only if Seller is not in material breach of any of its representations, warranties, covenants, or agreements contained herein;

d. by Buyer or Seller in the event that if, in accordance with the terms and conditions of this Purchase Agreement, Seller enters into one or more agreements to sell, transfer, or otherwise dispose of any material portion of the Purchased Assets in a transaction or series of transactions (other than in the ordinary course of business) with one or more Persons, other than Buyer in an amount equal to or over the Minimum Overbid (an “**Alternative Transaction**”) that actually closes.

e. Termination Fee. If a Stalking Horse Purchase Agreement is entered into on or before the Stalking Horse Designation Date, in consideration for Buyer serving as the stalking horse bidder, making a valuable offer for the Purchased Assets, and creating a bidding framework for higher and better offers, and this Purchase Agreement being subject to termination in the event that the Seller receives a higher or better bid consistent with the procedures set forth in the Bidding Procedures Order, and regardless of whether or not Buyer makes any matching or competing bids, Buyer shall be entitled to a termination fee in the amount of three percent (3%) of the Purchase Price plus expense reimbursement for Buyer’s reasonable, documented expenses and fees incurred in connection with this transaction, not to exceed \$50,000.00 (the “**Termination Fee**”) in the event that (i) the Seller consummates a transaction other than the one contemplated by this Purchase Agreement which involves an Alternative Transaction and (ii) this Purchase Agreement shall not have been terminated by Seller pursuant to Section 13.1(a), Section 13.1(c)(i) or Section 13.1(c)(iii) of this Purchase Agreement. The Termination Fee shall be payable only upon the closing of an Alternative Transaction and solely from the proceeds of such Alternative Transaction. Seller acknowledges and agrees that: (A) the Termination Fee is an integral part of the transactions contemplated by this Purchase Agreement; (B) in the absence of the obligation to pay the Termination Fee, Buyer would not have entered into this Purchase Agreement; (C) the entry of Buyer into this Purchase Agreement is beneficial to the Seller and its bankruptcy estate because it will enhance the Seller’s ability to maximize the value of the Purchased Assets for the benefit of its creditors in the Bankruptcy Case; and (D) the Termination Fee is reasonable in

relation to Buyer's expenses incurred in, and lost opportunities resulting from the time spent, pursuing the transaction. For the avoidance of doubt, Buyer shall not be entitled to a Termination Fee if it terminates this Purchase Agreement prior to the end of the Diligence Period or if the Bankruptcy Court does not approve the sale of the Purchased Assets as contemplated by this Purchase Agreement.

13.2 Effect of Termination.

a. In the event of termination of this Purchase Agreement by Buyer or Seller pursuant to this Article XIII, all rights and obligations of the Parties under this Purchase Agreement shall terminate without any liability of any Party to any other Party, except for (i) any obligation of Seller to disburse (or cause the disbursement of) the Good Faith Deposit in accordance with Section 2.2; and (ii) other than as set forth in Section 13.2(b), no such termination shall relieve any Party from any damages, losses, or liabilities suffered or incurred by the other Party arising out of any intentional breach of any covenant in this Purchase Agreement by a Party that occurs upon or prior to the termination of this Purchase Agreement. The provisions of this Section 13.2 (and, to the extent applicable to the interpretation or enforcement of such provisions Article IV), shall expressly survive the termination of this Purchase Agreement.

b. In the event of a termination of this Purchase Agreement pursuant to the subsections of this Section 13.2 pursuant to which Buyer is entitled to the return of the Good Faith Deposit, Buyer may elect, as the sole and exclusive remedy of Buyer, to (i) receive the Good Faith Deposit from Seller, and in such event Seller shall not have any further liability whatsoever to Buyer hereunder, or (ii) pursue its equitable remedies, including, without limitation, specific performance of this Purchase Agreement or the obligations of Seller hereunder. Notwithstanding the foregoing, In the event that the Buyer is paid the Termination Fee, Seller shall not have any further liability whatsoever to Buyer hereunder. In the event of a termination of this Purchase Agreement pursuant to which Seller is entitled to retain the Good Faith Deposit, Seller may elect, as the sole and exclusive remedy of Seller, to (i) retain the Good Faith Deposit, and in such event Buyer shall not have any further liability whatsoever to Seller hereunder, or (ii) pursue its equitable remedies, including, without limitation, specific performance of this Purchase Agreement or the obligations of Buyer hereunder.

**ARTICLE IV  
MISCELLANEOUS**

14.1 Waiver. Any Party may (a) agree to extend the time for the performance of any of the obligations or other acts of the other Party, (b) waive any inaccuracies in the representations and warranties contained herein or in any document delivered pursuant thereto or (c) waive compliance with any of the agreements or conditions contained herein. Any agreement on the part of the Party to any such extension or waiver shall be valid only if set forth in an instrument in writing signed by the authorized representative of such Party.

14.2 Remedies Cumulative. In the event of a breach by a Party of its obligations under this Purchase Agreement, the other Party shall be entitled to all remedies provided herein, by law or in equity, including, without limitation, the right to obtain an injunction to specifically enforce



this Purchase Agreement. Except as expressly limited in this Purchase Agreement, the remedies provided herein shall be cumulative and shall not preclude the assertion by any Party of any other rights or the seeking of any other remedies against the other hereto.

14.3 Notices. Any notices or other communications required or permitted hereunder or otherwise in connection herewith shall be in writing and shall be deemed to have been duly given when delivered in person or transmitted by facsimile transmission or on receipt (or refusal to accept) by the intended recipient after dispatch by express, registered or certified mail (return receipt requested), postage prepaid, or nationally recognized overnight delivery service, addressed as follows:

**If to Seller:**

PERFECT BROW ART, INC., ET AL.  
3323 Lake Ave 15c  
Wilmette, IL 60091  
Attn: Elizabeth Porikos-Gorgees

with a required copy, which shall not constitute notice, to:

Schoenberg, Finkel, Newman & Rosenberg, LLC  
222 S. Riverside Plaza, Suite 2100  
Chicago, IL 60606  
Attn: Michael Friman

and

Levenfeld Pearlstein, LLC  
2 North LaSalle, Suite 1300  
Chicago, IL 60602  
Attn: Harold D. Israel

**If to Buyer:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

with a required copy, which shall not constitute notice, to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or such other address as the person to whom notice is to be given has furnished in writing to the other Party.

14.4 Delivery of Notices. After the Closing Date, Seller shall promptly deliver to Buyer any notices, correspondence and other documents relating to the Purchased Assets being conveyed hereunder, which are, from to time, received by Seller.

14.5 Buyer's Indemnification. Buyer shall keep, save, protect, indemnify and hold harmless Seller from and against each and all of the following: (i) any and all liabilities and obligation of, or claims against, Seller with respect to Buyer's ownership, sale or use of the Purchased Assets on or and after the Closing Date or from Buyer's operation of Seller or any other liability or obligation of Buyer; (ii) any and all damage, loss, cost, expense, including reasonable attorneys' fees, liability or deficiency arising out of or resulting from any misrepresentation, breach of warranty or nonfulfillment of any covenant or obligation of Buyer under this Purchase Agreement; and (iii) all demands, assessments, judgment, costs and legal and other expenses, including reasonable attorneys' fees, arising from or in connection with, or any action, suit, proceeding or claim arising out of or relating to, any of the foregoing provisions of this Section 14.5.

14.6 Entire Agreement; Binding Effect. This Purchase Agreement (together with the Schedules, and the other agreements, documents and instruments executed at the Closing) sets forth the entire integrated understanding and agreement of the Parties with respect to the subject matter hereof and supersedes all prior agreements, representations, understandings and other communications, whether written or verbal, with respect to the subject matter hereof. This Purchase Agreement may not be modified, amended or terminated except in a writing signed by all of the Parties.

14.7 Assignment. No Party to this Purchase Agreement shall have the right to assign any of its rights and obligations hereunder without the prior written consent of the other Party. To the extent that any such assignment occurs in accordance with the terms hereof, this Purchase Agreement and all of its provisions shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns.

14.8 Counterparts. This Purchase Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original instrument, but all such counterparts together shall constitute the same instrument. Copies (electronic or otherwise) of signatures to this Purchase Agreement shall be deemed to be originals and may be relied on to the same extent as the originals.

14.9 Governing Law and Rules of Construction. This Purchase Agreement is being made in and shall be governed by and construed and enforced in accordance with the laws of the State of Illinois. Notwithstanding the foregoing, the Parties agree that both Parties have equally participated in the drafting of this Purchase Agreement and that if any term, condition or provision of this Purchase Agreement is deemed or construed to be ambiguous or vague, such ambiguity or vagueness shall not be construed in favor of or against any Party to this Purchase Agreement.

14.10 Severability. Should any terms, provision or clause hereof or of any other agreement or document which is required by this Purchase Agreement be held to be invalid, such invalidity shall not affect or render invalid any other provisions or clauses hereof or thereof, the consideration or mutuality of which can be given effect without such invalid provision, and all of which shall remain in full force and effect. If any provision of this Purchase Agreement is so broad as to be unenforceable, such provision shall be interpreted to be only so broad as is enforceable under applicable law.

14.11 Headings. The headings to the sections of this Purchase Agreement are inserted for convenience and reference only and are not intended to define or limit the substance of any section.

14.12 Singular and Plural. Singular terms in this Purchase Agreement may be deemed to include plural, and plural terms to include the singular, where appropriate.

14.13 Schedules. The Schedules referenced in this Purchase Agreement and attached hereto shall be deemed to be a part of this Purchase Agreement and are incorporated herein by this reference.

14.14 No Third Party Rights. This Purchase Agreement and the other agreements entered into at the Closing are solely for the benefit of the Parties. No third person shall acquire any rights or claims by reason of or under this Purchase Agreement.

14.15 Amendment. This Purchase Agreement may be amended only by a writing executed by the authorized representatives of Buyer and Seller.

14.16 Expenses. Except as otherwise expressly set forth herein, each Party shall bear its own costs and expenses in connection with the transactions contemplated in this Purchase Agreement.

*SIGNATURES CONTINUE ON NEXT PAGE*

*REMAINDER OF PAGE INTENTIONALLY LEFT BLANK*

IN WITNESS WHEREOF, the Parties have executed this Purchase Agreement as of the date first above written.

**SELLER:**

**BUYER:**

PERFECT BROW ART, INC.

\_\_\_\_\_

By: \_\_\_\_\_  
Elizabeth Porikos-Gorgees, President

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

PERFECT BROW FLORIDA, INC.

By: \_\_\_\_\_  
Elizabeth Porikos-Gorgees, President

PERFECT BROW PUERTO RICO, INC.

By: \_\_\_\_\_  
Elizabeth Porikos-Gorgees, President

PERFECT BROW NEW YORK, INC.

By: \_\_\_\_\_  
Elizabeth Porikos-Gorgees, President

PERFECT BROW OAKLAND, INC.

By: \_\_\_\_\_  
Elizabeth Porikos-Gorgees, President

P.B. ART FRANCHISE, INC.

By: \_\_\_\_\_  
Elizabeth Porikos-Gorgees, President

LOCKS ROCKS, INC.

By: \_\_\_\_\_  
Elizabeth Porikos-Gorgees, President

**LIST OF SCHEDULES AND EXHIBITS**

**SCHEDULES:**

- 1.1 Definitions
- 1.3 Excluded Assets
- 1.4(a) Contracts and Leases
- 1.4(b) Assumed Contracts and Leases
- 3.1 Assumed Liabilities
- 4.1(b) Bidding Procedures

**EXHIBITS:**

- A Bidding Procedures Order

## **SCHEDULE 1.1**

### **DEFINITIONS**

**“Alternative Transaction”** shall have the meaning set forth in Section 13.1(d) of the Purchase Agreement.

**“Assignment and Assumption Agreement”** shall have the meaning set forth in Section 9.3 of the Purchase Agreement.

**“Assignment and Assumption of Contract”** shall have the meaning set forth in Section 9.5 of the Purchase Agreement.

**“Assignment and Assumption of Lease”** shall have the meaning set forth in Section 9.4 of the Purchase Agreement.

**“Assumed Contracts”** shall have the meaning set forth in Section 1.4(b) of the Purchase Agreement.

**“Assumed Contracts and Leases”** shall have the meaning set forth in Section 1.4(b) of the Purchase Agreement.

**“Assumed Leases”** shall have the meaning set forth in Section 1.4(b) of the Purchase Agreement.

**“Assumed Liabilities”** shall have the meaning set forth in Section 3.1 of the Purchase Agreement.

**“Auction”** shall have the meaning set forth in the Recitals.

**“Auction Date”** shall have the meaning set forth in in paragraph 7 of Schedule 4.1(b) to the Purchase Agreement.

**“Back-Up Bidder”** shall have the meaning set forth in paragraph 11 of Schedule 4.1(b) to the Purchase Agreement.

**“Bankruptcy Case”** shall have the meaning set forth in the Recitals.

**“Bankruptcy Code”** shall have the meaning set forth in the Recitals.

**“Bankruptcy Court”** shall have the meaning set forth in the Recitals.

**“Bid Deadline”** shall have the meaning set forth in paragraph 3 of Schedule 4.1(b) to the Purchase Agreement.

**“Bidding Procedures”** shall have the meaning set forth in the Recitals.

**“Bidding Procedures Order”** shall have the meaning set forth in the Recitals.

**“Business Days”** means any day except Saturday, Sunday, or any other day on which banks are required or authorized by law to be closed in the State of Illinois.

**“Buyer”** shall have the meaning set forth in the introductory paragraph.

**“Closing”** shall have the meaning set forth in Section 5.1 of the Purchase Agreement.

**“Closing Date”** shall have the meaning set forth in Section 5.1 of the Purchase Agreement.

**“Committee”** means the Official Committee of Unsecured Creditors appointed in the Bankruptcy Case.

**“Competing Purchase Agreement”** shall have the meaning set forth in paragraph 4(i)(a) of Schedule 4.1(b) to the Purchase Agreement.

**“Contract”** means any agreement, contract, license, arrangement, commitment, promise, obligation, right, instrument, document or other similar understanding, which in each case is in writing and signed by parties intending to be bound thereby (other than any Leases).

**“Cure Costs”** means all amounts payable in order to cure any monetary defaults required to be cured under section 365(b)(1) of the Bankruptcy Code to effectuate, pursuant to the Bankruptcy Code, the assumption of the Assumed Contracts and Leases, including those arising out of (i) the assumption by the applicable Seller and assignment to Buyer of the Assumed Leases and (ii) those Contracts and Leases assumed and assigned pursuant to Section 1.4(b).

**“Cure Notice”** means a notice to be sent to the counterparties of the Assumed Contracts and Leases regarding the Seller’s intent to assume and assign the Assumed Contracts and Leases.

**“Designated Contract”** shall have the meaning set forth in Section 1.4(c) of the Purchase Agreement.

**“Designated Counterparty”** shall have the meaning set forth in Section 1.4(c) of the Purchase Agreement.

**“Designated Lease”** shall have the meaning set forth in Section 1.4(c) of the Purchase Agreement.

**“Designation Notice”** shall have the meaning set forth in Section 1.4(c) of the Purchase Agreement.

**“Designation Rights Period”** means, with respect to any Contracts or Leases to be assumed and assigned pursuant to Section 1.4(c), the period from the Closing Date through the earlier of (i) the date on which the Bankruptcy Court enters an order confirming a reorganization or liquidation plan concerning the Company in the Bankruptcy Cases and (ii) August 20, 2019; provided, that the expiration of the Designation Rights Period may be extended by Seller with the consent of Buyer.

**“Drop Dead Date”** shall have the meaning set forth in Section 5.1 of the Purchase Agreement.

**“Excluded Assets”** shall have the meaning set forth in Section 1.3 of the Purchase Agreement.

**“Franchised Stores”** shall have the meaning set forth in the Recitals.

**“Good Faith Deposit”** shall have the meaning set forth in Section 2.2 of the Purchase Agreement.

**“Intellectual Property”** shall have the meaning set forth in Section 1.2(f) of the Purchase Agreement.

**“Lease”** means all leases, subleases, licenses, concessions, options, contracts, extension letters, easements, reciprocal easements, assignments, termination agreements, subordination agreements, nondisturbance agreements, estoppel certificates and other agreements (written or oral), and any amendments or supplements to the foregoing, and recorded memoranda of any of the foregoing, pursuant to which any Seller holds any leasehold or subleasehold estates and other rights in respect of any Owned Store.

**“Liability”** means any liability or obligation of whatever kind or nature (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated and whether due or to become due) regardless of when arising.

**“Licenses”** shall have the meaning set forth in Section 1.2(e) of the Purchase Agreement.

**“Liens”** means any lien (statutory or otherwise), claim, encumbrance, interest, liability, deed of trust, right of first offer, easement, servitude, transfer restriction under any shareholder or similar agreement, mortgage, pledge, lien, charge, security interest, option, right of first refusal, easement, security agreement or other encumbrance or restriction on the use or transfer of any property, hypothecation, license, preference, priority, covenant, right of recovery, order of any U.S. Governmental Authority, of any kind or nature.

**“Minimum Overbid”** shall have the meaning set forth in paragraph 8 of Schedule 4.1(b) to the Purchase Agreement.

**“Objection Deadline”** shall have the meaning set forth in Section 1.4(c) of the Purchase Agreement.

**“Owned Stores”** shall have the meaning set forth in the Recitals.

**“Parties”** shall have the meaning set forth in the introductory paragraph.

**“Permitted Liens”** means with respect to leased or licensed real or personal property, the terms and conditions of the lease, license, sublease or other occupancy agreement applicable thereto which are customary.



**“Porikos”** means Elizabeth Porikos-Gorgees.

**“Potential Bidder”** shall have the meaning set forth in paragraph 4 of Schedule 4.1(b) to the Purchase Agreement.

**“Potential Bidder Good Faith Deposit”** shall have the meaning set forth in paragraph 4(i)(c) of Schedule 4.1(b) to the Purchase Agreement.

**“Purchase Agreement”** shall have the meaning set forth in the introductory paragraph.

**“Purchased Assets”** shall have the meaning set forth in Section 1.2 of the Purchase Agreement.

**“Purchase Price”** shall have the meaning set forth in Section 2.1 of the Purchase Agreement.

**“Qualified Bid”** shall have the meaning set forth in paragraph 5 of Schedule 4.1(b) to the Purchase Agreement.

**“Qualified Bidder”** shall have the meaning set forth in paragraph 5 of Schedule 4.1(b) to the Purchase Agreement.

**“Sale Hearing”** shall have the meaning set forth in the Recitals.

**“Sale Motion”** shall have the meaning set forth in the Recitals.

**“Sale Order”** shall have the meaning set forth in the Recitals.

**“Sale Proceeds”** shall have the meaning set forth in Section 2.1 of the Purchase Agreement.

**“Seller”** shall have the meaning set forth in the introductory paragraph.

**“Stalking Horse Agreement”** shall have the meaning set forth in paragraph 1 of Schedule 4.1(b) to the Purchase Agreement.

**“Stalking Horse Bid”** shall have the meaning set forth in paragraph 2 of Schedule 4.1(b) to the Purchase Agreement.

**“Stalking Horse Bidder”** shall have the meaning set forth in paragraph 2 of Schedule 4.1(b) of the Purchase Agreement.

**“Successful Bid”** shall have the meaning set forth in paragraph 10 of Schedule 4.1(b) to the Purchase Agreement.

**“Successful Bidder”** shall have the meaning set forth in paragraph 10 of Schedule 4.1(b) to the Purchase Agreement.

**“Stalking Horse Designation Date”** shall have the meaning set forth in Section 4.1(a) of the Purchase Agreement.

**“Termination Fee”** shall have the meaning set forth in Section 13.1(e) of the Purchase Agreement.

**“Territory”** shall have the meaning set forth in the Recitals.

**“Transaction Documents”** shall have the meaning set forth in Section 9.1 of the Purchase Agreement.

**“U.S. Governmental Authority”** shall have the meaning set forth in Section 10.9 of the Purchase Agreement.

**SCHEDULE 1.3**

**EXCLUDED ASSETS**

1. All cash and cash equivalents bank accounts, deposits and securities of Seller;
2. All accounts or notes receivable
3. All Intellectual Property not described in Section 1.2 of the Purchase Agreement, including international rights to Seller and related assets, and copies of necessary books, records, intellectual property, templates and forms for use in franchising and operating the business outside of the Territory.
4. All Contracts and Leases that are not Assumed Contracts and Leases and equipment and Intellectual Property subject to Contracts that are not Assumed Contracts;
5. The corporate seals, organizational documents, minute books, stock books, tax returns, books of account or other records having to do with the corporate organization of Seller, and any other books and records which Seller is prohibited from disclosing or transferring to Buyer under applicable law and is required by applicable law to retain;
6. All rights of Seller under this Purchase Agreement;
7. Any asset not constituting a Purchased Asset;
8. All insurance policies of Seller and all rights to applicable claims and proceeds thereunder;
9. All rights, claims, and causes of action of Seller against third parties and the proceeds thereof, including, without limitation, any claims or proceedings filed under chapter 5 of the Bankruptcy Code, tort claims, and causes of action against officers and directors, and including all rights to any action, suit or claim of any nature available to or being pursued by Seller, whether arising by way of counterclaim or otherwise;
10. [All assets and interests of and in OOH La La Beauty Bar Franchise, Inc.]

**SCHEDULE 1.4(a)**

**CONTRACTS AND LEASES**

1. TO COME

**SCHEDULE 1.4(b)**

**ASSUMED CONTRACTS AND LEASES**

1. TO COME

**SCHEDULE 3.1**

**ASSUMED LIABILITIES**

1. All Liabilities under the Assumed Contracts and Assumed Leases to the extent such Liabilities arise from and after the Closing Date;
2. all Liabilities relating to or arising out of the ownership or operation of the Owned Stores operating under an Assumed Lease or any Purchased Asset as of and after the Closing;
3. all Liabilities for gift cards and gift certificates; and
4. all Cure Costs pursuant to Section 1.4(g)

## SCHEDULE 4.1(b)

### BIDDING PROCEDURES

1. Assets to be Sold. Seller is offering for sale, the assets described in the Purchase Agreement or the stalking horse purchase agreement (the “**Stalking Horse Agreement**”)<sup>1</sup> if submitted on or before the June 14, 2019.

2. Stalking Horse Bid. \_\_\_\_\_ (the “**Stalking Horse Bidder**”), has submitted to the Seller an initial stalking horse bid of \$ \_\_\_\_\_ (the “**Stalking Horse Bid**”), which will serve as the minimum bid at the Auction, which Stalking Horse Bid is reflected in the Stalking Horse Agreement executed by the Stalking Horse Bidder and Seller and will be attached hereto as Exhibit 1 if a Stalking Horse Bid is received on or before June 14, 2019.

3. Deadline for Bid Submissions. Bids shall be due on or before \_\_\_\_\_, 2019 at 5:00 p.m. CST (the “**Bid Deadline**”).

4. Required Submissions for Bidding. In order to submit a bid, each person (each a “**Potential Bidder**”) must deliver to the Seller (via overnight mail or courier to Levenfeld Pearlstein, LLC, 2 N. LaSalle, Suite 1300 Chicago, Illinois 60602, Attention: Harold D. Israel, or via electronic mail to hisrael@lplegal.com), with a copies to Schoenberg Finkel Newman & Rosenberg, LLC via electronic mail to [michael.friman@SFNR.com](mailto:michael.friman@SFNR.com) and to Ravinia Capital via electronic mail to [jwk@raviniacapitalllc.com](mailto:jwk@raviniacapitalllc.com), and to (i) financial advisor to the Seller and the Committee, via overnight mail or courier to CBIZ Corporate Recovery Services, 1065 Avenue of the Americas, 11<sup>th</sup> Floor, New York, NY 10018, Attention Charles M. Berk or via electronic mail to [cberk@cbiz.com](mailto:cberk@cbiz.com); and (ii) counsel to the Committee (via overnight mail or courier to Sugar Felsenthal Grais & Helsinger LLP , 30 N. LaSalle St, Suite 3000 Chicago, Illinois 60602, Attention: Jonathan P. Friedland, Elizabeth B. Vandesteeg and Michael A. Brandess, or via electronic mail to [jfriedland@sfggh.com](mailto:jfriedland@sfggh.com); [evandesteeg@sfggh.com](mailto:evandesteeg@sfggh.com); [mbrandess@sfggh.com](mailto:mbrandess@sfggh.com)) the following, on or before the Bid Deadline

- (i) if there is a Stalking Horse Agreement:
  - a. an executed agreement (the “**Competing Purchase Agreement**”) (hard copy and electronic Microsoft Word document) for the purchase of the Purchased Assets upon the same or better terms and conditions than those set forth in the Stalking Horse Agreement, as determined by the Seller in its sole discretion, after consulting with the Committee, with such Competing Purchase Agreement substantially in the form to be attached hereto as Exhibit 1, and an electronic markup of the Potential Bidder’s Competing Purchase Agreement showing any and all amendments and modifications from the Stalking Horse Agreement, including, but not limited to, purchase price and contact information of the Potential Bidder;

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<sup>1</sup> Capitalized terms used but not defined herein have the meanings assigned thereto in the Stalking Horse Agreement.

- b. the Potential Bidder's Competing Purchase Agreement provides that the Potential Bidder is (i) willing to purchase the Purchased Assets for at least the Minimum Overbid and (ii) prepared to consummate the transaction contemplated by the Stalking Horse Agreement no later than the Closing Date;
- c. an initial deposit (the "**Potential Bidder Good Faith Deposit**") in the form of a cashier's check, cash, or otherwise immediately available funds in the amount of 2.5% of the Purchase Price set forth in the Competing Purchase Agreement payable to the Seller, to be submitted along with the bid (funds to be delivered to Seller, with proof of payment delivered to the Stalking Horse Bidder);
- d. written evidence satisfactory to the Seller of the Potential Bidder's chief executive officer's or other appropriate senior executive's approval of the contemplated transaction and that no other consents are required;
- e. financial statements (or other financial information acceptable to the Seller in its sole and absolute discretion, after consulting with the Committee) showing that the Potential Bidder has the financial ability to close on the Purchased Assets by the Closing Date;
- f. a signed statement indicating that the Competing Purchase Agreement is irrevocable until (i) the Auction has taken place and the Potential Bidder is not approved as the Successful Bidder or Back-up Bidder whether due to the Potential Bidder being not selected by the Seller in its sole discretion or for any other reason whatsoever, in which case the Potential Bidder Good Faith Deposit will be refunded unless otherwise forfeited pursuant to paragraph 10 below or (ii) one business day following the closing of the Sale, in the event the Potential Bidder is selected as the Successful Bidder or Back-up Bidder, in which case, the Potential Bidder Good Faith Deposit shall not be refunded until the Potential Bidder or another bidder has consummated the transaction; and
- g. a signed statement acknowledging the prohibition against collusive bidding.

Seller will not consider any offer that requires payment of a Termination Fee (except to the Stalking Horse Bidder) or other "stalking horse" protections or requires due diligence or financing contingencies of any kind.

- (ii) if there is not a Stalking Horse Agreement:
  - a. an executed Purchase Agreement (hard copy and electronic Microsoft Word document) for the purchase of the Purchased Assets, with such Purchase Agreement substantially in the form attached hereto as Exhibit 1, and an electronic markup of the Potential Bidder's Purchase Agreement showing any and all amendments and modifications from the form of Purchase Agreement, including, but not limited to, purchase price and contact information of the Potential Bidder;



- b. the Potential Bidder's Purchase Agreement provides that the Potential Bidder is prepared to consummate the transaction contemplated by the Purchase Agreement no later than the Closing Date;
- c. The Potential Bidder Good Faith Deposit in the form of a cashier's check, cash, or otherwise immediately available funds in the amount of 2.5% of the Purchase Price set forth in the Purchase Agreement payable to the Seller, to be submitted along with the bid (funds to be delivered to Seller).
- d. written evidence satisfactory to the Seller of the Potential Bidder's chief executive officer's or other appropriate senior executive's approval of the contemplated transaction and that no other consents are required;
- e. financial statements (or other financial information acceptable to the Seller in its sole and absolute discretion, after consulting with the Committee) showing that the Potential Bidder has the financial ability to close on the Purchased Assets by the Closing Date;
- f. a signed statement indicating that the Purchase Agreement is irrevocable until (i) the Auction has taken place and the Potential Bidder is not approved as the Successful Bidder or Back-up Bidder whether due to the Potential Bidder being not selected by the Seller in its sole discretion or for any other reason whatsoever, in which case the Potential Bidder Good Faith Deposit will be refunded unless otherwise forfeited pursuant to paragraph 10 below or (ii) one business day following the closing of the Sale, in the event the Potential Bidder is selected as the Successful Bidder or Back-up Bidder, in which case, the Potential Bidder Good Faith Deposit shall not be refunded until the Potential Bidder or another bidder has consummated the transaction; and
- g. a signed statement acknowledging the prohibition against collusive bidding.

Seller will not consider any offer that requires payment of a Termination Fee or other "stalking horse" protections or requires due diligence or financing contingencies of any kind.

5. Determination of Qualified Bids. A bid that complies with the requirements of and be accompanied by the information set forth in Paragraph 4 above, as determined in the sole discretion of the Seller, after consulting with the Committee, will be deemed a "**Qualified Bid.**" A "**Qualified Bidder**" is a Potential Bidder that submits a Qualified Bid and, in the Seller's sole discretion (after consulting with the Committee), is determined to demonstrate the financial capability to consummate the purchase of the Purchased Assets that is the subject of its Qualified Bid.

6. Impact of Bid Rejection. If Seller determines that a Potential Bidder is not a Qualified Bidder, the Seller shall return the Potential Bidder Good Faith Deposit to the Potential Bidder promptly upon such determination. At the Auction, only the Stalking Horse Bidder and Qualified Bidders who have submitted Qualified Bids for the Purchased Assets shall have the right to bid on the Purchased Assets. If there are no Qualified Bids and a Stalking Horse Agreement

was submitted on or before the Stalking Horse Designation Date, the Auction shall be canceled and Seller shall proceed with Closing of the purchase and sale of the Purchased Assets to the Stalking Horse Bidder on the Closing Date.

7. Timing and Location of Auction. The Auction shall be conducted on [June 28, 2019] (the “**Auction Date**”) at 10:00 a.m. CST. The Auction will be held at the offices of Levenfeld Pearlstein, LLC, 2 North LaSalle Street, Suite 1300, Chicago, Illinois 60602 or such other location designed by Seller in advance of the Bid Deadline. In addition to the Seller and its counsel and other advisors, representatives of the Committee, only the Stalking Horse Bidder (if any) and Qualified Bidders that submitted a Qualified Bid, along with their respective professionals and advisors, will be permitted to attend the Auction. In the event of a change in time or place of the Auction, the Seller shall use its commercially reasonable efforts to notify the Stalking Horse Bidder and all Qualified Bidders who have timely submitted Qualified Bids on or before the Bid Deadline.

8. Minimum Overbid and Bid Increments. The initial overbid (the “**Minimum Overbid**”) must be (i) if a Stalking Horse Agreement was submitted on or before the Stalking Horse Designation Date and another Qualified Bidder bids on the Purchased Assets, equal to the sum of the Stalking Horse Bid **plus** the Termination Fee **plus** \$50,000 or (ii) if a Stalking Horse Agreement was not submitted on or before the Stalking Horse Designation Date, \$50,000 greater than the offer the Seller designates, after consulting with the Committee, containing the highest or best offer for the Purchased Assets.

9. Procedures for the Auction. The Auction shall be conducted in accordance with commercially reasonable procedures as shall be established by Seller and its legal counsel, after consulting with the Committee. Seller reserves its right to modify the Auction procedures at any time in its sole and absolute discretion.

10. Determination of Successful Bid. Upon completion of the Auction, the Seller, in its sole discretion (after consulting with Committee), shall select the Qualified Bid that will maximize the value of the Purchased Assets and is in the best interest of the Seller’s bankruptcy estate (the “**Successful Bid**”). The Good Faith Deposit and the Potential Bidder Good Faith Deposit, as the case may be, for any Qualified Bidder shall be non-refundable until the Closing. If the party submitting the Successful Bid (the “**Successful Bidder**”) fails to close the sale (other than as a result of the Seller’s breach), such party’s Good Faith Deposit or Potential Bidder Good Faith Deposit, as the case may be, shall be retained by Seller as its sole and exclusive damages resulting from such failure to close.

11. Right to Select Back-Up Bidder(s). At the conclusion of the Auction, the Seller may designate a “Back-Up Bidder” or multiple Back-Up Bidders (each a “**Back-Up Bidder**”), if necessary, provided that each Back-Up Bidder is willing to purchase the Purchased Assets for at least the Back-Up Bidder’s last bid at the Auction. If, for any reason, the party that submits the Successful Bid fails to consummate the purchase of the Purchased Assets:

- a. the Back-Up Bidder designated by Seller shall be deemed to have submitted the highest and best bid, and shall be deemed the Successful Bid, and the Successful Bidder; and

- b. Seller shall have the right to effectuate the sale of the Purchased Assets to the Back-Up Bidder as soon as is commercially reasonable. Such Back-Up Bidder's Good Faith Deposit or Potential Bidder Good Faith Deposit, as the case may be, shall be held in escrow until the closing of the transaction with the Successful Bidder.

12. Termination Fee. If a Stalking Horse Agreement was submitted on or before the Stalking Horse Designation Date and such Stalking Horse Bidder is not the Successful Bidder at the Auction and an alternative transaction is consummated, the Stalking Horse Bidder shall become entitled to a Termination Fee in accordance with the Stalking Horse Agreement.

13. Closing of Sale. Closing of the purchase and sale of the Purchased Assets to the Successful Bidder shall be on the Closing unless otherwise agreed to by the parties. The Closing Date may be extended by written agreement of the Seller and the Successful Bidder.

**EXHIBIT B**

**AUCTION NOTICE**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re: )  
 ) Chapter 11  
 )  
PERFECT BROW ART, INC., *et al.* ) Case No. 19-01811  
 ) (Jointly Administered)  
 )  
Debtors.<sup>1</sup> ) Honorable Donald R. Cassling  
 )

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**NOTICE OF (I) DEBTOR'S INTENT TO SELL CERTAIN REAL PROPERTY FREE  
AND CLEAR OF ALL LIENS, CLAIMS; ENCUMBRANCES, AND OTHER  
INTERESTS, (II) AUCTION, (III) BIDDING PROCEDURES AND (IV) SALE HEARING**

**TO: ALL CREDITORS AND OTHER PARTIES IN INTEREST  
PLEASE TAKE NOTICE:**

On January 22, 2019, the above-captioned debtors and debtors in possession (collectively, the "*Debtors*") filed their voluntary petitions for relief (the "*Chapter 11 Cases*") under chapter 11 of title 11 of the United States Code in the United States Bankruptcy for the Northern District of Illinois (the "*Bankruptcy Court*"). In connection with the Chapter 11 Cases, the Debtors are selling substantially all of their assets (the "*Assets*").

**Sale Motion:** On May \_\_, 2019, the Debtors filed their motion for entry of (a) an order (the "*Bidding Procedures Order*") (i) approving procedures (the "*Bidding Procedures*") for the sale (the "*Sale*") of substantially all of the Debtors' assets (the "*Purchased Assets*") to the Successful Bidder ("*Successful Bidder*"); (ii) scheduling an auction (the "*Auction*"); (iii) establishing procedures for the assumption and assignment of Assumed Contracts and Leases (the "*Assumption and Assignment Procedures*"); (iv) approving the form and manner of notices associated with the Sale and Assumption and Assignment Procedures; (v) scheduling a final hearing (the "*Final Hearing*") to consider approval of the Sale of the Purchased Assets; (b) entry of an order (the "*Sale Order*") approving the Sale of the Purchased Assets to the Successful Bidder; and (c) granting related relief. [Docket No. \_\_\_\_]

**Sale of Assets:** The Debtors shall offer the Assets, via the Auction, free and clear of existing liens and security interests to the extent provided for in section 363 of the Bankruptcy Code. Additional detail on the Assets can be obtained by contacting Ravinia Capital, LLC, the Debtors' investment banker, 185 N. Franklin, Third Floor, Chicago, IL 60606, David Bergal,

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: (i) Perfect Brow Art, Inc. (5731), (ii) Perfect Brow Florida, Inc. (5602), (iii) Perfect Brow Puerto Rico, Inc. (3497), (iv) Perfect Brow New York, Inc. (2041), (v) Locks Rock, Inc. (5046), (vi) P.B. Art Franchise, Inc. (0026), (vii) Perfect Brow Oakland, Inc. (5727), and (viii) Ooh La La Beauty Bar Franchise, Inc. (0714).

(551) 795-4769, [dbergal@raviniacapitalllc.com](mailto:dbergal@raviniacapitalllc.com) or John Kemp, (630) 215-9383, [jwk@raviniacapitalllc.com](mailto:jwk@raviniacapitalllc.com).

**Bidding Procedures Order:** On \_\_\_\_\_, 2019, the Bankruptcy Court entered the Bidding Procedures Order and set (i) \_\_\_\_\_, 2019 at **(Central Time)** (*the “Bid Deadline”*) as the deadline to submit offers; (ii) \_\_\_\_\_, 2019 at **(Central Time)** as the date of the Auction (*the “Auction Date”*); and (iii) \_\_\_\_\_, 2019 at **(Central Time)** as the date of the Final Hearing before the Honorable Donald R. Cassling, United States Bankruptcy Judge, in the United States Bankruptcy Court for the Northern District of Illinois, 219 South Dearborn Street, Courtroom 619, Chicago, Illinois 60604. [Docket No. \_\_\_\_] Copies of the Sale Motion (including the form purchase agreement) and the Bidding Procedures Order are available upon request to Stretto, the Debtors’ noticing agent, at (855) 812-6112 and are available for download at <https://case.stretto.com/perfectbrowart/docket>.

**Submission of Offers:** All potential buyers desiring to bid at the Auction shall be required to comply with the terms of the Bidding Procedures attached to the Bid Procedures Order as Exhibit 1. Among other things, (i) all bids must be in the form of the purchase agreement attached as Exhibit 1 to the Bidding Procedures; (ii) all bids must be received by the Bid Deadline as provided for in the Bidding Procedures; and (iii) potential bidders must demonstrate to the Debtors the financial ability to close the proposed transaction.

**Auction:** As set forth in the Bidding Procedures, the auction shall take place on the Auction Date at the offices of the Debtors’ counsel, Levenfeld Pearlstein, LLC, 2 N. LaSalle Street, Suite 1300, Chicago, Illinois 60602.

Dated: \_\_\_\_\_, 2019

Respectfully submitted,

**PERFECT BROW ART, INC., ET AL.**

By: /s/ Harold D. Israel

Harold D. Israel  
Jamie L. Burns  
**LEVENFELD PEARLSTEIN, LLC**  
2 N. LaSalle Street, Suite 1300  
Chicago, Illinois 60602  
Telephone: (312) 346-8380  
Facsimile: (312) 346-8434

*Attorneys for the Debtors*

**EXHIBIT C**

**ASSUMPTION AND ASSIGNMENT PROCEDURES**

## ASSUMPTION AND ASSIGNMENT PROCEDURES

PERFECT BROW ART, INC., an Illinois corporation, together with its affiliates PERFECT BROW FLORIDA, INC., a Florida corporation, PERFECT BROW PUERTO RICO, INC., a Puerto Rico Corporation, PERFECT BROW NEW YORK, INC., an Illinois corporation, PERFECT BROW OAKLAND, INC., an Illinois corporation, P.B. ART FRANCHISE, INC., a Florida corporation and LOCKS ROCKS, INC., an Illinois corporation (“**Seller**”) is offering for sale, the assets described in the Purchase Agreement (“**Purchase Agreement**”) or the stalking horse purchase agreement (the “**Stalking Horse Agreement**” and together with the Agreement sometimes hereinafter referred to as the “**Agreement**”)<sup>1</sup> if submitted on or before June 14, 2019, which includes the assignment of certain contracts and leases related thereto. The following procedures (the “**Assumption and Assignment Procedures**”) relate to the assumption and assignment to a purchaser of certain contracts and unexpired leases by Seller as contemplated by the Agreement, including procedures for providing notice to counterparty of the Contracts and Leases (each, a “**Counterparty**”).

1. Contracts and Leases. Pursuant to the Agreement, the Contracts and Leases consist of certain executory contracts and unexpired leases that may be designated to be assumed by Seller and assigned to Successful Bidder as listed on Schedule 1.4(a) of the Agreement. Inclusion of a Contract or Lease on Schedule 1.4(a) of the Agreement shall not constitute an admission that such contract is an executory contract or lease is an unexpired lease.

2. Designation of Assumed Contracts and Leases. From and after the date hereof until the Bid Deadline, a buyer may, in its sole discretion, (i) designate a Contract listed on Schedule 1.4(a) of the Agreement for assumption and assignment to Purchaser, effective on and as of the Closing (such Contracts, the “**Assumed Contracts**”) or (ii) designate a Lease listed on Schedule 1.4(a) of the Agreement for assumption and assignment to Purchaser, effective on and as of the Closing (such Leases, the “**Assumed Leases**,” and collectively with the Assumed Contracts, the “**Assumed Contracts and Leases**”).

3. Notice of Cure Amounts. On or prior to June \_\_, 2019, the Debtors Seller shall serve by U.S. mail an omnibus notice (the “**Cure Notice**”) on each counterparty to a Contract and Lease, at the last known address available to Seller. The Cure Notice shall include an exhibit that (i) identifies the specific Contracts and Leases that may be assumed and assigned, (ii) identifies the property subject to the contract or lease, and (iv) the cure amount asserted by Seller that is necessary to cure any default under the relevant Assumed Contracts and Leases pursuant to section 365 of the Bankruptcy Code (the “**Cure Amount**”). Further, the Cure Notice shall include (i) the date of the Auction and (iii) the date of the Final Hearing.

4. Cure Objections. To the extent that any interested party wishes to object (“**Cure Objection**”) to the Cure Amount designated in the Cure Notice, then such interested party must

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<sup>1</sup> Capitalized terms used but not defined herein have the meanings assigned thereto in the Agreement/Stalking Horse Agreement.



file a written objection with the Bankruptcy Court no later than \_\_\_\_\_, **2019 at 5:00 p.m. CST** (the “**Cure Objection Deadline**”), and simultaneously serve such Cure Objection on the following parties (the “**Notice Parties**”): (a) Seller’s counsel; (b) counsel to the Committee; and (c) the Office of the United States Trustee for the Northern District of Illinois so that it is **actually received** by the Cure Objection Deadline. To the extent that any party in interest does not timely serve a Cure Objection as set forth above, such party will be deemed to have consented to the relevant Cure Amount, if any.

5. Initial Notice of Assumed Contracts and Leases

a. Stalking Horse Bidder. On or prior to June 25, 2019 (or earlier if available), Seller shall serve by overnight mail an omnibus notice (the “**Initial Assignment Notice**”) on each counterparty to an Assumed Contract and Lease, at the last known address available to Seller. The Initial Assignment Notice shall identify (i) the name of the Stalking Horse Bidder, (ii) the specific Assumed Contracts and Leases being assumed and assigned, (iii) identifies the property subject to the Assumed Contract or Lease; and (iv) a description of the Stalking Horse Bidder and a statement as to the ability of the such Stalking Horse Bidder to perform the Seller’s obligations under the Assumed Contracts and Leases; or

b. No Stalking Horse Bidder. On or prior to June 25, 2019, Seller shall serve by overnight mail an omnibus notice (the “**Initial Assignment Notice**”) on each counterparty to an Assumed Contract and Lease, at the last known address available to Seller. The Initial Assignment Notice shall identify (i) the name of the proposed buyer(s), (ii) the specific Assumed Contracts and Leases being assumed and assigned, (iii) identifies the property subject to the Assumed Contract or Lease; and (iv) a description of the proposed buyer(s) and a statement as to the ability of the such buyer to perform the Seller’s obligations under the Assumed Contracts and Leases.

6. Supplemental Notice of Assumed Contracts and Leases. Within one (1) business day after the conclusion of the Auction, Seller will serve by overnight mail and file with the Court an omnibus notice (the “**Auction Results Notice**”) upon each of the Notice Parties (and their attorneys, if an attorney has filed a notice of appearance in the Seller’s chapter 11 proceedings) at the last known address available to Seller. The Auction Results Notice shall, *inter alia*, identify the successful bidder(s) (the “**Successful Bidder**”) and the back-up bidder (the “**Backup Bidder**”) chosen at the Auction in accordance with the Bidding Procedures and such other information as hereinafter provided. The Auction Results Notice shall include, a description of the Successful Bidder and the Backup Bidder and a statement as to the ability of the Successful Bidder or the Backup Bidder to perform the Seller’s obligations under the Assumed Contracts and Leases (the “**Buyer’s Adequate Assurance**” or the “**Backup Bidder’s Adequate Assurance**”).

7. Supplemental Objections. To the extent that any interested party wishes to object to the assumption and assignment of the Buyer’s Adequate Assurance or the Backup Bidder’s Adequate Assurance designated in the Auction Results Notice, then such party must file a written objection with the Court no later than \_\_\_\_\_, **2019 at 5:00 p.m. CST** (the “**Supplemental Objection Deadline**”), and serve such an objection on the Objection Parties so

that it is **actually received** by the Supplemental Objection Deadline. To the extent that any interested party does not timely serve an objection as set forth above, such party will be deemed to have agreed that the Successful Bidder and the Backup Bidder have provided adequate assurance of future performance within the meaning of section 365(b)(1)(C) of the Bankruptcy Code.

8. Resolution and Adjudication of Objections. Upon filing of an objection by a Counterparty, Seller and/or Successful Bidder (if the objection occurs after the Auction Results Notice) will contact the objecting Counterparty to consensually resolve any timely served objection. If Seller and/or Successful Bidder are unable to resolve an objection in response to the Assignment Notice, to the extent such objections (each an “**Adequate Assurance Objection**”) relate to the adequate assurance of future performance by Buyer, such objections will be heard at the hearing on the Motion (the “**Sale Hearing**”). In the event an objection relates solely as to a Cure Amount (a “**Cure Objection**”), then such objecting Counterparty will be deemed to consent to the assumption of unexpired lease and its assignment to Buyer, notwithstanding such objection. In the event Seller and/or Successful Bidder are unable to resolve an Adequate Assurance Objection or a Cure Objection prior to the Sale Hearing, Successful Bidder may elect not to request assumption and assignment of the related unexpired lease as part of the Sale. On or as promptly after the Closing as practical, the Cure Amounts to which no objections have been filed, or to which Successful Bidder and applicable Counterparty have agreed as to the allowed Cure Amount(s), shall be paid as set forth in the Agreement. Payment of the undisputed Cure Amounts shall be deemed to discharge the obligation of Seller and Buyer to (i) cure any defaults under the Assumed Contracts and Leases and (ii) compensate, or provide adequate assurance that Seller will promptly compensate, any non-debtor party to the Assumed Contracts and Leases for any actual pecuniary loss resulting from any default thereunder. Pursuant to section 365(k) of the Bankruptcy Code, Seller shall have no liabilities for any claims arising or relating to or accruing post-closing under any of the Assumed Contracts and Leases.

9. Designation Rights. The Successful Bidder shall have the Designation Rights described in section 1.4 of the Agreement.

10. Reservation of Rights. Seller’s decision to assume and assign any of the Assumed Contracts and Leases is subject to Bankruptcy Court approval and consummation of the Sale. Accordingly, Seller shall be deemed to have assumed and assigned the Assumed Contracts and Leases ultimately identified under the Agreement as of and effective only upon the Closing (as defined in the Agreement). Absent a Closing that includes such Assumed Contracts and Leases, each of the Assumed Contracts and Leases shall be deemed neither assumed nor assigned/subleased and shall in all respects be subject to subsequent assumption or rejection by Seller under the Bankruptcy Code. Buyer shall have no rights in and to a particular unexpired lease until such time as the particular unexpired lease is assumed and assigned in accordance with the procedures set forth herein. Under no circumstances will Seller be deemed to have assumed an unexpired lease without a corresponding assignment of such an unexpired lease to Successful Bidder pursuant to the terms of the Agreement.

**EXHIBIT D**

**NOTICE OF ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND LEASES**

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re: )  
 ) Chapter 11  
 )  
PERFECT BROW ART, INC., *et al.* ) Case No. 19-01811  
 ) (Jointly Administered)  
 )  
Debtors.<sup>1</sup> ) Honorable Donald R. Cassling  
 )

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**NOTICE OF ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND LEASES**

**TO: ALL CONTRACT AND LEASE COUNTERPARTIES  
PLEASE TAKE NOTICE:**

On January 22, 2019, the above-captioned debtors and debtors in possession (collectively, the “*Debtors*”) filed their voluntary petitions for relief (the “*Chapter 11 Cases*”) under chapter 11 of title 11 of the United States Code in the United States Bankruptcy for the Northern District of Illinois (the “*Bankruptcy Court*”). In connection with the Chapter 11 Cases, the Debtors are selling substantially all of their assets (the “*Assets*”).

**Sale Motion:** On May \_\_, 2019, the Debtors filed their motion for entry of (a) an order (the “*Bidding Procedures Order*”) (i) approving procedures (the “*Bidding Procedures*”) for the sale (the “*Sale*”) of substantially all of the Debtors’ assets (the “*Purchased Assets*”) to the Successful Bidder (“*Successful Bidder*”); (ii) scheduling an auction (the “*Auction*”); (iii) establishing procedures for the assumption and assignment of Assumed Contracts and Leases (the “*Assumption and Assignment Procedures*”); (iv) approving the form and manner of notices associated with the Sale and Assumption and Assignment Procedures; (v) scheduling a final hearing (the “*Final Hearing*”) to consider approval of the Sale of the Purchased Assets; (b) entry of an order (the “*Sale Order*”) approving the Sale of the Purchased Assets to the Successful Bidder; and (c) granting related relief. [Docket No. \_\_\_\_]. On \_\_\_\_, 2019, the Bankruptcy Court entered the Bidding Procedures Order, including approving the Assignment and Assumption Procedures. [Docket No. \_\_\_\_].

**Objection Rights.** if you are receiving this notice, you or your company is a counterparty to a contract or lease that may constitute an executory contract or unexpired lease with one or more of the Debtors, and your rights will be impacted by the Sale Motion. Please carefully review Exhibit A to this notice, which lists under “cure amount” the amount that the applicable Debtor believes it needs to pay to cure all arrearages under the Contract or Lease in connection

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal taxpayer-identification number, are: (i) Perfect Brow Art, Inc. (5731), (ii) Perfect Brow Florida, Inc. (5602), (iii) Perfect Brow Puerto Rico, Inc. (3497), (iv) Perfect Brow New York, Inc. (2041), (v) Locks Rock, Inc. (5046), (vi) P.B. Art Franchise, Inc. (0026), (vii) Perfect Brow Oakland, Inc. (5727), and (viii) Ooh La La Beauty Bar Franchise, Inc. (0714).

with assigning it the successful bidder at the Auction. If you disagree with the cure amount set forth therein for the Contract or Lease applicable to you or your organization, you must file a written objection by \_\_\_\_\_, **2019, at 5:00 p.m. (Central Time)**. After the Auction, counterparties may object to the Successful Bidder's adequate assurance no later than \_\_\_\_\_, **2019**, at 5:00 p.m. CST. Inclusion of a Contract or Lease on Exhibit A shall not constitute an admission that such contract is an executory contract or lease is an unexpired lease.

**Auction:** The Auction to sell the Assets shall take place on \_\_\_\_\_, **2019 at 10:00 a.m. Central Time** at the offices of the Debtors' counsel, Levenfeld Pearlstein, LLC, 2 N. LaSalle Street, Suite 1300, Chicago, Illinois 60602.

**Final Hearing:** Pursuant to the Procedures Order, the Final Hearing will be held before Donald R. Cassling, United States Bankruptcy Judge, on \_\_\_\_\_, **2019 at \_\_\_\_\_ a.m. (Central Time)** in the United States Bankruptcy Court for the Northern District of Illinois, 219 South Dearborn Street, Courtroom 619, Chicago, Illinois 6060, to consider the Debtor's motion for the sale of the Assets.

Dated: \_\_\_\_\_, 2019

Respectfully submitted,

**PERFECT BROW ART, INC., ET AL.**

By: /s/ Harold D. Israel

Harold D. Israel  
Jamie L. Burns  
**LEVENFELD PEARLSTEIN, LLC**  
2 N. LaSalle Street, Suite 1300  
Chicago, Illinois 60602  
Telephone: (312) 346-8380  
Facsimile: (312) 346-8434

*Attorneys for the Debtors*

**EXHIBIT A**

<b>Contract /Lease Counterparty</b>	<b>Address</b>	<b>Description of Contract/Lease</b>	<b>Cure Amount</b>

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

In re:	)	
	)	Chapter 11
	)	
PERFECT BROW ART, INC., <i>et al.</i>	)	Case No. 19-01811
	)	(Jointly Administered)
	)	
Debtors. <sup>1</sup>	)	Honorable Donald R. Cassling
	)	

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**ORDER GRANTING DEBTORS' MOTION FOR ENTRY OF AN ORDER (A) (I) APPROVING PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (II) SCHEDULING AN AUCTION; (III) ESTABLISHING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF CERTAIN CONTRACTS AND LEASES; (IV) APPROVING FORM AND MANNER OF NOTICES ASSOCIATED WITH THE AUCTION AND THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND LEASES; AND (V) SETTING A FINAL HEARING; AND (B) GRANTING RELATED RELIEF**

Upon the Debtors' motion (the "Motion"), pursuant to sections 363, 365, 1107(a), and 1108 of title 11 of the United States Code (the "*Bankruptcy Code*") and Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the "*Bankruptcy Rules*") for entry of (a) an order (the "*Bidding Procedures Order*") (i) approving procedures (the "*Bidding Procedures*") for the sale (the "*Sale*") of substantially all of the Debtors' assets (the "*Purchased Assets*") to the Successful Bidder ("*Successful Bidder*"); (ii) scheduling an auction (the "*Auction*"); (iii) establishing procedures for the assumption and assignment of Assumed Contracts and Leases (the "*Assumption and Assignment Procedures*"); (iv) approving the form and manner of notices associated with the Sale and Assumption and Assignment Procedures; and (v) scheduling a final

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: (i) Perfect Brow Art, Inc. (5731), (ii) Perfect Brow Florida, Inc. (5602), (iii) Perfect Brow Puerto Rico, Inc. (3497), (iv) Perfect Brow New York, Inc. (2041), (v) Locks Rock, Inc. (5046), (vi) P.B. Art Franchise, Inc. (0026), (vii) Perfect Brow Oakland, Inc. (5727), and (viii) Ooh La La Beauty Bar Franchise, Inc. (0714).

hearing (the “*Final Hearing*”) to consider approval of the Sale of the Purchased Assets; (b) entry of an order (the “*Sale Order*”) approving the Sale of the Purchased Assets to the Successful Bidder; and (c) granting related relief; capitalized terms used herein but not defined shall have the meaning ascribed to them in the Motion; it appearing to the Court that based upon the representations contained in the Motion, entry of this Order is in the best interest of the Debtors, their estates, and their creditors, and after due deliberation and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Bidding Procedures, attached as Exhibit A hereto, for conducting the Auction are hereby authorized, approved, and made part of this Order as if fully set forth herein.

2. The Assumption and Assignment Procedures, attached as Exhibit B hereto, for the assumption and assignment of the Contracts and Leases are hereby authorized, approved, and made part of this Order as if fully set forth herein.

3. Subject to the final determination of this Court, the Debtors are authorized to (a) determine in their discretion (after consultation with the Committee), which of the Qualified Bids submitted for the Auction is the highest or otherwise best offer, and (b) properly reject any and all bids that, in the Debtors’ discretion (after consultation with the Committee) are (i) inadequate or insufficient; (ii) not in conformity with the requirements of the Bankruptcy Code, or the terms and conditions of the Bidding Procedures; or (iii) contrary to the best interests of the Debtors, their estates, and creditors.

4. If there is a Stalking Horse Bidder on or before June 14, 2017, (i) the Debtors will file the Stalking Horse Purchase Agreement on or before June 14, 2017; (ii) the Termination Fee and other bid protections as set forth in the Bidding Procedures are hereby approved and the Debtor is authorized and directed to pay any and all amounts owing to the Stalking Horse Bidder in



accordance with the terms of the Bidding Procedures, including the Termination Fee, without further order of the Court; and (iii) the Court, if necessary, will hold a status hearing on the Sale Motion on June 18, 2019 at \_\_\_\_\_ in the event that the Committee does not approve the Stalking Horse Purchase Agreement

5. If the Stalking Horse Bidder becomes entitled to payment from the Debtor under the Bidding Procedures for the Termination Fee, the Termination Fee shall be paid upon consummation, and from the proceeds, of a transaction with a buyer other than the Purchaser.

6. The Auction Notice, in substantially the same form as annexed to the Motion as Exhibit B, is sufficient to provide effective notice of the Bidding Procedures, the Auction, and the Sale to all interested parties, pursuant to Bankruptcy Rules 2002(a)(2) and 6004(a), and is hereby approved.

7. The Cure Notice, in substantially the same form as annexed to the Motion as Exhibit D, is hereby approved.

8. Within three days of the entry of this Order, the Debtors shall serve the (i) Auction Notice by first class mail, postage prepaid, or hand delivery upon: (a) all creditors, (b) all taxing authorities or recording offices which have a reasonably known interest in the relief requested, and (c) all federal, state, and local regulatory authorities with jurisdiction over the Debtors and (ii) send the Cure Notice to all counterparties to the Contracts and Leases. Additionally, the Debtors will forward courtesy copies of the Auction Notice to all entities known to the Debtors who have expressed an interest in a transaction with respect to the Purchased Assets during the last twelve months.

9. On \_\_\_\_\_, **2019 at : (Central Time)** or as soon thereafter as counsel may be heard, the Sale Hearing will be held before the Honorable Donald R. Cassling, United States

Bankruptcy Judge, in the United States Bankruptcy Court for the Northern District of Illinois, 219 South Dearborn Street, Courtroom 619, Chicago, Illinois, to consider the issuance and entry of an Order, *inter alia*, approving the Sale of the Property of the Debtors free and clear of liens, claims, and encumbrances.

10. The Court shall retain jurisdiction with respect to all matters relating to the interpretation or implementation of this Order.

Dated: \_\_\_\_\_, 2019

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UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT A**

**BIDDING PROCEDURES**

Draft of Exhibit Attached to Sale Motion

**EXHIBIT 1**

**FORM OF PURCHASE AGREEMENT**

Draft of Exhibit Attached to Sale Motion

**EXHIBIT B**

**ASSUMPTION AND ASSIGNMENT PROCEDURES**

Draft of Exhibit Attached to Sale Motion

**EXHIBIT C**

**AUCTION NOTICE**

Draft of Exhibit Attached to Sale Motion

**EXHIBIT D**

**NOTICE OF ASSUMPTION AND ASSIGNMENT OF CONTRACTS AND LEASES**

Draft of Exhibit Attached to Sale Motion