Rachel C. Strickland
Andrew S. Mordkoff
Ciara A. Copell
WILLKIE FARR & GALLAGHER LLP
787 Seventh Avenue
New York, New York 10019
Telephone: (212) 728-8000
Facsimile: (212) 728-8111

Proposed Counsel for the Debtors and Debtors in Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
	:	
GBG USA Inc., et al.,[1]	:	Case No. 21-_____ ( )
	:	
Debtors.	:	(Joint Administration Pending)

MOTION OF DEBTORS FOR ORDERS: (I)(A) AUTHORIZING AND APPROVING BID PROCEDURES IN CONNECTION WITH SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (B) AUTHORIZING AND APPROVING BID PROTECTIONS, (C) SCHEDULING RELATED AUCTION AND HEARING TO CONSIDER APPROVAL OF SALE, (D) APPROVING PROCEDURES RELATED TO ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (E) APPROVING FORM AND MANNER OF NOTICE THEREOF, AND (F) GRANTING RELATED RELIEF; AND (II)(A) AUTHORIZING AND APPROVING SALE OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS, (B) AUTHORIZING AND APPROVING ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES RELATED THERETO, AND (C) GRANTING RELATED RELIEF

[1] The Debtors in these chapter 11 cases and the last four digits of each Debtor's federal taxpayer identification number are as follows: GBG USA Inc. (2467), Jimlar Corporation (8380), GBG North America Holdings Co., Inc. (5576), Homestead International Group Ltd. (0549), IDS USA Inc. (7194), MESH LLC (8424), Frye Retail, LLC (1352), Krasnow Enterprises, Inc. (0122), Krasnow Enterprises Ltd. (0001), Pacific Alliance USA, Inc. (0435), and GBG Spyder USA LLC (9108). The Debtors' executive headquarters are located at 350 5th Avenue, 10th Floor, New York, NY 10118.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

The debtors and debtors in possession in the above-captioned cases (the "**Debtors**") hereby move (the "**Motion**"), pursuant to sections 105(a), 363, 365, 503 and 507 of title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2002, 6004, 6006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), Rules 6004-1 and 6006-1 of the Local Bankruptcy Rules for the Southern District of New York (the "**Local Rules**"), and the Amended Guidelines for the Conduct of Asset Sales established by the United States Bankruptcy Court for the Southern District of New York (the "**Sale Guidelines**"), for the entry of (i) an order, substantially in the form attached hereto as Exhibit A (the "**Bid Procedures Order**"): (a) authorizing and approving certain bid procedures (the "**Bid Procedures**,") substantially in the form attached to the Bid Procedures Order as Exhibit 1, in connection with the sale(s) of substantially all of the Debtors' assets; (b) authorizing the Debtors to pay the Stalking Horse Bidder (as defined herein) an expense reimbursement of no more than $300,000 (the "**Expense Reimbursement**"), and to pay the Stalking Horse Bidder a fee of $700,000 (the "**Break-Up Fee"** and together with the Expense Reimbursement, the "**Bid Protections**"), in each case, when and if payable pursuant to the terms of the Stalking Horse APA (as defined below); (c) scheduling an auction(s) (the "**Auction**"), if applicable, and a hearing to consider approval of the sale (the "**Sale Hearing**") and approving the form and manner of notice thereof (substantially in the form attached hereto as Exhibit C, the "**Sale Notice**"); (d) approving procedures related to the assumption and assignment of certain of the Debtors' Executory Contracts and Unexpired Leases (as defined herein) (the "**Assumption and Assignment Procedures**"); (e) approving the form and manner of notice thereof (substantially in the form attached hereto as Exhibit D, the "**Cure Notice**"); and (f) granting related relief; and (ii) one or more orders, in a form(s) to be

submitted to the Court prior to the Sale Hearing (the "**Sale Order**"): (a) authorizing the sale(s) of such assets free and clear of any liens, claims, encumbrances and other interests, except as provided in the Sale Order; (b) approving the assumption and assignment of certain Executory Contracts and Unexpired Leases; and (c) granting related relief. In support of the Motion, the Debtors rely upon and incorporate by reference the Declaration of Mark Caldwell in Support of Chapter 11 Petitions and First Day Pleadings (the "**First Day Declaration**"), the Declaration of David Skatoff in Support of the Motion (the "**Skatoff Declaration**"), each filed concurrently herewith, and respectfully represent:

BACKGROUND

1. On the date hereof (the "**Petition Date**"), each of the Debtors filed a voluntary petition in this Court for relief under chapter 11 of the Bankruptcy Code. The Debtors intend to continue in the possession of their respective properties and the management of their respective businesses as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. The Debtors have requested that these chapter 11 cases be consolidated for procedural purposes only. As of the date hereof, no trustee, examiner or official committee has been appointed in any of the Debtors' cases.

2. The events leading up to the Petition Date and the facts and circumstances supporting the relief requested herein are set forth in the First Day Declaration and the Skatoff Declaration.

JURISDICTION

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a), 363, 365, 503 and 507 of the

Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007 and 9014, Local Rules 6004-1 and 6006-1, and the Sale Guidelines.

RELIEF REQUESTED

4. By this Motion, the Debtors request that the Court:

i. following the first hearing on the Motion, enter the Bid Procedures Order: (a) authorizing and approving the Bid Procedures; (b) authorizing and approving the payment of the Bid Protections in accordance with the terms of the Stalking Horse APA; (c) scheduling the Auction and Sale Hearing and approving the Sale Notice; (d) approving the Assumption and Assignment Procedures; (e) approving the Cure Notice; and (f) granting related relief, and

ii. following the Sale Hearing, enter the Sale Order(s): (a) authorizing and approving the sale of the purchased assets free and clear of any liens, claims, encumbrances and other interests, except as provided in the Sale Order(s); (b) approving the assumption and assignment of certain Executory Contracts and Unexpired Leases; and (c) granting related relief.

EVENTS LEADING TO THE SALE

5. As set forth in the First Day Declaration, several factors contributed to the Debtors' recent struggles, including the catastrophic effects of the global COVID-19 pandemic, industry-specific headwinds and other liquidity constraints.

6. Faced with these hurdles, the Debtors initiated various cost-cutting measures to preserve liquidity, such as: stretching out their payables outstanding with vendors; reducing payroll through reductions in force and furloughing employees; implementing pay cuts for remaining employees across the business, including leadership personnel; froze hiring and modified other employee benefits; closed brick-and-mortar stores and shifted to a more predominant DTC model; outsourcing back-office functions; and other restructuring initiatives.

7. While the Debtors continued to generate revenues, these revenue streams — even when combined with their extensive cost-cutting measures — have been insufficient to meet the Debtors' liquidity needs and financial obligations, including their funded indebtedness

and lease obligations. It thus became apparent that a comprehensive restructuring of the Debtors' business and capital structure would be necessary.

8. With the concerns discussed above in mind, and with an impending liquidity crisis, the Debtors retained the following advisors to assist the Debtors with respect to their refinancing and restructuring alternatives: in April 2020, Ankura Consulting Group, LLC as restructuring advisor; in May 2020, Willkie Farr & Gallagher LLP as counsel; in September 2020, Ducera Partners LLC as financial advisor; and in March 2021, Alan Jacobs (of AMJ Advisors LLC) as chief strategic officer. To further support their evaluation process, on April 30, 2021, the Debtors appointed a special committee of the Debtors' board of directors comprised of the following three independent directors to assess the Debtors' restructuring alternatives (the "**Independent Committee**"): Neal Goldman (appointed to the board on July 31, 2020); Alan Carr (appointed to the board on March 24, 2021); and Jill Frizzley (appointed to the board on March 24, 2021).

9. Following productive negotiations with their prepetition secured lenders, which afforded the Debtors an extended runway, the Debtors and their advisors turned their attention to pursuing a comprehensive restructuring transaction.

10. With the aid of their advisors, the Debtors have been exploring and evaluating strategic business opportunities to enhance liquidity, including debt refinancing, cost savings initiatives, proceeds-generating transactions, M&A activities and other strategic opportunities. Given, among other things, their substantial leverage, near term liquidity crisis and the continuing pressure on the Debtors' business and related impact on retention of key personnel, the Debtors, in consultation with their advisors, conducted a comprehensive liquidity analysis and considered several potential restructuring alternatives. The Debtors ultimately

determined that a targeted sale process was the best option to maximize value for all stakeholders. To that end, in or around May 2021, Ducera commenced a targeted marketing process, focused on potential M&A partners and well-funded bidders for which the Debtors' business represented a strategic opportunity and that possessed the capability of consummating a transaction on an accelerated timeline. Specifically, Ducera commenced an expansive marketing process, which included reaching out to over 45 potential parties in interest. Over 30 parties signed confidentiality agreements and were granted access to a data room for continued diligence.

11. The results of these efforts have been fruitful. First, in the weeks leading up to the Petition Date, the Debtors successfully negotiated asset sales related to two of their Licensed Brands — Spyder and Frye[2]. The decision to sell these assets, approved by the Independent Committee, was based on numerous factors: the sales were the byproduct of the robust marketing process discussed above and extensive negotiations with bidders and their advisors; extensive deliberation by the Independent Committee and the Debtors' advisors and their determination that the terms of the proposed transactions were fair and reasonable and that the Debtors would obtain reasonably equivalent value in exchange for the sale of the purchased assets; the determination by the Independent Committee that the final bids represented the best offers and that a further protracted marketing process (including one that straddled into the bankruptcy cases) would only result in a lower offer for the purchased assets; the fact that the licensor of the Spyder and Frye brands (Authentic Brands Group), whose consent was required to effectuate a sale and assignment of such assets, consented to the proposed transactions; and the fact that consummation of the sales, and recovery of the proceeds thereof, would help avoid

[2] During this time, the Debtors also sold their equity interests in Purrfect Ventures LLC, a non-Debtor joint venture with Katy Perry.

an imminent liquidation and permit the Debtors to make payroll and satisfy other working capital needs and preserve jobs for their employees transferred to the buyers as part of the transactions. Moreover, the sales yielded approximately $15 million in proceeds and provided the Debtors — with the consent of their existing secured lenders — with cash collateral to fund these chapter 11 cases and reduce the Debtors' need for supplemental debtor-in-possession financing.

12. During this timeframe, and as the Debtors' liquidity situation became more dire, discussions began to focus on the need to implement a potential sale of the Debtors' remaining assets through a chapter 11 bankruptcy proceeding. Following an extensive, months-long multi track negotiation process, the Debtors' efforts ultimately culminated with the execution of that certain Asset Purchase Agreement, attached hereto as Exhibit B (together with the schedules and related documents thereto, and as may be amended, supplemented or otherwise modified from time to time, the "**Stalking Horse APA**"), dated as of July 28, 2021, by and among GBG USA Inc. and the other Debtor entities party thereto (collectively, the "**Sellers**") and WH AQ Holdings LLC (as Purchaser) and Hilco Trading, LLC (as Guarantor) (the "**Stalking Horse Bidder**" and its bid, the "**Stalking Horse Bid**"). Pursuant to the Stalking Horse Purchase Agreement, the Stalking Horse Bidder has committed to a purchase price of $17.3 million for the Debtors' Aquatalia brand and related working capital assets (the "**Aquatalia Assets**"), subject to higher and better offers.

13. The Stalking Horse Bid establishes a floor for the Aquatalia Assets. Any offer that tops the Stalking Horse Bid will inure to the benefit of the Debtors' stakeholders. In addition to the Aquatalia Assets, the Debtors are also seeking to maximize value by marketing their other brands in their portfolio. Any additional asset sales in connection therewith —

whether in insolation or a combined offer to acquire all of the Debtors' assets — will maximize recoveries for the Debtors' creditors.

14. Throughout this process, the Debtors and their advisors kept their major constituencies apprised of the status of the sale process. The Debtors' prepetition secured lenders and DIP lender support this sale process, the Debtors' entry into the Stalking Horse APA, and their ongoing efforts to achieve the highest offers possible for the Debtors' assets.

15. The Debtors have commenced these chapter 11 cases to implement the sale of the Aquatalia Assets to the Stalking Horse Bidder — subject to Court approval and higher or otherwise better offers in accordance with the Bid Procedures — as well as the Debtors' other fashion brands and assets that fall outside the Stalking Horse Bid, including Capezio, Ely & Walker and MagnaReady. The Debtors will continue marketing their assets throughout the chapter 11 cases — starting on day 1. The Debtors believe that their proposed sale process, which started months ago, is appropriate to ensure that the Debtors' assets are sold for the highest price to ensure the best possible outcome for the Debtors' stakeholders.

THE STALKING HORSE APA[3]

16. The Debtors are seeking approval of the Stalking Horse APA, which represents the culmination of their prepetition marketing efforts for the Aquatalia Assets. The proposed sale of the Aquatalia Assets to the Stalking Horse Bidder will be consummated absent higher or otherwise better offers at the Auction.

17. On July 29, 2021, the Sellers entered into the Stalking Horse APA, which evidences a value-maximizing bid of $17.3 million for the Aquatalia Assets free and clear of all

[3] Capitalized terms used but not defined in this section have the meaning given to them in the Stalking Horse APA. To the extent there are any ambiguities or inconsistences between this summary and the Stalking Horse APA, the terms of the Stalking Horse APA shall govern in all respects.

liens, claims and encumbrances other than Assumed Liabilities and Permitted Encumbrances (as defined therein), subject to higher or otherwise better offers and the approval of the Court. The Stalking Horse APA is not conditioned on financing or the completion of due diligence.

18. Material Terms of the Stalking Horse APA are as follows:

a. Aquatalia Assets: Substantially all of the assets relating to the Aquatalia Assets, including, but not limited to, Assigned Contracts, Acquired Leased Real Property, all Intellectual Property of the Sellers, Acquired Business Royalties, and inventory. See Stalking Horse APA § 1.1.

b. Excluded Assets: Among other things, Stalking Horse Bidder shall not acquire any cash receipts for revenue generated prior to Closing, all accounts receivable, equity interests of the Sellers, or avoidance actions arising prior to the chapter 11 filing. See Stalking Horse APA § 1.2.

c. Consideration: $17,300,000. See Stalking Horse APA § 2.1.

d. Deposit: $2,000,000. See Stalking Horse APA § 2.2(a).

e. Assumed Liabilities: (i) Liabilities related to Cure Costs in respect of Assigned Leased Real Property and Assigned Contracts; (ii) all Liabilities and obligations under the Assigned Contracts arising from and after the Closing; (iii) Assumed Taxes and Transfer Taxes; and (iv) all open purchase orders arising out of the Aquatalia Assets. See Stalking Horse APA § 1.3.

f. Excluded Liabilities: All liabilities of the Sellers other than Assumed Liabilities. See Stalking Horse APA § 1.4.

g. Break-Up Fee: $700,000 (i.e., 4.0% of the cash portion of the purchase price). See Stalking Horse APA § 5.1(a)(ii).

h. Expense Reimbursement: All reasonable documented out-of-pocket expenses up to $300,000. See Stalking Horse APA § 5.1(a)(i).

i. Court Approval: The sale of the Aquatalia Assets pursuant to the Stalking Horse APA is subject to approval by the Court. See Stalking Horse APA, § 3.2.

Extraordinary Provisions of the Stalking Horse APA

19. In accordance with Local Rule 6004-1(j) and the Sale Guidelines, the Debtors are required to highlight any "Extraordinary Provisions," as such term is defined in the Sale Guidelines.

a. Requested Findings as to Successor Liability. The Stalking Horse Bidder shall not have any successor liability on account of the purchase or sale of the Aquatalia Assets, except on account of Assumed Liabilities and Permitted Encumbrances.

b. Use of Proceeds. The Stalking Horse Bidder and the Sellers intend that, upon the Closing, the Debtors shall use a portion of the sale proceeds to repay the Debtors' proposed limited recourse senior secured superpriority debtor-in-possession financing facility ("**DIP Facility**").

c. Record Retention. The Debtors shall retain access to their books and records throughout the entirety of these chapter 11 cases, enabling the Debtors to administer these bankruptcy cases.

d. Relief from Bankruptcy Rules 6004(h) and 6006(d). The Debtors are seeking relief from the fourteen-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d) for the reasons set forth herein.

BID PROCEDURES AND RELEVANT NOTICES

A. Need for a Timely Sale Process

20. The Debtors respectfully request that the Court approve the following timeline for the sale process:

Sale Timeline	
Deadline to Serve Sale Notice and Cure Notice	Within 1 day after entry of the Bid Procedures Order
Adequate Assurance Objection Deadline	Earlier of (i) the date of the Sale Hearing or (ii) seven (7) days after the conclusion of the Auction
Cure Objection Deadline	September 13, 2021 at 4:00 p.m. prevailing E.T. (i.e., 46 days after Petition Date)
Assignment Objection Deadline	September 13, 2021 at 4:00 p.m. prevailing E.T. (i.e., 46 days after Petition Date)

Sale Timeline	
Sale Objection Deadline	September 13, 2021 at 4:00 p.m. prevailing E.T. (i.e., 46 days after the Petition Date)
Bid Deadline	September 13, 2021 at 5:00 p.m. prevailing E.T. (i.e., 46 days after the Petition Date)
Deadline to Notify Qualified Bidders	September 14, 2021 at 12:00 p.m. prevailing E.T. (i.e., 47 days after the Petition Date)
Auction (if required)	September 15, 2021 at [_].m. prevailing E.T. (i.e., 48 days after the Petition Date)
Notice of Successful Bidders	September 16, 2021 at 12:00 p.m. prevailing E.T. (i.e., 49 days after Petition Date)
Sale Reply Deadline	September 16, 2021 (i.e., 49 days after the Petition Date)
Sale Hearing	September 17, 2021 at [_].m. prevailing E.T. (i.e., 50 days after the Petition Date)

21. The Debtors believe that this timeline provides parties with sufficient time and information necessary to formulate a competitive bid, maximizing the prospect of receiving an offer that would benefit, without unduly prejudicing, the Debtors' estates. In formulating the sale timeline, the Debtors balanced the need to provide adequate and appropriate notice to parties in interest and to potential purchasers with the need to quickly and efficiently sell their assets, including the Aquatalia Assets, while they still have realizable value.

22. As described in the First Day Declaration and the Skatoff Declaration, the Debtors' assets have been extensively marketed for over three months to a broad group of strategic and select financial buyers and substantial information regarding the Debtors' assets, including the Aquatalia Assets, has been made available during the marketing process. Accordingly, the Debtors believe that numerous parties that may have an interest in bidding at the Auction are already familiar with the assets, including the Aquatalia Assets, for purposes of formulating their bids. Furthermore, potential bidders will have access to updated information

prepared by the Debtors and a substantial body of information that resides in the Debtors' data room.

23. The foregoing sale process timeline is essential for preserving the value of the Debtors' estates through a swift chapter 11 process. In addition, the proposed time periods set forth herein are within the milestones set forth in the Debtors' DIP and Cash Collateral Orders.[4] Accordingly, the Debtors believe the relief requested by this Motion is in the best interest of the Debtors' estates, will provide interested parties with sufficient opportunity to participate and therefore, should be approved.

B. Overview of the Bid Procedures

24. The Bid Procedures are intended to permit a fair and efficient competitive sale process, consistent with the timeline of these chapter 11 cases, to not only confirm that the Stalking Horse APA is, indeed, the best offer for the Aquatalia Assets or promptly identify the alternative bid that is higher or otherwise better, but also to market the Debtors' other branded assets that fall outside of the Stalking Horse Bid. Because the Bid Procedures are attached as Exhibit 1 to the Bid Procedures Order, they are not restated in their entirety herein. Generally speaking, however, the Bid Procedures establish, among other things:[5]

i. The availability of, access to, and conduct during due diligence by potential bidders (see Bid Proc. at B);

ii. The requirements that potential bidders must satisfy to participate in the bidding process (the "**Bidding Process**") (see Bid Proc. at C);

iii. The deadlines and requirements for submitting competitive bids and the method and criteria by which such competing bids are deemed "Qualified Bids" sufficient to trigger an Auction, including the minimum consideration

[4] "**Cash Collateral Orders**" means those certain interim and final orders authorizing the Debtors' use of cash collateral.

[5] Capitalized terms used, but not otherwise defined, in this section have the meaning given to them in the Bid Procedures. To the extent there are any ambiguities or inconsistences between this summary and the Bid Procedures, the terms of the Bid Procedures shall govern in all respects.

that must be provided, the terms and conditions that must be satisfied, and the deadline that must be met by a potential bidder (other than the Stalking Horse Bidder) to be considered a "Qualified Bidder" (see Bid Proc. at B);

iv. The manner in which Qualified Bids will be valued by the Debtors to determine the Starting Bid for the Auction (see Bid Proc. at D);

v. The conditions for having an Auction and procedures for conducting the Auction, if any (see Bid Proc. at F);

vi. The criteria by which the Successful Bidder will be selected by the Debtors (see Bid Proc. at G); and

vii. Various other matters relating to the Bid Process generally, including the date and time of the Sale Hearing, the designation of the Back-Up Bidder, the return of any good faith deposits to Qualified Bidders that submit Qualified Bids, and certain reservations of rights (see Bid Proc. at H-O).

25. Importantly, the Bid Procedures recognize the Debtors' fiduciary obligations to maximize sale value and, as such, do not impair the Debtors' ability to consider all Qualified Bids, and preserve the Debtors' right to modify the Bid Procedures as necessary or appropriate to maximize value for their estates. Moreover, through the Bid Procedures, the Debtors have agreed to provide substantial information about the ongoing sale process to their stakeholders, including their prepetition secured lenders, to ensure that they are apprised of the status and determinations related to the sale.

C. Form and Manner of Sale Notice

26. Within one day after entry of the Bid Procedures Order, or as soon as reasonably practicable thereafter (the "**Mailing Date**"), the Debtors will serve the Sale Notice and Cure Notice on the notice parties set forth in the Bid Procedures Order.

27. Additionally, on the Mailing Date or as soon as reasonably practicable thereafter, the Debtors shall publish a notice, substantially in the form of the Sale Notice, on one occasion, in the national edition of *The Wall Street Journal* or *The New York Times*. Such

publication notice shall be deemed sufficient and proper notice of the sale(s) to any other interested parties whose identities are unknown to the Debtors.

28. The Debtors submit that the Sale Notice is reasonably calculated to provide all interested parties with timely and proper notice of the proposed sale(s), including: (a) the date, time and place of the Auction (if one is held); (b) the Bid Procedures and the dates and deadlines related thereto; (c) the objection deadline to the proposed sale(s); (d) reasonably specific identification of the Debtors' assets, including the Aquatalia Assets; (e) instructions for promptly obtaining a copy of the Stalking Horse APA or Bid Procedures Order; (f) representations describing the sale(s) as being free and clear of liens, claims, interests and other encumbrances, which shall attach to the proceeds with the same validity and priority to the proceeds from the sale(s); (g) with respect to the Aquatalia Assets, the commitment by the Stalking Horse Bidder to assume certain liabilities of the Debtors, as listed in Section 1.3 of the Stalking Horse APA; and (h) notice of the proposed assumption and assignment of certain executory contracts (the "**Executory Contracts**") and non-residential unexpired leases (the "**Unexpired Leases**"), the proposed cure amounts relating thereto, and the rights, procedures and deadlines for objecting thereto. The Debtors propose that no other or further notice of the sale(s) shall be required. Accordingly, the Debtors request that the form and manner of the Sale Notice be approved.

D. Summary of Assumption and Assignment Procedures

29. The Debtors are also seeking approval of procedures to facilitate the fair and orderly assumption and assignment of their Executory Contracts and Unexpired Leases in connection with their sale process. Because these procedures are set forth in detail in the attached Bid Procedures Order, they are not restated herein. Generally speaking, however, such procedures: (a) outline the process by which the Debtors will serve notice to all counterparties to

Executory Contracts and Unexpired Leases regarding the proposed assumption and assignment and related cure amounts, if any, and informing such parties of their rights and procedures to object thereto; and (b) establish objection and other relevant deadlines and the manner for resolving disputes relating to assumption and assignment to the extent necessary.

E. Bid Protections

30. Pursuant to the Stalking Horse APA, the Sellers have agreed, subject to Court approval, to provide the Stalking Horse Bidder with the Bid Protections, consisting of the Expense Reimbursement and Break-Up Fee. Both of the Bid Protections shall be payable as set forth in the Stalking Horse APA, and nothing herein shall be deemed to limit or otherwise modify the terms thereof, including the circumstances pursuant to which the Bid Protections may be payable.

31. As set forth in more detail herein and in the Skatoff Declaration, the Bid Protections were heavily negotiated between the Sellers and the Stalking Horse Bidder and are integral to the Stalking Horse APA. The Debtors believe that the Bid Protections will help them secure the highest or otherwise best offer available to the Debtors and their estates for the Aquatalia Assets. The Bid Protections also ensure that the Stalking Horse Bidder will be fairly compensated for its time and expense in conducting due diligence and negotiating the Stalking Horse APA in the event the Stalking Horse Bidder is not the Successful Bidder for the Aquatalia Assets.

BASIS FOR RELIEF

A. The Bid Procedures Are Fair, Appropriate and Should Be Approved

32. "When conducting an asset sale, the ultimate responsibility of the debtor, and the primary focus of the bankruptcy court, is the maximization of the value of the assets sold." John J. Jerome & Robert D. Drain, *Bankruptcy Court Is Newest Arena for M&A Action*,

N.Y.L.J., June 3, 1991. In furtherance of that goal, bidding procedures and bid protections, such as those proposed here, may be used in court-supervised asset sales because they streamline the acquisition process, "help to provide an adequate basis by which to compare offers," and maximize value. Id.; see also Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 659 (S.D.N.Y. 1992) (bidding procedures and bid protections "are important tools to encourage bidding and to maximize the value of the debtor's assets"); In re Metaldyne Corp., 409 B.R. 661, 670 (Bankr. S.D.N.Y. 2009) ("[b]idder protections are granted when a bidder provides a floor for bidding by expending resources to conduct due diligence and allowing its bid to be shopped around for a higher offer."). In overseeing an asset sale subject to an auction process, the bankruptcy court must weigh:

> on the one hand, providing for an orderly bidding process, recognizing the danger that absent such a fixed and fair process bidders may decline to participate in the auction; and, on the other hand, retaining the liberty to respond to differing circumstances so as to obtain the greatest return for the bankrupt estate.

In re Fin. News Network, Inc., 980 F.2d 165, 166 (2d Cir. 1992). Because the bankruptcy court must perform this balancing act, "a bankruptcy judge's broad discretionary power in conducting the sale of a debtor's assets should not be narrowed by technical rules mindlessly followed" that "reduce the broad discretion and flexibility a bankruptcy court must necessarily have to enhance the value of the estates before it." Id. at 169–70.

33. Here, the Bid Procedures are fair and appropriate under the circumstances, consistent with procedures routinely approved by courts in this district, and in the best interest of the Debtors' estates. The Bid Procedures are designed to facilitate competitive and orderly bidding to maximize the net value realized from the sales of the Debtors' assets, including the Aquatalia Assets. In particular, the Bid Procedures contemplate an open auction process with

minimum barriers to entry and provide potential bidding parties with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed bid.

34. At the same time, the Bid Procedures provide the Debtors with an adequate opportunity to consider competing bids and select the highest and best offer for the completion of the sale(s). Moreover, entry into the Stalking Horse APA ensures that the Debtors will obtain fair market value for the Aquatalia Assets by setting a minimum purchase price that will be tested in the marketplace. As such, the Debtors and their creditors can be assured that, taking into account the financial condition of the Debtors and their industry, the consideration obtained will be fair and reasonable and at or above market. See Skatoff Decl. ¶ 17.

35. With respect to the Debtors' proposed timeline, the auction process and the time periods set forth in the Bid Procedures are reasonable under the circumstances and provide parties with sufficient time and information necessary to formulate a bid for the Debtors' assets. The Bid Procedures balance the need for adequate and appropriate notice to parties in interest and to potential purchasers with the need to sell the assets while they have meaningful realizable value. The Debtors undertook an extensive marketing process in the months leading up to the Petition Date and will, in accordance with the Bid Procedures, continue to give potential bidders the opportunity to perform diligence and submit bids. Moreover, the time periods set forth in the Bid Procedures were negotiated by the Stalking Horse Bidder and the Debtors' lenders under their prepetition and DIP credit facilities, and completing the sale process in an expedited manner is the best means of maximizing the value of the assets. In addition, the proposed time periods set forth herein are within the milestones set forth in the DIP Facility and the Cash Collateral Orders. The Debtors therefore believe that the proposed timeline is reasonable and adequate under the circumstances.

36. Courts in this district and others have approved bid procedures containing sale timelines similar (if not shorter) than the timeline proposed herein. See, e.g., In re KB US Holdings, Inc., No. 20-22962 (SHL) (Bankr. S.D.N.Y. Sept. 21, 2020) (approving bid procedures contemplating sale hearing within 61 days of petition date); In re Templar Energy, LLC, No. 20-11441 (BLS) (Bankr. D. Del. June 23, 2020) (approving bid procedures contemplating sale hearing within 43 days of petition date); In re Advantage Holdco, Inc., No. 20-11259 (CTG) (Bankr. D. Del. June 15, 2020) (approving bid procedures contemplating sale hearing within 31 days of petition date); In re Valeritas Holdings, Inc., No. 20-10290 (LSS) (Bankr. D. Del. Mar. 6, 2020) (approving bid procedures contemplating sale hearing within 38 days of petition date); In re Agera Energy LLC, No. 19-23802 (RDD) (Bankr. S.D.N.Y. Oct. 22, 2019) (approving bid procedures contemplating sale hearing within 32 days of petition date); and In re KII Liquidating Inc. (f/k/a Katy Indus., Inc.), No. 17-11101(LSS) (Bankr. D. Del. June 19, 2017) (approving bid procedures contemplating sale hearing within 64 days of petition date).

37. Therefore, the Debtors respectfully submit that the proposed Bid Procedures will encourage competitive bidding in a controlled, fair and open fashion and are appropriate under the circumstances. Accordingly, the Debtors request that the Court approve the Bid Procedures as a valid exercise of the Debtors' business judgment.

B. The Bid Protections Have Sound Business Purpose and Should Be Approved

38. The Debtors are also requesting approval of the Bid Protections in connection with the Stalking Horse Bid for the Aquatalia Assets, which includes the Break-Up Fee in the amount of $700,000 and the Expense Reimbursement up to a maximum amount of $300,000, which represents approximately 4.0% and 1.7%, respectively, of the cash portion of the Stalking Horse Bid. The Bid Protections will be paid to the Stalking Horse Bidder upon the occurrence of certain "triggering events" typical and customary for transactions of this kind,

including, among other things, if the sale for the Aquatalia Assets is ultimately consummated by a Successful Bidder other than the Stalking Horse Bidder.

39. Bankruptcy courts in the Second Circuit analyze the appropriateness of bidding incentives such as these under the "business judgment rule" standard, and it is well established in this district that courts consider whether: (a) the relationship of the parties who negotiated the break-up fee was tainted by self-dealing or manipulation; (b) the fee hampers, rather than encourages, bidding; and (c) the amount of the fee is unreasonable relative to the proposed purchase price. See In re Genco Shipping & Trading Ltd., 509 B.R. 455, 465 (Bankr. S.D.N.Y 2014); see also Integrated Res., 147 B.R. at 656-57 (approving termination fee and expense reimbursement and noting that termination fee arrangements that have been negotiated by debtor are to be reviewed according to the deferential "business judgment" standard, under which such procedures and arrangements are "presumptively valid"); In re 995 Fifth Ave. Assocs., L.P., 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (holding that business judgment standard protects break-up fees and other contractual provisions negotiated in good faith).

40. The Debtors submit that the Bid Protections are appropriate under each of the three foregoing factors.

41. ***First***, the Bid Protections are the product of good faith, arm's-length negotiations between several parties, including the Debtors who were acting not in their own self-interest, but rather, in the interest of their bankruptcy estates consistent with their fiduciary duties. See Skatoff Decl. ¶20. Further, the Stalking Horse APA provisions relating to the Bid Protections (as well as the other Stalking Horse APA provisions) were scrutinized by the Debtors' professionals, reviewed and vetted with outside advisors, including the advisors of the

Debtors' existing first lien secured lenders, throughout the marketing process, and approved by the Independent Committee of the Debtors' board of directors. See Skatoff Decl. ¶20.

42. ***Second***, the Debtors believe, based on their reasoned business judgment, that the presence of the Bid Protections enhances their ability to maximize value without chilling bidding. The Bid Protections were a material inducement for, and a condition of, the Stalking Horse Bidder's agreement to enter into the Stalking Horse APA. Indeed, granting these Bid Protections convinced the Stalking Horse Bidder to enter into the Stalking Horse APA, which assures the Debtors of a sale to a contractually-committed bidder with respect to the Aquatalia Assets at a price they believe is fair and reasonable. See Skatoff Decl. ¶22.

43. Moreover, the Stalking Horse APA provides the upside opportunity that the Debtors could potentially receive a higher or otherwise better offer for the Aquatalia Assets at the Auction which, absent such a floor, might otherwise never have been realized. Further, the Stalking Horse Bidder has funded a $2 million deposit (the "**Stalking Horse Deposit**") into a segregated account at Prime Clerk LLC to be held in escrow. The Stalking Horse Deposit shall be paid to the Debtors upon the occurrence of certain termination events under the Stalking Horse APA, thereby providing the Debtors with downside protection if the Stalking Horse Bidder fails to fulfill its obligations under the Stalking Horse APA.

44. In addition, the Debtors will only be forced to pay the Bid Protections in the event they determine, after good faith, arm's length negotiations, that it would be beneficial for their estates to pay such Bid Protections. For example, the Debtors seek authority to agree to pay a break-up fee in the event the Debtors elect to pursue a sale with a Successful Bidder other than the Stalking Horse Bidder. See Stalking Horse APA § 5.1(a)(i). Courts in this district have held that this is an appropriate, if not mandatory, basis for the provision of a Break-Up Fee. See

Integrated Res., 147 B.R. at 659-60 ("Break-up fees are important tools to encourage bidding and to maximize the value of the debtor's assets . . . In fact, because the . . . corporation has a duty to encourage bidding, break-up fees can be ***necessary*** to discharge [such] duties to maximize value." (emphasis added)); 995 Fifth Ave. Assocs., L.P., 96 B.R. at 28 (Break-Up Fee "may be legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking.").

45. Thus, the value created for the Debtors' estates will outweigh the cost of any Bid Protections.

46. ***Third***, the Debtors believe, based on their reasoned business judgment, that the Bid Protections are reasonable and appropriate relative to the size, nature, and complexity of this transaction and the commitments made and resources expended by the Stalking Horse Bidder in connection therewith in view of:

i. The meaningful floor established by the Stalking Horse APA for competitive bidding in connection with the Aquatalia Assets;

ii. The substantial benefits that will be received by the Debtors and their estates from having a Stalking Horse Bid serve as a catalyst for other potential or actual bidders to confirm that the Debtors receive the highest and best offer by subjecting the Sale to an open auction and competitive bidding;

iii. The need of the Debtors to move forward with a transaction in connection with the Aquatalia Assets with a high likelihood of closure assured by a contractually committed party at a fair and reasonable price consistent with the timeline of these chapter 11 cases;

iv. The extensive due diligence, analysis, and negotiations undertaken by the Stalking Horse Bidder in connection with the sale of the Aquatalia Assets;

v. The fact that the Debtors have been unable to identify another bidder willing to set a floor for the Aquatalia Assets; and

vi. The risks borne by the Stalking Horse Bidder for being the stalking horse in this transaction and any opportunity costs incurred as a result thereof.

47. In addition, the aggregate amount of the Bid Protections, if any are offered at all, are 5.7% of the total cash purchase price offered. Although the total amount is at the high end of the range of bid protections routinely approved by courts in this district[6], the Debtors submit that the Stalking Horse Bidder has undertaken extraordinary efforts at considerable expense of time and money relative to the deal size, such that the Bid Protections are appropriate compensation for such efforts.

48. Therefore, for the reasons set forth above, the Debtors respectfully submit that the Bid Protections are "reasonably related to the bidder's efforts and the transaction's magnitude." Integrated Res., 147 B.R. at 662-63; see also In re Adelphia Commc'ns Corp., 336 B.R. 610, 629-30 (Bankr. S.D.N.Y. 2006) ("It is the common practice for bankruptcy courts, in connection with sales of businesses or lines of business, to enter orders approving bidding procedures and bidding-related obligations, especially no-shop requirements and breakup fees, before being asked to approve the resulting sale itself."). Accordingly, the Bid Protections reflect a sound business purpose, are fair and appropriate under the circumstances, and should be approved. See Skatoff Decl. ¶¶ 22-23.

C. The Form and Manner of the Sale Notice Should Be Approved

49. Pursuant to Bankruptcy Rule 2002(a), the Debtors are required to provide their creditors with 21 days' notice of the Sale Hearing. Pursuant to Bankruptcy Rule 2002(c),

---

[6] See, e.g., In re Metaldyne, 409 B.R. at 670 ("The total amount of the proposed break-up fee and expense reimbursement is less than 3% of the total purchase price. This falls within the range of what courts in this jurisdiction have found to be [an] acceptable break-up fees."); In re LSC Commc'ns, Inc., No. 20-10950 (SHL) (Bankr. S.D.N.Y. June 5, 2020) (authorizing break-up fee of 3% of cash consideration and $750,000 expense reimbursement); In re Barneys New York, Inc., No. 19-36300 (CGM) (Bankr. S.D.N.Y. Oct. 30, 2019) (approving break-up fee, work fee and expense reimbursement of up to 3% in the aggregate); In re Hooper Holmes, Inc. d/b/a Provant Health, No. 18-23302 (RDD) (Bankr. S.D.N.Y. Sept. 20, 2018) (authorizing a 3% break-up fee and approximately 1% expense reimbursement); In re Nine West Holdings, Inc., No. 18- 10947 (SCC) (Bankr. S.D.N.Y. May 7, 2018) (authorizing a 3% break-up fee and $750,000 expense reimbursement); In re Avaya Inc., No. 17-10089 (SMB) (Bankr. S.D.N.Y. Apr. 5, 2017) (approving break-up fee of 3% of purchase price and expense reimbursement of less than 1% of purchase price).

such notice must include the time and place of the Auction and the Sale Hearing and the deadline for filing any objections to the relief requested herein. The Sale Notice complies with the Sale Guidelines, and the Debtors submit that notice of this Motion and the related hearing to consider entry of the Bid Procedures Order, coupled with service of the Sale Notice as provided for herein, constitutes good and adequate notice of the sale(s) and the proceedings with respect thereto in compliance with, and satisfaction of, the applicable requirements of Bankruptcy Rule 2002, Local Rule 2002-1, and the Sale Guidelines. Accordingly, the Debtors request that this Court approve the form and manner of the Sale Notice proposed herein.

D. The Assumption and Assignment Procedures Are Appropriate and Should Be Approved

50. In connection with the assumption and assignment of the Executory Contracts and Unexpired Leases, the Debtors believe it is necessary to establish a process by which (a) the Debtors and their contract counterparties can reconcile cure obligations, if any, in accordance with section 365 of the Bankruptcy Code and (b) such counterparties can object to the assumption and assignment of the Executory Contracts and Unexpired Leases and/or related cure amounts.

51. As set forth in the Bid Procedures Order, the Debtors also request that any party that fails to object to the proposed assumption and assignment of any Executory Contract and Unexpired Lease be deemed to consent to: (a) the assumption and assignment thereof pursuant to section 365 of the Bankruptcy Code on the terms set forth in the Sale Order; and (b) assignment notwithstanding any anti-assignment provision or other restriction on assignment. See, e.g., Hargrave v. Township of Pemberton (In re Tabone, Inc.), 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to sale motion, creditor deemed to consent); Pelican Homestead v. Wooten (In re Gabel), 61 B.R. 661, 667 (Bankr. W.D. La. 1985) (same).

52. The Debtors believe that the proposed Assumption and Assignment Procedures are fair and reasonable, provide sufficient notice to parties to the Executory Contracts and Unexpired Leases, and provide certainty to all parties in interest regarding their obligations and rights in respect thereof. Accordingly, the Debtors request the Court approve the proposed Assumption and Assignment Procedures set forth in the Bid Procedures Order.

E. The Sale Should Be Approved as an Exercise of Sound Business Judgment

53. Section 363(b) of the Bankruptcy Code provides that a debtor may sell property of the estate outside the ordinary course of business after notice and a hearing. Section 363(b) does not, however, provide a standard for determining when such a sale should be authorized if proposed outside confirmation of a chapter 11 plan. In the Second Circuit, that standard is well-established by case law: a debtor's decision to sell assets outside the ordinary course of business must be based upon sound business judgment. See, e.g., In re MF Global Inc., 535 B.R. 596, 605 (Bankr. S.D.N.Y. 2015); Genco, 509 B.R. at 464; Licensing By Paolo, Inc. v. Sinatra (In re Gucci), 126 F.3d 380, 387 (2d Cir. 1997); Official Comm. of Unsecured Creditors of LTV Aerospace and Defense Co. v. LTV Corp. (In re Chateaugay Corp.), 973 F.2d 141 (2d Cir. 1992); In re Lionel Corp., 722 F.2d 1063, 1070 (2d Cir. 1983); Integrated Res., 147 B.R. at 656.

54. When determining whether to approve a proposed sale under section 363 of the Bankruptcy Code, courts generally apply a business judgment test. See, e.g., MF Glob., 535 B.R. at 605; Genco, 509 B.R. at 464; In re Global Crossing Ltd., 295 B.R. 726, 744 (Bankr. S.D.N.Y. 2003). In In re Lionel Corp., the Court of Appeals for the Second Circuit set forth several non-exclusive factors bankruptcy courts in this district may consider in conducting a section 363(b) analysis, including, whether: (a) a "sound business purpose" exists that justifies the sale; (b) adequate and reasonable notice has been provided to interested parties; (c) the sale

value obtained is fair and reasonable; and (d) the debtor acted in good faith. See Global Crossing, 295 B.R. at 744.

(i) A Sound Business Purpose Exists for the Sale

55. A sound business purpose for the sale of a debtor's assets outside the ordinary course of business exists where such sale is necessary to preserve the value of the estate for the benefit of creditors and interest holders. See, e.g., In re Lionel Corp., 722 F.2d 1063; In re Food Barn Stores, Inc., 107 F.3d 558, 564-65 (8th Cir. 1997) (recognizing the paramount goal of any proposed sale of property of estate is to maximize value); In re Abbotts Dairies of Pa., Inc., 788 F.2d 143 (3d Cir. 1986).

56. As set forth above, a strong business justification exists for the sale of all or substantially all of the Debtors' assets, including the Aquatalia Assets. A sale of the Debtors' assets quickly and efficiently is critical to maximizing the recoveries for the Debtors' stakeholders.

57. With respect to the Aquatalia Assets, the Stalking Horse APA was executed only after (a) potential alternatives were evaluated, (b) the transaction was aggressively marketed, and (c) all of the foregoing was presented to the Debtors' boards of directors, including the Independent Committee, who, in conjunction with advice from experienced professionals, exercised sound and appropriate business judgment, and determined to pursue the sale on the terms of the Stalking Horse APA, subject to competitive bidding sanctioned by the Court. See Skatoff Decl. ¶14.

58. Thus, for the reasons set forth herein, and as will be further shown at the Sale Hearing, because the Stalking Horse APA (or the asset purchase agreement with another Successful Bidder, as the case may be) constitutes (or will constitute) the highest or otherwise best offer, on balance of the facts and circumstances of the moment, and provides greater

recovery for these estates than any known or practicably available alternative, the Debtors submit that the execution thereof represents sound reasonable business judgment.

(ii) Adequate and Reasonable Notice of the Sale Will Be Provided

59. As described above, the Sale Notice (a) will be served in a manner that provides at least 21 days' notice of the date, time, and location of the Sale Hearing, (b) informs interested parties of the deadlines for objecting to the sale(s) or the assumption and assignment of certain Executory Contracts and Unexpired Leases, and (c) otherwise includes all information relevant to parties interested in or affected by the Sale in accordance with the Sale Guidelines. The form and manner of the Sale Notice has already been vetted with many of the Debtors' stakeholders before the filing of this Motion. Moreover, the form and manner of the Sale Notice will be examined by other stakeholders who receive service of this Motion. Accordingly, the Debtors submit that the Sale Notice will provide adequate notice of the sale(s) by the time of service thereof.

(iii) The Sale and Purchase Price Reflect a Fair Value Transaction

60. The Bid Procedures are designed to produce a fair and reasonable purchase price for the Debtors' assets.

61. It is well-settled that, where there is a court-approved auction process, a full and fair price is presumed obtained for the assets sold. See Bank of Am. Nat'l Trust & Sav. Ass'n. v. 203 N. LaSalle St. P'ship, 526 U.S. 434, 457 (1999); see also In re Trans World Airlines, Inc., No. 01-00056, 2001 WL 1820326, at *4 (Bankr. D. Del. 2001) (while a "§ 363(b) sale transaction does not require an auction procedure," "the auction procedure has developed over the years as an effective means for producing an arm's length fair value transaction"). This is especially true here, where the sale of the Debtors' assets, including the Aquatalia Assets, has been subjected to an extensive marketing process — approximately three months prepetition plus

an additional two months postpetition — and scrutinized by the Debtors, their retained advisors, and many of their stakeholders before filing these chapter 11 cases.

62. In addition, the presence of the Stalking Horse Bidder with respect to the Aquatalia Assets is designed to facilitate a robust and competitive bidding process. Moreover, even as the Debtors move forward with the sale(s), the Debtors and their advisors will continue to market the transactions and solicit other offers for the Debtors' assets, including the Aquatalia Assets consistent with the Bid Procedures and subject to the Stalking Horse APA, including, for example, by contacting previously solicited parties, providing qualified bidders with data room access and requested information, considering a variety of alternative transaction structures, and otherwise assisting the Debtors with all efforts to increase transaction value. See Skatoff Decl. ¶14. In this way, the number of bidders that are eligible to participate in a competitive auction process will be maximized, or, if no Auction is held because no Auction is necessary, the Stalking Horse APA purchase price will, conclusively, be fair value.

(iv) The Sale Has Been Proposed in Good Faith and Without Collusion and the Stalking Horse Bidder or Successful Bidder Is a "Good Faith Purchaser"

63. Section 363(m) of the Bankruptcy Code provides, in part, that "[t]he reversal or modification on appeal of an authorization . . . of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith." 11 U.S.C. § 363(m). Although the Bankruptcy Code does not define "good faith," the Second Circuit has held that the good faith of a purchaser is shown by the integrity of his conduct during the course of the sale proceedings, finding that where there is a lack of such integrity, a good faith finding may not be made. See, e.g., Gucci, 126 F.3d at 390 (a purchaser's good faith is lost by "fraud, collusion between the purchaser and other bidders or

the trustee, or an attempt to take grossly unfair advantage of other bidders"); In re Sasson Jeans, Inc., 90 B.R. 608, 610 (S.D.N.Y. 1988) (same).

64. The selection of the Successful Bidder(s) will be a product of arm's-length and good faith negotiations. Furthermore, the Bid Procedures are designed to produce a fair and transparent competitive bidding process. For example, each Qualified Bidder participating in the Auction(s) must confirm that it has not engaged in any collusion with respect to the bidding or the sale of any of the Debtors' assets. See Bid Procedures §F(x).

65. With respect to the Aquatalia Assets, several factors weigh in favor of a good faith finding. First, the consideration to be received by the Debtors pursuant to the Stalking Horse APA is substantial, fair, and reasonable. See Skatoff Decl. ¶13. Second, the parties entered into the Stalking Horse APA in good faith and after extensive, arm's-length negotiations, during which time both parties were represented by competent counsel of similar bargaining positions. See Skatoff Decl. ¶12. Third, there is no indication of any "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders" or similar conduct that would cause or permit the sale or Stalking Horse APA to be avoided under section 363(n) of the Bankruptcy Code. See Skatoff Decl. ¶12. Finally, the Stalking Horse Bid was evaluated and approved by the Debtors' boards of directors, including the Independent Committee, in consultation with the Debtors' professionals.

66. Based on the foregoing, the Debtors request that the Court determine that the Successful Bidder(s) is a good faith purchaser entitled to the protections of section 363(m) of the Bankruptcy Code.

(v) Sale Should be Approved "Free and Clear" Under Section 363(f) With Respect to the Debtors' Assets

67. Section 363(f) of the Bankruptcy Code permits a debtor to sell property free and clear of another party's interest in the property if: (a) applicable nonbankruptcy law permits such a free and clear sale; (b) the holder of the interest consents; (c) the interest is a lien and the sale price of the property exceeds the value of all liens on the property; (d) the interest is in bona fide dispute; or (e) the holder of the interest could be compelled in a legal or equitable proceeding to accept a monetary satisfaction of its interest. Section 363(f) of the Bankruptcy Code is drafted in the disjunctive: meaning, approval of a proposed sale of assets free and clear of interests requires only that one of the five requirements be satisfied with respect to each such interest. See 11 U.S.C. § 363(f); see also In re Borders Grp., Inc., 453 B.R. 477, 483-84 (Bankr. S.D.N.Y. 2011); In re Gen. Bearing Corp., 136 B.R. 361, 368 (Bankr. S.D.N.Y. 1992); In re Kellstrom Indus., Inc., 282 B.R. 787, 793 (Bankr. D. Del. 2002).

68. The Debtors submit that (a) any lien, claim, or encumbrance will be adequately protected because those liens, claims and encumbrances will attach to the net proceeds of the sale or (b) the Debtors will satisfy one of the other subsections of section 363(f) in connection with the sale(s). Accordingly, the Debtors request that the applicable assets be transferred to the Stalking Horse Bidder or Successful Bidder(s) free and clear of all liens, claims, and encumbrances.

(vi) Assumption and Assignment of Contracts Should Be Approved

69. The Debtors also must demonstrate that the assumption and assignment of the Executory Contracts and Unexpired Leases in connection with their sale(s) reflects sound business judgment. See In re Orion Pictures Corp., 4 F.3d 1095, 1099 (2d Cir. 1993) (purpose behind allowing assumption under section 365(a) is to permit the debtor, subject to the approval

of the court, to use valuable property of the estate); In re Penn Traffic Co., 524 F.3d 373, 383 (2d Cir. 2008) (business judgment test "rather obviously presupposes that the estate will assume a contract only where doing so will be to its economic advantage"). A motion to assume an executory contract is considered a summary proceeding, whereby courts efficiently review a "debtor's decision to adhere to a particular contract in the course of the swift administration of the bankruptcy estate." Orion Pictures, 4 F.3d at 1099. In conducting such review, bankruptcy courts should "examine a contract and the surrounding circumstances and apply its best 'business judgment' to determine if it would be beneficial or burdensome to the estate to assume it." Id. (the court "sits as an overseer of the wisdom with which the bankruptcy estate's property is being managed").

70. In other words, the Court must place itself in the position of the Debtors and determine "whether assuming the contract would be a good business decision or a bad one." Penn Traffic, 524 F.3d at 383; see also Orion Pictures, 4 F.3d at 1099. If a debtor's business judgment has been exercised reasonably, the court should approve the assumption of an executory contact or unexpired lease. See In re Riodizio, Inc., 204 B.R. 417, 424 (Bankr. S.D.N.Y. 1997); In re Child World, Inc., 142 B.R. 87, 89 (Bankr. S.D.N.Y. 1992); In re Ionosphere Clubs, Inc., 100 B.R. 670, 673 (Bankr. S.D.N.Y. 1989).

71. Here, a review of the relevant facts reveals that the Court should approve the decision to assume and assign the Executory Contracts and Unexpired Leases in connection with the sale(s) as a sound exercise of the Debtors' business judgment, consistent with the well-settled standard in this district governing same:

i. ***First***, the Executory Contracts and Unexpired Leases are necessary to run the business segments associated with the Debtors' assets, including the Aquatalia Assets. As such, they are essential to inducing the best offer for the Debtors' assets. In the event of a sale(s) the contracts and leases will

no longer have any value to the Debtors. By assuming and assigning them, the Debtors will be able to maximize the value of the sale to their estates while avoiding damages claims that would arise from rejection thereof;

ii. ***Second***, it is unlikely that any purchaser would want to acquire any assets on a going-concern basis unless a significant number of the executory contracts and leases needed to conduct the business and manage the day-to-day operations were included in the transaction;

iii. ***Third***, with respect to the Aquatalia Assets, the Stalking Horse APA provides that the assumption and assignment of certain executory contracts is integral to, and inextricably integrated in, the Stalking Horse Bid; and.

iv. ***Fourth***, certain executory contracts and leases will be assumed and assigned though the process approved by the Court by the Bid Procedures Order, and thus will be reviewed by key constituents.

72. Accordingly, the Debtors submit that the assumption and assignment of certain Executory Contracts and Unexpired Leases by way of the Assumption and Assignment Procedures should be approved as an exercise of their business judgment.

73. The consummation of any sale involving the assignment of an Executory Contract or Unexpired Lease will be contingent upon the Debtors' compliance with the applicable requirements of section 365 of the Bankruptcy Code. Section 365(b)(1) requires that any outstanding defaults under the contracts and leases to be assumed and assigned be cured or that the Debtors provide adequate assurance that such defaults will be promptly cured.

74. The Debtors' assumption and assignment of Executory Contracts or Unexpired Leases will require payment or reserve of cure costs and effective only upon the closing of an applicable sale. As set forth in the Bid Procedures, the Debtors propose to file with the Court and serve on each contract counterparty an initial assignment notice, which will set forth the Debtors' good faith calculations of cure amounts with respect to each Executory Contract or Unexpired Lease listed on such notice. Counterparties will have the opportunity to

file any objections to the proposed assignment of their respective contract or lease as provided in the Bid Procedures Order. With respect to the Aquatalia Assets, Sections 1.3(b) and 1.5 of the Stalking Horse APA provide that the Stalking Horse Bidder shall cure all defaults associated with, or required to properly assume, any Executory Contracts or Unexpired Leases assigned in connection therewith. Because the Bid Procedures Order (once approved) provides a clear process by which to resolve disputes over cure amounts or other defaults, the Debtors are confident that if defaults exist that must be cured, such cure will be achieved fairly, efficiently, and properly, consistent with the Bankruptcy Code and with due respect to the rights of non-Debtor parties.

75. Similarly, the Debtors submit that the third requirement of section 365(b)(1)(C) of the Bankruptcy Code — adequate assurance of future performance — is also satisfied given the facts and circumstances present here. The phrase "adequate assurance of future performance", while not defined in the Bankruptcy Code, "is to be given a practical, pragmatic construction based upon the facts and circumstances of each case." In re U.L. Radio Corp., 19 B.R. 537, 542 (Bankr. S.D.N.Y. 1982). Although no single solution will satisfy every case, the required assurance will fall short of an absolute guarantee of performance. Among other things, adequate assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. See Androse Assocs. of Allaire, LLC v. Great Atl. & Pac. Tea Co. (In re Great Atl. & Pac. Tea Co.), 472 B.R. 666, 674 (S.D.N.Y. 2012) ("A debtor need not provide 'an absolute guarantee of performance.'").

76. The Debtors believe that they can and will demonstrate that the requirements for assumption and assignment of certain Executory Contracts and Unexpired Leases to the Stalking Horse Bidder (or other Successful Bidder) will be satisfied at the Sale

Hearing. As required by the Bid Procedures, the Debtors will evaluate the financial wherewithal of potential bidders before designating such party a Qualified Bidder (e.g., financial credibility, willingness and ability of the interested party to perform under the assigned contracts and leases). Further, all counterparties will be provided with notice of the proposed assumption and assignment and will have adequate time and opportunity to object to the assumption or proposed cure amount or otherwise be heard with respect thereto.

(vii) The Sale of the Debtors' Assets Does Not Require the Appointment of a Consumer Privacy Ombudsman

77. Section 363(b)(1) of the Bankruptcy Code provides that a debtor may not sell or release personally identifiable information about individuals unless such sale or lease is consistent with its policies or upon appointment of a consumer privacy ombudsman pursuant to section 332 of the Bankruptcy Code. Section 101(41A) defines "personally identifiable information" as an individual's name, residence address, email address, telephone number, social security number, or credit card number, as well as an individual's birth date or other information that, if associated with the information described previously, would permit the identification or contacting of the individual. 11 U.S.C. § 101(41A).

78. The Debtors submit that, under the circumstances, the transfer of personally identifiable information is expressly permitted by the terms of their existing privacy policies, which is publicly available on the Debtors' website. For example, with respect to the Aquatalia Assets, the Debtors' website provides, in pertinent part, as follows: "We may disclose the following categories of Personal Information with the following categories of third parties for business purposes . . . Parties to a corporate transaction or proceeding: In the event of a corporate sale, merger, reorganization, bankruptcy, dissolution or similar event, Personal Information may be part of the transferred assets." https://www.aquatalia.com/pages/privacy-policy.

79. The Debtors have no existing privacy policy that restricts the transfer of personally identifiable information collected by the Debtors through other means. Accordingly, because the transfer of "personally identifiable information" is consistent with the Debtors' privacy policy as provided in section 363(b)(1) of the Bankruptcy Code, the Debtors submit that there is no need for the appointment of a consumer privacy ombudsman.

F. Relief from Bankruptcy Rules 6004(h) and 6006(d) Is Appropriate

80. Pursuant to Bankruptcy Rule 6004(h), unless the court orders otherwise, all orders authorizing the sale of property pursuant to section 363 of the Bankruptcy Code are automatically stayed for fourteen days after entry of the order. See Fed. R. Bankr. P. 6004(h). The purpose of Bankruptcy Rule 6004(h) is to provide sufficient time for an objecting party to appeal before the order is implemented. See Advisory Committee Notes to Fed. R. Bankr. P. 6004(h). Similarly, Bankruptcy Rule 6006(d) stays all orders authorizing a debtor to assign an executory contract or unexpired lease pursuant to section 365(f) of the Bankruptcy Code for fourteen days, unless the court orders otherwise.

81. To preserve the value of the Debtors' estates and limit the costs of administering and preserving the Debtors' assets, including the Aquatalia Assets, it is critical that the Debtors close the sale(s) of their assets as soon as possible after all closing conditions have been met or waived under the Stalking Horse APA or any other purchase agreement(s). Most notably, the Debtors' funding under the DIP Facility is projected to dry up approximately sixty days into these cases – i.e., right around the same time as the Sale Hearing and closing of the sale(s). The requested relief will also allow the Debtors to avoid incurring additional administrative expenses. Accordingly, the Debtors hereby request that the Court waive the fourteen-day stay periods under Bankruptcy Rules 6004(h) and 6006(d).

Notice

82. Notice of this Motion will be provided to: (a) the U.S. Trustee; (b) the Debtors' fifty (50) largest unsecured creditors on a consolidated basis; (c) counsel to the first lien lenders under the Debtors' prepetition first lien secured credit facilities; (d) counsel to the agent and the collateral agent under the Debtors' prepetition secured credit facilities; (e) counsel to the lenders under the Debtors' proposed debtor-in-possession financing facility and stalking horse bidder with respect to the Debtors' Aquatalia assets; (f) the United States Attorney's Office for the Southern District of New York; (g) the Internal Revenue Service; (h) counsel to Global Brands Group Holding Limited, the Debtors' ultimate parent entity; (i) all persons known by the Debtors to have expressed an interest to the Debtors in a transaction with respect to the Debtors' assets, including the Aquatalia Assets, during the previous six months; (j) all entities known by the Debtors that may have a lien, claim, encumbrance, or other interest in the Debtors' assets, including the Aquatalia Assets (for which identifying information and addresses are available to the Debtors); (k) all non-Debtor counterparties to the Executory Contracts and Unexpired Leases; (l) all of the Debtors' known creditors; (m) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (n) all other persons as directed by the Court. The Debtors submit that, under the circumstances, no other or further notice is required other than the provision of the Cure Notice and Sale Notice discussed above.

83. No previous motion for the relief sought herein has been made to this or any other Court.

CONCLUSION

WHEREFORE the Debtors respectfully request that the Court grant the relief requested herein and enter the Bid Procedures Order substantially in the form attached hereto as Exhibit A and, following the Sale Hearing, the Sale Order, and such other and further relief as it deems just and proper.

Dated: July 29, 2021
New York, New York

WILLKIE FARR & GALLAGHER LLP
Proposed Counsel for the Debtors and Debtors in Possession

By: /s/ Rachel C. Strickland

Rachel C. Strickland
Andrew S. Mordkoff
Ciara A. Copell
787 Seventh Avenue
New York, New York 10019
Telephone: (212) 728-8000
Facsimile: (212) 728-8111

EXHIBIT A

Bid Procedures Order

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
GBG USA Inc., et al.,[1]	:	Case No. 21-_____ ( )
Debtors.	:	(Jointly Administered)

ORDER: (A) AUTHORIZING AND APPROVING BID PROCEDURES IN CONNECTION WITH SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (B) AUTHORIZING AND APPROVING BID PROTECTIONS, (C) SCHEDULING RELATED AUCTION AND HEARING TO CONSIDER APPROVAL OF THE SALE, (D) APPROVING PROCEDURES RELATED TO ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (E) APPROVING FORM AND MANNER OF NOTICE THEREOF, AND (F) GRANTING RELATED RELIEF

Upon the motion (the "**Motion**")[2] of the debtors and debtors in possession in the above-captioned cases (collectively, the "**Debtors**") for the entry of an order (this "**Order**"), pursuant to sections 105(a), 363, 365, 503 and 507 of title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2002, 6004, 6006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), Rules 6004-1 and 6006-1 of the Local Bankruptcy Rules for the Southern District of New York (the "**Local Rules**"), and the Amended Guidelines for the Conduct of Asset Sales established by the United States Bankruptcy Court for the Southern District of New York (the "**Sale Guidelines**"): (i) (a) authorizing and approving certain bid procedures (as attached hereto as Exhibit 1, the "**Bid Procedures**") in connection with the sale of some or all of the Debtors' assets (collectively, the "**Assets**"), and in the case of

[1] The Debtors in these chapter 11 cases and the last four digits of each Debtor's federal taxpayer identification number are as follows: GBG USA Inc. (2467), Jimlar Corporation (8380), GBG North America Holdings Co., Inc. (5576), Homestead International Group Ltd. (0549), IDS USA Inc. (7194), MESH LLC (8424), Frye Retail, LLC (1352), Krasnow Enterprises, Inc. (0122), Krasnow Enterprises Ltd. (0001), Pacific Alliance USA, Inc. (0435), and GBG Spyder USA LLC (9108). The Debtors' executive headquarters are located at 350 5th Avenue, 10th Floor, New York, NY 10118.

[2] Capitalized terms used but not otherwise defined herein have the meanings given to them in the Motion or the Bid Procedures (as defined below).

the Aquatalia Assets, pursuant to that certain Asset Purchase Agreement, dated as of July 29, 2021 (together with the schedules and other documents related thereto, and as may be amended, supplemented or otherwise modified from time to time, the "**Stalking Horse APA**"), substantially in the form attached to the Motion as Exhibit B, by and between Debtor GBG USA Inc. and certain of its Debtor affiliates (collectively, the "**Sellers**") and WH AQ Holdings LLC LLC (as Purchaser) and Hilco Trading, LLC (as Guarantor) (the "**Stalking Horse Bidder**") subject to the outcome of an auction (the "**Auction**") if the Sellers receive one or more timely and acceptable Qualified Bids; (b) authorizing and approving the Expense Reimbursement and Break-Up Fee (collectively, the "**Bid Protections**") for the Stalking Horse Bidder; (c) scheduling the related Auction and hearing (the "**Sale Hearing**") to consider approval of the sale(s); (d) approving procedures related to the assumption and assignment of certain of the Debtors' executory contracts and unexpired leases; (e) approving the form and manner of notice thereof; and (f) granting related relief (collectively, the "**Bid Procedures Relief**"); and (ii) (a) authorizing the sale of such assets free and clear of liens, claims, encumbrances, and other interests, except as provided herein or by the Stalking Horse APA or other purchase agreements with a Successful Bidder(s); (b) approving procedures (the "**Assumption and Assignment Procedures**") for the assumption and assignment of certain of the Debtors' executory contracts (each, an "**Executory Contract**") and unexpired leases (each, an "**Unexpired Lease**") related thereto; and (c) granting related relief; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C §§ 157 and 1334; and it appearing that venue of the chapter 11 cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and a

hearing having been held to consider the relief requested in the Motion; and upon consideration of the First Day Declaration and the Skatoff Declaration in support of the Motion; and upon the record of the hearing; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties in interest; and the legal and factual bases set forth in the Motion having established just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

FOUND AND DETERMINED that:

A. The Court has jurisdiction to hear and determine the Motion and to grant the relief requested herein with respect to the bidding and auction process pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. §157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§1408 and 1409.

B. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. The statutory and legal predicates for the relief requested in the Motion are sections 105, 363, 365, 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006, Local Rules 2002-1, 6004-1, 6006-1, and 9006-1(b), and the Sale Guidelines.

D. The Debtors have demonstrated good and sufficient reasons for, and that the best interests of their estates, creditors and other parties in interest will be served by, this Court granting, to the extent provided herein, the relief requested in the Motion, including approval of:

(1) the Bid Procedures; (2) the selection of the Stalking Horse Bidder with respect to the Aquatalia Assets subject to higher or better offers; (3) the Debtors' entry into the Stalking Horse APA with respect to the Aquatalia Assets; (4) the Bid Protections; (5) the Assumption and Assignment Procedures; and (6) the forms of the Sale Notice (as defined below) and Cure Notice (as defined below) attached to the Motion as Exhibit C and Exhibit D, respectively.

E. The Debtors have demonstrated good and sufficient reasons for, and that the best interests of their estates will be served by, this Court scheduling a Sale Hearing to consider granting the other relief requested in the Motion, including approval of the sale and the transfer of the assets to the Stalking Horse Bidder or Successful Bidder free and clear of all liens, claims, encumbrances and other interests pursuant to sections 363(f) and 365 of the Bankruptcy Code.

F. The Bid Protections as set forth in Section 5.1 of the Stalking Horse APA to be paid under the circumstances described therein are: (1) an actual and necessary cost of preserving the Debtors' estates within the meaning of sections 503(b) and 507(a) of the Bankruptcy Code; (2) commensurate to the real and substantial benefits conferred upon the Debtors' estates by the Stalking Horse Bidder; (3) reasonable and appropriate in light of the size and nature of the proposed sale of the Aquatalia Assets and comparable transactions, the commitments and accommodations of the Stalking Horse Bidder that have been made for the benefit of the Debtors' estates, and the efforts that have been and will be expended by the Stalking Horse Bidder; and (4) a condition to and necessary to induce the Stalking Horse Bidder to continue to pursue the sale and to continue to be bound by the Stalking Horse APA.

G. Moreover, such Bid Protections are an essential inducement and condition of the Stalking Horse Bidder's entry into, and continuing obligations under, the Stalking Horse APA. Unless it is assured that the Bid Protections will be available, the Stalking Horse Bidder is

unwilling to remain obligated to consummate the sale of the Aquatalia Assets or otherwise be bound under the Stalking Horse APA (including the obligation to maintain its committed offer while such offer is subject to higher or otherwise better offers as contemplated by the Bid Procedures). The applicable Bid Protections induced the Stalking Horse Bidder to submit a bid that will serve as a minimum, or floor, bid for the Aquatalia Assets on which the Debtors, their creditors and other bidders can rely, and which encourages and facilitates the Auction process with respect to the Aquatalia Assets. The Stalking Horse Bidder has thus provided a material benefit to the Debtors and their creditors by increasing the likelihood that the best possible purchase price for the Aquatalia Assets will be realized. Accordingly, the Bid Protections are reasonable and appropriate and represent the best method for maximizing value for the benefit of the Debtors' estates.

H. The Bid Procedures are fair, reasonable and appropriate and are designed to maximize the recovery from the sale(s) of the Assets.

I. The process for submitting Qualified Bids is fair, reasonable and appropriate and is designed to maximize recoveries for the benefit of the Debtors' estates, creditors and other parties in interest.

J. The Sale Notice and the Contract Notices (each as defined below) are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of this Order, the Bid Procedures, the sale(s), the Sale Hearing and any and all objection deadlines related thereto, including with respect to cure amounts and the assumption and assignment of Executory Contracts and Unexpired Leases, and no other or further notice is required of the foregoing.

K. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law. To the extent any of the findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the conclusions of law constitute findings of fact, they are adopted as such.

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

1. The Motion is GRANTED to the extent set forth herein.

I. Important Dates and Deadlines

2. **Sale Hearing**. The Sale Hearing will commence on **September 17, 2021, at __ __.m., prevailing Eastern Time**, before the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, New York 10004-1408. The Sale Hearing may be adjourned without further notice other than by announcement in open Court or on the Court's calendar. Upon entry of this Order, the Debtors are authorized to perform any obligations set forth in the Stalking Horse APA that are intended to be performed prior to the Sale Hearing and/or entry of the Sale Order.

3. **Sale Objection Deadline**. Objections, if any, to the sale(s) must be made by **September 13, 2021, at 4:00 p.m., prevailing Eastern Time** (the "**Sale Objection Deadline**"), and must: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules, the Local Rules, and any orders of the Court; (c) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (d) be filed with the Court and served so **actually received** no later than the Sale Objection Deadline by (a) the Debtors, c/o GBG USA Inc., 350 5th Avenue, 10th Floor, New York, NY 10118 (Attn: Robert Smits); (b) proposed counsel to the Debtors, Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019 (Attn: Rachel C. Strickland, Esq., Andrew S. Mordkoff, Esq. and Ciara A. Copell, Esq.); (c) counsel to the first lien lenders under the Debtors' prepetition first lien secured credit

facilities, Linklaters LLP, 1290 6th Avenue, New York, NY 10104 (Attn: Margot B. Schonholtz, Esq., Penelope J. Jensen Esq., and Christopher J. Hunker, Esq.); (d) counsel to the agent and the collateral agent under the Debtors' prepetition secured credit facilities, Moses & Singer LLP, 405 Lexington Avenue, New York, NY 10174 (Attn: Alan Gamza, Esq. and Kent Kolbig, Esq.); (e) counsel to Global Brands Group Holding Limited, Kirkland & Ellis LLP, 300 North LaSalle, Chicago, IL 60654 (Attn: Patrick Nash, Esq. and Whitney Fogelberg, Esq.); (f) counsel to the lenders under the Debtors' proposed debtor-in-possession financing facility and stalking horse bidder with respect to the Debtors' Aquatalia assets, Dechert LLP, 1095 6th Avenue, New York, NY 10036 (Attn: Nazim Zilkha, Esq., Allan S. Brilliant, Esq., and Stephen Wolpert, Esq.); (g) counsel to any official committee of unsecured creditors appointed in these chapter 11 cases; and (h) William K. Harrington, United States Trustee, U.S. Department of Justice, Office of the U.S. Trustee, 201 Varick Street, Rm 1006, New York, NY 10014 (Attn.: Richard C. Morrissey, Esq., email: richard.morrissey@usdoj.gov and Greg Zipes, Esq., email: greg.zipes@usdoj.gov); and (i) all parties requesting notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002.

4. A party's failure to timely file or make an objection in accordance with this Order will forever bar the assertion of any objection to the Motion, entry of the Sale Order, and/or consummation of the sale(s) with the Successful Bidder(s) pursuant to the applicable asset purchase agreement and shall be deemed to constitute any such party's consent to entry of the Sale Order and consummation of the sale(s) and all transactions related thereto, including the assumption and assignment of Executory Contracts and Unexpired Leases pursuant to the applicable asset purchase agreement.

5. **Response Deadline**. Responses or replies, if any, to timely filed objections to entry of the Sale Order must be filed by **September 16, 2021, at 4:00 p.m., prevailing Eastern**

Time, *provided* that such deadline may be extended by agreement of the Debtors and the affected objecting party.

6. **Bidding Process**. The following dates and deadlines regarding the bidding process are hereby established (subject to modification in accordance with the Bid Procedures):

a. **Deadline to Serve Sale Notice:** Within 1 day after entry of the Bid Procedures Order;

b. **Bid Deadline: September 13, 2021, at 5:00 p.m., prevailing Eastern Time**, is the deadline by which Qualified Bids must be received (the "**Bid Deadline**");

c. **Deadline to Notify Qualified Bidders: September 14, 2021, at 12:00 p.m., prevailing Eastern Time**, the deadline by which the Debtors must inform Potential Bidders whether their bid is a Qualified Bid;

d. **Auction: No later than September 15, 2021, at .m., prevailing Eastern Time**, is the date and time of the Auction for the Debtors' assets, including the Aquatalia Assets. The Auction(s) will be held either virtually through Zoom, or, if permitted, at the offices of proposed counsel to the Debtors: Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019; and

e. **Deadline to File Notice of Successful Bidder(s): September 16, 2021, at 12:00 p.m., prevailing Eastern Time**, is the date and time by which the Debtors must file the Notice of Successful Bidder(s), including the Closing Assignment Notice (as defined below).

7. In the event the Debtors modify the milestones described in paragraphs 2-6 herein, they shall promptly notify: (a) the U.S. Trustee; (b) the Debtors' fifty (50) largest unsecured creditors on a consolidated basis; (c) counsel to the first lien lenders under the Debtors' prepetition first lien secured credit facilities; (d) counsel to the agent and the collateral agent under the Debtors' prepetition secured credit facilities; (e) counsel to the lenders under the Debtors' proposed debtor-in-possession financing facility and stalking horse bidder with respect to the Debtors' Aquatalia assets; and (f) counsel to Global Brands Group Holding Limited, the Debtors' ultimate parent entity (the "**Notice Parties**").

II. Bid Procedures and Related Relief

A. Bid Procedures.

8. The Bid Procedures, substantially in the form attached hereto as **Exhibit 1** and incorporated by reference as though fully set forth herein, are hereby approved in their entirety, and the Bid Procedures shall govern the submission, receipt, and analysis of all bids relating to the sale of the Assets, including the Aquatalia Assets, and any party desiring to submit an offer for any or all of the Assets must comply with the terms of the Bid Procedures and this Order.

9. Subject to the terms of the Bid Procedures, any Qualified Bidder that has a valid and perfected lien on any Assets of the Debtors' estates and the right under applicable non-bankruptcy law to credit bid claims secured by such liens shall be entitled to credit bid some or all of their claims at the Auction(s) pursuant to section 363(k) of the Bankruptcy Code; *provided,* that in no event shall any Secured Lenders (as defined in the Stalking Horse APA) (or any assignees, transferees or purchasers of the secured indebtedness held by any Secured Lender) be permitted to credit bid for the Aquatalia Assets as part of any competing bid for the Aquatalia Assets at any Auction at which the Stalking Horse Bidder is bidding pursuant to the terms of the Stalking Horse APA.

10. Following entry of this Order, the Debtors shall be authorized, but not directed, with the consent of the Required First Lien Lenders (as defined in the Cash Collateral Order), to designate additional stalking horse bidders solely for segments of the Debtors' business other than the Aquatalia Assets, subject to Court approval. For the avoidance of doubt, to the extent the Debtors designate more than one stalking horse bidder, no two stalking horse bidders will be designated with respect to the same or overlapping Assets. To the extent that the Debtors designate additional stalking horse bidders, the Debtors shall file a notice disclosing such designation and serve such notice on the Notice Parties. Any sale conducted following the

subsequent designation of a stalking horse bidder for the Debtors' assets shall be subject to Court approval and conducted in accordance with the Bid Procedures and Assumption and Assignment Procedures.

B. Bid Protections.

11. The Bid Protections described in the Bid Procedures and Motion are hereby approved as set forth in the Stalking Horse APA in connection with the Aquatalia Assets.

12. If the Stalking Horse Bidder becomes entitled to receive the Bid Protections in accordance with the terms of the Stalking Horse APA: (a) the Debtors are authorized to pay any and all amounts owing to the Stalking Horse Bidder in accordance with the terms of the Stalking Horse APA, including the Break-Up Fee and Expense Reimbursement, without further action or order by the Court, in accordance with the terms and conditions of the Stalking Horse APA and this Order, and (b) the Stalking Horse Bidder shall be granted an allowed superpriority administrative claim in the Sellers' chapter 11 cases in an amount equal to the Break-Up Fee and Expense Reimbursement under sections 503(b)(1) and 507(a)(2) of the Bankruptcy Code, which shall be junior and subordinate to the Adequate Protection Claims (as defined in the Cash Collateral Order) granted pursuant to the Cash Collateral Order. In the event that the Debtors consummate any sale transaction for some or all of the Aquatalia Assets with any Successful Bidder that is not the Stalking Horse Bidder (an "**Alternative Transaction**"), then the Debtors shall pay (i) first, all obligations outstanding under the DIP Facility in full in cash to the agent under the DIP Facility and (ii) second, the Bid Protections to the Stalking Horse Bidder in accordance with the terms and conditions of the Stalking Horse APA, in each case by wire transfer of immediately available funds from the proceeds of the Alternative Transaction immediately upon the consummation thereof.

13. No person or entity, other than the Stalking Horse Bidder, shall be entitled to any expense reimbursement, break-up fee, "topping," or other similar fee or payment for the Aquatalia Assets.

14. The Stalking Horse Deposit and the deposits paid by all other Qualified Bidders shall be held in escrow by the Debtors or their agent, and shall not become property of the Debtors' bankruptcy estates unless and until released from escrow to the Debtors pursuant to the terms of the applicable escrow agreement or order of this Court.

III. Sale Hearing Notice and Related Relief

15. The Sale Notice, substantially in the form attached to the Motion as **Exhibit C**, is hereby approved. Within one (1) day following the entry of this Order, or as soon as reasonably practicable thereafter (the "**Mailing Date**"), the Debtors will cause the Sale Notice to be served on: (a) any other party that has filed a notice of appearance in these chapter 11 cases; (b) counsel to the Stalking Horse Bidder; (c) the Notice Parties; (d) the Federal Trade Commission; (e) the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice; (f) any parties known or reasonably believed to have expressed interest in the Assets or any portion thereof; (g) all entities known or reasonably believed to have asserted a lien, encumbrance, claim, or other interest in the Assets; (h) all parties to executory contracts to be assumed and assigned, or rejected as part of the Sale; (i) all applicable state and local taxing authorities; and (j) each governmental agency that is an interested party with respect to the sale of the Aquatalia Assets and transactions proposed thereunder.

16. Additionally, on the Mailing Date or as soon as reasonably practicable thereafter, the Debtors shall publish a notice, substantially in the form of the Sale Notice, on one occasion, in *The Wall Street Journal* or the *New York Times*. Such publication notice shall be deemed

sufficient and proper notice of the sale to any other interested parties whose identities are unknown to the Debtors.

IV. Assumption and Assignment Procedures

17. The following assumption and assignment procedures (the "**Assumption and Assignment Procedures**") are hereby approved:

a. No later than 1 day after entry of the Bid Procedures Order, the Debtors will file with the Court and serve by first-class mail a notice (the "**Cure Notice**") on each counterparty (a "**Counterparty**") to the Debtors' Executory Contracts and Unexpired Leases that the Debtors may wish to assume and assign to a Potential Bidder (as defined in the Bid Procedures) in connection with a sale (each, an "**Identified Contract**").

b. The Cure Notice served on a Counterparty shall (i) identify each Identified Contract then applicable to such Counterparty, (ii) set forth the proposed amount necessary to cure any default under the relevant Identified Contract pursuant to section 365 of the Bankruptcy Code (the "**Cure Amount**"), (iii) expressly state that assumption and assignment of any particular Identified Contract is not guaranteed and (iv) inform such Counterparty of the requirement to file and duly serve any (A) Cure Objections (as defined below) no later than the Sale Objection Deadline (as defined in the Bid Procedures) and (B) Adequate Assurance Objections (as defined below) no later than the earlier of (x) the Sale Hearing or (y) seven (7) calendar days after the conclusion of the Auction (such deadlines set forth in clauses (A) and (B), the "**Initial Objection Deadline**").

c. At the time the Debtors file the Notice of Successful Bidder, and within one (1) calendar day after the conclusion of the Auction, or as soon as reasonably practicable thereafter, the Debtors will file with the Court and serve by first-class mail on each Counterparty to a Closing Assumed Contract (as defined below), a notice (the "**Closing Assignment Notice**"), which shall (i) identify the Successful Bidder(s) (ii) list all Identified Contracts which are proposed to be assumed and assigned in the Successful Bid(s) at the closing of the sale(s) (the "**Closing Assumed Contracts**"), (iii) identify any known proposed assignee(s) of the Closing Assumed Contracts (if different from the applicable Successful Bidder) and (iv) provide such Successful Bidder's proposed form of adequate assurance of future performance with respect to the relevant Closing Assumed Contract.

d. If, following service of the Closing Assignment Notice, the Debtors identify additional Executory Contracts and Unexpired Leases for

assumption and assignment in connection with the sale (the "**Additional Assumed Contracts**," and together with the Closing Assumed Contracts, the "**Purchased Contracts**"), the Debtors will file with the Court and serve by first-class mail additional notice(s) (each, a "**Supplemental Cure Notice**," and together with the Cure Notice and Closing Assignment Notice, the "**Contract Notices**") on each Counterparty to the Additional Assumed Contracts. Supplemental Cure Notices shall (i) identify the Counterparty to each Additional Assumed Contract, (ii) identify any known proposed assignee(s) of the Additional Assumed Contracts (if different from the applicable Successful Bidder), (iii) set forth the Cure Amounts with respect to such Additional Assumed Contract, and (iv) provide such Successful Bidder's proposed form of adequate assurance of future performance with respect to the relevant Additional Assumed Contract. The Counterparty will have fourteen (14) days following delivery of a Supplemental Cure Notice (the "**Further Objection Deadline**" and, together with the Initial Objection Deadline, the "**Contract Objection Deadlines**") to file and duly serve a Contract Objection. Supplemental Cure Notices may be filed and served at any time up to three (3) days prior to the closing of a sale.

e. Service of the Contract Notices does not constitute an admission that a Purchased Contract is an Executory Contract or Unexpired Lease of real property, or confirm that the Debtors are required to assume and assign such Purchased Contract.

f. Objections with respect to (i) the proposed assumption and assignment of any Identified Contract, (ii) the proposed Cure Amount with respect thereto, (iii) whether applicable law excuses a Counterparty from accepting performance by, or rendering performance to, any Successful Bidder (the "**Cure Objections**"), if any, and objections to the adequate assurance of future performance of the Successful Bidder (or a proposed designee thereof) (the "**Adequate Assurance Objections**") and, together with any Cure Objections, the "**Contract Objections**") must: (A) be in writing; (B) state with specificity the nature of such objection and, if the Cure Amount is disputed, the alleged Cure Amount and any and all defaults that must be cured or satisfied in order for such Purchased Contract to be assumed and assigned (with appropriate documentation in support thereof); (C) comply with the terms of these Assumption and Assignment Procedures, the Bankruptcy Rules and the Local Rules; and (D) be filed with the Court and properly served on the Objection Notice Parties (as defined in the Cure Notice).

g. The Debtors may extend the Contract Objection Deadlines one or more times without further notice.

h. If no objections are received by the applicable Contract Objection Deadline with respect to a Purchased Contract, the assumption and

assignment of such Purchased Contract shall be deemed authorized, the Counterparty to such Purchased Contract will be deemed to have given any required consent to the assumption and assignment of the Purchased Contract, and the proposed Cure Amount shall be binding on the applicable Counterparty for all purposes and will constitute a final determination of the total Cure Amount required to be paid in connection with the assumption and assignment of such Purchased Contract. The Debtors are authorized to then submit to the Court a form of order, which order may be the Sale Order (an "**Approval Order**") authorizing the assumption and assignment of such Purchased Contract. Upon entry of an Approval Order with respect to the assumption and assignment of a Purchased Contract, any and all previously filed Contract Objections with respect thereto shall be deemed resolved.

i. Any Counterparty who fails to timely file and properly serve a Contract Objection (i) will be deemed to have forever waived and released any Contract Objection and consented to the assumption and assignment of such Purchased Contract on the terms set forth in the applicable Contract Notice, subject to the occurrence of the closing of the applicable sale, and (ii) will be barred and estopped forever from asserting or claiming against the Debtors or the Successful Bidder that any additional amounts are due or defaults exist, or conditions to assignment must be satisfied, under such Purchased Contract.

j. If a Contract Objection is timely filed and properly served in accordance with these Assumption and Assignment Procedures, the Debtors and the Counterparty shall meet and confer in good faith to attempt to resolve any such objection without Court intervention. If the parties determine that the Contract Objection cannot be resolved in a timely manner without judicial intervention, the Court will make all necessary determinations relating to such Contract Objection at the applicable Contract Hearing (as defined below).

k. A hearing with respect to Contract Objections to the Closing Assignment Notice shall be held at the Sale Hearing or at such other earlier or later date prior to the closing of the applicable sale as the Court may designate (the "**Initial Contract Hearing**"). Hearings with respect to Contract Objections to any Supplemental Cure Notices may be held on such dates as this Court may designate (each, an "**Additional Contract Hearing**," and together with the Initial Contract Hearing, each a "**Contract Hearing**").

l. To the extent that (i) the Debtors settle a Contract Objection, or (ii) the Court enters an order resolving the Contract Objection, and such settlement or order is not acceptable to the Successful Bidder, the Successful Bidder shall have the option to designate the relevant contract as no longer a Purchased Contract in which case, the Successful Bidder

shall not assume such contract and shall not be responsible for any Cure Amounts related to such contract.

m. No Purchased Contract shall be deemed assumed and assigned pursuant to section 365 of the Bankruptcy Code until the later of (i) the date the Court has entered an order assuming and assigning such Purchased Contract or (ii) the date of the applicable sale closing.

18. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

19. To the extent the provisions of this Order are inconsistent with the provisions of any exhibits referenced herein or with the Motion, the provisions of this Order shall control.

20. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

21. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: _____, 2021
New York, New York

_____
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

Bid Procedures

BID PROCEDURES

On July 29, 2021, GBG USA Inc. and its affiliated debtors and debtors in possession (collectively, the "**Debtors**")[1] commenced proceedings under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**").

On July 29, 2021, certain Debtors (collectively, the "**Sellers**") entered into an asset purchase agreement (the "**Stalking Horse APA**") with WH AQ Holdings LLC LLC (as Purchaser) and Hilco Trading, LLC (as Guarantor) (the "**Stalking Horse Bidder**" and its bid, the "**Stalking Horse Bid**"), subject to Bankruptcy Court (as defined herein) approval, pursuant to which, among other things the Stalking Horse Bidder proposes to (a) purchase, acquire, and take assignment and delivery of, free and clear of all liens, claims, encumbrances, and other interests (except as otherwise provided in the Stalking Horse APA), the assets defined in the Stalking Horse APA as the "Acquired Assets" (the "**Aquatalia Assets**"), for $17.3 million, and (b) assume those certain liabilities set forth in Section 1.3 of the Stalking Horse APA. The Debtors propose that in the event that, among other circumstances, the Debtors consummate a sale of all or any portion of the Aquatalia Assets with any person other than the Stalking Horse Bidder, the Debtors will pay the Stalking Horse Bidder a break-up fee in the amount of $700,000 and reimburse the Stalking Horse Bidder for its reasonable and documented expenses in conjunction with the Stalking Horse Bid up to a maximum amount of $300,000 (collectively, the "**Bid Protections**"). The Bid Protections shall be payable in accordance with the terms and conditions of the Stalking Horse APA.

On _____, 2021, the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") entered an order [Docket No. __] (the "**Bid Procedures Order**") approving, among other things, these Bid Procedures (the "**Bid Procedures**").

These Bid Procedures set forth the process by which the Debtors are authorized to conduct the auction(s) (the "**Auction(s)**") for the sale(s) of (i) the Aquatalia Assets and (ii) the Debtors' assets other than the Aquatalia Assets (the "**Other Assets**" and together with the Aquatalia Assets, the "**Assets**").

Copies of the Bid Procedures Order, the Stalking Horse APA, or any other documents in the Debtors' chapter 11 cases are available upon request to Prime Clerk LLC, by phone at (877) 635-8928 (U.S./Canada) or (929) 203-3305 (International), or at https://cases.primeclerk.com/gbg.

[1] The Debtors in these chapter 11 cases and the last four digits of each Debtor's federal taxpayer identification number are as follows: GBG USA Inc. (2467), Jimlar Corporation (8380), GBG North America Holdings Co., Inc. (5576), Homestead International Group Ltd. (0549), IDS USA Inc. (7194), MESH LLC (8424), Frye Retail, LLC (1352), Krasnow Enterprises, Inc. (0122), Krasnow Enterprises Ltd. (0001), Pacific Alliance USA, Inc. (0435), and GBG Spyder USA LLC (9108). The Debtors' executive headquarters are located at 350 5th Avenue, 10th Floor, New York, NY 10118.

A. Due Diligence

(i) Due Diligence.

The Debtors have posted copies of all material documents related to the Debtors' business to the Debtors' confidential electronic data room (the "**Data Room**"). To access the Data Room, a party must submit to the Debtors or their advisors:

A. an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtors[2];

B. if practicable, a description of the nature and extent of any due diligence the interested party wishes to conduct and the date in advance of the Bid Deadline (as defined below) by which such due diligence will be completed; and

C. sufficient information, as reasonably determined by the Debtors, to allow the Debtors, after consultation with the Consultation Parties, to determine that the interested party has the financial wherewithal to close a sale for the Assets.

An interested party that meets the above requirements to the satisfaction of the Debtors, after consultation with the Consultation Parties, shall be a "**Potential Bidder**." As soon as practicable, the Debtors will provide such Potential Bidder access to the Data Room; *provided* that such access may be terminated by the Debtors in their discretion at any time for any reason whatsoever, after prior notice to, and after consultation with, the Consultation Parties, including that a Potential Bidder does not become a Qualified Bidder (as defined below) or these Bid Procedures are terminated.

The Debtors shall keep the Consultation Parties reasonably informed of all interested parties that become Potential Bidders and the status of their due diligence.

Each Potential Bidder shall comply with all reasonable requests for information and due diligence access by the Debtors or their advisors regarding the ability of such Potential Bidder to consummate a sale transaction. Failure of a Potential Bidder to comply with reasonable requests for additional information and due diligence access may be a basis for the Debtors to determine, after consultation with the Consultation Parties, that a bid made by such Qualified Bidder is not a Qualified Bid.

The Debtors have designated Ducera Partners LLC ("**Ducera**"), 11 Times Square, Floor 36, New York, New York 10036 (Attn: David Skatoff (dskatoff@ducerapartners.com), and Jonathan Cremeans (jcremeans@ducerapartners.com)) to coordinate all reasonable requests for additional information and due diligence access.

[2] Neither the Debtors nor their representatives shall furnish information of any kind whatsoever relating to the Assets to any person, other than the Consultation Parties, who has not delivered to the Debtors an executed confidentiality agreement.

(ii) Consultation Parties.

The following parties shall be "**Consultation Parties**" hereunder: (a) counsel to the first lien lenders under the Debtors' prepetition first lien secured credit facilities, Linklaters LLP, 1290 6th Avenue, New York, NY 10104 (Attn: Margot B. Schonholtz, Esq., Penelope J. Jensen Esq., and Christopher J. Hunker, Esq.); (b) counsel to the agent and the collateral agent under the Debtors' prepetition secured credit facilities, Moses & Singer LLP, 405 Lexington Avenue, New York, NY 10174 (Attn: Alan Gamza, Esq. and Kent Kolbig, Esq.); and (c) counsel to any official committee of unsecured creditors appointed in these chapter 11 cases.

Notwithstanding anything in these Bid Procedures or the Bid Procedures Order to the contrary, the following provisions of these Bid Procedures shall not be amended or modified without the consent of the Stalking Horse Bidder: (a) any Bid Protections in favor of the Stalking Horse Bidder; and (b) Section L hereof.

(iii) Communications with Potential Bidders.

There must be no communications between or among Potential Bidders, or between Potential Bidders and the Consultation Parties, unless the Debtors have previously authorized such communication in writing. Should any Potential Bidder attempt to communicate directly with a Consultation Party, such Consultation Party shall immediately direct the Potential Bidder to the Debtors' counsel and Ducera. The Debtors reserve the right, in their reasonable business judgment, in consultation with the Consultation Parties, to disqualify any Potential Bidder(s) that have communications between or among themselves. The Debtors further reserve their right, in their reasonable business judgment, to disqualify any Potential Bidder(s) that have communications with a Consultation Party, and to strip any Consultation Party that violates this provision (except as otherwise provided in this paragraph) of its consultation rights hereunder; *provided* that the Debtors shall provide such Consultation Party with notice that the Debtors are exercising their rights to strip the Consultation Party of their consultation rights.

B. Bid Requirements.

To be eligible to participate in the Auction, a Potential Bidder (other than the Stalking Horse Bidder and the Agent under the DIP Facility, who shall be deemed Qualified Bidders) must deliver to the Debtors and their advisors on or prior to the Bid Deadline, a written, irrevocable offer that must be determined by the Debtors, in their business judgment and in consultation with the Consultation Parties, to satisfy each of the following conditions (collectively, the "**Bid Requirements**"):

(i) **Purchase Price**. Each bid (a "**Bid**") must clearly set forth the purchase price to be paid for the Assets (the "**Purchase Price**") and must (i) indicate the source of cash consideration, including funding commitments, and confirm that such consideration is not subject to any contingencies, (ii) identify separately the cash and non-cash components of the Purchase

Price, and (iii) if the Bid is for less than all of the Assets, indicate the allocation of the Purchase Price between Assets.

(ii) **Bid Deposit**. Each Bid (other than the Stalking Horse Bid, with respect to which the deposit requirements will be governed by the Stalking Horse APA) must be accompanied by a cash deposit equal to 10% of the Purchase Price attributable to the Assets to be purchased (the "**Good Faith Deposit**"), which will be held in an escrow account to be identified and established pursuant to the authority granted by the order authorizing the Debtors to maintain and operate their bank accounts, by wire transfer or certified or cashier's check. To the extent a Qualified Bid (other than the Stalking Horse Bid) is modified before, during or after the Auction in any manner that increases the Purchase Price contemplated by such Qualified Bid, the Debtors reserve the right, in consultation with the Consultation Parties, to require that such Qualified Bidder (as defined below) increase its Good Faith Deposit so that it equals 10% of the increased Purchase Price.

(iii) **Committed Financing**. To the extent that a Bid is not accompanied by evidence of the Potential Bidder's capacity to consummate the sale transaction set forth in its Bid with cash on hand, each Bid must include committed financing documented to the Debtors' satisfaction, in consultation with the Consultation Parties, that demonstrates that the Potential Bidder has sufficient cash on hand or has received sufficient debt and/or equity funding commitments to satisfy the Potential Bidder's Purchase Price and other obligations under its Bid, including information sufficient to enable the Debtors to verify the Potential Bidder's financing sources.

(iv) **Minimum Bid Amount for Aquatalia Assets**. With respect to the sale of the Aquatalia Assets, (a) the value of each Bid, as determined by the Debtors in their business judgment and in consultation with the Consultation Parties, must exceed the aggregate sum of (1) the Stalking Horse Bid (including the aggregate cash consideration, assumed liabilities, and other non-cash consideration), (2) the Bid Protections, and (3) the minimum Bid increment of $100,000, and (b) to the extent any Bid includes (1) some, but not all, of the Aquatalia Assets, or (2) some or all of the Aquatalia Assets and some or all of the Other Assets, such Bid must provide for the allocation of the cash component of the Purchase Price to the Aquatalia Assets included in such Bid in an amount that equals or exceeds the amount required to pay in full the outstanding obligations under the Debtors' debtor-in-possession financing facility plus the Bid Protections. The Debtors and their advisors, in consultation with the Consultation Parties, will determine the value of any assumed liabilities that differ from those included in the Stalking Horse Bid.

(v) **Good Faith Offer**. Each Bid must constitute a good faith, bona fide offer to purchase some or all of the Assets.

(vi) **Sale Terms**. Each Bid must be accompanied by duly executed transaction documents (including schedules and exhibits thereto that identify with particularity which of the Debtors' Executory Contracts and Unexpired Leases the Potential Bidder seeks to have assigned). With respect to any Bid that includes any Aquatalia Assets, such Bid (i) must be, in the Debtors' reasonable business judgment, after consultation with the Consultation Parties, on terms that are the same or better than the terms of the Stalking Horse APA, and (ii) must include copies of transaction documents that are marked to reflect the amendments and modifications from the Stalking Horse APA, which amendments and modifications may not be materially more burdensome than the Stalking Horse APA or inconsistent with these Bid Procedures. The Debtors, in their reasonable business judgment and in consultation with the Consultation Parties, will determine whether such amendments and modifications are materially more burdensome than the Stalking Horse APA.

(vii) **No Contingencies.** A Bid must not be conditioned on any contingency, including, among others, on obtaining any of the following: (a) financing; (b) shareholder, board of directors, or other approval; and/or (c) the outcome or completion of a due diligence review by the Potential Bidder.

(viii) **Binding and Irrevocable**. A Potential Bidder's Bid must be irrevocable unless and until the Debtors accept a higher Bid and such Potential Bidder is not selected as the Back-up Bidder (as defined herein).

(ix) **Adequate Assurance Information / Identification of Executory Contracts and Unexpired Leases**. Each Bid must be accompanied by sufficient and adequate financial and other information (the "**Adequate Assurance Information**") to demonstrate, to the reasonable satisfaction of the Debtors in consultation with the Consultation Parties, that such Potential Bidder: (a) has the financial wherewithal and ability to consummate the acquisition of the Assets and the operation of the Assets until such time as the Executory Contracts or Unexpired Leases with respect thereto have been rejected or assumed and assigned to the Potential Bidder following the closing of the proposed transaction (the "**Closing**") and (b) can provide adequate assurance of future performance with respect to any Executory Contract or Unexpired Lease to be assumed and assigned to the Potential Bidder in connection with the proposed transaction (including providing for the payment of all Cure Amounts related to such Executory Contracts and Unexpired Leases by the Potential Bidder). The Bid must also identify a contact person that counterparties to any assumed Executory Contract or Unexpired Lease may contact to obtain additional Adequate Assurance Information.

(x) **Identity and Corporate Authority**. Each Bid must fully disclose the identity of each entity that will be participating in connection with such Bid (including any equity owners or sponsors, if the purchaser is an entity formed for the purpose of consummating the acquisition of the Assets), and the complete terms of any such participation, along with sufficient evidence that the Potential Bidder is legally empowered, by power of attorney or otherwise, to complete the transactions on the terms contemplated by the parties. A Bid must also fully disclose any connections or agreements with the Debtors, any stalking horse bidder, or any other known, potential, prospective Bidder, or Qualified Bidder, or any officer, director, or equity security holder of the Debtors.

(xi) **Authorization**. Each Bid must contain evidence that the Potential Bidder has obtained authorization or approval from its board of directors (or a comparable governing body acceptable to the Debtors) with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.

(xii) **No Fees**. With regard to the Aquatalia Assets, the Bids must not be subject to any termination fee, transaction fee, break-up fee, expense reimbursement, or any similar type of payment or reimbursement; *provided, however*, that the Debtors reserve the right, in consultation with the Consultation Parties and subject to Bankruptcy Court approval, to designate additional stalking horse bidders solely for the Other Assets and grant such stalking horse bidders bid protections pursuant to the Bid Procedures Order. Other than the Bid Protections granted to Stalking Horse Bidder(s), each Potential Bidder presenting a Bid or Bids will bear its own costs and expenses (including legal fees) in connection with the proposed transaction, and by submitting its Bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code.

(xiii) **Adherence to Bid Procedures**. By submitting its Bid, each Potential Bidder is agreeing to abide by and honor the terms of these Bid Procedures and agrees not to submit a Bid or seek to reopen the Auction(s) after conclusion of the Auction(s).

(xiv) **Regulatory Approvals and Covenants**. A Bid must set forth each regulatory and third-party approval required for the Potential Bidder to consummate the applicable Sale, if any, and the time period within which the Potential Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than 30 days following execution and delivery of the asset purchase agreement, those actions the Potential Bidder will take to ensure receipt of such approvals as promptly as possible).

(xv) **As-Is, Where-Is**. Each Bid must include a written acknowledgement and representation that the Potential Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the relevant Assets prior to making its offer; has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid; and did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Assets or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Potential Bidder's proposed purchase and sale agreement for the Assets.

(xvi) **Time Frame for Closing**. A Bid by a Potential Bidder must be reasonably likely (based on antitrust or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid, within a time frame acceptable to the Debtors in consultation with the Consultation Parties.

(xvii) **Consent to Jurisdiction**. The Potential Bidder must submit to the jurisdiction of the Bankruptcy Court and waive any right to a jury trial in connection with any disputes relating to Debtors' qualification of bids, the Auction(s), the construction and enforcement of these Bid Procedures, the sale documents, and the Closing, as applicable.

Bids fulfilling all of the preceding requirements, as determined by the Debtors and their advisors, in consultation with the Consultation Parties, will be deemed to be "**Qualified Bids**," and those parties submitting Qualified Bids will be deemed to be "**Qualified Bidders**". All information disclosed by any Bidder in connection with all of the preceding requirements will be made available by the Debtors to the Consultation Parties promptly upon the Debtors' receipt thereof but in any event no later than one (1) business day following the Bid Deadline; *provided* that any confidential financing and/or equity commitment documents received from a Bidder shall only be shared with the Consultation Parties on an a professional-eyes'-only basis. The Debtors reserve the right, in consultation with the Consultation Parties, to work with any Potential Bidder in advance of the Auction to cure any deficiencies in a Bid that is not initially deemed to be a Qualified Bid. The Debtors may accept a single Qualified Bid or multiple bids for non-overlapping material portions of the Debtors' Assets such that, if taken together in the aggregate, would otherwise meet the standards for a single Qualified Bid (in which event those multiple bidders will be treated as a single Qualified Bidder for purposes of the Auction).

Within one (1) calendar day after the Bid Deadline, the Debtors and their advisors, in consultation with the Consultation Parties, will determine which Potential Bidders are Qualified Bidders and will notify the Potential Bidders whether Bids submitted constitute, alone or together with other Bids, Qualified Bids so as to enable such Qualified Bidders to bid at the Auction. Any Bid that is not deemed a Qualified Bid will not be considered by the Debtors.

The Stalking Horse Bidder will be deemed to be a Qualified Bidder for the Aquatalia Assets and any subsequent stalking horse bidder will be deemed a Qualified Bidder for the Other Assets subject to such stalking horse bidder's purchase agreement.

C. Bid Deadline.

Qualified Bids must be received by each of the Debtors and their advisors so as to be actually received no later than September 13, 2021, at 5:00 p.m., prevailing Eastern Time (the "Bid Deadline").

D. Evaluation of Qualified Bids.

Prior to the Auction(s), the Debtors and their advisors will evaluate the Qualified Bids and identify the Qualified Bid(s) that is, in the Debtors' reasonable business judgment, in consultation with the Consultation Parties, the highest or otherwise best bid for all or a particular subset of the Assets (the "**Starting Bid**"). In making such determination, the Debtors will take into account, among other things, the execution risk attendant to any submitted bids. Within 24 hours of such determination, but in no event later than the start of the Auction, the Debtors will (i) notify the Stalking Horse Bidder, and the Consultation Parties as to which Qualified Bid(s) is the Starting Bid(s) and (ii) distribute copies of the Starting Bid(s) to the Consultation Parties and each Qualified Bidder who has submitted a Qualified Bid.

If any Bid is determined by the Debtors not to be a Qualified Bid, the Debtors will refund such Potential Bidder's Good Faith Deposit and all accumulated interest thereon on or within ten (10) business days after the Bid Deadline.

E. No Qualified Bids.

If no Qualified Bids are received by the Bid Deadline, then the Auction will not occur, the Stalking Horse APA will be deemed the Successful Bid with respect to the Aquatalia Assets, and, subject to the termination rights under the Stalking Horse APA, the Debtors will pursue entry of an order by the Bankruptcy Court approving the Stalking Horse APA and authorizing the sale of the Aquatalia Assets to the Stalking Horse Bidder as soon as practicable.

F. Auction.

If one or more Qualified Bids is received for any of the Assets, including the Aquatalia Assets, by the Bid Deadline, the Debtors will conduct one or more Auctions with respect to the Assets. The date and time of the Auction(s) for the Assets, including the Aquatalia Assets, if one is needed, is September 15, 2021. The Auction(s) will be held either virtually through Zoom, or, if permitted, at the offices of proposed counsel to the Debtors: Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019, or such later time or other place as the Debtors will timely notify the Stalking Horse Bidder(s) and all other Qualified Bidders, in consultation with the Consultation Parties.

The Auction will be conducted in accordance with the following procedures (the "**Auction Procedures**"):

(i) the Auction(s) will be conducted openly;

(ii) only the Qualified Bidders, including the Stalking Horse Bidder, will be entitled to bid at the Auction(s);

(iii) the Qualified Bidders, including the Stalking Horse Bidder, must appear either virtually or in person or through duly-authorized representatives at the Auction(s);

(iv) only such authorized representatives of each of the Qualified Bidders, the Stalking Horse Bidder, the Debtors, their respective advisors, and the advisors to the Notice Parties will be permitted to attend the Auction(s);

(v) bidding at the Auction(s) will begin at the Starting Bid(s);

(vi) subsequent Bids at the Auction for the Assets must be made in minimum increments of $100,000;

(vii) in the event of a competing Qualified Bid with respect to the Aquatalia Assets, the Stalking Horse Bidder shall be entitled, but not obligated, to submit subsequent Bids and shall be entitled, but not obligated, in any and all such subsequent Bids to credit bid the full amount of the Bid Protections in lieu of cash, and for purposes of evaluating the subsequent Bid, the full amount of the Bid Protections shall be treated as equal to cash in the same amount.

(viii) each Qualified Bidder will be informed of the terms of the previous Bids;

(ix) the bidding will be transcribed to ensure an accurate recording of the bidding at the Auction(s);

(x) each Qualified Bidder will be required to confirm on the record of the Auction(s) that it has not engaged in any collusion with respect to the bidding or the sale(s);

(xi) the Auction(s) will not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an overbid at the Auction to the then prevailing highest Bid, subject to the Debtors' right to require, in consultation with the Consultation Parties, last and final Bids to be submitted on a "blind" basis;

(xii) the Debtors reserve the right, in their reasonable business judgment and in consultation with the Consultation Parties, to adjourn the Auction(s) one or more times to, among other things: (a) facilitate discussions between the Debtors and Qualified Bidders; (b) allow Qualified Bidders to consider

how they wish to proceed; and (c) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment and in consultation with the Consultation Parties, may require that the Qualified Bidder has sufficient internal resources or has received sufficient noncontingent debt and/or equity funding commitments to consummate the proposed transaction at the prevailing amount; and

(xiii) the Auction(s) will be governed by such other Auction Procedures as may be announced by the Debtors and their advisors, after consultation with the Consultation Parties, from time to time on the record at the Auction(s); *provided*, *however*, that such other Auction Procedures are (A) not inconsistent with the Bid Procedures Order, the Bankruptcy Code, or any other order of the Bankruptcy Court, (B) disclosed orally or in writing to all Qualified Bidders, and (C) determined by the Debtors, in consultation with the Consultation Parties and in good faith, to further the goal of attaining the highest or otherwise best offer for the Assets.

For the avoidance of doubt, nothing in the Auction Procedures will prevent the Debtors from exercising their respective fiduciary duties under applicable law (as reasonably determined in good faith by the Debtors in consultation with their outside legal counsel).

G. Acceptance of the Successful Bid.

Upon the conclusion of the Auction(s) (if such Auction(s) is conducted), the Debtors, in the exercise of their reasonable, good-faith business judgment, and in consultation (which consultation shall include, without limitation, a meaningful opportunity for the Consultation Parties to respond to the Debtors' determination prior to any announcement of a Successful Bid) with the Consultation Parties, will identify the highest or otherwise best Qualified Bid for the Assets (the "**Successful Bid**"), which will be determined by considering, among other things: (a) the number, type, and nature of any changes to the Stalking Horse APA; (b) the extent to which such modifications are likely to delay the Closing and the cost to the Debtors of such delay; (c) the total expected consideration to be received by the Debtors; (d) the likelihood of the Qualified Bidder's ability to close a transaction and the timing thereof; (e) the expected net benefit to the estates; and (f) any other criteria as may be considered by the Debtors in their reasonable, good-faith business judgment (collectively, the "**Bid Assessment Criteria**"). The Qualified Bidder(s) having submitted a Successful Bid will be deemed the "**Successful Bidder**."

The Successful Bidder(s) and the Debtors must, as soon as commercially reasonably practicable, complete and sign all agreements, contracts, instruments, or other documents evidencing and containing the terms upon which such Successful Bid(s) was made.

The Debtors will present the results of the Auction(s) to the Bankruptcy Court at the Sale Hearing (as defined below), at which certain findings will be sought from the Bankruptcy Court regarding the Auction(s), including, among other things, that: (a) the Auction(s) was conducted, and the Successful Bidder(s) was selected, in accordance with these Bid

Procedures; (b) the Auction(s) was fair in substance and procedure; and (c) consummation of the Successful Bid(s) will provide the highest or otherwise best value for the Debtors' Assets and is in the best interests of the Debtors' estates.

If an Auction(s) is held, the Debtors will be deemed to have accepted a Qualified Bid only when (a) such Qualified Bid is declared the Successful Bid at the Auction and (b) definitive documentation has been executed in respect thereof. Such acceptance is conditioned upon approval by the Bankruptcy Court of the Successful Bid and entry of an order approving such Successful Bid (the "**Sale Order**").

H. Sale Hearing(s).

The date and time of the hearing to consider approval of the Successful Bid(s) for the Debtors' Assets, including the Aquatalia Assets (the "**Sale Hearing**"), is September 17, 2021, or as soon thereafter as counsel may be heard, before the Honorable _____, United States Bankruptcy Judge for the Bankruptcy Court for the Southern District of New York, either virtually via Zoom, or at One Bowling Green, New York, New York 10004.

The Sale Hearing may be continued to a later date by the Debtors by sending notice prior to, or making an announcement at, the Sale Hearing. No further notice of any such continuance will be required to be provided to any party.

At the Sale Hearing, the Debtors will present the Successful Bid(s) to the Bankruptcy Court for approval.

I. Designation of Back-Up Bidder.

If for any reason the Successful Bidder fails to consummate the Qualified Bid within the time permitted after the entry of the Sale Order approving the sale to the Successful Bidder, then the Qualified Bidder with the next-highest or otherwise second-best Bid (the "**Back-Up Bidder**"), as determined by the Debtors after consultation with their advisors and the Consultation Parties, at the conclusion of the Auction(s) and announced at that time to all the Qualified Bidders participating therein, will automatically be deemed to have submitted the highest or otherwise best Bid (the "**Back-Up Bid**"), and the Debtors will be authorized, but not required, to consummate the transaction pursuant to the Back-Up Bid as soon as is commercially reasonable without further order of the Bankruptcy Court upon at least 24 hours advance notice, which notice will be filed with the Bankruptcy Court. The Stalking Horse Bidder shall not be required to serve as the Back-Up Bidder for less than all of the Aquatalia Assets or any of the Other Assets. Upon designation of the Back-Up Bidder at the Auction(s), the Back-Up Bid must remain open until the Closing(s) of the Successful Bid(s).

J. Return of Good Faith Deposit to Qualified Bidders that Submit Qualified Bids.

The Good Faith Deposit of the Successful Bidder(s) will, upon consummation of the Successful Bid(s), become property of the Debtors' estate and be credited against the

Purchase Price under the Successful Bid. If the Successful Bidder(s) (or Back-Up Bidder(s), if applicable) fail to consummate the Successful Bid(s) (or Back-Up Bid(s), if applicable), then the Good Faith Deposit of such Successful Bidder(s) (or Back-Up Bidder(s), if applicable) will be irrevocably forfeited to the Debtors.

The Good Faith Deposit of any unsuccessful Qualified Bidders (except for the Back-Up Bidder(s) and, with respect to the Aquatalia Assets, the Stalking Horse Bidder, which will be subject to the terms of the Stalking Horse APA) will be returned within fifteen (15) business days after consummation of the sale(s) or upon the permanent withdrawal of the proposed sale of the Debtors' Assets. The Good Faith Deposit of the Back-Up Bidder(s), if any, will be returned to such Back-Up Bidder no later than five (5) business days after the Closing with the Successful Bidder(s) for the assets bid upon by such Back-Up Bidder.

Notwithstanding the foregoing, the Stalking Horse Bidder's Deposit (as defined in the Stalking Horse APA) shall be treated in accordance with the Stalking Horse APA.

All deposits shall be held in escrow and at no time shall be deemed property of the Debtors' estates absent further order of the Bankruptcy Court.

K. Reservation of Rights.

The Debtors reserve their rights, in consultation with the Consultation Parties, to modify these Bid Procedures in good faith, to further the goal of attaining the highest or otherwise best offer for the Assets, or impose, at or prior to the Auction(s), additional customary terms and conditions on the sale of the Assets. The Debtors shall provide notice of any such modification to the Stalking Horse Bidder and any Qualified Bidder.

L. Bids by Secured Creditors

Any Qualified Bidder who has a valid and perfected lien on any Assets of the Debtors' estates and the right under applicable non-bankruptcy law to credit bid claims secured by such liens shall be entitled to credit bid some or all of their claims at the Auction(s) pursuant to section 363(k) of the Bankruptcy Code; *provided* that such credit bid is received by the Bid Deadline; *provided, further*, that in no event shall any Secured Lenders (as defined in the Stalking Horse APA) (or any assignees, transferees or purchasers of the secured indebtedness held by any Secured Lender) be permitted to credit bid for the Aquatalia Assets as part of any competing for the Aquatalia Assets at any Auction at which the Stalking Horse Bidder is bidding pursuant to the terms of the Stalking Horse APA. No credit bid shall be permitted other than pursuant to a Qualified Bid by a Qualified Bidder.

M. Consent to Jurisdiction.

All Qualified Bidders at the Auction will be deemed to have consented to the jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the sale(s), the Auction(s), and the construction and enforcement of these Bid Procedures, as applicable.

Any parties raising a dispute relating to these Bid Procedures must request that such dispute be heard by the Bankruptcy Court on an expedited basis.

N. Fiduciary Out.

Nothing in these Bid Procedures will require the board of directors, board of managers, or such similar governing body of a Debtor or non-Debtor affiliate to take any action, or to refrain from taking any action, with respect to these Bid Procedures, to the extent such board of directors, board of managers, or such similar governing body reasonably determines in good faith, in consultation with outside counsel, that taking such action, or refraining from taking such action, as applicable, is required to comply with applicable law or its fiduciary obligations under applicable law.

O. Sale Is As Is/Where Is.

The Assets sold pursuant to these Bid Procedures will be conveyed at the Closing in their then-present condition, "**as is, with all faults, and without any warranty whatsoever, express or implied.**"

*** * * * ***

EXHIBIT B

Stalking Horse APA

Execution Version

ASSET PURCHASE AGREEMENT

DATED AS OF JULY 28, 2021

BY AND AMONG

WH AQ HOLDINGS LLC,

HILCO TRADING, LLC,

GBG USA INC.,

AND

THE OTHER SELLER ENTITIES NAMED HEREIN

TABLE OF CONTENTS

Page

INDEX OF EXHIBITS

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of July 28, 2021, by and among WH AQ Holdings LLC, a Delaware limited liability company ("Purchaser"), Hilco Trading, LLC, a Delaware limited liability company ("Guarantor"), GBG USA Inc. a Delaware corporation (the "Company"), and the affiliates of the Company that are indicated on the signature pages attached hereto (together with the Company, each a "Seller" and collectively "Sellers"). Purchaser and Sellers are referred to herein individually as a "Party" and collectively as the "Parties." Capitalized terms used herein shall have the meanings set forth herein or in Article XI.

RECITALS

WHEREAS, the Sellers, together with certain of their affiliates (collectively, the "Debtors") intend to file voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"), to be jointly administered for procedural purposes only (the "Bankruptcy Case");

WHEREAS, Sellers intend to manage their properties and operate their businesses as "debtors-in-possession" under the jurisdiction of the Bankruptcy Court and in accordance with the applicable provisions of the Bankruptcy Code;

WHEREAS, Purchaser desires to purchase the Acquired Assets and assume the Assumed Liabilities from Sellers, and Sellers desire to sell, convey, assign and transfer to Purchaser all rights, title and interests in and to the Acquired Assets together with the Assumed Liabilities, in a sale authorized by the Bankruptcy Court pursuant to section 363 of the Bankruptcy Code, all on the terms and subject to the conditions set forth in this Agreement, the Bidding Procedures Order and the Sale Order; and

WHEREAS, the Acquired Assets and Assumed Liabilities shall be purchased and assumed by Purchaser pursuant to the Sale Order approving such sale, free and clear of all Encumbrances (other than Permitted Encumbrances), pursuant to Sections 363 and 365 of the Bankruptcy Code, and Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure, which Order will include the authorization for the assumption by the applicable Seller and assignment by the applicable Seller to Purchaser of the Assigned Contracts and the Liabilities thereunder in accordance with Section 365 of the Bankruptcy Code, all in the manner and subject to the terms and conditions set forth in this Agreement, the Bidding Procedures Order and the Sale Order and in accordance with other applicable provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and the local rules for the Bankruptcy Court (together, the "Bankruptcy Rules").

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

ARTICLE I

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

1.1 Purchase and Sale of the Acquired Assets. Pursuant to Section 363 and 365 of the Bankruptcy Code and on the terms and subject to the conditions set forth herein and in the Bidding Procedures Order and Sale Order, at the Closing, Sellers shall, to the extent permitted by applicable Law, sell, transfer, assign, convey and deliver to Purchaser, and Purchaser shall purchase, acquire and accept from Sellers, all of the Acquired Assets, free and clear of all Encumbrances other than Permitted Encumbrances. "Acquired Assets" means all of the properties, rights, interests and other assets of the Sellers to the extent primarily related to the Acquired Business, whether tangible or intangible, real, personal or mixed, wherever located and whether or not required to be reflected on a balance sheet prepared in accordance with GAAP, and including the following assets of the Sellers, but excluding in all cases, and notwithstanding anything to the contrary in this Section 1.1 or otherwise, the Excluded Assets:

(a) the Assigned Contracts;

(b) all Documents (including all originals and copies of such Documents under Sellers' possession or control);

(c) the leased real property listed on Section 1.1(c) of the Schedules (the "Acquired Leased Real Property"), including any Leasehold Improvements and all permanent fixtures, improvements and appurtenances thereto, in each case, so long as the lease relating to such Acquired Leased Real Property is an Assigned Contract;

(d) all machinery, fixtures, fixed assets, furniture, equipment, materials, parts, supplies, tools, servers, appliances, spare parts and other tangible property of every kind and description (other than Inventory) (the "Tangible Personal Property");

(e) all of the rights, interests and benefits accruing under all permits and all pending applications therefor, to the extent transferable under applicable Law ("Assigned Permits");

(f) all Intellectual Property, including all claims, demands, income, damages, royalties, payments, accounts, and accounts receivable now or hereafter due and payable, and rights to causes of action and remedies, arising from any such Intellectual Property, including all proceeds from infringement suits, the right to sue and prosecute for past, present, and future infringement, misappropriation, or other violation of rights related to any such Intellectual Property, and all Documentation or other tangible embodiments of Sellers that comprise, embody, disclose or describe such Intellectual Property, including engineering drawings, technical documentation, databases, spreadsheets, business records, inventors' notebooks, invention disclosures, digital files, software code embodied in media or firmware, and files related to the prosecution or enforcement of any such Intellectual Property, including such patent, trademark or copyright prosecution or enforcement files in the custody of the Sellers' outside legal counsel, and

all attorney client privileges and work product immunities associated with such files and such prosecution and enforcement activities (collectively, "Transferred Intellectual Property");

(g) all customer data and information derived from customer purchase files and branded loyalty promotion programs and other similar information related to customer purchases, including personal information and customer purchase history at a transaction level, including relating to customers of the E-Commerce Platform or any similar e-commerce platform owned, operated or controlled by Sellers;

(h) all rights of publicity and similar rights, including all marketing assets, including upcoming campaign material, current point-of-purchase material and historical digital assets;

(i) insurance proceeds received by Sellers and insurance awards received by Sellers with respect to any of the Acquired Assets which are not in respect of any Retained Liabilities;

(j) all goodwill, including the right to represent to third parties that Purchaser is the successor to the Acquired Business;

(k) solely to the extent arising from or related to (i) all claims, causes of action and other legal rights and remedies of any nature, by counterclaim or otherwise, against other Persons under the Assigned Contracts or (ii) facts and circumstances that occurred from and after the Closing, all claims, causes of action and other legal rights and remedies of any nature, by counterclaim or otherwise, against other Persons;

(l) all Acquired Business Royalties;

(m) all information technology assets, including software and hardware exclusively related to the Acquired Business or the ownership or operation of the Acquired Assets or the Acquired Business;

(n) all five-digit UPC codes and customer service phone numbers exclusively related to the Acquired Business;

(o) all accounts receivable for revenue generated (i) from and after the Petition Date and outstanding as of the Closing, and (ii) from and after the Closing;

(p) all inventory wherever located (including finished goods, supplies, raw materials, work in progress, spare, replacement and component parts) (collectively, the "Inventory");

(q) (i) any preference or avoidance claims or actions arising under the Bankruptcy Code and (ii) any other rights, claims, actions, rights of recovery, rights of set-off and rights of recoupment as of the Closing of any Seller, in each case of (i) and (ii), arising out of or relating to events occurring on or prior to the Closing Date against any vendors listed on Section 1.1(q) of the Schedules (the "Critical Vendors"); provided however, that 50% of any monetary

amounts actually received by Purchaser or one of its Affiliates in connection with the foregoing or a cash settlement of the foregoing ("Preference Recoveries") shall be turned over to Sellers (net of any cost of collection, set-offs or other credits taken by the Critical Vendors) and shall constitute an Excluded Asset; and

(r) the excess, if any, over $500,000 of all revenue, cash (or cash equivalents) or other amounts generated, received or otherwise obtained by the Sellers from and after the Petition Date and prior to Closing, resulting from or arising out of (i) the collection or settlement of post-petition wholesale accounts receivables or (ii) proceeds from sales of Inventory (but excluding sales of Inventory through the Company's or its retail partners' e-commerce site and retail sales) (any such excess, the "Excess Receipts" and any amounts generated, received or otherwise obtained by the Sellers from and after the Petition Date and prior to Closing other than the Excess Receipts, the "Retained Receipts").

1.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, in no event shall Sellers sell, transfer, assign, convey or deliver, or be deemed to sell, transfer, assign, convey or deliver, and Sellers shall retain, all right, title and interest to, in and under the following assets, properties, privileges, interests and rights of each such Seller (collectively, the "Excluded Assets"):

(a) (i) all amounts generated, received or otherwise obtained by the Sellers for revenue generated prior to the Petition Date, (ii) all amounts generated, received or otherwise obtained by the Sellers prior to Closing, resulting from or arising out of any direct to consumer and retail revenue, and (iii) all Retained Receipts;

(b) (i) all Documents to the extent they relate to any of the Excluded Assets or Excluded Liabilities, or (ii) originals of any Documents that any Seller is required by Law to retain or any Documents any Seller is prohibited by Law from providing a copy thereof to Purchaser (provided that with respect to clause (ii), Purchaser shall have the right to review and to the extent not prohibited by Law, receive and make copies of any such Documents);

(c) all shares of capital stock or other equity interests of the Company and the other Sellers or securities convertible into, exchangeable or exercisable for any such shares of capital stock or other equity interests;

(d) except as set forth in Section 1.1(p), (i) any preference or avoidance claims or actions arising under the Bankruptcy Code, (ii) any other rights, claims, actions, rights of recovery, rights of set-off and rights of recoupment as of the Closing, in each case, arising out of or relating to events occurring on or prior to the Closing Date, (iii) all claims or actions that any Seller may have against any Person with respect to any other Excluded Assets (other than Preference Recoveries) or any Excluded Liabilities and (iv) any claims against any Seller or Affiliate thereof or any director, officer or agent of any Seller;

(e) all director and officer insurance policies ("D&O Insurance Policies"), employment practices liability insurance policies ("EPLI Insurance Policies"), errors and omissions insurance policies ("E&O Insurance Policies") and any other similar insurance policies providing coverage to Sellers' directors and officers (collectively with the D&O Insurance

Policies, EPLI Insurance Policies, E&O Insurance Policies, the "D&O Related Insurance Policies"), and all rights and benefits of any Sellers of any nature with respect to the D&O Related Insurance Policies, including all insurance recoveries or proceeds thereunder and rights to assert claims or actions with respect to any such insurance recoveries or proceeds;

(f) Sellers' rights under this Agreement, including the Purchase Price hereunder, or any Transaction Document, or any other agreement between any Seller and Purchaser entered into on or after the date hereof;

(g) (i) all attorney-client work product, legal privilege and expectation of client confidence of each Seller not primarily related to the Acquired Assets, the Assumed Liabilities or the Acquired Business, and (ii) all records and reports prepared or received by Sellers or any of their Affiliates in connection with the sale of the Acquired Assets or any portion thereof in the Bankruptcy Court (copies of which Sellers shall, from and after the Closing, provide to Purchaser upon reasonable written request);

(h) any Tax refunds, Tax abatements, Tax assets or other Tax recoveries receivable by any Seller or any of their Affiliates (together with any interest due thereon or penalty rebate arising therefrom) and all other Tax assets in each case arising from or attributable to the Acquired Assets or Assumed Liabilities in a Pre-Closing Tax Period;

(i) all Seller Plans and all right, title and interest in any assets thereof or relating thereto; and

(j) Tax Returns and other Tax records unrelated to the Acquired Assets or the Acquired Business;

(k) all security, vendor, utility, and other similar deposits, prepaid expenses, advances, advance payments, prepayments, deferred charges or rebates in favor of the Sellers;

(l) solely to the extent arising from or related to facts and circumstances that occurred prior to the Closing (except those arising from or related to the Assigned Contracts), all claims, causes of action and other legal rights and remedies of any nature, by counterclaim or otherwise, against other Persons; and

(m) all assets of any Sellers primarily related to the Retained Business.

1.3 Assumption of Liabilities. On the terms and subject to the conditions set forth in this Agreement, the Bidding Procedures Order and the Sale Order, effective as of the Closing, Purchaser shall irrevocably assume from Sellers and from and after the Closing pay, perform, discharge or otherwise satisfy in accordance with their respective terms (or on such other terms as Purchaser may be able to negotiate with the Person to which such Liabilities are owed), and Sellers shall irrevocably convey, transfer and assign to Purchaser the following Liabilities, in each case except to the extent constituting Excluded Liabilities (collectively, the "Assumed Liabilities"):

(a) all Liabilities and obligations under the Assigned Contracts arising from and after the Closing;

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

(c) all Liabilities (including all Assumed Taxes (including real property Taxes and personal property Taxes)) and Transfer Taxes, in each case determined in accordance with ARTICLE IX, arising out of the conduct of the Acquired Business or the ownership of the Acquired Assets, in each case, by Purchaser or any of its Affiliates from and after the Closing Date;

(d) Liabilities with respect to Transferred Employees;

(e) all open purchase orders described on Section 1.3(e) of the Schedules (the "Purchase Orders"); and

(f) accounts payable owed to each of the Critical Vendors generated on or following the Petition Date in an aggregate amount up to $1,300,000 (the "Critical Vendors Payable").

1.4 Excluded Liabilities. Notwithstanding the foregoing and for the avoidance of doubt, Purchaser shall not assume or be liable for hereunder any Liabilities of any Seller or any of their respective Affiliates, whether or not related to the Acquired Business or the Acquired Assets, and Seller shall retain and be responsible for all other Liabilities of Sellers and their Affiliates of all kinds, of any Retained Business or other business by Sellers or any of their Affiliates at any time, including the following (all such Liabilities that Purchaser is not assuming being referred to collectively herein as the "Excluded Liabilities"):

(a) other than any Taxes that are Assumed Liabilities pursuant to Section 1.3(c), any Liability for Taxes (A) of a Seller or any of its Affiliates or any member or equity owner of such Seller or Affiliate or (B) relating to the Acquired Assets or the Assumed Liabilities for any taxable period (or portion thereof) ending on or before the Closing Date;

(b) all professional fees and expenses for advisers of a Seller or its Affiliates, including advisers retained pursuant to an order of the Bankruptcy Court;

(c) any Liability of a Seller, any of its Affiliates or any of its or their respective directors, officers, stockholders or agents (acting in such capacities), arising out of, or relating to, this Agreement or the other Transaction Documents, whether incurred prior to, at, or subsequent to, the Closing, including all finder's or broker's fees and expenses and any and all fees and expenses of any representatives of any of them;

(d) other than as specifically set forth herein, any Liability relating to, occurring or existing in connection with, or arising out of, (A) the ownership of Sellers, (B) the ownership or operation of the Acquired Business prior to the Closing (including any lawsuits outstanding as of the Closing where any of the Acquired Assets are subject or where a Seller is a defendant), or (C) the ownership, possession, use, operation or sale or other disposition prior to the Closing of

any Acquired Assets (or any other assets, properties, rights or interests associated, at any time prior to the Closing, with the Acquired Business);

(e) except as provided in Section 1.3(d), any Liability with respect to any Employee, other employee or any other Person at any time employed or retained by or otherwise providing services to a Seller or any of its Affiliates, including any Liability relating to or arising out of the employment or service relationship or termination of the employment or service relationship of any such Person and any compensation or benefits of any such Person;

(f) all Liability related to or arising under the Seller Plans;

(g) any Liability relating to or arising out of the ownership, possession, use, operation or sale or other disposition of any Excluded Asset;

(h) all accounts payable owed by Sellers in excess of the Assumed Critical Vendors Payable.

(i) except as provided in Section 1.3(b), any other liability or obligation of any Seller or any of its Affiliates, whether relating to or arising from the Acquired Business, the Acquired Assets, the Retained Business or otherwise, arising from facts, circumstances, occurrences, conditions, acts or omissions occurring prior to Closing, of whatever nature, whether known or unknown, accrued, contingent, absolute, determined or determinable.

1.5 Assumption/Rejection of Certain Contracts.

(a) Section 1.5(a) of the Schedules sets forth a list of all executory Contracts (including all leases with respect to any leased property) to which Sellers are a party that are primarily related to the Acquired Business, excluding Shared Intellectual Property Licenses (the "Assigned Contracts") and all Assigned Permits. From and after the date hereof until three (3) Business Days prior to Closing, Purchaser may request in writing to Sellers that any Contract listed on Section 1.5(a) of the Schedules be retained by the applicable Seller and not qualify as an Assigned Contract hereunder, and Sellers shall during such period update Section 1.5(a) of the Schedules to reflect the same, subject in each case to the requirements of the Bankruptcy Code. Notwithstanding anything contained in this Agreement to the contrary, as of the third Business Day prior to the Closing Date, (A) any such Contract that is not designated on Section 1.5(a) of the Schedules as an Assigned Contract shall be deemed to no longer be an Assigned Contract and (B) all Contracts of Sellers that are not listed on Section 1.5(a) of the Schedules shall not be considered an Assigned Contract.

(b) Sellers shall use commercially reasonable efforts to take all actions required to assign the Assigned Contracts and all Assigned Permits to Purchaser (subject to payment by Purchaser of Cure Costs and provision by Purchaser of adequate assurance of future performance as may be required under Section 365 of the Bankruptcy Code), including but not limited to all commercially reasonable efforts to obtain, and to cooperate in obtaining, all Consents and Governmental Authorizations necessary to assume and assign such Assigned Contracts and Assigned Permits to Purchaser. Sellers shall use commercially reasonable efforts to facilitate any negotiations with the counterparties to such Assigned Contracts and Assigned Permits, including,

at the request of the Purchaser, to enter into amendments to any Assigned Contracts to the extent such amendments are contingent on the payment by Purchaser of cure costs and the related assumption of such Assigned Contract, and to obtain an Order (which may be the Sale Order) containing a finding that the proposed assumption and assignment of the Assigned Contracts to Purchaser satisfies all applicable requirements of Section 365 of the Bankruptcy Code. Sellers shall have no obligation to Purchaser to provide adequate assurance of future performance under any Assigned Contract in connection with the assignment and assumption thereof by Sellers. Notwithstanding anything contained herein to the contrary, Purchaser agrees that no Seller shall be required to pay any fee to obtain any Consent to assign the Assigned Contracts or Assigned Permits or make any commercial concession that negatively impacts the Excluded Assets.

(c) At the Closing, Sellers shall, pursuant to the Bidding Procedures Order, Sale Order and any Assignment and Assumption Agreement(s), assign to Purchaser (the consideration for which is included in the Purchase Price), all Assigned Contracts that may be assigned by any such Seller to Purchaser pursuant to Sections 363 and 365 of the Bankruptcy Code subject to provision by Purchaser of adequate assurance of future performance as may be required under Section 365 of the Bankruptcy Code, and payment by Purchaser of the Cure Costs in respect of Assigned Contracts pursuant to and in accordance with Section 365 of the Bankruptcy Code, the Bidding Procedures Order and the Sale Order. At the Closing, Purchaser shall assume, and thereafter in due course and in accordance with its respective terms pay, fully satisfy, discharge and perform all of the obligations under each Assigned Contract pursuant to Section 365 of the Bankruptcy Code.

(d) Previously Omitted Contracts. If, at any time prior to the date that is three (3) Business Days prior to Closing (the "Contract Assessment Period"), Purchaser desires in its sole discretion to acquire any Contract related to the Acquired Business to which Sellers are a party (any such Contract, a "Previously Omitted Contract"), Purchaser shall deliver a written notice to Sellers designating such Previously Omitted Contract as an Assigned Contract. The Sellers agree not to reject or seek to terminate any Previously Omitted Contract during the Contract Assessment Period without obtaining prior written consent of the Purchaser. Purchaser shall have the right at any time during the Contract Assessment Period to designate a Previously Omitted Contract as an Assigned Contract. If Purchaser designates a Previously Omitted Contract as an Assigned Contract, (i) Section 1.5(a) of the Schedules shall be automatically deemed amended to include such Previously Omitted Contract and (ii) to the extent not previously served, Sellers shall serve a notice (the "Previously Omitted Contract Notice") on the counterparties to such Previously Omitted Contract notifying such counterparties of the Cure Costs with respect to such Previously Omitted Contract and such Seller's intention to assume and assign such Previously Omitted Contract in accordance with this Section 1.5. The Previously Omitted Contract Notice shall provide the counterparties to such Previously Omitted Contract with fourteen (14) calendar days to object, in writing to Sellers and Purchaser, to the Cure Costs, the proposed adequate assurance of future performance by Purchaser or the assumption of its Contract. If the counterparties, Sellers and Purchaser are unable to reach a consensual resolution with respect to the objection prior to the Closing, Sellers will seek an expedited hearing before the Bankruptcy Court to determine the Cure Costs and approve the assumption and shall diligently prosecute such motion. Sellers shall use commercially reasonable efforts to obtain an order of the Bankruptcy Court fixing the Cure Costs and approving the assumption of the Previously Omitted Contract.

(e) Disputed Contracts. With respect to any Disputed Contract, if, after the end of the Contract Assessment Period, (i) the Debtors settle with the counterparty to the Disputed Contract regarding Cure Costs (a "Disputed Contract Settlement"), or (ii) the Bankruptcy Court enters an order determining Cure Costs with respect to the Disputed Contract (a "Disputed Contract Order"), in either case in a manner that fixes Cure Costs in an amount that is unacceptable to Purchaser, Purchaser shall have the option, within ten (10) days of receiving notice of the Disputed Contract Order or the entry of the Disputed Contract Order to designate the Disputed Contract as no longer an Assigned Contract, in which case Purchaser shall not assume the Disputed Contract and shall not be responsible for any Cure Costs associated with such Disputed Contract.

(f) Deemed Consents. As part of the Sale Motion (or, as necessary in one or more separate motions), the Sellers shall request that by virtue of a Seller providing fourteen (14) days' notice of its intent to assume and assign any Contract, the Bankruptcy Court shall deem any non-debtor party to such Contract that does not file an objection with the Bankruptcy Court during the applicable notice period to have given any required Consent to the assumption of the Contract by the Seller and assignment to the Purchaser if, and to the extent that, pursuant to the Sale Order or other Bankruptcy Court Order, the applicable Seller is authorized to assume and assign the Contract to the Purchaser and the Purchaser is authorized to accept such Assigned Contract pursuant to Section 365 of the Bankruptcy Code.

(g) Notwithstanding the foregoing, an Assigned Contract shall not be assigned to, or assumed by, Purchaser on the Closing Date to the extent that such Contract (i) is terminated by a Seller (subject to Section 6.1) or the counterparty thereto, or terminates or expires by and in accordance with its terms, on or prior to the Closing Date and is not continued or otherwise extended upon assumption or (ii) requires a Consent or Governmental Authorization (other than, and in addition to, that of the Bankruptcy Court) in order to permit the sale or transfer to Purchaser of the applicable Seller's rights under such Contract, and, despite Sellers undertaking all reasonable efforts to obtain, and to cooperate in obtaining, such Consent or Governmental Authorization necessary to assume and assign such Assigned Contract to Purchaser has not been obtained on or prior to the Closing Date. In addition, an Assigned Permit shall not be assigned to, or assumed by, Purchaser on the Closing Date to the extent that such permit requires a Consent or Governmental Authorization (other than, and in addition to, that of the Bankruptcy Court) in order to permit the sale or transfer to Purchaser of the applicable Seller's rights under such Assigned Permit, and despite the Seller undertaking all commercially reasonable efforts to obtain, and to cooperate in obtaining, such Consent or Governmental Authorization, such Consent or Governmental Authorization has not been obtained on or prior to the Closing Date. In the event that any Assigned Contract or Assigned Permit is deemed not to be assigned pursuant to this Section 1.5(f), the Closing shall nonetheless take place subject to the terms and conditions set forth herein and, thereafter, through the earlier of such time as such Consent or Governmental Authorization is obtained and six (6) months following the Closing (or the remaining term of such Contract, if shorter), Sellers and Purchaser shall (A) use reasonable best efforts to secure such Consent or Governmental Authorization as promptly as practicable after the Closing and (B) cooperate in good faith in any lawful and commercially reasonable arrangement reasonably proposed by Purchaser, including subcontracting, licensing or sublicensing to Purchaser any or all of any Seller's rights and obligations with respect to any such Assigned Contract or Assigned Permit, as applicable, under which (1) Purchaser shall obtain (without infringing upon the legal

rights of such third party or violating any Law) the economic rights and benefits (net of the amount of any related Tax costs imposed on Sellers or their respective affiliates) under such Assigned Contract or Assigned Permit, as applicable, with respect to which the Consent and/or Governmental Authorization has not been obtained and (2) Purchaser shall assume any related liability (including the amount of any related Tax benefit obtained by Sellers or their respective affiliates) and obligation (including performance) with respect to such Assigned Contract or Assigned Permit, as applicable. Upon satisfying any requisite Consent or Governmental Authorization requirement applicable to such Assigned Contract or Assigned Permit, as applicable, after the Closing, such Assigned Contract or Assigned Permit, as applicable, shall promptly be transferred and assigned to Purchaser in accordance with the terms of this Agreement. In connection with and without limiting the foregoing, for so long as an Assigned Contract is not transferred to Purchaser, each party will use reasonable best efforts and cooperate in good faith with the other party to allow Purchaser to perform the services thereunder on Sellers' behalf, in all cases, without infringing upon the legal rights of any third party or violating any Law and subject to the other terms of this Section 1.5(f), such that Sellers may provide delivery with respect to customer commitments thereunder and Purchaser shall obtain the economic rights and benefits under such Assigned Contract.

(h) If after the Closing (i) Purchaser holds any Excluded Assets or Excluded Liabilities or (ii) any Seller holds any Acquired Assets or Assumed Liabilities, Purchaser or the applicable Seller will transfer (or cause to be transferred), as promptly as is reasonably practicable, such assets or assume (or cause to be assumed) such Liabilities to or from (as the case may be) the other Party. Prior to any such transfer, the Party receiving or possessing any such asset will hold it in trust for the benefit of such other Party.

ARTICLE II

CONSIDERATION; PAYMENT; CLOSING

2.1 Consideration; Payment.

(a) The aggregate consideration (the "Purchase Price") to be paid by Purchaser for the purchase of the Acquired Assets shall be: (i) the assumption of Assumed Liabilities and (ii) a cash payment in an amount equal to $17,300,000 (the "Cash Payment").

(b) At the Closing, Purchaser shall deliver, or cause to be delivered, to the Sellers, the Cash Payment less the Deposit Amount (the "Closing Date Payment") and the Parties shall issue joint instructions to cause the Escrow Agent to deliver the Deposit Amount to the Sellers. The Closing Date Payment and any payment required to be made to Sellers pursuant to any other provision hereof shall be made in cash by wire transfer of immediately available funds to such bank account as shall be designated in writing by the applicable Party at least two (2) Business Days prior to the date such payment is to be made.

(c) Purchaser will be entitled to deduct and withhold (or cause to be deducted and withheld) from any payment made pursuant to this Agreement such amounts as are required to be deducted and withheld with respect to such payment under the Code or any other provision

of applicable Tax Law. If Purchaser determines that any amount is required to be deducted or withheld, Purchaser shall use reasonable best efforts to: (i) provide at least two Business Days written notice to the Sellers, together with reasonably sufficient details regarding the relevant withholding Law; (ii) cooperate in good faith with the other party to reduce or eliminate the deduction or withholding of such amount; and (iii) provide the other party a reasonable opportunity to provide forms or documentation that would exempt such amounts from withholding. To the extent that any amounts are so withheld and properly remitted to the applicable Governmental Body, such amounts will be treated for all purposes of this Agreement as having been paid to the Person in respect of which such withholding was made.

2.2 Deposit.

(a) Prior to or concurrently with the execution of this Agreement, the Company and Purchaser shall execute and deliver to each other an escrow agreement in the form of Exhibit D (the "Escrow Agreement"), and Purchaser shall, promptly following such execution (and, in any event within one (1) Business Day of such execution) deposit with Prime Clerk (the "Escrow Agent") an amount equal to $2,000,000 (the "Deposit") pursuant to and in accordance with the terms thereof. All fees, costs and expenses payable to the Escrow Agent pursuant to the terms of the Escrow Agreement shall be borne and timely paid 50% by Purchaser and 50% by Sellers. The Deposit shall not be subject to any lien, attachment, trustee process or any other judicial process of any creditor of any Seller or Purchaser, except as required by the Escrow Agreement. Interest accrued on the Deposit shall become a part of the Deposit (such collective amount, the "Deposit Amount") and shall be paid to the Party entitled to the Deposit in accordance with Section 2.2(a)(ii). For the avoidance of doubt, the Deposit shall not be considered property of any Seller's estate under section 541 of the Bankruptcy Code.

(b) The Deposit Amount shall be held and disbursed pursuant to the terms of the Escrow Agreement, the Bidding Procedures Order and this Agreement, including, and each of the Company and Purchaser shall deliver joint written instructions pursuant to and in accordance with the Escrow Agreement instructing the Escrow Agent to comply with the following:

(i) if the Closing shall occur, then the Deposit Amount shall be credited against the Purchase Price;

(ii) if this Agreement is terminated by (A) the Sellers pursuant to Section 8.1(e) or 8.1(g)(A), or (B) by Purchaser pursuant to Section 8.1(b), 8.1(c) or 8.1(d), in each case in circumstances where the Sellers would be entitled to terminate this Agreement pursuant to Section 8.1(e) or 8.1(g)(A), then the Deposit Amount shall be promptly delivered to Sellers, and in any event no later than three (3) Business Days after such termination; and

(iii) if this Agreement is terminated other than as described in Section 2.2(b)(ii), then the Deposit Amount shall be promptly returned to Purchaser, and in any event no later than three (3) Business Days after such termination.

(c) In the event the Deposit Amount becomes payable to Purchaser or the Sellers pursuant to Section 2.2(b), the Parties agree to cause the Escrow Agent to disburse the

Deposit Amount to Purchaser or the Sellers, as applicable, by wire transfer of immediately available funds to (i) if payable to the Purchaser, to an account designated by Purchaser or (ii) if payable to the Sellers, to the DIP Collateral Proceeds Account (net of costs of collection, if any).

2.3 Closing. The closing of the purchase and sale of the Acquired Assets, the delivery of the Purchase Price and the assumption of the Assumed Liabilities (the "Closing") will take place by telephone conference and electronic exchange of documents at 9:00 a.m. Eastern Time on the second (2nd) Business Day following full satisfaction or due waiver (by the Party entitled to the benefit of such condition) of the closing conditions set forth in Article VII (other than conditions that by their terms or nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions at the Closing), or at such other place and time as the Parties may agree. The date the Closing occurs is referred to as the "Closing Date."

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

(a) a bill of sale substantially in the form of Exhibit A (the "Bill of Sale") duly executed by Sellers;

(b) an assignment and assumption agreement substantially in the form of Exhibit B (the "Assignment and Assumption Agreement") duly executed by Sellers;

(c) a copy of the Sale Order, as entered by the Bankruptcy Court;

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

(e) a complete and duly executed IRS Form W-9 by each Seller.

2.5 Closing Deliveries by Purchaser. At the Closing, Purchaser shall deliver to (or at the express written direction of) the Sellers:

(a) the Closing Date Payment;

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

(c) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of Purchaser certifying that the conditions set forth in Sections 7.3(a) and 7.3(b) have been satisfied.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as set forth in the Schedules that correspond to the representations and warranties set forth in this Article III (each of which exceptions, in order to be effective, shall indicate the Section and, if applicable, the subsection of this Article III to which it corresponds, unless the relevance of such disclosure to other representations and warranties set forth in this Article III is reasonably apparent from the text of the disclosed exception, in which case such disclosed exception shall be deemed so applicable to such other representations and warranties set forth in this Article III), Sellers, jointly and severally, represent and warrant to Purchaser as follows:

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

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

3.3 Conflicts; Consents.

(a) Except as set forth on Section 3.3(a) of the Schedules and assuming that (x) requisite Bankruptcy Court approvals are obtained and (y) the notices, authorizations,

approvals, Orders, permits or consents set forth on Section 3.3(a) of the Schedules are made, given or obtained, as applicable, the execution, delivery and performance by Sellers of this Agreement and the Transaction Documents and the consummation by Sellers of the transactions contemplated hereby and thereby, do not: (i) violate the certificate of incorporation or formation, bylaws or limited liability company agreement or equivalent organizational documents of any of the Sellers; (ii) violate any Order or Law applicable to the Acquired Business, to any of the Acquired Assets or by which the Acquired Assets are bound; (iii) result in a material violation or material breach of, or cause acceleration, or constitute (with or without due notice or lapse of time or both) a material default (or give rise to any material right of termination, modification, cancellation or acceleration) under any of the terms, conditions or provisions of any Assigned Contract or Assigned Permit, or (iv) result in the creation or imposition of any Encumbrance on any of the Acquired Assets, except for Permitted Encumbrance.

(b) Except as set forth on Section 3.3(b) of the Schedules, Sellers are not required to file, seek or obtain any notice, authorization, approval, Order, permit or consent of or with any Governmental Body in connection with the execution, delivery and performance by Sellers of this Agreement or the consummation by Sellers of the transactions contemplated hereby, except (i) requisite Bankruptcy Court approvals, (ii) where failure to obtain such consent, approval, authorization or action, or to make such filing or notification, would not reasonably be expected to be material to the Acquired Business or to the Acquired Assets, taken as a whole, or (iii) as may be necessary as a result of any facts or circumstances relating to Purchaser or any of its Affiliates.

3.4 Condition and Sufficiency of Assets. The Acquired Leased Real Property and each item of Tangible Personal Property are (i) structurally sound, in good operating condition and repair, and adequate for the uses to which they are being put, except in each case as would not be material to the Acquired Business taken as a whole, (ii) not in need of maintenance other than ordinary, routine maintenance in the Ordinary Course, and (iii) in compliance with all requirements under any Laws and any licenses which govern the use and operation thereof, except where the failure to be in such compliance would not be material to the Acquired Business taken as a whole.

(a) Subject to requisite Bankruptcy Court approvals, and subject to assumption by Purchaser of any Contracts primarily related to the Acquired Business, the Acquired Assets, together with the services and rights provided for in the Transaction Documents, are sufficient for the continued conduct of the Acquired Business after the Closing in substantially the same manner as conducted prior to the Closing and constitute all of the rights, property, and assets necessary to conduct the Acquired Business as currently conducted. Section 3.4 of the Schedules sets forth a list of each Contract to which any Seller is party that is used, but not primarily used, in the Acquired Business.

3.5 Title to Acquired Assets.

(a) Except as set forth on Section 3.5(a) of the Schedules of the date of this Agreement and subject to the entry of the Sale Order, each Seller is the sole and lawful owner of, and has good title to, or a valid leasehold interest in, all of its Acquired Assets, free and clear of all Encumbrances other than the Permitted Encumbrances. As of immediately prior to the Closing

and subject to the entry of the Sale Order, such Seller shall be the sole and lawful owner of, and have good title to, or a valid leasehold interest in, and the power to sell, assign or transfer to Purchaser, all of the Acquired Assets free and clear of all Encumbrances other than the Permitted Encumbrances.

(b) Upon Closing and entry of the Sale Order, Purchaser will acquire from Sellers good and marketable title to such Acquired Assets, free and clear of all Encumbrances except for Permitted Encumbrances and any Encumbrances set forth in the Sale Order.

3.6 Assigned Contracts. Each Assigned Contract is valid and binding on the applicable Seller in accordance with its terms and is in full force and effect. Neither Seller nor, to the Knowledge of Sellers, any other party thereto is in breach of, violation of or default under (or is alleged to be in breach of, violation of or default under), or has provided or received any notice of any intention to suspend or terminate, any Assigned Contract. No event or circumstance has occurred that would constitute an event of default under any Assigned Contract or result in a termination thereof. Complete and correct copies of each Assigned Contract (including all modifications, amendments, and supplements thereto and waivers thereunder) have been made available to Purchaser. There are no disputes pending or threatened under any Assigned Contract. Subject to payment of the Cure Costs by Purchaser, Sellers have paid all amounts due and payable by Sellers pursuant to the Assigned Contracts. The Sellers have made available to Purchaser true, correct and complete copies of each Assigned Contract.

3.7 Inventory. All Inventory consists of a quality and quantity usable and, with respect to finished goods, salable in the Ordinary Course, except for obsolete, below-standard quality, damaged, defective, or slow-moving items that have been written off or written down to fair market value. No Inventory is held on a consignment basis, and following the Closing all Inventory will be owned by Purchaser free and clear of all Encumbrances. All Inventory is free from defects in materials and workmanship (normal wear and tear expected), except as would not be material to the Acquired Business taken as a whole. Section 3.7 of the Schedules sets forth a true and complete ageing schedule for the Inventory, as of the date of this Agreement.

3.8 Material Customers and Suppliers.

(a) Section 3.8(a) of the Schedules sets forth with respect to the Acquired Business (i) each customer who has paid aggregate consideration for goods or services rendered in an amount greater than or equal to $100,000 for the most recent fiscal year (collectively, the "Material Customers"); and (ii) the amount of consideration paid by each Material Customer during such periods. No Seller has received any notice that any of the Material Customers has ceased, or intends to cease after the Closing, to use the goods or services of the Acquired Business or to otherwise terminate or materially reduce its relationship with the Acquired Business.

(b) Section 3.8(b) of the Schedules sets forth with respect to the Business (i) each supplier and/or vendor to whom a Seller has paid aggregate consideration for goods or services rendered in an amount greater than or equal to $100,000 for the most recent fiscal year (collectively, the "Material Suppliers"); and (ii) the amount of purchases from each Material Supplier during such periods. No Seller has received any notice that any of the Material Suppliers

has ceased, or intends to cease, to supply goods or services to the Acquired Business or to otherwise terminate or materially reduce its relationship with the Acquired Business.

3.9 Legal Proceedings; Government Orders.

(a) There are no claims, actions, causes of action, demands, lawsuits, arbitrations, inquiries, audits, notices of violation, proceedings, litigation, citations, summons, subpoenas, or investigations of any nature, whether at Law or in equity (collectively, "Actions") pending or, to the Knowledge of Sellers, threatened (i) against or by any Seller primarily relating to or primarily affecting the Acquired Business, the Acquired Assets, or the Assumed Liabilities whether or not a Seller is a defendant, (ii) against Krasnow Enterprises Ltd. or any debts owed to, or claims by, creditors of Krasnow Enterprises Ltd., in each case, in excess of $50,000 in the aggregate, (iii) against any Seller or its directors and officers that would conflict with any terms and conditions of this Agreement, or (iv) as of the date hereof, by any Seller against any third parties with respect to the Acquired Business, the Acquired Assets, or the Assumed Liabilities.

(b) There are no outstanding orders, writs, judgments, injunctions, decrees, stipulations, determinations, penalties, or awards entered by or with any Governmental Body against, primarily relating to, or primarily affecting the Acquired Business or the Acquired Assets.

3.10 Compliance with Laws.

(a) Sellers are in material compliance with all Laws applicable to the conduct of the Acquired Business as currently conducted or the ownership and use of the Acquired Assets.

3.11 Employee Matters.

(a) Section 3.11(a)(i) of the Schedules sets forth, in all material respects, a complete and accurate list of all Employees as of the date of this Agreement, along with the position, status as full-time or part-time, date of hire, base compensation or contract fee, any other incentive-based compensation (such as bonuses or commissions), status as exempt or non-exempt for purposes of federal and state overtime pay requirements, status as active or on leave, accrued but unused sick time or vacation leave or paid time off and a description of the fringe benefits provided to each such individual as of the date hereof. Section 3.11(a)(ii) of the Schedules sets forth a complete and accurate list of each individual engaged to provide services to any Seller with respect to the Acquired Business as a consultant or other independent contractor and, for each such individual, has made available to Purchaser any agreement between such individual and such Seller.

(b) Section 3.11(b) of the Schedules sets forth each "multiemployer plan" within the meaning of Section 3(37) or Section 4001(a)(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), that is subject to Title IV of ERISA, to which such Seller or any Affiliate thereof contributes or has an obligation to contribute or in respect of which such Seller or any Affiliate thereof has any actual or contingent liability, in each case with respect to the Employees or the Acquired Assets.

(c) Except as set forth on Section 3.11(c) of the Schedules, no Seller has ordered or implemented any plant closing, mass layoff, group termination or similar event with respect to Employees that requires the issuance of notice under the WARN Act or any similar Law, and no such action is planned or contemplated prior to Closing.

3.12 Intellectual Property Matters; Data Privacy.

(a) Section 3.12(a) of the Schedules lists all (i) Transferred Intellectual Property that is the subject of a patent, registration, or pending application, including domain name and social media account registrations ("Registered IP") and (ii) material unregistered Transferred Intellectual Property, and, specifying as to each such item, as applicable, the owner(s) of record (and, in the case of domain names, the registrant, and in the case of social media accounts, the account holder), jurisdiction of application and/or registration and the application and/or registration number. To the Knowledge of Sellers, all Registered IP is in full force and otherwise in good standing. To the Knowledge of Sellers, all Registered IP identified on Section 3.12(a) of the Schedules is valid, subsisting, and enforceable. Subject to entry of the Sale Order, Sellers exclusively own all right, title (including, with respect to all Registered IP, record title) and interest in and to the Transferred Intellectual Property free and clear of all Encumbrances except for Permitted Encumbrances.

(b) Neither the Transferred Intellectual Property nor the operation or conduct of the Acquired Business, including the manufacture, marketing, license, sale or use of any products or services anywhere in the world in connection with the Acquired Business, has (i) to the Knowledge of the Sellers, infringed, misappropriated, or otherwise violated, or is infringing, misappropriating, or otherwise violating any Intellectual Property of any other Person, or (ii) violated any license or agreement with any third party to which a Seller is bound. None of the Sellers have received any written claim, demand or notice, and no Action is pending or threatened against any of the Sellers: (i) alleging any infringement, misappropriation, or other violation of any Intellectual Property of any other Person; or (ii) challenging the validity, registrability, enforceability or ownership of, or the right of the Sellers and their respective Subsidiaries to use, any Transferred Intellectual Property. To the Knowledge of Sellers, no other Person is infringing, misappropriating or otherwise violating any Transferred Intellectual Property. None of the Transferred Intellectual Property included in the Acquired Assets is subject to any outstanding judgment, decree or order of any Governmental Body. None of the Registered IP has been or is now involved in any interference, reissue, inter-partes review, reexamination, cancellation, revocation, opposition or other proceeding in the United States Patent and Trademark Office or any other Governmental Body.

(c) The Transferred Intellectual Property (together with any Licensed Intellectual Property that could be covered by the Transition Services Agreement) constitutes all Intellectual Property owned or purported to be owned by Sellers, or licensed to the Sellers, and used or held for use by Sellers in connection with the Acquired Business.

(d) The Sellers' practices with regard to the collection, dissemination and use of Personal Data in connection with the Business are and have been at all times in conformance in all material respects with all (i) Laws relating to data protection or personal information, and (ii)

contractual commitments of the Sellers. For the thirty six (36) months immediately preceding the date of this Agreement and the Closing Date, (i) the Sellers have not received any written notification or allegation from any competent authority (including any information or enforcement notice, or any transfer prohibition notice) alleging that any of the Sellers has not complied in any respect with Laws relating to data protection or personal information and (ii) in the Knowledge of Sellers, there has been no loss of, or unauthorized access, use, disclosure or modification of any Personal Data.

3.13 Accounts Receivable. The accounts receivable of Sellers and the Acquired Business have arisen from bona fide transactions entered into by Sellers in the Ordinary Course. Sellers have not at any time in the past twelve (12) months increased or extended the payment terms with respect to any such accounts receivable in a manner not consistent with the Ordinary Course.

3.14 Brokers. Except for Ducera Partners LLC, whose fees and expenses will be borne solely by Sellers, there is no investment banker, broker, finder or other intermediary which has been retained by or is authorized to act on behalf of Sellers that might be entitled to any fee or commission in connection with the transactions contemplated by this Agreement.

3.15 Transactions With Affiliates. Except as set forth in Section 3.15 of the Schedules, to the Knowledge of Sellers, no licensee under any Assigned Contract is an Affiliate of any Seller.

3.16 Taxes. Except as set forth in Section 3.16 of the Schedules:

(a) Sellers have timely filed or caused to be filed with the appropriate federal, state, local, or foreign Governmental Body all Tax Returns required to be filed in respect of the Acquired Assets or of the Acquired Business and have timely paid in full or caused to be paid in full all material Taxes required to be paid (whether or not shown on any Tax Return), and all such Tax Returns are true, correct and complete in all material respects;

(b) there are no liens or encumbrances for Taxes upon the Acquired Assets except Permitted Encumbrances;

(c) Sellers have withheld or collected and paid (or set aside for payment when due) all Taxes required to be withheld or collected and paid with respect to the Acquired Assets or the Acquired Business, have timely filed all Tax Returns that are required to be filed in respect of any such Tax withholding (including IRS Forms 1099 and W-2), and have accurately reported all information required to be included on such Tax Returns;

(d) Sellers have not consented to extend or granted any waiver of any statute of limitations with respect to, or any extension of a period for the assessment of, any Taxes with respect to the Acquired Assets, Acquired Business, or Assumed Liabilities;

(e) there is no action, suit, proceeding, investigation, audit, claim, assessment or judgment currently ongoing, pending, or threatened in writing, for or relating to any Liability for Taxes with respect to the Acquired Assets, Acquired Business, or Assumed Liabilities by any Governmental Body; and

(f) no Acquired Asset is (i) tax-exempt use property within the meaning of Section 168(h) of the Code, (ii) an equity interest in any Person, or (iii) a "United States real property interest" within the meaning of Section 897(c) of the Code.

3.17 No Other Representations or Warranties. Except for the representations and warranties expressly made by Sellers to Purchaser in this Article III, (as qualified by the Schedules and in accordance with the express terms and conditions (including limitations and exclusions) of this Agreement) (the "Express Representations") (it being understood that Purchaser and the Purchaser Group have relied only on such Express Representations), Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that neither any Seller nor any other Person on behalf of any Seller makes, and neither Purchaser nor any member of the Purchaser Group has relied on, the accuracy or completeness of any express or implied representation or warranty with respect to the Sellers, the Acquired Assets or the Assumed Liabilities or with respect to any statement or information of any nature made or provided by any Person, any information, statements, disclosures, documents or other material made available to Purchaser or any of its Affiliates or Advisors by electronic mail or in that certain datasite administered by Datasite (the "Dataroom") or elsewhere, or projections, forward-looking statements and other forecasts (whether in written, electronic or oral form, and including in the Dataroom, management meetings, etc.) (collectively, "Projections") on behalf of any Seller or any of its Affiliates or Advisors to Purchaser or any of its Affiliates or Advisors. Without limiting the foregoing, neither any Seller nor any other Person will have or be subject to any liability whatsoever to Purchaser, or any other Person, resulting from the distribution to Purchaser or any of its Affiliates or Advisors, or Purchaser's or any of its Affiliates' or Advisors' use of or reliance on, any such information, including any information, statements, disclosures, documents, projections, forecasts or other material made available to Purchaser or any of its Affiliates or Advisors in the Dataroom or elsewhere, Projections or otherwise in expectation of the transactions contemplated by this Agreement or any Transaction Document or any discussions with respect to any of the foregoing information. Notwithstanding anything contained herein to the contrary, the Parties acknowledge that the disclaimer set forth in this Section 3.17 is not intended to and does not limit or waive any Party's liability for Fraud.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF PURCHASER

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

4.1 Organization and Qualification. Purchaser (a) is an entity duly incorporated or organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization, as applicable, (b) has all requisite power and authority to own and operate its properties and to carry on its businesses as now conducted and (c) is qualified to do business and is in good standing (or its equivalent) in every jurisdiction in which its ownership of property or the conduct of its business as now conducted requires it to qualify, except where the failure to be so qualified would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Purchaser's ability to consummate the transactions

contemplated under this Agreement and the other Transaction Documents. Guarantor is an entity duly incorporated or organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation or organization, as applicable.

4.2 Authorization of Agreement. The execution, delivery and performance of this Agreement and the other Transaction Documents by Purchaser, and the consummation by Purchaser of the transactions contemplated hereby and thereby, have been duly and validly authorized by all requisite corporate or similar organizational action, and no other corporate or similar organizational proceedings on its part are necessary to authorize the execution, delivery or performance hereunder and thereunder by Purchaser. This Agreement and the Transaction Documents have been duly and validly executed and delivered by Purchaser, and, assuming this Agreement and the Transaction Documents are valid and binding obligations of Sellers, this Agreement and the Transaction Documents constitute valid and binding obligations of Purchaser, enforceable against Purchaser in accordance with their terms, except as limited by the Enforceability Exceptions. The execution, delivery and performance of this Agreement and the other Transaction Documents to which Guarantor is a party, if any, by Guarantor, and the consummation by Guarantor of the transactions contemplated hereby and thereby, have been duly and validly authorized by all requisite corporate or similar organizational action, and no other corporate or similar organizational proceedings on its part are necessary to authorize the execution, delivery or performance hereunder and thereunder by Guarantor. This Agreement and the other Transaction Documents to which Guarantor is a party, if any, have been duly and validly executed and delivered by Guarantor, and, assuming this Agreement and the Transaction Documents are valid and binding obligations of Sellers, this Agreement and the Transaction Documents constitute valid and binding obligations of Guarantor, enforceable against Guarantor in accordance with their terms, except as limited by the Enforceability Exceptions.

4.3 Conflicts; Consents.

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

(b) Purchaser is not required to file, seek or obtain any notice, authorization, approval, Order, permit or consent of or with any Governmental Body in connection with the execution, delivery and performance by Purchaser of this Agreement, the Transaction Documents, or the consummation by Purchaser of the transactions contemplated hereby and thereby, except where failure to obtain such consent, approval, authorization or action, or to make such filing or

notification, would not, individually or in the aggregate, reasonably be expected to prevent or materially delay the ability of Purchaser to consummate the transactions contemplated hereby and thereby.

4.4 Financing. Purchaser has access to, and will have at the Closing, sufficient immediately available funds in an aggregate amount necessary to pay the Purchase Price and all fees and expenses of Purchaser related to the transactions contemplated by this Agreement or any Transaction Document, to perform the Assumed Liabilities as they become due in accordance with their terms and to consummate all of the other transactions contemplated by this Agreement or any Transaction Document.

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

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

4.7 Guarantor Financial Capabilities. As of the date hereof and as of the Closing, Guarantor has and will have the resources, financial or otherwise, to perform its obligations hereunder, and has and will have the capabilities to carry out its financial and other obligations under this Agreement, including the payment of any amounts outstanding and assumption of Liabilities. Guarantor is not insolvent. No insolvency proceedings of any nature, including bankruptcy, receivership, reorganization, composition, arrangement with creditors, voluntary or involuntary, affecting the Guarantor are pending, and Guarantor has not made an assignment for the benefit of creditors, nor, to its knowledge, has any person taken any action with a view to the institution of any insolvency proceedings. Guarantor has not, as of the date hereof, and will not have as of the Closing, incurred any obligation, commitment, restriction or liability of any kind that would impair or adversely affect such aforementioned resources or capabilities.

4.8 No Outside Reliance. Notwithstanding anything contained in this Article IV or any other provision of this Agreement to the contrary, Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that the Express Representations are the sole and exclusive representations, warranties and statements of any kind made to Purchaser or any member of the Purchaser Group and on which Purchaser and the Purchaser Group may rely in connection with the transactions contemplated by this Agreement or any Transaction Document. Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that all other representations, warranties and statements of any kind or nature expressed or implied, whether in written, electronic or oral form, including (a) the completeness or accuracy of, or any omission to state or to disclose, any information (other than solely to the extent expressly set forth in the Express Representations) including in the Dataroom, any Projections, meetings, calls or correspondence with management of the Sellers, or any other Person on behalf of the Sellers, their Subsidiaries or any of their respective Affiliates or Advisors and (b) any other statement relating

to the historical, current or future business, financial condition, results of operations, assets, Liabilities, properties, Contracts and prospects of the Acquired Business, or the quality, quantity or condition of the Sellers' or their Subsidiaries' assets (including the Acquired Assets), are, in each case specifically disclaimed by Sellers and that neither Purchaser nor any member of the Purchaser Group has relied on any such representations, warranties or statements. Purchaser is knowledgeable about the industries in which the Sellers operate and is capable of evaluating the merits and risks of the transactions contemplated by this Agreement or any Transaction Document and is able to bear the substantial economic risk of such investment for an indefinite period of time. Purchaser has been afforded access to the books and records, facilities and personnel relating to the Acquired Assets or Assumed Liabilities for purposes of conducting a due diligence investigation and has conducted a full due diligence investigation of the Acquired Assets and Assumed Liabilities. Purchaser acknowledges, on its own behalf and on behalf of the Purchaser Group, that it has conducted to its full satisfaction an independent investigation and verification of the business, financial condition, results of operations, assets, Liabilities, properties, Contracts and prospects of the Sellers and the Acquired Assets and Assumed Liabilities, and, in making its determination to proceed with the transactions contemplated by this Agreement and any Transaction Document, Purchaser has relied solely on the results of the Purchaser Group's own independent investigation and verification, and has not relied on, is not relying on, and will not rely on, any Seller, any Subsidiary, any information, statements, disclosures, documents, projections, forecasts or other material made available to Purchaser or any of its Affiliates or Advisors in the Dataroom or otherwise, Projections or any information, statements, disclosures or materials, in each case, whether written or oral, made or provided by, or as part of, any of the foregoing or the Sellers, their Subsidiaries or any of their respective Affiliates or Advisors, or any failure of any of the foregoing to disclose or contain any information, except for the Express Representations (it being understood that Purchaser and the Purchaser Group have relied only on the Express Representations). Without limiting the generality of the foregoing, Purchaser, on its own behalf and on behalf of the Purchaser Group, hereby waive, all rights and claims it or they may have against any Seller Party with respect to the accuracy of, any omission, or any misstatement with respect to any warranty or representation (whether in written, electronic or oral form), express or implied, as to the quality, merchantability, fitness for a particular purpose, or condition of the Sellers' business (including the Acquired Business), operations, assets (including the Acquired Assets), Liabilities (including the Assumed Liabilities), prospects or any portion thereof, except, in each case, solely to the extent expressly set forth in the Express Representations. Except as expressly set forth herein, Purchaser is acquiring the Acquired Assets and assuming the Assumed Liabilities on an "AS IS, WHERE IS" basis. Notwithstanding anything contained herein to the contrary, the parties acknowledge that the disclaimer set forth in this Section 4.8 is not intended to and does not limit or waive any Party's liability for Fraud.

ARTICLE V

BANKRUPTCY COURT MATTERS

5.1 Bid Protections and Auction Matters.

(a) In addition to the Sellers' obligation to release the Deposit to Purchaser in accordance with Section 2.2(a) and (c):

(i) if this Agreement is terminated pursuant to (i) Section 8.1 (other than (A) Sections 8.1(a), 8.1(e) or 8.1(g)(A), or (B) by Purchaser pursuant to Section 8.1(b), 8.1(c) or 8.1(d), in each case of this clause (B), in circumstances where the Sellers would be entitled to terminate this Agreement pursuant to Section 8.1(e) or 8.1(g)(A)), then Purchaser shall be entitled to the reimbursement of, and the Sellers shall, within five (5) days following such termination, reimburse Purchaser by wire transfer of immediately available funds for, the actual, reasonable and documented out-of-pocket fees and expenses incurred by Purchaser (including reasonable and documented fees and expenses of legal, financial advisory, and accounting professionals, filing fees, and other similar costs, fees and expenses) and its Advisors in connection with the diligence, preparation, execution, negotiation, documentation, and performance of this Agreement, in an amount up to but not exceeding $300,000 (the "Expense Reimbursement"), which amount shall constitute an allowed administrative expense of Sellers under Sections 503(b) or 507(b) of the Bankruptcy Code senior to all other administrative expense claims against the Sellers, other than a superpriority administrative expense claim under Section 364(c)(1) of the Bankruptcy Code granted pursuant to any financing order and/or cash collateral order entered in the Sellers' cases of Chapter 11 of the Bankruptcy Code,

(ii) if this Agreement is terminated pursuant to Sections 8.1(f), 8.1(h), 8.1(g)(B), 8.1(j), 8.1(i) or 8.1(l), then in addition to the Expense Reimbursement, Purchaser shall be entitled to the payment of, a break-up fee in an amount equal to $700,000 (such fee, the "Break-Up Fee", and together with the Expense Reimbursement, the "Bid Protections") and shall constitute an allowed administrative expense of Sellers under Sections 503(b) or 507(b) of the Bankruptcy Code senior to all other administrative expense claims against the Sellers, other than a superpriority administrative expense claim under Section 364(c)(1) of the Bankruptcy Code granted pursuant to any financing order and/or cash collateral order entered in the Sellers' cases of Chapter 11 of the Bankruptcy Code (provided, that unless otherwise agreed to by the DIP Agent, such claims will be subject to the liens and claims of the DIP Facility lenders and the adequate protection rights provided to the Prepetition Secured Parties in connection with the DIP Order). The Break-Up Fee shall be paid by wire transfer of immediately available funds (x) in the case of a termination pursuant to Section 8.1(f), 8.1(g)(B), 8.1(h) or 8.1(l) within five (5) days of such termination or (y) in the case of termination pursuant to Section 8.1(i) or 8.1(j), as a required closing payment at the closing of an Alternative Transaction, and

(iii) if Sellers fail to pay any amounts due to Purchaser pursuant to Section 5.1(a) within the time period specified therein, Sellers shall also pay the costs and expenses (including reasonable legal fees and expenses) incurred by Purchaser in connection with any Action taken to collect payment of such amounts (the "Collection Expenses"), and the Collection Expenses shall not be subject to the cap on Expense Reimbursement set forth in Section 5.1(a)(i). To the extent any portion of the Expense Reimbursement is being contested in good faith, Sellers shall (i) promptly pay the undisputed portion of the expense claimed by Purchaser and (ii) set aside the disputed portion of such expense in a separate interest bearing account for the sole benefit of Purchaser pending the resolution of such dispute.

(b) The obligations of the Sellers to pay the Bid Protections are subject to approval by the Bankruptcy Court and shall survive the termination of this Agreement in accordance with Section 8.2. Other than as provided in Section 10.12, the sole and exclusive remedy of Purchaser and its Related Parties or any other Person against the Sellers and their Related Parties and any other Person for any and all Liabilities of any kind, character or description suffered or incurred in connection with this Agreement, the Transaction Documents and the transactions contemplated hereby and thereby, prior to the termination of this Agreement, shall be the payment of the Break-Up Fee and the Expense Reimbursement; provided that in no event (except Fraud) will Purchaser be entitled to amounts in excess of the payment of the Break-Up Fee and Expense Reimbursement.

(c) The Parties acknowledge and agree that, in the event that the payment of the Break-Up Fee, the Expense Reimbursement and/or Collection Expenses becomes due and payable, and such amounts are actually paid to the Purchaser, such amounts are not a penalty, but rather are liquidated damages in reasonable amounts that will compensate Purchaser for its efforts and resources expended and the opportunities forgone while negotiating this Agreement and in reliance on this Agreement and the Transaction Documents and on the expectation of the consummation of the transactions contemplated hereby and thereby, which amount would otherwise be impossible to calculate with precision. The Parties acknowledge and agree that (i) the agreements contained in Section 5.1(a) are an integral part of this Agreement and the transactions contemplated by this Agreement and are a material and necessary inducement to the Purchaser to enter into this Agreement and to consummate the transactions contemplated by this Agreement. Sellers acknowledge and agree that the entry into this Agreement provides value to the Sellers' chapter 11 estates by, among other things, inducing other Persons to submit higher or better offers for the Acquired Assets.

(d) As required by the Bidding Procedures Order, if an Auction is conducted, any bidder other than Purchaser that seeks to bid on any of the Acquired Assets must provide for the allocation of the cash component of the purchase price for such bidder's bid to the Acquired Assets included in such bid in an amount that equals or exceeds the amount required to pay in full in cash the Bid Protections plus all obligations outstanding under the DIP Facility. If a bidder other than Purchaser is the successful bidder for all or any portion of the Acquired Assets at the conclusion of such Auction (such successful bidder, the "Successful Bidder") but the Purchaser is the next highest bidder for such assets at the Auction, Purchaser shall be required to serve as a back-up bidder (the "Backup Bidder") and keep Purchaser's bid to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be revised in the Auction) open and irrevocable until this Agreement is otherwise terminated. If the Successful Bidder fails to consummate the applicable Alternative Transaction as a result of a breach or failure to perform on the part of such Successful Bidder, the Backup Bidder will be deemed to have the new prevailing bid, and the Sellers may consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may have been improved upon in the Auction). Notwithstanding the foregoing or anything else herein, Purchaser shall not be required to purchase or serve as Backup Bidder for less than all of the Acquired Assets.

5.2 Cure Costs. Subject to entry of the Sale Order, Purchaser shall, (a) on or prior to the Closing, pay the Cure Costs and cure any and all other defaults and breaches under the Assigned Contracts (excluding any Assigned Contracts that are Previously Omitted Contracts for which Cure Costs have not been consensually agreed with the Contract counterparty or fixed by an order of the Bankruptcy Court as of the Closing Date) so that such Contracts may be assumed by the applicable Seller and assigned to Purchaser (subject to payment by Purchaser of the Cure Costs and provision by Purchaser of adequate assurance of future performance), and (b) with respect to each Assigned Contract that is a Previously Omitted Contract for which Cure Costs have not been consensually agreed with the Contract counterparty or fixed by an order of the Bankruptcy Court as of the Closing Date, on the date that is two (2) days after the date on which (i) the Cure Costs with respect to such Assigned Contract have been consensually agreed, or (ii) the Bankruptcy Court has entered an Order fixing such Cure Costs, pay such Cure Costs and cure any and all other defaults and breaches under so that such Contracts may be assumed by the applicable Seller and assigned to Purchaser (subject to payment by Purchaser of the Cure Costs and provision by Purchaser of adequate assurance of future performance), in each case of the foregoing clauses (a) and (b), in accordance with the provisions of Section 365 of the Bankruptcy Code, the Bidding Procedures Order, the Sale Order and this Agreement. The Sellers agree that they will promptly take such commercially reasonable actions as are necessary to obtain a Final Order of the Bankruptcy Court (which order may be the Sale Order) providing for the assumption and assignment of such Contracts.

5.3 Bankruptcy Court Filings.

(a) Within one Business Day of the Petition Date, the Debtors shall file with the Bankruptcy Court a motion (the "Sale Motion") in form and substance reasonably satisfactory to Purchaser for:

(i) entry of the bidding procedures order in the form annexed hereto as Exhibit C (the "Bidding Procedures Order"), *inter alia*, (a) establishing the Bidding Procedures (as defined in the Bidding Procedures Order), (b) approving payment of the Bid Protections, (c) providing that the Bid Protections shall constitute administrative expenses of the Debtors, (d) approving procedures for the assumption and assignment of contracts, and (e) setting sale milestones and scheduling related hearings.

(ii) entry of the Sale Order in form and substance reasonably satisfactory to Purchaser, which shall, among other things, (a) approve, pursuant to Sections 105, 363, and 365 of the Bankruptcy Code, (i) the execution, delivery and performance by Sellers of this Agreement, (ii) the sale of the Acquired Assets to Purchaser on the terms set forth herein and free and clear of all Encumbrances (other than Encumbrances included in the Assumed Liabilities and Permitted Encumbrances), and (iii) the performance by Sellers of their respective obligations under this Agreement; (b) authorize and empower Sellers to assume and assign to Purchaser the Assigned Contracts; (c) find that Purchaser is a "good faith" Purchaser within the meaning of Section 363(m) of the Bankruptcy Code, not a successor to any Seller and grant Purchaser the protections of Section 363(m) of the Bankruptcy Code; (e) find that Purchaser shall have no Liability or responsibility for any Liability or other obligation of any Seller arising under or related

to the Acquired Assets other than as expressly set forth in this Agreement (including the Assumed Liabilities), including successor or vicarious Liabilities of any kind or character, including any theory of antitrust, environmental, successor or transferee Liability, labor law, de facto merger or substantial continuity; and (f) find that Purchaser shall have no Liability for any Excluded Liability.

(b) Purchaser and Seller shall take all actions as may be reasonably necessary to cause the Bidding Procedures Order and Sale Order to be issued, entered and become Final Orders, including furnishing affidavits, declarations or other documents or information for filing with the Bankruptcy Court. Purchaser agrees that it will promptly take such actions as are reasonably requested by Sellers to assist in obtaining entry of the Sale Order and a finding of adequate assurance of future performance by Purchaser, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of (x) providing necessary assurances of performance by Purchaser under this Agreement and demonstrating that Purchaser is a "good faith" Purchaser under Section 363(m) of the Bankruptcy Code, and (y) establishing adequate assurance of future performance within the meaning of Section 365 of the Bankruptcy Code. Sellers shall provide Purchaser with copies of all pleadings in the Bankruptcy Cases relevant to Purchaser entering into the transactions contemplated hereby, at least two (2) calendar days prior to filing or, in the event that such prior notice is not reasonably practicable under the attendant circumstances, as promptly as practicable thereafter; provided that Sellers shall provide Purchaser with a copy of the Sale Motion at least two (2) Business Days prior to the filing thereof.

(c) The Sale Motion shall include procedures for the assumption of and assignment to Purchaser of the Assigned Contracts (the "Assignment and Assumption Procedures"). The Assumption and Assignment Procedures shall require Sellers to serve on each non-debtor Contract counterparty a notice specifically stating that (i) Sellers are or may be seeking to assume and assign the Contract; (ii) the Cure Costs for each Contract and (iii) the deadline for objecting to the Cure Costs which shall be no later than fourteen (14) days prior to the hearing to consider approval of the Sale Order, or, with respect to Previously Omitted Contracts, fourteen (14) days after the counterparty's receipt of a Previously Omitted Contract Notice. The Assumption and Assignment Procedures shall provide that upon objection by the non-debtor Contract counterparty to the Cure Costs asserted by Sellers with regard to any Contract (such contract, a "Disputed Contract"), Sellers, with the consent of Purchaser, shall either settle the objection of such party or shall litigate such objection under procedures as the Bankruptcy Court shall approve and proscribe. In the event that, as of the Closing Date, a dispute regarding the Cure Costs with respect to a Disputed Contract has not been resolved, or the Bankruptcy Court has entered an Order determining any Cure Costs regarding any Disputed Contract, the Parties shall nonetheless remain obligated to consummate the transactions contemplated by this Agreement subject to the terms and conditions set forth herein.

5.4 Credit Bidding. Purchaser shall have the right to credit bid all or a portion of the Bid Protections at any Auction or otherwise. In no event shall Sellers provide bid protections (in the form of a break-up fee, expense reimbursement, or otherwise) to any bidder other than Purchaser in connection with the Acquired Assets. In no event shall any Secured Lenders (or any assignees, transferees or purchasers of the secured indebtedness held by any Secured Lender) be

permitted to credit bid for the Acquired Assets as all or part of any competing bid for the Acquired Assets at any Auction at which Purchaser is bidding pursuant to the terms of this Agreement. Sellers shall obtain the written agreement of the Secured Lenders to comply with this Section 5.4 and to cause any assignee, transferee, or purchaser of the secured debt of such Secured Lenders to comply with this Section 5.4. The Parties agree that the provisions substantially in the form of this Section 5.4 shall be reflected in the Bidding Procedures Order.

5.5 Bankruptcy Process. Unless Purchaser is in material breach of this Agreement or this Agreement has been terminated, Sellers covenant and agree that if the Sale Order is entered, the terms of any chapter 11 plan submitted by Sellers to the Bankruptcy Court for confirmation or otherwise supported by Sellers shall not conflict with, supersede, abrogate, nullify, modify or restrict the terms of this Agreement or the rights of Purchaser hereunder, or in any way prevent or interfere with the consummation or performance of the transactions contemplated by this Agreement, including any transaction that is contemplated by or approved pursuant to the Sale Order. If the Bidding Procedures Order, the Sale Order or any other Order of the Bankruptcy Court relating to this Agreement shall be appealed or any petition for certiorari or motion for rehearing or reargument shall be filed with respect thereto, Sellers agree to take all action as may be commercially reasonable and appropriate to defend against such appeal, petition or motion, and Purchaser agrees to cooperate in such efforts, and each Party agrees to use its reasonable efforts to obtain an expedited resolution of such appeal.

ARTICLE VI

COVENANTS AND AGREEMENTS

6.1 Conduct of Business of Sellers. Until the earlier of the termination of this Agreement and the Closing, except (i) for any limitations on operations imposed by, and subject to any Orders entered or approvals or authorizations granted or required by or under, the Bankruptcy Court or the Bankruptcy Code (including in connection with the Bankruptcy Case) or the DIP Facility, (ii) as required by applicable Law, (iii) as required or recommended under any directive, pronouncement, guideline or recommendation issued by any Governmental Body, including the Centers for Disease Control and Prevention and the World Health Organization, in each case, providing for or contemplating business closures or other reductions, changes to business operations, worker safety matters, "sheltering-in-place," quarantines, "stay-at-home," curfews, workforce reduction, social distancing, or any other remedial measures relating to, or arising out of, COVID-19 virus and any mutations, variations or evolutions thereof, (iv) to the extent related to the Excluded Assets, Excluded Liabilities and/or Retained Business, (v) as otherwise required by, or reasonably necessary to carry out, the terms of this Agreement or as set forth on Section 6.1 of the Schedules or (vi) with the prior written consent of Purchaser (which consent shall not be unreasonably withheld, conditioned or delayed), Sellers shall (A) use commercially reasonable efforts to conduct the Acquired Business in the Ordinary Course (including using commercially reasonable efforts to maintain the Acquired Assets in the same condition as they were on the date of this Agreement, subject to reasonable wear and tear, if applicable), and paying payables of the Acquired Business owed to the Critical Vendors arising following the Petition Date as and when due); (B) maintain the Documents in accordance with past

practice; and (C) comply in all material respects with all Laws applicable to the ownership and use of the Acquired Assets, and shall not:

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

(b) sell, assign, license, transfer, convey, lease, surrender, relinquish or otherwise dispose of any material portion of the Acquired Assets, other than (i) sales of Inventory in the Ordinary Course or (ii) pursuant to existing Contracts;

(c) sell, assign, license, transfer, convey, lease, surrender, relinquish or otherwise dispose of any Inventory other than in the Ordinary Course (including by means of volume or pricing discounts);

(d) (i) increase the compensation or employee benefits payable or to be provided to any Employee, (ii) hire or terminate (other than for cause) any Employee or transfer any Employee outside the perimeter of the Acquired Business, or (iii) adopt or amend any Seller Plan, except to the extent that any such adoption or amendment will not increase the cost of the Purchaser's obligations under Section 6.3(b);

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

(f) make, rescind or change any material tax election with respect to the Acquired Assets or Assumed Liabilities;

(g) accelerate accounts receivable or provide trade terms outside the Ordinary Course;

(h) change distribution channels for inventory or products from those in effect prior to the Petition Date without the prior written consent of Purchaser;

(i) undertake any liquidation or going-out-of-business sale to dispose of any Inventory or other assets of the Acquired Business;

(j) sell Inventory or other assets to customers, discount retailers or other parties other than pursuant to purchase orders, e-commerce accounts and retail sales in the Ordinary Course; or

(k) agree or commit to do any of the foregoing.

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

6.2 Access to Information.

(a) From the date hereof until the Closing (or the earlier termination of this Agreement pursuant to Article VIII), the Sellers shall provide Purchaser and its authorized Advisors with reasonable access and upon reasonable advance notice and during regular business hours to the properties, offices, plants and other facilities, and books and records of the Sellers primarily related to the Acquired Business (excluding, for the avoidance of doubt, all confidentiality agreements with prospective purchasers of the Acquired Assets or any portion thereof, and all bids and expressions of interest received from third parties with respect thereto), in order for Purchaser and its authorized Advisors to access such information regarding the Acquired Business as Purchaser reasonably deems necessary in connection with effectuating the transactions contemplated by this Agreement, and shall furnish Purchaser with such financial, operating and other data and information in connection with the Acquired Business and the Acquired Assets as Purchaser may reasonably request; provided that (i) such access does not unreasonably interfere with the normal operations of the Sellers, (ii) such access will occur in such a manner as the Sellers reasonably determine to be appropriate to protect the confidentiality of the transactions contemplated by this Agreement and the Transaction Documents, (iii) all requests for access will be directed to Ducera Partners LLC or such other Person(s) as the Sellers may designate in writing from time to time and (iv) nothing herein will require the Sellers to provide access to, or to disclose any information to, Purchaser if such access or disclosure (A) would cause significant competitive harm to the Sellers if the transactions contemplated by this Agreement and the Transaction Documents are not consummated, (B) would require the Sellers to disclose any financial or proprietary information of or regarding the Affiliates of the Sellers or otherwise disclose information regarding the Affiliates of the Sellers that the Sellers deem to be commercially sensitive, (C) would waive any legal privilege or (D) would be in violation of applicable Laws or the provisions of any agreement to which the Sellers are a party; provided that, in the event that the Sellers withhold access or information in reliance on the foregoing clause (C) or (D), the Sellers shall provide (to the extent possible without waiving or violating the applicable legal privilege or Law) notice to Purchaser that such access or information is being so withheld and shall use commercially reasonable efforts to provide such access or information in a way that would not risk waiver of such legal privilege or applicable Law.

(b) The information provided pursuant to this Section 6.2 will be used solely for the purpose of effecting the transactions contemplated hereby, and will be governed by the terms and conditions of the Confidentiality Agreement. Purchaser will, and will cause its Advisors to, abide by the terms of the Confidentiality Agreement with respect to such access and any information furnished to Purchaser or any of its Advisors. Neither Seller makes any representation or warranty as to the accuracy of any information, if any, provided pursuant to this Section 6.2, and Purchaser may not rely on the accuracy of any such information, in each case, other than the Express Representations.

(c) From and after the Closing for a period of seven (7) years following the Closing Date (or, if later, the closing of the Bankruptcy Case), upon the reasonable request of any Seller (on the one hand) or Purchaser (on the other hand), the non-requesting Party will provide the requesting Party and its Advisors with reasonable access, during normal business hours, and upon reasonable advance notice, to the books and records, including work papers, schedules, memoranda, Tax Returns, Tax schedules, Tax rulings, and other documents (for the purpose of examining and copying) primarily relating to the Acquired Assets or the Assumed Liabilities with

respect to periods or occurrences prior to the Closing Date. Unless otherwise consented to in writing by the Sellers, Purchaser will not, for a period of seven (7) years following the Closing Date (or, if later, the closing of the Bankruptcy Case), destroy, alter or otherwise dispose of any of the books and records relating to the Acquired Assets or the Assumed Liabilities with respect to periods or occurrences prior to the Closing Date without first offering to surrender to the Sellers such books and records or any portion thereof that Purchaser may intend to destroy, alter or dispose of. Unless otherwise consented to in writing by Purchaser, no Seller will, for a period of seven (7) years following the Closing Date, destroy, alter or otherwise dispose of any of the books and records primarily relating to the Acquired Assets or the Assumed Liabilities with respect to periods or occurrences prior to the Closing Date without first offering to surrender to Purchaser such books and records or any portion thereof that such Seller may intend to destroy, alter or dispose of. Nothing in this Section 6.2(c) will require any Party to provide access to, or to disclose any information to, the other Party if such access or disclosure (A) would waive any legal privilege or (B) would be in violation of applicable Law; provided that, in the event that the non-requesting Party withholds access or information in reliance on the foregoing clause (A) or (B), the non-requesting Party shall provide (to the extent possible without waiving or violating the applicable legal privilege or Law) notice to the requesting Party that such access or information is being so withheld and shall use commercially reasonable efforts to provide such access or information in a way that would not risk waiver of such legal privilege or applicable Law.

(d) Purchaser will not, and will not permit any member of the Purchaser Group to, contact any officer, manager, director, employee, customer, supplier, lessee, lessor, lender, noteholder or other material business relation of the Sellers prior to the Closing with respect to the Acquired Business or the transactions contemplated by this Agreement and the Transaction Documents without the prior consent of the Sellers for each such contact.

6.3 Employee Matters.

(a) On or prior to the Closing Date, Purchaser may, at its sole discretion, extend an offer of employment to any individual listed or identified on Section 6.3 of the Schedules (the "Employees," any such offer, a "Transfer Offer") that, if accepted, shall become effective immediately after the Closing; provided that to the extent any Employees are on leave or otherwise not actively employed as of the Closing Date, their employment with Purchaser shall become effective only upon their presenting themselves to Purchaser to commence active employment within six (6) months following the Closing. Employees who accept such Transfer Offers and begin active employment with Purchaser in accordance with this Section 6.3(a) shall be referred to herein as "Transferred Employees." Effective as of the Closing (or, with respect to Employees who are on leave or otherwise not actively employed as of the Closing Date, as of such later date that such Employees begin their active employment with Purchaser as described above), each Transferred Employee shall cease to be an employee of Sellers or their Affiliates. Sellers intend that for purposes of any Seller Plan providing severance or termination benefits, or any comparable plan, program, policy, agreement or arrangement of Sellers or their Subsidiaries, the transactions contemplated by this Agreement and any Transaction Document shall not constitute a termination of employment of any Transferred Employee prior to or upon the consummation of such transactions, and Sellers shall take all actions necessary to effectuate such intention.

(b) For a period of one (1) year from and after the Closing Date, Purchaser shall (i) provide each Transferred Employee with base compensation/wage rate that is no lower than that provided to such Transferred Employees as of the date hereof; and (ii) use its commercially reasonable efforts to provide each Transferred Employee with other employee benefits (other than equity incentive, retention or change in control arrangements) that are substantially comparable in the aggregate to those provided by Sellers to such Transferred Employees under the Seller Plans as of the date hereof. For purposes of eligibility and vesting (other than vesting of future equity awards) under the benefit plans and programs maintained by Purchaser to provide employee benefits to Transferred Employees after the Closing Date (the "Purchaser Plans"), each Transferred Employee shall be credited with his or her years of service with Sellers before the Closing Date to the same extent as such Transferred Employee was entitled, before the Closing Date, to credit for such service under substantially similar Seller Plans in which such Transferred Employees participated before the Closing Date, except to the extent such credit would result in a duplication of benefits.

(c) Without limiting the generality of any other provision of this Agreement, to the extent permitted under each applicable Purchaser Plan and applicable Law: (i) each Transferred Employee shall be eligible to participate, without any waiting time, in any and all Purchaser Plans; (ii) for purposes of each Purchaser Plan providing medical, dental, hospital, pharmaceutical or vision benefits to any employee, Purchaser shall use commercially reasonable efforts to cause all pre-existing condition exclusions and actively-at-work requirements of such Purchaser Plan to be waived for such Transferred Employee and his or her covered dependents (unless such exclusions or requirements were applicable under comparable Seller Plans); and (iii) Purchaser shall use commercially reasonable efforts to cause any co-payments, deductible and other eligible expenses incurred by such Transferred Employee or his or her covered dependents during the plan year in which the Closing Date occurs to be credited for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such Transferred Employee and his or her covered dependents for the applicable plan year of each comparable Purchaser Plan.

(d) Without limiting the generality of any other provision of this Agreement, as soon as reasonably practicable on or after the Closing Date, Purchaser shall use its commercially reasonable efforts to have in effect one or more defined contribution plans that include a qualified cash or deferred arrangement within the meaning of Section 401(k) of the Code (and a related trust exempt from tax under Section 501(a) of the Code) (as applicable, the "Purchaser 401(k) Plan"). Each Transferred Employee who is eligible to participate in a 401(k) plan maintained by any Seller immediately prior to the transfer of such Transferred Employee (a "Seller 401(k) Plan") shall be eligible, subject to any restrictions imposed by applicable Law, to participate in Purchaser 401(k) Plan as soon as reasonably practicable following the Closing Date. Purchaser shall use its commercially reasonable efforts to cause Purchaser 401(k) Plan to accept a "direct rollover" to such Purchaser 401(k) Plan of the account balances of each Transferred Employee (including promissory notes evidencing outstanding loans) under any Seller 401(k) Plan, if such direct rollover is elected in accordance with applicable Law by such Transferred Employee. Sellers shall cause each Seller 401(k) Plan to permit rollovers of Transferred Employees' account balances (including promissory notes evidencing outstanding loans) and shall not place any Transferred

Employees' plan loans into default until the end of the calendar quarter following the calendar quarter in which the Closing Date occurs.

(e) Purchaser and the buying group (as defined in Treasury Regulation Section 54.4980B-9, Q&A-2(c)) of which it is a part, and not the Sellers and the selling group (as defined in Treasury Regulation Section 54.4980B-9, Q&A-2(a) of which they are a part), shall be responsible for providing continuation coverage to the extent required by COBRA to those individuals who are "M&A qualified beneficiaries," as defined in Treasury Regulation Section 54.4980B-9, Q&A-4(b), with respect to the transactions contemplated by this Agreement and any Transaction Document.

(f) Purchaser shall assume and honor all vacation days and other paid-time-off accrued or earned, but not yet taken, by each Transferred Employee as of the Closing Date to the extent reflected (including the Liability accrued in respect thereof) on a true and complete list provided to Purchaser by Seller as of the date hereof and updated as of the Closing to reflect accrual and usage through the Closing.

(g) The provisions of this Section 6.3 are for the sole benefit of the Parties to this Agreement and nothing herein, express or implied, is intended or shall be construed to confer upon or give any Person (including for the avoidance of doubt any Employees or Transferred Employees), other than the Parties and their respective permitted successors and assigns, any legal or equitable or other rights or remedies (with respect to the matters provided for in this Section 6.3 or under or by reason of any provision of this Agreement). Nothing contained herein, express or implied: (i) shall be construed to establish, amend, or modify any benefit plan, program, agreement or arrangement, (ii) shall alter or limit Purchaser's or Sellers' ability to amend, modify or terminate any particular benefit plan, program, agreement or arrangement or (iii) is intended to confer upon any current or former employee any right to employment or continued employment for any period of time by reason of this Agreement, or any right to a particular term or condition of employment.

(h) Purchaser shall not effect any plant closing, mass layoff, group termination or similar event with respect to any Transferred Employee within ninety (90) days of Closing that would create liability on the part of any Seller under the Worker Adjustment and Retraining Notification Act or any similar or related Law (the "WARN Act") with respect to any layoff or similar action occurring prior to the Closing.

6.4 Reasonable Best Efforts; Cooperation.

(a) Subject to the other terms of this Agreement, each Party shall, and shall cause its Advisors to, use its reasonable best efforts to perform its obligations hereunder and to take, or cause to be taken, and do, or cause to be done, all things necessary, proper or advisable under applicable Law to cause the transactions contemplated herein to be effected as soon as practicable, but in any event on or prior to the Outside Date, in accordance with the terms hereof and to cooperate with each other Party and its Advisors in connection with any step required to be taken as a part of its obligations hereunder. The "reasonable best efforts" of the Sellers will not require Purchaser or the Sellers or any of their respective Subsidiaries, Affiliates or Advisors to

expend any money to remedy any breach of any representation or warranty, to commence any Action, to waive or surrender any right, to modify any Contract or to waive or forego any right, remedy or condition hereunder.

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

6.5 Confidentiality.

(a) Subject to the requirements of the Bankruptcy Code or as may be imposed by the Bankruptcy Court or as otherwise required by Law or as may be necessary to prosecute the Chapter 11 Cases, from and after the Closing: (i) Sellers shall not, and shall direct their Affiliates, officers, directors, employees, agents and representatives not to, directly or indirectly, use, disclose, reveal, divulge, furnish or make accessible to anyone who is not otherwise authorized to be in possession of the same, any confidential information of the Acquired Business or primarily related to the Acquired Assets; (ii) in the event a Seller or an Affiliate or representative thereof shall be legally compelled to disclose any such information, such Seller shall provide Purchaser with prompt written notice of such requirement (to the extent such notice is legally permitted) so that Purchaser may seek a protective order or other remedy (at Purchaser's sole cost and expense); and (iii) in the event that such protective order or other remedy is not obtained, such Seller or its Affiliates or representatives shall furnish only such information as is legally required to be provided. Confidential information shall not include information that is or becomes publicly available without breach of this Section 6.5(a).

(b) Purchaser acknowledges and agrees that the Confidentiality Agreement remains in full force and effect and, in addition, covenants and agrees to keep confidential, in accordance with the provisions of such Confidentiality Agreement, information provided to Purchaser pursuant to this Agreement. If this Agreement is, for any reason, terminated prior to the Closing, the Confidentiality Agreement and the provisions of this Section 6.5(b) shall nonetheless continue in full force and effect.

6.6 Further Assurances.

(a) From time to time after the Closing, as and when requested by any Party and at such requesting Party's expense, any other Party will execute and deliver, or cause to be executed and delivered, all such documents and instruments and will take, or cause to be taken, all such further or other actions as such requesting party may reasonably deem necessary or desirable to evidence and effectuate the transactions contemplated by this Agreement.

(b) If, following the Closing, either Seller receives or becomes aware that it holds any Liability, asset, property or right which constitutes an Assumed Liability or Acquired Asset, then such Seller shall transfer such Liability, asset, property or right to Purchaser (including

the execution and delivery of all appropriate transfer documents) as promptly as practicable for no additional consideration.

(c) If, following the Closing, Purchaser receives or becomes aware that it holds any Liability, asset, property or right which constitutes an Excluded Liability or an Excluded Asset, then Purchaser shall transfer such Liability, asset, property or right to Sellers (including the execution and delivery of all appropriate transfer documents) as promptly as practicable for no additional consideration.

6.7 Invoicing Procedures under Assigned Contracts.

(a) All income, proceeds and receipts of the Business payable pursuant to the Assigned Contracts and solely attributable to the period from and after the Closing, or otherwise solely related to the operation of the Acquired Assets by Purchaser from and after the Closing, shall be the sole entitlement of Purchaser, and, to the extent received by any Seller, such Seller shall fully disclose, account for and remit the same to Purchaser as promptly as is reasonably practicable after the end of the calendar month in which receipt occurs, which in any event, shall be within ten (10) Business Days following the end of such month.

(b) All income, proceeds and receipts of the Acquired Business payable pursuant to the Assigned Contracts and attributable to the period prior to the Closing, or otherwise related to the operation of the Acquired Assets by Sellers prior to the Closing, shall be the sole entitlement of Sellers, and, to the extent received by Purchaser, Purchaser shall fully disclose, account for and remit the same to Sellers as promptly as is reasonably practicable after the end of the calendar month in which receipt occurs, which in any event, shall be within ten (10) Business Days of the end of such month.

6.8 Transition Services. Each party hereto agrees that, from the date hereof through the Closing, it shall cooperate fully and negotiate in good faith with the other parties in finalizing a form of transition services agreement (the "Transition Services Agreement") providing for the services necessary to support the Acquired Business in the Ordinary Course (and fees therefor) in form and substance reasonably satisfactory to Purchaser and Sellers. All services under the Transition Services Agreement shall be provided at cost.

6.9 Payment to Critical Vendors. Sellers hereby agree to pay or cause to be paid to the Critical Vendors an amount in cash equal to $1.1 million within five (5) calendar days following the Petition Date.

ARTICLE VII

CONDITIONS TO CLOSING

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

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

(b) the Bankruptcy Court shall have entered (i) the Bidding Procedures Order approving the Bidding Procedures without material deviations to the form attached hereto as Exhibit C as related to holding and release of the Deposit, the scheduling of deadlines, restrictions on credit bidding for the Acquired Assets, contract assumption and assignment procedures and application of proceeds of the sale of any Acquired Assets to the obligations under the DIP Credit Agreement and (ii) the Sale Order (in form and substance reasonably satisfactory to Purchaser) and such Order shall be a Final Order.

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

(a) the representations and warranties made by Sellers in Article III shall be true and correct (disregarding all qualifications or limitations as to "materiality" or "Material Adverse Effect" and words of similar import set forth therein) as of the Closing Date (as though such representations and warranties had been made on and as of the Closing Date) (other than representations and warranties that by their terms address matters only as of another specified date, which shall be so true and correct only as of such other specified date), except where the failure of such representations and warranties to be true and correct has not had, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; provided, however, that the representations set forth in Sections 3.1, 3.2, 3.3(a)(i), 3.5(b) and 3.15 will be true and correct in all respects and the representations set forth in Section 3.5(a) shall be true and correct in all material respects, in each case as of the Closing Date (as though such representations and warranties had been made on and as of the Closing Date) (other than representations and warranties that by their terms address matters only as of another specified date, which shall be so true and correct only as of such other specified date).

(b) Sellers shall have performed in all material respects the covenants and agreements required to be performed by them under this Agreement at or prior to the Closing; and

(c) Sellers shall have delivered all items pursuant to Section 2.4.

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

(a) the representations and warranties made by Purchaser in Article IV shall be true and correct in all material respects (without giving effect to any materiality or similar qualification contained therein), in each case as of the Closing Date (with the same force and effect as though all such representations and warranties had been made as of the Closing Date) (other

than representations and warranties that by their terms address matters only as of another specified date, which shall be so true and correct only as of such other specified date), except where the failure of such representations or warranties to be so true and correct has not had, and would not reasonably be expected to have, individually or in the aggregate, a material adverse effect on Purchaser's ability to consummate the transactions contemplated hereby; provided that the representations set forth in Sections 4.1 and 4.2 will be true and correct in all material respects;

(b) Purchaser shall have performed in all material respects all of the covenants and agreements required to be performed by it under this Agreement at or prior to the Closing;

(c) Purchaser shall have delivered all items pursuant to Section 2.5; and

(d) Purchaser shall have paid all Cure Costs for all Acquired Contracts other than Previously Omitted Contracts for which Cure Costs have not been consensually agreed with the Contract counterparty or fixed by an order of the Bankruptcy Court as of the Closing Date.

ARTICLE VIII

TERMINATION

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

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

(b) by written notice of either Purchaser (on the one hand) or the Sellers (on the other hand) to the other, upon the issuance by any Governmental Body of an Order restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement or declaring unlawful the transactions contemplated by this Agreement, and such Order having become final, binding and non-appealable; provided that no termination may be made by a Party under this Section 8.1(b) if the issuance of such Order was caused by the breach or action or inaction of such Party;

(c) by written notice of either Purchaser (on the one hand) or the Sellers (on the other hand) to the other, if the Closing shall not have occurred on or before October 15, 2021 (the "Outside Date"); provided that a Party shall not be permitted to terminate this Agreement pursuant to this Section 8.1(c) if the failure of the Closing to have occurred by the Outside Date was caused by the breach or action or inaction of Purchaser (with respect to a termination by the Sellers) or any Seller (with respect to a termination by the Sellers);

(d) by written notice of either Purchaser (on the one hand) or the Sellers (on the other hand) to the other, if the Bankruptcy Case is dismissed or converted to a case or cases under Chapter 7 of the Bankruptcy Code, or if a trustee or examiner with expanded powers to operate or manage the financial affairs or reorganization of the Sellers is appointed in the Bankruptcy Case;

(e) by written notice from the Sellers to Purchaser, upon a breach of any covenant or agreement on the part of Purchaser, or if any representation or warranty of Purchaser

will have become untrue, in each case, such that the conditions set forth in Section 7.3(a) or 7.3(b) would not be satisfied, including a breach of Purchaser's obligation to consummate the Closing; provided that (i) if such breach is curable by Purchaser then the Sellers may not terminate this Agreement under this Section 8.1(e) unless such breach has not been cured by the date which is the earlier of (A) two (2) Business Days prior to the Outside Date and (B) ten (10) Business Days after the Sellers notify Purchaser of such breach and (ii) the right to terminate this Agreement pursuant to this Section 8.1(e) will not be available to the Sellers at any time that any Seller is in material breach of any covenant, representation or warranty hereunder;

(f) by written notice from Purchaser to the Sellers, upon a breach of any covenant or agreement on the part of any Seller, or if any representation or warranty of any Seller will have become untrue, in each case, such that the conditions set forth in Section 7.2(a) or 7.2(b) would not be satisfied; provided that (i) if such breach is curable by such Seller then Purchaser may not terminate this Agreement under this Section 8.1(f) unless such breach has not been cured by the date which is the earlier of (A) two (2) Business Days prior to the Outside Date and (B) ten (10) Business Days after Purchaser notifies the Sellers of such breach and (ii) the right to terminate this Agreement pursuant to this Section 8.1(f) will not be available to Purchaser at any time that Purchaser is in material breach of any covenant, representation or warranty hereunder;

(g) by written notice from the Sellers to Purchaser, if (A) all of the conditions set forth in Sections 7.1 and 7.2 have been satisfied (other than conditions that by their nature are to be satisfied at the Closing) or waived and Purchaser fails to complete the Closing at the time required by Section 2.3 or (B) if any Seller or the board of directors, board of managers, or similar governing body of any Seller determines in good faith, on advice in the opinion of outside legal counsel, that proceeding with the transactions contemplated by this Agreement or failing to terminate this Agreement would violate applicable Law or breach its or such Person's or body's fiduciary obligations under applicable Law;

(h) by written notice from Purchaser to the Sellers, if all of the conditions set forth in Sections 7.1 and 7.3 have been satisfied (other than conditions that by their nature are to be satisfied at the Closing) or waived and the Sellers fail to complete the Closing at the time required by Section 2.3;

(i) by written notice of either Purchaser (on the one hand) or the Sellers (on the other hand) to the other, if (i) any Seller enters into (or provides written notice to Purchaser of its intent to enter into) one or more Alternative Transactions with one or more Persons other than Purchaser or (ii) the Bankruptcy Court approves an Alternative Transaction other than with Purchaser;

(j) by written notice of either Purchaser (on the one hand) or the Sellers (on the other hand) to the other, if (i) Purchaser is not the Successful Bidder at the Auction and (ii) either (A) Purchaser is not required by the terms of this Agreement or the Bidding Procedures Order to serve as the Backup Bidder or (B) the Purchaser is required by the terms of this Agreement or the Bidding Procedures Order to serve as the Backup Bidder, but closing of the sale of the Acquired Assets has not occurred within thirty (30) days of the conclusion of the Auction;

(k) by written notice of either Purchaser (on the one hand) or the Sellers (on the other hand) to the other, if the Bankruptcy Court shall have stated unconditionally that it will not enter the Sale Order approving the sale to the Purchaser; or

(l) the Petition Date shall not have occurred within two Business Days following the date of this Agreement.

8.2 Effect of Termination. In the event of termination of this Agreement pursuant to Section 8.1, this Agreement shall become null and void and there shall be no Liability on the part of any Party or any of its Related Parties to the other Parties; provided that Section 2.2, Section 5.1(a), this Section 8.2 and Article X shall survive any such termination; provided further that no termination will relieve any Party from any Liability for damages (including damages based on the loss of the economic benefits of the transactions contemplated by this Agreement or any Transaction Document, including the Cash Payment, to Sellers), losses, costs or expenses (including reasonable legal fees and expenses) to any non-breaching Party resulting from any material breach of this Agreement by such first Party prior to the date of such termination (which, for the avoidance of doubt, will be deemed to include any failure by the Sellers or Purchaser to consummate the Closing if and when it is obligated to do so hereunder) or Fraud. Any amounts payable to Sellers for damages hereunder (net of collection costs) shall be paid to the DIP Collateral Proceeds Account.

ARTICLE IX

TAXES

9.1 Transfer Taxes. Any sales, use, value-added, goods and services, registration, conveyancing, purchase, transfer, franchise, deed, fixed asset, stamp, documentary, use or similar Taxes and recording charges which may be payable by reason of the sale of the Acquired Assets or the assumption of the Assumed Liabilities under this Agreement or the transactions contemplated hereby (the "Transfer Taxes") shall be borne and timely paid by Purchaser, but only to the extent not exempt under the Bankruptcy Code, as applicable to the transfer of the Acquired Assets pursuant to this Agreement. Purchaser shall timely file any Tax Returns as may be required to comply with the provisions of applicable Law in connection with the payment of such Transfer Taxes.

9.2 Allocation of Purchase Price. Purchaser shall prepare an allocation of the Purchase Price and the Assumed Liabilities (plus other relevant items) among the Acquired Assets for all Tax purposes (the "Purchase Price Allocation") in accordance with the principles of Section 1060 of the Code (and any similar provision of state, local, or non-U.S. law, as appropriate). Purchaser shall deliver such allocation to the Company within thirty (30) days following the Closing Date for the Company's review, comment and approval. Purchaser and the Company shall work together to jointly agree to the final allocation. If Purchaser and the Company agree on the allocations, such allocations will become the Purchase Price Allocation and in such case (i) Purchaser and the Sellers will report, act and file Tax Returns (including, but not limited to Internal Revenue Service Form 8594) in all respects and for all purposes consistent with the Purchase Price Allocation and (ii) the parties will not take any position (whether in audits, on any Tax Returns or

otherwise) that is inconsistent with the Purchase Price Allocation unless required to do so by a "determination" as defined in Section 1313 of the Code. If Purchaser and the Company do not reach an agreement each of Purchaser and the Company shall be permitted to file, and shall permit its Affiliates to file, federal and applicable state income Tax Returns (including IRS Form 8594 or other applicable form) in any manner that it chooses regarding the allocation of the Purchase Price, applicable Assumed Liabilities and other relevant items. The Sellers shall provide Purchaser and Purchaser shall provide the Sellers with a copy of any information required to be furnished to the Secretary of the Treasury under Code Section 1060.

9.3 Cooperation. Purchaser and Sellers shall cooperate fully, as and to the extent reasonably requested by the other Party, in connection with the filing of Tax Returns and any audit, litigation or other proceeding with respect to Taxes. Purchaser and Sellers further agree, upon request in writing from either party, to use their commercially reasonable efforts to obtain any certificate or other document (including any resale exemption certification) from any Governmental Body or any other Person as may be necessary to mitigate, reduce or eliminate any Tax that could be imposed (including, but not limited to, with respect to the transactions contemplated hereby); provided that the requesting party shall reimburse the other party for its reasonable out-of-pocket costs incurred in satisfying the request.

9.4 Straddle Period. In the case of any taxable period that includes (but does not end on) the Closing Date (a "Straddle Period"), the amount of any property, ad valorem or other Taxes not based on income or gross receipts for a Straddle Period that relates to the Pre-Closing Tax Period shall be deemed to be the amount of such Tax for the entire taxable period multiplied by a fraction the numerator of which is the number of days in the taxable period ending on and including the Closing Date and the denominator of which is the number of days in such Straddle Period. The amount of any Taxes based on income or gross receipts for a Straddle Period shall be determined by an interim closing of the books. To the extent the actual amount of a Tax is not known at the time a determination is to be made with respect to a Tax, no later than two Business Days prior to the date of such determination, the Parties shall utilize the most recent information available in estimating in good faith the amount of such Tax for purposes of such determination.

ARTICLE X

MISCELLANEOUS

10.1 Non-Survival of Representations and Warranties and Certain Covenants. Each of the representations and warranties and the covenants and agreements (to the extent such covenant or agreement contemplates or requires performance by such party prior to or at the Closing) of the Parties set forth in this Agreement, or in any certificate delivered hereunder, will terminate effective immediately as of the Closing such that, other than in the case of Fraud, no claim for breach of any such representation, warranty, covenant or agreement, detrimental reliance or other right or remedy (whether in contract, in tort or at law or in equity) may be brought with respect thereto after the Closing. Each covenant and agreement to the extent such covenant or agreement contemplates or requires performance after the Closing, will, in each case and to such extent, expressly survive the Closing in accordance with its terms, and if no term is specified, until fully performed.

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

10.3 Notices. Except as otherwise expressly provided herein, all notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given (a) when personally delivered, (b) when transmitted via facsimile device or by electronic mail (provided with respect to electronic mail that no "bounce back" or similar message of non-delivery is received with respect thereto) (unless if transmitted after 5:00 P.M. Central time or other than on a Business Day, then on the next Business Day), (c) the day following the day on which the same has been delivered prepaid to a reputable national overnight air courier service or (d) the third (3rd) Business Day following the day on which the same is sent by certified or registered mail, postage prepaid, in each case, to the respective party at the number, electronic mail address or street address, as applicable, set forth below, or at such other number, electronic mail address or street address as such party may specify by written notice to the other Party.

Notices to Purchaser:
WH AQ Holdings LLC
15 Riverside Ave.
Westport, CT 06880
Attention: Andrew Tarshis
Email: atarshis@windsongglobal.com

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

Dechert LLP
Three Bryant Park
1095 Avenue of the Americas
New York, NY 10036
Attention: Naz Zilkha
Email: nzilkha@dechert.com

Notices to Guarantor:

Hilco Trading, LLC
5 Revere Dr. Suite 206
Northbrook, IL 60062
Attention: Eric Kaup
Email: ekaup@hilcoglobal.com

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

Dechert LLP
Three Bryant Park
1095 Avenue of the Americas
New York, NY 10036
Attention: Naz Zilkha
Email: nzilkha@dechert.com

Notices to Sellers:

GBG USA Inc.
Empire State Building
350 5th Ave, 9th Floor
New York, New York 10118
Attention: Robert Smits, EVP and Secretary
Email: robertsmits@globalbrandsgroup.com

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

Willkie Farr & Gallagher LLP
787 Seventh Ave
New York, New York 10019
Attention: Rachel C. Strickland
Andrew S. Mordkoff
Claire E. James
Facsimile: (212) 728-8111
Email: rstrickland@willkie.com
amordkoff@willkie.com
cejames@willkie.com

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

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

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

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

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

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

10.10 Schedules. The disclosure schedules to this Agreement (the "Schedules") have been arranged for purposes of convenience in separately numbered sections corresponding to the sections of this Agreement; provided that each section of the Schedules will be deemed to incorporate by reference all information disclosed in any other section of the Schedules to the extent that the relevance of such disclosure to such other actions is reasonably apparent from the text of such disclosure. Capitalized terms used in the Schedules and not otherwise defined therein have the meanings given to them in this Agreement. The specification of any dollar amount or the inclusion of any item in the representations and warranties contained in this Agreement, the Schedules or the attached Exhibits is not in and of itself intended to imply that the amounts, or higher or lower amounts, are or are not material or are within or outside of the Ordinary Course, and no party will use the fact of the setting of the amounts or the fact of the inclusion of any item in the representations and warranties contained in this Agreement, the Schedules or the attached Exhibits, in and of itself, in any dispute or controversy between the Parties as to whether the amount or items are material or are within or outside of the Ordinary Course. In addition, matters reflected in the Schedules are not necessarily limited to matters required by this Agreement to be reflected in the Schedules. Such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature. No information set forth in the Schedules will be deemed to broaden in any way the scope of the parties' representations and warranties. Any description of any agreement, document, instrument, plan, arrangement or other item set forth on any Schedule is a summary only and is qualified in its entirety by the terms of such agreement, document, instrument, plan, arrangement or item which terms will be deemed

disclosed for all purposes of this Agreement. The information contained in this Agreement, in the Schedules and Exhibits hereto is disclosed solely for purposes of this Agreement, and no information contained herein or therein will be deemed to be an admission by any Party to any third party of any matter whatsoever, including any violation of Law or breach of contract.

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

10.12 Specific Performance. The Parties agree that irreparable damage, for which monetary relief, even if available, would not be an adequate remedy, would occur in the event that any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached, including if any Party fails to take any action required of it hereunder to consummate the transactions contemplated by this Agreement. It is accordingly agreed that (a) the Parties will be entitled to an injunction or injunctions, specific performance or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in the courts described in Section 10.13 without proof of damages or otherwise, this being in addition to any other remedy to which they are entitled under this Agreement, and (b) the right of specific performance and other equitable relief is an integral part of the transactions contemplated by this Agreement and without that right, neither Sellers nor Purchaser would have entered into this Agreement. The Parties acknowledge and agree that any Party pursuing an injunction or injunctions or other Order to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in accordance with this Section 10.12 will not be required to provide any bond or other security in connection with any such Order. The remedies available to Sellers pursuant to this Section 10.12 will be in addition to any other remedy to which they were entitled at law or in equity, and the election to pursue an injunction or specific performance will not restrict, impair or otherwise limit any Seller from seeking to collect or collecting damages. If, prior to the Outside Date, any Party brings any action, in each case in accordance with this Section 10.12, to enforce specifically the performance of the terms and provisions hereof by any other party, the Outside Date will automatically be extended (y) for the period during which such action is pending, plus ten (10) Business Days or (z) by such other time period established by the court presiding over such action, as the case may be. In no event will this Section 10.12 be used, alone or together with any other provision of this Agreement, to require any Seller or Purchaser, as applicable, to remedy any breach of any representation or warranty of any Seller or Purchaser, as applicable, made herein. Sellers (on the one hand) and Purchaser (on the other hand) shall be entitled to specific performance to cause the other party to effect the

Closing in accordance with Section 2.3 only if (i) all of the conditions set forth in Article VII (other than conditions that by their terms or nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions at the Closing) have been satisfied or waived as of the time when Closing is required to have occurred pursuant to Section 2.3, (ii) the first party shall have confirmed to the other party in writing that the Closing will occur pursuant to Section 2.3 if specific performance is granted, (iii) the first party has not validly terminated this Agreement pursuant to Section 8.1 and (iv) the other party has failed to complete the Closing at a time required by Section 2.3.

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

10.14 Governing Law; Waiver of Jury Trial.

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

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT, THE DOCUMENTS AND AGREEMENTS CONTEMPLATED HEREBY AND THE TRANSACTIONS

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

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

10.16 Publicity. Neither the Sellers nor Purchaser shall issue any press release or public announcement concerning this Agreement or the transactions contemplated hereby without obtaining the prior written approval of the other Party, which approval will not be unreasonably withheld or delayed, unless, in the reasonable judgment of Purchaser or the Company, disclosure is otherwise required by applicable Law or by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement.

10.17 Bulk Sales Laws. The Parties intend that pursuant to Section 363(f) of the Bankruptcy Code, the transfer of the Acquired Assets shall be free and clear of any security interests in the Acquired Assets, including any liens or claims arising out of the bulk transfer laws, and the Parties shall take such steps as may be necessary or appropriate to so provide in the Sale

Order. In furtherance of the foregoing, each Party hereby waives compliance by the Parties with the "bulk sales," "bulk transfers" or similar Laws and all other similar Laws in all applicable jurisdictions in respect of the transactions contemplated by this Agreement.

10.18 Waiver of Conflicts. Sellers have engaged Willkie Farr & Gallagher LLP as its legal counsel in connection with the transactions contemplated hereby. In the event that such counsel now or in the future represents Purchaser in connection with matters unrelated to the transactions contemplated hereby, Purchaser hereby (a) consents to the continued representation of the Sellers or any other Seller Party by such counsel in connection with the transactions contemplated hereby, and (b) waives any actual, potential or alleged conflict of interest that exists or may arise from such counsel's representation of any Seller Party in connection with the transactions contemplated hereby, and any Actions or other dispute resolution proceedings of any kind in respect of the foregoing. Nothing contained herein shall be deemed to be a waiver of any privilege or consent to the disclosure of any privileged information. Purchaser hereby acknowledges that Purchaser has obtained independent legal advice in connection with the foregoing consent and waiver. For the avoidance of doubt, the Company retains the right to pursue any transaction or restructuring strategy that, in the Company's business judgment, will maximize the value of its estates.

10.19 Guarantee.

(a) Guarantor hereby irrevocably, absolutely and unconditionally guarantees (as the primary obligor and not merely as surety) to Sellers the prompt and full performance, discharge and payment by Purchaser of each of Purchaser's covenants, agreements, obligations and liabilities under this Agreement and any Transaction Document (including, without limitation, the making of any payments required by Section 2.1 hereof) (collectively, the "Purchaser Obligations", and Guarantor's guarantee thereof, the "Guaranty"). The foregoing sentence is an absolute, unconditional and continuing guarantee of the full and punctual discharge and performance of the Guaranteed Obligations. The Guarantor acknowledges and agrees that, with respect to all the Purchaser Obligations to pay money pursuant to this Agreement, such guarantee shall be a guarantee of payment and performance and not of collection and shall not be conditioned or contingent upon the pursuit of any remedies against Purchaser.

(b) Guarantor hereby waives diligence, presentment, demand of performance, filing of any claim, any right to require any Action first against Purchaser, protest, notice and all demands whatsoever in connection with the performance of its obligations set forth in this Section 10.19.

(c) Guarantor agrees that the Guaranty is a continuing guarantee, and that its obligations under the Guaranty shall not be released or discharged, in whole or in part, or otherwise affected by:

(i) any change in the corporate existence, structure or ownership of Purchaser or the Sellers;

(ii) any insolvency, bankruptcy, reorganization or other similar proceeding affecting Purchaser;

(iii) any change in the time, place, or manner of payment of the Purchaser Obligations, or any rescission, waiver, compromise, or other amendment or modification of any of the terms or provisions of this Agreement, the Transaction Documents or any other agreement or instrument relating thereto made in accordance with the terms thereof or any other agreement evidencing, securing or otherwise executed in connection with the Purchaser Obligations;

(iv) the addition, substitution or release of any Person now or hereafter liable for the Purchaser Obligations; or

(v) any other act or omission which may in any manner otherwise operate as a release or discharge of a surety.

(vi) This Guaranty may not be revoked or terminated and shall remain in full force and effect and shall be binding on Guarantor and its successors until the Purchaser Obligations have been indefeasibly paid in full in cash and performed in full.

ARTICLE XI

ADDITIONAL DEFINITIONS AND INTERPRETIVE MATTERS

11.1 Certain Definitions.

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

(b) "Acquired Business" means the Sellers' global wholesale, e-commerce and retail footwear and accessories business operated under the Aquatalia brand.

(c) "Acquired Business Royalties" means any guaranteed royalties, earned royalties, marketing fund payments, other royalties or licensing receivables (or other similar amounts under the Assigned Contracts) generated by the Acquired Assets with respect to any period.

(d) "Advisors" means, with respect to any Person, the accountants, attorneys, consultants, advisors, investment bankers, or other representatives of such Person.

(e) "Affiliate" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause

the direction of the management and policies of such Person, whether through ownership of voting securities, by Contract or otherwise.

(f) "Alternative Transaction" means any transaction (or series of transactions), whether direct or indirect, concerning a sale, merger, acquisition, issuance, financing, recapitalization, reorganization, liquidation or disposition of any Seller or any portion of the equity interests of any Seller or any portion of the Acquired Assets (in any form of transaction, whether by merger, sale of assets or equity or otherwise).

(g) "Assumed Taxes" means any Liability for Taxes arising from the ownership or operation of the Acquired Business, the Acquired Assets or the Assumed Liabilities for a Post-Closing Tax Period.

(h) "Auction" has the meaning set forth in the Bidding Procedures Order.

(i) "Bidding Procedures Order" has the meaning set forth in Section 5.3(a)(i).

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

(k) "Code" means the United States Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, as the same may be in effect from time to time.

(l) "Confidentiality Agreement" means the Agreement, dated as of April 19, 2021, by and between the Company and Windsong Global LLC.

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

(n) "Contract" means any contract, indenture, note, bond, lease, sublease, license or other agreement that is binding upon a Person or its property.

(o) "DIP Agent" means Restore Capital, LLC.

(p) "DIP Collateral Proceeds Account" has the meaning set forth in the DIP Credit Agreement.

(q) "DIP Credit Agreement" means that certain Debtor-in-Possession Term Loan Agreement, dated as of July 28, 2021, by and among GBG USA Inc., as Borrower, the Guarantors named therein, ReStore Capital, LLC, as Agent, and the other Lenders party thereto.

(r) "DIP Facility" means the debtor-in-possession credit facility provided to the Debtors under the DIP Credit Agreement and approved by the Bankruptcy Court.

(s) "Disputed Contract" means a Contract designated by the Purchaser at any time as an Assigned Contract pursuant to Section 1.5(a) or 1.5(d) hereof, for which the applicable

counterparty has objected to the Cure Costs, the proposed adequate assurance of future performance by Purchaser, or the assumption of its Contract.

(t) "Documents" means all of the Sellers' written files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, plans, operating records, safety and environmental reports, data, studies and documents, ledgers, journals, title policies, customer lists, regulatory filings, operating data and plans, research material, technical documentation (design specifications, engineering information, test results, maintenance schedules, functional requirements, operating instructions, logic manuals, processes, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, web pages, etc.) and other similar materials, in each case whether or not in electronic form.

(u) "E-Commerce Platform" means the series of software and hardware applications integrated into, and through which Sellers sell inventory to consumers who place orders for such inventory through, the http://www.aquatalia.com (and similar permutations thereof) website, including the Contracts pursuant to which such software and hardware applications are owned or licensed by Sellers.

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

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

(x) "Final Order" means an order or judgment of the Bankruptcy Court or any other court of competent jurisdiction entered by the clerk of the Bankruptcy Court or such other court on the docket in Sellers' Bankruptcy Case or the docket of such other court, which has not been modified, amended, reversed, vacated or stayed and as to which (a) the time to appeal, petition for certiorari, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for certiorari or motion for new trial, reargument or rehearing shall then be pending or (b) if an appeal, writ of certiorari new trial, reargument or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court or other court of competent jurisdiction shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, reargument or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or move for a new trial, reargument or rehearing shall have expired, as a result of which such order shall have become final in accordance with Rule 8002 of the Federal Rules of Bankruptcy Procedure; provided that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure,

or any analogous rule under the Bankruptcy Rules, may be filed relating to such order, shall not cause such order not to be a Final Order.

(y) "Fraud" means, with respect to any Party, actual common law fraud (and not constructive fraud, negligent misrepresentation or negligent omission, or any form of fraud premised on recklessness or negligence) under the Laws of the State of Delaware, which shall only be deemed to exist if such party makes a representation or warranty (as qualified by the Schedules) in Article III (with respect to the Sellers) or Article IV (with respect to Purchaser), as applicable, with actual knowledge that such representation or warranty was false at the time such representation or warranty was made.

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

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

(bb) "Governmental Body" means any government, or other governmental or regulatory body, agency or political subdivision thereof of any nature, whether foreign, federal, state or local, or any agency, branch, department, official, entity, instrumentality or authority thereof, or any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of any such government or political subdivision, and any supranational organization of sovereign states exercising such functions for such sovereign states.

(cc) "IFRS" means the International Financial Reporting Standards as in effect from time to time.

(dd) "Intellectual Property" means all of the following: (i) patents, patent applications and patent disclosures; (ii) trademarks, service marks, trade dress, corporate names and Internet domain names, together with all goodwill associated with each of the foregoing; (iii) copyrights; (iv) registrations and applications for any of the foregoing; (v) trade secrets and know-how; and (vi) all other intellectual property.

(ee) "Knowledge of Sellers" or words of similar effect, regardless of case, means the actual knowledge of Mark Caldwell and Chris Nakatani.

(ff) "Law" means any federal, state, provincial, local, municipal, foreign or international, multinational or other law, statute, legislation, constitution, principle of common law, resolution, ordinance, code, edict, decree, proclamation, treaty, convention, rule, regulation, ruling, directive, pronouncement, determination, decision, opinion or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body.

(gg) "Leasehold Improvements" means all buildings, structures, improvements and fixtures which are owned by a Seller and located on any Acquired Leased Real Property,

regardless of whether title to such buildings, structures, improvements or fixtures are subject to reversion to the landlord or other third party upon the expiration or termination of the lease for such Acquired Leased Real Property.

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

(ii) "Licensed Intellectual Property" means any and all Intellectual Property licensed by one or more of the Sellers from any other Person and used primarily in, held for use primarily in, or otherwise related primarily to the Acquired Business.

(jj) "Material Adverse Effect" means any event, change, occurrence or effect (each, an "Effect") that, individually or in the aggregate with all other Effects, has had, or would reasonably be expected to have, a material adverse effect on the business, operations, Liabilities, properties, assets or condition (financial or otherwise) of the Acquired Business, including the Acquired Assets and Assumed Liabilities, taken as whole; provided that none of the following shall constitute or be taken into account in determining whether or not there has been a Material Adverse Effect: (i) general business or economic conditions generally affecting the industry in which the Sellers operate as primarily related to the Acquired Business, (ii) national or international political or social conditions, including the engagement by the United States in hostilities or the escalation thereof, whether or not pursuant to the declaration of a national emergency or war, or the occurrence or the escalation of any military, cyber or terrorist attack upon the United States, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, asset, equipment or personnel of the United States, (iii) financial, banking, or securities markets (including (A) any disruption of any of the foregoing markets, (B) any change in currency exchange rates, (C) any decline or rise in the price of any security, commodity, contract or index), and (D) any increased cost, or decreased availability, of capital or pricing or terms related to any financing for the transaction contemplated by this Agreement, (iv) changes in GAAP or IFRS, (v) changes in Laws, (vi) (A) the taking of any action expressly required by this Agreement or at the request of Purchaser or its Affiliates (other than the Sellers' obligations to conduct the Acquired Business in the Ordinary Course in accordance with Section 6.1), (B) the failure to take any action if such action is prohibited by this Agreement, or (C) the announcement or pendency of this Agreement or the transactions contemplated hereby or the identity, nature or ownership of Purchaser, including the impact thereof on the relationships, contractual or otherwise, of the business of the Sellers or any of their Subsidiaries with employees, customers, lessors, suppliers, vendors or other commercial partners (provided, that for purposes of Section 3.3, any Effects resulting from or arising in connection with the matters set forth in clause (vi) of this definition shall be taken into account in determining whether a Material Adverse Effect has occurred), (vii) any failure, in and of itself, to achieve any budgets, projections, forecasts, estimates, plans, predictions, performance metrics or operating statistics or the inputs into such items (whether or not shared with Purchaser or its Affiliates or Advisors) (but, for the avoidance

of doubt, not the underlying causes of any such failure to the extent such underlying cause is not otherwise excluded from the definition of Material Adverse Effect), (viii) seasonal fluctuations in the Acquired Business, (ix) any pandemic or epidemic, including COVID-19, or any change, escalation or worsening thereof after the date hereof or (ix) (A) the commencement or pendency of the Bankruptcy Case; (B) any objections in the Bankruptcy Court to (1) this Agreement or any of the transactions contemplated hereby or thereby, (2) the reorganization of Sellers and any related plan of reorganization or disclosure statement, (3) the Sale Motion or (4) the assumption or rejection of any Assigned Contract; (C) any Order of the Bankruptcy Court or any actions or omissions of Sellers or their Subsidiaries in compliance therewith; except in the case of the clauses (i), (ii), (iii), (iv), (v) and (ix), to the extent such Effects have a materially disproportionate impact on the Acquired Business, as compared to other participants engaged in a business comparable to the Acquired Business.

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

(ll) "Ordinary Course" means the ordinary and usual course of operations of the business of the Acquired Business, consistent with past practice, taking into account with the commencement and pendency of the Bankruptcy Case.

(mm) "Petition Date" means the date of commencement of the Bankruptcy Case by the filing of voluntary petitions for relief under Chapter 11 of Title 11 of the Bankruptcy Code in the Bankruptcy Court.

(nn) "Permitted Encumbrances" means (i) Encumbrances for utilities and Taxes not yet due and payable or being contested in good faith and for which adequate reserves have been established in accordance with IFRS, (ii) easements, rights of way, restrictive covenants, encroachments and similar non-monetary encumbrances or non-monetary impediments against any of the Acquired Assets which do not, individually or in the aggregate, adversely affect the operation of the Acquired Assets and, in the case of the Acquired Leased Real Property, which do not, individually or in the aggregate, materially detract from the value of such Acquired Leased Real Property or adversely affect the use or occupancy of such Acquired Leased Real Property as it relates to the operation of the Acquired Assets, (iii) applicable zoning Laws, building codes, land use restrictions and other similar restrictions imposed by Law which are not violated by the current use or occupancy of such Acquired Leased Real Property, as applicable, (iv) materialmans', mechanics', artisans', shippers', warehousemans' or other similar common law or statutory liens incurred in the Ordinary Course for amounts not yet due and payable and that are not resulting from a breach, default or violation by any Seller or any Contract or Law, and (v) licenses granted on a non-exclusive basis, (vi) such other Encumbrances or title exceptions as Purchaser may specifically and expressly approve in writing in its sole discretion.

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

(pp) "Personal Data" means any information relating to an identified or identifiable natural person including (i) a natural person's name, street address, telephone number, email address, photograph, passport number, credit card number, bank information, or account number, and (ii) any other piece of non-publicly available information that allows the identification of such natural person or is otherwise considered personally identifiable information or personal information under Law.

(qq) "Post-Closing Tax Period" means all taxable periods beginning after the Closing Date and the portion beginning after the Closing Date of any taxable period that includes but does not end on the Closing Date.

(rr) "Pre-Closing Tax Period" means all taxable periods ending on or prior to the Closing Date and the portion ending on the Closing Date of any taxable period that includes but does not end on the Closing Date.

(ss) "Prepetition First Lien Credit Agreement" means that certain Credit Agreement, dated as of October 23, 2020 (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time (including by joinder thereto or otherwise), by and among GBG USA Inc. as borrower, Global Brands Group Holding Limited as guarantor, the financial institutions party thereto as lenders (the "Prepetition First Lien Lenders") and HSBC Bank USA, National Association as administrative agent and collateral agent.

(tt) "Prepetition Second Lien Facilities" means those certain bilateral facility agreements (as amended, restated, amended and restated, supplemented, or otherwise modified from time to time (including by joinder thereto or otherwise), by Banc of America Leasing & Capital, LLC, Citibank N.A., The Hongkong and Shanghai Banking Corporation Limited, Mizuho Bank, Ltd., (Incorporated in Japan with Limited Liability), Hong Kong Branch and Standard Chartered Bank New York Branch (and affiliates of any of the forgoing) (the "Prepetition Second Lien Lenders").

(uu) "Purchaser Group" means Purchaser and each of its Related Parties.

(vv) "Required Prepetition First Lien Lenders" has the meaning assigned to such term in the Prepetition First Lien Credit Agreement.

(ww) "Required Prepetition Second Lien Lenders" means the Prepetition Second Lien Lenders holding at least 66.67% of the aggregate voting obligations under the Prepetition Second Lien Facilities.

(xx) "Retained Business" means any business that is not the Acquired Business.

(yy) "Sale Motion" has the meaning set forth in Section 5.3(a).

(zz) "Sale Order" means a Final Order of the Bankruptcy Court, in form and substance reasonably acceptable to the Purchaser, approving the sale of the Acquired Assets consistent with the terms of this Agreement and the Bidding Procedures Order.

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

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

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

(ddd) "Secured Lenders" means, collectively, the Prepetition First Lien Lenders and the Prepetition Second Lien Lenders.

(eee) "Seller Plans" means all "employee benefit plans" (within the meaning of Section 3(3) of ERISA (and whether or not subject to ERISA) and all other (i) nonqualified deferred compensation or retirement plans, (ii) qualified "defined contribution plans" (as such term is defined under Section 3(34) of ERISA), (iii) qualified "defined benefit plans" (as such term is defined under Section 3(35) of ERISA), (iv) "welfare benefit plans" (as such term is defined under Section 3(1) of ERISA) and (v) severance, incentive or bonus, stock purchase, stock option or equity incentive or any other employee benefit plans, policy, programs, arrangements or agreements (including employment and collective bargaining agreements), whether written or unwritten, insured or self-insured, in each case, established, maintained, sponsored or contributed to (or with respect to which any obligation to contribute has been undertaken) by Sellers, their Subsidiaries, the Acquired Business or any entity that would be deemed a "single employer" with Sellers, their Subsidiaries or the Acquired Business under Section 414(b), (c), (m) or (o) of the Code or Section 4001 of ERISA (each, an "ERISA Affiliate") on behalf of any employee, director or other individual service provider of Sellers, their Subsidiaries or the Acquired Business (whether current, former or retired) or their beneficiaries, or with respect to which Sellers, their Subsidiaries, the Acquired Business or any ERISA Affiliate has any Liability on behalf of any such employee, director or other individual service provider or beneficiary.

(fff) "Shared Intellectual Property Licenses" means any and all Contracts relating to the inbound or outbound licensing of Intellectual Property relied upon by both the business of any Subsidiary of the Sellers or other business retained by Sellers on the one hand, and the Acquired Business on the other hand.

(ggg) "Subsidiary" means, with respect to any Person, any corporation of which a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof is at the time

owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person or a combination thereof or any partnership, association or other business entity of which a majority of the partnership or other similar ownership interest is at the time owned or controlled, directly or indirectly, by such Person or one or more Subsidiaries of such Person or a combination thereof.

(hhh) "Tax" means any federal, state, local, non-U.S. or other income, gross receipts, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, escheat, unclaimed property, ad valorem/personal property, stamp, excise, occupation, sales, use, transfer, value added, import, export, alternative minimum or estimated tax, including any interest, penalty or addition thereto.

(iii) "Tax Return" means any return (including any information return), report, statement, declaration, estimate, schedule, notice, notification, form, election, certificate or other document or information (including any amendments thereto) that is, has been or may in the future be filed with or submitted to, or required to be filed with or submitted to, any Governmental Body in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any Law relating to any Tax.

(jjj) "Transaction Documents" means (i) the Bill of Sale, (ii) the Assignment and Assumption Agreement, (iii) the Transition Services Agreement and (iv) the other agreements, instruments, and documents required to be delivered in connection with this Agreement.

11.2 Index of Defined Terms.

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

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

(b) The terms "hereof," "herein" and "hereunder" and terms of similar import are references to this Agreement as a whole and not to any particular provision of this Agreement. Section, clause, schedule and Exhibit references contained in this Agreement are references to sections, clauses, schedules and Exhibits in or to this Agreement, unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

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

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

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

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

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

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

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

(j) Any document or item will be deemed "delivered", "provided" or "made available" by the Sellers, within the meaning of this Agreement if such document or item (a) is included in the Dataroom no later than twenty-four (24) hours prior to the date of this Agreement, (b) actually delivered or provided to Purchaser or Purchaser's attorneys no later than twenty-four (24) hours prior to the date of this Agreement, or (c) actually delivered or provided to Purchaser or Purchaser's attorneys by email with acknowledgment of receipt.

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

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

(m) All references to a day or days shall be deemed to refer to a calendar day or calendar days, as applicable, unless the defined term "Business Day" is used.

[*Signature page(s) follow*.]

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

PURCHASER

WH AQ HOLDINGS LLC

By: _____
Name: Andrew Tarshis
Title: Authorized Representative

GUARANTOR

HILCO TRADING, LLC

By: _____
Name:
Title:

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

PURCHASER

WH AQ HOLDINGS LLC

By: _____
Name:
Title:

GUARANTOR

HILCO TRADING, LLC

By: _____
Name: Sarah Baker
Title: Vice President & Assistant General Counsel

SELLERS

GBG USA INC.

By: _____
Name: Ronald Ventricelli
Title: President, North America

JIMLAR CORPORATION

By: _____
Name: Ronald Ventricelli
Title: President, North America

KRASNOW ENTERPRISES LTD.

By: _____
Name: Ronald Ventricelli
Title: President, North America

KRASNOW ENTERPRISES INC.

By: _____
Name: Ronald Ventricelli
Title: President, North America

EXHIBIT A

FORM OF BILL OF SALE

BILL OF SALE

This BILL OF SALE (this "Agreement") is executed and effective as of [●], 2021, by and among GBG USA Inc., a Delaware corporation (the "Company"), and the affiliates of the Company that are indicated on the signature page hereto (together with the Company, each a "Seller" and collectively "Sellers"), and WH AQ Holdings LLC, a Delaware limited liability company ("Purchaser"). Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Purchase Agreement (as defined below).

WHEREAS, each Seller is a debtor and debtor in possession in those certain bankruptcy cases under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 1532 (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York, to be jointly administered for procedural purposes only (the "Bankruptcy Case");

WHEREAS, in connection with the Bankruptcy Case, Sellers and Purchaser have entered into that certain Asset Purchase Agreement, dated as of [●], 2021 (the "Purchase Agreement");

WHEREAS, Sellers desire to sell, convey, assign, transfer, and deliver to Purchaser, and Purchaser desires to purchase, acquire and accept from Sellers, all of Sellers' rights, titles, and interests in, to and under the Acquired Assets; and

WHEREAS, pursuant to the Purchase Agreement, Sellers and Purchaser have agreed to enter into this Agreement pursuant to which the Acquired Assets will be conveyed to Purchaser.

NOW, THEREFORE, for and in consideration of the payment by Purchaser of the Purchase Price pursuant to and in accordance with the terms of the Purchase Agreement and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

1. Sale; Assignment; Transfer; Conveyance and Delivery. Sellers hereby irrevocably SELL, CONVEY, ASSIGN, TRANSFER, and DELIVER to Purchaser (or its affiliated designee) and its successors and assigns for its and their own use forever, as provided in the Purchase Agreement, all of the rights, titles and interests of Sellers as of the Closing in and to all of the Acquired Assets, and Purchaser hereby PURCHASES, ACQUIRES and ACCEPTS from Sellers all of Sellers' rights, titles and interests in and to all of the Acquired Assets, free and clear of any Encumbrances.

2. Consummation. Upon the request of any party at any time after the Closing Date, and at the expense of such requesting party, the requested party shall forthwith execute and deliver such further instruments of deed, assignment, transfer and conveyance, endorsement, direction or authorization and other documents as the requesting party or its counsel as may reasonably be required to perfect title of Purchaser (or its affiliated designee) and its successors and assigns to the Acquired Assets or otherwise to effectuate the purposes of this Agreement.

3. Priority. Notwithstanding anything in this Agreement to the contrary, nothing contained herein shall in any way supersede, modify, alter, replace, amend, change, diminish, rescind, waive, exceed, expand, enlarge or in any way affect the provisions, including the warranties, covenants, agreements, conditions, representations or, in general, any of the rights and remedies or any of the obligations (including for indemnification) of Sellers or Purchaser set forth in the Purchase Agreement. This Agreement is intended only to effect the sale, assignment, transfer, conveyance and delivery to Purchaser of Sellers' rights, titles and interests in the Acquired Assets free and clear of any Encumbrances pursuant to the Purchase Agreement and shall be governed entirely in accordance with the terms and conditions of the Purchase Agreement, which shall in all respects survive the execution and delivery of this Agreement in accordance with its terms. To the extent that any provision of this Agreement conflicts or is inconsistent with the terms of the Purchase Agreement, the provisions of the Purchase Agreement shall govern.

4. Successors and Assigns. This Agreement shall be binding upon Purchaser and, subject to entry of the Bidding Procedures Order (with respect to the matters covered thereby) and the Sale Order, Sellers, and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns, including any trustee or estate representative appointed in the Bankruptcy Case or any successor Chapter 7 case, and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Any purported assignment in violation of this Section shall be null and void. No assignment shall relieve the assigning party of any of its obligations hereunder.

5. No Assumption of Liabilities. Except as otherwise set forth in the Purchase Agreement, nothing expressed or implied in this Agreement shall be deemed to be an assumption by Purchaser of any Excluded Liabilities of Sellers.

6. Governing Law. Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement, and any Action that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance of this Agreement or the transactions contemplated hereby will be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction). Any Action arising out of or related to this Agreement may be instituted in the federal courts of the United States of America or the courts of the State of Delaware, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, proceeding, or dispute.

7. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. A signed digital copy of this Agreement shall be treated as an original.

8. Descriptive Headings. The section and paragraph headings in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

9. Severability. In the event that any part of this Agreement is declared by any court or other judicial or administrative body to be null, void or unenforceable, said provision shall survive to the extent it is not so declared, and all of the other provisions of this Agreement shall remain in full force and effect.

10. Entire Agreement. This Agreement, the Purchase Agreement and the other Transaction Documents constitute the entire agreement of the parties hereto relating to the purchase of the rights, titles and interests in and to the Acquired Assets, and supersedes all prior agreements and understandings, both written and oral, between the parties with respect to the subject matter hereof, subject to the terms and conditions listed in Section 3 hereof.

11. Amendments. This Agreement may be amended, supplemented or changed only by a writing signed by all parties hereto.

[Signature page follows]

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

PURCHASER

WH AQ HOLDINGS LLC

By: _____
Name:
Title:

SELLERS

GBG USA INC.

By: _____
Name:
Title:

JIMLAR CORPORATION

By: _____
Name:
Title:

KRASNOW ENTERPRISES LTD.

By: _____
Name:
Title:

KRASNOW ENTERPRISES INC.

By: _____
Name:
Title:

EXHIBIT B

FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement"), dated as of [●], 2021, by and among GBG USA Inc., a Delaware corporation (the "Company"), and the affiliates of the Company that are indicated on the signature page hereto (together with the Company, each an "Assignor" and collectively "Assignors"), and WH AQ HOLDINGS LLC, a Delaware limited liability company ("Assignee"). All capitalized terms used but not defined herein shall have the meanings set forth in that certain Asset Purchase Agreement, dated as of [●], 2021, by and among Assignors and Assignee (the "Purchase Agreement").

RECITALS

WHEREAS, each Assignor is a debtor and debtor in possession in those certain bankruptcy cases under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 1532 (the "Bankruptcy Code") in the United States Bankruptcy Court for the Southern District of New York, to be jointly administered for procedural purposes only (the "Bankruptcy Case");

WHEREAS, in connection with the Bankruptcy Case, Assignors and Assignee have entered into the Purchase Agreement (the terms of which, including all Schedules and Exhibits thereto, are incorporated herein by this reference), pursuant to which Assignee is acquiring the Acquired Assets from Assignors as described therein;

WHEREAS, the assignment, transfer and conveyance of such Acquired Assets to Assignee includes, as a condition thereof, the assumption by Assignee of all Assumed Liabilities; and

WHEREAS, Assignee and Assignors now desire to evidence and effectuate the assignment, transfer and conveyance by Assignors to Assignee of the Acquired Assets and the assumption by Assignee of the Assumed Liabilities.

NOW, **THEREFORE**, in consideration of the mutual covenants set forth in the Purchase Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignee and Assignors hereby covenant and agree as follows:

1. Assignors agree to, and hereby do, sell, convey, assign, transfer, and deliver Assignee (or its affiliated designee) and its successors and assigns for its and their own use forever, as provided in the Purchase Agreement, all of the rights, titles and interests of Assignors as of the Closing in and to all of the Acquired Assets, and Assignee agrees to, and hereby does purchase, acquire and accept from Assignors all of Assignors' rights, titles and interests in and to all of the Acquired Assets, free and clear of any Encumbrances.

2. Assignors agree to, and hereby do, assign to Assignee, and Assignee agrees to, and hereby does, accept and assume, and agrees to pay, honor, perform and discharge when due, the Assumed Liabilities in accordance with the terms set forth in the Purchase Agreement and any and all Transaction Documents. Upon the consummation of the transactions contemplated hereby,

Assignors shall not have any liability or obligation, direct or indirect, absolute or contingent, related to any of the Assumed Liabilities (except as set forth in the indemnification provisions of the Purchase Agreement). For the avoidance of doubt, Assignee shall not assume, succeed to or have any liability or obligation, direct or indirect, absolute or contingent, related to any of the Excluded Liabilities, all of which Assignors hereby agree to retain, remain solely liable for and to pay and satisfy when due.

[3. Certain of contracts that constitute the Acquired Assets pursuant to the Purchase Agreement (the "Assigned Contracts") may require the consent of third parties to any assignment. The execution of this Agreement shall not be interpreted, and is not intended to be interpreted, as any action taken by Assignors or Assignee that would be contrary to the terms and conditions of any Assigned Contract requiring consent of any third party to such assignment. If, after the date hereof, any such required consent is obtained, the Assigned Contract to which such consent relates shall, without any further action of either Assignors or Assignee, be automatically deemed to have been assigned and assumed effective as of the date set forth in such consent, but otherwise in accordance with the terms of this Agreement.]

4. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. A signed digital copy of this Agreement shall be treated as an original.

5. The Purchase Agreement, this Agreement and the other Transaction Documents embody the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein and supersede all other prior agreements and understandings among the parties hereto with respect to such subject matter. Notwithstanding anything in this Agreement to the contrary, nothing contained herein shall in any way supersede, modify, alter, replace, amend, change, diminish, rescind, waive, exceed, expand, enlarge or in any way affect the provisions, including the warranties, covenants, agreements, conditions, representations or, in general, any of the rights and remedies or any of the obligations (including for indemnification) of Assignors or Assignee set forth in the Purchase Agreement. To the extent that any provision of this Agreement conflicts or is inconsistent with the terms of the Purchase Agreement, the provisions of the Purchase Agreement shall govern.

6. This Agreement shall be binding upon and inure solely to the benefit of each party and its successors and permitted assigns and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement.

7. Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement, and any Action that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance of this Agreement or the transactions contemplated hereby will be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice or conflict of law provision or rule (whether of the State of Delaware or any other jurisdiction). Any Action arising out of or related to this Agreement may

be instituted in the federal courts of the United States of America or the courts of the State of Delaware, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, proceeding, or dispute.

8. This Agreement can be amended, supplemented or changed only by a writing signed by the parties hereto.

[*Signature Page Follows*]

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

ASSIGNORS:

GBG USA INC.

By: _____
Name:
Title:

JIMLAR CORPORATION

By: _____
Name:
Title:

KRASNOW ENTERPRISES LTD.

By: _____
Name:
Title:

KRASNOW ENTERPRISES INC.

By: _____
Name:
Title:

ASSIGNEE:

WH AQ HOLDINGS LLC

By: _____
Name:
Title:

EXHIBIT C

Sale Notice

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
	:	
GBG USA Inc., et al.,[1]	:	Case No. 21-_____ ( )
	:	
Debtors.	:	(Jointly Administered)

NOTICE OF SALE BY AUCTION AND SALE HEARING

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the "**Debtors**")[2] each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") on July 29, 2021.

PLEASE TAKE FURTHER NOTICE that on July 29, 2021, in connection with the proposed sale of the Debtors' assets (the "**Assets**"), the Debtors filed a motion [Docket No. __] (the "**Motion**") seeking, among other things, the entry of an order approving (a) bid procedures governing the sale(s) (the "**Bid Procedures**"), (b) the bid protections to WH AQ Holdings LLC LLC (as Purchaser) and Hilco Trading, LLC (as Guarantor), the stalking horse bidder (the "**Stalking Horse Bidder**") in connection with the Debtors' Aquatalia brand (the "**Aquatalia Assets**") in accordance with the terms of the Stalking Horse APA, and (c) procedures for the assumption and assignment of executory contracts and unexpired leases in connection with the sale(s) (the "**Assumption and Assignment Procedures**").

PLEASE TAKE FURTHER NOTICE that on _____, 2021, the Bankruptcy Court entered an order [Docket No. __] (the "**Bid Procedures Order**") granting the relief sought in the Motion, including, among other things, approving (a) the Bid Procedures, and (b) the Assumption and Assignment Procedures.

Contact Persons for Parties Interested in Submitting a Bid

The Bid Procedures set forth in detail the requirements for submitting a Qualified Bid, and any person interested in making an offer to purchase the Assets, including the Aquatalia Assets, must comply strictly with the Bid Procedures. **Only Qualified Bids will be considered by the Debtors**. Any persons interested in making an offer to purchase the Assets should contact:

---

[1] The Debtors in these chapter 11 cases and the last four digits of each Debtor's federal taxpayer identification number are as follows: GBG USA Inc. (2467), Jimlar Corporation (8380), GBG North America Holdings Co., Inc. (5576), Homestead International Group Ltd. (0549), IDS USA Inc. (7194), MESH LLC (8424), Frye Retail, LLC (1352), Krasnow Enterprises, Inc. (0122), Krasnow Enterprises Ltd. (0001), Pacific Alliance USA, Inc. (0435), and GBG Spyder USA LLC (9108). The Debtors' executive headquarters are located at 350 5th Avenue, 10th Floor, New York, NY 10118.

[2] Capitalized terms used in this notice and not immediately defined have the meanings given to such terms in the Bid Procedures (as defined herein).

Proposed Sale Process Investment Banker to Debtors	Proposed Counsel to Debtors
Ducera Partners LLC 11 Times Square New York, New York 10036 Attn: David Skatoff, Jonathan Cremeans (dskatoff@ducerapartners.com; jcremeans@ducerapartners.com)	Willkie Farr & Gallagher LLP 787 Seventh Avenue New York, New York 10019 Attn: Rachel C. Strickland, Esq. and Andrew S. Mordkoff, Esq. (rstrickland@willkie.com; amordkoff@willkie.com)

Obtaining Information

Copies of the Bid Procedures Order, the Stalking Horse APA, or any other documents in the Debtors' chapter 11 cases are available upon request to Prime Clerk LLC, the Debtors' claims and noticing agent, by phone at (877) 635-8928 (U.S./Canada) or (929) 203-3305 (International), or at https://cases.primeclerk.com/gbg.

Important Dates and Deadlines

1. The deadline to submit a Qualified Bid (the "**Bid Deadline**") is **September 13, 2021, at 5:00 p.m., prevailing Eastern Time**.

2. The deadline to file an objection with the Bankruptcy Court to the entry of an order approving the sale(s) (the "**Sale Order**") is **September 13, 2021, at 4:00 p.m., prevailing Eastern Time** (the "**Sale Objection Deadline**").

3. The date and time of the Auction(s) for the Debtors' Assets, including the Aquatalia Assets, if one is needed, is **_____.m., prevailing Eastern Time on September 15, 2021**. The Auction(s) will be held either virtually through Zoom, or, if permitted, at the offices of proposed counsel to the Debtors: Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019, or such later time or other place as the Debtors will timely notify the Qualified Bidders, in consultation with the Consultation Parties.

4. The date and time of the hearing to consider approval of the Successful Bid(s) for the Debtors' Assets, including the Aquatalia Assets (the "**Sale Hearing**"), is **_____.m., prevailing Eastern Time on September 17, 2021** or as soon thereafter as counsel may be heard, before the Honorable _____, United States Bankruptcy Judge for the Bankruptcy Court for the Southern District of New York, either virtually via Zoom, or at One Bowling Green, New York, New York 10004.

Filing Objections to the Sale

Any objection to the Motion as it relates to the sale(s) of the Debtors' Assets, including the Aquatalia Assets, must: (a) be in writing; (b) state with specificity the nature of such objection; (c) comply with the applicable provisions of the Bankruptcy Rules, the Local Rules, and the Bankruptcy Court's case management order; and (d) be filed with this Bankruptcy

Court and served upon, so as to be **actually received** on or prior to the Sale Objection Deadline by, the following parties:

Debtors	**Counsel to Debtors**
GBG USA Inc. 350 5th Avenue, 10th Floor New York, NY 10118 (Attn: Robert Smits)	Willkie Farr & Gallagher LLP 787 Seventh Avenue, New York, NY 10019 (Attn: Rachel C. Strickland, Esq., Andrew S. Mordkoff, Esq. and Ciara A. Copell, Esq.)
Counsel to the DIP Lenders and the Stalking Horse Bidder for the Aquatalia Assets	**United States Trustee**
Dechert LLP 1095 Avenue of the Americas New York, New York 10036 (Attn: Stephen Wolpert, Esq., Sarah Gelb, Esq.)	Office of the United States Trustee Southern District of New York U.S. Federal Office Building 201 Varick Street, Room 1006 New York, New York 10014 (Attn: Richard Morrissey, Esq. and Greg Zipes, Esq.)
Counsel to the Prepetition First Lien Lenders	**Counsel to the Agent and Collateral Agent Under Debtors' Prepetition Secured Credit Facilities**
Linklaters LLP 1290 6th Avenue New York, NY 10104 (Attn: Margot B. Schonholtz, Esq., Penelope J. Jensen Esq., and Christopher J. Hunker, Esq.)	Moses & Singer LLP 405 Lexington Avenue New York, NY 10174 (Attn: Alan Gamza, Esq. and Kent Kolbig, Esq.)
Counsel to Global Brands Group Holding Limited	**Counsel to the Committee**
Kirkland & Ellis LLP 300 North LaSalle Chicago, IL 60654 (Attn: Patrick J. Nash, Jr., Esq. and Whitney C. Fogelberg, Esq.)	[ ]

Consequences of Failing to Timely File and Serve an Objection:

Any party or entity who fails to timely file and serve an objection to the sale(s) on or before the Sale Objection Deadline in accordance with the Bid Procedures Order shall be forever barred from asserting any objection to the sale(s) of the Assets free and clear of liens, claims, encumbrances, and other interests effected thereunder.

No Successor or Transferee Liability

The Stalking Horse APA and proposed Sale Order provide that the Stalking Horse Bidder and/or Successful Bidder(s), if applicable, will have no responsibility for, and the Assets will be sold free and clear of, any successor liability, including the following: (a) any liability or other obligation of the Debtors' estates or related to the Assets other than as expressly set forth in the Stalking Horse APA or purchase agreement(s) for other Successful Bidder(s); or (b) any claims against the Debtors, their estates, or any of their predecessors or affiliates. Except as expressly provided in the Sale Order or the Stalking Horse APA or purchase agreement(s) for other Successful Bidder(s), the Stalking Horse Bidder or Successful Bidder shall have no liability whatsoever with respect to the Debtors' estates' (or their predecessors' or affiliates') respective businesses or operations or any of the Debtors' estates' (or their predecessors' or affiliates') obligations (as described below, "Successor Liability") based on any action taken in connection with the sale, the assumption of the Assumed Liabilities (as defined in the Stalking Horse APA or purchase agreement(s) for other Successful Bidder(s)), or the continued operation of the Assets on any basis, including under any doctrines of successor, transferee, or vicarious liability (whether based on de facto merger, mere continuation, or any other basis or theory of liability), including (a) any past, present, or future liabilities of the Debtors or any of its affiliates to any shareholder, governmental entity, or person, (b) any past, present, or future liabilities of the Debtors or any of its affiliates arising out of any civil or criminal investigations or claims brought by any governmental entity, including the United States Attorney's Office or the Securities and Exchange Commission, seeking sanctions, penalties, restitution, disgorgement, or other amounts owed or that become owed, and (c) any past, present, or future claims of or liability associated with indemnity, advancement, reimbursement, or contribution of legal or other expenses incurred by current or former directors, officers, employees, agents, attorneys, or other representatives of the Debtors or its affiliates in connection with or arising out of any proceedings, including those referenced in sections (a) and (b) above.

*** * * * ***

EXHIBIT D

Cure Notice

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	:	Chapter 11
GBG USA Inc., et al.,[1]	:	Case No. 21-_____ ( )
Debtors.	:	(Jointly Administered)

NOTICE OF POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS OR UNEXPIRED LEASES AND CURE AMOUNT

You are receiving this Notice of Potential Assumption and Assignment of Executory Contracts or Unexpired Leases and Cure Amount (this "Cure Notice") because you may be a counterparty to an executory contract or unexpired lease with GBG USA Inc. or one or more of its affiliated debtors. Please read this notice carefully as your rights may be affected by the transactions described herein.

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the "**Debtors**")[2] each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York (the "**Bankruptcy Court**") on July 29, 2021.

PLEASE TAKE FURTHER NOTICE that on July 29, 2021, in connection with the proposed sale of the Debtors' assets (the "**Assets**"), the Debtors filed a motion [Docket No. __] (the "**Motion**") seeking, among other things, the entry of an order approving (a) bid procedures governing the sale(s) (the "**Bid Procedures**"), (b) the bid protections for WH AQ Holdings LLC LLC (as Purchaser) and Hilco Trading, LLC (as Guarantor), the stalking horse bidder (the "**Stalking Horse Bidder**") in connection with the Debtors' Aquatalia brand (the "**Aquatalia Assets**") in accordance with the terms of the Stalking Horse APA, and (c) procedures for the assumption and assignment of executory contracts and unexpired leases in connection with the sale(s) (the "**Assumption and Assignment Procedures**").

PLEASE TAKE FURTHER NOTICE that on _____, 2021, the Bankruptcy Court entered an order [Docket No. __] (the "**Bid Procedures Order**") granting the relief sought

---

[1] The Debtors in these chapter 11 cases and the last four digits of each Debtor's federal taxpayer identification number are as follows: GBG USA Inc. (2467), Jimlar Corporation (8380), GBG North America Holdings Co., Inc. (5576), Homestead International Group Ltd. (0549), IDS USA Inc. (7194), MESH LLC (8424), Frye Retail, LLC (1352), Krasnow Enterprises, Inc. (0122), Krasnow Enterprises Ltd. (0001), Pacific Alliance USA, Inc. (0435), and GBG Spyder USA LLC (9108). The Debtors' executive headquarters are located at 350 5th Avenue, 10th Floor, New York, NY 10118.

[2] Capitalized terms used in this notice and not immediately defined have the meanings given to such terms in the Bid Procedures (as defined herein).

in the Motion, including, among other things, approving (a) the Bid Procedures, and (b) the Assumption and Assignment Procedures.

PLEASE TAKE FURTHER NOTICE that, upon closing of the sale(s), the Debtors intend to assume and assign to the Successful Bidder(s) certain executory contracts and unexpired leases (the "**Assumed Debtor Contracts**"). A list set forth on Exhibit A hereto (the "**Executory Contract List**") (i) identifies each executory contract and unexpired lease that the Debtors may wish to assume and assign to a Potential Bidder (each, an "**Identified Contract**") applicable to each counterparty (a "**Counterparty**") and (ii) sets forth the proposed amount (the "**Cure Amount**") necessary to cure any default under the relevant Identified Contract pursuant to section 365 of the Bankruptcy Code.

YOU ARE RECEIVING THIS NOTICE BECAUSE YOU HAVE BEEN IDENTIFIED AS A COUNTERPARTY TO AN EXECUTORY CONTRACT OR UNEXPIRED LEASE.

IF YOU AGREE WITH THE PROPOSED CURE AMOUNT(S) LISTED IN THE EXECUTORY CONTRACT OR UNEXPIRED LEASE(S) LIST WITH RESPECT TO YOUR CONTRACT(S), YOU ARE NOT REQUIRED TO TAKE ANY FURTHER ACTION.

IF YOU DISAGREE WITH THE PROPOSED CURE AMOUNT(S) LISTED IN THE EXECUTORY CONTRACT LIST WITH RESPECT TO YOUR EXECUTORY CONTRACT(S) OR UNEXPIRED LEASES, YOU MAY OBJECT TO THE PROPOSED CURE AMOUNT.

PLEASE TAKE FURTHER NOTICE that service of this Cure Notice does not constitute an admission that an Identified Contract is an executory contract or unexpired lease of real property, or confirm that the Debtors are required to assume and assign such Identified Contract.

PLEASE TAKE FURTHER NOTICE that Objections with respect to (i) the proposed assumption and assignment of any Identified Contract, (ii) the proposed Cure Amount with respect thereto, (iii) whether applicable law excuses a Counterparty from accepting performance by, or rendering performance to, any Potential Bidder (items (i), (ii) and (iii), collectively, the "**Cure Objections**"), if any, and objections to the proposed adequate assurance of future performance of the Successful Bidder (or a proposed designee thereof) (the "**Adequate Assurance Objections**" and, together with any Cure Objections, the "**Contract Objections**") must (A) be in writing; (B) state with specificity the nature of such objection and, if the Cure Amount is disputed, the alleged Cure Amount and any and all defaults that must be cured or satisfied in order for such Purchased Contract to be assumed and assigned (with appropriate documentation in support thereof); (C) comply with the terms of the Assumption and Assignment Procedures set forth herein and in the Bid Procedures Order, the Bankruptcy Rules and the Local Rules; and (D) be filed with the Court and properly served on: (i) the Debtors, c/o GBG USA Inc., 350 5th Avenue, 10th Floor, New York, NY 10118 (Attn: Robert Smits); (ii) proposed counsel to the Debtors, Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New

York, NY 10019 (Attn: Rachel C. Strickland, Esq., Andrew S. Mordkoff, Esq. and Ciara A. Copell, Esq.); (iii) counsel to the first lien lenders under the Debtors' prepetition first lien secured credit facilities, Linklaters LLP, 1290 6th Avenue, New York, NY 10104 (Attn: Margot B. Schonholtz, Esq., Penelope J. Jensen Esq., and Christopher J. Hunker, Esq.); (iv) counsel to the agent and the collateral agent under the Debtors' prepetition secured credit facilities, Moses & Singer LLP, 405 Lexington Avenue, New York, NY 10174 (Attn: Andrew Oliver, Esq. and Kent Kolbig, Esq.); (v) counsel to Global Brands Group Holding Limited, Kirkland & Ellis LLP, 300 North LaSalle, Chicago, IL 60654 (Attn: Patrick Nash, Esq. and Whitney Fogelberg, Esq.); (vi) counsel to the lenders under the Debtors' proposed debtor-in-possession financing facility and stalking horse bidder with respect to the Debtors' Aquatalia assets, Dechert LLP, 1095 6th Avenue, New York, NY 10036 (Attn: Nazim Zilkha, Esq., Allan S. Brilliant, Esq., and Stephen Wolpert, Esq.); (vii) counsel to any official committee of unsecured creditors appointed in these chapter 11 cases; and (viii) William K. Harrington, United States Trustee, U.S. Department of Justice, Office of the U.S. Trustee, 201 Varick Street, Rm 1006, New York, NY 10014 (Attn.: Richard C. Morrissey, Esq., email: richard.morrissey@usdoj.gov and Greg Zipes, Esq., email: greg.zipes@usdoj.gov); and (ix) all parties requesting notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002 (the "**Objection Notice Parties**").

PLEASE TAKE FURTHER NOTICE that, within one (1) calendar day after the conclusion of the Auction, or as soon as reasonably practicable thereafter, the Debtors will file with the Court a "**Closing Assignment Notice**," which shall (i) identify the Successful Bidder(s), (ii) list all Identified Contracts which are proposed to be assumed and assigned in the Successful Bid(s) at the closing of the sale(s), (iii) identify any known proposed assignee(s) of the Closing Assumed Contracts (if different from the applicable Successful Bidder) and (iv) provide such Successful Bidder's proposed form of adequate assurance of future performance.

PLEASE TAKE FURTHER NOTICE that, until three (3) days prior to sale(s) closing, the Debtors may identify additional Executory Contracts and Unexpired Leases for assumption and assignment by filing with the Court a "**Supplemental Cure Notice**" and serving such notice on each Counterparty.

PLEASE TAKE FURTHER NOTICE that to the extent a Counterparty is served with a Closing Assignment Notice, the deadline to file (A) Cure Objections is no later than **September 13, 2021, at :00 p.m., prevailing Eastern Time**, and (B) Adequate Assurance Objections is no later than the earlier of (x) the Sale Hearing or (y) seven (7) calendar days after the conclusion of the Auction (such deadlines to file Cure Objections and Adequate Assurance Objections, the "**Initial Objection Deadlines**").

PLEASE TAKE FURTHER NOTICE that to the extent a Counterparty is served with a Supplemental Cure Notice, the Counterparty shall have fourteen (14) days following delivery of a Supplemental Cure Notice (the "**Further Objection Deadline**" and, together with the Initial Objection Deadlines, the "**Contract Objection Deadlines**") to file and duly serve a Contract Objection. Supplemental Cure Notices may be filed and served at any time up to three (3) days prior to the closing of a sale(s).

PLEASE TAKE FURTHER NOTICE that if a Contract Objection is timely filed and properly served in accordance with this notice and the Assumption and Assignment Procedures, the Debtors and the Counterparty shall meet and confer in good faith to attempt to resolve any such objection without Court intervention. If the parties determine that the Contract Objection cannot be resolved in a timely manner without judicial intervention, the Court will make all necessary determinations relating to such Contract Objection at the applicable Contract Hearing (as defined below).

PLEASE TAKE FURTHER NOTICE that a hearing with respect to Contract Objections to the Closing Assignment Notice shall be held at the Sale Hearing or at such other earlier or later date prior to the closing of the sale(s) as the Court may designate (the "**Initial Contract Hearing**"). Hearings with respect to Contract Objections to any Supplemental Cure Notices may be held on such dates as this Court may designate (each, an "**Additional Contract Hearing**," and together with the Initial Contract Hearing, each a "**Contract Hearing**").

PLEASE TAKE FURTHER NOTICE that any Counterparty who fails to timely file and properly serve a Contract Objection (i) will be deemed to have forever waived and released any Contract Objection and consented to the assumption and assignment of such Purchased Contract on the terms set forth in the applicable Contract Notice, subject to occurrence of the closing of the sale(s), and (ii) will be barred and estopped forever from asserting or claiming against the Debtors or the Successful Bidder(s) that any additional amounts are due or defaults exist, or conditions to assignment must be satisfied, under such Purchased Contract.

PLEASE TAKE FURTHER NOTICE that this Cure Notice is subject to the fuller terms and conditions of the Bid Procedures Order and the Debtors encourage parties-in-interest to review such document in its entirety. Copies of the Motion and the Bid Procedures Order, as well as all related exhibits, including all other documents filed with the Court, are available (i) from the website of the Debtors' claims and noticing agent, Prime Clerk LLC ("Prime Clerk"), at https://cases.primeclerk.com/gbg and (ii) on the Court's electronic docket for the Debtors' chapter 11 cases at https://www.ecf.sdny.uscourts.gov (a PACER login and password are required and can be obtained through the PACER Service Center at www.pacer.psc.uscourts.gov). In addition, copies of the Motion may be requested from Prime Clerk by phone at (877) 635-8928 (U.S./Canada) or (929) 203-3305 (International).

Dated: _____, 2021
New York, New York

WILLKIE FARR & GALLAGHER LLP

Proposed Counsel for the Debtors and Debtors in Possession

By: _____

Rachel C. Strickland
Andrew S. Mordkoff
Ciara A. Copell

787 Seventh Avenue
New York, New York 10019
Telephone: (212) 728-8000
Facsimile: (212) 728-8111

EXHIBIT 1

Assumed Contracts