

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

BHCOSMETICS HOLDINGS, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 22-10050 (____)

(Joint Administration Requested)

Bid Procedures Objection Deadline: TBD

Bid Procedures Hearing: TBD

Proposed Sale Objection Deadline:
February 11, 2022 at 4:00 p.m. (ET)

Proposed Sale Hearing:
February 17, 2022 at a time TBD

DEBTORS' MOTION FOR ENTRY OF:

(I) AN ORDER (A) APPROVING CERTAIN BIDDING PROCEDURES, ASSUMPTION AND ASSIGNMENT PROCEDURES, AND THE FORM AND MANNER OF NOTICE THEREOF; (B) AUTHORIZING THE DEBTORS TO ENTER INTO AN ASSET PURCHASE AGREEMENT WITH A STALKING HORSE BIDDER AND APPROVING CERTAIN BIDDING PROTECTIONS; AND (C) SCHEDULING A HEARING ON THE APPROVAL OF THE SALE OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES AS WELL AS THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND

(II) AN ORDER (A) AUTHORIZING THE SALE OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES, (B) APPROVING ASSET PURCHASE AGREEMENTS, (C) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (D) WAIVING STAY PROVISIONS PURSUANT TO BANKRUPTCY RULES 6004(h) AND 6006(d)

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: BHCosmetics Holdings, LLC (7827); BHCosmetics Intermediate, LLC (2918); BHCosmetics, LLC (9106); and Visceral Agency LLC (9266). The Debtors' service address for purposes of these chapter 11 cases is 8161 Lankershim Blvd., North Hollywood, CA 91605.

BHCosmetics Holdings, LLC and its affiliated debtors and debtors in possession (collectively, the “Debtors”) hereby submit this motion (this “Motion”) for the entry of: (i) an order, substantially in the form attached hereto as **Exhibit I** (the “Bidding Procedures Order”):

- a. authorizing and approving certain bidding procedures (collectively, the “Bidding Procedures,” a copy of which is attached as Exhibit A to the Bidding Procedures Order) for the sale of assets not otherwise disposed of pursuant to the Debtors’ *de minimis* asset procedures motion, filed concurrently herewith, including but not limited to the Debtors’ tradenames and brands, domain names, social media assets, customer database, other intellectual property, executory contracts, furniture, fixtures and equipment, inventory, and any other miscellaneous assets (collectively, the “Assets”);
- b. approving certain procedures (collectively, the “Assumption and Assignment Procedures”) for the assumption and assignment of certain executory contracts and unexpired leases (each, a “Target Contract,” and collectively, the “Target Contracts”) in connection therewith, and the form and manner of notice thereof;
- c. authorizing, but not directing, the Debtors to enter into an asset purchase agreement with a stalking horse bidder and approving certain bidding protections; and
- d. scheduling a hearing (the “Sale Hearing”) on approval of the sale of applicable Assets, free and clear of all liens, claims, interests, encumbrances, and other interests, including as set forth in the Stalking Horse Bid (collectively, the “Encumbrances”) and authorizing the assumption and assignment of the selected Target Contracts in connection therewith;

and (ii) an order with respect to Assets offered for sale pursuant to the Bidding Procedures (the “Sale Order”):

- a. authorizing and approving the sale or sales of the applicable Assets (the “Sale”), free and clear of all Encumbrances other than those permitted by the applicable asset purchase agreement for the Assets (each, a “Purchase Agreement”);
- b. authorizing and approving the Debtors’ entry into each Purchase Agreement;
- c. authorizing and approving the assumption and assignment of the selected Target Contracts in connection therewith; and

- d. waiving the stay provisions of Bankruptcy Rules 6004(h) and 6006(d) in accordance therewith.

The facts and circumstances supporting this Motion are set forth in the *Declaration of Spencer M. Ware in Support of Debtors' Chapter 11 Petitions and First Day Motions* (the "First Day Declaration"). In further support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012 (the "Amended Standing Order"). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and pursuant to rule 9013-1(f) of the Local Rules of Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), the Debtors consent to entry of a final order by the Court in connection with this Motion to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and legal predicates for the relief sought herein are sections 105, 363, 365, and 503 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Local Rules 2002-1 and 6004-1.

BACKGROUND

I. GENERAL BACKGROUND

2. On January 14, 2022 (the "Petition Date"), the Debtors filed voluntary petitions for relief (the "Chapter 11 Cases") under chapter 11 of the Bankruptcy Code. The

Debtors have continued in the possession of their properties and the operation of their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. No request has been made for the appointment of a trustee or examiner and no official committee has been appointed in the Chapter 11 Cases.

4. Additional information about the Debtors' business and the events leading up to the Petition Date can be found in the First Day Declaration, which is incorporated herein by reference.

II. BACKGROUND SPECIFIC TO THE RELIEF REQUESTED

5. As noted in the First Day Declaration, the Debtors entered these Chapter 11 Cases with the goal of (i) realizing potential value from the sale of the Debtors' Assets by commencing (a) inventory sales through the Debtors' e-commerce and wholesale channels, (b) an auction process for substantially all of the Debtors' Assets or a subset thereof, or (c) a combination of (a) and (b) (collectively, the "Sale Process"); and (ii) minimizing estate obligations to the extent possible. Once the Debtors consummate the sale of their inventory, the Debtors will close their merchandise distribution center and look to unburden the estates of the administrative expenses associated therewith and monetize the non-inventory assets located therein. The Debtors anticipate that the Sale Process will be completed in the first quarter of 2022.

6. To maximize value for the Debtors' estates, the Debtors wish to dispose of their Assets in the manner most likely to maximize the value the Debtors can obtain for the Assets.² Accordingly, to assist with their efforts to maximize the value of the Assets, the Debtors entered

² A consumer privacy ombudsman need not be appointed in these Chapter 11 Cases. *See* 11 U.S.C. §§ 332 and 363. In the ordinary course of business, the Debtors maintain a privacy policy (the "Privacy Policy"), which is maintained on and accessible to users through the Debtors' e-commerce website. Under the Privacy Policy, users of the Debtors' website consent to the use, sale, or transfer of such users' data for a breadth of purposes, including in the event of a sale of the Debtors or substantially all of their assets. The Privacy Policy does not prohibit the Debtors from transferring any personal identification information.

into an agreement with each of Hilco IP Services, LLC d/b/a Hilco Streambank (“Streambank”)³ and SB360 Capital Partners LLC, (“SB360”). Streambank is well known for their expertise in assisting with the disposition of intellectual property and related tangible assets, and SB360 is well known for their expertise in assisting with the disposition of inventory and furniture, fixtures, and equipment.

7. As part of the marketing and solicitation process, Streambank prepared a detailed information sheet, containing information about the Debtors’ intellectual property portfolio and other assets. The Debtors and Streambank contacted a total of 84 strategic parties and received responses from 32 parties. A total of 15 parties executed confidentiality agreements and were granted access to an electronic data room (the “Data Room”) containing diligence and other confidential information with respect to the Assets. The Debtors received two written indications of interests, and three parties expressed an interest in acting as a stalking horse purchaser for the Debtors’ intellectual property and certain additional assets.

8. After extensive deliberations with Streambank and the Debtors’ other advisors regarding the terms of an asset purchase agreement, the Debtors secured a stalking horse agreement (the “Stalking Horse Bid”) with RBI Acquisition Holdings, LLC, a Delaware limited liability company (the “Stalking Horse Bidder”) for the sale of a substantial portion of the Assets, including a majority of the Debtors’ intellectual property and inventory. The total cash consideration for the Stalking Horse Bid is approximately \$4.3 million, subject to higher or otherwise better offers and certain adjustments. The Stalking Horse Bid is attached hereto as **Exhibit IV**.

³ The Debtors will request authority to enter into the engagement agreement with Streambank pursuant to a separate application.

9. The Debtors now seek authority to proceed with the robust bidding and auction process set forth herein to generate maximum value for the Debtors' Assets. The following procedures are designed to preserve flexibility in the Sale Process and generate the greatest level of interest and the highest or best value for the Assets. In addition, by establishing dates for submitting bids, conducting auctions, and approving sales, the sale procedures will provide clarity as to the bidding and auction process to all interested parties.

10. The proposed Sale Process and transactions contemplated by this Motion are reasonable and necessary under the circumstances of these Chapter 11 Cases, as they will allow the Debtors to realize the maximum value of their Assets for the benefit of their estates and all stakeholders. Simply put, the Debtors' declining revenues are insufficient to support continued operations of the Debtors' business. Accordingly, the Sale Process represents the best opportunity for the Debtors to preserve and enhance the value of their estates.

III. THE STALKING HORSE SALE TRANSACTION

11. The Stalking Horse Bid, which the Debtors negotiated at arms'-length with the assistance of Streambank and Debtors' other professionals, will serve as a baseline from which all prospective bidders will negotiate. The Stalking Horse Bid contemplates a sale of certain unexpired contracts, inventory, and intellectual property. The Stalking Horse Bidder is responsible for paying any cure costs related to the assumption and assignment of Target Contracts in accordance with the terms and conditions of the Stalking Horse Bid. The Stalking Horse Bid includes various customary representations and warranties by and from the Debtor and the Stalking Horse Bidder, as well as certain conditions to closing and rights of termination. The Stalking Horse Bid is subject to higher and better offers, as well as approval by the Court.

12. The Bidding Procedures provide for standard bid protections, such as an initial overbid amount, and the Stalking Horse Bid includes provisions for the payment of a break-

up fee and capped expense reimbursement (together, the “Termination Payment”) upon the Debtors’ consummation of an alternative sale transaction.

13. Various material terms of the Stalking Horse Bid are described as follows:⁴

- a. Assets. Acquired Assets include certain assumed contracts, intellectual property, goodwill, trade secrets, social media accounts, and inventory for a base cash purchase price of \$4,300,000, subject to adjustment as set forth in the Stalking Horse Bid, and assumption of (i) cure obligations for any contracts to be assumed; (ii) certain tax liabilities; and (iii) certain go-forward liabilities associated with the Acquired Assets.
- b. Termination Payment. Break-up fee of \$172,000, plus the reasonable, actual, and documented out of pocket costs and expenses paid or incurred by the Stalking Horse Bidder directly incident to, under, or in connection with the negotiation, execution, and performance under the Stalking Horse Bid and the transactions contemplated thereunder (including travel expenses and reasonable fees and disbursements of counsel, accountants and financial advisors, excluding any charges for the time or services of the Stalking Horse Bidder’s employees) in an amount not to exceed \$150,000 in the aggregate.
- c. Back-Up Bidder. The Stalking Horse Bidder agreed to serve as a Back-Up Bidder.
- d. Bankruptcy Milestones. The Stalking Horse Bidder and the Debtors negotiated for the sale milestones as set forth herein.
- e. Closing. Closing to occur no later than February 24, 2022, subject to extension to March 4, 2022, as detailed in the Stalking Horse Bid.
- f. Records Retention. The Stalking Horse Bidder will acquire certain of the Debtors’ books and records and, subject to the terms of the Stalking Horse Bid, will allow reasonable access to such books and records.

14. In addition to the salient terms of the Stalking Horse Bid described above, in accordance with Local Bankruptcy Rule 6004-1(b)(iv), the Debtors note the following with respect to the Stalking Horse Bid:

⁴ Capitalized terms used but not defined in paragraphs 13 and 14 herein shall have the meanings given to them in the Stalking Horse Bid.

- a. No Sale to an Insider. The Stalking Horse Bidder is not an insider of the Debtors within the meaning set forth in section 101(31) of the Bankruptcy Code.
- b. Agreements with Management. No agreements with management have been entered into in connection with the Stalking Horse Bid.
- c. Releases. The Stalking Horse Bid contemplates that the Stalking Horse Bidder shall not assume any liability for the Excluded Liabilities, and that title to the Acquired Assets will be received free and clear of any liens, claims, and Encumbrances, but does not otherwise include a release of claims.
- d. Public Auction Contemplated. As set forth herein, the Debtors are pursuing a public sale of their Assets subject to a competitive bid process in accordance with industry standards.
- e. Closing and Other Deadlines. The Stalking Horse Bid contemplates an outside closing date of February 24, 2022, which may be extended to March 4, 2022. Other contemplated milestones are described in paragraph 13(d), above.
- f. Good Faith Deposit. The Stalking Horse Bidder will provide or has provided a good faith deposit of 10% of the cash consideration component of the purchase price for the sale transaction.
- g. Interim Arrangements with Proposed Buyers. Pursuant to, and subject to the conditions set forth therein, the Stalking Horse Bid provides that the Stalking Horse shall grant the applicable Debtors a license to use acquired trademarks for a 90-day period following the Closing Date (as defined in the Stalking Horse Bid).
- h. Use of Proceeds. At the closing, (a) Stalking Horse Bidder shall pay to Debtors cash by wire transfer of immediately available funds in an amount equal to the Cash Consideration less the (i) Deposit, and (ii) any adjustments as required by the Stalking Horse Bid; and (b) Stalking Horse Bidder and Debtors shall direct Streambank to indefeasibly transfer the Deposit to an account designated by Debtors, as set forth in the Stalking Horse Bid. In addition, any Termination Payment shall be satisfied from the proceeds of an Alternative Transaction, if any.
- i. Tax Exemption. The Debtors and Stalking Horse Bidder shall use commercially reasonable efforts and cooperate in good faith to exempt the sale and transfer of Acquired Assets (as defined in the Stalking Horse Bid) from any transfer taxes, to the extent permitted under applicable law.
- j. Record Retention. The Debtors will retain their books and records (or copies thereof) to administer these chapter 11 cases; *provided*, however,

that, after the Closing Date, the Debtors will transfer to the Stalking Horse Bidder certain books and records related to the Acquired Assets (as defined in the Stalking Horse Bid).

- k. Sale of Claims. The Stalking Horse Bid does not provide for the sale by the Debtors of any rights, claims or causes of action arising under chapter 5 of the Bankruptcy Code.
- l. Successor Liability. The Stalking Horse Bid limits the Stalking Horse Bidders' successor liability.
- m. Sale Free and Clear of Liens, Claims, Encumbrances and Other Interests. The Debtors will seek entry of a proposed sale order authorizing the Debtors to sell the Acquired Assets (as defined in the Stalking Horse Bid) free and clear of all liens, claims, Encumbrances and other interests of any kind or nature.
- n. Credit Bid. The Stalking Horse Bid contemplates that the sale of the Debtors' Assets will be subject to the Bidding Procedures, which provide for credit bidding pursuant to section 363(k) of the Bankruptcy Code by any Secured Creditor (as defined below).
- o. Relief from Bankruptcy Rules 6004(h) and 6006(d). For the reasons set forth below, the Debtors seek relief from Bankruptcy Rules 6004(h) and 6006(d).

IV. OVERVIEW OF SALE PROCEDURES

A. Bidding Procedures⁵

15. The Bidding Procedures describe, among other things, (i) the Assets available for sale and the means by which interested parties may obtain additional information with respect thereto; (ii) the manner in which bids become "qualified;" (iii) the coordination of diligence efforts among the bidders and the Debtors; (iv) the receipt and negotiation of bids received; (v) the conduct of any Auction; and (vi) the selection and approval of the Successful

⁵ Any summary of the Bidding Procedures contained herein is qualified in its entirety by the actual terms and conditions of the Bidding Procedures as provided for in the Bidding Procedures Order. To the extent that there is any conflict between any summary contained herein and the actual terms and conditions of the Bidding Procedures as provided for in the Bidding Procedures Order, the actual terms and conditions of the Bidding Procedures as provided for in the Bidding Procedures Order shall control. Capitalized terms used but not defined in this summary of the Bidding Procedures shall have the meanings ascribed to such terms in the Bidding Procedures.

Bidder or Successful Bidders and the selection of a Back-Up Bidder or Back-Up Bidders. Certain of the key terms of the Bidding Procedures, which shall apply to each Potential Bidder, the Qualifying Bidders, the submission, receipt, and analysis of all bids relating to any proposed Sale, and the conduct of the Auction, are included below:

- a. **Qualification as Bidder:** Any person or entity that wishes to participate in the bidding process for the Assets (each, a “Potential Bidder”) must first become a “Qualifying Bidder.”

To become a Qualifying Bidder, a Potential Bidder must submit to the Debtors and their advisors: (i) documentation identifying the Potential Bidder, its principals, and the representatives thereof who are authorized to appear and act on its behalf for all purposes regarding the contemplated Sale; (ii) an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtors, which by its terms will inure to the benefit of the Successful Bidder(s), if the Debtors intend to provide confidential materials to the Potential Bidder; (iii) a statement and other factual support demonstrating the Debtors’ reasonable satisfaction that the interested party has a bona fide interest in consummating a Sale on or before **February 24, 2022**; and (iv) sufficient information, as determined by the Debtors, to allow the Debtors to determine that the interested party (a) has, or can obtain, the financial wherewithal and any required internal corporate, legal, or other requisite authorizations to close a Sale on or before **February 24, 2022**, and (b) can provide adequate assurance of future performance under any executory contracts and unexpired leases to be assumed by the Debtors and assigned to such bidder, pursuant to section 365 of the Bankruptcy Code, in connection with a Sale; and (v) a non-binding written indication of interest identifying the Assets in which the party is interested in purchasing.

Each Potential Bidder shall comply with all reasonable requests for information and due diligence access by the Debtors, each of the Consultation Parties (as defined below), or their advisors regarding the ability of such Potential Bidder, as applicable, to consummate its contemplated Sale. The Debtors shall share the information submitted by each Potential Bidder with the Consultation Parties upon their reasonable request.

Notwithstanding anything to the contrary herein, and for the avoidance of doubt, for all purposes under the Bidding Procedures: (i) the Stalking Horse Bidder (as defined below) shall be considered a Qualifying Bidder and a Stalking Horse Bid (as defined below) shall be considered a Qualifying Bid upon receipt of such Stalking Horse Bidder’s Deposit (as defined below);

and (ii) the Debtors may consider a combination of bids for the Assets in determining whether the Potential Bidders constitute Qualifying Bidders.

Notwithstanding anything to the contrary herein, and for the avoidance of doubt, for all purposes under the Bidding Procedures, any Secured Creditor (as defined below) shall automatically be considered a Qualifying Bidder without the submission of information or documents otherwise required of other Qualifying Bidders, and any Secured Creditor's credit bid shall be considered a Qualifying Bid without meeting the foregoing requirements in this Section 3 or otherwise.

- b. **Due Diligence:** The Debtors will provide any Qualifying Bidder with information that the Debtors believe to be reasonable and appropriate under the circumstances. All due diligence requests shall be directed to: (i) for furniture, fixtures and equipment, Robert Raskin or Ziggy Schaffer at SB360 by email at rraskin@sb360.com or zschafer@sb360.com; and (ii) for intangible property, David Peress, Richelle Kalnit, or Jordon Parker at Hilco Streambank by email at dperess@hilcoglobal.com, rkalnit@hilcoglobal.com, or jparker@hilcoglobal.com.

The due diligence period shall extend through and include the Bid Deadline (as defined below). The Debtors may, but shall not be obligated to, in their sole discretion, furnish any due diligence information after the Bid Deadline. The Debtors reserve the right, in their reasonable discretion, to withhold or limit access to any due diligence information that the Debtors determine is not appropriate for disclosure to a Qualifying Bidder (who is not also a Secured Creditor). Notwithstanding any prepetition limitations, including, without limitation, any non-disclosure, confidentiality, or similar provisions relating to any due diligence information, the Debtors and their estates shall be authorized to provide due diligence information to Qualifying Bidders provided that such Qualifying Bidders have delivered an executed confidentiality agreement in form and substance acceptable to the Debtors, if such an agreement is provided to the Qualifying Bidders as part of the sale process for the particular Asset(s). The Debtors and their estates are not responsible for, and shall have no liability with respect to, any information obtained by, or provided to, any Qualifying Bidders in connection with the Bidding Procedures and a contemplated Sale.

- c. **Bid Requirements:**

- i. ***Qualifying Bid.*** Other than in the case of a bid submitted by the Stalking Horse Bidder or a credit bid by a Secured Creditor, to be deemed a "Qualifying Bid," a bid must be received from a Qualifying Bidder on or before the Bid Deadline and satisfy each of the following requirements, as determined by the Debtors in consultation with the Consultation Parties (each, a "Bid Requirement"):

- (a) be in writing;
- (b) fully disclose the identity of the Qualifying Bidder (and any other party participating in the bid) and provide the contact information of the specific person(s) whom the Debtors or their advisors should contact in the event that the Debtors have any questions or wish to discuss the bid submitted by the Qualifying Bidder;
- (c) set forth the purchase price to be paid by such Qualifying Bidder for the Assets in question;
- (d) if a bid includes a credit bid under section 363(k) (other than a bid by the Prepetition Loan Lenders), evidence of the amount of the claim, the Assets constituting the collateral securing the claim, and evidence of the grant, perfection, priority, and validity of the lien (the “Secured Claim Documentation”);
- (e) not propose payment in any form other than cash (except as otherwise expressly set forth in these Bidding Procedures and the Bidding Procedures Order);
- (f) if applicable, state the liabilities proposed to be paid or assumed by such Qualifying Bidder;
- (g) specify the Assets that are included in the bid and state that such Qualifying Bidder offers to purchase the applicable Assets;
- (h) state that such Qualifying Bidder’s offer is formal, binding, and unconditional and is irrevocable until two (2) business days after the closing of the sale of the Assets;
- (i) state that such Qualifying Bidder is financially capable of consummating the Sale contemplated by the bid by **February 24, 2022**, and provide written evidence in support thereof;
- (j) contain such financial and other information to allow the Debtors to make a reasonable determination as to the Qualifying Bidder’s financial and other capabilities to close the Sale contemplated by the proposal by **February 24, 2022**, including, without limitation, such financial and other information supporting the Qualifying Bidder’s ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code,

including the Qualifying Bidder's financial wherewithal and willingness to perform under any Target Contracts that are assumed and assigned to the Qualifying Bidder, in a form that allows the Debtors to serve, within one (1) business day after such receipt, such information on any counterparties to any contracts or leases being assumed and assigned (or assumed) in connection with the Sale that have requested, in writing, such information;

- (k) identify with particularity every executory contract and unexpired lease the assumption and assignment of which is a condition to close the contemplated Sale;
- (l) a commitment to close the Sale by **February 24, 2022**, or such other date as agreed to by the Debtors in consultation with the Consultation Parties;
- (m) not request or entitle such Qualifying Bidder to any break-up fee, termination fee, expense reimbursement, or similar type of fee or payment;
- (n) provide aggregate consideration which either when considered alone or in combination with other Qualifying Bidders must equal or exceed the sum of (A) the purchase price under the Stalking Horse Bid, (B) any Break-Up Fee (as defined below), (C) any Expense Reimbursement (as defined below), and (D) \$100,000 under the Stalking Horse Bid, unless otherwise agreed by the Debtors in consultation with the Consultation Parties;
- (o) not contain any contingencies of any kind, including, without limitation, contingencies related to financing, internal approval, or due diligence;
- (p) contain a written acknowledgement and representation that the Qualifying Bidder (i) has had an opportunity to conduct any and all due diligence regarding the Assets in question, (ii) has relied solely upon its own independent review, investigation, and inspection of any documents and other information in making its Qualifying Bid, and (iii) 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 documents or other information provided in connection with the Bidding Procedures and the proposed Sale;

- (q) provides for the Qualifying Bidder to serve as a backup bidder (the “Back-Up Bidder”) if the Qualifying Bidder’s bid is the next highest or best bid (the “Back-Up Bid”) after the Successful Bid (as defined below) for the applicable Assets;
- (r) includes a copy of an asset purchase agreement (in both PDF and MS-WORD format) acceptable to the Debtors and the Prepetition Loan Lenders reflecting the terms and conditions of its bid, which agreement must be marked to show any proposed amendments and modifications to the form of purchase agreement posted by the Debtors in the Data Room.
- (s) includes written evidence of authorization and approval with respect to the submission, execution, and delivery of the subject term sheet;
- (t) provides a good faith cash deposit (the “Deposit”) in an amount equal to ten percent (10%) of the cash purchase price stated in the proposal (or such additional amount as may be determined by the Debtors in their reasonable discretion and in consultation with the Consultation Parties) to be held in a noninterest-bearing escrow account to be identified and established by the Debtors; and
- (u) provides for liquidated damages in the event of the Qualifying Bidder’s breach of, or failure to perform under, the modified Purchase Agreement equal to the amount of the Deposit.
- (v) The Debtors reserve the right, in consultation with the Consultation Parties, to negotiate with any Qualifying Bidder in advance of the Auction to cure any deficiencies in a bid that is initially deemed not a Qualifying Bid.

Each Qualifying Bidder submitting a bid shall be deemed to:

- (a) acknowledge and represent that it is bound by all of the terms and conditions of the Bidding Procedures and
- (b) have waived the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the submission of its bid, the Bidding Procedures, and a Sale.

- ii. ***Bid Deadline.*** A Qualifying Bidder, other than the Stalking Horse Bidder, that desires to make a bid shall deliver a written and electronic copy of its bid in **both** PDF and MS-WORD format to (a) counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP,

Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: M. Blake Cleary, Esq. and Allison Mielke, Esq. (mbcleary@ycst.com and amielke@ycst.com); (b) proposed counsel to any official committee of unsecured creditors appointed in these Chapter 11 Cases; (c) counsel to the Debtors' prepetition lenders, Stoll Keenon Ogden PLLC, Attn: Lea Pauley Goff, Esq. (Lea.Goff@skofirm.com), 500 West Jefferson Street, Suite 2000, Louisville, KY 40202-2828 and Attn: Amelia Martin Adams, Esq. (Amelia.Adams@skofirm.com), 300 West Vine Street, Suite 2100, Lexington, KY 40507-1801 and Stevens & Lee, P.C., Attn: Joseph H. Huston, Jr., Esq. (joseph.huston@stevenslee.com), 919 North Market Street, Suite 1300, Wilmington, DE 19801; and (d) (i) for furniture, fixtures and equipment, Robert Raskin or Ziggy Schaffer at SB360 by email at rraskin@sb360.com or zschafter@sb360.com; and (ii) for intangible property, David Peress, Richelle Kalnit, or Jordon Parker at Hilco Streambank by email at dperess@hilcoglobal.com, rkalin@hilcoglobal.com, or jparker@hilcoglobal.com (collectively, the "Bid Package Notice Parties"), so as to be received on or before **February 11, 2022, at 12:00 p.m. (ET)** (the "Bid Deadline"); *provided* that the Debtors may extend the Bid Deadline without further order of the Court, subject to providing notice to the Consultation Parties. To the extent that the Bid Deadline is extended for all parties, the Debtors shall file a notice on the docket of these Chapter 11 Cases indicating the same.

Any party that does not submit a bid by the Bid Deadline (including as extended in accordance with the prior two sentences) may not be allowed to (a) submit any offer after the Bid Deadline or (b) participate in the Auction.

- iii. ***Evaluation of Qualifying Bids.*** The Debtors shall deliver by no later than 5:00 p.m. (ET) on the day of the Bid Deadline, copies of all bids from Qualifying Bidders to each of the Consultation Parties.

The Debtors, in consultation with the Consultation Parties shall make a determination regarding whether a timely submitted bid from a Qualifying Bidder is a Qualifying Bid and shall notify all Qualifying Bidders whether their bids have been determined to be a Qualifying Bid by no later than 8:00 p.m. (ET) on the day before the commencement of the Auction. In the event that a bid is determined not to be a Qualifying Bid, including with respect to any proposed credit bid amount, the Non-Qualifying Bidder shall be notified by the Debtors and shall have until the commencement of the Auction to modify its bid to increase the purchase price or otherwise improve the terms of the Qualifying Bid for the Debtors and to provide

additional Secured Claim Documentation; provided that any Qualifying Bid may be improved at the Auction as set forth herein.

Prior to commencing the Auction, the Debtors shall determine, in consultation with the Consultation Parties, which of the Qualifying Bids, at such time, is the highest or best bid as to the applicable Assets for purposes of constituting the opening bid of the Auction (each a “Baseline Bid” and the Qualifying Bidder(s) submitting each such Baseline Bid, a “Baseline Bidder”) and shall notify the Stalking Horse Bidder and all Qualifying Bidders with Qualifying Bids of the Baseline Bid or Baseline Bids no later than the opening of the Auction.

- iv. ***No Qualifying Bids.*** If no timely Qualifying Bids—other than the Stalking Horse Bidder’s Qualifying Bid—are submitted on or before the Bid Deadline, the Debtors, after consultation with the Prepetition Loan Lenders, shall not hold an Auction and may request at the Sale Hearing that the Stalking Horse Bidder be deemed the Successful Bidder (as defined below) and that the Court approve the Stalking Horse Bid, and the Sales contemplated thereunder.
- d. **Right to Credit Bid.** The Prepetition Loan Lenders and any party who has a valid, perfected and enforceable lien on any Assets of the Debtors’ estates that is not subject to an objection filed in these Chapter 11 Cases by the commencement of the Auction (a “Secured Creditor”) shall have the right to credit bid all or a portion of the value of such Secured Creditor’s claim within the meaning of section 363(k) of the Bankruptcy Code and to the extent demonstrated by the Secured Claim Documentation; *provided* that a Secured Creditor shall have the right to credit bid its claim only with respect to the collateral by which such Secured Creditor is secured by a first-priority lien (subject to any agreed carve-outs); *provided, further*, that if the Secured Creditor’s lien is subsequently avoided, then such Qualified Bidder shall be subject to disgorgement.
- e. **Auction.** If the Debtors timely receive one or more Qualifying Bids for any of the Assets (inclusive of the Stalking Horse Bidder’s Qualifying Bid), then the Debtors shall conduct an auction (the “Auction”). Following the Auction, the Debtors will determine, in consultation with the Consultation Parties, which Qualifying Bid is the highest or best bid for the Assets or subsets thereof, which will be determined by considering, among other things, the following non-binding factors:
 - i. the terms of the Purchase Agreement requested by each Auction Bidder;
 - ii. the extent to which such terms are likely to delay closing of a Sale beyond February 24, 2022, the cost to the Debtors and their estates

of such modifications or delay, and any incremental financing being offered to accommodate any delay;

- iii. the total consideration to be received by the Debtors and their estates and the return to the Secured Creditors;
- iv. the Sale structure and execution risk, including conditions to, timing of, and certainty of closing, termination provisions, availability of financing and financial wherewithal to meet all commitments, and required governmental or other approval;
- v. the net benefit to the Debtors' estates, except that any Break-Up Fee and any Expense Reimbursement provided for in the Stalking Horse Bid shall not be taken into account, nor shall the Stalking Horse Bidder be permitted to credit bid any portion of any Break-Up Fee or any Expense Reimbursement;
- vi. the impact on interested parties, including, but not limited to, Secured Creditors, employees, landlords, and vendors; and
- vii. any other factors the Debtors, in consultation with the Consultation Parties, may reasonably deem relevant.

The Auction shall be governed by the following procedures:

- i. the Auction shall commence on **February 15, 2022, at 10:00 a.m. (ET)** (the "Auction Date"), at Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Rodney Square, Wilmington, Delaware 19801 and virtually by videoconference;
- ii. only the Stalking Horse Bidder and the other Qualifying Bidders with Qualifying Bids (collectively, the "Auction Bidders") shall be entitled to make any bids at the Auction;
- iii. the Auction Bidders shall appear in person at the Auction or by videoconference, on camera, through a duly authorized representative;
- iv. only the Debtors, the Auction Bidders, the Consultation Parties, and members of any official committee of unsecured creditors, and the professional advisors to each of the foregoing parties, may attend the Auction; provided that any creditors and equity holders (who are not among the Consultation Parties) desiring to attend the Auction must provide one (1) business day's written notice of their intent to attend the Auction to counsel for the Debtors;
- v. the Debtors and their professional advisors shall direct and preside over the Auction, which shall be transcribed;

- vi. the Auction Bidders shall confirm that they have not engaged in any collusion with respect to the Bidding Procedures, the Auction, or the Sale;
- vii. bidding shall commence at the amount of the Baseline Bid or Baseline Bids, and the Auction Bidders may submit successive bids in increments to be identified at or prior to the commencement of the Auction, which may include sealed bids (the “Bid Increment”); *provided* that: (a) each such successive bid must be a Qualifying Bid; (b) if the then-highest or best bid was made by the Stalking Horse Bidder, such bid shall be deemed to include the sum of the amount of (A) the Break-Up Fee and (B) the Expense Reimbursement (meaning the amount of the Break-Up Fee and Expense Reimbursement will be deemed included in each bid of the Stalking Horse Bidder); and (c) the Debtors, in consultation with the Consultation Parties, reserve the right to modify the Bid Increment during the course of the Auction and shall do so on the record at the Auction; *provided*, however that Bid Increments shall not include sealed bids during the first three complete rounds of bidding;
- viii. the Auction may include individual negotiations with any of the Auction Bidders, but all bids shall be made on the record and in the presence of all of the Auction Bidders;
- ix. all material terms of the bid that is deemed to be the highest or best bid for the Assets or a specific subset thereof for each round of bidding shall be fully disclosed to the Auction Bidders, and the Debtors shall use reasonable efforts to clarify any and all questions that the Auction Bidders may have regarding the Debtors’ announcement of the then-current highest or best bid or bids;
- x. the Debtors and their professional advisors, in consultation with the Consultation Parties, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make subsequent bids or to move to an open outcry or sealed bid format, or a combination thereof) for conducting the Auction, provided that such rules are (a) not inconsistent with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or any applicable order of the Court entered in connection with these Chapter 11 Cases, including, without limitation, the Bidding Procedures Order, and (b) disclosed to the Auction Bidders;
- xi. any Potential Bidder shall (a) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating the Bidding Procedures, the Sale, the

Auction, and the construction and enforcement of the contemplated Sale documents of the Auction Bidders, (b) bring any such action or proceeding in the Court, and (c) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law;

- xii. Auction Bidders shall have the right to make additional modifications to their respective Purchase Agreements or the Stalking Horse Bid, as applicable, in conjunction with each Qualifying Bid submitted in each round of bidding during the Auction, provided that (a) any such modifications on an aggregate basis and viewed in whole, shall not, in the Debtors' discretion, in consultation with the Consultation Parties, be less favorable to the Debtors and their estates than the terms of the Auction Bidders' respective Purchase Agreements or the Stalking Horse Bid, as applicable, and (b) each Qualifying Bid shall constitute an irrevocable offer and shall be binding on the Auction Bidder submitting such bid until such party shall have submitted a subsequent Qualifying Bid at the Auction or the conclusion of the Sale Hearing, whichever occurs sooner, unless such bid is selected as the Successful Bid or the Back-Up Bid, which shall remain binding as provided for herein;
- xiii. the Debtors and the Consultation Parties shall have the right to request any additional financial information that will allow the Debtors and the Consultation Parties to make a reasonable determination as to an Auction Bidder's financial and other capabilities to consummate the Sales contemplated by their proposal or the Stalking Horse Bid, as applicable, as may be amended during the Auction, and any further information that the Debtors, in consultation with the Prepetition Loan Lenders, may believe is reasonably necessary to clarify and evaluate any bid made by an Auction Bidder during the Auction;
- xiv. upon the conclusion of the Auction, the Debtors shall determine, in consultation with the Consultation Parties and subject to Court approval, the offer or offers for the Assets that is or are the highest or best from among the Qualifying Bids submitted at the Auction, which may be the Stalking Horse Bid or a credit bid (each a "Successful Bid"). In making this decision, the Debtors shall consider, in consultation with the Consultation Parties, the amount of the purchase price, the particular assets to be sold, the likelihood of the bidder's ability to close a Sale and the timing thereof, the

nature and impact of any variances from the form Purchase Agreement requested by each bidder, and the net benefit to the Debtors' estates and Secured Creditors. The bidders submitting such Successful Bids, which may be the Stalking Horse Bidder or credit bidder, shall each become a "Successful Bidder," and shall have such rights and responsibilities of the purchaser as set forth in the subject Purchase Agreement, as applicable. The Debtors may, in their sole discretion, designate Back-Up Bids (and corresponding Back-Up Bidders) to purchase the applicable Assets in the event that the Successful Bidder or Successful Bidders do not close the Sale;

- xv. prior to the Sale Hearing, each Successful Bidder shall complete and execute all agreements, contracts, instruments, and other documents evidencing and containing the terms and conditions upon which the applicable Successful Bid was made; and
- xvi. as soon as reasonably practicable after the conclusion of the Auction, the Debtors shall file with the Court and post to the Claims Agent Website a notice identifying the Successful Bidder(s) (the "Notice of Successful Bidder"), which shall set forth, among other things, (a) the Successful Bidder(s) and Back-Up Bidder(s) (if any), (b) the executory contract(s) and/or unexpired lease(s) to be assumed and assigned to such Bidder(s), and (c) the proposed assignee(s) of such executory contract(s) and unexpired lease(s). No later than one (1) business day after the conclusion of the Auction, the Debtors will cause the Notice of Successful Bidder to be served by overnight mail or email, where available, upon all counterparties to such executory contract(s) and unexpired lease(s) proposed to be assumed and all parties requesting notice under Bankruptcy Rule 2002.

EACH SUCCESSFUL BID AND ANY BACK-UP BIDS SHALL EACH CONSTITUTE AN IRREVOCABLE OFFER AND BE BINDING ON THE APPLICABLE SUCCESSFUL BIDDER AND ANY BACK-UP BIDDER, RESPECTIVELY, FROM THE TIME THE BID IS SUBMITTED UNTIL TWO (2) BUSINESS DAYS AFTER THE SALE HAS CLOSED. EACH QUALIFYING BID THAT IS NOT A SUCCESSFUL BID OR BACK-UP BID SHALL BE DEEMED WITHDRAWN AND TERMINATED AT THE CONCLUSION OF THE SALE HEARING.

- f. **Bid Protections to the Stalking Horse Bidder.** The Stalking Horse Bidder shall be granted the right to a Termination Payment comprising a break-up fee of \$172,000, plus reimbursement for up to \$150,000 of expenses, as set forth in more detail in the Stalking Horse Bid.

- g. **Sale Hearing and Closing.** Each Successful Bid and any Back-Up Bid (or if no Qualifying Bid other than that of the Stalking Horse Bidder is received, then the Stalking Horse Bid) will be subject to approval by the Court. The hearing to approve each Successful Bid and any Back-Up Bid (the “Sale Hearing”) shall take place on **February 17, 2022, at a time to be determined**. The Sale Hearing may be adjourned by the Debtors from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or by filing a hearing agenda or notice on the docket of the Chapter 11 Cases. **For the avoidance of doubt, by no later than the time of announcement of any Baseline Bid for the Auction, the Debtors may determine, in consultation with the Consultation Parties, to withdraw the Assets or any subset thereof, from the Auction and sale process, and adjourn the Sale Hearing with respect to the withdrawn Assets on the terms set forth herein.**

At the Sale Hearing, the Debtors will seek entry of an order that is in form and substance acceptable to the Prepetition Loan Lenders and the Successful Bidder that provides, among other things:

- i. authorizes and approves each Sale to a Successful Bidder (and, if applicable, the Back-Up Bidder), pursuant to the terms and conditions set forth in the Stalking Horse Bid or Purchase Agreement executed by the Successful Bidder (and, if applicable the Back-Up Bidder), and that the Assets being transferred in such Sale shall be transferred free and clear of all Encumbrances pursuant to section 363(f) of the Bankruptcy Code, with such Encumbrances, attaching to the sale or transfer proceeds, if any, with the same validity, extent, and priority as had attached to such sold Assets immediately prior to such sale or transfer;
- ii. unless otherwise ordered by the Court, directs that all Encumbrances on the Assets that are sold shall attach to the cash proceeds generated from the sale of such Assets in the same order of priority as they existed prior to the consummation of such sale;
- iii. finds that the Stalking Horse Bidder or Successful Bidder, as applicable, is a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code;
- iv. as appropriate, exempts the Sale(s) and conveyance(s) of the applicable Assets from any transfer tax, stamp tax, or similar tax, or deposit under any applicable bulk sales statute;
- v. notwithstanding anything to the contrary herein, provides for the distribution to the Prepetition Loan Lenders of certain net sale proceeds of all Assets in which the Prepetition Loan Lenders have

first-priority security interests promptly following the closing, which shall occur on or before **February 24, 2022**; and

- vi. permits the Successful Bidder(s) to, up to the time of closing, decline to take title to any assets otherwise included in the sale, but without adjusting the purchase price.
- h. **Back-Up Bidder.** Notwithstanding any of the foregoing, in the event that a Successful Bidder fails to close a Sale by **February 24, 2022**, or such date as may be extended by the Debtors, in consultation with the Consultation Parties, and with the agreement of the applicable Back-Up Bidder, the Back-Up Bid will be deemed to be the Successful Bid, the applicable Back-Up Bidder will be deemed to be a Successful Bidder, and the Debtors will be authorized, but not directed, to close the Sale to the applicable Back-Up Bidder subject to the terms of the Back-Up Bid without the need for further order of the Court and without the need for further notice to any interested parties, as soon as practicable, but not later than **March 11, 2022**, which deadline may be extended by the Debtors in consultation with the Consultation Parties.
- i. **Return of Deposits.** All Deposits shall be returned to each bidder not selected by the Debtors as a Successful Bidder or a Back-Up Bidder no later than three (3) business days following the conclusion of the Sale Hearing. The deposit of each Successful Bidder or, if a Sale is closed with the relevant Back-Up Bidder, the deposit of the Back-Up Bidder, shall be applied to the purchase price for applicable Sale. If a Successful Bidder (or, if a Sale is to be closed with a Back-Up Bidder, then the Back-Up Bidder) fails to consummate a Sale because of a breach or failure to perform on the part of such bidder, then, subject to the terms of the Purchase Agreement or the Stalking Horse Bid, as applicable, the Debtors and their estates shall be entitled to retain the Deposit of the Successful Bidder (or, if the Sale is to be closed with the Back-Up Bidder, then the Back-Up Bidder) as part of the damages resulting to the Debtors and their estates for such breach or failure to perform.
- j. **Reservation of Rights.** Notwithstanding any of the foregoing, the Debtors and their estates reserve the right to, after consultation with the Consultation Parties, modify these Bidding Procedures at or prior to the Auction, including, without limitation, to extend the deadlines set forth herein, modify bidding increments, waive terms and conditions set forth herein with respect to any or all Potential Bidders (including, without limitation, the Bid Requirements), impose additional terms and conditions with respect to any or all Potential Bidders, adjourn or cancel the Auction at or prior to the Auction, and adjourn the Sale Hearing.

16. The Bidding Procedures establish the following key dates for the sale process:

Deadline to Serve Assumption Notice	January 25, 2022
Deadline to File Proposed Sale Order	February 1, 2022
Deadline to Object to Assumption Notice	February 11, 2022 at 4:00 p.m. (ET)
Bid Deadline	February 11, 2022 at 12:00 p.m. (ET)
Deadline to Object to Sale (other than with respect to the conduct of the Auction and designation of a Successful Bidder)	February 11, 2022 at 4:00 p.m. (ET)
Deadline to Object to Adequate Assurance of Stalking Horse	February 11, 2022 at 4:00 p.m. (ET)
Auction Commencement	February 15, 2022 at 10:00 a.m. (ET)
Deadline To Object to Conduct of Auction, Designation of Successful Bidders, and Adequate Assurance	At the Sale Hearing
Proposed Sale Hearing	February 17, 2022 at a time TBD
Closing Date	February 24, 2022, which may be extended in consultation with the Consultation Parties

17. The Debtors believe the timeline set forth in the Bidding Procedures is necessary under the specific circumstances of these Chapter 11 Cases. Specifically, in order to avoid incurring additional administrative expenses related to the Debtors' leases, the Debtors must be able to divest themselves of the assets located therein on an expedited timeframe. Although necessarily compressed, this timeframe will allow parties in interest sufficient time to formulate bids for the Assets. Moreover, relevant information regarding the Assets will be made available by the Debtors to allowing Qualifying Bidders to conduct sufficient due diligence.

B. Notice Procedures for the Sale

18. The Debtors also request approval of the sale notice (the “Sale Notice”), substantially in the form attached hereto as **Exhibit III**. The Debtors will serve the Sale Notice by email (if available) or first class mail, within two (2) business days of entry of the Bidding Procedures Order, upon: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to the Debtors’ prepetition lenders; (iii) all parties known by the Debtors to assert a lien on, interest in, or security interest in any of the Assets; (iv) the Office of the United States Attorney for the District of Delaware; (v) the Office of the Attorney General in each state in which the Debtors operate or sell their goods; (vi) the Office of the Secretary of State in each state in which the Debtors operate or are organized; (vii) all taxing authorities having jurisdiction over any of the Assets, including the Internal Revenue Service; (viii) all environmental authorities having jurisdiction over any of the Assets, including the Environmental Protection Agency; (ix) all of the Debtors’ other known creditors and equity security holders, including the Counterparties; (x) all other parties that had filed a notice of appearance and demand for service of papers in these Chapter 11 Cases as of the service date; (xi) proposed counsel to the Official Committee of Unsecured Creditors; and (xii) all persons known or reasonably believed to have expressed an interest in acquiring all or a substantial portion of the Assets of the Debtors within twelve (12) months prior to the Petition Date (each, an “Interested Person”); *provided*, however, that the Debtors need not serve the Sale Notice on any Interested Person for whom the Debtors are unable to obtain, after reasonable diligence, an email or physical address as of the entry of the Bidding Procedures Order (collectively, the “Sale Notice Parties”).

19. In addition, the Debtors will upload an electronic copy of the Sale Notice to the Data Room. The Debtors will also post the Sale Notice and the Bidding Procedures Order on

the website of the Debtors' claims and noticing agent, <https://dm.epiq11.com/BHCosmetics> (the "Claims Agent Website").

C. Assumption and Assignment Procedures

20. To facilitate the Sale of the Assets, the Debtors seek authority to assume and assign to the Successful Bidder (as defined below) any of the Target Contracts selected by a Successful Bidder in accordance with the Assumption and Assignment Procedures, which are as follows:

- a. On or before **January 25, 2022**, (the "Assumption Notice Deadline"), the Debtors shall file with the Court and serve, by email, if available, or otherwise by first class mail, on each counterparty (each, a "Counterparty," and collectively, the "Counterparties") to a Target Contract a notice, substantially in the form attached hereto as **Exhibit II** (the "Assumption Notice").
- b. The Assumption Notice shall include, without limitation, the cure amount (each, a "Cure Amount"), if any, that the Debtors believe is required to be paid to the applicable Counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy Code for each of the Target Contracts.
- c. If, after the Assumption Notice Deadline, additional executory contracts or unexpired leases of the Debtors are determined to be Target Contracts (such additional contracts, the "Additional Contracts"), as soon as practicable thereafter and in no event less than one (1) business day before the commencement of the Auction, the Debtors shall file with the Court and serve, by email (if available) or overnight delivery, on the affected Counterparties an Assumption Notice, and such Counterparties shall file any Contract Objections (as defined below) not later than: (i) the Contract Objection Deadline (as defined below) in the event that such Assumption Notice was filed and served within two (2) days of the Assumption Notice Deadline and (ii) three (3) hours prior to the commencement of the Sale Hearing in the event that such Assumption Notice was filed and served more than two (2) days after the Assumption Notice Deadline. In either case, service of an Assumption Notice after the Assumption Notice Deadline shall be by email (if available) or overnight mail.
- d. As soon as reasonably practicable after the conclusion of the Auction, the Debtors shall file with the Court and post to the Claims Agent Website a notice identifying the Successful Bidder(s) (a "Notice of Successful Bidder"), which shall set forth, among other things, (i) the Successful Bidder(s) and Back-Up Bidder(s) (if any), (ii) the Selected Target Contracts

(as defined below), and (iii) the proposed assignee(s) of such Selected Target Contracts.

- e. No later than one (1) business day after conclusion of the Auction, the Debtors will cause to be served by overnight mail or email, if available, the Notice of Successful Bidder upon each affected Counterparty and all parties requesting notice under Bankruptcy Rule 2002.
- f. If a Counterparty objects to the (i) Cure Amount for its Target Contract or (ii) Debtors' ability to assume and assign the Target Contract, the Counterparty must file with the Court and serve on the Objection Notice Parties (as defined below) a written objection (a "Contract Objection"). Any Contract Objection shall: (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) be filed with the Clerk of the Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, together with proof of service, **on or before 4:00 p.m. (ET) on February 11, 2022** (the "Contract Objection Deadline"); (iv) be served, so as to be actually received on or before the Contract Objection Deadline, upon the Objection Notice Parties; and (v) state with specificity the grounds for such objection, including, without limitation, the fully liquidated cure amount and the legal and factual bases for any unliquidated cure amount that the Counterparty believes is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code for the Target Contract, along with the specific nature and dates of any alleged defaults, any pecuniary losses resulting therefrom, and the conditions giving rise thereto. Any objections to adequate assurance of future performance by a Successful Bidder shall be filed not later the commencement of the Sale Hearing.
- g. The "Objection Notice Parties" are as follows: (i) counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: M. Blake Cleary, Esq. and Allison Mielke, Esq. (mbcleary@ycst.com and amielke@ycst.com); (ii) proposed counsel to any official committee of unsecured creditors appointed in these Chapter 11 Cases; (iii) counsel to the Debtors' prepetition lenders, Stoll Kennon Ogden PLLC, 500 West Jefferson Street, Suite 2000, Louisville, KY 40202-2828, Attn: Lea Pauley Goff, Esq. (Lea.Goff@skofirm.com) and Jamie Brodsky, Esq. (Jamie.Brodsky@skofirm.com); and (iv) the U.S. Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801, Attn: Timothy J. Fox, Jr., Esq. (Timothy.J.Fox@usdoj.gov).
- h. At the Sale Hearing, the Debtors will seek Court approval of the assumption and assignment to any Successful Bidder of only those Target Contracts that have been selected by any Successful Bidder to be assumed and assigned (each, a "Selected Target Contract," and collectively, the "Selected Target Contracts"). The Debtors and their estates reserve any and all rights with

respect to any Target Contracts that are not ultimately selected as Selected Target Contracts.

- i. If no Contract Objection is timely received with respect to a Selected Target Contract, then upon the closing of the Sale and payment of any Cure Amounts set forth in the Assumption Notice: (i) the Counterparty to such Selected Target Contract shall be deemed to have consented to the assumption by the Debtors and assignment to the Successful Bidder of the Selected Target Contract and be forever barred from asserting any objection with regard to such assumption and assignment (including, without limitation, with respect to adequate assurance of future performance by the applicable Successful Bidder); (ii) any and all defaults under the Selected Target Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to section 365(b)(1)(A) and (B) of the Bankruptcy Code; and (iii) the Cure Amount for such Selected Target Contract shall be controlling notwithstanding anything to the contrary in such Selected Target Contract or any other related document and the Counterparty shall be deemed to have consented to the Cure Amount and shall be forever barred from asserting any other claims related to such Selected Target Contract against the Debtors and their estates or any Successful Bidder, or the property of any of them, that existed prior to the entry of the Sale Order.
- j. To the extent that the parties are unable to consensually resolve any Contract Objection prior to the commencement of the Sale Hearing, including, without limitation, any dispute with respect to the cure amount required to be paid to the applicable Counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy Code (any such dispute, a “Cure Dispute”), such Contract Objection will be adjudicated at the Sale Hearing or at such other date and time as may be determined by the Debtors and the applicable Successful Bidder or fixed by the Court; *provided, however*, that if the Contract Objection relates solely to a Cure Dispute, the Selected Target Contract may be assumed by the Debtors and assigned to any Successful Bidder provided that any undisputed portion of the cure amount is paid upon the effective date of the assumption and assignment of the Selected Target Contract and any disputed portion of the cure amount that the Counterparty asserts is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code (or such lower amount as agreed to by the Counterparty) is deposited in a segregated account by the Debtors or the applicable Successful Bidder pending the Court’s adjudication of the Cure Dispute or the parties’ consensual resolution of the Cure Dispute. To the extent the parties are unable to consensually resolve a Cure Dispute, the Debtors shall file and serve a notice for a hearing for the Court to consider the applicable Cure Dispute at the next scheduled omnibus hearing, which shall be at least fourteen (14) days from the date of the filing of the notice unless the Debtors and the objection Counterparty agree to an earlier hearing. The disputed portion of a cure amount shall be paid to the

applicable Counterparty within seven (7) days of the resolution of the Cure Dispute.

- k. Notwithstanding anything to the contrary herein, if after the Sale Hearing or the entry of the Sale Order, additional executory contracts or unexpired leases of the Debtors are determined to be Target Contracts, as soon as practicable thereafter, the Debtors shall file with the Court and serve, by overnight delivery, on the impacted Counterparties an Assumption Notice, and such Counterparties shall file any Contract Objections not later than seven (7) days thereafter. If no Contract Objection is timely received, the Debtors shall be authorized to assume and assign such Target Contracts to any Successful Bidder without further notice to creditors or other parties in interest and without the need for further order of the Court, and such assumption and assignment shall be subject to the terms of the Sale Order and paragraph 14(i) above.

RELIEF REQUESTED

21. By this Motion, the Debtors seek entry of: (i) the Bidding Procedures Order, (a) authorizing and approving the Bidding Procedures and the Assumption and Assignment Procedures, and the form and manner of notice thereof; (b) authorizing, but not directing, the Debtors to enter into an asset purchase agreement with the Stalking Horse Bidder and approving Bid Protections related thereto; (c) scheduling the Sale Hearing for the Court's consideration of the sale of the applicable Assets free and clear of the Encumbrances, and authorizing the assumption and assignment of the Selected Target Contracts in connection therewith; and (ii) the Sale Order (a) authorizing and approving the Sale free and clear of all Encumbrances other than those permitted by each Purchase Agreement; (b) authorizing and approving the Debtors' entry into each Purchase Agreements; (c) authorizing and approving the assumption and assignment of the Selected Target Contracts in connection therewith; and (d) waiving the stay provisions of Bankruptcy Rules 6004(h) and 6006(d) in accordance therewith.

BASIS FOR RELIEF

I. THE PROCEDURES CONTEMPLATED HEREIN ARE APPROPRIATE AND IN THE BEST INTERESTS OF THE DEBTORS, THEIR ESTATES, AND CREDITORS

A. The Bidding Procedures Are Reasonable, Appropriate, and Will Maximize Value

22. The key objective in any sale of property of a debtor's estate is to maximize the value received by the estate.⁶ Procedures used to enhance competitive bidding support this objective and, therefore, are appropriate in the context of bankruptcy sales.⁷

23. The Debtors have designed the Bidding Procedures to promote a competitive and fair bidding process and, thus, to maximize value for the Debtors' estates and creditors under the unique circumstances and time pressures of these cases. The Bidding Procedures will allow the Debtors to conduct the Auction in a controlled, fair, and open fashion that will encourage participation by financially capable bidders, thereby increasing the likelihood that the Debtors will receive the highest or best possible consideration for the applicable Assets. Furthermore, the Bidding Procedures provide an appropriate framework for the Debtors to review, analyze, and compare any bids received to determine which bids are in the best interests of the Debtors' estates and their creditors.

24. As provided in the Bidding Procedures, the Debtors and their estates, in consultation with the Consultation Parties, reserve the right to, after consultation with the Consultation Parties, modify these Bidding Procedures at or prior to the Auction, including,

⁶ See *In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004) (finding that debtor "had a fiduciary duty to protect and maximize the estate's assets"); *Official Comm. of Unsecured Creditors of Cybergenics, Corp v. Chinery*, 330 F.3d 548, 573 (3d Cir. 2003) (same).

⁷ See *Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.)*, 181 F.3d 527, 537 (3d Cir. 1999) ("O'Brien"); *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 659 (Bankr. S.D.N.Y. 1992) (stating that bidding procedures "encourage bidding and . . . maximize the value of the debtor's assets").

without limitation, to extend the deadlines set forth herein, allow for bidding on only a portion of the Assets and not all of them, modify bidding increments, waive terms and conditions set forth herein with respect to any or all Potential Bidders (including, without limitation, the Bid Requirements), impose additional terms and conditions with respect to any or all Potential Bidders, adjourn or cancel the Auction at or prior to the Auction, and adjourn the Sale Hearing.

25. For these reasons, the Debtors submit that the Bidding Procedures are fair and transparent and will derive the highest or best bids for the Assets. Therefore, the Debtors request that the Court approve the Bidding Procedures, including, without limitation, the dates established thereby for the Auction and the Sale Hearing

B. Bidding Protections Are in the Best Interests of the Debtors and Their Estates and Should Be Authorized

26. The Debtors are also requesting certain bid protections for the Stalking Horse Bidder, such as: (a) the provision of a Termination Payment (including a break-up fee and expense reimbursement) to be paid to the Stalking Horse Bidder upon the occurrence of the consummation of an Alternative Transaction, and (b) the initial overbid requirement (together with the Termination Payment, the “Bid Protections”).

27. The United States Court of Appeals for the Third Circuit recognizes that bid protections, including traditional break-up fees and expense reimbursement provisions, will be approved where they are necessary for the preservation of the debtor’s estate.⁸ In *O’Brien*, the Third Circuit held that even though bidding incentives are measured against a business judgment standard in non-bankruptcy transactions, the administrative expense provisions of section 503(b)

⁸ See, e.g., *In re Reliant Energy Channelview LP*, 594 F.3d 200, 206 (3d Cir. 2010) (citing *O’Brien*, 181 F.3d at 537); see also *Integrated Res.*, 147 B.R. at 659 (bidding procedures “encourage bidding and . . . maximize the value of the debtor’s assets”).

of the Bankruptcy Code govern in the bankruptcy context. Accordingly, to be approved, bidding incentives must benefit a debtor's estate.⁹

28. The Third Circuit identified at least two instances in which bidding incentives may benefit the estate. First, benefit may be found if “assurance of break-up fee promoted more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited.”¹⁰ Second, where the availability of bidding incentives induce a bidder to research the value of the debtor and submit a bid that serves as a minimum or floor bid on which other bidders can rely, “the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth.”¹¹

29. In *O'Brien*, the Third Circuit referred to nine factors that the bankruptcy court viewed as relevant in deciding whether to award a break-up fee or expense reimbursement: (1) the presence of self-dealing or manipulation in negotiating the break-up fee; (2) whether the fee harms, rather than encourages, bidding; (3) the reasonableness of the break-up fee relative to the purchase price; (4) whether the “unsuccessful bidder place[d] the estate property in a sales configuration mode to attract other bidders to the auction;” (5) the ability of the request for a break-up fee “to attract or retain a potentially successful bid, establish a bid standard or minimum for other bidders, or attract additional bidders;” (6) the correlation of the fee to a maximization of value of the debtor's estate; (7) the support of the principal secured creditors and creditors' committees of break-up fee; (8) the benefits of the safeguards to the debtor's estate; and (9) the

⁹ *O'Brien*, 181 F.3d at 533.

¹⁰ *Id.* at 537.

¹¹ *Id.*

“substantial adverse impact [of the break-up fee] on unsecured creditors, where such creditors are in opposition to the break-up fee.”¹²

30. The Debtors submit that the Bid Protections collectively provide the Debtors’ estates with the types of benefits generally contemplated by the Third Circuit and, therefore, should be approved. Indeed, based on the extensive marketing process that the Debtors and their advisors have conducted thus far, the Debtors have determined that the Bid Protections were necessary to attract and retain the Stalking Horse Bidder. Simply stated, the Bid Protections were a material inducement for, and condition of, the Stalking Horse Bidder’s entry into the Stalking Horse Bid. Moreover, by inducing the Stalking Horse Bidder to hold its offer open as a baseline from which other potential purchasers can submit higher and/or better offers, the Bid Protections serve to encourage more competitive bidding and, in turn, will increase the likelihood that the Debtors will maximize the value of the Assets for the benefit of their stakeholders.

31. Furthermore, the Debtors believe that the Bid Protections are within market and fair and reasonable in amount, especially where the Termination Payment will be paid out of the proceeds of any competing transaction that is consummated.

32. For the foregoing reasons, the Debtors respectfully request that this Court authorize the Bid Protections.

C. Secured Parties Should Be Authorized to Credit Bid on the Assets under Section 363(k) of the Bankruptcy Code

33. Section 363(k) of the Bankruptcy Code provides that, unless the court for cause orders otherwise, the holder of a claim secured by property that is the subject of a sale “may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset

¹² *Id.* at 536.

such claim against the purchase price of such property.”¹³ Even if a secured creditor is undersecured as determined in accordance with section 506(a) of the Bankruptcy Code, section 363(k) allows such secured creditor to bid the full face value of its claim and does not limit the credit bid to the claim’s economic value.¹⁴

34. As a result, the Debtors propose that any party holding claims, that are not subject to objection by the start of the Auction and that are secured by valid, binding, enforceable, non-avoidable, and perfected liens on and security interests in an Asset, be permitted to submit a credit bid for the Assets subject to those liens and security interests, subject to providing Secured Claim Documentation (as defined in the Bidding Procedures) satisfactory to the Debtors.

D. The Notice Procedures for the Sale Are Reasonable and Appropriate

35. Pursuant to Bankruptcy Rules 2002(a) and (c), the Debtors are required to notify creditors of the Sale, including a disclosure of the time and place of any auction, the terms and conditions of the sale, and the deadline for filing any objections. The Debtors submit that the notice procedures described above are reasonably calculated to provide timely and adequate notice of the Sale, Bidding Procedures, Auction, and Sale Hearing to the Debtors’ creditors and all other parties in interest that are entitled to notice, as well as those parties that have expressed a bona fide interest in acquiring the Assets. Further, the Assumption and Assignment Procedures ensure that each Counterparty will have sufficient notice, under the circumstances, of such potential assumption and assignment, and an opportunity to contest the Cure Amount, if any, for its Target Contract, as well as the ability of the relevant Successful Bidder(s) to provide adequate assurance of future performance with respect to such Selected Target Contract. Accordingly, the Debtors

¹³ 11 U.S.C. § 363(k).

¹⁴ See *Cohen v. KB Mezzanine Fund II, LP (In re Submicron Sys. Corp.)*, 432 F.3d 448, 459-60 (3d Cir. 2006).

respectfully request that the Court approve the notice procedures set forth in this Motion, including the form and manner of service of the Sale Notice and service of the Assumption Notice, and that no other or further notice of the Sale, Bidding Procedures, Auction, or Sale Hearing is necessary or required.

II. APPROVAL OF THE SALE OF THE ASSETS IS APPROPRIATE AND IN THE BEST INTERESTS OF THE DEBTORS' ESTATES

A. Sufficient Business Justification Exists for Consummation of the Sale Under Sections 105(a) and 363(b) of the Bankruptcy Code

36. Pursuant to section 105(a) of the Bankruptcy Code, a “[c]ourt may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.”¹⁵ Section 363(b) of the Bankruptcy Code provides that a debtor, “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.”¹⁶ Although section 363(b) does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of the estate, courts have required that such use, sale, or lease be based upon the sound business judgment of the debtor.¹⁷ Further, the demonstration of a valid business justification by a debtor leads to a strong presumption “that in making [the] business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.”¹⁸

¹⁵ 11 U.S.C. § 105(a).

¹⁶ 11 U.S.C. § 363(b).

¹⁷ See, e.g., *Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996) (internal citation omitted); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070–71 (2d Cir. 1983); *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143, 147–48 (3d Cir. 1986) (implicitly adopting the “sound business judgment” test of *In re Lionel Corp.*); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 175–76 (D. Del. 1991) (holding that the Third Circuit adopted the “sound business judgment” test in *Abbotts Dairies*); *Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (same).

¹⁸ *Integrated Res.*, 147 B.R. at 656 (Bankr. S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)).

37. Courts typically consider the following factors in determining whether a proposed sale satisfies this standard: (a) whether a sound business justification exists for the sale; (b) whether adequate and reasonable notice of the sale was given to interested parties; (c) whether the sale will produce a fair and reasonable price for the property; and (d) whether the parties have acted in good faith.¹⁹ A sound business purpose for the sale of a debtor's assets outside the ordinary course of business may be found where such a sale is necessary to preserve the value of assets for the estate, its creditors or interest holders.²⁰ Furthermore, "[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor's conduct."²¹ There is a presumption that "in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company."²² Thus, if a debtor's actions satisfy the business judgment rule, then the transaction in question should be approved under section 363(b)(1) of the Bankruptcy Code.

38. The Debtors' decision to pursue a sale of the Assets represents a reasonable exercise of the Debtors' business judgment, and, accordingly, the Debtors should be authorized to sell the Assets under sections 105(a) and 363(b) of the Bankruptcy Code.

39. As for the balance of the Assets, the open and fair auction and sale process contemplated by the Bidding Procedures will ensure that the Debtors' estates receive the highest

¹⁹ See *In re Decora Indus., Inc.*, No. 00-4459 (JJF), 2002 WL 32332749, at *2 (D. Del. May 20, 2002) (citing *In re Del & Hudson Ry. Co.*, 124 B.R. at 176); *In re United Healthcare Sys. Inc.*, No. 97-1159, 1997 WL 176574, at *4 & n.2 (D.N.J. Mar. 26, 1997).

²⁰ See, e.g., *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (3d Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983); see also *In re Food Barn Stores, Inc.*, 107 F.3d 558, 564–65 (8th Cir. 1997) (stating that the paramount goal in any proposed sale of property of the estate is to maximize value).

²¹ *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

²² *In re Integrated Res., Inc.*, 147 B.R. at 656 (quoting *Smith v. Van Gorkcom*, 488 A.2d 858, 872 (Del. 1985)).

or otherwise best value available for the Assets by allowing the market to determine the purchase price of the Assets and will minimize the administrative expenses the Debtors' estates are forced to incur while providing provide a greater recovery than would be provided by any other available alternative. Furthermore, compliance with the Bidding Procedures will ensure the fairness and reasonableness of the consideration to be paid by the Stalking Horse Bidder or other Successful Bidder, and will establish that the Debtors and such bidder have proceeded in good faith.

40. Accordingly, the proposed Sale is the best path forward for maximizing recoveries to the Debtors' estates, their creditors, and all parties in interest, given both the open nature of the proposed process and the need for a Sale to occur given the Debtors' current financial circumstances as outlined in the First Day Declaration. The Debtors submit that ample business justification exists for the consummation of Sale and, therefore, request that the Court approve such Sale.

B. The Sale of the Assets Free and Clear of All Encumbrances Is Authorized Under Section 363(f) of the Bankruptcy Code

41. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests, and encumbrances if:

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest; (2) such entity consents; (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property; (4) such interest is in bona fide dispute; or (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.²³

This provision is supplemented by section 105(a) of the Bankruptcy Code, which provides that “[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out

²³ 11 U.S.C. § 363(f).

the provisions of [the Bankruptcy Code].”²⁴ Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice to permit the sale of the Assets “free and clear” of liens and interests.²⁵ Furthermore, a debtor possesses broad authority to sell assets free and clear of liens.²⁶

42. The Debtors submit that, to attract the highest or otherwise best value for creditors, it is appropriate to sell their Assets on a final “as is” basis, free and clear of any and all Encumbrances (except as otherwise expressly set forth in the Sale Order and the Stalking Horse Bid or a Purchase Agreement with a Successful Bidder, as applicable) in accordance with section 363(f) of the Bankruptcy Code because one or more of the tests of section 363(f) are satisfied with respect to such Sale.

43. In particular, the Debtors believe that they will meet section 363(f)(2) of the Bankruptcy Code with respect to the Debtors’ prepetition secured lenders that have a first-lien position on any of the Assets because the Debtors’ prepetition secured lenders will consent to the Sale. Moreover, with respect to any other party asserting a lien, claim, or encumbrance against the Assets, the Debtors anticipate that they will be able to satisfy one or more of the conditions set forth in section 363(f) of the Bankruptcy Code. In particular, known lienholders will receive notice and will be given sufficient opportunity to object to the relief requested. Such lienholders that do not object to the Sale should be deemed to have consented.²⁷ Furthermore, the Debtors propose

²⁴ 11 U.S.C. § 105(a).

²⁵ See *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988) (noting that because section 363(f) is written in the disjunctive, a court may approve a sale free and clear if any one subsection is met); see also *Mich. Emp’t Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (same); *In re Bygaph, Inc.*, 56 B.R. 596, 606 n.8 (Bankr. S.D.N.Y. 1986) (same).

²⁶ See *In re Trans World Airlines, Inc.*, 322 F.3d 283, 289 (3d Cir. 2003).

²⁷ See *FutureSource LLC v. Reuters Ltd.*, 312 F.3d 281, 285-86 (7th Cir. 2002) (“[L]ack of objection (provided of course there is notice) counts as consent. It could not be otherwise; transaction costs would be prohibitive if everyone who might have an interest in the bankrupt’s assets had to execute a formal consent before they could be sold.”) (internal citations omitted); *Hargrave v. Twp. of Pemberton (In re Tabone, Inc.)*, 175 B.R. 855, 858

that any Encumbrances asserted against the Assets be transferred to and attach to the proceeds of such Sale.

C. The Sale Should Be Subject to the Protections of Section 363(m) of the Bankruptcy Code

44. Section 363(m) of the Bankruptcy Code provides, in part, that the reversal or modification on appeal of an authorization of a sale pursuant to section 363(b) or section 363(c) of the Bankruptcy Code 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, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.²⁸ While the Bankruptcy Code does not define “good faith,” the Third Circuit in *In re Abbotts Dairies of Pennsylvania, Inc.* held that the misconduct that would destroy a purchaser’s good faith status at a judicial sale typically involves “fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.”²⁹

45. In approving the Sale free and clear of Encumbrances, the Debtors request that the Court find and hold that all purchasers of applicable Assets are entitled to the protections afforded by section 363(m) of the Bankruptcy Code. Such relief is appropriate in that parties in interest will have the opportunity to review and object to a proposed transaction, and selection of

(Bankr. D.N.J. 1994) (holding that creditor’s failure to object to sale free and clear of liens, claims and encumbrances satisfies section 363(f)(2)); *In re Elliot*, 94 B.R. at 345 (same).

²⁸ See 11 U.S.C. § 363(m).

²⁹ 788 F.2d at 147 (citation omitted); see also *Kabro Assocs. of West Islip, L.L.C. v. Colony Hill Assocs. (In re Colony Hill Assocs.)*, 111 F.3d 269, 276 (2d Cir. 1997) (“Typically, the misconduct that would destroy a [buyer]’s good faith status at a judicial sale involves fraud, collusion between the [buyer] and other bidders or the trustee or an attempt to take grossly unfair advantage of other bidders.”).

a Successful Bidder or Successful Bidders will be the result of a competitive bidding process and arm's-length, good-faith negotiations.³⁰

D. The Assumption and Assignment of the Selected Target Contracts in Connection with the Sale Satisfies Section 365 of the Bankruptcy Code

46. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.”³¹ The Second Circuit has stated that “[t]he purpose behind allowing the assumption or rejection of executory contracts is to permit the trustee or debtor-in-possession to use valuable property of the estate and to ‘renounce title to and abandon burdensome property.’”³²

47. The standard applied to determine whether the assumption of a contract or an unexpired lease should be authorized is the “business judgment” standard.³³ As described above, “[t]he business judgment rule ‘is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interest of the company.’”³⁴ Further, the business judgment rule is crucial in Chapter 11 Cases and shields a debtor’s management from judicial second-guessing.³⁵

³⁰ See *Esposito v. Title Ins. Co. of Pa. (In re Fernwood Mkts.)*, 73 B.R. 616, 620 (Bankr. E.D. Pa. 1987) (good faith purchasers are protected under section 363(m) where notice is provided to lienholders).

³¹ 11 U.S.C. § 365(a).

³² *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1098 (2d Cir. 1993) (quoting 2 COLLIER ON BANKRUPTCY ¶ 365.01[1] (15th ed. 1993)).

³³ See *In re AbitibiBowater Inc.*, 418 B.R. 815, 831 (Bankr. D. Del. 2009) (finding that a debtor’s decision to assume or reject an executory contract will stand so long as “a reasonable business person would make a similar decision under similar circumstances.”); *In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (stating a debtor’s decision to reject an executory contract is governed by the business judgment standard and can only be overturned if the decision was the product of bad faith, whim, or caprice).

³⁴ *Integrated Res., Inc.*, 147 B.R. at 656 (quoting *Smith v. Van Gorkom*, 488 A.2d at 872).

³⁵ See *id.*; see also *Comm. of Asbestos Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“[T]he Code favors the continued operation of a business by a debtor and a presumption of reasonableness attaches to a debtor’s management decisions.”).

Generally, courts defer to a debtor in possession's business judgment to assume or reject an executory contract or lease,³⁶ and here, the Debtors have exercised their sound business judgment in determining that assumption and assignment of the Selected Target Contracts in connection with the Sale is in the best interests of the Debtors and their estates. Accordingly, the proposed assumption under section 365(a) of the Bankruptcy Code is appropriate.³⁷

48. As set forth above, the Sale will yield the maximum value for the Debtors' estates and the Debtors expect that value may be achieved through the assumption, assignment, and sale of the Selected Target Contracts. In addition, under section 365(k) of the Bankruptcy Code, a debtor's assignment of a contract or lease "relieves the trustee and the estate from any liability for any breach of such contract or lease occurring after such assignment."³⁸ Thus, following an assignment to a Successful Bidder of a Target Contract, the Debtors will be relieved from any liability for any subsequent breach associated therewith.

49. Furthermore, section 365(b)(1) of the Bankruptcy Code requires that any outstanding defaults under the Target Contracts be cured or that adequate assurance be provided that such defaults will be promptly cured.³⁹ The Debtors propose to file with the Court, and serve on each Counterparty to a Target Contract, an Assumption Notice that indicates the proposed Cure

³⁶ See *Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co.*, (In re *Wheeling-Pittsburgh Steel Corp.*), 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987) (stating that the business judgment test "requires only that the trustee [or debtor in possession] demonstrate that [assumption or] rejection of the executory contract will benefit the estate."); see also *N.L.R.B. v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984); *Control Data Corp. v. Zelman* (In re *Minges*), 602 F.2d 38, 42-43 (2d Cir. 1979); *In re Riodizio, Inc.*, 204 B.R. 417, 424-25 (Bankr. S.D.N.Y. 1997); *In re G Survivor Corp.*, 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994).

³⁷ See, e.g., *In re Philadelphia Newspapers, LLC*, 424 B.R. 178, 182-83 (Bankr. E.D. Pa. 2010) (stating that if a debtor's business judgment has been reasonably exercised, a court should approve the assumption or rejection of an executory contract or unexpired lease); *Westbury Real Estate Ventures, Inc. v. Bradlees, Inc.* (In re *Bradlees Stores, Inc.*), 194 B.R. 555, 558 n.1 (Bankr. S.D.N.Y. 1996); *Summit Land Co. v. Allen* (In re *Summit Land Co.*), 13 B.R. 310, 315 (Bankr. D. Utah 1981) (holding that, absent extraordinary circumstances, court approval of a debtor's decision to assume or reject an executory contract "should be granted as a matter of course").

³⁸ 11 U.S.C. § 365(k).

³⁹ 11 U.S.C. § 365(b)(1).

Amount for each such contract. As such, each Counterparty will have the opportunity to object to the proposed assumption and assignment to the applicable Successful Bidder and to the proposed Cure Amount, if applicable. Moreover, the payment or reserve of the applicable Cure Amount, as provided for in the Bidding Procedures, will be a condition to the Debtors' assumption and assignment of any Selected Target Contract.

50. Relatedly, section 365(f)(2) of the Bankruptcy Code provides that a debtor may assign an executory contract or unexpired lease of nonresidential real property if “adequate assurance of future performance by the assignee of such contract or lease is provided.”⁴⁰ The words “adequate assurance of future performance” must be given a “practical, pragmatic construction” in light of the facts and circumstances of the proposed assumption.⁴¹ Specifically, adequate assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned.⁴²

51. Here, any Successful Bidder will have provided adequate assurance of future performance with respect to any Selected Target Contract. For a bid to be deemed a Qualifying Bid, each Qualifying Bidder will be required to provide evidence supporting its ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code (the “Adequate

⁴⁰ 11 U.S.C. § 365(f)(2).

⁴¹ See *In re Fleming Cos., Inc.*, 499 F.3d 300, 307 (3d Cir. 2007) (internal citation omitted); *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988) (same); see also *In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (finding that adequate assurance of future performance does not mean absolute assurance that debtor will thrive and profit); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (“Although no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.”).

⁴² See *In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (holding that adequate assurance of future performance is given where the assignee of lease has financial resources and expressed a willingness to devote sufficient funding to the business to ensure its success, and that in the leasing context, the chief determinant of adequate assurance is whether rent will be paid).

Assurance Information”), including: (a) the bidder’s financial wherewithal and willingness to perform under any Target Contracts that are assumed and assigned to such potential bidder; (b) the name of the proposed counterparty that will act as the assignee of any Target Contract; and (c) a contact person for the proposed assignee that the Counterparty may directly contact in connection with the adequate assurance of future performance. To the extent available, the Adequate Assurance Information may also include (x) a corporate organization chart or similar disclosure identifying ownership and control of the proposed assignee and (y) financial statements, tax returns, and annual reports. Furthermore, given that the Debtors will submit evidence at the Sale Hearing that all requirements for the assumption and assignment of the Selected Target Contracts have been satisfied, the Court and other interested parties will have the opportunity to evaluate the ability of each Successful Bidder to provide adequate assurance of future performance.

52. Therefore, the Debtors respectfully request that the Court (a) approve the proposed assumption and assignment of the Target Contracts and (b) find that all anti-assignment provisions of such contracts to be unenforceable under section 365(f) of the Bankruptcy Code.⁴³

WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h) AND 6006(d)

53. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.”⁴⁴ Furthermore, Bankruptcy Rule 6006(d) provides

⁴³ Section 365(f)(1) provides that “notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease...” 11 U.S.C. § 365(f)(1). Section 365(f)(3) further provides that “notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such contract or lease or a right or obligation under such contract or lease on account of an assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated or modified under such provision because of the assumption or assignment of such contract or lease by the trustee.” 11 U.S.C. § 365(f)(3).

⁴⁴ Fed. R. Bankr. P. 6004(h).

that an “order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise.”⁴⁵

54. As set forth throughout this Motion, any delay in the Debtors’ ability to consummate the Sale—should the Debtors determine it is the best or only viable disposition of the Assets—would be detrimental to the Debtors, their creditors and estates, would cause the Debtors’ estates to incur unnecessary administrative expenses, and would impair the Debtors’ ability to maximize value of the Assets through an expeditious closing of the Sale. For this reason and those set forth above, the Debtors submit that ample cause exists to justify a waiver of the fourteen day stay imposed by Bankruptcy Rule 6004(h) and 6006(d), to the extent applicable.

NOTICE

55. Notice of this Motion has been provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to the Debtors’ prepetition lenders; (iii) all parties known by the Debtors to assert a lien on or a security interest in any of the Assets; (iv) the holders of the twenty (20) largest unsecured claims on a consolidated basis against the Debtors; and (v) all parties that have requested notice in these Chapter 11 Cases under Bankruptcy Rule 2002 (collectively, the “Motion Notice Parties”).

⁴⁵ Fed. R. Bankr. P. 6006(d).

CONCLUSION

WHEREFORE, the Debtors request entry of the Bidding Procedures Order and the Sale Order, granting the relief requested herein and such other and further relief as is just and proper.

Dated: January 15, 2022
Wilmington, Delaware

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EXHIBIT I

Bidding Procedures Sale Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

BHCOSMETICS HOLDINGS, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 22-10050 (____)

(Joint Administration Requested)

Docket Ref. No. _____

**ORDER (A) APPROVING CERTAIN BIDDING PROCEDURES,
ASSUMPTION AND ASSIGNMENT PROCEDURES, AND THE FORM AND
MANNER OF NOTICE THEREOF; (B) AUTHORIZING THE DEBTORS TO
ENTER INTO AN ASSET PURCHASE AGREEMENT WITH A STALKING HORSE
BIDDER AND APPROVING CERTAIN BIDDING PROTECTIONS; AND
(C) SCHEDULING A HEARING ON THE APPROVAL OF THE SALE OF THE
DEBTORS' REMAINING ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES
AS WELL AS THE ASSUMPTION AND ASSIGNMENT OF CERTAIN
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Upon consideration of the motion (the “Motion”)² of BHCosmetics Holdings, LLC and its affiliated debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (collectively, the “Chapter 11 Cases”) for entry of this Order, among other things: (a) authorizing and approving the Bidding Procedures, attached hereto as **Exhibit A**, and the Assumption and Assignment Procedures, and the form and manner of notice thereof; (b) authorizing, but not directing, the Debtors to enter into an asset purchase agreement with the Stalking Horse Bidder and approving certain bid protections for the Stalking Horse Bidder, such as: (i) the provision for payment of a break-up fee and capped expense reimbursement (together,

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: BHCosmetics Holdings, LLC (7827); BHCosmetics Intermediate, LLC (2918); BHCosmetics, LLC (9106); and Visceral Agency LLC (9266). The Debtors’ service address for purposes of these chapter 11 cases is 8161 Lankershim Blvd., North Hollywood, CA 91605.

² Capitalized terms used but not defined herein shall have the meanings given them in the Bidding Procedures (as defined below), or to the extent not defined therein, the Motion.

the “Termination Payment”) to be paid to the Stalking Horse Bidder upon the occurrence of the consummation of an Alternative Transaction, and (ii) the initial overbid requirement (together with the Termination Payment, the “Bid Protections”); and (c) scheduling the Sale Hearing for the Court’s consideration of the sale of the applicable Assets free and clear of Encumbrances, and authorizing the assumption and assignment of the Selected Target Contracts in connection therewith; and this Court having reviewed the Motion; and upon the First Day Declaration and upon the record of the hearing and all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is hereby

FOUND AND DETERMINED THAT:³

A. This Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order.

B. Venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution.

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

D. The Debtors have demonstrated that good and sufficient notice of the relief granted by this Bidding Procedures Order has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief granted by this Bidding

³ 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 that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Procedures Order has been afforded to those parties entitled to notice pursuant to Bankruptcy Rule 2002 and all other interested parties.

E. The Motion provides all interested parties with timely and proper notice of: (i) the identity of the Stalking Horse Bidder, including any affiliation with the Debtors; (ii) the Assets that are the subject of the Stalking Horse Bid; (iii) a copy of the Stalking Horse Bid; (iv) the purchase price to be provided by the Stalking Horse Bidder; (v) any proposed Bid Protections; and (vi) the deposit paid by the Stalking Horse Bidder. No other or further notice will be required of the foregoing.

F. The Bidding Procedures are (i) fair, reasonable, and appropriate and (ii) designed to maximize recovery with respect to the Assets.

G. The Assumption and Assignment Procedures provided for herein and the Assumption Notice are reasonable and appropriate and consistent with the provisions of section 365 of the Bankruptcy Code and Bankruptcy Rule 6006. The Assumption and Assignment Procedures and the Assumption Notice have been tailored to provide an adequate opportunity for all Counterparties to assert any Contract Objections.

H. RBI Acquisition Holdings, LLC shall act as the “Stalking Horse Bidder” under the Stalking Horse Bid, which shall be subject to higher or better offers in accordance with the Bidding Procedures.

I. Pursuit of the Stalking Horse Bidder as a “stalking-horse” and the Stalking Horse Bid as a “stalking-horse” sale agreement is in the best interests of the Debtors and the Debtors’ estates and creditors, and it reflects a sound exercise of the Debtors’ business judgment. The Stalking Horse Bid provides the Debtors with the opportunity to sell the applicable Assets, in order to preserve and realize their optimal value. The Stalking Horse Bid will enable the Debtors

to secure a fair and adequate baseline price for the applicable Assets at the auction for the Debtors' Assets and, accordingly, will provide a clear benefit to the Debtors' estates, their creditors, and all other parties in interest.

J. The Bid Protections, including, but not limited to, any Termination Payment (as defined in the Motion), (i) have been negotiated by the Stalking Horse Bidder and the Debtors and their respective advisors at arms' length and in good faith and (ii) are necessary to ensure that the Stalking Horse Bidder will continue to pursue its Stalking Horse Bid and the sale transaction contemplated thereby (the "Sale Transaction"). The Termination Payment, to the extent payable under the Stalking Horse Bid, (iii) is an actual and necessary cost and expense of preserving the Debtors' estates within the meaning of section 503(b) of the Bankruptcy Code, (iv) shall be treated as an allowed administrative expense claim against the Debtors' estates pursuant to sections 105(a), 503(b) and 507(a)(2) of the Bankruptcy Code, (v) is commensurate to the real and material benefits conferred upon the Debtors' estates by the Stalking Horse Bidder, and (vi) is fair, reasonable, and appropriate, including in light of the size and nature of the Sale Transaction, the necessity to announce a sale transaction for the applicable Assets and the efforts that have been and will be expended by the Stalking Horse Bidder. The Stalking Horse Bidder has expended, and will continue to expend, considerable time, money, and energy pursuing the proposed Sale Transaction; and the Bid Protections, including, but not limited to, any Termination Payment are a material inducement for, and condition of, the Stalking Horse Bidder's execution of the Stalking Horse Bid. Unless it is assured that the Bid Protections, including, but not limited to, any Termination Payment, will be available, the Stalking Horse Bidder is unwilling to remain obligated to consummate the Sale Transaction or otherwise be bound under the Stalking Horse Bid

(including the obligations to maintain its committed offer while such offer is subject to higher or better offers as contemplated by the Bidding Procedures).

K. The Stalking Horse Bidder is not an “insider” or “affiliate” of any of the Debtors, as those terms are defined in section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, or controlling stockholders exist between the Stalking Horse Bidder and the Debtors. The Stalking Horse Bidder and its respective counsel and advisors have acted in “good faith” within the meaning of section 363(m) of the Bankruptcy Code in connection with the Stalking Horse Bidder’s negotiation of its Bid Protections and the Bidding Procedures and the Stalking Horse Bidder’s negotiation and entry into the Stalking Horse Bid.

L. Entry of this Bidding Procedures Order is in the best interests of the Debtors, their estates, their creditors, and all other interested parties, and the legal and factual bases set forth in the Motion, the First Day Declaration, and at the hearing on the Motion establish just cause for the relief granted herein.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Those portions of the Motion seeking approval of (a) the Bidding Procedures, (b) the Assumption and Assignment Procedures, (c) the date and time of the Sale Hearing, (d) entry into an asset purchase agreement with the Stalking Horse Bidder, and (e) the noticing and objection procedures related to each of the foregoing, as applicable, including, without limitation, the Assumption Notice and the Sale Notice, substantially in the form attached to the Motion as Exhibit III (subclauses (a)–(d) above, collectively, the “Bidding and Auction Process Procedures”), are hereby GRANTED to the extent set forth herein.

2. Any objections to the Motion as it pertains to the Bidding and Auction Process Procedures or the relief granted by this Bidding Procedures Order that have not been

withdrawn, waived, or settled, and all reservations of rights included therein, are hereby overruled and denied on the merits with prejudice.

I. BID PROTECTIONS

3. The Bid Protections are approved in their entirety, including, without limitation, the Termination Payment payable in accordance with, and subject to the terms of, the Stalking Horse Bid.

4. Except as expressly provided for herein for the benefit of the Stalking Horse Bidder, no other termination payments, expense reimbursements, topping fees or any other similar fee or payment are authorized or permitted under this Order.

5. The obligations of the Debtors to pay the Termination Payment to the Stalking Horse Bidder: (i) to the extent provided in the Stalking Horse Bid, shall be entitled to administrative expense claim status under sections 503(b) and/or 507(a)(2) of the Bankruptcy Code; and (ii) shall survive the termination of the Stalking Horse Bid. Absent malfeasance by the Stalking Horse Bidder, no subsequent order of the Court can modify the requirement that the Termination Payment be paid to the Stalking Horse Bidder pursuant to the terms of this Order.

6. Under no circumstances shall any portion of the deposit provided by the Stalking Horse Bidder under the terms of the Stalking Horse Bid be deemed to be property of any of the Debtors' chapter 11 estates under section 541 of the Bankruptcy Code unless and until such portion is delivered or required to be delivered to the applicable Debtor, as seller, in accordance with the terms of the Stalking Horse Bid, and such deposit shall be disbursed only in accordance with the terms of the Stalking Horse Bid. Upon termination of the Stalking Horse Bid that results in the required payment of a deposit back to the Stalking Horse Bidder, the Debtors are authorized and directed to take all steps contemplated under the Stalking Horse Bid to cause the transfer of such deposit back to the Stalking Horse Bidder.

7. The Debtors are authorized and directed to pay the Termination Payment, to the extent payable under the Stalking Horse Bid, without further order of the Court in accordance with the Stalking Horse Bid. The Termination Payment, to the extent payable under the Stalking Horse Bid, shall be paid in cash from the proceeds of any approved sale.

II. BIDDING PROCEDURES & AUCTION

8. The Bidding Procedures are hereby approved. The failure to specifically include or reference any particular provision of the Bidding Procedures in the Motion or this Bidding Procedures Order shall not diminish or otherwise impair the effectiveness of such procedures, it being this Court's intent that the Bidding Procedures are approved in their entirety as if fully set forth in this Bidding Procedures Order. The Debtors are hereby authorized to conduct the Auction pursuant to the terms of the Bidding Procedures and this Bidding Procedures Order.

9. Notwithstanding any prepetition limitations, including, without limitation, any non-disclosure, confidentiality, or similar provisions relating to any due diligence information, if the Debtors intend to provide confidential materials to Qualifying Bidders, the Debtors and their estates shall be authorized to provide due diligence information to Qualifying Bidders provided that such Qualifying Bidders (except Secured Creditors, including but not limited to Fifth Third Bank, National Association ("Fifth Third"), as Administrative Agent, Collateral Agent, Swing Line Lender, L/C Issuer, Lead Arranger, and Bookrunner, and the other participating lenders (collectively with Fifth Third, the "Prepetition Loan Lenders") have delivered an executed confidentiality agreement in form and substance acceptable to the Debtors, if such an agreement is provided to the Qualifying Bidders as part of the sale process for the particular Asset(s). The Debtors and their estates are not responsible for, and shall have no liability with respect to, any information obtained by, or provided to, any Qualifying Bidders in connection with the Bidding

Procedures or the Sale, if the information was provided in accordance with this Bidding Procedures Order.

10. For all purposes under the Bidding Procedures: (a) the Stalking Horse Bidder shall be considered a Qualifying Bidder, and any Stalking Horse Bid shall be considered a Qualifying Bid; (b) should they decide to credit bid, Secured Creditors, including but not limited to, the Prepetition Loan Lenders, shall be deemed Qualified Bidders without being required to submit information or documents required to be submitted by other Qualified Bidders and may seek to credit bid some or all of their claims within the meaning of section 363(k) of the Bankruptcy Code and to the extent demonstrated by their Secured Claim Documentation; *provided* that a Secured Creditor shall have the right to credit bid its claim only with respect to the collateral by which such secured creditor is secured and may only credit bid claims secured by a first-priority lien unless the bid is accompanied by a cash bid in an amount sufficient to satisfy all senior liens in such collateral; and (c) in determining whether the Potential Bidders constitute Qualifying Bidders, the Debtors may consider a combination of bids for the Assets and subsets thereof.

11. The Bidding Procedures shall apply to the Potential Bidders; the Qualifying Bidders; the submission, receipt, and analysis of all bids relating to the Sale; and the conduct of the Sale and the Auction.

12. A Qualifying Bidder, other than the Stalking Horse Bidder, that desires to make a bid shall deliver a written and electronic copy of its bid in **both** PDF and MS-WORD format to the Bid Package Notice Parties, so as to be received on or before **February 11, 2022, at 12:00 p.m. (ET)** (the “Bid Deadline”); *provided* that the Debtors may extend the Bid Deadline without further order of the Court, with the approval of the Prepetition Loan Lenders and subject to providing notice to the Consultation Parties. To the extent that the Bid Deadline is extended for

all parties, the Debtors shall file a notice on the docket of these Chapter 11 Cases indicating the same. **Any party that does not submit a bid by the Bid Deadline (including as extended in accordance with the prior two sentences) may not be allowed to (a) submit any offer after the Bid Deadline or (b) participate in the Auction.**

13. All persons or entities submitting a bid are deemed to have submitted to the exclusive jurisdiction of this Court with respect to all matters related to the Auction and the terms and conditions of the sale or transfer of the Assets identified under the applicable Purchase Agreement.

14. If only one Qualifying Bid is submitted for the Assets on or before the Bid Deadline, the Debtors, after consultation with the Prepetition Loan Lenders, shall not hold an Auction and shall request at the Sale Hearing that this Court approve such Qualifying Bid and the transactions contemplated thereunder for those Assets. In the event that the Debtors timely receive two or more Qualifying Bids for the same Assets, the Debtors shall conduct the Auction for the subject Assets on **February 15, 2022, at 10:00 a.m. (ET)**, at Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Rodney Square, Wilmington, Delaware 19801, and by videoconference, for parties electing to appear remotely, or such other date and time as the Debtors, after consultation with the Consultation Parties, may notify Qualifying Bidders who have submitted Qualifying Bids; *provided* that such other date and time is no earlier than one (1) business day following the delivery of such notice.

15. Each Auction Bidder shall confirm in writing that: (a) it has not engaged in any collusion with respect to the submission of any bid, the bidding or the Auction; and (b) its Qualifying Bid is a good faith *bona fide* offer that it intends to consummate if selected as a Successful Bidder. All proceedings at the Auction shall be transcribed.

16. Following the Auction, the Debtors will determine, in consultation with the Consultation Parties, which Qualifying Bid is the highest or otherwise best bid for the Assets or subsets thereof.

17. The Debtors, subject to the terms of this Bidding Procedures Order and the Bidding Procedures, shall have the right as they may reasonably determine, in consultation with the Consultation Parties, to carry out the Bidding Procedures, including, without limitation, to:

- (a) determine which bidders are Qualifying Bidders; (b) determine which bids are Qualifying Bids;
- (c) determine the Baseline Bids; (d) determine which bids are the Successful Bids and Back-Up Bids, each as it relates to the Auction; (e) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code, or (iii) contrary to the best interests of the Debtors and their estates; (f) adjourn or cancel an Auction and the Sale Hearing in open court without further notice (other than the filing of a notice of such adjournment or cancellation on the docket of these Chapter 11 Cases, which notice may be the hearing agenda in the case of a Sale Hearing) or as provided in this Bidding Procedures Order and in the Bidding Procedures; (g) modify the Bidding Procedures consistent with their fiduciary duties and bankruptcy law; and (h) withdraw the Motion as it relates to a Sale at any time with or without prejudice. Notwithstanding the foregoing, the Debtors cannot abrogate any Secured Creditors' right to credit bid under section 363(k) of the Bankruptcy Code.

III. ASSUMPTION AND ASSIGNMENT PROCEDURES

18. The following Assumption and Assignment Procedures are hereby approved:

- a. On or before **January 25, 2022**, (the "Assumption Notice Deadline"), the Debtors shall file with the Court and serve, by email, if available, or otherwise by first class mail, on each counterparty (each, a "Counterparty," and collectively, the "Counterparties") to a Target Contract and their

counsel, if known by the Debtors, a notice, substantially in the form attached to the Motion as Exhibit II (the “Assumption Notice”).

- b. The Assumption Notice shall include, without limitation, the cure amount (each, a “Cure Amount”), if any, that the Debtors believe is required to be paid to the applicable Counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy Code for each of the Target Contracts. Notwithstanding anything to the contrary herein, Cure Amounts are to be paid only by Successful Bidder(s) for, or other assignee(s) of, Target Contracts, not by the Debtors or any Prepetition Loan Lenders.
- c. If, after the Assumption Notice Deadline, additional executory contracts or unexpired leases of the Debtors are determined to be Target Contracts (such additional contracts, the “Additional Contracts”), then, as soon as practicable thereafter and in no event less than one (1) business day before the commencement of the Auction, the Debtors shall file with the Court and serve, by email (if available) or overnight delivery, on the affected Counterparties an Assumption Notice, and such Counterparties shall file any Contract Objections (as defined below) not later than: (i) the Contract Objection Deadline (as defined below), in the event that such Assumption Notice was filed and served within two (2) days of the Assumption Notice Deadline; and (ii) not less than three (3) hours prior to the commencement of the Sale Hearing, in the event that such Assumption Notice was filed and served more than two (2) days after the Assumption Notice Deadline. In either case, service of an Assumption Notice after the Assumption Notice Deadline shall be by email (if available) or overnight mail.
- d. As soon as reasonably practicable after the conclusion of the Auction, the Debtors shall file with the Court and post to the Claims Agent Website a notice identifying the Successful Bidder(s) (a “Notice of Successful Bidder”), which shall set forth, among other things, (i) the Successful Bidder(s) and Back-Up Bidder(s) (if any), (ii) the Selected Target Contracts (as defined below), and (iii) the proposed assignee(s) of such Selected Target Contracts.
- e. No later than one (1) business day after conclusion of the Auction, the Debtors will cause to be served by overnight mail or email, if available, the Notice of Successful Bidder upon each affected Counterparty and all parties requesting notice under Bankruptcy Rule 2002.
- f. If a Counterparty objects to the (i) Cure Amount for its Target Contract or (ii) Debtors’ ability to assume and assign the Target Contract, then the Counterparty must file with the Court and serve on the Objection Notice Parties (as defined below) a written objection (a “Contract Objection”). Any Contract Objection shall: (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) be filed with the Clerk of the Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801,

together with proof of service, **on or before 4:00 p.m. (ET) on February 11, 2022** (the “Contract Objection Deadline”); (iv) be served, so as to be actually received on or before the Contract Objection Deadline, upon the Objection Notice Parties; and (v) state with specificity the grounds for such objection, including, without limitation, the fully liquidated cure amount and the legal and factual bases for any unliquidated cure amount that the Counterparty believes is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code for the Target Contract, along with the specific nature and dates of any alleged defaults, any pecuniary losses resulting therefrom, and the conditions giving rise thereto. Any objections to adequate assurance of future performance by a Successful Bidder shall be filed not later the commencement of the Sale Hearing.

- g. The “Objection Notice Parties” are as follows: (i) counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: M. Blake Cleary, Esq. and Allison Mielke, Esq. (mbcleary@ycst.com and amielke@ycst.com); (ii) proposed counsel to any official committee of unsecured creditors appointed in these Chapter 11 Cases; (iii) counsel to the Debtors’ prepetition lenders, Stoll Keenon Ogden PLLC, Attn: Lea Pauley Goff, Esq. (Lea.Goff@skofirm.com), 500 West Jefferson Street, Suite 2000, Louisville, KY 40202-2828 and Attn: Amelia Martin Adams, Esq. (Amelia.Adams@skofirm.com), 300 West Vine Street, Suite 2100, Lexington, KY 40507-1801 and Stevens & Lee, P.C., Attn: Joseph H. Huston, Jr., Esq. (joseph.huston@stevenslee.com), 919 North Market Street, Suite 1300, Wilmington, DE 19801; and (iv) the U.S. Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801, Attn: Timothy J. Fox, Jr., Esq. (Timothy.J.Fox@usdoj.gov).
- h. At the Sale Hearing, the Debtors will seek Court approval of the assumption and assignment to any Successful Bidder of only those Target Contracts that have been selected by any Successful Bidder to be assumed and assigned (each, a “Selected Target Contract,” and collectively, the “Selected Target Contracts”). The Debtors and their estates reserve any and all rights with respect to any Target Contracts that are not ultimately selected as Selected Target Contracts.
- i. If no Contract Objection is timely received with respect to a Selected Target Contract, then upon the closing of the Sale and payment of any Cure Amounts set forth in the Assumption Notice: (i) the Counterparty to such Selected Target Contract shall be deemed to have consented to the assumption by the Debtors and assignment to the Successful Bidder of the Selected Target Contract and be forever barred from asserting any objection with regard to such assumption and assignment (including, without limitation, with respect to adequate assurance of future performance by the applicable Successful Bidder); (ii) any and all defaults under the Selected Target Contract and any and all pecuniary losses related thereto shall be

deemed cured and compensated pursuant to section 365(b)(1)(A) and (B) of the Bankruptcy Code; and (iii) the Cure Amount for such Selected Target Contract shall be controlling notwithstanding anything to the contrary in such Selected Target Contract or any other related document and the Counterparty shall be deemed to have consented to the Cure Amount and shall be forever barred from asserting any other claims related to such Selected Target Contract against the Debtors and their estates or any Successful Bidder, or the property of any of them, that existed prior to the entry of the Sale Order.

- j. If the parties are unable to consensually resolve any Contract Objection prior to the commencement of the Sale Hearing, including, without limitation, any dispute with respect to the cure amount required to be paid to the applicable Counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy Code (any such dispute, a “Cure Dispute”), then such Contract Objection will be adjudicated at the Sale Hearing or at such other date and time as may be determined by the Debtors and the applicable Successful Bidder or fixed by the Court; *provided*, however, that if the Contract Objection relates solely to a Cure Dispute, the Selected Target Contract may be assumed by the Debtors and assigned to any Successful Bidder provided that any undisputed portion of the cure amount is paid upon the effective date of the assumption and assignment of the Selected Target Contract and any disputed portion of the cure amount that the Counterparty asserts is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code (or such lower amount as agreed to by the Counterparty) is deposited in a segregated account by the Debtors or the applicable Successful Bidder pending the Court’s adjudication of the Cure Dispute or the parties’ consensual resolution of the Cure Dispute. If the parties are unable to consensually resolve a Cure Dispute, the Debtors shall file and serve a notice for a hearing for the Court to consider the applicable Cure Dispute at the next scheduled omnibus hearing, which shall be at least fourteen (14) days from the date of the filing of the notice unless the Debtors and the objection Counterparty agree to an earlier hearing. The disputed portion of a cure amount shall be paid to the applicable Counterparty within seven (7) days of the resolution of the Cure Dispute.
- k. Notwithstanding anything to the contrary herein, if after the Sale Hearing or the entry of the Sale Order, additional executory contracts or unexpired leases of the Debtors are determined to be Target Contracts, then as soon as practicable thereafter, the Debtors shall file with the Court and serve an Assumption Notice by overnight delivery, on the impacted Counterparties, and such Counterparties shall file any Contract Objections not later than seven (7) days thereafter. If no Contract Objection is timely received, the Debtors shall be authorized to assume and assign such Target Contracts to any Successful Bidder without further notice to creditors or other parties in interest and without the need for further order of the Court, and such

assumption and assignment shall be subject to the terms of the Sale Order and paragraph 18(i) above.

19. The Debtors' decision to assume and assign any Target Contract is subject to this Court's further approval and the closing of the Sale. Accordingly, absent this Court's approval and the closing of the Sale, no Target Contracts shall be deemed assumed or assigned, and shall in all respects be subject to further administration by the Debtors and their estates under the Bankruptcy Code in connection with these Chapter 11 Cases.

20. The Assumption and Assignment Procedures are appropriate and fair to all Counterparties. The Assumption Notice is: (a) reasonably calculated to (i) provide sufficient, effective notice to all Counterparties and any other affected parties of the Debtors' intent to assume and assign to any Successful Bidder some or all of the Target Contracts and (ii) afford the Counterparties the opportunity to exercise any rights impacted by the Motion and the relief granted by this Bidding Procedures Order pursuant to Bankruptcy Rules 2002(a)(2), 6004, and 6006; and (b) hereby approved.

21. The inclusion of a contract, lease, or other agreement on an Assumption Notice shall not constitute or be deemed a determination or admission by the Debtors and their estates or any other party in interest that such contract, lease, or other agreement is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code, and any and all rights of all parties with respect thereto shall be reserved. Notwithstanding anything to the contrary herein, for the avoidance of doubt, the Debtors may not assume or assign any contracts that they have with the Prepetition Loan Lenders.

22. As part of its bid, each Qualifying Bidder must provide the Debtors information supporting the Qualifying Bidder's ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section

365(b)(3) of the Bankruptcy Code (the “Adequate Assurance Information”), including (a) the bidder’s financial wherewithal and willingness to perform under any Target Contracts that are assumed and assigned to such potential bidder; (b) the name of the proposed counterparty that will act as the assignee of any Target Contract; and (c) a contact person for the proposed assignee that the Counterparty may directly contact in connection with the adequate assurance of future performance. To the extent available, the Adequate Assurance Information may also include (x) a corporate organization chart or similar disclosure identifying ownership and control of the proposed assignee and (y) financial statements, tax returns, and annual reports. Furthermore, given that the Debtors will submit evidence at the Sale Hearing that all requirements for the assumption and assignment of the Selected Target Contracts have been satisfied, the Court and other interested parties will have the opportunity to evaluate the ability of each Successful Bidder to provide adequate assurance of future performance.

23. The Debtors, the Consultation Parties, and the Counterparties to any Target Contracts included in an applicable bid shall keep confidential all Adequate Assurance Information provided to them and shall be permitted to use and disclose such Adequate Assurance Information only as provided in this Bidding Procedures Order unless the Qualifying Bidder that provided such Adequate Assurance Information otherwise consents in writing. Each Counterparty in receipt of Adequate Assurance Information shall review the Adequate Assurance Information received on a confidential basis and shall not disclose the Adequate Assurance Information except as expressly provided in this Paragraph. Such Counterparty may not use or disclose, except to representatives, attorneys, advisors, and financing sources (collectively, “Representatives”), any confidential Adequate Assurance Information for any purpose other than: (a) evaluating whether adequate assurance of future performance as required under section 365(f)(2)(B) and, if applicable, section

365(b)(3) of the Bankruptcy Code has been provided; (b) in support of any objection (the “Assignment Objection”) (subject to the limitations on disclosure set forth herein) by such Counterparty relating to adequate assurance of future performance; and (c) if the proposed assignee is successful and becomes a party to the Target Contract, on a confidential basis, in the ordinary course of the contractual relationship. Any Assignment Objection that includes confidential, non-public Adequate Assurance Information must be filed under seal unless disclosure of such confidential, non-public information is authorized by the Debtors and the applicable assignee(s). This Bidding Procedures Order authorizes the filing of any such Assignment Objections under seal, and on the docket with such non-public information redacted, without further order of this Court; *provided*, that unredacted versions of such Assignment Objections shall be served upon the Debtors, Consultation Parties, and the U.S. Trustee, with a copy to the Court’s chambers; *provided, further*, that parties shall have a period of ten (10) business days after the filing of any redacted Assignment Objection to object to the sealing of any information. Any Representative receiving Adequate Assurance Information shall be notified and shall agree to be bound by the restrictions set forth in this Bidding Procedures Order.

IV. NOTICE PROCEDURES FOR THE SALE

24. The Assumption Notice, the Sale Notice, the Bidding Procedures, the Auction, the Sale Hearing, the Assumption and Assignment Procedures, and the objection periods associated with each of the foregoing are reasonably calculated to provide notice to any affected party and afford the affected party the opportunity to exercise any rights affected by the Motion as it relates to the Bidding Procedures, Auction, the Sale, and the Sale Hearing.

25. The assumption and assignment to the Successful Bidder of the Target Contracts pursuant to Bankruptcy Rules 2002(a)(2), 6004, and 6006, and such notice and objection periods are hereby approved.

26. Within two (2) business days of the entry of this Bidding Procedures Order, the Debtors shall file the Sale Notice in these Chapter 11 Cases and serve, email (if available) or first class mail, the Sale Notice on: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to the Prepetition Loan Lenders, Stoll Keenon Ogden PLLC, Attn: Lea Pauley Goff, Esq. (Lea.Goff@skofirm.com), 500 West Jefferson Street, Suite 2000, Louisville, KY 40202-2828 and Attn: Amelia Martin Adams, Esq. (Amelia.Adams@skofirm.com), 300 West Vine Street, Suite 2100, Lexington, KY 40507-1801 and Stevens & Lee, P.C., Attn: Joseph H. Huston, Jr., Esq. (joseph.huston@stevenslee.com), 919 North Market Street, Suite 1300, Wilmington, DE 19801; (iii) all parties known by the Debtors to assert a lien on or security interest in any of the Assets; (iv) the Office of the United States Attorney for the District of Delaware; (v) the Office of the Attorney General in each state in which the Debtors operate or sell their goods; (vi) the Office of the Secretary of State in each state in which the Debtors operate or are organized; (vii) all taxing authorities having jurisdiction over any of the Assets, including the Internal Revenue Service; (viii) all environmental authorities having jurisdiction over any of the Assets, including the Environmental Protection Agency; (ix) all of the Debtors' other known creditors and equity security holders, including the Counterparties; (x) all other parties that had filed a notice of appearance and demand for service of papers in these Chapter 11 Cases as of the service date; and (xi) proposed counsel to the Official Committee of Unsecured Creditors; and (xii) all persons known or reasonably believed to have expressed an interest in acquiring all or a substantial portion of the Assets of the Debtors within twelve (12) months prior to the Petition Date (each, an "Interested Person"); *provided*, however, that the Debtors need not serve the Sale Notice on any Interested Person for whom the Debtors are unable to obtain, after reasonable diligence, an email

or physical address as of the entry of this Bidding Procedures Order (collectively, the “Sale Notice Parties”).

27. In addition, the Debtors will upload an electronic copy of the Sale Notice to the Data Room. The Debtors will also post the Sale Notice and the Bidding Procedures Order on the website of the Debtors’ claims and noticing agent, <https://dm.epiq11.com/BHCosmetics>.

V. SALE HEARING

28. The Debtors will file and serve a proposed Sale Order **on or before 4:00 p.m. (ET) on February 1, 2022**. Any objections to the Sale or the relief requested in connection with the Sale (a “Sale Objection”), other than a Contract Objection, which shall be governed by the Assumption and Assignment Procedures, must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) set forth the specific basis for the Sale Objection; (d) be filed with the Clerk of this Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, together with proof of service, **on or before 4:00 p.m. (ET) on February 7, 2022** (the “Sale Objection Deadline”); and (e) be served, so as to be actually received on or before the Sale Objection Deadline, upon the Objection Notice Parties.

29. Failure to file a Sale Objection on or before the Sale Objection Deadline (a) shall forever bar the assertion, whether at any Sale Hearing or thereafter, of any objection to the Motion, to entry of the Sale Order, and to the consummation and performance of the Sale contemplated by a Purchase Agreement with a Successful Bidder, and (b) for purposes of section 363(f)(2) of the Bankruptcy Code, shall be deemed to be “consent” to entry of the Sale Order and consummation of the Sale and all transactions related thereto.

30. The Debtors shall have until **5:00 p.m. (ET) on the day prior to the Sale Hearing** to file and serve a reply to any objection filed in connection with the Sale, including any Sale Objection or Contract Objection.

31. The Sale Hearing shall be held before this Court on **February 17, 2022, at** _____ **.m.** (prevailing Eastern Time) before the Honorable _____, United States Bankruptcy Judge for the Bankruptcy Court for the District of Delaware, at 824 North Market Street, ____th Floor, Courtroom No. _____, Wilmington, Delaware 19801.

VI. MISCELLANEOUS

32. The Debtors are authorized to conduct the Sale without the necessity of complying with any state or local bulk transfer laws or requirements.

33. In the event that there is a conflict between this Bidding Procedures Order and the Bidding Procedures, this Bidding Procedures Order shall control and govern.

34. Prior to mailing the Assumption Notice and Sale Notice, as applicable, the Debtors may fill-in, or cause to be filled in, any missing dates and other information, correct any typographical errors, conform the provisions thereof to the provisions of this Bidding Procedures Order, and make such other, non-material changes as the Debtors deems necessary or appropriate.

35. All persons or entities that participate in the Sale shall be deemed to have knowingly and voluntarily: (a) consented to the entry of a final order by this Court in connection with the Motion or this Bidding Procedures Order (including any disputes relating to the bidding process, the Auction, or any Sale) to the extent that it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution; and (b) waived any right to jury trial in connection with any disputes relating to the any of the foregoing matters.

36. For purposes of section 363(b)(1) of the Bankruptcy Code, if the Debtors seek to transfer any personally identifiable information about individuals through or in connection with a Sale, the Debtors will promptly notify the United States Trustee appointed in these cases, who will determine whether appointment of a consumer privacy ombudsman is required.

37. This Bidding Procedures Order shall be effective immediately upon entry and any stay of orders provided for in Bankruptcy Rules 6004(h) or 6006(d) or any other provision of the Bankruptcy Code, the Bankruptcy Rules, or the Local Rules is expressly waived. The Debtors are not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Bidding Procedures Order and may, in their reasonable discretion and without further delay, take any action and perform any act authorized or approved under this Bidding Procedures Order. Further, to the extent applicable, the requirements of Bankruptcy Rule 6006(e) are hereby waived.

38. The requirements set forth in Local Rules 6004-1, 9006-1, and 9013-1 are hereby satisfied or waived.

39. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation or interpretation of the Order.

EXHIBIT A

Bidding Procedures

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

BHCOSMETICS HOLDINGS, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 22-____ (____)

(Jointly Administered)

BIDDING PROCEDURES

On January 14, 2022 (the “Petition Date”), BHCosmetics Holdings, LLC and its affiliated debtors and debtors in possession (collectively, the “Debtors”), filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code.

On [●], 2022, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered an order [Docket No. [●]] (the “Bidding Procedures Order”), which, among other things, authorized the Debtors to solicit bids and approved these procedures (collectively, the “Bidding Procedures”) to be employed by the Debtors in connection with a sale of substantially all of their assets, including but not limited to the tradename and related intellectual property, inventory, non-residential real property leases, executory contracts, furniture, fixtures and equipment and any other miscellaneous assets (collectively, the “Assets”), or components thereof.

Any party interested in bidding on the Assets should contact (i) for furniture, fixtures and equipment, Robert Raskin or Ziggy Schaffer at SB360 by email at rraskin@sb360.com or zschafter@sb360.com; and (ii) for intangible property, David Peress, Richelle Kalnit, or Jordon Parker at Hilco Streambank by email at dperess@hilcoglobal.com, rkalnit@hilcoglobal.com, or jparker@hilcoglobal.com.

1. Summary of Important Dates

Deadline to Serve Assumption Notice	January 25, 2022
Deadline to File Proposed Sale Order	February 1, 2022
Deadline to Object to Assumption Notice	February 11, 2022 at 4:00 p.m. (ET)

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: BHCosmetics Holdings, LLC (7827); BHCosmetics Intermediate, LLC (2918); BHCosmetics, LLC (9106); and Visceral Agency LLC (9266). The Debtors’ service address for purposes of these chapter 11 cases is 8161 Lankershim Blvd., North Hollywood, CA 91605.

Bid Deadline	February 11, 2022 at 12:00 p.m. (ET)
Deadline to Object to Sale (other than with respect to the conduct of the Auction and designation of a Successful Bidder)	February 11, 2022 at 4:00 p.m. (ET)
Deadline to Object to Adequate Assurance of Stalking Horse	February 11, 2022 at 4:00 p.m. (ET)
Auction Commencement	February 15, 2022 at 10:00 a.m. (ET)
Deadline To Object to Conduct of Auction, Designation of Successful Bidders, and Adequate Assurance	At the Sale Hearing
Proposed Sale Hearing	February 17, 2022 at a time TBD
Closing Date	February 24, 2022, which may be extended in consultation with the Consultation Parties

2. Assets to be Sold

The Debtors are offering for sale all of the Assets.² Potential Bidders (as defined below) may bid on all or any number or combination of the Assets.

3. Participation Requirements

Any person or entity that wishes to participate in the bidding process for the Assets (each, a “Potential Bidder”) must first become a “Qualifying Bidder.” To become a Qualifying Bidder, a Potential Bidder must submit to the Debtors and their advisors:

- (a) documentation identifying the Potential Bidder, its principals, and the representatives thereof who are authorized to appear and act on its behalf for all purposes regarding the contemplated Sale;
- (b) an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtors, which by its terms will inure to the benefit of the Successful Bidder(s), if the Debtors intend to provide confidential materials to the Potential Bidder;
- (c) a statement and other factual support demonstrating to the Debtors’ reasonable satisfaction that the interested party has a bona fide interest in consummating a

² After consultation with the Consultation Parties, the Debtors may withdraw any Asset for sale or provide a different process if the Debtors reasonably believe in their business judgment that the recovery on such assets may be meaningfully improved if sold pursuant to a different procedure than the ones set forth herein.

Sale on or before **February 24, 2022**;

- (d) sufficient information, as determined by the Debtors, to allow the Debtors to determine that the interested party (i) has, or can obtain, the financial wherewithal and any required internal corporate, legal, or other requisite authorizations to close a Sale on or before **February 24, 2022**, and (ii) can provide adequate assurance of future performance under any executory contracts and unexpired leases to be assumed by the Debtors and assigned to such bidder, pursuant to section 365 of the Bankruptcy Code, in connection with a Sale; and
- (e) a non-binding written indication of interest identifying the Assets that the party is interested in purchasing.

Each Potential Bidder shall comply with all reasonable requests for information and due diligence access by the Debtors, each of the Consultation Parties (as defined below), or their advisors regarding the ability of such Potential Bidder, as applicable, to consummate its contemplated Sale. The Debtors shall share the information submitted by each Potential Bidder with the Consultation Parties upon their reasonable request.

Notwithstanding anything to the contrary herein, and for the avoidance of doubt, for all purposes under the Bidding Procedures: (i) the Stalking Horse Bidder (as defined below) shall be considered a Qualifying Bidder and a Stalking Horse Bid (as defined below) shall be considered a Qualifying Bid upon receipt of such Stalking Horse Bidder's Deposit (as defined below); and (ii) the Debtors may consider a combination of bids for the Assets in determining whether the Potential Bidders constitute Qualifying Bidders.

Notwithstanding anything to the contrary herein, and for the avoidance of doubt, for all purposes under the Bidding Procedures, any Secured Creditor (as defined below) shall automatically be considered a Qualifying Bidder without the submission of information or documents otherwise required of other Qualifying Bidders, and any Secured Creditor's credit bid shall be considered a Qualifying Bid without meeting the foregoing requirements in this Section 3 or otherwise.

4. Bankruptcy Court Jurisdiction

Any Potential Bidder shall (i) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating the Bidding Procedures, the Sale, the Auction, and the construction and enforcement of the contemplated Sale documents of the Auction Bidders (as defined below), (ii) bring any such action or proceeding in the Court, and (iii) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law.

5. Due Diligence

The Debtors will provide any Qualifying Bidder with reasonable access to information that the Debtors believe to be reasonable and appropriate under the circumstances, and the Debtors will provide the Prepetition Loan Lenders any information that the Prepetition Loan Lenders may reasonably request regarding the Debtors' Assets, operations, and other issues related to the Debtors' liquidation. **All additional due diligence requests shall be directed to: (i) for furniture, fixtures, and equipment, Robert Raskin or Ziggy Schaffer at SB360 by email at rraskin@sb360.com or zschaffer@sb360.com; and (ii) for intangible property, David Peress, Richelle Kalnit, or Jordon Parker at Hilco Streambank by email at dperess@hilcoglobal.com, rkalnit@hilcoglobal.com, or jparker@hilcoglobal.com.**

The due diligence period shall extend through and include the Bid Deadline (as defined below). The Debtors may, but shall not be obligated to, in their sole discretion, furnish any due diligence information after the Bid Deadline. The Debtors reserve the right, in their reasonable discretion, to withhold or limit access to any due diligence information that the Debtors determine is not appropriate for disclosure to a Qualifying Bidder (who is not also a Secured Creditor). Notwithstanding any prepetition limitations, including, without limitation, any non-disclosure, confidentiality, or similar provisions relating to any due diligence information, the Debtors and their estates shall be authorized to provide due diligence information to Qualifying Bidders provided that such Qualifying Bidders have delivered an executed confidentiality agreement in form and substance acceptable to the Debtors, if such an agreement is provided to the Qualifying Bidders as part of the sale process for the particular Asset(s). The Debtors and their estates are not responsible for, and shall have no liability with respect to, any information obtained by, or provided to, any Qualifying Bidders in connection with the Bidding Procedures and a contemplated Sale.

6. Bid Requirements

Other than in the case of a bid submitted by the Stalking Horse Bidder or a credit bid by a Secured Creditor, to be deemed a "Qualifying Bid," a bid must be received from a Qualifying Bidder on or before the Bid Deadline and satisfy each of the following requirements, as determined by the Debtors in consultation with the Consultation Parties (each, a "Bid Requirement"):

- (a) be in writing;
- (b) fully disclose the identity of the Qualifying Bidder (and any other party participating in the bid) and provide the contact information of the specific person(s) whom the Debtors or their advisors should contact in the event that the Debtors have any questions or wish to discuss the bid submitted by the Qualifying Bidder;
- (c) set forth the purchase price to be paid by such Qualifying Bidder for the Assets in question;

- (d) if a bid includes a credit bid under section 363(k) (other than a bid by the Prepetition Loan Lenders), evidence of the amount of the claim, the Assets constituting the collateral securing the claim, and evidence of the grant, perfection, priority, and validity of the lien (the “Secured Claim Documentation”);
- (e) not propose payment in any form other than cash (except as otherwise expressly set forth in these Bidding Procedures and the Bidding Procedures Order);
- (f) if applicable, state the liabilities proposed to be paid or assumed by such Qualifying Bidder;
- (g) specify the Assets that are included in the bid and state that such Qualifying Bidder offers to purchase the applicable Assets;
- (h) state that such Qualifying Bidder’s offer is formal, binding, and unconditional and is irrevocable until two (2) business days after the closing of the sale of the Assets;
- (i) state that such Qualifying Bidder is financially capable of consummating the Sale contemplated by the bid by **February 24, 2022**, and provide written evidence in support thereof;
- (j) contain such financial and other information to allow the Debtors to make a reasonable determination as to the Qualifying Bidder’s financial and other capabilities to close the Sale contemplated by the proposal by **February 24, 2022**, including, without limitation, such financial and other information supporting the Qualifying Bidder’s ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code, including the Qualifying Bidder’s financial wherewithal and willingness to perform under any Target Contracts that are assumed and assigned to the Qualifying Bidder, in a form that allows the Debtors to serve, within one (1) business day after such receipt, such information on any counterparties to any contracts or leases being assumed and assigned (or assumed) in connection with the Sale that have requested, in writing, such information;
- (k) identify with particularity every executory contract and unexpired lease the assumption and assignment of which is a condition to close the contemplated Sale;
- (l) a commitment to close the Sale by **February 24, 2022**, or such other date as agreed to by the Debtors in consultation with the Consultation Parties;
- (m) not request or entitle such Qualifying Bidder to any break-up fee, termination fee, expense reimbursement, or similar type of fee or payment;
- (n) provide aggregate consideration which either when considered alone or in combination with other Qualifying Bidders equals or exceeds the sum of (A) the purchase price under the Stalking Horse Bid, (B) any Break-Up Fee (as defined

below), (C) any Expense Reimbursement (as defined below), and (D) \$100,000, unless otherwise agreed by the Debtors in consultation with the Consultation Parties;

- (o) not contain any contingencies of any kind, including, without limitation, contingencies related to financing, internal approval, or due diligence;
- (p) contain a written acknowledgement and representation that the Qualifying Bidder (i) has had an opportunity to conduct any and all due diligence regarding the Assets in question, (ii) has relied solely upon its own independent review, investigation, and inspection of any documents and other information in making its Qualifying Bid, and (iii) 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 documents or other information provided in connection with the Bidding Procedures and the proposed Sale;
- (q) provides for the Qualifying Bidder to serve as a backup bidder (the “Back-Up Bidder”) if the Qualifying Bidder’s bid is the next highest or best bid (the “Back-Up Bid”) after the Successful Bid (as defined below) for the applicable Assets;
- (r) includes a copy of an asset purchase agreement (in **both** PDF and MS-WORD format) acceptable to the Debtors and the Prepetition Loan Lenders reflecting the terms and conditions of its bid, which agreement must be marked to show any proposed amendments and modifications to the form of purchase agreement posted by the Debtors in the Data Room.
- (s) includes written evidence of authorization and approval with respect to the submission, execution, and delivery of the subject term sheet;
- (t) provides a good faith cash deposit (the “Deposit”) in an amount equal to ten percent (10%) of the cash purchase price stated in the proposal (or such additional amount as may be determined by the Debtors in their reasonable discretion and in consultation with the Consultation Parties) to be held in a noninterest-bearing escrow account to be identified and established by the Debtors; and
- (u) provides for liquidated damages in the event of the Qualifying Bidder’s breach of, or failure to perform under, the modified Purchase Agreement equal to the amount of the Deposit.

The Debtors reserve the right, in consultation with the Consultation Parties, to negotiate with any Qualifying Bidder in advance of the Auction to cure any deficiencies in a bid that is initially deemed not a Qualifying Bid.

Each Qualifying Bidder submitting a bid shall be deemed to: (a) acknowledge and represent that it is bound by all of the terms and conditions of the Bidding Procedures and (b) have

waived the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the submission of its bid, the Bidding Procedures, and a Sale.

7. Bid Deadline

A Qualifying Bidder, other than the Stalking Horse Bidder, that desires to make a bid shall deliver a written and electronic copy of its bid in **both** PDF and MS-WORD format to (i) counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: M. Blake Cleary, Esq. and Allison Mielke, Esq. (mbcleary@ycst.com and amielke@ycst.com); (ii) proposed counsel to any official committee of unsecured creditors appointed in these Chapter 11 Cases; (iii) counsel to the Debtors' prepetition lenders, Stoll Keenon Ogden PLLC, Attn: Lea Pauley Goff, Esq. (Lea.Goff@skofirm.com), 500 West Jefferson Street, Suite 2000, Louisville, KY 40202-2828 and Attn: Amelia Martin Adams, Esq. (Amelia.Adams@skofirm.com), 300 West Vine Street, Suite 2100, Lexington, KY 40507-1801 and Stevens & Lee, P.C., Attn: Joseph H. Huston, Jr., Esq. (joseph.huston@stevenslee.com), 919 North Market Street, Suite 1300, Wilmington, DE 19801; and (iv) (a) for furniture, fixtures and equipment, Robert Raskin or Ziggy Schaffer at SB360 by email at rraskin@sb360.com or zschaffer@sb360.com; and (b) for intangible property, David Peress, Richelle Kalnit, or Jordon Parker at Hilco Streambank by email at dperess@hilcoglobal.com, rkalnit@hilcoglobal.com, or jparker@hilcoglobal.com (collectively, the "Bid Package Notice Parties"), so as to be received on or before **February 11, 2022, at 12:00 p.m. (ET)** (the "Bid Deadline"); *provided* that the Debtors may extend the Bid Deadline without further order of the Court, subject to providing notice to the Consultation Parties. To the extent that the Bid Deadline is extended for all parties, the Debtors shall file a notice on the docket of these Chapter 11 Cases indicating the same. **Any party that does not submit a bid by the Bid Deadline (including as extended in accordance with the prior two sentences) may not be allowed to (a) submit any offer after the Bid Deadline or (b) participate in the Auction, except as agreed otherwise by the Debtors and the Prepetition Loan Lenders.**

8. Evaluation of Qualifying Bids

The Debtors shall deliver by no later than 5:00 p.m. (ET) on the day of the Bid Deadline, copies of all bids from Qualifying Bidders to each of the Consultation Parties.

The Debtors, in consultation with the Consultation Parties, shall make a determination regarding whether a timely submitted bid from a Qualifying Bidder is a Qualifying Bid and shall notify all Qualifying Bidders whether their bids have been determined to be a Qualifying Bid by no later than 8:00 p.m. (ET) on the day before the commencement of the Auction. In the event that a bid is determined not to be a Qualifying Bid, including with respect to any proposed credit bid amount, the Non-Qualifying Bidder shall be notified by the Debtors and shall have until the commencement of the Auction to modify its bid to increase the purchase price or otherwise improve the terms of the Qualifying Bid for the Debtors and to provide additional Secured Claim Documentation; provided that any Qualifying Bid may be improved at the Auction as set forth herein.

Prior to commencing the Auction, the Debtors shall determine, in consultation with the Consultation Parties, which of the Qualifying Bids, at such time, is the highest or best bid as

to the applicable Assets for purposes of constituting the opening bid of the Auction (each a “Baseline Bid” and the Qualifying Bidder(s) submitting each such Baseline Bid, a “Baseline Bidder”) and shall notify the Stalking Horse Bidder and all Qualifying Bidders with Qualifying Bids of the Baseline Bid or Baseline Bids no later than the opening of the Auction.

9. No Qualifying Bids

If no timely Qualifying Bids—other than the Stalking Horse Bidder’s Qualifying Bid—are submitted on or before the Bid Deadline, the Debtors, after consultation with the Prepetition Loan Lenders, shall not hold an Auction and shall request at the Sale Hearing that the Stalking Horse Bidder be deemed the Successful Bidder (as defined below) and that the Court approve the Stalking Horse Bid, and the Sales contemplated thereunder.

10. Right to Credit Bid

The Prepetition Loan Lenders and any party who has a valid, perfected and enforceable lien on any Assets of the Debtors’ estates that is not subject to an objection filed in these Chapter 11 Cases by the commencement of the Auction (a “Secured Creditor”) shall have the right to credit bid all or a portion of the value of such Secured Creditor’s claim within the meaning of section 363(k) of the Bankruptcy Code and to the extent demonstrated by the Secured Claim Documentation; *provided* that a Secured Creditor shall have the right to credit bid its claim only with respect to the collateral by which such Secured Creditor is secured by a first-priority lien (subject to any agreed carve-outs); *provided, further*, that if the Secured Creditor’s lien is subsequently avoided, then such Qualified Bidder shall be subject to disgorgement.

11. Auction

If the Debtors timely receive one or more Qualifying Bids for any of the Assets (inclusive of the Stalking Horse Bidder’s Qualifying Bid), then the Debtors shall conduct an auction (the “Auction”). Following the Auction, the Debtors will determine, in consultation with the Consultation Parties, which Qualifying Bid is the highest or best bid for the Assets or subsets thereof, which will be determined by considering, among other things, the following non-binding factors:

- i. the terms of the Purchase Agreement requested by each Auction Bidder;
- ii. the extent to which such terms are likely to delay closing of a Sale beyond February 24, 2022, the cost to the Debtors and their estates of such modifications or delay, and any incremental financing being offered to accommodate any delay;
- iii. the total consideration to be received by the Debtors and their estates and the return to the Secured Creditors;
- iv. the Sale structure and execution risk, including conditions to, timing of, and certainty of closing, termination provisions, availability of financing and

financial wherewithal to meet all commitments, and required governmental or other approval;

- v. the net benefit to the Debtors' estates, except that any Break-Up Fee and any Expense Reimbursement provided for in the Stalking Horse Bid shall not be taken into account, nor shall the Stalking Horse Bidder be permitted to credit bid any portion of any Break-Up Fee or any Expense Reimbursement;
- vi. the impact on interested parties, including, but not limited to, Secured Creditors, employees, landlords, and vendors; and
- vii. any other factors the Debtors, in consultation with the Consultation Parties may reasonably deem relevant.

The Auction shall be governed by the following procedures:

- i. the Auction shall commence on **February 15, 2022, at 10:00 a.m. (ET)** (the "Auction Date"), at Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Rodney Square, Wilmington, Delaware 19801 and virtually by videoconference for parties electing to appear remotely;
- ii. only the Stalking Horse Bidder and the other Qualifying Bidders with Qualifying Bids (collectively, the "Auction Bidders") shall be entitled to make any bids at the Auction;
- iii. the Auction Bidders shall appear in person at the Auction or by videoconference, on camera, through a duly authorized representative;
- iv. only the Debtors, the Auction Bidders, the Consultation Parties, and members of any official committee of unsecured creditors, and the professional advisors to each of the foregoing parties, may attend the Auction; provided that any creditors and equity holders who are not among the Consultation Parties desiring to attend the Auction must provide one (1) business day's written notice of their intent to attend the Auction to counsel for the Debtors;
- v. the Debtors and their professional advisors shall direct and preside over the Auction, which shall be transcribed;
- vi. the Auction Bidders shall confirm that they have not engaged in any collusion with respect to the Bidding Procedures, the Auction, or the Sale;
- vii. bidding shall commence at the amount of the Baseline Bid or Baseline Bids, and the Auction Bidders may submit successive bids in increments to be identified at or prior to the commencement of the Auction, which may include sealed bids (the "Bid Increment"); *provided* that: (i) each such successive bid must be a Qualifying Bid; (ii) if the then-highest or best bid

was made by the Stalking Horse Bidder, such bid shall be deemed to include the sum of the amount of (A) the Break-Up Fee and (B) the Expense Reimbursement (meaning the amount of the Break-Up Fee and Expense Reimbursement will be deemed included in each bid of the Stalking Horse Bidder); and (iii) the Debtors, in consultation with the Consultation Parties, reserve the right to modify the Bid Increment during the course of the Auction and shall do so on the record at the Auction; *provided*, however, that Bid Increments shall not include sealed bids during the first three complete rounds of bidding;

- viii. the Auction may include individual negotiations with any of the Auction Bidders, but all bids shall be made on the record and in the presence of all of the Auction Bidders;
- ix. all material terms of the bid that is deemed to be the highest or best bid for the Assets or a specific subset thereof for each round of bidding shall be fully disclosed to the Auction Bidders, and the Debtors shall use reasonable efforts to clarify any and all questions that the Auction Bidders may have regarding the Debtors' announcement of the then-current highest or best bid or bids;
- x. the Debtors and their professional advisors, in consultation with the Consultation Parties, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make subsequent bids or to move to an open outcry or sealed bid format, or a combination thereof) for conducting the Auction, provided that such rules are (i) not inconsistent with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or any applicable order of the Court entered in connection with these Chapter 11 Cases, including, without limitation, the Bidding Procedures Order, and (ii) disclosed to the Auction Bidders;
- xi. any Potential Bidder shall (i) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating the Bidding Procedures, the Sale, the Auction, and the construction and enforcement of the contemplated Sale documents of the Auction Bidders, (ii) bring any such action or proceeding in the Court, and (iii) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law;
- xii. Auction Bidders shall have the right to make additional modifications to their respective Purchase Agreements or the Stalking Horse Bid, as applicable, in conjunction with each Qualifying Bid submitted in each

round of bidding during the Auction, provided that (i) any such modifications on an aggregate basis and viewed in whole, shall not, in the Debtors' discretion, in consultation with the Consultation Parties, be less favorable to the Debtors and their estates than the terms of the Auction Bidders' respective Purchase Agreements or the Stalking Horse Bid, as applicable, and (ii) each Qualifying Bid shall constitute an irrevocable offer and shall be binding on the Auction Bidder submitting such bid until such party shall have submitted a subsequent Qualifying Bid at the Auction or the conclusion of the Sale Hearing, whichever occurs sooner, unless such bid is selected as the Successful Bid or the Back-Up Bid, which shall remain binding as provided for herein;

- xiii. the Debtors and the Consultation Parties shall have the right to request any additional financial information that will allow the Debtors and the Consultation Parties to make a reasonable determination as to an Auction Bidder's financial and other capabilities to consummate the Sales contemplated by their proposal or the Stalking Horse Bid, as applicable, as may be amended during the Auction, and any further information that the Debtors, in consultation with the Prepetition Loan Lenders may believe is reasonably necessary to clarify and evaluate any bid made by an Auction Bidder during the Auction;
- xiv. upon the conclusion of the Auction, the Debtors shall determine, in consultation with the Consultation Parties and subject to Court approval, the offer or offers for the Assets that is or are the highest or best from among the Qualifying Bids submitted at the Auction, which may be the Stalking Horse Bid or a credit bid (each a "Successful Bid"). In making this decision, the Debtors shall consider, in consultation with the Consultation Parties, the amount of the purchase price, the particular assets to be sold, the likelihood of the bidder's ability to close a Sale and the timing thereof, the nature and impact of any variances from the form Purchase Agreement requested by each bidder, and the net benefit to the Debtors' estates and Secured Creditors. The bidders submitting such Successful Bids, which may be the Stalking Horse Bidder or credit bidder, shall each become a "Successful Bidder," and shall have such rights and responsibilities of the purchaser as set forth in the subject Purchase Agreement, as applicable. The Debtors may, in their sole discretion and in consultation with the Consultation Parties, designate Back-Up Bids (and corresponding Back-Up Bidders) to purchase the applicable Assets in the event that the Successful Bidder or Successful Bidders do not close the Sale;
- xv. prior to the Sale Hearing, each Successful Bidder shall complete and execute all agreements, contracts, instruments, and other documents evidencing and containing the terms and conditions upon which the applicable Successful Bid was made; and

- xvi. as soon as reasonably practicable after the conclusion of the Auction, the Debtors shall file with the Court and post to the Claims Agent Website a notice identifying the Successful Bidder(s) (the “Notice of Successful Bidder”), which shall set forth, among other things, (i) the Successful Bidder(s) and Back-Up Bidder(s) (if any), (ii) the executory contract(s) and/or unexpired lease(s) to be assumed and assigned to such Bidder(s), and (iii) the proposed assignee(s) of such executory contract(s) and unexpired lease(s). No later than one (1) business day after the conclusion of the Auction, the Debtors will cause the Notice of Successful Bidder to be served by overnight mail or email, where available, upon all counterparties to such executory contract(s) and unexpired lease(s) proposed to be assumed and all parties requesting notice under Bankruptcy Rule 2002.

EACH SUCCESSFUL BID AND ANY BACK-UP BIDS SHALL EACH CONSTITUTE AN IRREVOCABLE OFFER AND BE BINDING ON THE APPLICABLE SUCCESSFUL BIDDER AND ANY BACK-UP BIDDER, RESPECTIVELY, FROM THE TIME THE BID IS SUBMITTED UNTIL TWO (2) BUSINESS DAYS AFTER THE SALE HAS CLOSED. EACH QUALIFYING BID THAT IS NOT A SUCCESSFUL BID OR BACK-UP BID SHALL BE DEEMED WITHDRAWN AND TERMINATED AT THE CONCLUSION OF THE SALE HEARING.

12. Bid Protections to the Stalking Horse Bidder.

The Stalking Horse Bidder shall be granted the right to a Termination Payment comprising a break-up fee of \$172,000, plus reimbursement for up to \$150,000 of expenses, as set forth in more detail in the Stalking Horse Bid.

13. Sale Hearing and Closing

Each Successful Bid and any Back-Up Bid (or if no Qualifying Bid other than that of the Stalking Horse Bidder is received, then the Stalking Horse Bid) will be subject to approval by the Court. The hearing to approve each Successful Bid and any Back-Up Bid (the “Sale Hearing”) shall take place on **February 17, 2022, at a time to be determined**. The Sale Hearing may be adjourned by the Debtors from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or by filing a hearing agenda or notice on the docket of the Chapter 11 Cases. **For the avoidance of doubt, by no later than the time of announcement of any Baseline Bid for the Auction, the Debtors may determine, in consultation with the Consultation Parties, to withdraw the Assets or any subset thereof, from the Auction and sale process, and adjourn the Sale Hearing with respect to the withdrawn Assets on the terms set forth herein.**

At the Sale Hearing, the Debtors will seek entry of an order that is in form and substance acceptable to the Prepetition Loan Lenders and, the Successful Bidder that provides, among other things:

- i. authorizes and approves each Sale to a Successful Bidder (and, if applicable, the Back-Up Bidder), pursuant to the terms and conditions set forth in the Stalking Horse Bid or Purchase Agreement executed by the Successful Bidder (and, if applicable the Back-Up Bidder), and that the Assets being transferred in such Sale shall be transferred free and clear of all Encumbrances (including any claim of successor liability) pursuant to section 363(f) of the Bankruptcy Code, with such Encumbrances, attaching to the sale or transfer proceeds, if any, with the same validity, extent, and priority as had attached to such sold Assets immediately prior to such sale or transfer;
- ii. unless otherwise ordered by the Court, directs that all Encumbrances on the Assets that are sold shall attach to the cash proceeds generated from the sale of such Assets in the same order of priority as they existed prior to the consummation of such sale;
- iii. finds that the Stalking Horse Bidder or Successful Bidder, as applicable, is a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code;
- iv. as appropriate, exempts the Sale(s) and conveyance(s) of the applicable Assets from any transfer tax, stamp tax, or similar tax, or deposit under any applicable bulk sales statute;
- v. notwithstanding anything to the contrary herein, provides for the distribution to the Prepetition Loan Lenders of certain net sale proceeds of all Assets in which the Prepetition Loan Lenders have first-priority security interests promptly following the closing, which shall occur on or before **February 24, 2022**; and
- vi. permits the Successful Bidder(s) to, up to the time of closing, decline to take title to any assets otherwise included in the sale, but without adjusting the purchase price.

14. Back-Up Bidder

Notwithstanding any of the foregoing, in the event that a Successful Bidder fails to close a Sale by **February 24, 2022**, or such date as may be extended by the Debtors, in consultation with the Consultation Parties, and with the agreement of the applicable Back-Up Bidder, the Back-Up Bid will be deemed to be the Successful Bid, the applicable Back-Up Bidder will be deemed to be a Successful Bidder, and the Debtors will be authorized, but not directed, to close the Sale to the applicable Back-Up Bidder subject to the terms of the Back-Up Bid without the need for further order of the Court and without the need for further notice to any interested parties, as soon as practicable, but not later than **March 11, 2022**, which deadline may be extended by the Debtors in consultation with the Consultation Parties.

15. Return of Deposits

All Deposits shall be returned to each bidder not selected by the Debtors as a Successful Bidder or a Back-Up Bidder no later than three (3) business days following the conclusion of the Sale Hearing. The deposit of each Successful Bidder or, if a Sale is closed with the relevant Back-Up Bidder, the deposit of the Back-Up Bidder, shall be applied to the purchase price for applicable Sale. If a Successful Bidder (or, if a Sale is to be closed with a Back-Up Bidder, then the Back-Up Bidder) fails to consummate a Sale because of a breach or failure to perform on the part of such bidder, then, subject to the terms of the Purchase Agreement or the Stalking Horse Bid, as applicable, the Debtors and their estates shall be entitled to retain the Deposit of the Successful Bidder (or, if the Sale is to be closed with the Back-Up Bidder, then the Back-Up Bidder) as part of the damages resulting to the Debtors and their estates for such breach or failure to perform.

16. Notice and Consultation Parties

- (a) The term “Notice Parties” as used in these Bidding Procedures shall mean:
 - (i) the Debtors, Attn: Spencer Ware (spencer.ware@riveron.com); and
 - (ii) counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Attn: M. Blake Cleary, Esq. and Allison Mielke, Esq.; (mbcleary@ycst.com and amielke@ycst.com).
- (b) The term “Consultation Parties” as used in these Bidding Procedures shall mean:
 - (i) the Prepetition Loan Lenders and their counsel, including, but not limited to, Stoll Keenon Ogden PLLC, Attn: Lea Pauley Goff, Esq. (Lea.Goff@skofirm.com), 500 West Jefferson Street, Suite 2000, Louisville, KY 40202-2828, and Attn: Amelia Martin Adams, Esq. (Amelia.Adams@skofirm.com) and Stevens & Lee, P.C., Attn: Joseph H. Huston, Jr., Esq. (joseph.huston@stevenslee.com), 919 North Market Street, Suite 1300, Wilmington, DE 19801; and
 - (ii) counsel to the official committee of unsecured creditors appointed in the Debtors’ chapter 11 cases (the “Creditors’ Committee”).

For the avoidance of doubt, any consultation rights provided to the Consultation Parties by these Bidding Procedures shall not limit the Debtors’ discretion in any way and shall not include the right to veto any decision made by the Debtors in the exercise of their business judgment.

17. Reservation of Rights

Notwithstanding any of the foregoing, the Debtors and their estates reserve the right to, after consultation with the Consultation Parties, modify these Bidding Procedures at or prior to the Auction, including, without limitation, to extend the deadlines set forth herein, modify bidding increments, waive terms and conditions set forth herein with respect to any or all Potential Bidders

(including, without limitation, the Bid Requirements), impose additional terms and conditions with respect to any or all Potential Bidders, adjourn or cancel the Auction at or prior to the Auction, and adjourn the Sale Hearing.

EXHIBIT II

Assumption Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

BHCOSMETICS HOLDINGS, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 22-10050 (____)

(Jointly Administered)

Docket Ref. No. ____

Cure Objection Deadline:
February 1, 2022 at 4:00 p.m. (ET)

Sale Hearing Date:
February 17, 2022 at [●].m. (ET)

**NOTICE OF POSSIBLE ASSUMPTION AND ASSIGNMENT
AND CURE AMOUNTS WITH RESPECT TO EXECUTORY CONTRACTS
AND UNEXPIRED LEASES OF THE DEBTORS**

BHCosmetics Holdings, LLC and its affiliated debtors and debtors in possession (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), on January 14, 2022, in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). The Debtors are seeking to assume and assign certain of their executory contracts and unexpired leases in connection with one or more sales of assets, including but not limited to the tradename and related intellectual property, non-residential real property leases, executory contracts, furniture, fixtures and equipment and any other miscellaneous assets (collectively, the “Assets”). The Debtors are seeking Court approval of such sales and assumptions and assignments pursuant to a motion, dated January [●], 2022 [Docket No. [●]] (the “Motion”).²

The Court has entered an order [Docket No. [●]] (the “Bidding Procedures Order”) approving (i) certain procedures for the sale of Assets (the “Bidding Procedures”), and (ii) certain procedures that govern the assumption and assignment of certain executory contracts and unexpired leases transferred pursuant to the Bidding Procedures. Copies of the Motion and the Bidding Procedures Order are available for download at <https://dm.epiq11.com/BHCosmetics> (the “Case Website”).

You are receiving this notice because you may be a party to an unexpired lease or an executory contract that is potentially to be assumed and assigned (collectively, the “Contracts”), in

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: BHCosmetics Holdings, LLC (7827); BHCosmetics Intermediate, LLC (2918); BHCosmetics, LLC (9106); and Visceral Agency LLC (9266). The Debtors’ service address for purposes of these chapter 11 cases is 8161 Lankershim Blvd., North Hollywood, CA 91605.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

connection with a sale under the Bidding Procedures. The Contract (or Contracts) to which you are a party is identified on Exhibit A hereto (the “Cure Schedule”).

The Debtors have determined the current amounts owing (the “Cure Amounts”) under each Contract and have listed the applicable Cure Amount for the Contract(s) to which you are a party on the Cure Schedule. The Cure Amounts are the only amounts proposed to be paid upon any assumption and assignment of the Contracts, in full satisfaction of all amounts outstanding under the Contracts.

To the extent that you as a counterparty to a Contract (a “Counterparty”) object to (i) the applicable Cure Amount or (ii) the Debtors’ ability to assume and assign your Contract, **you must file and serve an objection** (a “Contract Objection”). Any Contract Objection shall: (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) be filed with the Clerk of the Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, together with proof of service, **on or before 4:00 p.m. (ET) on February 1, 2022** (the “Contract Objection Deadline”); (iv) be served, so as to be actually received on or before the Contract Objection Deadline, upon the Objection Notice Parties (set forth below); and (v) state with specificity the grounds for such objection, including, without limitation, the fully liquidated cure amount and the legal and factual bases for any unliquidated cure amount that you believes is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code for the Contract in question, along with the specific nature and dates of any alleged defaults, any pecuniary losses resulting therefrom, and the conditions giving rise thereto.

Any objections to adequate assurance of future performance by a Successful Bidder shall be filed not later than **at the Sale Hearing** (the “Adequate Assurance Objection Deadline”).

The “Objection Notice Parties” are as follows: (i) counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: M. Blake Cleary, Esq. and Allison Mielke Esq. (mbcleary@ycst.com and amielke@ycst.com); (ii) proposed counsel to any official committee of unsecured creditors appointed in these Chapter 11 Cases; (iii) counsel to the Debtors’ prepetition lenders, Stoll Kennon Ogden PLLC, Attn: Lea Pauley Goff, Esq. (Lea.Goff@skofirm.com), 500 West Jefferson Street, Suite 2000, Louisville, KY 40202-2828, and Attn: Amelia Martin Adams, Esq. (Amelia.Adams@skofirm.com) and Stevens & Lee, P.C., Attn: Joseph H. Huston, Jr., Esq. (joseph.huston@stevenslee.com), 919 North Market Street, Suite 1300, Wilmington, DE 19801; and (iv) the U.S. Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801, Attn: Timothy J. Fox, Jr., Esq. (Timothy.J.Fox@usdoj.gov).

If no objection is timely received with respect to a Cure Amount, then upon the closing of the applicable sale and payment of any Cure Amounts set forth in this notice: (i) you shall be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts with respect to such Contract, (ii) the Cure Amount set forth on Exhibit A attached hereto shall be controlling, notwithstanding anything to the contrary in any Contract, or any other document, and you shall be deemed to have consented to the Cure Amount, and (iii) you shall be forever barred and estopped from asserting any other claims related to such Contract against the Debtors or the applicable transferee, or the property of any of them.

If no objection is received by the Adequate Assurance Objection Deadline to any Successful Bidder’s adequate assurance of future performance with respect to your Contract, you shall be deemed to have consented to the assumption, assignment, and transfer of the applicable Contract to the applicable Successful Bidder and shall be forever barred and estopped from asserting or claiming that any conditions to such assumption, assignment, and transfer must be satisfied under such applicable Contract or that any related right or benefit under such applicable Contract cannot or will not be available to the applicable Successful Bidder.

Subject to the terms of the Bidding Procedures Order, an auction (the “Auction”) for the Assets, including the Contracts, will be conducted on **February 15, 2022, at 10:00 a.m. (ET)** at the offices of Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 and by videoconference. As soon as reasonably practicable after the Auction, the Debtors file with the Court and post to the Claims Agent Website a notice identifying the Successful Bidder(s), which shall set forth, among other things, (i) the Successful Bidder(s) and Back-Up Bidder(s) (if any), (ii) the Contracts selected by the Successful Bidder to be assumed and assigned, (iii) the proposed assignee(s) of such Contracts, and (iv) contact information of the proposed assignee, so that Counterparties to the selected Contracts may obtain the applicable Successful Bidder’s adequate assurance information, which shall be provided to each affected Counterparty on a confidential basis.

The Debtors will seek to assume and assign the Contracts that have been selected by a Successful Bidder (the “Selected Assumed Contracts”) at a hearing before the Honorable [●], in the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, [●]th Floor, Courtroom [●], Wilmington, Delaware 19801 (a “Sale Hearing”) on **February 17, 2022 at [●].m. (ET)**, or such other date as determined by the Debtors in accordance with the terms of the Bidding Procedures Order.

To the extent that the Debtors and a Counterparty are unable to consensually resolve any Contract Objection prior to the commencement of the Sale Hearing, including, without limitation, any dispute with respect to the cure amount required to be paid to the applicable Counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy Code (any such dispute, a “Cure Dispute”), such Contract Objection will be adjudicated at the Sale Hearing or at such other date and time as may be determined by the Debtors and the applicable Successful Bidder or fixed by the Court; *provided*, however, that if the Contract Objection relates solely to a Cure Dispute, the Selected Target Contract may be assumed by the Debtors and assigned to any Successful Bidder provided that any undisputed portion of the cure amount is paid upon the effective date of the assumption and assignment of the Selected Target Contract and any disputed portion of the cure amount that the Counterparty asserts is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code (or such lower amount as agreed to by the Counterparty) is deposited in a segregated account by the Debtors or the applicable Successful Bidder pending the Court’s adjudication of the Cure Dispute or the parties’ consensual resolution of the Cure Dispute. To the extent the parties are unable to consensually resolve a Cure Dispute, the Debtors shall file and serve a notice for a hearing for the Court to consider the applicable Cure Dispute at the next scheduled omnibus hearing, which shall be at least fourteen (14) days from the date of the filing of the notice unless the Debtors and the objection Counterparty agree to an earlier hearing. The disputed portion of a cure amount shall be paid to the applicable Counterparty within seven (7) days of the resolution of the Cure Dispute.

Dated: January __, 2022
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/

M. Blake Cleary (No. 3614)
Allison S. Mielke (No. 5934)
Alexander S. Faris (No. 6278)
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Tel: (302) 571-6600
Fax: (302) 571-1253
Email: mbcleary@ycst.com
amielke@ycst.com
afaris@ycst.com

Proposed Counsel to the Debtors and Debtors in Possession

Exhibit A to Assumption Notice

Cure Schedule

EXHIBIT III

Sale Notice

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

BHCOSMETICS HOLDINGS, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 22-10050 (____)

(Joint Administration Requested)

Sale Objection Deadline:

February 7, 2022, at 4:00 p.m. (ET)

Sale Hearing:

February 17, 2022, at [●].m. (ET)

**NOTICE OF ENTRY OF BIDDING PROCEDURES
ORDER AND PROPOSED SALE**

PLEASE TAKE NOTICE that BHCosmetics Holdings, LLC and its affiliated debtors and debtors in possession (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), on January 14, 2022 (the “Petition Date”), in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). The Debtors are seeking to sell their assets not otherwise disposed of pursuant to the Debtors’ *de minimis* asset sale motion [Docket No. [●]], including but not limited to tradenames and related intellectual property, non-residential real property leases, executory contracts, furniture, fixtures and equipment and any other miscellaneous assets (collectively, the “Assets”), or subset(s) thereof, free and clear of all liens, claims, encumbrances, and other interests.

PLEASE TAKE FURTHER NOTICE that by order dated January [●], 2022 [Docket No. [●]] (the “Bidding Procedures Order”),² the Bankruptcy Court approved, among other things, certain procedures for the sale of the Debtors’ Assets (the “Bidding Procedures”). All interested parties should carefully read the Bidding Procedures Order and the Bidding Procedures. Copies of the Bidding Procedures Order and the Bidding Procedures are available upon request to the Debtors’ claims and noticing agent, Epiq Corporate Restructuring, LLC, at BHCosmetics@epiqglobal.com and are available for download from the Case Website, <https://dm.epiq11.com/BHCosmetics>. A separate notice will be provided to counterparties to executory contracts and unexpired leases with the Debtors that may be assumed and assigned in connection with the Sale. **Any interested bidder should contact (i) for furniture, fixtures and equipment, Robert Raskin or Ziggy Schaffer at SB360 by email at rraskin@sb360.com or zschaffer@sb360.com; and (ii) for intangible property, David Peress, Richelle Kalnit, or Jordon**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: BHCosmetics Holdings, LLC (7827); BHCosmetics Intermediate, LLC (2918); BHCosmetics, LLC (9106); and Visceral Agency LLC (9266). The Debtors’ service address for purposes of these chapter 11 cases is 8161 Lankershim Blvd., North Hollywood, CA 91605.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures Order.

Parker at Hilco Streambank by email at dperess@hilcoglobal.com, rkalnit@hilcoglobal.com, or jparker@hilcoglobal.com.

PLEASE TAKE FURTHER NOTICE OF THE FOLLOWING INFORMATION AND IMPORTANT DEADLINES IN CONNECTION WITH THE SALE, WHICH DATES AND DEADLINES SUPERSEDE ANY DATES AND DEADLINES SET FORTH IN THE MOTION [DOCKET NO. [●]] PREVIOUSLY FILED AND SERVED BY THE DEBTORS.

▪ The deadline to submit a bid for any Assets is **February 11, 2022, at 12:00 p.m. (ET)**. All bids must be submitted to the following:

- (i) the Debtors, Attn: Spencer Ware (spencer.ware@riveron.com);
- (ii) counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: M. Blake Cleary, Esq. and Allison Mielke, Esq. (mbleary@ycst.com and amielke@ycst.com);
- (iii) proposed counsel to the official committee of unsecured creditors appointed in the Debtors' chapter 11 cases; and
- (iv) counsel to the Debtors' prepetition lenders, Stoll Kennon Ogden PLLC, Attn: Lea Pauley Goff, Esq. (Lea.Goff@skofirm.com), 500 West Jefferson Street, Suite 2000, Louisville, KY 40202-2828, and Attn: Amelia Martin Adams, Esq. (Amelia.Adams@skofirm.com) and Stevens & Lee, P.C., Attn: Joseph H. Huston, Jr., Esq. (joseph.huston@stevenslee.com), 919 North Market Street, Suite 1300, Wilmington, DE 19801.

▪ Any objections to the Sale or the relief requested in connection with the Sale (a "Sale Objection"), other than a Contract Objection, which shall be governed by the Assumption and Assignment Procedures, must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) set forth the specific basis for the Sale Objection; (d) be filed with the Clerk of this Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, together with proof of service, **on or before 4:00 p.m. (ET) on February 11, 2022** (the "Sale Objection Deadline"); and (e) be served so as to be actually received on or before the Sale Objection Deadline, upon the following parties (the "Objection Notice Parties"): (i) counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: M. Blake Cleary, Esq. and Allison Mielke, Esq. (mbleary@ycst.com and amielke@ycst.com); (ii) proposed counsel to any official committee of unsecured creditors appointed in these Chapter 11 Cases; (iii) counsel to the Debtors' prepetition lenders, Stoll Kennon Ogden PLLC, Attn: Lea Pauley Goff, Esq. (Lea.Goff@skofirm.com), 500 West Jefferson Street, Suite 2000, Louisville, KY 40202-2828, and Attn: Amelia Martin Adams, Esq. (Amelia.Adams@skofirm.com) and Stevens & Lee, P.C., Attn: Joseph H. Huston, Jr., Esq. (joseph.huston@stevenslee.com), 919 North Market Street, Suite 1300, Wilmington, DE 19801; and (iv) the U.S. Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801, Attn: Timothy J. Fox, Jr., Esq. (Timothy.J.Fox@usdoj.gov).

▪ An auction for the Assets, unless cancelled or adjourned in accordance with the Bidding Procedures Order, will be held on **February 15, 2022, at 10:00 a.m. (ET)**, at the offices of at Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Rodney Square, Wilmington, Delaware 19801 and by videoconference.

▪ Unless adjourned in accordance with the Bidding Procedures Order, the Bankruptcy Court will conduct a hearing (the "Sale Hearing") to consider the Sale on **February 17, 2022, at [●].m. (ET)**.

PLEASE TAKE FURTHER NOTICE THAT, IF A SALE OBJECTION IS NOT FILED AND SERVED ON OR BEFORE THE SALE OBJECTION DEADLINE IN ACCORDANCE WITH THE ENTERED BIDDING PROCEDURES ORDER, THEN THE OBJECTING PARTY SHALL BE BARRED FROM OBJECTING TO THE SALE AND SHALL NOT BE HEARD AT THE SALE HEARING, AND THE BANKRUPTCY COURT MAY ENTER THE SALE ORDER WITHOUT FURTHER NOTICE TO SUCH PARTY.

Dated: January __, 2022
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/

M. Blake Cleary (No. 3614)
Allison S. Mielke (No. 5934)
Alexander S. Faris (No. 6278)
Rodney Square
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Email: mbcleary@ycst.com
amielke@ycst.com
afaris@ycst.com

Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT IV

Stalking Horse Bid

INTELLECTUAL PROPERTY AND INVENTORY ASSET PURCHASE AGREEMENT

THIS INTELLECTUAL PROPERTY AND INVENTORY ASSET PURCHASE AGREEMENT (this “Agreement”) is made as of January 14, 2022 (the “Effective Date”), by and between RBI Acquisition Holdings, LLC, a Delaware limited liability company (the “Buyer”), BHCosmetics Holdings, LLC, a Delaware limited liability company (the “Company”), and each of its affiliated debtors in the Bankruptcy Case (defined below) to the extent such affiliated debtor owns any of the Acquired Assets (defined below) (each, separately and collectively, “Seller”). Capitalized terms used herein and not otherwise defined herein have the meaning set forth in Article I.

RECITALS

WHEREAS, the Company, headquartered in North Hollywood, California, is engaged in the business (the “Business”) of being a leading beauty brand specializing in clean, vegan, and cruelty-free cosmetics and other beauty products (the “Beauty Products”);

WHEREAS, the Company, together with each affiliated Seller, anticipates filing voluntary petitions for relief (the “Filing”) commencing cases under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) and that such cases will be jointly administered;

WHEREAS, Buyer will deliver to Hilco IP Services, LLC, d/b/a Hilco Streambank (“Hilco Streambank”) an amount in cash totaling \$430,000 (such amount, as it may be adjusted pursuant hereto, the “Deposit”) in immediately available funds to be held in escrow by Hilco Streambank, subject to the terms of an escrow agreement of even date herewith by and among Buyer, Seller, and Hilco Streambank (the “Escrow Agreement”);

WHEREAS, Seller believes, following consultation with Seller’s financial advisors and other professionals, and consideration of available alternatives, that, in light of the current circumstances, a sale of certain of Seller’s intellectual property assets, and certain of Seller’s inventory of Beauty Products, as provided herein is necessary to maximize value, and is in the best interest of Seller and Seller’s creditors and stakeholders;

WHEREAS, Seller desires to sell to Buyer all of the Acquired Assets and transfer to Buyer the Assumed Liabilities, and Buyer desires to purchase from Seller all of the Acquired Assets and assume all of the Assumed Liabilities, in each case, on the terms and subject to the conditions hereinafter set forth;

WHEREAS, the execution and delivery of this Agreement and Seller’s ability to consummate the transactions set forth in this Agreement are subject to, among other things, the entry of the Bidding Procedures Order and the Sale Order pursuant to sections 363 and 365 of the Bankruptcy Code; and

WHEREAS, the Parties desire to consummate the proposed transaction as promptly as practicable after the Bankruptcy Court enters the Sale Order.

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties, and covenants herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound hereby, the Parties agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. For purposes of this Agreement, the following terms have the meaning specified or referenced below.

“Acquired Assets” shall have the meaning set forth in Section 2.1.

“Additional Designated Beauty Products” means Beauty Products owned by Seller that are neither Purchased Inventory or Special Purchased Inventory as of the Effective Date that Seller and Buyer may mutually agree from time to time prior to the Closing Date be included as Purchased Inventory or Special Purchased Inventory.

“Affiliate” shall have the meaning ascribed to it section 101(2) of the Bankruptcy Code.

“Agreement” shall have the meaning set forth in the Preamble.

“Allocation” shall have the meaning set forth in Section 7.1(e).

“Alternative Transaction” means a transaction or series of related transactions (whether by asset sale, equity purchase, reorganization, merger, or otherwise) pursuant to which Seller agrees to a sale or sales (to one or more Persons other than Buyer) of all of the Acquired Assets or any group of assets that includes all or any material portion of the Acquired Assets or a reorganization of Seller pursuant to a plan approved the Bankruptcy Court.

“Assumed Contracts” shall have the meaning set forth in Section 2.1(a) and shall include any Contract designated for assumption by Seller and assignment to Buyer on or before January 25, 2022.

“Auction” shall mean the auction, if any, of the Acquired Assets.

“Avoidance Actions” means any and all claims for relief of Seller under chapter 5 of the Bankruptcy Code, or state fraudulent conveyance, fraudulent transfer, or other similar state laws.

“Back-up Bidder” has the meaning ascribed to such term in the Bid Procedures.

“Bankruptcy Case” means, collectively, the bankruptcy cases commenced by Seller under chapter 11 of the Bankruptcy Code in the Bankruptcy Court in the Filing.

“Bankruptcy Code” means Title 11 of the United States Code, section 101 *et seq.*

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

“Beauty Products” shall have the meaning set forth in the Recitals.

“Bid Procedures” means the solicitation, bid, and auction procedures governing the sale of the Intellectual Property, Purchased Inventory, and Special Purchased Inventory, a form of which will be attached to the Sale Motion.

“Bidding Procedures Order” means an order of the Bankruptcy Court approving the Bid Procedures.

“Books and Records” means copies or originals of all files and records, archived files, artwork, development and design work, graphics and design work, formulas, recipes, technical files, applications, licenses, agreements, contracts, and permissions (as amended to date) and all other written correspondence and documentation relating to the Acquired Assets and the Beauty Products, used in connection with or evidencing ownership of each Acquired Asset to the extent such documents are in Seller’s possession or control, including, but not limited to, all correspondence, purchasing materials and records, vendor lists, operation and quality control records and procedures, research and development files, new product development and product briefs, written evidence of Trade Secrets, sales order files, purchase order files, advertising materials, catalogs, product brochures, mailing lists, customer files, customer lists, distribution lists, sales and promotional materials all in any form or medium, including electronic and computer files stored or maintained on Third Party Platforms.

“Break-Up Fee” means the amount of \$172,000.

“Business Day” means any day of the year, other than a Saturday or Sunday, on which national banking institutions in New York, New York are open to the public for conducting business and are not required or authorized by Law to close.

“Buyer” shall have the meaning set forth in the Preamble.

“Buyer Termination Notice” shall have the meaning set forth in Section 10.1(c)(i).

“Cash Consideration” means an amount equal to the Intellectual Property Consideration plus the Purchased Inventory Consideration plus the Special Purchased Inventory Consideration (estimated at approximately \$4,300,000 as of the date of this Agreement).

“Claims” means all claims, causes of action, rights of recovery, and rights of set-off of Seller, in each case, of whatever kind or description against any Third Party.

“Closing” shall have the meaning set forth in Section 3.4.

“Closing Date” shall have the meaning set forth in Section 3.4.

“Closing Date Cash Payment” shall have the meaning set forth in Section 3.3.

“Closing Legal Impediment” shall have the meaning set forth in Section 8.3.

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

“Competing Bids” shall have the meaning set forth in Section 6.3(a).

“Contract” means any contract, agreement, undertaking, license, sublicense, sales order, purchase order, or other commitment, whether written or oral (including commitments to enter into any of such), that is binding on any Person or any part of such Person’s property under applicable Law.

“Copyrights” means registered and unregistered copyright, and any applications and registrations therefor that are owned by Seller and set forth on Schedule 2.1(b).

“Cure Costs” means any Liability of Seller that must be paid or otherwise satisfied, pursuant to Section 365(b) of the Bankruptcy Code, to cure all of Seller’s defaults under Assumed Contracts at the time of assumption by and assignment to Buyer of such Assumed Contracts as provided herein.

“Customer Data” means information pertaining to current or past customers of Seller as described on Schedule 1.1(a) attached hereto.

“Deposit” shall have the meaning set forth in the Recitals.

“Domain Names” means the Internet resource names and associated uniform resource locaters of Seller that are owned by Seller and set forth on Schedule 2.1(b).

“DTC Sales” means direct to consumer sales of Beauty Products by Seller through Seller’s websites and other e-commerce platforms from and after the Effective Date.

“Effective Date” shall have the meaning set forth in the Preamble.

“Employee Obligations” means, in each case accrued prior to the Closing, (i) any and all obligations under applicable Law or agreements owed by Seller to employees, including without limitation, wages, salaries, bonuses, commissions, accrued vacation, severance, sick leave pay, and expense reimbursements and (ii) any and all payroll and other taxes associated with the obligations described in clause (i), including without limitation, federal income taxes, state and local income taxes, FICA, Medicare, and state disability insurance.

“Encumbrance” means any charge, lien, interest, claim, mortgage, hypothecation, deed of trust, pledge, security interest, option, right of use or possession, right of first offer or first refusal, easement, servitude, restrictive covenant, encroachment, encumbrance, or other similar restriction of any kind including, but not limited to, claims of successor liability.

“Escrow Agreement” has the meaning set forth in the Recitals.

“Excluded Assets” shall have the meaning set forth in Section 2.2.

“Excluded Liabilities” shall have the meaning set forth in Section 2.4.

“Expense Reimbursement” means the reimbursement to Buyer of the reasonable, actual, out-of-pocket costs and expenses paid or incurred by Buyer directly incident to, under, or in connection with the negotiation, execution and performance under this Agreement and the transactions contemplated hereunder (including travel expenses and reasonable fees and disbursements of counsel, accountants and financial advisors, excluding any charges for the time or services of the Buyer’s employees) in an amount not to exceed \$150,000 in the aggregate.

“Filing” shall have the meaning set forth in the Recitals.

“German Subsidiary” means BH Cosmetics GmbH.

“Governmental Authority” means any United States federal, state, municipal or local or any foreign government, governmental agency or authority, or regulatory or administrative authority, including the United States Patent and Trademark Office and United States Copyright Office, or any court, tribunal, or judicial body of competent jurisdiction, including the Bankruptcy Court.

“Intellectual Property” means, collectively, the Copyrights, Trademarks, and Domain Names.

“Inventory Sale License” has the meaning set forth in Section 7.5.

“Inventory Sale Licensees” has the meaning set forth in Section 7.5.

“Inventory Sale Orders” has the meaning set forth in Section 7.5.

“Inventory Sales” has the meaning set forth in Section 7.5.

“Inventory Sale Trademarks” has the meaning set forth in Section 7.5.

“Intellectual Property Consideration” means \$2,700,000.

“Knowledge” means, with respect to any matter in question, in the case of Seller, the actual knowledge of Spencer Ware, Paul Kasinski, and Francois Bonin.

“Law” means any foreign or domestic law, statute, code, ordinance, rule, regulation, order, judgment, writ, stipulation, award, injunction, or decree by any Governmental Authority.

“Liability” means any debt, loss, claim, damage, demand, fine, judgment, penalty, liability, or obligation (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due).

“Material Adverse Effect” means any effect, change, condition, circumstance, development, or event that, individually or in the aggregate with all other effects, changes, conditions, circumstances, developments and events has had, or would reasonably be expected to have, a material adverse effect on (x) the Purchased Intellectual Property, Purchased Inventory, Special Purchased Inventory, or any other Acquired Assets, taken as a whole or (y) Seller’s ability to consummate the transactions contemplated hereby, excluding any effect, change, condition, circumstance, development, or event that results from or arises out of: (i) general business or economic conditions in any of the geographical areas in which Seller operates or uses the Acquired Assets; (ii) geopolitical conditions or any outbreak or escalation of hostilities or acts of terrorism or war or any effect, change or event that is otherwise generally applicable to the industries and markets in which Seller operates; (iii) changes in Laws or accounting regulations or principles; (iv) any event, change, occurrence, or effect affecting United States financial, banking, or securities markets (including any disruption thereof or any decline in the price of securities generally or any market or index); (v) the occurrence of any act of God or other calamity or force majeure events, including, but not limited to, the COVID-19 pandemic or any other pandemic (including the impact on economies generally and the results of any actions taken by any Governmental Authority in response thereto); (vi) the Bankruptcy Case, including, without limitation, the Auction and any announced liquidation of Seller’s inventory or any of Seller’s respective assets; or (vii) any action expressly contemplated by this Agreement or taken at the written request of Buyer; except in the case of clauses (i) through (v), to the extent such effect, change, condition, circumstance, development, or event has a disproportionate impact on the Purchased Intellectual Property, Purchased Inventory, Special Purchased Inventory, or other Acquired Assets, as compared to the impact on other participants engaged in the industries and geographies in which Seller operates.

“Order” means any award, writ, injunction, judgment, order, or decree entered, issued, made, or rendered by any Governmental Authority.

“Outside Date” shall have the meaning set forth in Section 10.1(b)(ii).

“Party” or “Parties” means, individually or collectively, as applicable, Buyer and Seller.

“Permitted Encumbrances” means the non-exclusive outbound licenses of Intellectual Property set forth on Schedule 1.1(b)(1).

“Person” means any individual, corporation (including any non-profit corporation), partnership, limited liability company, joint venture, estate, trust, association, organization, other entity, or Governmental Authority.

“Physical Count” shall have the meaning set forth in Section 3.4(a).

“Post-Closing Tax Period” means (a) any taxable period beginning after the Closing Date and (b) the portion of any Straddle Period beginning after the Closing Date.

“Pre-Closing Covenant” shall have the meaning set forth in Section 11.13.

“Pre-Closing Tax Period” means (a) any taxable period ending on or before the Closing Date and (b) the portion of any Straddle Period beginning on the first day of such Straddle Period and ending at the close of business on the Closing Date.

“Proceeding” means any action, arbitration, audit, hearing, investigation, litigation, or suit (whether civil criminal, administrative, or investigative) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Authority, other than an Avoidance Action.

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

“Purchased Intellectual Property” means the Acquired Assets set forth in Sections 2.1(b), (c), (d), and (f).

“Purchased Inventory” shall mean (i) all Beauty Products owned by the Seller as of the Effective Date as set forth on Schedule 4.8(a) and (ii) any Additional Designated Beauty Products designated as Purchased Inventory, in each instance, as reduced by any sales of such Beauty Products prior to the Closing Date.

“Purchased Inventory Consideration” shall mean an amount equal to fifty percent (50%) of the cost value (as set forth on Schedule 4.8(a)) of the Purchased Inventory that is delivered to Buyer by Seller on the Closing Date.

“Qualified Bid” shall have the meaning set forth in the Bidding Procedures Order.

“Representative” means, with respect to a particular Person, any director, officer, employee, agent, consultant, advisor, or other representative of such Person, including legal counsel, accountants, and financial advisors.

“Registered Intellectual Property” means any Copyrights or Trademarks that are registered, filed, or issued under the authority of any Governmental Authority.

“Sale Motion” shall mean the motion to be filed by the Seller seeking approval of the sale of the Acquired Assets.

“Sale Order” means an Order of the Bankruptcy Court approving this Agreement and the transactions contemplated hereby.

“Seller” shall have the meaning set forth in the Preamble.

“Seller Termination Notice” shall have the meaning set forth in Section 10.1(d)(i).

“Social Media Accounts” means the online account registrations of Seller described on Schedule 2.1(g).

“Special Purchased Inventory” shall mean (i) the Beauty Products owned by Seller as of the Effective Date as set forth on Schedule 4.8(b) and (ii) any Additional Designated Beauty Products designated as Special Purchased Inventory, in each instance, as reduced by DTC Sales prior to the Closing Date.

“Special Purchased Inventory Consideration” means an amount equal to fifty percent (50%) of the cost value (as set forth on Schedule 4.8(b)) of the Special Purchased Inventory that is delivered to the Buyer by the Seller on the Closing Date and as adjusted pursuant to Section 3.4 hereof.

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

“Subsidiary” means any entity with respect to which a specified Person (or a Subsidiary thereof) has the power, through the ownership of securities or otherwise, to elect a majority of the directors or similar managing body.

“Successful Bidder” shall have the meaning set forth in the Bidding Procedures Order.

“Tax” or “Taxes” means any federal, state, local or foreign income, gross receipts, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, *ad valorem*, personal property, stamp, excise, occupation, sales, use, transfer, value added, alternative minimum, estimated, or other tax or imposition, including any interest, penalty, or addition thereto.

“Tax Return” means any return, declaration, report, claim for refund, information return, or other document (including any related or supporting estimates, elections, schedules, statements, or information) filed with or required to be filed with any Governmental Authority or required to be provided to any Person, in each case in connection with the determination, assessment, or collection of any Tax or the administration of any laws, regulations, or administrative requirements relating to any Tax.

“Third Party” means a Person who is neither a Party nor an Affiliate of a Party.

“Third Party Platforms” means Google Drives, Net Suite, Avectous, Looker, Snowflake, Shopify, Klaviyo, Yotpo, and Rakuten.

“Trade Secrets” means trade secrets, industrial secret rights, rights in know-how, data, confidential or proprietary business or technical information, in all cases that derives independent economic value, whether actual or potential, from not being known to, and not being readily ascertainable by proper means by, other Persons who can obtain economic value from its disclosure or use and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

“Trademarks” means the trademarks, service marks, trade names, logos, slogans, designs, common law trademarks and service marks, trademark and service mark registrations, designations of origin, and applications therefor that are owned by Seller and set forth on Schedule 2.1(b).

“Transaction Documents” means this Agreement and any other agreements, instruments, or documents entered into pursuant to this Agreement.

“Transfer Taxes” shall have the meaning set forth in Section 7.1(a).

“TSA” shall have the meaning set forth in Section 7.9.

Section 1.2 Other Definitions and Interpretive Matters. Unless otherwise indicated to the contrary in this Agreement by the context or use thereof:

(a) 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 shall be excluded. If the last day of such period is a day other than a Business Day, the period in question shall end on the next succeeding Business Day.

(b) Any reference in this Agreement to “\$” means U.S. dollars.

(c) Unless the context otherwise requires, all capitalized terms used in the Exhibits and Schedules shall have the respective meanings assigned in this Agreement. No reference to or disclosure of any item or other matter in the Exhibits and Schedules shall be construed as an admission or indication that such item or other matter is material. No disclosure in the Exhibits and Schedules relating to any possible breach or violation of any Contract or Law shall be construed as an admission or indication that any such breach or violation exists or has actually occurred. Any information, item or other disclosure set forth in any Schedule shall be deemed to have been set forth in all other applicable Schedules if the relevance of such disclosure to such other Schedule is reasonably apparent on its face. All Exhibits and Schedules attached or annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein.

(d) Any reference in this Agreement to words importing the singular number also include the plural and vice versa.

(e) The provision of a table of contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in the construction or interpretation of this Agreement. All references in this Agreement to any “Section,” “Article,” “Schedule,” or “Exhibit” are to the corresponding Section, Article, Schedule, or Exhibit of or to this Agreement unless otherwise specified.

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

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

ARTICLE II

PURCHASE AND SALE

Section 2.1 Purchase and Sale of the Acquired Assets. On the terms and subject to the conditions set forth in this Agreement, on the Closing Date, in consideration of payment of the Purchase Price and assumption of the Assumed Liabilities by Buyer, Seller shall sell, transfer, assign, convey, and deliver, or cause to be sold, transferred, assigned, conveyed, and delivered, to Buyer, free and clear of any Encumbrances (other than Permitted Encumbrances), and Buyer shall purchase, assume and accept from Seller, all right, title, and interest of Seller in, to, or under the following (collectively, the “Acquired Assets”):

- (a) all contracts listed on Schedule 2.1(a) (the “Assumed Contracts”);
- (b) the Intellectual Property;
- (c) all rights of Seller in names and trade names used by Seller within the past five (5) years;
- (d) all goodwill associated with the Intellectual Property;
- (e) all Claims of Seller to the extent arising out of, or relating to, the Intellectual Property;
- (f) Trade Secrets associated with the Intellectual Property;
- (g) the Social Media Accounts;
- (h) Customer Data, to the extent the sale or transfer of such Customer Data is permitted under applicable Law;
- (i) the Purchased Inventory;
- (j) the Special Purchased Inventory; and
- (k) the Books and Records.

Section 2.2 Excluded Assets. Notwithstanding anything herein to the contrary, the Buyer shall not acquire any right, title or interest in or to any assets, properties, rights, interests, or claims of any kind or description of Seller or any Affiliates other than the Acquired Assets, including, without limitation, any inventories of Beauty Products of the Seller that are not Purchased Inventory or Special Purchased Inventory (collectively, the “Excluded Assets”). For the avoidance of doubt, Buyer shall have the right at any time prior to the date specified in the Bidding Procedures Order for commencement of the Auction to designate any Contracts as Assumed Contracts and any Contract that is not designated as an Assigned Contract shall be an Excluded Asset.

Section 2.3 Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, at the Closing, contemporaneously with the sale, assignment, and transfer of the Acquired Assets to Buyer, Buyer shall assume and agree to pay, perform, and discharge, as and when due (in accordance with the respective terms and subject to the respective conditions thereof) only (i) all Cure Costs, (ii) those Liabilities arising from or relating to the ownership of the Acquired Assets or the use thereof by Buyer from and after the Closing, (iii) fifty percent (50%) of all Transfer Taxes, and (iv) those Taxes pro-rated to Buyer pursuant to Section 7.1(d) (collectively, the “Assumed Liabilities”), and no other Liabilities whatsoever of Seller.

Section 2.4 Excluded Liabilities. Buyer shall not assume or be obliged to pay, perform, or otherwise discharge, and Seller shall be solely and exclusively liable with respect to, any Liability of Seller that is not an Assumed Liability (such Liabilities, collectively, the “Excluded Liabilities”). For the avoidance of doubt, Excluded Liabilities shall include, but is not limited to, any and all Liabilities and obligations for (i) gift cards, rewards points, or loyalty rewards issued by Seller, (ii) amounts due to employees, independent contractors (including, without limitation, brand influencers), consultants of Seller, suppliers to Seller, and (iii) any Employee Obligations.

Section 2.5 Further Assurances. Following the Closing, the Parties shall use their respective commercially reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things reasonably necessary under applicable Law, and execute and deliver such instruments and documents and to take such other actions, as may be required to consummate the transactions contemplated by this Agreement at or after the Closing; provided, however, that nothing in this Section 2.5 shall prohibit Seller from ceasing operations or winding up Seller's affairs and liquidating following the Closing and upon the completion of the winding up of Seller's affairs and liquidation Seller will have no further responsibility under this Section 2.5. In furtherance and not in limitation of the foregoing, in the event that any of the Acquired Assets shall not have been conveyed at Closing, Seller shall use commercially reasonable efforts to convey such Acquired Assets to Buyer as promptly as practicable after the Closing.

ARTICLE III

PURCHASE PRICE; CLOSING

Section 3.1 Purchase Price. In consideration for the purchase, sale, assignment, and conveyance of the Acquired Assets, Buyer shall pay to Seller in cash the amount of the Cash Consideration (the "Purchase Price") and assume the Assumed Liabilities.

Section 3.2 Deposit. Buyer shall deliver the Deposit to Hilco Streambank in immediately available funds within one (1) Business Day of the date of this Agreement. The Deposit shall not be subject to any lien, attachment, trustee process, or any other judicial process of any creditor of Seller or Buyer. The Deposit shall be retained by Seller at the Closing as a portion of the Purchase Price, or if this Agreement is terminated, treated in the manner set forth in Section 10.2.

Section 3.3 Closing Date Payment. At the Closing, (a) Buyer shall pay to Seller in cash by wire transfer of immediately available funds an amount equal to the Cash Consideration less the Deposit (the "Closing Date Cash Payment") and (b) Buyer and Seller shall direct Hilco Streambank to indefeasibly transfer the Deposit to an account designated by Seller.

Section 3.4 Inventory Adjustment. The Purchased Inventory Consideration and Special Purchased Inventory Consideration shall be subject to adjustment as follows:

(a) Physical Count. Within three (3) days preceding the Closing Date, the Buyer and Seller shall jointly conduct a physical count (the "Physical Count") of the Special Purchased Inventory and the twenty-five (25) SKUs constituting the largest SKUs included in the Purchased Inventory. Upon mutual agreement as to the results of the Physical Count and subject to the adjustment set forth in Section 3.4(b) below, the Parties shall mutually agree on the final Purchased Inventory Consideration and Special Purchased Inventory Consideration.

(b) Adjustments to Special Purchased Inventory Consideration. The Special Purchased Inventory Consideration shall be subject to the following adjustments:

(i) If after the conducting of the Physical Count, there is a deviation of 1% or less in the amount of Beauty Products included in any SKU included in the Special Purchased Inventory as reflected on Schedule 4.8(b) and reduced by DTC Sales, then there will be no adjustment in the Special Purchased Inventory Consideration for that particular SKU.

(ii) If after the conducting of the Physical Count, there is a deviation of greater than 1% but less than 10% in the amount of Beauty Products included in any SKU included in the Special Purchased Inventory as reflected on Schedule 4.8(b) as reduced by DTC Sales, then the cost value for the

determination of the Special Purchased Inventory Consideration for such SKU shall be reduced on a dollar for dollar basis for purposes of calculating the Special Purchased Inventory Consideration for that particular SKU.

(iii) If, after the conducting of the Physical Count, there is a deviation of greater than 10% or more in the amount of Beauty Products included in any SKU included in the Special Purchased Inventory as reflected on Schedule 4.8(b) as reduced by DTC Sales, then the Buyer, in its sole and absolute discretion, shall be permitted to either: (x) reduce the Special Purchased Inventory in accordance with the provisions of Section 3.4(b)(ii); or (y) terminate the Agreement, have the Deposit immediately returned to Buyer, and Buyer shall be automatically fully and forever released from any further obligations or liabilities to Seller under this Agreement.

Section 3.5 Closing Date. On the terms and subject to the conditions set forth in this Agreement, the closing of the sale of the Acquired Assets and the assumption of the Assumed Liabilities contemplated hereby (the “Closing”) shall take place by electronic exchange of documents on a date no later than the first Business Day following the date on which the conditions set forth in Article VIII and Article IX have been satisfied or (if permissible) waived (other than the conditions that by their nature are to be satisfied by actions taken at the Closing, but subject to the satisfaction or (if permissible) waiver of such conditions), or at such other place or time as Buyer and Seller may mutually agree upon in writing. The date and time at which the Closing actually occurs is referred to herein as the “Closing Date.”

Section 3.6 Buyer’s Deliveries to Seller. At the Closing, Buyer shall deliver to Seller each of the following:

(a) the Closing Date Cash Payment in accordance with clause (a) of Section 3.3 and a direction to Hilco Streambank duly executed by Buyer, to deliver the Deposit to Seller in accordance with clause (b) of Section 3.3 and the Escrow Agreement;

(b) each other Transaction Document not previously executed to which Buyer is a party, duly executed by Buyer;

(c) the certificates of Buyer to be received by Seller pursuant to Section 9.1 and Section 9.2; and

(d) such assignments and other good and sufficient instruments of assumption and transfer, each in form reasonably satisfactory to Seller, as Seller may reasonably request to transfer and assign the Acquired Assets and Assumed Liabilities to Buyer.

Section 3.7 Seller’s Deliveries to Buyer. At the Closing, Seller shall deliver to Buyer each of the following:

(a) a direction to Hilco Streambank duly executed by Seller, to deliver the Deposit to Seller in accordance with clause (b) of Section 3.3 and the Escrow Agreement;

(b) each other Transaction Document to which Seller is a party, duly executed by Seller;

(c) confirmation that the Bankruptcy Court shall have entered the Sale Order and no order staying, reversing, modifying, or materially amending the Sale Order shall be in effect on the applicable Closing Date;

(d) the certificates of Seller to be received by Buyer pursuant to Section 8.1 and Section 8.2;

(e) such bills of sale (including a bill of sale to transfer title to all Purchased Inventory and Special Purchased Inventory), deeds, endorsements, assignments (including requisite assignments of all Purchased Intellectual Property, Social Media Accounts and Customer Data), UCC terminations and other filings and other good and sufficient instruments, each in form reasonably satisfactory to Buyer, which are necessary to vest in Buyer all the right, title and interest of Seller in, to or under any or all of the Acquired Assets free and clear of Encumbrances other than Permitted Encumbrances;

(f) a duly completed Form W-9 executed by Seller or the Person treated as its regarded owner for U.S. federal income purposes;

(g) with respect to the Domain Names and the Social Media Accounts, Seller's login credentials for and such documents as may be reasonably necessary to transfer to Buyer all administrative rights to the Domain Names and the Social Media Accounts;

(h) the Customer Data;

(i) the Purchased Inventory;

(j) the Special Purchased Inventory; and

(k) the Books and Records.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the Schedules, Seller hereby represents and warrants to Buyer that the following statements contained in this Article IV are true and correct as of the date hereof and as of the Closing Date:

Section 4.1 Organization and Good Standing. Seller is an entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of Seller's organization. Subject to the limitations imposed on Seller as a result of the Filing, (x) Seller has the requisite corporate power and authority to own or lease and to operate and use Seller's properties and (y) 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, or has required it, to qualify, except where the failure to be so qualified or have qualified would not reasonably be expected to have a Material Adverse Effect.

Section 4.2 Authority; Validity; Consents. Seller has, subject to requisite Bankruptcy Court approval and limitations imposed on Seller as a result of the Filing, as applicable, the requisite corporate power and authority necessary to enter into and perform Seller's obligations under this Agreement and the other Transaction Documents to which Seller is a party and to consummate the transactions contemplated hereby and thereby. This Agreement has been duly and validly executed and delivered by Seller and each other Transaction Document required to be executed and delivered by Seller at the Closing will be duly and validly executed and delivered by Seller at the Closing. Subject to requisite Bankruptcy Court approval and limitations imposed on Seller as a result of the Filing, as applicable, this Agreement and the other Transaction Documents constitute, with respect to Seller, the legal, valid, and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, except as such enforceability is limited

by bankruptcy, insolvency, reorganization, moratorium, or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity. Subject to, and after giving effect to, requisite Bankruptcy Court approval (including, without limitation, the Sale Order) and except (a) for entry of the Sale Order and (b) for notices, filings, and consents required in connection with the Bankruptcy Case, Seller is not required to give any notice to, make any filing with, or obtain any consent from any Person (including any Governmental Authority) in connection with the execution and delivery of this Agreement and the other Transaction Documents to which it is a party or the consummation or performance of any of the transactions contemplated hereby and thereby.

Section 4.3 Title to Acquired Assets. At the Closing, Seller will have and, upon delivery to Buyer on the Closing Date of the instruments of transfer contemplated by Section 3.7, and subject to the terms of the Sale Order, Seller will thereby transfer to Buyer, title to or, where expressly provided for herein a valid contractual interest in, all of the Acquired Assets free and clear of all Encumbrances, except for Permitted Encumbrances.

Section 4.4 Taxes. Except as would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, in each case, to the extent relating to the Acquired Assets:

(a) Seller has timely filed (taking into account any valid extensions) all Tax Returns required to be filed by Seller with respect to the Acquired Assets or the Assumed Liabilities and has timely paid all Taxes (whether or not shown or required to be shown on any Tax Return) with respect to the Acquired Assets or the Assumed Liabilities by the due date thereof. Seller is not currently the beneficiary of any extension of time within which to file any Tax Return with respect to the Acquired Assets or the Assumed Liabilities other than extensions of time to file Tax Returns obtained in the ordinary course of business.

(b) Seller is not a "foreign person" as that term is used in Treasury Regulations Section 1.1445-2.

(c) Seller has withheld and paid all Taxes required to have been withheld and paid in connection with any amount paid or owing to any employee, independent contractor, creditor, stockholder or other Third Party under applicable Laws.

(d) The representations and warranties in this Section 4.4 shall constitute the sole and exclusive representations and warranties by Seller with respect to Taxes, and no representation or warranty in this Section 4.4 shall be deemed to apply directly or indirectly to any period after the Closing.

Section 4.5 Legal Proceedings. As of the date hereof, except for the Bankruptcy Case and as set forth on Schedule 4.5, there is no Proceeding or Order pending or, to Seller's Knowledge, threatened in writing against Seller that (a) seeks to restrain or prohibit or otherwise challenge the consummation, legality, or validity of the transactions contemplated hereby or (b) would have a Material Adverse Effect.

Section 4.6 Brokers or Finders. Except as set forth on Schedule 4.6 hereof, Seller has not incurred any obligation or liability, contingent or otherwise, for brokerage or finders' fees or agents' commissions or other similar payment owed in connection with this Agreement, the other Transaction Documents to which it is a party, or the transactions contemplated hereby or thereby, in all cases for which Buyer is or will become liable following the Closing.

Section 4.7 Intellectual Property.

(a) Schedule 4.7(a) sets forth a correct and complete list as of the date hereof of all Registered Intellectual Property, specifying as to each, as applicable: (i) the title of the Trademark or Copyright; (ii) the jurisdiction by or in which it has been issued, registered, or filed; and (iii) the registration or application serial number. Except as set forth on Schedule 4.7(a), the Seller owns all right, title, and interests in and to the Purchased Intellectual Property, all Social Media Accounts, and the Customer Data, free and clear of all Encumbrances, other than Permitted Encumbrances. Except as set forth on Schedule 4.7(a), the Registered Intellectual Property is subsisting and is in full force and effect.

(b) To Seller's Knowledge, no Third Party is infringing or misappropriating any Purchased Intellectual Property included in the Acquired Assets, nor any of Seller's rights in the Social Media Accounts, in a material manner. To Seller's Knowledge, there exists no agreement between the Seller and the German Subsidiary or any other Subsidiary or Affiliate of Seller pursuant to which any such Person has the right to own, use, or license any of the Purchased Intellectual Property. Seller is not subject to any outstanding or prospective Order (including any motion or petition therefor) that does or would restrict or impair the use of the Purchased Intellectual Property, Social Media Accounts, or Customer Data. To Seller's Knowledge, the use of the Purchased Intellectual Property does not infringe any Third Party's trademarks, copyrights, or other intellectual property rights.

Section 4.8 Purchased Inventory and Special Purchased Inventory. The Purchased Inventory as of the Effective Date is set forth in Schedule 4.8(a) and the Special Purchased Inventory as of the Effective Date is set forth in Schedule 4.8(b) attached hereto. All of the Purchased Inventory and Special Purchased Inventory are located at facilities owned or leased by the Seller as indicated on Schedule 4.8(a) and Schedule 4.8(b), respectively. Seller owns the Purchased Inventory and Special Purchased Inventory and upon transfer of the Purchased Inventory and Special Purchased Inventory to Buyer, Buyer will own all Purchased Inventory and Special Purchased Inventory free and clear of all Encumbrances, except Permitted Encumbrances, and Buyer shall be free to sell such Purchased Inventory and Special Purchased Inventory without the payment of any royalty, commission, or similar payment to any Third Party.

Buyer acknowledges, on behalf of itself and its Affiliates, that, except for the representations and warranties contained in this Article IV, none of Seller, Seller's Affiliates or any other Person on behalf of Seller or Seller's Affiliates makes any express or implied representation or warranty with respect to Seller, the Acquired Assets, or with respect to any information provided by or on behalf of Seller or its Affiliates to Buyer. Without limiting the generality of the foregoing, and except as otherwise provided herein, Seller expressly disclaims any representations or warranties (whether written or oral) regarding accuracy, sufficiency, fitness for a particular purpose, merchantability, and non-infringement of third-party rights, and it is understood that, except as expressly stated in this Agreement, the Acquired Assets are being transferred on a "where is" and, as to condition, "as is" basis.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller that the following statements contained in this Article V are true and correct as of the date hereof and as of the Closing Date:

Section 5.1 Organization and Good Standing. Buyer is a limited liability company, duly organized, validly existing, and in good standing under the laws of the jurisdiction Buyer's organization. Buyer has the requisite power and authority to own or lease and to operate and use Buyer's properties and to carry on Buyer's business as now conducted.

Section 5.2 Authority; Validity; Consents. Buyer has the requisite power and authority necessary to enter into and perform Buyer's obligations under this Agreement and the other Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery, and performance of this Agreement by Buyer and the consummation by Buyer of the transactions contemplated herein have been duly and validly authorized by all requisite corporate actions in respect thereof. This Agreement has been duly and validly executed and delivered by Buyer and each other Transaction Document to which Buyer is a party will be duly and validly executed and delivered by Buyer at the Closing. This Agreement and the other Transaction Documents to which Buyer is a party constitute the legal, valid, and binding obligation of Buyer, enforceable against Buyer in accordance with their respective terms, except as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity. Subject to requisite Bankruptcy Court approval, as applicable, Buyer is not and will not be required to give any notice to or obtain any consent from any Person in connection with the execution and delivery of this Agreement and the other Transaction Documents to which it is a party or the consummation or performance of any of the transactions contemplated hereby or thereby.

Section 5.3 No Conflict. The execution and delivery of this Agreement and the other Transaction Documents and the consummation of the transactions provided for herein and therein will not result in the breach of any of the terms and provisions of, or constitute a default under, or conflict with, or cause any acceleration of any obligation of Buyer under (a) any agreement, indenture, or other instrument to which it is bound, (b) the organizational documents of Buyer, (c) any Order, or (d) any Law.

Section 5.4 Availability of Funds; Solvency. Buyer will have at the Closing sufficient cash in immediately available funds to pay the Purchase Price and any other costs, fees, and expenses required to be paid by it under this Agreement and the other Transaction Documents. As of the Closing and immediately after consummating the transactions contemplated by this Agreement and the other transactions contemplated by the Transaction Documents, Buyer will not, assuming that the representations and warranties made by Seller in Article IV of this Agreement are accurate in all material respects, (i) be insolvent (either because Buyer's financial condition is such that the sum of Buyer's debts is greater than the fair value of Buyer's assets or because the present fair value of Buyer's assets will be less than the amount required to pay Buyer's probable Liability on Buyer's debts as they become absolute and matured), (ii) have unreasonably small capital with which to engage in Buyer's business, or (iii) have incurred or plan to incur debts beyond Buyer's ability to repay such debts as they become absolute and matured.

Section 5.5 Legal Proceedings. There are no Proceedings pending or, to the knowledge of Buyer, threatened, that would affect in any material respect Buyer's ability to perform Buyer's obligations under this Agreement or any other Transaction Documents or to consummate the transactions contemplated hereby or thereby.

Section 5.6 Brokers or Finders. Neither Buyer nor any Person acting on behalf of Buyer has paid or become obligated to pay any fee or commission to any broker, finder, investment banker, agent, or intermediary for or on account of the transactions contemplated by this Agreement for which Seller is or will become liable, and Buyer shall hold harmless and indemnify Seller from any claims with respect to any such fees or commissions.

Section 5.7 Condition of Acquired Assets; Buyer's Investigation; Representations. Notwithstanding anything contained in this Agreement to the contrary, Buyer acknowledges and agrees that Seller is not making any representations or warranties whatsoever, express or implied, beyond those expressly made by Seller in Article IV (subject to the disclosures set forth on the Schedules), and Buyer acknowledges and agrees that, except for the representations and warranties contained in Article IV, the Acquired Assets are being transferred on a "where is" and, as to condition, "as is" basis. Buyer

acknowledges that it has conducted to Buyer's satisfaction Buyer's own independent investigation of Seller's business (including the Acquired Assets and Assumed Liabilities) and, in making the determination to proceed with the transactions contemplated by this Agreement, Buyer has relied on the results of Buyer's own independent investigation. In connection with Buyer's investigation, Buyer has received or may receive from Seller certain projections, forward-looking statements, and other forecasts and certain business plan information. Buyer acknowledges that there are uncertainties inherent in attempting to make such estimates, projections and other forecasts and plans, that Buyer is familiar with such uncertainties, that Buyer is taking full responsibility for making Buyer's own evaluation of the adequacy and accuracy of all estimates, projections, and other forecasts and plans so furnished to Buyer (including the reasonableness of the assumptions underlying such estimates, projections, forecasts or plans), and that Buyer shall have no claim against anyone (including, for the avoidance of doubt, Seller or any of its Affiliates or Representatives) with respect thereto. Accordingly, Buyer acknowledges that Seller makes no representation or warranty with respect to such estimates, projections, forecasts, or plans (including the reasonableness of the assumptions underlying such estimates, projections, forecasts, or plans). Nothing in this Section 5.7, however, shall relieve Seller from any Liability on account of actual and knowing fraud.

ARTICLE VI

ACTIONS PRIOR TO THE CLOSING DATE

Section 6.1 Operations Prior to the Closing Date. Seller covenants and agrees that, except (i) as expressly contemplated by this Agreement, (ii) with the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed, (iii) as required by the Bankruptcy Court, or (iv) as otherwise required by Law (including as required by any Governmental Authority to respond to the impact, presence, outbreak or spread of COVID-19 or any other pandemic), after the Effective Date and prior to the Closing Date (or the earlier termination of this Agreement):

(a) Seller shall use commercially reasonable efforts, taking into account Seller's status as debtors-in-possession in the Bankruptcy Case, to maintain and preserve the Acquired Assets in the Acquired Assets' present condition in all material respects and shall continue to operate its distribution and fulfillment centers in the ordinary and normal course of business and shall not remove any equipment located in such centers that would prohibit the processing and shipment of Beauty Products;

(b) Seller shall continue to make DTC Sales in a manner consistent with past practice, provided that offered discounts for DTC Sales shall not exceed the levels set forth on Schedule 6.1(b);

(c) Seller shall use commercially reasonable efforts, taking into account Seller's status as debtors-in-possession in the Bankruptcy Case, to (i) protect the validity and value of all Purchased Intellectual Property, (ii) respond to the office actions from the applicable regulatory authority in the time required with respect to those office actions set forth on Schedule 6.1(c), and (iii) file all renewals and extensions and pay all associated fees for the United States domestic Trademarks and Domain Names that are due prior to the Closing Date such that no lapses in rights or abandonments of such United States domestic Trademarks indicated as "Active Marks" on Schedule 4.7(a) or Domain Names occur prior to the Closing Date; and

(d) Seller shall not:

(i) sell, lease (as lessor), transfer, or otherwise dispose of, or mortgage or pledge, or voluntarily impose or suffer to be imposed any Encumbrance (other than Permitted Encumbrances) on, any Acquired Asset except in the ordinary course of business consistent with past practices;

(ii) cancel or compromise any material Claim or waive or release any material right, in each case, that is a Claim or right related to an Acquired Asset;

(iii) enter into any agreement that limits or restricts the conduct of the Acquired Assets in any location or with any Person; or

(iv) enter into any agreement or commitment to take any action prohibited by this Section 6.1.

Section 6.2 Special Covenants for Special Purchased Inventory. Seller covenants and agrees that, except (i) as expressly contemplated by this Agreement, (ii) with the prior written consent of Buyer, (iii) as required by the Bankruptcy Court, or (iv) as otherwise required by Law (including as required by any Governmental Authority to respond to the impact, presence, outbreak or spread of COVID-19 or any other pandemic), after the Effective Date and prior to the Closing Date (or the earlier termination of this Agreement):

(a) With exception of DTC Sales, Seller shall not transfer or sell, nor enter into any agreements to transfer or sell, any of the Special Purchased Inventory.

(b) Buyer and Buyer's representatives will have reasonable access during normal business hours to inspect the Special Purchased Inventory in a manner that does not interfere with Seller's conduct of the Business; and

(c) Commencing on January 27, 2022 and on each Thursday thereafter prior to the Closing Date, Seller shall provide a written report to Buyer setting forth the Special Purchased Inventory as it is then constituted and the aggregate DTC Sales as of the close of business through the immediately preceding Saturday .

Section 6.3 Bankruptcy Court Filings and Approval.

(a) This Agreement is subject to approval by the Bankruptcy Court and the consideration by Seller of higher or better competing bids (whether through cash, assumed liabilities, or credit bid) in respect of a sale, reorganization, or other disposition of the Acquired Assets (collectively, "Competing Bids"). From the date hereof (and any prior time) and until the Auction referenced herein is conducted, Seller is permitted to and to cause its Representatives and Affiliates to, initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Buyer and its Affiliates and Representatives) in connection with any Alternative Transaction. In addition, Seller shall have the authority to respond to any inquiries or offers with respect to an Alternative Transaction and perform any and all other acts related thereto to the extent any such act is not in violation of the Bidding Procedures Order or the Bankruptcy Code.

(b) Seller shall use Seller's commercially reasonable efforts to obtain the entry of the Bidding Procedures Order and the Sale Order and such other relief from the Bankruptcy Court as may be necessary or appropriate in connection with this Agreement and the consummation of the transactions contemplated by this Agreement. Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining the entry of the Bidding Procedures Order and the Sale Order and a finding by the Bankruptcy Court of adequate assurance of future performance by Buyer.

(c) On the date Seller files its original voluntary petition in Bankruptcy Court, but in any event within three (3) Business Days after Buyer's and Seller's execution of this Agreement, Seller shall file with the Bankruptcy Court a motion or motions seeking the Bankruptcy Court's approval of the

Sale Order and the Bidding Procedures Order. The Bidding Procedures Order will be substantially in the form attached hereto as **Exhibit A**. Seller shall affix a true and complete copy of this Agreement to such motion or motions (as the case may be) filed with the Bankruptcy Court. Notice of the motion shall be served upon all required creditors and interested parties as required by the Bankruptcy Code and, in addition, all Persons identified on the attached Schedule 6.3(c), are to be served by a nationally recognized courier for overnight delivery service, with signature receipt required. The Sale Order shall include the following:

(i) a finding that the appointment of a consumer privacy ombudsman is not required or necessary.

(ii) Once the Bankruptcy Court authorizes Seller to enter into this Agreement, Seller shall provide access and allow the Buyer to communicate directly with the counterparties to Assumed Contracts, any Person necessary for the transfer or transition of the Acquired Assets to Buyer, and Seller's employees.

(d) Back-up Bidder. By executing this Agreement, Buyer agrees to be the Back-up Bidder in the event the Seller selects it as such in accordance with the Bid Procedures.

ARTICLE VII

ADDITIONAL AGREEMENTS

Section 7.1 Taxes.

(a) Any sales, use, transfer, documentary, stamp, registration, recording, value added, or similar Taxes and fees (including any penalties and interest) payable in connection with the sale or transfer of the Acquired Assets ("Transfer Taxes"), along with any expenses arising in connection with preparation and filing of Tax Returns with respect to the Transfer Taxes, shall be borne fifty percent (50%) by Seller and fifty percent (50%) by Buyer. Accordingly, if Buyer or Seller is required by Law to pay any such Transfer Taxes, Seller shall promptly reimburse Buyer for fifty percent (50%) of the amount of such Transfer Taxes actually paid by Buyer and if Seller is required by Law to pay any such Transfer Taxes, Buyer shall promptly reimburse Seller for fifty percent (50%) of the amount of such Transfer Taxes actually paid by Seller. Each Tax Return with respect to Transfer Taxes will be prepared and filed by the party that customarily has primary responsibility for filing such Tax Return pursuant to applicable Law. Seller and Buyer shall use commercially reasonable efforts and cooperate in good faith to exempt the sale and transfer of the Acquired Assets from any such Transfer Taxes to the extent allowed under applicable Law, and shall each timely sign and deliver (or cause to be timely signed and delivered) such certificates or forms as may be necessary or appropriate.

(b) Buyer and Seller agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance primarily relating to the Acquired Assets as is reasonably necessary for the filing of all Tax Returns, the making of any election relating to Taxes, the claiming of any Tax refund, the preparation for any audit by any taxing authority and the prosecution or defense of any claims, suit, or proceeding relating to any Tax (other than any proceeding between Buyer and Seller); provided, however, that other than as required pursuant to this Section 7.1(b), in no event shall (i) Seller have access to any of the Tax Returns or other books and records of Buyer or any of its Affiliates (other than Tax Returns primarily related to the Acquired Assets) or (ii) Buyer have access to any of the Tax Returns of Seller or other books and records of or any of its Affiliates. Any expenses incurred in furnishing such information or assistance pursuant to this Section 7.1(b) shall be borne by the Party requesting it. Any information obtained pursuant to this Section 7.1(b) or pursuant to any other

Section hereof providing for the sharing of information or review of any Tax Return or other schedule relating to Taxes shall be kept confidential by the Parties and their respective Affiliates, except as necessary to be disclosed in connection with such return, audit or examination, refund claim, proceedings, or determination, or as required by applicable Law.

(c) Notwithstanding any other provisions in this Agreement, Buyer and Seller hereby waive compliance with all “bulk sales,” “bulk transfer,” and similar laws that may be applicable with respect to the sale and transfer of any or all of the Acquired Assets to Buyer.

(d) Any personal property or similar Taxes applicable to the Acquired Assets for a Straddle Period shall be apportioned between the Parties on the number of days of the Straddle Period included in the Pre Closing Tax Period and the number of days of the Straddle Period in the Post-Closing Tax Period. Seller shall be liable for the proportionate amount of such Taxes that is attributable to the Pre-Closing Tax Period, and Buyer shall be liable for the proportionate amount of such Taxes that is attributable to the Post-Closing Tax Period. Seller shall pay to Buyer an amount equal to any such Taxes payable by Buyer that are attributable to the Pre-Closing Tax Period, and the Buyer shall pay to Seller an amount equal to any such Taxes that have been paid by Seller that are not attributable to the Pre-Closing Tax Period. Such payments shall be made on the Closing Date, or if later, on the date such Taxes are due (or thereafter, promptly after request by Buyer or Seller if such Taxes are not identified by Buyer or Seller on or prior to the Closing Date).

(e) Within 60 days after the Closing Date, Seller shall deliver to Buyer an allocation of the Purchase Price (and the Assumed Liabilities treated as consideration for U.S. federal income tax purposes) among the Acquired Assets in accordance with Section 1060 of the Code and the Treasury Regulations promulgated thereunder (and any similar provision of state, local, and foreign law, as appropriate) (the “Allocation”). The Allocation shall be conclusive and binding on Buyer, Seller and each Party’s respective Affiliates, and none of Buyer, Seller, and their respective Affiliates will take any position inconsistent with the Allocation on any Tax Return (including IRS Form 8594) or in any audit or Tax proceeding, in each case, unless otherwise required by a final determination by a Governmental Authority.

Section 7.2 Payments Received. The Parties each agree that, after the Closing, each of the Parties will hold and will promptly transfer and deliver to the other Party, from time to time as and when received by them, any cash, checks with appropriate endorsements (using each of their commercially reasonable efforts not to convert such checks into cash) or other property that they may receive on or after the Closing that properly belongs to the other and will account to the other for all such receipts.

Section 7.3 Information; Confidentiality.

(a) The terms of any confidentiality agreement to which Buyer (or an Affiliate of Buyer) is party in respect of Seller (or any Affiliate of Seller) shall continue in full force and effect until the Closing, at which time Buyer’s obligations under any such confidentiality agreement shall terminate only insofar as they pertain to the Acquired Assets, and shall otherwise remain in full force and effect in accordance with the terms thereof.

(b) From the date hereof until the Closing (or the earlier termination of this Agreement), Seller will provide Buyer and its Representatives with information concerning the Acquired Assets and the Assumed Liabilities, as Buyer or any of its Representatives may reasonably request; provided, however, that in no event shall Seller be required to create any information in writing, electronic format, or otherwise (including, but not limited to, reports, records, or files) concerning the Acquired Assets and the Assumed Liabilities that did not exist prior to such request of Buyer or any of its Representatives. Notwithstanding anything to the contrary in this Agreement, Seller shall not be required to disclose any

attorney client privileged information to Buyer or to make any disclosure that would violate any applicable Law or fiduciary duty.

Section 7.4 Preservation of Books and Records. After the Closing Date, Buyer shall provide Sellers and its Affiliates and Representatives (after reasonable notice and during normal business hours and without charge to Seller other than the costs of copying, if any) reasonable access to, including the right to make copies of, all Books and Records, to the extent necessary to permit Seller to determine any matter relating to its rights and obligations hereunder or to any period ending on or before the Closing Date (for example, for purposes of any Tax or accounting audit or any claim or litigation matter), for periods prior to the Closing and shall preserve such books and records until the later of (i) such period as shall be consistent with Buyer's records retention policy in effect from time to time, (ii) the retention period required by applicable Law, (iii) the conclusion of all bankruptcy proceedings relating to the Bankruptcy Case, and (iv) in the case of books and records relating to Taxes, the expiration of the statute of limitations applicable to such Taxes. Such access shall include access to any information in electronic form to the extent reasonably available. Buyer acknowledges that Seller have the right to retain originals or copies of all of Books and Records included in or related to the Acquired Assets for periods prior to the Closing.

Section 7.5 Inventory Sale.

(a) For a period of 90 days after the Closing Date, Buyer hereby grants to the Seller only and not to the German Subsidiary a limited, non-exclusive, royalty-free, fully paid-up, irrevocable right and license to use the Buyer's Trademarks (the "Inventory Sale Trademarks"), in each case solely as expressly authorized herein (each, an "Inventory Sale License"). The Inventory Sale License grants Seller and its authorized representatives (including, without limitation, sales consultants) (collectively, "Inventory Sale Licensees") administering the sale of inventory that is not Purchased Inventory or Special Purchased Inventory in accordance with the Orders of the Bankruptcy Court (the "Inventory Sale Orders"), the right to use the Inventory Sale Trademarks solely in conjunction with the wind-down plan of Seller's estate, including the sale of inventory at the existing distribution centers of Seller in accordance with the Inventory Sale Orders (the "Company Wind Down"). The Company Wind Down is referred to as the "Inventory Sales." The Inventory Sale License will terminate on the date that is the earlier of (i) 90 days after the Closing Date and (ii) that date on which the Inventory Sales are concluded in accordance with the Inventory Sale Orders (the "Liquidation Period"). The Seller acknowledges and agrees that, as of the Closing, (i) the Inventory Sale Trademarks shall be the exclusive property of the Buyer (subject to the foregoing license), and that any and all goodwill arising in connection with the use of the Inventory Sale Trademarks inures solely to Buyer, (ii) subject to Section 7.5(b), that no Inventory Sale Licensee shall take any action that would reasonably be expected to impair the value of or goodwill associated with any of the Inventory Sale Trademarks, (iii) no Inventory Sale Licensee shall apply the Inventory Sale Trademarks to any product or any other materials for the sale, promotion, or commercialization of any retail store or consumer product (including promotional materials) unrelated to the Inventory Sales (unless approved by Buyer), and (iv) no Inventory Sale Licensee shall use the Inventory Sale Trademarks in a manner that is of a different character than used by Seller prior to the Closing. The Inventory Sale Licensees shall use the Inventory Sale Trademarks in accordance with quality control requirements regarding the character and quality of the goods, services, and promotional materials provided in association with the Inventory Sale Trademarks, and such quality control obligations shall be deemed to be met so long as the goods, services, and promotional materials provided in association with the Inventory Sale Trademarks are of a character and quality substantially equivalent to or better than the quality of those provided by Seller in the 12-month period prior to the Closing or not of a character or quality that would reasonably be expected to impair the value of or goodwill associated with the applicable Inventory Sale Trademarks. At the end of the applicable Liquidation Period, all licenses to the Inventory Sale Trademarks shall terminate and the Inventory Sale Licensees shall cause all Persons operating under or pursuant to any Inventory Sale Licenses to cease all usage of the Inventory Sale Trademarks.

(b) Notwithstanding anything herein to the contrary, (A) the association of an Inventory Sale Trademark with the Bankruptcy Case, execution of the Inventory Sale, or wind-down of Seller's estate shall not be considered to be an impairment to the value or goodwill thereof, and (B) the use of the Inventory Sale Trademarks for the Inventory Sale as historically used by Seller, including as the Inventory Sale Trademarks are currently being used consistent and may be used with the quality requirements of the Inventory Sale Orders shall not be considered to be of a different character than the character of the use of such Inventory Sale Trademark prior to the Closing.

(c) Notwithstanding the foregoing, after the Closing, Buyer shall be entitled to use the Acquired Assets to conduct e-commerce with and through the Domain Names.

Section 7.6 Transfer of the Social Media Accounts and Other Data. During the Liquidation Period, Seller will cooperate with Buyer to effect the transfer of the Social Media Accounts to Buyer and the data related to the Acquired Assets stored on Third Party Platforms.

Section 7.7 Change of Corporate Name. Not more than 45 days after the Closing Date, Seller and its subsidiaries and affiliates shall change their respective names to remove "BH Cosmetics" or any deviation thereof. Seller shall provide written evidence of such name changes to Buyer not more than 45 days after the Closing Date.

Section 7.8 Removal of Purchased Inventory and Special Purchased Inventory. If Buyer is approved as the successful bidder by the Bankruptcy Court, Buyer shall cause all Purchased Inventory and Special Purchased Inventory to be removed from any facilities leased by Seller within the earliest to occur of (x) 10 days after the Closing Date and (y) March 15, 2022; provided, however, that in no event shall any Purchased Inventory and Special Purchased Inventory remain in such facilities beyond March 31, 2022, unless, Buyer, at Buyer's sole cost and expense makes arrangements for any Purchased Inventory and Special Purchased Inventory to remain in such facilities. In the event, that all of the Purchased Inventory and Special Purchased Inventory is not removed from any facilities leased by Seller on or before March 15, 2022, Buyer shall reimburse Seller for the full amount of the monthly rental and other occupancy costs for each month in which the Purchased Inventory or Special Purchased Inventory remains in any such facilities.

Section 7.9 Transition Services. If requested by Buyer prior to the Closing Date, Seller agrees to negotiate in good faith the terms of, and enter into effective as of the Closing, a transition services agreement (the "TSA") acceptable to Buyer and Seller for post-Closing services and access to data maintained on Third Party Platforms; provided, the TSA, if any, shall (a) contain customary terms for transactions of the type contemplated by this Agreement with respect to the provision of services reasonably requested by Buyer for a reasonable period of time post-Closing (not to exceed 30 days following the Closing); and (b) provide that Buyer shall pay to Seller the actual costs for such transition services and actual and direct out-of-pocket expenses incurred by the Seller in connection with the provision of such transition services.

ARTICLE VIII

CONDITIONS PRECEDENT TO THE OBLIGATION OF BUYER TO CLOSE

Buyer's obligation to consummate the transactions contemplated by this Agreement is subject to the satisfaction or waiver by Buyer (to the extent waivable), at or prior to the Closing, of each of the following conditions:

Section 8.1 Accuracy of Representations. The representations and warranties of Seller contained in Article IV shall be true and correct as of the date hereof and as of the Closing Date as though

made on and as of the Closing Date (except that those representations and warranties addressing matters as of a particular date shall be true and correct as of such date); provided, however, that, other than in respect of Section 4.2, Section 4.3, and Section 4.6, the condition in this Section 8.1 shall be deemed to be satisfied so long as any failure of such representations and warranties to be true and correct (without giving effect to any limitation as to “materiality” or “Material Adverse Effect” set forth therein), individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect. At the Closing, Buyer shall receive a certificate of Seller, signed by a duly authorized officer of Seller, to that effect.

Section 8.2 Seller’s Performance. Seller shall have performed and complied in all material respects with the covenants and agreements that Seller is required to perform or comply with pursuant to this Agreement at or prior to the Closing including but not limited to the covenants and agreements contained in Section 6.2. At the Closing, Buyer shall receive a certificate of Seller, signed by a duly authorized officer of Seller, to that effect.

Section 8.3 No Order. No Governmental Authority shall have enacted, issued, promulgated or entered any Order which is in effect and has the effect of making illegal or otherwise prohibiting the consummation of the transactions contemplated by this Agreement (a “Closing Legal Impediment”); provided, however, that prior to asserting this condition Buyer shall have taken all actions required to be taken by Buyer by Article VI to prevent the occurrence or entry of any such Closing Legal Impediment and to remove or appeal as promptly as possible any such Closing Legal Impediment.

Section 8.4 Seller’s Deliveries. Each of the deliveries required to be made to Buyer pursuant to Section 3.7 shall have been delivered.

Section 8.5 Bankruptcy Court Approvals. (a) the Bankruptcy Court shall have entered the Bidding Procedures Order in substantially the form attached as Exhibit A and the Sale Order (containing the provisions referenced in Section 6.3(c)) and (b) the Sale Order shall not be subject to a stay pending appeal.

ARTICLE IX

CONDITIONS PRECEDENT TO THE OBLIGATION OF SELLER TO CLOSE

Seller’s obligation to consummate the transactions contemplated by this Agreement is subject to the satisfaction or waiver by Seller (to the extent waivable), at or prior to the Closing, of each of the following conditions:

Section 9.1 Accuracy of Representations. The representations and warranties of Buyer contained in Article V shall be true and correct (except for *de minimis* inaccuracies) as of the date hereof and as of the Closing Date as though made on and as of the Closing Date (except that those representations and warranties addressing matters only as of a particular date shall be true and correct as of such date); provided, however, that, other than in respect of Section 5.1, Section 5.2, and Section 5.6, the condition in this Section 9.1 shall be deemed to be satisfied so long as any failure of such representations and warranties to be true and correct (without giving effect to any limitation as to “materiality” or “material adverse effect” set forth therein), individually or in the aggregate, has not had and would not reasonably be expected to prevent or materially impair the ability of Buyer to consummate the transactions contemplated by this Agreement. At the Closing, Seller shall receive a certificate of Buyer, signed by a duly authorized officer of Buyer, acting solely in such capacity, to that effect.

Section 9.2 Buyer's Performance. Buyer shall have performed and complied in all material respects with the covenants and agreements that Buyer is required to perform or comply with pursuant to this Agreement at or prior to the Closing. At the Closing, Seller shall receive a certificate of Buyer, signed by a duly authorized officer of Buyer, to that effect.

Section 9.3 No Order. No Closing Legal Impediment shall be in effect, provided, however, that prior to asserting this condition Seller shall have taken all actions required to be taken by Seller by Article VI to prevent the occurrence or entry of any such Closing Legal Impediment and to remove or appeal as promptly as possible any such Closing Legal Impediment.

Section 9.4 Buyer's Deliveries. Each of the deliveries required to be made to Seller pursuant to Section 3.6 shall have been delivered.

Section 9.5 Bankruptcy Court Approvals. (a) the Bankruptcy Court shall have entered the Sale Order and (b) the Sale Order shall not be subject to a stay pending appeal.

ARTICLE X

TERMINATION

Section 10.1 Termination Events. Notwithstanding anything contained in this Agreement to the contrary (other than as provided in the last sentence of this Section 10.1, this Agreement may be terminated at any time prior to the Closing Date:

- (a) by mutual written consent of Seller and Buyer; or
- (b) by either Seller or Buyer:

(i) if the Bankruptcy Court does not approve this Agreement for any reason or if a Governmental Authority issues a final, non-appealable ruling or Order permanently prohibiting the transactions contemplated hereby, provided, however, that the right to terminate this Agreement pursuant to this Section 10.1(b)(i) shall not be available to any Party whose breach of any of its representations, warranties, covenants, or agreements contained herein results in such failure to approve such ruling or Order;

(ii) if the Closing shall not have occurred by the close of business on February 24, 2022 (the "Outside Date"); provided, however, that the right to terminate this Agreement pursuant to this Section 10.1(b)(ii) shall not be available to any Party whose breach of any of such Party's representations, warranties, covenants, or agreements contained herein results in the failure of the Closing to be consummated by such time; provided, further, that if as of the Outside Date, all of the conditions precedent to the Closing (other than those conditions that by their terms are to be satisfied at the Closing or on the Closing Date) shall have been satisfied as of the Outside Date, then Seller shall be entitled to extend the Outside Date until March 4, 2022, upon written notice to the Buyer, in which case the Outside Date shall be deemed for all purposes to be March 4, 2022;

(iii) if (A) the Bankruptcy Court has not entered the Bidding Procedures Order on or before January 31, 2022, or (B) the Bankruptcy Court has not entered the Sale Order on or before February 21, 2022; provided, however, if approval of the Bidding Procedures Order and the Sale Order is delayed due to the Bankruptcy Court's unavailability, the next Business Day on which the Bankruptcy Court is available;

(iv) if the Sale Order is vacated;

(v) if Seller enters into a definitive agreement with respect to an Alternative Transaction; provided, however, that if Buyer is selected as the Backup Bidder in accordance with the Bid Procedures, then Buyer may not terminate this Agreement or withdraw its irrevocable offer unless and until such Alternative Transaction has closed;

(vi) Seller (A) files any stand-alone plan of reorganization or liquidation contemplating an Alternative Transaction or (B) consummates an Alternative Transaction; or

(c) by Buyer:

(i) in the event of any breach by Seller of any of Seller's agreements, covenants, representations or warranties contained herein that would result in the failure of a condition set forth in Article VIII to be satisfied, and the failure of Seller to cure such breach by the earlier of (A) the Outside Date and (B) the date that is 15 days after receipt of the Buyer Termination Notice; provided, however, that (1) Buyer is not in breach of any of Buyer's representations, warranties, covenants, or agreements contained herein in a manner that would result in the failure of a condition set forth in Article IX to be satisfied, (2) Buyer notifies Seller in writing (the "Buyer Termination Notice") of Buyer's intention to exercise Buyer's rights under this Section 10.1(c)(i) as a result of the breach, and (3) Buyer specifies in the Buyer Termination Notice the representation, warranty, covenant, or agreement contained herein of which Seller is allegedly in breach;

(ii) in accordance with the provisions of Section 3.4(b)(iii) hereof;

(iii) if the Bankruptcy Case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code and neither such dismissal nor conversion expressly contemplates the transactions provided for in this Agreement; or

(iv) if any conditions to the obligations of Buyer set forth in Article VIII shall have become incapable of fulfillment other than as a result of a breach by Buyer of any covenant or agreement contained in this Agreement; or

(d) by Seller:

(i) except as provided in Section 10.1(d)(ii), in the event of any breach by Buyer of any of Buyer's agreements, covenants, representations or warranties contained herein that would result in the failure of a condition set forth in Article IX to be satisfied, and the failure of Buyer to cure such breach by the earlier of (A) the Outside Date and (B) the date that is 15 days after receipt of the Seller Termination Notice; provided, however, that Seller (1) is not itself in material breach of any of Seller's representations, warranties, covenants, or agreements contained herein, and (2) Seller notifies Buyer in writing (the "Seller Termination Notice") of Seller's intention to exercise Seller's rights under this Section 10.1(d)(i) as a result of the breach, and Seller specifies in the Seller Termination Notice the representation, warranty, covenant, or agreement contained herein of which Buyer is allegedly in breach; or

(ii) if the Sale Order with respect to the transactions contemplated by this Agreement has been entered and is not subject to any stay on enforcement and (A) Seller has provided Buyer with written notice that Seller is prepared to consummate the transactions contemplated by this Agreement, (B) the conditions to Closing in Article VIII have been satisfied (or waived by Buyer), other than those conditions that by their nature can only be satisfied at Closing, and (C) the Closing Date does not occur within one Business Day of Seller providing Buyer with such notice.

For the avoidance of doubt, the Parties acknowledge and agree, that in the event that Seller determines, in Seller's reasonable discretion, that the last overbid submitted by Buyer is better than all other Qualified Bids as such Qualified Bids may be amended by an overbid submitted at the Auction, then within two (2) Business Days following the conclusion of the Auction, Seller and Buyer shall enter into an amendment to this Agreement to reflect Buyer's last overbid; it being acknowledged and agreed that this Agreement shall not be deemed to have terminated by virtue of Buyer's having submitted the winning bid at the Auction.

Section 10.2 Effect of Termination and Liquidated Damages; Buyer Protections, Break-Up Fee and Expense Reimbursement.

(a) Deposit. If this Agreement is terminated pursuant to Section 10.1(d)(i) or Section 10.1(d)(ii), the Deposit (including, for the avoidance of doubt, all interests and other earnings accrued and earned thereon) shall be retained by Seller as liquidated damages (and the Seller shall be permitted to direct Hilco Streambank to disburse the Deposit to Seller), and the retention thereof shall constitute the sole and exclusive remedy of Seller in the event of such a termination hereunder. If this Agreement is terminated pursuant to any other provision of Article X (i.e., except as described in the immediately preceding sentence), Seller shall promptly (but in any event within two (2) Business Days of such termination) instruct Hilco Streambank to return the Deposit (including, for the avoidance of doubt, all interests and other earnings accrued and earned thereon) to Buyer by wire transfer of immediately available funds and the return thereof and, subject to Section 10.2(b), the payment of the Break-Up Fee and Expense Reimbursement shall constitute the sole and exclusive remedy of Buyer in the event of such a termination hereunder. Nothing in this Section 10.2, however, shall relieve Seller or Buyer from any Liability on account of fraud or be deemed to impair the right of any Party to compel specific performance by another Party of its obligations under this Agreement. The provisions of this Section 10.2 shall survive any termination of this Agreement pursuant to Article X.

(b) If Seller enters into an Alternative Transaction, as compensation for Buyer serving as the "stalking horse" and subjecting this Agreement to higher and better offers and in consideration for Buyer having expended considerable time and expense in connection with this Agreement and the negotiation thereof and the identification and quantification of assets of Seller, Seller shall pay Buyer, in accordance with the terms hereof, the Break-Up Fee and the Expense Reimbursement. In such case, the Break-Up Fee and Expense Reimbursement shall be paid to Buyer no later than one (1) Business Day following the date of consummation of an Alternative Transaction from the proceeds thereof if no material breach by Buyer of this Agreement has occurred. Nothing in this Section 10.2(b) shall relieve Buyer or Seller of any Liability for a breach of this Agreement prior to the date of termination; provided, however, that Seller's liability hereunder for any and all such breaches shall be capped at an amount equal to the Break-Up Fee and Expense Reimbursement. Upon payment of the Break-Up Fee and Expense Reimbursement to Buyer in accordance with this Section 10.2(b), Seller and their respective Representatives and Affiliates, on the one hand, and Buyer and its Representatives and Affiliates, on the other, will be deemed to have fully released and discharged each other from any Liability resulting from the termination of this Agreement and neither Seller, their Representatives or Affiliates, on the one hand, nor Buyer, its Representatives or Affiliates, on the other hand, or any other Person will have any other remedy or cause of action under or relating to this Agreement or any applicable Law.

(c) So long as Buyer shall not be in material violation of its obligations under this Agreement, and if this Agreement shall be terminated for any reason other than pursuant to Section 10.1(d)(i) or Section 10.1(d)(ii), the Expense Reimbursement shall immediately become earned and due from Seller to Buyer, and the Break-Up Fee shall then immediately become earned and due from Seller to Buyer. The Break-Up Fee and Expense Reimbursement Shall be paid directly to Buyer from the proceeds of any Alternative Transaction after the termination of this Agreement for any reason other than pursuant

to Section 10.1(d)(i) or Section 10.1(d)(ii) and shall be paid within one (1) day of the closing of any such Alternative Transaction.

(d) The Expense Reimbursement and the Break-Up Fee shall be entitled to such priority as is set forth in the Bidding Procedures Order .

(e) The payment of the Break-Up Fee or Expense Reimbursement as provided herein shall be free and clear of any interest or claim that any other person or entity may have or assert in such Alternative Transaction proceeds or otherwise available cash.

(f) Seller hereby acknowledges that the obligation to pay the Expense Reimbursement and the Break-Up Fee shall survive the termination of this Agreement, and shall have administrative priority status against Seller and its estates in accordance with the Bidding Procedures Order.

ARTICLE XI

GENERAL PROVISIONS

Section 11.1 Notices. Any notice, consent or other communication required or permitted under this Agreement shall be in writing and shall be delivered (a) in person, (b) by a nationally recognized courier for overnight delivery service, or (c) by email or other electronic means to the persons indicated below. A notice or communication shall be deemed to have been effectively given (i) if in person, upon personal delivery to the Party to whom the notice is directed, (ii) if by nationally recognized courier, one Business Day after delivery to such courier, and (iii) if by email or other electronic means, when sent unless the sender receives a “bounce back” or similar indication that the e-mail was not delivered to the recipient. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice has been received shall also constitute receipt. Any such notice, election, demand, request or response shall be addressed as follows:

(a) If to Seller, then to:

BHCosmetics Holdings, LLC
8161 Lankershim Blvd.
North Hollywood, CA 91605
Attention: Spencer Ware
E- mail: spencer.ware@riveron.com

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

Young Conaway Stargatt & Taylor, LLP
1000 North King Street
Wilmington, DE 19801
Attention: M. Blake Cleary
E- mail: mbcleary@ycst.com

- and -

Counsel to the Prepetition Loan Lenders
Stoll Keenon Ogden PLLC
500 West Jefferson Street, Suite 200
Louisville, KY 40202-2828

Attn: Lea Pauley Goff
Email: Lea.Goff@skofirm.com

and

300 West Vine Street, Suite 2100
Lexington, KY 40507-1801
Attn: Amelia Martin Adams
Email: Amelia.Adams@skofirm.com

(b) If to Buyer, then to:

RBI Acquisition Holdings, LLC
c/o Jordan Warburton
Director – Corporate Finance
Zeus Capital Ltd
82 King Street
Manchester, M2 4WQ
United Kingdom
E-mail: Jordan.warburton@zeuscapital.co.uk

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

Shumaker, Loop & Kendrick, LLP
1000 Jackson Street
Toledo, Ohio 43604
Attention: M. Scott Aubry and David J. Coyle
E-mail: saubry@shumaker.com and dcoyle@shumaker.com

Section 11.2 Amendment; Waiver. No amendment, modification or discharge of this Agreement, and no waiver hereunder, shall be valid or binding unless set forth in writing and duly executed by the Party against whom enforcement of the amendment, modification, discharge, or waiver is sought and such amendment, modification, discharge, or waiver is delivered substantially contemporaneously to each other Party. Any such waiver shall constitute a waiver only with respect to the specific matter described in such writing and shall in no way impair the rights of the Party granting such waiver in any other respect or at any other time. Neither the waiver by any of the Parties of a breach of or a default under any of the provisions of this Agreement, nor the failure by any of the Parties, on one or more occasions, to enforce any of the provisions of this Agreement or to exercise any right or privilege hereunder shall be construed as a waiver of any other breach or default of a similar nature, or as a waiver of any of such provisions, rights or privileges hereunder. No course of dealing between or among the Parties shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights to payment of any Party under or by reason of this Agreement.

Section 11.3 Entire Agreement. This Agreement (including the Schedules and the Exhibits) and the other Transaction Documents contain all of the terms, conditions and representations and warranties agreed to by the Parties relating to the subject matter of this Agreement and supersede all prior and contemporaneous agreements, understandings, negotiations, correspondence, undertakings, and communications of the Parties or their representatives, oral or written, respecting such subject matter. The representations, warranties, covenants, and agreements contained in this Agreement (including the Schedules and the Exhibits) and the other Transaction Documents are intended, among other things, to allocate the economic cost and the risks inherent in the transactions contemplated hereby and thereby,

including risks associated with matters as to which the party making such representations and warranties has no knowledge or only incomplete knowledge, and such representations and warranties may be qualified by disclosures contained in the Schedules. Consequently, Persons other than the Parties may not rely upon the representations and warranties in this Agreement as characterizations of actual facts or circumstances as of the date of this Agreement or as of any other date.

Section 11.4 No Presumption as to Drafting. Each of the Parties acknowledges that it has been represented by legal counsel in connection with this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby. Accordingly, any rule of law or any legal decision that would require interpretation of any claimed ambiguities in this Agreement or the Transaction Documents against the drafting party has no application and is expressly waived.

Section 11.5 Assignment. The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. This Agreement, and the rights, interests and obligations hereunder, shall not be assigned by any Party by operation of law or otherwise without the express written consent of the other Party (which consent may be granted or withheld in the sole discretion of such other Party); provided, however, that Buyer shall be permitted, upon prior notice to Seller, to assign all or part of Buyer's rights or obligations hereunder to an Affiliate, but no such assignment shall relieve Buyer of Buyer's obligations under this Agreement.

Section 11.6 Severability. The provisions of this Agreement shall be deemed severable, and the invalidity or unenforceability of any provision shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability.

Section 11.7 Governing Law; Consent to Jurisdiction and Venue; Jury Trial Waiver.

(a) Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement and all claims or causes of action (whether in contract, tort or otherwise) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter into this Agreement) shall be governed by, and construed in accordance with, the laws of the State of Delaware applicable to Contracts made and to be performed entirely in such state without regard to principles of conflicts or choice of laws or any other law that would make the laws of any other jurisdiction other than the State of Delaware applicable hereto.

(b) Without limitation of any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the transactions contemplated hereby and (ii) any and all claims relating to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent and submit to the exclusive jurisdiction and venue of the Bankruptcy Court and irrevocably waive the defense of an inconvenient forum to the maintenance of any such Proceeding; provided, however, that, if the Bankruptcy Case is closed, all Proceedings arising out of or relating to this Agreement shall be heard and determined in the United States District Court for the District of Delaware, and the Parties hereby (a) irrevocably and unconditionally submit to the exclusive jurisdiction of the United States District Court for the District of Delaware; (b) agree that all claims with respect to any such Proceeding shall be heard and

determined in such courts and agrees not to commence any Proceeding relating to this Agreement or the transactions contemplated hereby (whether based on contract, tort or other theory) except in such courts; (c) irrevocably and unconditionally waive any objection to the laying of venue of any Proceeding arising out of this Agreement or the transactions contemplated hereby and irrevocably and unconditionally waives the defense of an inconvenient forum; and (d) agree that a final judgment in any such Proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. The Parties agree that any violation of this Section 11.7(b) shall constitute a material breach of this Agreement and shall constitute irreparable harm.

(c) EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY 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 (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS Section 11.7.

Section 11.8 Counterparts. This Agreement may be executed in any number of counterparts (including via facsimile or other electronic transmission in portable document format (pdf)) with the same effect as if the signatures to each counterpart were upon a single instrument, and all such counterparts together shall be deemed an original of this Agreement. This Agreement shall become effective when, and only when, each Party shall have received a counterpart hereof signed by the other Party. Delivery of an executed counterpart hereof by means of facsimile or electronic transmission in portable document format (pdf) shall have the same effect as delivery of a physically executed counterpart in person.

Section 11.9 Parties in Interest; No Third Party Beneficiaries. Nothing in this Agreement shall confer any rights, benefits, remedies, obligations, liabilities, or claims hereunder upon any Person not a Party or a permitted assignee of a Party.

Section 11.10 Non-Recourse. All claims, obligations, liabilities, or causes of action (whether in contract or in tort, in law, or in equity or granted by statute) that may be based upon, in respect of, arise under, out, or by reason of, be connected with or relate in any manner to this Agreement, the negotiation, execution, or performance of this Agreement (including any representation or warranty made in connection with or as an inducement to this Agreement) or the transactions contemplated hereby may be made only against (and are those solely of) the Persons that are expressly identified as Parties to this Agreement. No other Person, including any of their Affiliates, directors, officers, employees, incorporators, members, partners, managers, stockholders, agents, attorneys, or representatives of, or any financial advisors or lenders to, any of the foregoing shall have any liabilities (whether in contract or in tort, in law or in equity, or granted by statute) for any claims, causes of action, obligations, or liabilities arising under, out of, in connection with, or related in any manner to, this Agreement or based on, in respect of, or by reason of, this Agreement or its negotiation, execution, performance or breach.

Section 11.11 Schedules; Materiality. The inclusion of any matter in any Schedule shall be deemed to be an inclusion for all purposes of this Agreement, to the extent that such disclosure is sufficient to identify the Section to which such disclosure is responsive, but inclusion therein shall not be deemed to constitute an admission, or otherwise imply, that any such matter is material or creates a measure for materiality for purposes of this Agreement. The disclosure of any particular fact or item in any Schedule

shall not be deemed an admission as to whether the fact or item is “material” or would constitute a “Material Adverse Effect.”

Section 11.12 Specific Performance. The Parties acknowledge and agree that irreparable injury, for which monetary damages, even if available, would not be an adequate remedy, will occur in the event that any of the provisions of this Agreement are not performed in accordance with the specific terms hereof or are otherwise breached, and a Party shall be entitled, in addition to any other remedies that may be available, to obtain (without the posting of any bond) specific performance of the terms of this Agreement. For the avoidance of doubt, Buyer has no right to initiate any Proceeding against Seller or otherwise compel specific performance of this Agreement so long as Seller has terminated this Agreement in accordance with the terms hereof.

Section 11.13 No Survival. None of the representations and warranties or covenants which require performance prior to the Closing (“Pre-Closing Covenants”) contained in this Agreement, any Transaction Document or in any certificate or schedule delivered pursuant to hereto or thereto shall survive the Closing or the termination of this Agreement. In furtherance, not limitation, of the foregoing, the Parties, intended to contractually shorten any otherwise applicable statute of limitations, hereby agree that: (a) the representations and warranties herein are intended solely to facilitate disclosure and to give effect to the closing conditions set forth in Articles VIII and IX, (b) the Pre-Closing Covenants are intended solely to give effect to the closing conditions set forth in Articles VIII and IX, and (c) no claim of any kind based on the failure of any representation or warranty to have been true and correct, or based on the failure of any Pre-Closing Covenant to have been performed or complied with, may be brought at any time after the Closing. All covenants and agreements contained herein that by their terms are to be performed in whole or in part, or which prohibit actions, subsequent to the Closing shall survive the Closing in accordance with their terms.

Section 11.14 Publicity. Neither Party nor any of their respective representatives may make any press release or other public disclosure regarding the existence of this Agreement or the other Transaction Documents, its or their contents, or the transactions contemplated by this Agreement or the other Transaction Documents without the written consent of the other Party, in any case, as to the form, content, and timing and manner of distribution or publication of such press release or other public disclosure (which consent may not be unreasonably withheld, conditioned, or delayed); provided that following the Closing, Buyer shall be permitted to make one or more public statements that it has acquired the Acquired Assets and the Assumed Liabilities. Notwithstanding the foregoing, nothing in this Section 11.14 will prevent either Party or its representatives from making any press release or other disclosure required by Law (including in connection with the Bankruptcy Case or Sale Motion) or the rules of any stock exchange, in which case the Party required to make such press release or other disclosure shall use commercially reasonable efforts to allow the other Party reasonable time to review and comment on such release or disclosure in advance of its issuance.

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IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized representatives, all as of the Effective Date.

BUYER:

RBI Acquisition Holdings, LLC, a Delaware limited liability company

By: M. Scott Aubry
Name: M. Scott Aubry
Title: Authorized Representative
and Attorney-in-fact

SELLER:

BHCosmetics Holdings, LLC, a Delaware limited liability company

By: _____
Name: Spencer Ware
Title: Co-Chief Executive Officer

BHCosmetics, LLC, a Delaware limited liability company

By: BHCosmetics Intermediate, LLC, its manager

By: BHCosmetics Holdings, LLC, its manager

By: _____
Name: Spencer Ware
Title: Co-Chief Executive Officer

Visceral Agency LLC, a Delaware limited liability company

By: BHCosmetics, LLC, its manager

By: BHCosmetics Intermediate, LLC, its manager

By: BHCosmetics Holdings, LLC, its manager

By: _____
Name: Spencer Ware
Title: Co-Chief Executive Officer

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized representatives, all as of the Effective Date.

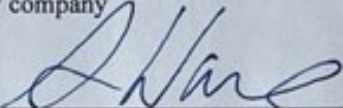
BUYER:

RBI Acquisition Holdings, LLC, a Delaware limited liability company

By: _____
Name: M. Scott Aubry
Title: Authorized Representative
and Attorney-in-fact

SELLER:

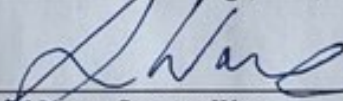
BHCosmetics Holdings, LLC, a Delaware limited liability company

By:  _____
Name: Spencer Ware
Title: Co-Chief Executive Officer

BHCosmetics, LLC, a Delaware limited liability company

By: BHCosmetics Intermediate, LLC, its manager

By: BHCosmetics Holdings, LLC, its manager

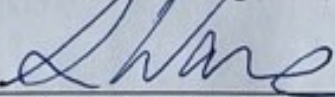
By:  _____
Name: Spencer Ware
Title: Co-Chief Executive Officer

Visceral Agency LLC, a Delaware limited liability company

By: BHCosmetics, LLC, its manager

By: BHCosmetics Intermediate, LLC, its manager

By: BHCosmetics Holdings, LLC, its manager

By:  _____
Name: Spencer Ware
Title: Co-Chief Executive Officer

Schedule 1.1(a)

Customer Data

Buyer will receive a database of customer data containing a total of approximately 700,000 opt-in email addresses and 150,000 opt-in SMS text numbers.

Of the approximately 700,000 opt-in email addresses, approximately 300,000 are considered “active.” An email address is considered active if it has opened an email marketing communication within the past 180 days.

All customer counts are as of December 31, 2021, which is the date on which the most recent data pull was run.

The customer database maintains the following data fields, among others:

- Email Address
- First Name
- Last Name
- Phone Number
- Address
- Source
- Consent
- SMS Consent Timestamp
- First Active
- Last Active

Schedule 1.1(b)(1)

Permitted Encumbrances

None

Schedule 2.1(a)







Assumed Contracts




None (but subject to Buyer's right to designate Contracts as Assumed Contracts prior to January 25, 2022)








Schedule 2.1(b)









Intellectual Property







Trademarks:Active Marks






Country	Trademark	App/Reg No.
US		6479886
US		5100478
US	VISCERAL	90050113
US	ITSA	88898028
US		5675638
US		6091203
US		6206356
US	AFFECT	90307069
US	AFFECT COLLECTIVE	90251910
US	THE AFFECT COLLECTIVE	90251930
US	BADASS WITH HEART	88768601
US		6060610







US		6479886
US	BHCOSMETICS	3906780
US	BHCOSMETICS	4436623
US	BHCOSMETICS	4951198
US	TAKE ME BACK TO BRAZIL	5881573
US	POP ART	5004657
US	STELLARLASH	5956478
US	STUDIO PRO	4874065
US		6403156
US	BH CARES (Word Mark)	6403155
US	TRENDY IN TOKYO	6408805
US	SMITTEN IN SWITZERLAND	6438114
US	HANGIN' IN HAWAII	6408806
US	BEAUTIFUL IN BARCELONA	6415612
US	BLUSHING IN BALI	6415613
US	GLOWING IN GREECE	6408807
US	ILLUMINATING IN IRELAND	6415614
US	TRAVEL SERIES	90249564
US	TRAVEL SERIES	90256435
US	NUDE EGO	90463589
US	STUDIO PRO TOTAL COVERAGE	5801208
US	FOREVER NUDE	4922030
US	NUDE ROSE	5225060
US	GLOWING IN GREECE	6408807
US	TRENDY IN TOKYO	6408805
US	HANGIN' IN HAWAII	6408806
US	BEAUTIFUL IN BARCELONA	6415612
US	ILLUMINATING IN IRELAND	6415614
US	SMITTEN IN SWITZERLAND	6438114
US	BLUSHING IN BALI	6415613
ARGENTINA	BHCOSMETICS	3540184
AUSTRALIA		2061828 (WIPO1508431)
AUSTRALIA	BHCOSMETICS	1743879 (WIPO 1280718)
AUSTRALIA	ILLUMINTE BY ASHLEY TISDALE	174815 (WIPO 1280499)
BOLIVIA	BHCOSMETICS	188459







BRAZIL	BHCOSMETICS	911520090
CANADA		TMA1115046
CANADA	BHCOSMETICS	TMA966971
CANADA	ILLUMINATE BY ASHLEY TISDALE	TMA976790
CANADA	STUDIO PRO	TMA966970
CANADA	VISCERAL	2086605
CANADA	AFFECT	2086607
CANADA	THE AFFECT COLLECTIVE	2086608
CHINA		36922119
CHINA		35607467
CHINA		35604360
CHINA		35595361
CHINA	BHCOSMETICS BEAUTY UNDER YOUR INFLUENCE	33433254
CHINA		A0086833 (WIPO)
CHINA		27653349





CHINA		27653348
CHINA		36940899
CHINA		36929720
CHINA		36939409
CHINA		36922477
CHINA		36919068
CHINA		36928248
CHINA		36917785
CHINA	BHCOSMETICS	36924943
CHINA	BHCOSMETICS	1280718 (WIPO)
CHINA	BHCOSMETICS	15990753
CHINA	BHCOSMETICS	36919072
CHINA	BHCOSMETICS	36933706
CHINA	BHCOSMETICS	36917783

CHINA	ILLUMINATE BY ASHLEY TISDALE	G1280499
CHINA	GALAXY CHIC	16366187
CHINA	STUDIO PRO TOTAL COVERAGE	30744876
CHINA	BRONZTOURING	30807121
CHINA	STUDIO PRO TOTAL COVERAGE	30744879
CHINA	TAKE ME BACK TO	35189251
CHINA	STELLARLASH	34709974
CHINA	BH COSMETICS	G1280718
CHINA		27653347
EUROPE	BADASS + HEART	018213706
EUROPE	BADASS HEART	018213697
EUROPE	BADASS WITH HEART	018213322
EUROPE	TAKE ME BACK TO BRAZIL	017998351
EUROPE	BEAUTY UNDER YOUR INFLUENCE	017950679
EUROPE	BEYOND HOLLYWOOD	017834573
EUROPE		18083326
EUROPE	BHCOSMETICS	013978275
EUROPE	 cosmetics	015625064
EUROPE	BRONZTOURING	017897853
EUROPE	ILLUMINATE BY ASHLEY TISDALE	014573265
EUROPE	STELLARLASH	017984941
EUROPE	STUDIO PRO	014738471
EUROPE	STUDIO PRO TOTAL COVERAGE	017897148
EUROPE		015069206
EUROPE	AFFECT COLLECTIVE	018451148
EUROPE	ITSA	018451147
EUROPE	VISCERAL	018451149
GERMANY	 cosmetics	3020120053823
HONG KONG		304963186
HONG KONG		303592936

	BHCOSMETICS	
HONG KONG	TAKE ME BACK TO BRAZIL	304763764
HONG KONG	ILLUMINATE BY ASHLEY TISDALE	303594259
INDIA	BHCOSMETICS	4200083
INDIA		4200084
INDIA		4200085
MEXICO		2256192
MEXICO		2256193
MEXICO		2256191
MEXICO	TAKE ME BACK TO BRAZIL	2142318
MEXICO	TAKE ME BACK TO BRAZIL	2142315
MEXICO	TAKE ME BACK TO BRAZIL	2142322
MEXICO	BEAUTY UNDER YOUR INFLUENCE	2120264
MEXICO	BEAUTY UNDER YOUR INFLUENCE	2120259
MEXICO	BEAUTY UNDER YOUR INFLUENCE	2120268
MEXICO	BHCOSMETICS	1908182
MEXICO	AFFECT COLLECTIVE	2554119
MEXICO	AFFECT COLLECTIVE	2554121
MEXICO	AFFECT COLLECTIVE	2554123
MEXICO	AFFECT COLLECTIVE	2554125
MEXICO	AFFECT COLLECTIVE	2554127
MEXICO	ITSA	2554131
MEXICO	ITSA	2554134
MEXICO	ITSA	2554135
MEXICO	ITSA	2554136
MEXICO	VISCERAL	2554138
MEXICO	VISCERAL	2554144
MEXICO	VISCERAL	2554147




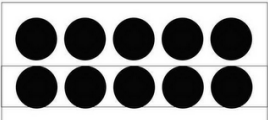
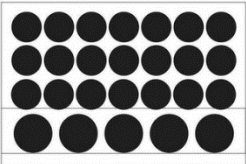



NEW ZEALAND		1138442 (WIPO 1508431)
NORWAY		A0086833(WIPO 1508431)
JAPAN		(WIPO 1508431)
KOREA		(WIPO 1508431)
PARAGUAY	BHCOSMETICS	61045/2016
PARAGUAY	BHCOSMETICS	61050/2016
PARAGUAY	BHCOSMETICS	61053/2016
PARAGUAY	BHCOSMETICS	61048/2016
PERU	BHCOSMETICS	245049
SAUDIA ARABIA	 Beauty Under Your Influence™	191120
SAUDIA ARABIA		191122
SAUDIA ARABIA	BHCOSMETICS	1438005480





SAUDIA ARABIA		191124
SINGAPORE		40202000746Y
SWITZERLAND		1508431 (WIPO)
SWITZERLAND	BHCOSMETICS	1280718 (WIPO)
TAIWAN		108039350
TAIWAN	BHCOSMETICS	107083113
TAIWAN	TAKE ME BACK TO BRAZIL	107083112
THAILAND		A0086833 (WIPO 1508431)
THAILAND	 cosmetics	181127696
TURKEY	BHCOSMETICS	201602959 (WIPO 1280718)
TURKEY	ILLUMINATE BY ASHLEY TISDALE	201602993 (WIPO 1280499)

UK		UK00918083326 (WIPO 1508431)
UK		UK915069206
UK	BHCOSMETICS	UK00913978275
UK	ILLUMINATE BY ASHLEY TISDALE	UK00914573265
UK	STUDIO PRO	UK00914738471
UK		UK00915625064
UK	BEYOND HOLLYWOOD	UK00917834573
UK	STUDIO PRO TOTAL COVERAGE	UK00917897148
UK	BRONZTOURING	UK00917897853
UK	BEAUTY UNDER YOUR INFLUENCE	UK00917950679
UK	STELLARLASH	UK00917984941
UK	TAKE ME BACK TO BRAZIL	UK00917998351
UK	AFFECT COLLECTIVE	UK00003625220
UK	ITSA	UK00003625217
UK	VISCERAL	UK00003625221
US CUSTOMS	BHCOSMETICS	TMK 17-00407
VENEZUELA	BHCOSMETICS	P372377
WIPO		1508431
WIPO	BHCOSMETICS	1280718
WIPO	ILLUMINATE BY ASHLEY TISDALE	1280499

Inactive Marks

Country	Trademark	App/Reg No.
US	TAKE ME BACK TO BRAZIL	88221609
US	ITSA	90057001
US		4703496
US		3906792
US	AFFECT	88898025
US	AFFECT	88898022

US	BADASS + HEART	88768598
US	BADASS HEART	88768606
US	BDSS	88898029
US	SUMMER IN ST. TROPEZ	90249524
US	OMG GLITTER!	90249549
US	LOST IN LOS ANGELES	90248537
US	APRES IN ASPEN	90248578
US	PASSION IN PARIS	90248620
US	TANNED IN TULUM	90248737
US	BIRTHSTONE COLLECTION	90248744
US	REMIX DANCE	90248747
US	GEM ON	90248791
US	BH GIVES BACK	90248764
US	PARTY IN PUERTO RICO	90248754
US	BADASS WITH HEART	90248939
US	 BHCOSMETICS	86353250
US	LOVEABLE LASHES	86032677
US	 BHCOSMETICS	85786548
US	BH COSMETICS 	85904047
US	BH COSMETICS	85904027
US	MUAPAGES	85903378
US	MUAPAGES	85900999
US	BH PARTY GIRL	85784786
US	Design Mark 	87133341
US	Design Mark 	87133359
US	BEAUTY UNDER YOUR INFLUENCE	88109217
US	BECAUSE GETTING READY IS ALL THE FUN	87930977
US	BEYOND HOLLYWOOD	87577574
US	BH EXPRESS IT	88808424
US	BH PARTY GIRL	85784786
US	 BHCOSMETICS	85923793
US	 BHCOSMETICS	85923789
US	 BHCOSMETICS	85919748
US	BHCOSMETICS	85923792

US	BHCOSMETICS	85919746
US	BHCOSMETICS	85923790
US	BLUSHED NEUTRALS 26 COLOR EYESHADOW & BLUSH PALETTE DE 26 COULEURS NEUTRES D'OMBRE A PAUPIERES & FARD A JOUES 	87133386
	BHCOSMETICS	
US	BRONZTOURING	87680446
US	GALAXY CHIC	87283797
US	GLAMOROUS BLUSH 10 COLOR BLUSH PALETTE PALETTE DE 10 COULEURS DE FARD A JOUES BHCOSMETICS 	87133311
US	SUPERNOVA	87284025
US	SKIP-CARE	88730517
CANADA	BHCOSMETICS	WIPO 1280718
CANADA	ITSA	2086606
CHINA	BEYOND HOLLYWOOD	29307285
CHINA	BADASS WITH HEART	44747541
CHINA	BADASS HEART	44747540
CHINA	BADASS + HEART	44747539; 36216-6310CN
CHINA		14032707
CHINA	BADASS WITH HEART	44816478
CHINA	BADASS + HEART	48246082
CHINA	BADASS WITH HEART	48246081
CHINA	BADASS HEART	48246080
CHINA		27653350
JAPAN	BHCOSMETICS	1280718 (WIPO)
KOREA	BHCOSMETICS	1280718 (WIPO)
VIETNAM	BHCOSMETICS	1280718 (WIPO)

Domain Names:

affectcollective.com

b4cosmetics.com
bbhcosmetics.com
b-cosmetics.net
bdcosmetics.com
bhacrylic.com
bhacrylics.com
bhamore.com
bhbling.com
bhccosmetics.com
bhcismetics.com
bhcoametics.com
bhcodmetics.com
bhcomsetics.com
bhcomsmetics.com
bhconsmetics.com
bhcoosmetics.com
bhcosemetics.com
bhcosemtics.com
bhcosetics.com
bhcosmatics.com
bhcosmeetics.com
bhcosmeics.com
bhcosmeitcs.com
bhcosmentics.com
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bhcosmetcis.com
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bhcosmeticas.com
bhcosmeticcs.com
bhcosmetid.com
bhcosmetice.com
bhcosmetices.com
bhcosmetics.biz
bhcosmetics.co.uk
bhcosmetics.com
bh-cosmetics.com
bhcosmetics.de
bhcosmetics.info
bhcosmetics.me
bhcosmetics.mobi
bhcosmetics.mx
bhcosmetics.net
bhcosmetics.nl
bhcosmetics.org
bhcosmetics.tv
bhcosmetics.us
bhcosmeticserum.com
bhcosmeticsgt.com
bhcosmeticsindonesia.com

bhcosmeticss.com
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bhcosmeyics.com
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bhcostmetics.com
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bhsometics.com

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bhfash.com
bhhcosmetics.com
bhkiss.com
bhlush.com
bhnailart.com
bhnails.com
bhosmetics.com
bhstyles.com
bhstylez.com
bhtrendy.com
bhvosmetics.com
bjcosmetics.com
bqcosmetics.com
bscosmetics.net
bwc cosmetics.com
bxcosmetics.com
bycosmetics.com
chcosmetics.com
getbhcosmeticscouponcode.com
hbhcosmetics.com
hcosmetics.com
lbhcosmetics.com
mrsbellacollection.de

mybhcosmetics.com
nbhcosmetics.com
nhcosmetics.com
preprodbhcosmetics.com
rhcosmetics.com
theaffectcollective.com
vhcosmetics.com
visceral.la
visceralcreative.com
visercal.la
whcosmetics.com
wwwbhcosmetics.com

Social Media Accounts:

The Buyer will be given access to the following social media accounts which shall include all applicable login credentials and passwords.

Platform	Handle
Instagram	@bhcosmetics
Facebook	BH Cosmetics
TikTok	@bhcosmeticsofficial
Twitter	@bhcosmetics
Instagram	@bhcosmeticsgermany
YouTube	BH Cosmetics
Pinterest	BH Cosmetics

Copyrights:

All rights of the Seller to unregistered copyrights related to the Acquired Assets owned or used by the Seller in the conduct of the Business including, without limitation, all copyrights related to product packaging, product designs, advertisements, webpages, photos, and product manuals.

Schedule 4.5

Legal Proceedings

None

Schedule 4.6

Brokers and Finders







Hilco Streambank




SB360 Capital Partners, LLC








Schedule 4.7(a)









Registered Intellectual Property; Title Exceptions







Trademarks:Active Marks






Country	Trademark	App/Reg No.
US		6479886
US		5100478
US	VISCERAL	90050113
US	ITSA	88898028
US		5675638
US		6091203
US		6206356
US	AFFECT	90307069
US	AFFECT COLLECTIVE	90251910
US	THE AFFECT COLLECTIVE	90251930
US	BADASS WITH HEART	88768601
US		6060610







US		6479886
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US	BHCOSMETICS	4436623
US	BHCOSMETICS	4951198
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US	HANGIN' IN HAWAII	6408806
US	BEAUTIFUL IN BARCELONA	6415612
US	BLUSHING IN BALI	6415613
US	GLOWING IN GREECE	6408807
US	ILLUMINATING IN IRELAND	6415614
US	TRAVEL SERIES	90249564
US	TRAVEL SERIES	90256435
US	NUDE EGO	90463589
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US	NUDE ROSE	5225060
US	GLOWING IN GREECE	6408807
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BOLIVIA	BHCOSMETICS	188459







BRAZIL	BHCOSMETICS	911520090
CANADA		TMA1115046
CANADA	BHCOSMETICS	TMA966971
CANADA	ILLUMINATE BY ASHLEY TISDALE	TMA976790
CANADA	STUDIO PRO	TMA966970
CANADA	VISCERAL	2086605
CANADA	AFFECT	2086607
CANADA	THE AFFECT COLLECTIVE	2086608
CHINA		36922119
CHINA		35607467
CHINA		35604360
CHINA		35595361
CHINA	BHCOSMETICS BEAUTY UNDER YOUR INFLUENCE	33433254
CHINA		A0086833 (WIPO)
CHINA		27653349





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CHINA		36940899
CHINA		36929720
CHINA		36939409
CHINA		36922477
CHINA		36919068
CHINA		36928248
CHINA		36917785
CHINA	BHCOSMETICS	36924943
CHINA	BHCOSMETICS	1280718 (WIPO)
CHINA	BHCOSMETICS	15990753
CHINA	BHCOSMETICS	36919072
CHINA	BHCOSMETICS	36933706
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EUROPE	BHCOSMETICS	013978275
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EUROPE	STELLARLASH	017984941
EUROPE	STUDIO PRO	014738471
EUROPE	STUDIO PRO TOTAL COVERAGE	017897148
EUROPE		015069206
EUROPE	AFFECT COLLECTIVE	018451148
EUROPE	ITSA	018451147
EUROPE	VISCERAL	018451149
GERMANY		3020120053823
HONG KONG		304963186
HONG KONG		303592936

	BHCOSMETICS	
HONG KONG	TAKE ME BACK TO BRAZIL	304763764
HONG KONG	ILLUMINATE BY ASHLEY TISDALE	303594259
INDIA	BHCOSMETICS	4200083
INDIA		4200084
INDIA		4200085
MEXICO		2256192
MEXICO		2256193
MEXICO		2256191
MEXICO	TAKE ME BACK TO BRAZIL	2142318
MEXICO	TAKE ME BACK TO BRAZIL	2142315
MEXICO	TAKE ME BACK TO BRAZIL	2142322
MEXICO	BEAUTY UNDER YOUR INFLUENCE	2120264
MEXICO	BEAUTY UNDER YOUR INFLUENCE	2120259
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MEXICO	BHCOSMETICS	1908182
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MEXICO	AFFECT COLLECTIVE	2554121
MEXICO	AFFECT COLLECTIVE	2554123
MEXICO	AFFECT COLLECTIVE	2554125
MEXICO	AFFECT COLLECTIVE	2554127
MEXICO	ITSA	2554131
MEXICO	ITSA	2554134
MEXICO	ITSA	2554135
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MEXICO	VISCERAL	2554138
MEXICO	VISCERAL	2554144
MEXICO	VISCERAL	2554147




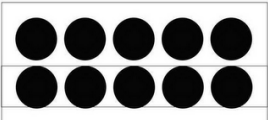
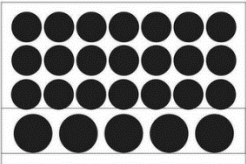



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JAPAN		(WIPO 1508431)
KOREA		(WIPO 1508431)
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PARAGUAY	BHCOSMETICS	61050/2016
PARAGUAY	BHCOSMETICS	61053/2016
PARAGUAY	BHCOSMETICS	61048/2016
PERU	BHCOSMETICS	245049
SAUDIA ARABIA	 Beauty Under Your Influence™	191120
SAUDIA ARABIA		191122
SAUDIA ARABIA	BHCOSMETICS	1438005480





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SINGAPORE		40202000746Y
SWITZERLAND		1508431 (WIPO)
SWITZERLAND	BHCOSMETICS	1280718 (WIPO)
TAIWAN		108039350
TAIWAN	BHCOSMETICS	107083113
TAIWAN	TAKE ME BACK TO BRAZIL	107083112
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THAILAND	 cosmetics	181127696
TURKEY	BHCOSMETICS	201602959 (WIPO 1280718)
TURKEY	ILLUMINATE BY ASHLEY TISDALE	201602993 (WIPO 1280499)

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UK		UK00915625064
UK	BEYOND HOLLYWOOD	UK00917834573
UK	STUDIO PRO TOTAL COVERAGE	UK00917897148
UK	BRONZTOURING	UK00917897853
UK	BEAUTY UNDER YOUR INFLUENCE	UK00917950679
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WIPO	BHCOSMETICS	1280718
WIPO	ILLUMINATE BY ASHLEY TISDALE	1280499

Inactive Marks

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US	AFFECT	88898022

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US	BADASS HEART	88768606
US	BDSS	88898029
US	SUMMER IN ST. TROPEZ	90249524
US	OMG GLITTER!	90249549
US	LOST IN LOS ANGELES	90248537
US	APRES IN ASPEN	90248578
US	PASSION IN PARIS	90248620
US	TANNED IN TULUM	90248737
US	BIRTHSTONE COLLECTION	90248744
US	REMIX DANCE	90248747
US	GEM ON	90248791
US	BH GIVES BACK	90248764
US	PARTY IN PUERTO RICO	90248754
US	BADASS WITH HEART	90248939
US	BHCOSMETICS 	86353250
US	LOVEABLE LASHES	86032677
US	BHCOSMETICS 	85786548
US	BH COSMETICS 	85904047
US	BH COSMETICS	85904027
US	MUAPAGES	85903378
US	MUAPAGES	85900999
US	BH PARTY GIRL	85784786
US	Design Mark 	87133341
US	Design Mark 	87133359
US	BEAUTY UNDER YOUR INFLUENCE	88109217
US	BECAUSE GETTING READY IS ALL THE FUN	87930977
US	BEYOND HOLLYWOOD	87577574
US	BH EXPRESS IT	88808424
US	BH PARTY GIRL	85784786
US		85923793
US		85923789
US		85919748
US	BHCOSMETICS	85923792

US	BHCOSMETICS	85919746
US	BHCOSMETICS	85923790
US	BLUSHED NEUTRALS 26 COLOR EYESHADOW & BLUSH PALETTE DE 26 COULEURS NEUTRES D'OMBRE A PAUPIERES & FARD A JOUES  BHCOSMETICS	87133386
US	BRONZTOURING	87680446
US	GALAXY CHIC	87283797
US	GLAMOROUS BLUSH 10 COLOR BLUSH PALETTE PALETTE DE 10 COULEURS DE FARD A JOUES BHCOSMETICS 	87133311
US	SUPERNOVA	87284025
US	SKIP-CARE	88730517
CANADA	BHCOSMETICS	WIPO 1280718
CANADA	ITSA	2086606
CHINA	BEYOND HOLLYWOOD	29307285
CHINA	BADASS WITH HEART	44747541
CHINA	BADASS HEART	44747540
CHINA	BADASS + HEART	44747539; 36216-6310CN
CHINA		14032707
CHINA	BADASS WITH HEART	44816478
CHINA	BADASS + HEART	48246082
CHINA	BADASS WITH HEART	48246081
CHINA	BADASS HEART	48246080
CHINA		27653350
JAPAN	BHCOSMETICS	1280718 (WIPO)
KOREA	BHCOSMETICS	1280718 (WIPO)
VIETNAM	BHCOSMETICS	1280718 (WIPO)

Schedule 4.8(a)

Purchased Inventory

Attached

**Asset Purchase Agreement
Schedule 4.8(a)
Purchased Inventory List**

No.	SKU	Description	Category	Collection	Qty	Unit Cost	Total Cost
1	BH-1000-172	bh Passion in Paris - 16 Color Shadow Palette	Eyeshadow	Travel Series	1,334		
2	BH-1000-171	bh Party in Puerto Rico - 16 Color Shadow Palette	Eyeshadow	Travel Series	4,410		
3	BH-1000-167	bh Hangin' in Hawaii - 16 Color Shadow Palette	Eyeshadow	Travel Series	4,718		
4	BH-4000-105	Constellation - 12 Piece Face & Eye Brush Set	Brush - Sets	Mystic Zodiac	20		
5	BH-1000-170	bh Trendy in Tokyo - 16 Color Shadow Palette	Eyeshadow	Travel Series	7,448		
6	BH-1000-148	Low Key Love You - 9 Color Shadow Palette	Eyeshadow	Say It!	9,537		
7	BH-4000-070	Take Me Back To Brazil - 10 Piece Brush Set	Brush - Sets	Take Me Back to Brazil	-		
8	BH-1000-145	Do Not Disturb - 9 Color Shadow Palette	Eyeshadow	Say It!	10,570		
9	BH-1000-147	Lookin Like a Snack - 9 Color Shadow Palette	Eyeshadow	Say It!	10,775		
10	BH-1000-151	bh Lost in Los Angeles - 16 Color Shadow Palette	Eyeshadow	Travel Series	13,773		
11	BH-1000-079	Take Me Back To Brazil - 35 Color Pressed Pigment Palette	Eyeshadow	Take Me Back to Brazil	13,089		
12	BH-4000-059	Marble Luxe - 10 Piece Brush Set	Brush - Sets	Brush Set	-		
13	BH-4000-089	SAY IT! - 6 Piece Eye Brush Set with Bag	Brush - Sets	Say It!	3		
14	BH-4000-081	Hello Holo - 10 Piece Brush Set	Brush - Sets	Brush Set	-		
15	BH-4000-069	Bombshell Beauty - 10 Piece Brush Set	Other	Brush Set	-		
16	BH-4000-054	BH Signature Rose Gold - 13 Piece Brush Set	Brush - Sets	Brush Set	501		
17	BH-4000-097	Remix Dance Brush Beat - 10 Piece Face & Eye Brush Set with Bag	Brush - Sets	Remix Collection	-		
18	BH-4000-093	Travel Series - 7 Piece Face & Eye Brush Set with Bag	Brush - Sets	Travel Series	-		
19	BH-4000-083	Weekend Vibes Brunch Bunch - 11 Piece Brush Set	Brush - Sets	Weekend Vibes	-		
20	BH-3100-060	DO NOT DISTURB - Shimmer Gloss	Lip	Say It!	8,199		
21	BH-3100-062	LOOKIN' LIKE A SNACK - Shimmer Gloss	Lip	Say It!	11,142		
22	BH-3100-063	LOW KEY LOVE YOU - Shimmer Gloss	Lip	Say It!	9,493		
23	BH-6100-064	bh Tanned in Tulum â€” 6 Color Bronzer & Highlighter Palette	Blush/Bronze	Travel Series	41,224		
24	BH-8000-005	Acne Patches - Hydrocolloid Pimple Patches: 100% Bye Bitch	Face	Acne Patches	26,872		
25	BH-8000-006	Acne Patches - Hydrocolloid Pimple Patches: Sorry Not Sorry	Face	Acne Patches	12,823		
26	BH-8000-007	Acne Patches - Hydrocolloid Pimple Patches: See Ya Never	Face	Acne Patches	23,495		
27	BH-1000-018	Galaxy Chic - 18 Color Baked Eyeshadow Palette	Eyeshadow	BH Galaxy	50		
28	BH-1000-059	Modern Mattes - 28 Color Eyeshadow Palette	Eyeshadow	Other	22		
29	BH-1000-073	Midnight Affair - 16 Color Eyeshadow Palette	Eyeshadow	Other	104		
30	BH-1000-083	Zodiac - 25 Color Eyeshadow & Highlighter Palette	Eyeshadow	Zodiac	157		
31	BH-1000-084	Studio Pro Ultimate Neutrals - 42 Color Shadow Palette	Eyeshadow	Other	28		
32	BH-1000-091	Sylvia Gani - 22 Color Shadow Palette	Eyeshadow	Other	30		
33	BH-1000-094	Daisy Marquez - 20 Color Shadow Palette.	Other	Other	105		
34	BH-1000-095	Zodiac Love Signs - 25 Color Eyeshadow & Highlighter Palette	Other	Zodiac	37		
35	BH-1000-096	Ultimate Matte - 42 Color Shadow Palette	Other	Other	49		
36	BH-1000-098	Midnight City - 16 Color Shadow Palette	Eyeshadow	GWP Palette	2		
37	BH-1000-108	Mini Zodiac: Leo - 9 Color Shadow Palette	Eyeshadow	Zodiac	1		
38	BH-1000-109	Mini Zodiac: Virgo - 9 Color Shadow Palette	Other	Other	30		
39	BH-1000-115	Santa Fe - 20 Color Shadow Palette	Other	Other	2		
40	BH-1000-118	Illusion - 16 Color Shadow Palette	Eyeshadow	GWP Palette	50		
41	BH-1000-120	Golden Twilight - 16 Color Shadow Palette	Eyeshadow	Mini Pan Palette	51		
42	BH-1000-125	Digital Future - 16 Color Shadow Palette	Eyeshadow	Mini Pan Palette	23		
43	BH-1000-127	Colori Vivaci - 16 Color Shadow Palette	Eyeshadow	Mini Pan Palette	4,961		
44	BH-1000-128	Weekend Vibes Avocado Toast - 16 Color Shadow Palette	Eyeshadow	Weekend Vibes	12,303		
45	BH-1000-129	Weekend Vibes Mimosa - 16 Color Shadow Palette	Eyeshadow	Weekend Vibes	40,292		
46	BH-1000-131	Orange Sorbet - 8 Color Shadow Palette	Eyeshadow	Sweet Shoppe	1		
47	BH-1000-133	Bubble Gum - 8 Color Shadow Palette	Eyeshadow	Sweet Shoppe	6		
48	BH-1000-134	Pistachio - 8 Color Shadow Palette	Eyeshadow	Sweet Shoppe	6		
49	BH-1000-138	Chillin' in Chicago - 16 Color Shadow Palette	Eyeshadow	Travel Series	105		
50	BH-1000-139	Blueberry Muffin - 16 Color Shadow Palette	Eyeshadow	Weekend Vibes	17,620		
51	BH-1000-140	Full-On Crazy â€” 14 Color Shadow Palette	Eyeshadow	Drop Dead Gorgeous	16		
52	BH-1000-142	Ho Ho Holidays Naughty - 30 Color Shadow Palette	Eyeshadow	Ho Ho Holidays	2		
53	BH-1000-144	Fuck Off - 9 Color Shadow Palette	Eyeshadow	Say It!	17,425		
54	BH-1000-146	Let That Shit Go - 9 Color Shadow Palette	Eyeshadow	Say It!	15,407		
55	BH-1000-149	Optimistic AF - 9 Color Shadow Palette	Eyeshadow	Say It!	17,521		
56	BH-1000-159	Pearl for June - 7 Color Shadow Palette	Eyeshadow	Birthstone Collection	5,318		
57	BH-1000-168	bh Smitten in Switzerland - 16 Color Shadow Palette	Eyeshadow	Travel Series	-		
58	BH-1000-173	bh Beautiful in Barcelona - 16 Color Shadow Palette	Eyeshadow	Travel Series	48		
59	BH-1000-179	Remix Dance 90's - 15 Color Shadow Palette	Eyeshadow	Remix Collection	15		
60	BH-1000-182	Absinthe - 9 Color Shadow Palette	Eyeshadow	Poison Shock	4,929		
61	BH-1000-184	Ghost Pepper - 9 Color Shadow Palette	Eyeshadow	Poison Shock	5,501		
62	BH-1000-185	Nightshade - 9 Color Shadow Palette	Eyeshadow	Poison Shock	3,304		

Schedule 4.8(a)
Purchased Inventory List

No.	SKU	Description	Category	Collection	Qty	Unit Cost	Total Cost
63	BH-1000-197	So Spoiled - 16 Color Shadow Palette	Eyeshadow	Miss Claus	50		
64	BH-1000-203	Cream Shadow - Gilded	Eyeshadow	Miss Claus	3,925		
65	BH-1000-205	Cream Shadow - Mulled Wine	Eyeshadow	Miss Claus	3,759		
66	BH-1000-207	Cream Shadow - Tinsel	Eyeshadow	Miss Claus	4,078		
67	BH-1200-015	Studio Pro Lashes - N-101	Lashes	Studio Pro False Lashes	175		
68	BH-1200-016	Studio Pro Lashes - N-102	Lashes	Studio Pro False Lashes	50		
69	BH-1200-017	Studio Pro Lashes - N-103	Lashes	Studio Pro False Lashes	-		
70	BH-1200-018	Studio Pro Lashes - M-201	Lashes	Studio Pro False Lashes	790		
71	BH-1200-020	Studio Pro Lashes - M-203	Lashes	Studio Pro False Lashes	243		
72	BH-1200-021	Studio Pro Lashes - D-301	Lashes	Studio Pro False Lashes	1,096		
73	BH-1200-022	Studio Pro Lashes - D-302	Lashes	Studio Pro False Lashes	6,150		
74	BH-1200-023	Studio Pro Lashes - D-303	Lashes	Studio Pro False Lashes	-		
75	BH-1200-024	False Eyelashes: D-304	Other	False Eyelashes	1,192		
76	BH-1200-025	False Eyelashes: D-305	Other	False Eyelashes	-		
77	BH-1200-028	False Eyelashes: N-104	Lashes	False Eyelashes	839		
78	BH-1200-029	False Eyelashes: N-105	Lashes	False Eyelashes	-		
79	BH-1200-030	False Eyelashes: M-204	Lashes	False Eyelashes	1,425		
80	BH-1200-031	False Eyelashes: M-205	Lashes	False Eyelashes	3,068		
81	BH-1200-032	False Eyelashes: D-306	Lashes	False Eyelashes	1		
82	BH-1200-033	False Eyelashes: D-307	Lashes	False Eyelashes	151		
83	BH-1200-035	3D 551 - Silk False Eyelashes	Lashes	Other	145		
84	BH-1200-036	3D 552 - Silk False Eyelashes	Lashes	Other	145		
85	BH-1200-037	3D 553 - Silk False Eyelashes	Lashes	Other	145		
86	BH-1200-038	3D 554 - Silk False Eyelashes	Lashes	Other	145		
87	BH-1200-039	3D 555 - Silk False Eyelashes	Lashes	Other	145		
88	BH-1200-040	3D 556 - Silk False Eyelashes	Lashes	Other	145		
89	BH-1200-041	3D 557 - Silk False Eyelashes	Lashes	Other	145		
90	BH-1200-042	3D 558 - Silk False Eyelashes	Lashes	Other	145		
91	BH-1200-043	3D 559 - Silk False Eyelashes	Lashes	Other	145		
92	BH-1200-045	3D 561 - Silk False Eyelashes	Lashes	Other	145		
93	BH-1200-046	3D Lashes - Synthetic Silk Eyelashes: 550	Lashes	3D Lashes	691		
94	BH-1200-048	3D Lashes - Synthetic Silk Eyelashes: 554	Lashes	3D Lashes	994		
95	BH-1200-049	3D Lashes - Synthetic Silk Eyelashes: 558	Lashes	3D Lashes	994		
96	BH-1200-051	3D Lashes - Synthetic Silk Eyelashes: 560	Lashes	3D Lashes	299		
97	BH-1200-061	Lunar New Year: 2021 Edit & Faux Mink Lashes: Dynasty Diva	Lashes	Lunar New Year Collection	1		
98	BH-1200-062	Lunar New Year: 2021 Edit & Faux Mink Lashes: The Empress	Lashes	Lunar New Year Collection	1		
99	BH-1200-063	Ghost Pepper - False Eyelashes	Lashes	Poison Shock	165		
100	BH-1200-064	Scorpion Sting - False Eyelashes	Lashes	Poison Shock	432		
101	BH-1200-067	Sub-Zero - False Eyelashes	Lashes	Poison Shock	260		
102	BH-1200-070	Snow Extra - False Lashes - Snow Angel	Lashes	Miss Claus	336		
103	BH-1200-071	Snow Extra - False Lashes - Snow Good	Lashes	Miss Claus	93		
104	BH-1400-019	Eyelights - Waterproof Eye Toppers: Gal Pal	Eyeshadow	Eyelight Toppers	16		
105	BH-1400-020	Eyelights - Waterproof Eye Toppers: Fresh	Eyeshadow	Eyelight Toppers	25		
106	BH-1400-022	Diamond Dazzlers - Loose Foil Pigment: Radiant	Accessories	Other	12		
107	BH-1400-025	Base Booster Glitter & Shadow Glue	Primer	Other	5,666		
108	BH-1400-026	Diamond Dazzler - Loose Foil Pigment: Opulent	Accessories	Other	47		
109	BH-1500-022	Studio Pro HD Brow Pencil Blonde CC 15 mm Brow ASH 11 Ash	Other	Other	1		
110	BH-1500-032	Studio Pro Shade & Define Duo Brow Pencil: Medium Blonde	Brows	Studio Pro	3		
111	BH-1500-037	Brow Duo - Light Blonde	Brows	Basic Hero	1		
112	BH-1500-039	Brow Duo - Caramel	Brows	Basic Hero	4		
113	BH-1500-041	Brow Duo - Dark Brown	Brows	Basic Hero	12		
114	BH-1500-055	Brow Designer - Dual Ended Precision Pencil -Light Blonde	Brows	Basic Hero	1,773		
115	BH-1500-056	Brow Designer - Dual Ended Precision Pencil- Blonde	Brows	Basic Hero	160		
116	bh-1500-058	Brow Designer - Dual Ended Precision Pencil- Auburn	Brows	Basic Hero	1,804		
117	BH-1500-059	Brow Designer - Dual Ended Precision Pencil- Ash Brown	Brows	Basic Hero	-		
118	BH-1500-060	Brow Designer - Dual Ended Precision Pencil- Warm Brown	Brows	Basic Hero	49		
119	BH-1500-061	Brow Designer - Dual Ended Precision Pencil- Dark Brown	Brows	Basic Hero	692		
120	BH-1500-062	Brow Designer - Dual Ended Precision Pencil- Ebony	Brows	Basic Hero	50		
121	BH-1500-063	Brow Designer - Dual Ended Precision Pencil- Charcoal	Brows	Basic Hero	1,625		
122	BH-1600-002	Absinthe - Liquid Eyeshadow	Liner	Poison Shock	3,799		
123	BH-1600-003	Scorpion Sting - Liquid Eyeshadow	Liner	Poison Shock	3,811		
124	BH-1600-004	Ghost Pepper - Liquid Eyeshadow	Liner	Poison Shock	3,725		
125	BH-1600-005	Nightshade - Liquid Eyeshadow	Liner	Poison Shock	3,824		

Schedule 4.8(a)
Purchased Inventory List

No.	SKU	Description	Category	Collection	Qty	Unit Cost	Total Cost
126	BH-1600-006	Sub-Zero - Liquid Eyeshadow	Liner	Poison Shock	3,839		
127	BH-1600-007	Venom - Liquid Eyeshadow	Liner	Poison Shock	3,755		
128	BH-1700-001	BH Liquid Eyeliner - Black	Liner	Other	16,978		
129	BH-1700-018	Studio Pro Waterproof Gel Liner - Onyx	Liner	Other	5		
130	BH-1700-027	Power Pencil - Waterproof Eyeliner: Warm Brown	Other	Power Pencil	3,029		
131	BH-1700-028	Power Pencil - Waterproof Eyeliner: White	Liner	Power Pencil	3,332		
132	BH-1700-030	Power Pencil - Waterproof Eyeliner: Shimmer Pearl	Liner	Power Pencil	1,277		
133	BH-1700-032	Power Pencil - Waterproof Eyeliner: Shimmer Gold	Liner	Power Pencil	2		
134	BH-1700-033	Power Pencil - Waterproof Eyeliner: Shimmer Teal	Liner	Power Pencil	3,366		
135	BH-1700-041	Ho Ho Holidays Lump of Coal - BH Liquid Eyeliner: Black	Other	Ho Ho Holidays	42		
136	BH-1700-042	Lunar New Year: 2021 Edit & Liquid Eyeliner	Liner	Lunar New Year Collection	1		
137	BH-1800-026	Glitter Collection - Loose Glitter: LIT	Accessories	Glitter Collection	10		
138	BH-1800-033	OMG Glitter! Liquid Eyeliner: Golden Gal	Liner	OMG Glitter!	1		
139	BH-1800-034	OMG Glitter! Liquid Eyeliner: Alumin-ating	Liner	OMG Glitter!	2		
140	BH-1800-036	OMG Glitter! Liquid Eyeliner: Illumina-teal	Liner	OMG Glitter!	1		
141	BH-1800-037	OMG Glitter! Liquid Eyeliner: Confetti Pink	Liner	OMG Glitter!	1		
142	BH-1800-038	OMG Glitter! Liquid Eyeliner: Lookin' Lilac a Snack	Liner	OMG Glitter!	1		
143	BH-1800-039	OMG Glitter! Face & Body Gel: Teal Me About It	Face	OMG Glitter!	1,476		
144	BH-1800-040	OMG Glitter! Face & Body Gel: Pink-ing Of You	Face	OMG Glitter!	1,561		
145	BH-1800-041	OMG Glitter! Face & Body Gel: Lemon Lime Light	Face	OMG Glitter!	1,431		
146	BH-1800-042	OMG Glitter! Face & Body Gel: Au Some	Other	OMG Glitter!	1,502		
147	BH-1800-043	OMG Glitter! Face & Body Gel: Don't Lilac To Me	Other	OMG Glitter!	1,259		
148	BH-1800-044	OMG Glitter! Face & Body Gel: Holo-Back Girl	Face	OMG Glitter!	42		
149	BH-2000-001	Blushed Neutrals - 26 Color Eyeshadow and Blush Palette	Blush/Bronze	Other	1		
150	BH-2000-029	Nouveau Neutrals - 26 Color Shadow & Blush Palette	Other	Other	15		
151	BH-2000-031	Desert Oasis - 19 Color Shadow & Highlighter Palette	Other	Other	45		
152	BH-2000-041	Weekend Vibes Belgian Waffle - 6 Color Baked Bronzer & Highlighter Palette	Combo Palette	Weekend Vibes	29,911		
153	BH-2900-002	Brush V2 - Vegan Pointed Blending Brush	Brush - Single	Vegan Mono Brush	97		
154	BH-2900-005	Brush V5 - Vegan Blending Brush	Brush - Single	Vegan Mono Brush	9		
155	BH-2900-009	Brush V9 - Vegan Eye Precision Brush	Brush - Single	Vegan Mono Brush	550		
156	BH-2900-011	Brush V11 & Vegan Deluxe Round Powder Brush	Brush - Single	Vegan Mono Brush	7		
157	BH-2900-013	Brush V13 & Vegan Brow Definer & Blender Brush	Brush - Single	Vegan Mono Brush	9		
158	BH-2900-014	Brush V14 & Vegan Fan Brush	Brush - Single	Vegan Mono Brush	12		
159	BH-2900-015	Brush V15 & Vegan Round Crease Brush	Brush - Single	Vegan Mono Brush	6		
160	BH-2900-017	Brush V17 - Vegan Setting Brush	Brush - Single	Vegan Mono Brush	1		
161	BH-2900-019	Brush V19 & Vegan Large Blending Brush	Brush - Single	Vegan Mono Brush	6		
162	BH-2900-020	Brush V20 & Vegan Precision Brush	Brush - Single	Vegan Mono Brush	4		
163	BH-3000-034	Brush 34 - Angled Kabuki Brush	Brush - Single	Other	2		
164	BH-3000-044	Studio Pro Brush 6 - Blending Crease	Brush - Single	Studio Pro	14		
165	BH-3000-045	Studio Pro Brush 7 - Flat Shader	Brush - Single	Studio Pro	11		
166	BH-3000-046	Studio Pro Brush 8 - Small Pointed Crease	Brush - Single	Studio Pro	2		
167	BH-3000-047	Studio Pro Brush 9 - Small Flat Shader	Brush - Single	Studio Pro	189		
168	BH-3000-049	Studio Pro Brush 11 - Flat Eyeliner	Brush - Single	Studio Pro	38		
169	BH-3000-053	Studio Pro Brush 15 - Blush	Brush - Single	Studio Pro	1		
170	BH-3000-054	Studio Pro Brush 16 & Tapered Blending	Brush - Single	Studio Pro	36		
171	BH-3000-055	Studio Pro Brush 17 - Small Tapered Blending	Brush - Single	Studio Pro	14		
172	BH-3000-056	Studio Pro Brush 18 - Tapered Highlight	Brush - Single	Studio Pro	17		
173	BH-3000-057	Studio Pro Brush 19 - Small Flat Contour	Brush - Single	Studio Pro	2		
174	BH-3000-058	All Over Fan Brush 1	Other	Other	55		
175	BH-3000-060	Shading Fan Brush 3	Other	Other	1		
176	BH-3000-061	Eye Fan Brush 4	Other	Other	1		
177	BH-3000-062	Concealer Fan brush 5	Other	Other	6		
178	BH-3000-063	Detailing Fan Brush 6	Other	Other	21		
179	BH-3000-066	Soft Liner Brush 9	Other	Other	43		
180	BH-3000-084	Angled Blush Brush	Brush - Single	Vegan Mono Brush	565		
181	BH-3000-086	Rounded Highlighter Brush	Brush - Single	Vegan Mono Brush	615		
182	BH-3000-088	Pointed Crease Brush	Brush - Single	Vegan Mono Brush	1,815		
183	BH-3000-091	Small Packer Brush	Brush - Single	Vegan Mono Brush	2,160		
184	BH-3000-092	Domed Pencil Brush	Brush - Single	Vegan Mono Brush	3,977		
185	BH-3000-093	Flat Definer Brush	Brush - Single	Vegan Mono Brush	3,936		
186	BH-3000-097	Duo-Fiber Stippling Brush	Brush - Single	Vegan Mono Brush	3,816		
187	BH-3000-098	Large Blending Brush	Brush - Single	Vegan Mono Brush	3,890		
188	BH-3000-100	Rounded Shader Brush	Brush - Single	Vegan Mono Brush	4,439		

Schedule 4.8(a)
Purchased Inventory List

No.	SKU	Description	Category	Collection	Qty	Unit Cost	Total Cost
189	BH-3000-102	Small Precision Brush	Brush - Single	Vegan Mono Brush	3,330		
190	BH-3000-103	Angled Brow Brush	Brush - Single	Vegan Mono Brush	1,446		
191	BH-3000-104	Dense Cheek Brush	Brush - Single	Vegan Mono Brush	2,199		
192	BH-3000-105	Tapered Setting Brush	Brush - Single	Vegan Mono Brush	3,932		
193	BH-3000-108	Small Smudger Brush	Brush - Single	Vegan Mono Brush	4,006		
194	BH-3000-109	Bent Liner Brush	Brush - Single	Vegan Mono Brush	2,544		
195	BH-3000-110	Fan Detailer Brush	Brush - Single	Vegan Mono Brush	4,266		
196	BH-3100-051	Weekend Vibes So Extra Bloody Mary - High Shine Plumping Lip Gloss Duo	Lip	Weekend Vibes	-		
197	BH-3100-052	Weekend Vibes So Extra Chai Latte - High Shine Plumping Lip Gloss Duo	Lip	Weekend Vibes	63		
198	BH-3100-058	BFF Elsy's Faves - Lip Duo	Lip	BFF Alondra & Elsy	72		
199	BH-3100-059	FUCK OFF - Shimmer Gloss	Lip	Say It!	2,442		
200	BH-3100-061	LET THAT SHIT GO - Shimmer Gloss	Lip	Say It!	3,563		
201	BH-3100-064	OPTIMISTIC AF - Shimmer Gloss	Lip	Say It!	3,696		
202	BH-3100-065	Poison Shock Topper Shock - Holographic Lip Gloss	Lip	Poison Shock	1,848		
203	BH-3200-027	Color Lock Long Lasting Matte Lipstick - Blissful	Lip	Other	1,830		
204	BH-3200-028	Color Lock Long Lasting Matte Lipstick - Rapture	Lip	Other	1		
205	BH-3400-023	BH Metallic Liquid Lipstick - Lucy	Other	Other	1		
206	BH-3400-026	BH Metallic Liquid Lipstick - Ginger	Lip	Other	2		
207	BH-3400-038	Liquid Linen - Long Lasting Lip Color: Martha	Other	Liquid Linen	138		
208	BH-3400-039	Liquid Linen - Long Lasting Lip Color: Shelby	Other	Liquid Linen	43		
209	BH-3400-040	Liquid Linen - Long Lasting Lip Color: Carin	Other	Liquid Linen	216		
210	BH-3400-041	Liquid Linen - Long Lasting Lip Color: Evelyn	Other	Liquid Linen	49		
211	BH-3400-042	Liquid Linen - Long Lasting Lip Color: Natalie	Other	Liquid Linen	90		
212	BH-3400-043	Liquid Linen - Long Lasting Lip Color: Monica	Other	Liquid Linen	84		
213	BH-3400-044	Liquid Linen - Long Lasting Lip Color: Jacqueline	Other	Liquid Linen	3		
214	BH-3400-045	Liquid Linen - Long Lasting Lip Color: Mel	Other	Liquid Linen	83		
215	BH-3400-046	Liquid Linen - Long Lasting Lip Color: Maria	Other	Liquid Linen	1		
216	BH-3400-048	Cashmere Cream - Comfort Lipstick: Thirsty	Other	Cashmere Cream	1		
217	BH-3400-050	Cashmere Cream - Comfort Lipstick: Perf	Other	Cashmere Cream	8		
218	BH-3400-051	Cashmere Cream - Comfort Lipstick: Roast	Other	Cashmere Cream	2		
219	BH-3400-052	Cashmere Cream - Comfort Lipstick: YAS	Other	Cashmere Cream	13		
220	BH-3400-054	Cashmere Cream - Comfort Lipstick: FTW	Other	Cashmere Cream	933		
221	BH-3400-055	Cashmere Cream - Comfort Lipstick: Extra	Other	Cashmere Cream	19		
222	BH-3400-056	Cashmere Cream - Comfort Lipstick: 100	Other	Cashmere Cream	943		
223	BH-3400-057	Cashmere Cream - Comfort Lipstick: Hustle	Other	Cashmere Cream	801		
224	BH-3400-058	Cashmere Cream - Comfort Lipstick: Slay	Other	Cashmere Cream	49		
225	BH-3400-059	Cashmere Cream - Comfort Lipstick: Bae	Other	Cashmere Cream	50		
226	BH-3400-060	Cashmere Cream - Comfort Lipstick: Savage	Other	Cashmere Cream	50		
227	BH-3400-062	Liquid Linen - Long Lasting Lip Color: Jordan	Lip	Liquid Linen	50		
228	BH-3400-063	Liquid Linen - Long Lasting Lip Color: Christy	Lip	Liquid Linen	15		
229	BH-3400-065	Liquid Linen - Long Lasting Lip Color: Nichele	Lip	Liquid Linen	1,702		
230	BH-3400-066	Liquid Linen - Long Lasting Lip Color: Jessica	Lip	Liquid Linen	47		
231	BH-3500-010	Waterproof Lip Liner - Rosy	Lip	Other	65		
232	BH-3500-018	Waterproof Lip Liner - Sorbet	Lip	Other	10		
233	BH-3500-019	Waterproof Lip Liner - Samantha	Lip	Other	9		
234	BH-3500-021	Waterproof Lip Liner - Glory	Lip	Other	40		
235	BH-4000-007	Sculpt and Blend - 10 Piece Brush Set	Brush - Sets	Brush Set	1		
236	BH-4000-026	Sculpt and Blend 2 - 10 Piece Brush Set	Brush - Sets	Brush Set	4		
237	BH-4000-032	BH Chic - 14 Piece Brush Set with Cosmetic Case	Brush - Sets	Brush Set	2		
238	BH-4000-044	Smokey Eye Essential - 7 Piece Brush Set	Brush - Sets	Brush Set	25		
239	BH-4000-046	Lavish Elegance - 15 Piece Brush Set With Cosmetic Bag	Brush - Sets	Brush Set	2		
240	BH-4000-048	RosÃ© Romance - 12 Piece Brush Set & Cosmetic Bag	Brush - Sets	Brush Set	4		
241	BH-4000-050	Crystal Quartz - 12 Piece Brush Set	Brush - Sets	Brush Set	2,022		
242	BH-4000-051	Smoke 'n Mirrors - 10 Piece Metalized Brush Set	Brush - Sets	Other	4		
243	BH-4000-053	Studio Pro - 13 Piece Brush Set	Brush - Sets	Studio Pro	33		
244	BH-4000-056	Sculpt and Blend Fan Faves - 10 Piece Brush Set	Brush - Sets	Brush Set	6		
245	BH-4000-057	Weekend Festival - 10 Piece Brush Set	Brush - Sets	Other	23		
246	BH-4000-060	Aurora Lights - 10 Piece Brush Set with Bag	Brush - Sets	Other	27		
247	BH-4000-061	White Marble - 9 Piece Brush Set with Brush Holder	Other	Brush Set	15		
248	BH-4000-068	Colour Festival - 12 Piece Brush Set	Other	Other	6		
249	BH-4000-085	Chillin' in Chicago - 7 Piece Eye Brush Set	Brush - Sets	Travel Series	1		
250	BH-4000-088	Ho Ho Holidays There's Snowbody Like you - 12 Piece Brush Set	Brush - Sets	Ho Ho Holidays	26		
251	BH-5000-005	Studio Pro Waterproof Eye Primer	Other	Other	207		

Schedule 4.8(a)
Purchased Inventory List

No.	SKU	Description	Category	Collection	Qty	Unit Cost	Total Cost
252	BH-5000-011	Paradise Prime - Mattifying Face Primer	Primer	Paradise Collection	-		
253	BH-5000-015	Illuminating Setting Spray	Face	Paradise Collection	-		
254	BH-5000-018	Hydrating Setting Spray	Face	Paradise Collection	9		
255	BH-6100-003	Glamorous Blush - 10 Color Blush Palette	Blush/Bronze	Other	31		
256	BH-6100-026	Nude Blush - 10 Color Blush Palette	Blush/Bronze	Other	1		
257	BH-6100-031	Floral Blush - Duo Cheek Color: Bahama Bronze	Blush/Bronze	Floral Blush	1		
258	BH-6100-034	Spotlight Highlight - 6 Color Palette	Highlight	Other	11		
259	BH-6100-035	Classic Blush - 10 Color Palette	Blush/Bronze	Other	29		
260	BH-6100-036	Studio Pro Shade & Define 10 Color Contour Palette	Blush/Bronze	Studio Pro	18		
261	BH-6100-038	Blushing in Bali - 6 Color Blush & Highlighter Palette	Other	Travel Series	129		
262	BH-6100-040	Chocolate Marshmallow Truffle - 4 Color Blush Palette	Powder	Truffle Blush	-		
263	BH-6100-041	Chocolate Strawberry Truffle - 4 Color Blush Palette	Powder	Truffle Blush	2		
264	BH-6100-044	Vanilla Cream Truffle - 4 Color Blush Palette-	Powder	Truffle Blush	14,640		
265	BH-6100-045	Vanilla Strawberry Truffle - 4 Color Blush Palette	Powder	Truffle Blush	38		
266	BH-6100-049	Illuminating in Ireland - 6 Color Highlight Palette	Highlight	Travel Series	4,032		
267	BH-6100-053	Weekend Vibes Bellini - 6 Color Blush Palette	Blush/Bronze	Weekend Vibes	7,198		
268	BH-6100-057	FroÅve - 6 Color Highlighter Palette	Highlight	Weekend Vibes	18		
269	BH-6100-058	Ho Ho Holidays Let it Glow - 4 Color Highlighter Palette	Face	Ho Ho Holidays	50		
270	BH-6100-059	AprÃ's in Aspen - 6 Color Highlight Palette	Highlight	Travel Series	779		
271	BH-6100-062	bh Blushing in Bali - 6 Color Blush & Highlighter Palette	Eyeshadow	Travel Series	7		
272	bh-6100-066	BFF Snatched Face Palette - 4 Color Highlight, Blush, Bronze and Contour Palette	Highlight	BFF Alondra & Elsy	50		
273	BH-6100-067	bh Illuminating in Ireland - 6 Color Highlighter Palette	Highlight	Travel Series	49		
274	BH-6200-008	Brilliance Bronzers - Satin Finish Bronzer: Bronze Babe	Accessories	Brilliance Bronzer	2		
275	BH-6400-001	Studio Pro Matte Finish Pressed Powder - Shade #205	Powder	Other	50		
276	BH-6400-005	Studio Pro Matte Finish Pressed Powder - Shade #240	Powder	Other	5,456		
277	BH-6400-006	Studio Pro Matte Finish Pressed Powder - Shade #250	Powder	Other	4,500		
278	BH-6400-007	Studio Pro Matte Finish Pressed Powder - Shade #255	Powder	Other	3,779		
279	BH-7000-002	Quick Change - Brush Cleaner	Accessories	Other	2		
280	BH-7200-001	Studio Pro Dual Cleansing Brush Pad	Accessories	Other	50		
281	BH-7200-003	Angled Brush Holder - Pink	Accessories	Other	1		
282	BH-7200-005	Angled Brush Holder - Marble	Accessories	Other	52		
283	BH-7200-006	Angled Brush Holder - Holographic	Accessories	Other	32		
284	BH-7400-015	Weekend Vibes Makeup Bag	Accessories	Other	50		
285	BH-7400-020	Miss Claus - Cosmetic Bag	Accessories	Miss Claus	4,322		
286	BH-7500-001	Studio Pro Beauty Sponge	Accessories	Studio Pro	50		
287	BH-7500-003	Studio Pro Perfecting Sponge	Accessories	Other	2,131		
288	BH-7600-002	BH T-Shirt (Small)	Accessories	Other	50		
289	BH-7600-004	BH T-Shirt (Medium)	Accessories	Other	1,471		
290	BH-7600-005	BH T-Shirt (Large)	Accessories	Other	1,812		
291	BH-7600-006	BH T-Shirt (X-Large)	Accessories	Other	1,272		
292	BH-7600-007	BH T-Shirt (X-Small)	Accessories	Other	48		
293	BH-7600-008	BH T-Shirt (XX-Large)	Accessories	Other	60		
294	BH-9250-035	Opallusion Mystic	Accessories	Other	16		
295	BH-9250-039	Ho Ho Holidays Sleigh All Day - Fan Brush Eye Trio	Accessories	Ho Ho Holidays	2		
296	BH-9250-040	Mistletoe Kisses - Cashmere Cream Lip Trio	Accessories	Ho Ho Holidays	31		
297	BH-9250-053	BH x Get Stonned Drop Dead Gorgeous Gem Set	Accessories	Drop Dead Gorgeous	109		
298	BH-GC10	Glitter Collection - Night Vision	Accessories	Other	20		
299	BH-HOLI1801	Royal Affair - Petite Highlight Set	Highlight	Other	132		
300	BH-HOLI1802	Royal Affair - 20 Color Shadow Palette	Other	Other	3		
301	BH-HOLI1803	Royal Affair - 10 Piece Metalized Brush Set	Other	Other	44		
302	BH-PS	Makeup Pencil Sharpener	Accessories	Other	47		
						609,855	

Schedule 4.8(b)

Special Purchased Inventory

Attached

Asset Purchase Agreement
Schedule 4.8(b)
Special Purchase Inventory

No.	SKU	Description	Category	Collection	Qty	Unit Cost	Total Cost
1	BH-4000-083	Weekend Vibes Brunch Bunch - 11 Piece Brush Set	Brush - Sets	Weekend Vibes	43,209		
2	BH-4000-089	SAY IT! - 6 Piece Eye Brush Set with Bag	Brush - Sets	Say It!	28,776		
3	BH-4000-081	Hello Holo - 10 Piece Brush Set	Brush - Sets	Brush Set	22,034		
4	BH-4000-105	Constellation - 12 Piece Face & Eye Brush Set	Brush - Sets	Mystic Zodiac	7,416		
5	BH-4000-097	Remix Dance Brush Beat - 10 Piece Face & Eye Brush Set with Bag	Brush - Sets	Remix Collection	33,950		
6	BH-4000-070	Take Me Back To Brazil - 10 Piece Brush Set	Brush - Sets	Take Me Back to Brazil	9,547		
7	BH-4000-093	Travel Series - 7 Piece Face & Eye Brush Set with Bag	Brush - Sets	Travel Series	54,036		
8	BH-4000-054	BH Signature Rose Gold - 13 Piece Brush Set	Brush - Sets	Brush Set	33,648		
9	BH-4000-059	Marble Luxe - 10 Piece Brush Set	Brush - Sets	Brush Set	11,607		
10	BH-1000-151	bh Lost in Los Angeles - 16 Color Shadow Palette	Eyeshadow	Travel Series	40,716		
11	BH-1000-147	Lookin Like a Snack - 9 Color Shadow Palette	Eyeshadow	Say It!	32,148		
12	BH-1000-145	Do Not Disturb - 9 Color Shadow Palette	Eyeshadow	Say It!	31,140		
13	BH-1000-148	Low Key Love You - 9 Color Shadow Palette	Eyeshadow	Say It!	28,188		
14	BH-1000-170	bh Trendy in Tokyo - 16 Color Shadow Palette	Eyeshadow	Travel Series	22,572		
15	BH-1000-167	bh Hangin' in Hawaii - 16 Color Shadow Palette	Eyeshadow	Travel Series	14,742		
16	BH-1000-171	bh Party in Puerto Rico - 16 Color Shadow Palette	Eyeshadow	Travel Series	12,636		
17	BH-1000-172	bh Passion in Paris - 16 Color Shadow Palette	Eyeshadow	Travel Series	5,562		
18	BH-1000-079	Take Me Back To Brazil - 35 Color Pressed Pigment Palette	Eyeshadow	Take Me Back to Brazil	39,456		
19	BH-4000-069	Bombshell Beauty - 10 Piece Brush Set	Other	Brush Set	28,881		
					500,264		

Schedule 6.1(b)

Permitted Discounts for DTC Sales

DTC Sales shall be conducted subject to the following discounts to the manufacturer's suggested retail prices for the applicable Beauty Products:

- Special Purchased Inventory shall not be discounted more than 25%.
- Purchased Inventory shall not be discounted more than 50% although this discount will be increased to 55% or 65% on certain SKUs as agreed between Buyer and Seller (which for avoidance of doubt will exclude any Special Purchased Inventory).
- Seller will remove all references to "Total Inventory Blow Out" or words of similar import on its websites.
- Seller shall effectuate the changes set forth in this Schedule 6.1(b) within 24 hours of the execution of this Agreement.

Schedule 6.1(c)

Office Actions for Response or Extension

Mark	Registration Number	Status	Classification	Date for Response
BADASS WITH HEART	88768601	Rejected	003 (cosmetics); 005 (acne treatment); 018 (cosmetic cases); 021 (applicator sticks, cosmetic brushes)	Office Action response due by 2/5/2022
NUDE EGO	90463589		003 (cosmetics)	Proceeding with Procedural Office Action response due 1/24/ 2022

Schedule 6.3(c)

Additional Notice List

1. HYG Financial Services, Inc., P.O. Box 35701, Billings, Montana 59107.
2. Trinity Capital Fund III, L.P., 3075 West Ray Road, Chandler, AZ 85226.

Exhibit A

Bidding Procedures Order

Attached

28939541.17

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

BHCOSMETICS HOLDINGS, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 22-____ (____)

(Joint Administration Requested)

Docket Ref. No. ____

**ORDER (A) APPROVING CERTAIN BIDDING PROCEDURES,
ASSUMPTION AND ASSIGNMENT PROCEDURES, AND THE FORM AND
MANNER OF NOTICE THEREOF; (B) AUTHORIZING THE DEBTORS TO
ENTER INTO AN ASSET PURCHASE AGREEMENT WITH A STALKING HORSE
BIDDER AND APPROVING CERTAIN BIDDING PROTECTIONS; AND
(C) SCHEDULING A HEARING ON THE APPROVAL OF THE SALE OF THE
DEBTORS' REMAINING ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES
AS WELL AS THE ASSUMPTION AND ASSIGNMENT OF CERTAIN
EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Upon consideration of the motion (the “Motion”)² of BHCosmetics Holdings, LLC and its affiliated debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (collectively, the “Chapter 11 Cases”) for entry of this Order, among other things: (a) authorizing and approving the Bidding Procedures, attached hereto as **Exhibit A**, and the Assumption and Assignment Procedures, and the form and manner of notice thereof; (b) authorizing, but not directing, the Debtors to enter into an asset purchase agreement with the Stalking Horse Bidder and approving certain bid protections for the Stalking Horse Bidder, such as: (i) the provision for payment of a break-up fee and capped expense reimbursement (together,

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: BHCosmetics Holdings, LLC (7827); BHCosmetics Intermediate, LLC (2918); BHCosmetics, LLC (9106); and Visceral Agency LLC (9266). The Debtors’ service address for purposes of these chapter 11 cases is 8161 Lankershim Blvd., North Hollywood, CA 91605.

² Capitalized terms used but not defined herein shall have the meanings given them in the Bidding Procedures (as defined below), or to the extent not defined therein, the Motion.

the “Termination Payment”) to be paid to the Stalking Horse Bidder upon the occurrence of the consummation of an Alternative Transaction, and (ii) the initial overbid requirement (together with the Termination Payment, the “Bid Protections”); and (c) scheduling the Sale Hearing for the Court’s consideration of the sale of the applicable Assets free and clear of Encumbrances, and authorizing the assumption and assignment of the Selected Target Contracts in connection therewith; and this Court having reviewed the Motion; and upon the First Day Declaration and upon the record of the hearing and all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is hereby

FOUND AND DETERMINED THAT:³

A. This Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order.

B. Venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution.

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

D. The Debtors have demonstrated that good and sufficient notice of the relief granted by this Bidding Procedures Order has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief granted by this Bidding

³ 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 that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Procedures Order has been afforded to those parties entitled to notice pursuant to Bankruptcy Rule 2002 and all other interested parties.

E. The Motion provides all interested parties with timely and proper notice of: (i) the identity of the Stalking Horse Bidder, including any affiliation with the Debtors; (ii) the Assets that are the subject of the Stalking Horse Bid; (iii) a copy of the Stalking Horse Bid; (iv) the purchase price to be provided by the Stalking Horse Bidder; (v) any proposed Bid Protections; and (vi) the deposit paid by the Stalking Horse Bidder. No other or further notice will be required of the foregoing.

F. The Bidding Procedures are (i) fair, reasonable, and appropriate and (ii) designed to maximize recovery with respect to the Assets.

G. The Assumption and Assignment Procedures provided for herein and the Assumption Notice are reasonable and appropriate and consistent with the provisions of section 365 of the Bankruptcy Code and Bankruptcy Rule 6006. The Assumption and Assignment Procedures and the Assumption Notice have been tailored to provide an adequate opportunity for all Counterparties to assert any Contract Objections.

H. RBI Acquisition Holdings, LLC shall act as the “Stalking Horse Bidder” under the Stalking Horse Bid, which shall be subject to higher or better offers in accordance with the Bidding Procedures.

I. Pursuit of the Stalking Horse Bidder as a “stalking-horse” and the Stalking Horse Bid as a “stalking-horse” sale agreement is in the best interests of the Debtors and the Debtors’ estates and creditors, and it reflects a sound exercise of the Debtors’ business judgment. The Stalking Horse Bid provides the Debtors with the opportunity to sell the applicable Assets, in order to preserve and realize their optimal value. The Stalking Horse Bid will enable the Debtors

to secure a fair and adequate baseline price for the applicable Assets at the auction for the Debtors' Assets and, accordingly, will provide a clear benefit to the Debtors' estates, their creditors, and all other parties in interest.

J. The Bid Protections, including, but not limited to, any Termination Payment (as defined in the Motion), (i) have been negotiated by the Stalking Horse Bidder and the Debtors and their respective advisors at arms' length and in good faith and (ii) are necessary to ensure that the Stalking Horse Bidder will continue to pursue its Stalking Horse Bid and the sale transaction contemplated thereby (the "Sale Transaction"). The Termination Payment, to the extent payable under the Stalking Horse Bid, (iii) is an actual and necessary cost and expense of preserving the Debtors' estates within the meaning of section 503(b) of the Bankruptcy Code, (iv) shall be treated as an allowed administrative expense claim against the Debtors' estates pursuant to sections 105(a), 503(b) and 507(a)(2) of the Bankruptcy Code, (v) is commensurate to the real and material benefits conferred upon the Debtors' estates by the Stalking Horse Bidder, and (vi) is fair, reasonable, and appropriate, including in light of the size and nature of the Sale Transaction, the necessity to announce a sale transaction for the applicable Assets and the efforts that have been and will be expended by the Stalking Horse Bidder. The Stalking Horse Bidder has expended, and will continue to expend, considerable time, money, and energy pursuing the proposed Sale Transaction; and the Bid Protections, including, but not limited to, any Termination Payment are a material inducement for, and condition of, the Stalking Horse Bidder's execution of the Stalking Horse Bid. Unless it is assured that the Bid Protections, including, but not limited to, any Termination Payment, will be available, the Stalking Horse Bidder is unwilling to remain obligated to consummate the Sale Transaction or otherwise be bound under the Stalking Horse Bid

(including the obligations to maintain its committed offer while such offer is subject to higher or better offers as contemplated by the Bidding Procedures).

K. The Stalking Horse Bidder is not an “insider” or “affiliate” of any of the Debtors, as those terms are defined in section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, or controlling stockholders exist between the Stalking Horse Bidder and the Debtors. The Stalking Horse Bidder and its respective counsel and advisors have acted in “good faith” within the meaning of section 363(m) of the Bankruptcy Code in connection with the Stalking Horse Bidder’s negotiation of its Bid Protections and the Bidding Procedures and the Stalking Horse Bidder’s negotiation and entry into the Stalking Horse Bid.

L. Entry of this Bidding Procedures Order is in the best interests of the Debtors, their estates, their creditors, and all other interested parties, and the legal and factual bases set forth in the Motion, the First Day Declaration, and at the hearing on the Motion establish just cause for the relief granted herein.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Those portions of the Motion seeking approval of (a) the Bidding Procedures, (b) the Assumption and Assignment Procedures, (c) the date and time of the Sale Hearing, (d) entry into an asset purchase agreement with the Stalking Horse Bidder, and (e) the noticing and objection procedures related to each of the foregoing, as applicable, including, without limitation, the Assumption Notice and the Sale Notice, substantially in the form attached to the Motion as Exhibit III (subclauses (a)–(d) above, collectively, the “Bidding and Auction Process Procedures”), are hereby GRANTED to the extent set forth herein.

2. Any objections to the Motion as it pertains to the Bidding and Auction Process Procedures or the relief granted by this Bidding Procedures Order that have not been

withdrawn, waived, or settled, and all reservations of rights included therein, are hereby overruled and denied on the merits with prejudice.

I. BID PROTECTIONS

3. The Bid Protections are approved in their entirety, including, without limitation, the Termination Payment payable in accordance with, and subject to the terms of, the Stalking Horse Bid.

4. Except as expressly provided for herein for the benefit of the Stalking Horse Bidder, no other termination payments, expense reimbursements, topping fees or any other similar fee or payment are authorized or permitted under this Order.

5. The obligations of the Debtors to pay the Termination Payment to the Stalking Horse Bidder: (i) to the extent provided in the Stalking Horse Bid, shall be entitled to administrative expense claim status under sections 503(b) and/or 507(a)(2) of the Bankruptcy Code; and (ii) shall survive the termination of the Stalking Horse Bid. Absent malfeasance by the Stalking Horse Bidder, no subsequent order of the Court can modify the requirement that the Termination Payment be paid to the Stalking Horse Bidder pursuant to the terms of this Order.

6. Under no circumstances shall any portion of the deposit provided by the Stalking Horse Bidder under the terms of the Stalking Horse Bid be deemed to be property of any of the Debtors' chapter 11 estates under section 541 of the Bankruptcy Code unless and until such portion is delivered or required to be delivered to the applicable Debtor, as seller, in accordance with the terms of the Stalking Horse Bid, and such deposit shall be disbursed only in accordance with the terms of the Stalking Horse Bid. Upon termination of the Stalking Horse Bid that results in the required payment of a deposit back to the Stalking Horse Bidder, the Debtors are authorized and directed to take all steps contemplated under the Stalking Horse Bid to cause the transfer of such deposit back to the Stalking Horse Bidder.

7. The Debtors are authorized and directed to pay the Termination Payment, to the extent payable under the Stalking Horse Bid, without further order of the Court in accordance with the Stalking Horse Bid. The Termination Payment, to the extent payable under the Stalking Horse Bid, shall be paid in cash from the proceeds of any approved sale.

II. BIDDING PROCEDURES & AUCTION

8. The Bidding Procedures are hereby approved. The failure to specifically include or reference any particular provision of the Bidding Procedures in the Motion or this Bidding Procedures Order shall not diminish or otherwise impair the effectiveness of such procedures, it being this Court's intent that the Bidding Procedures are approved in their entirety as if fully set forth in this Bidding Procedures Order. The Debtors are hereby authorized to conduct the Auction pursuant to the terms of the Bidding Procedures and this Bidding Procedures Order.

9. Notwithstanding any prepetition limitations, including, without limitation, any non-disclosure, confidentiality, or similar provisions relating to any due diligence information, if the Debtors intend to provide confidential materials to Qualifying Bidders, the Debtors and their estates shall be authorized to provide due diligence information to Qualifying Bidders provided that such Qualifying Bidders (except Secured Creditors, including but not limited to Fifth Third Bank, National Association ("Fifth Third"), as Administrative Agent, Collateral Agent, Swing Line Lender, L/C Issuer, Lead Arranger, and Bookrunner, and the other participating lenders (collectively with Fifth Third, the "Prepetition Loan Lenders") have delivered an executed confidentiality agreement in form and substance acceptable to the Debtors, if such an agreement is provided to the Qualifying Bidders as part of the sale process for the particular Asset(s). The Debtors and their estates are not responsible for, and shall have no liability with respect to, any information obtained by, or provided to, any Qualifying Bidders in connection with the Bidding

Procedures or the Sale, if the information was provided in accordance with this Bidding Procedures Order.

10. For all purposes under the Bidding Procedures: (a) the Stalking Horse Bidder shall be considered a Qualifying Bidder, and any Stalking Horse Bid shall be considered a Qualifying Bid; (b) should they decide to credit bid, Secured Creditors, including but not limited to, the Prepetition Loan Lenders, shall be deemed Qualified Bidders without being required to submit information or documents required to be submitted by other Qualified Bidders and may seek to credit bid some or all of their claims within the meaning of section 363(k) of the Bankruptcy Code and to the extent demonstrated by their Secured Claim Documentation; *provided* that a Secured Creditor shall have the right to credit bid its claim only with respect to the collateral by which such secured creditor is secured and may only credit bid claims secured by a first-priority lien unless the bid is accompanied by a cash bid in an amount sufficient to satisfy all senior liens in such collateral; and (c) in determining whether the Potential Bidders constitute Qualifying Bidders, the Debtors may consider a combination of bids for the Assets and subsets thereof.

11. The Bidding Procedures shall apply to the Potential Bidders; the Qualifying Bidders; the submission, receipt, and analysis of all bids relating to the Sale; and the conduct of the Sale and the Auction.

12. A Qualifying Bidder, other than the Stalking Horse Bidder, that desires to make a bid shall deliver a written and electronic copy of its bid in **both** PDF and MS-WORD format to the Bid Package Notice Parties, so as to be received on or before **February 11, 2022, at 12:00 p.m. (ET)** (the “Bid Deadline”); *provided* that the Debtors may extend the Bid Deadline without further order of the Court, with the approval of the Prepetition Loan Lenders and subject to providing notice to the Consultation Parties. To the extent that the Bid Deadline is extended for

all parties, the Debtors shall file a notice on the docket of these Chapter 11 Cases indicating the same. **Any party that does not submit a bid by the Bid Deadline (including as extended in accordance with the prior two sentences) may not be allowed to (a) submit any offer after the Bid Deadline or (b) participate in the Auction.**

13. All persons or entities submitting a bid are deemed to have submitted to the exclusive jurisdiction of this Court with respect to all matters related to the Auction and the terms and conditions of the sale or transfer of the Assets identified under the applicable Purchase Agreement.

14. If only one Qualifying Bid is submitted for the Assets on or before the Bid Deadline, the Debtors, after consultation with the Prepetition Loan Lenders, shall not hold an Auction and shall request at the Sale Hearing that this Court approve such Qualifying Bid and the transactions contemplated thereunder for those Assets. In the event that the Debtors timely receive two or more Qualifying Bids for the same Assets, the Debtors shall conduct the Auction for the subject Assets on **February 15, 2022, at 10:00 a.m. (ET)**, at Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Rodney Square, Wilmington, Delaware 19801, and by videoconference, for parties electing to appear remotely, or such other date and time as the Debtors, after consultation with the Consultation Parties, may notify Qualifying Bidders who have submitted Qualifying Bids; *provided* that such other date and time is no earlier than one (1) business day following the delivery of such notice.

15. Each Auction Bidder shall confirm in writing that: (a) it has not engaged in any collusion with respect to the submission of any bid, the bidding or the Auction; and (b) its Qualifying Bid is a good faith *bona fide* offer that it intends to consummate if selected as a Successful Bidder. All proceedings at the Auction shall be transcribed.

16. Following the Auction, the Debtors will determine, in consultation with the Consultation Parties, which Qualifying Bid is the highest or otherwise best bid for the Assets or subsets thereof.

17. The Debtors, subject to the terms of this Bidding Procedures Order and the Bidding Procedures, shall have the right as they may reasonably determine, in consultation with the Consultation Parties, to carry out the Bidding Procedures, including, without limitation, to:

- (a) determine which bidders are Qualifying Bidders; (b) determine which bids are Qualifying Bids;
- (c) determine the Baseline Bids; (d) determine which bids are the Successful Bids and Back-Up Bids, each as it relates to the Auction; (e) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code, or (iii) contrary to the best interests of the Debtors and their estates; (f) adjourn or cancel an Auction and the Sale Hearing in open court without further notice (other than the filing of a notice of such adjournment or cancellation on the docket of these Chapter 11 Cases, which notice may be the hearing agenda in the case of a Sale Hearing) or as provided in this Bidding Procedures Order and in the Bidding Procedures; (g) modify the Bidding Procedures consistent with their fiduciary duties and bankruptcy law; and (h) withdraw the Motion as it relates to a Sale at any time with or without prejudice. Notwithstanding the foregoing, the Debtors cannot abrogate any Secured Creditors' right to credit bid under section 363(k) of the Bankruptcy Code.

III. ASSUMPTION AND ASSIGNMENT PROCEDURES

18. The following Assumption and Assignment Procedures are hereby approved:

- a. On or before **January 25, 2022**, (the "Assumption Notice Deadline"), the Debtors shall file with the Court and serve, by email, if available, or otherwise by first class mail, on each counterparty (each, a "Counterparty," and collectively, the "Counterparties") to a Target Contract and their

counsel, if known by the Debtors, a notice, substantially in the form attached to the Motion as Exhibit II (the “Assumption Notice”).

- b. The Assumption Notice shall include, without limitation, the cure amount (each, a “Cure Amount”), if any, that the Debtors believe is required to be paid to the applicable Counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy Code for each of the Target Contracts. Notwithstanding anything to the contrary herein, Cure Amounts are to be paid only by Successful Bidder(s) for, or other assignee(s) of, Target Contracts, not by the Debtors or any Prepetition Loan Lenders.
- c. If, after the Assumption Notice Deadline, additional executory contracts or unexpired leases of the Debtors are determined to be Target Contracts (such additional contracts, the “Additional Contracts”), then, as soon as practicable thereafter and in no event less than one (1) business day before the commencement of the Auction, the Debtors shall file with the Court and serve, by email (if available) or overnight delivery, on the affected Counterparties an Assumption Notice, and such Counterparties shall file any Contract Objections (as defined below) not later than: (i) the Contract Objection Deadline (as defined below), in the event that such Assumption Notice was filed and served within two (2) days of the Assumption Notice Deadline; and (ii) not less than three (3) hours prior to the commencement of the Sale Hearing, in the event that such Assumption Notice was filed and served more than two (2) days after the Assumption Notice Deadline. In either case, service of an Assumption Notice after the Assumption Notice Deadline shall be by email (if available) or overnight mail.
- d. As soon as reasonably practicable after the conclusion of the Auction, the Debtors shall file with the Court and post to the Claims Agent Website a notice identifying the Successful Bidder(s) (a “Notice of Successful Bidder”), which shall set forth, among other things, (i) the Successful Bidder(s) and Back-Up Bidder(s) (if any), (ii) the Selected Target Contracts (as defined below), and (iii) the proposed assignee(s) of such Selected Target Contracts.
- e. No later than one (1) business day after conclusion of the Auction, the Debtors will cause to be served by overnight mail or email, if available, the Notice of Successful Bidder upon each affected Counterparty and all parties requesting notice under Bankruptcy Rule 2002.
- f. If a Counterparty objects to the (i) Cure Amount for its Target Contract or (ii) Debtors’ ability to assume and assign the Target Contract, then the Counterparty must file with the Court and serve on the Objection Notice Parties (as defined below) a written objection (a “Contract Objection”). Any Contract Objection shall: (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) be filed with the Clerk of the Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801,

together with proof of service, **on or before 4:00 p.m. (ET) on February 11, 2022** (the “Contract Objection Deadline”); (iv) be served, so as to be actually received on or before the Contract Objection Deadline, upon the Objection Notice Parties; and (v) state with specificity the grounds for such objection, including, without limitation, the fully liquidated cure amount and the legal and factual bases for any unliquidated cure amount that the Counterparty believes is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code for the Target Contract, along with the specific nature and dates of any alleged defaults, any pecuniary losses resulting therefrom, and the conditions giving rise thereto. Any objections to adequate assurance of future performance by a Successful Bidder shall be filed not later the commencement of the Sale Hearing.

- g. The “Objection Notice Parties” are as follows: (i) counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: M. Blake Cleary, Esq. and Allison Mielke, Esq. (mbcleary@ycst.com and amielke@ycst.com); (ii) proposed counsel to any official committee of unsecured creditors appointed in these Chapter 11 Cases; (iii) counsel to the Debtors’ prepetition lenders, Stoll Keenon Ogden PLLC, Attn: Lea Pauley Goff, Esq. (Lea.Goff@skofirm.com), 500 West Jefferson Street, Suite 2000, Louisville, KY 40202-2828 and Attn: Amelia Martin Adams, Esq. (Amelia.Adams@skofirm.com), 300 West Vine Street, Suite 2100, Lexington, KY 40507-1801 and Stevens & Lee, P.C., Attn: Joseph H. Huston, Jr., Esq. (joseph.huston@stevenslee.com), 919 North Market Street, Suite 1300, Wilmington, DE 19801; and (iv) the U.S. Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801, Attn: Timothy J. Fox, Jr., Esq. (Timothy.J.Fox@usdoj.gov).
- h. At the Sale Hearing, the Debtors will seek Court approval of the assumption and assignment to any Successful Bidder of only those Target Contracts that have been selected by any Successful Bidder to be assumed and assigned (each, a “Selected Target Contract,” and collectively, the “Selected Target Contracts”). The Debtors and their estates reserve any and all rights with respect to any Target Contracts that are not ultimately selected as Selected Target Contracts.
- i. If no Contract Objection is timely received with respect to a Selected Target Contract, then upon the closing of the Sale and payment of any Cure Amounts set forth in the Assumption Notice: (i) the Counterparty to such Selected Target Contract shall be deemed to have consented to the assumption by the Debtors and assignment to the Successful Bidder of the Selected Target Contract and be forever barred from asserting any objection with regard to such assumption and assignment (including, without limitation, with respect to adequate assurance of future performance by the applicable Successful Bidder); (ii) any and all defaults under the Selected Target Contract and any and all pecuniary losses related thereto shall be

deemed cured and compensated pursuant to section 365(b)(1)(A) and (B) of the Bankruptcy Code; and (iii) the Cure Amount for such Selected Target Contract shall be controlling notwithstanding anything to the contrary in such Selected Target Contract or any other related document and the Counterparty shall be deemed to have consented to the Cure Amount and shall be forever barred from asserting any other claims related to such Selected Target Contract against the Debtors and their estates or any Successful Bidder, or the property of any of them, that existed prior to the entry of the Sale Order.

- j. If the parties are unable to consensually resolve any Contract Objection prior to the commencement of the Sale Hearing, including, without limitation, any dispute with respect to the cure amount required to be paid to the applicable Counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy Code (any such dispute, a “Cure Dispute”), then such Contract Objection will be adjudicated at the Sale Hearing or at such other date and time as may be determined by the Debtors and the applicable Successful Bidder or fixed by the Court; *provided*, however, that if the Contract Objection relates solely to a Cure Dispute, the Selected Target Contract may be assumed by the Debtors and assigned to any Successful Bidder provided that any undisputed portion of the cure amount is paid upon the effective date of the assumption and assignment of the Selected Target Contract and any disputed portion of the cure amount that the Counterparty asserts is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code (or such lower amount as agreed to by the Counterparty) is deposited in a segregated account by the Debtors or the applicable Successful Bidder pending the Court’s adjudication of the Cure Dispute or the parties’ consensual resolution of the Cure Dispute. If the parties are unable to consensually resolve a Cure Dispute, the Debtors shall file and serve a notice for a hearing for the Court to consider the applicable Cure Dispute at the next scheduled omnibus hearing, which shall be at least fourteen (14) days from the date of the filing of the notice unless the Debtors and the objection Counterparty agree to an earlier hearing. The disputed portion of a cure amount shall be paid to the applicable Counterparty within seven (7) days of the resolution of the Cure Dispute.
- k. Notwithstanding anything to the contrary herein, if after the Sale Hearing or the entry of the Sale Order, additional executory contracts or unexpired leases of the Debtors are determined to be Target Contracts, then as soon as practicable thereafter, the Debtors shall file with the Court and serve an Assumption Notice by overnight delivery, on the impacted Counterparties, and such Counterparties shall file any Contract Objections not later than seven (7) days thereafter. If no Contract Objection is timely received, the Debtors shall be authorized to assume and assign such Target Contracts to any Successful Bidder without further notice to creditors or other parties in interest and without the need for further order of the Court, and such

assumption and assignment shall be subject to the terms of the Sale Order and paragraph 18(i) above.

19. The Debtors' decision to assume and assign any Target Contract is subject to this Court's further approval and the closing of the Sale. Accordingly, absent this Court's approval and the closing of the Sale, no Target Contracts shall be deemed assumed or assigned, and shall in all respects be subject to further administration by the Debtors and their estates under the Bankruptcy Code in connection with these Chapter 11 Cases.

20. The Assumption and Assignment Procedures are appropriate and fair to all Counterparties. The Assumption Notice is: (a) reasonably calculated to (i) provide sufficient, effective notice to all Counterparties and any other affected parties of the Debtors' intent to assume and assign to any Successful Bidder some or all of the Target Contracts and (ii) afford the Counterparties the opportunity to exercise any rights impacted by the Motion and the relief granted by this Bidding Procedures Order pursuant to Bankruptcy Rules 2002(a)(2), 6004, and 6006; and (b) hereby approved.

21. The inclusion of a contract, lease, or other agreement on an Assumption Notice shall not constitute or be deemed a determination or admission by the Debtors and their estates or any other party in interest that such contract, lease, or other agreement is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code, and any and all rights of all parties with respect thereto shall be reserved. Notwithstanding anything to the contrary herein, for the avoidance of doubt, the Debtors may not assume or assign any contracts that they have with the Prepetition Loan Lenders.

22. As part of its bid, each Qualifying Bidder must provide the Debtors information supporting the Qualifying Bidder's ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section

365(b)(3) of the Bankruptcy Code (the “Adequate Assurance Information”), including (a) the bidder’s financial wherewithal and willingness to perform under any Target Contracts that are assumed and assigned to such potential bidder; (b) the name of the proposed counterparty that will act as the assignee of any Target Contract; and (c) a contact person for the proposed assignee that the Counterparty may directly contact in connection with the adequate assurance of future performance. To the extent available, the Adequate Assurance Information may also include (x) a corporate organization chart or similar disclosure identifying ownership and control of the proposed assignee and (y) financial statements, tax returns, and annual reports. Furthermore, given that the Debtors will submit evidence at the Sale Hearing that all requirements for the assumption and assignment of the Selected Target Contracts have been satisfied, the Court and other interested parties will have the opportunity to evaluate the ability of each Successful Bidder to provide adequate assurance of future performance.

23. The Debtors, the Consultation Parties, and the Counterparties to any Target Contracts included in an applicable bid shall keep confidential all Adequate Assurance Information provided to them and shall be permitted to use and disclose such Adequate Assurance Information only as provided in this Bidding Procedures Order unless the Qualifying Bidder that provided such Adequate Assurance Information otherwise consents in writing. Each Counterparty in receipt of Adequate Assurance Information shall review the Adequate Assurance Information received on a confidential basis and shall not disclose the Adequate Assurance Information except as expressly provided in this Paragraph. Such Counterparty may not use or disclose, except to representatives, attorneys, advisors, and financing sources (collectively, “Representatives”), any confidential Adequate Assurance Information for any purpose other than: (a) evaluating whether adequate assurance of future performance as required under section 365(f)(2)(B) and, if applicable, section

365(b)(3) of the Bankruptcy Code has been provided; (b) in support of any objection (the “Assignment Objection”) (subject to the limitations on disclosure set forth herein) by such Counterparty relating to adequate assurance of future performance; and (c) if the proposed assignee is successful and becomes a party to the Target Contract, on a confidential basis, in the ordinary course of the contractual relationship. Any Assignment Objection that includes confidential, non-public Adequate Assurance Information must be filed under seal unless disclosure of such confidential, non-public information is authorized by the Debtors and the applicable assignee(s). This Bidding Procedures Order authorizes the filing of any such Assignment Objections under seal, and on the docket with such non-public information redacted, without further order of this Court; *provided*, that unredacted versions of such Assignment Objections shall be served upon the Debtors, Consultation Parties, and the U.S. Trustee, with a copy to the Court’s chambers; *provided, further*, that parties shall have a period of ten (10) business days after the filing of any redacted Assignment Objection to object to the sealing of any information. Any Representative receiving Adequate Assurance Information shall be notified and shall agree to be bound by the restrictions set forth in this Bidding Procedures Order.

IV. NOTICE PROCEDURES FOR THE SALE

24. The Assumption Notice, the Sale Notice, the Bidding Procedures, the Auction, the Sale Hearing, the Assumption and Assignment Procedures, and the objection periods associated with each of the foregoing are reasonably calculated to provide notice to any affected party and afford the affected party the opportunity to exercise any rights affected by the Motion as it relates to the Bidding Procedures, Auction, the Sale, and the Sale Hearing.

25. The assumption and assignment to the Successful Bidder of the Target Contracts pursuant to Bankruptcy Rules 2002(a)(2), 6004, and 6006, and such notice and objection periods are hereby approved.

26. Within two (2) business days of the entry of this Bidding Procedures Order, the Debtors shall file the Sale Notice in these Chapter 11 Cases and serve, email (if available) or first class mail, the Sale Notice on: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to the Prepetition Loan Lenders, Stoll Keenon Ogden PLLC, Attn: Lea Pauley Goff, Esq. (Lea.Goff@skofirm.com), 500 West Jefferson Street, Suite 2000, Louisville, KY 40202-2828 and Attn: Amelia Martin Adams, Esq. (Amelia.Adams@skofirm.com), 300 West Vine Street, Suite 2100, Lexington, KY 40507-1801 and Stevens & Lee, P.C., Attn: Joseph H. Huston, Jr., Esq. (joseph.huston@stevenslee.com), 919 North Market Street, Suite 1300, Wilmington, DE 19801; (iii) all parties known by the Debtors to assert a lien on or security interest in any of the Assets; (iv) the Office of the United States Attorney for the District of Delaware; (v) the Office of the Attorney General in each state in which the Debtors operate or sell their goods; (vi) the Office of the Secretary of State in each state in which the Debtors operate or are organized; (vii) all taxing authorities having jurisdiction over any of the Assets, including the Internal Revenue Service; (viii) all environmental authorities having jurisdiction over any of the Assets, including the Environmental Protection Agency; (ix) all of the Debtors' other known creditors and equity security holders, including the Counterparties; (x) all other parties that had filed a notice of appearance and demand for service of papers in these Chapter 11 Cases as of the service date; and (xi) proposed counsel to the Official Committee of Unsecured Creditors; and (xii) all persons known or reasonably believed to have expressed an interest in acquiring all or a substantial portion of the Assets of the Debtors within twelve (12) months prior to the Petition Date (each, an "Interested Person"); *provided*, however, that the Debtors need not serve the Sale Notice on any Interested Person for whom the Debtors are unable to obtain, after reasonable diligence, an email

or physical address as of the entry of this Bidding Procedures Order (collectively, the “Sale Notice Parties”).

27. In addition, the Debtors will upload an electronic copy of the Sale Notice to the Data Room. The Debtors will also post the Sale Notice and the Bidding Procedures Order on the website of the Debtors’ claims and noticing agent, <https://dm.epiq11.com/BHCosmetics>.

V. SALE HEARING

28. The Debtors will file and serve a proposed Sale Order **on or before 4:00 p.m. (ET) on February 1, 2022**. Any objections to the Sale or the relief requested in connection with the Sale (a “Sale Objection”), other than a Contract Objection, which shall be governed by the Assumption and Assignment Procedures, must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) set forth the specific basis for the Sale Objection; (d) be filed with the Clerk of this Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, together with proof of service, **on or before 4:00 p.m. (ET) on February 7, 2022** (the “Sale Objection Deadline”); and (e) be served, so as to be actually received on or before the Sale Objection Deadline, upon the Objection Notice Parties.

29. Failure to file a Sale Objection on or before the Sale Objection Deadline (a) shall forever bar the assertion, whether at any Sale Hearing or thereafter, of any objection to the Motion, to entry of the Sale Order, and to the consummation and performance of the Sale contemplated by a Purchase Agreement with a Successful Bidder, and (b) for purposes of section 363(f)(2) of the Bankruptcy Code, shall be deemed to be “consent” to entry of the Sale Order and consummation of the Sale and all transactions related thereto.

30. The Debtors shall have until **5:00 p.m. (ET) on the day prior to the Sale Hearing** to file and serve a reply to any objection filed in connection with the Sale, including any Sale Objection or Contract Objection.

31. The Sale Hearing shall be held before this Court on **February 17, 2022, at** _____ **.m.** (prevailing Eastern Time) before the Honorable _____, United States Bankruptcy Judge for the Bankruptcy Court for the District of Delaware, at 824 North Market Street, ____th Floor, Courtroom No. _____, Wilmington, Delaware 19801.

VI. MISCELLANEOUS

32. The Debtors are authorized to conduct the Sale without the necessity of complying with any state or local bulk transfer laws or requirements.

33. In the event that there is a conflict between this Bidding Procedures Order and the Bidding Procedures, this Bidding Procedures Order shall control and govern.

34. Prior to mailing the Assumption Notice and Sale Notice, as applicable, the Debtors may fill-in, or cause to be filled in, any missing dates and other information, correct any typographical errors, conform the provisions thereof to the provisions of this Bidding Procedures Order, and make such other, non-material changes as the Debtors deems necessary or appropriate.

35. All persons or entities that participate in the Sale shall be deemed to have knowingly and voluntarily: (a) consented to the entry of a final order by this Court in connection with the Motion or this Bidding Procedures Order (including any disputes relating to the bidding process, the Auction, or any Sale) to the extent that it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution; and (b) waived any right to jury trial in connection with any disputes relating to the any of the foregoing matters.

36. For purposes of section 363(b)(1) of the Bankruptcy Code, if the Debtors seek to transfer any personally identifiable information about individuals through or in connection with a Sale, the Debtors will promptly notify the United States Trustee appointed in these cases, who will determine whether appointment of a consumer privacy ombudsman is required.

37. This Bidding Procedures Order shall be effective immediately upon entry and any stay of orders provided for in Bankruptcy Rules 6004(h) or 6006(d) or any other provision of the Bankruptcy Code, the Bankruptcy Rules, or the Local Rules is expressly waived. The Debtors are not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Bidding Procedures Order and may, in their reasonable discretion and without further delay, take any action and perform any act authorized or approved under this Bidding Procedures Order. Further, to the extent applicable, the requirements of Bankruptcy Rule 6006(e) are hereby waived.

38. The requirements set forth in Local Rules 6004-1, 9006-1, and 9013-1 are hereby satisfied or waived.

39. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation or interpretation of the Order.

EXHIBIT A

Bidding Procedures

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

BHCOSMETICS HOLDINGS, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 22-____ (____)

(Jointly Administered)

BIDDING PROCEDURES

On January 14, 2022 (the “Petition Date”), BHCosmetics Holdings, LLC and its affiliated debtors and debtors in possession (collectively, the “Debtors”), filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code.

On [●], 2022, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered an order [Docket No. [●]] (the “Bidding Procedures Order”), which, among other things, authorized the Debtors to solicit bids and approved these procedures (collectively, the “Bidding Procedures”) to be employed by the Debtors in connection with a sale of substantially all of their assets, including but not limited to the tradename and related intellectual property, inventory, non-residential real property leases, executory contracts, furniture, fixtures and equipment and any other miscellaneous assets (collectively, the “Assets”), or components thereof.

Any party interested in bidding on the Assets should contact (i) for furniture, fixtures and equipment, Robert Raskin or Ziggy Schaffer at SB360 by email at rraskin@sb360.com or zschafter@sb360.com; and (ii) for intangible property, David Peress, Richelle Kalnit, or Jordon Parker at Hilco Streambank by email at dperess@hilcoglobal.com, rkalnit@hilcoglobal.com, or jparker@hilcoglobal.com.

1. Summary of Important Dates

Deadline to Serve Assumption Notice	January 25, 2022
Deadline to File Proposed Sale Order	February 1, 2022
Deadline to Object to Assumption Notice	February 11, 2022 at 4:00 p.m. (ET)

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: BHCosmetics Holdings, LLC (7827); BHCosmetics Intermediate, LLC (2918); BHCosmetics, LLC (9106); and Visceral Agency LLC (9266). The Debtors’ service address for purposes of these chapter 11 cases is 8161 Lankershim Blvd., North Hollywood, CA 91605.

Bid Deadline	February 11, 2022 at 12:00 p.m. (ET)
Deadline to Object to Sale (other than with respect to the conduct of the Auction and designation of a Successful Bidder)	February 11, 2022 at 4:00 p.m. (ET)
Deadline to Object to Adequate Assurance of Stalking Horse	February 11, 2022 at 4:00 p.m. (ET)
Auction Commencement	February 15, 2022 at 10:00 a.m. (ET)
Deadline To Object to Conduct of Auction, Designation of Successful Bidders, and Adequate Assurance	At the Sale Hearing
Proposed Sale Hearing	February 17, 2022 at a time TBD
Closing Date	February 24, 2022, which may be extended in consultation with the Consultation Parties

2. Assets to be Sold

The Debtors are offering for sale all of the Assets.² Potential Bidders (as defined below) may bid on all or any number or combination of the Assets.

3. Participation Requirements

Any person or entity that wishes to participate in the bidding process for the Assets (each, a “Potential Bidder”) must first become a “Qualifying Bidder.” To become a Qualifying Bidder, a Potential Bidder must submit to the Debtors and their advisors:

- (a) documentation identifying the Potential Bidder, its principals, and the representatives thereof who are authorized to appear and act on its behalf for all purposes regarding the contemplated Sale;
- (b) an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtors, which by its terms will inure to the benefit of the Successful Bidder(s), if the Debtors intend to provide confidential materials to the Potential Bidder;
- (c) a statement and other factual support demonstrating to the Debtors’ reasonable satisfaction that the interested party has a bona fide interest in consummating a

² After consultation with the Consultation Parties, the Debtors may withdraw any Asset for sale or provide a different process if the Debtors reasonably believe in their business judgment that the recovery on such assets may be meaningfully improved if sold pursuant to a different procedure than the ones set forth herein.

Sale on or before **February 24, 2022**;

- (d) sufficient information, as determined by the Debtors, to allow the Debtors to determine that the interested party (i) has, or can obtain, the financial wherewithal and any required internal corporate, legal, or other requisite authorizations to close a Sale on or before **February 24, 2022**, and (ii) can provide adequate assurance of future performance under any executory contracts and unexpired leases to be assumed by the Debtors and assigned to such bidder, pursuant to section 365 of the Bankruptcy Code, in connection with a Sale; and
- (e) a non-binding written indication of interest identifying the Assets that the party is interested in purchasing.

Each Potential Bidder shall comply with all reasonable requests for information and due diligence access by the Debtors, each of the Consultation Parties (as defined below), or their advisors regarding the ability of such Potential Bidder, as applicable, to consummate its contemplated Sale. The Debtors shall share the information submitted by each Potential Bidder with the Consultation Parties upon their reasonable request.

Notwithstanding anything to the contrary herein, and for the avoidance of doubt, for all purposes under the Bidding Procedures: (i) the Stalking Horse Bidder (as defined below) shall be considered a Qualifying Bidder and a Stalking Horse Bid (as defined below) shall be considered a Qualifying Bid upon receipt of such Stalking Horse Bidder's Deposit (as defined below); and (ii) the Debtors may consider a combination of bids for the Assets in determining whether the Potential Bidders constitute Qualifying Bidders.

Notwithstanding anything to the contrary herein, and for the avoidance of doubt, for all purposes under the Bidding Procedures, any Secured Creditor (as defined below) shall automatically be considered a Qualifying Bidder without the submission of information or documents otherwise required of other Qualifying Bidders, and any Secured Creditor's credit bid shall be considered a Qualifying Bid without meeting the foregoing requirements in this Section 3 or otherwise.

4. Bankruptcy Court Jurisdiction

Any Potential Bidder shall (i) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating the Bidding Procedures, the Sale, the Auction, and the construction and enforcement of the contemplated Sale documents of the Auction Bidders (as defined below), (ii) bring any such action or proceeding in the Court, and (iii) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law.

5. Due Diligence

The Debtors will provide any Qualifying Bidder with reasonable access to information that the Debtors believe to be reasonable and appropriate under the circumstances, and the Debtors will provide the Prepetition Loan Lenders any information that the Prepetition Loan Lenders may reasonably request regarding the Debtors' Assets, operations, and other issues related to the Debtors' liquidation. **All additional due diligence requests shall be directed to: (i) for furniture, fixtures, and equipment, Robert Raskin or Ziggy Schaffer at SB360 by email at rraskin@sb360.com or zschafer@sb360.com; and (ii) for intangible property, David Peress, Richelle Kalnit, or Jordon Parker at Hilco Streambank by email at dperess@hilcoglobal.com, rkalnit@hilcoglobal.com, or jparker@hilcoglobal.com.**

The due diligence period shall extend through and include the Bid Deadline (as defined below). The Debtors may, but shall not be obligated to, in their sole discretion, furnish any due diligence information after the Bid Deadline. The Debtors reserve the right, in their reasonable discretion, to withhold or limit access to any due diligence information that the Debtors determine is not appropriate for disclosure to a Qualifying Bidder (who is not also a Secured Creditor). Notwithstanding any prepetition limitations, including, without limitation, any non-disclosure, confidentiality, or similar provisions relating to any due diligence information, the Debtors and their estates shall be authorized to provide due diligence information to Qualifying Bidders provided that such Qualifying Bidders have delivered an executed confidentiality agreement in form and substance acceptable to the Debtors, if such an agreement is provided to the Qualifying Bidders as part of the sale process for the particular Asset(s). The Debtors and their estates are not responsible for, and shall have no liability with respect to, any information obtained by, or provided to, any Qualifying Bidders in connection with the Bidding Procedures and a contemplated Sale.

6. Bid Requirements

Other than in the case of a bid submitted by the Stalking Horse Bidder or a credit bid by a Secured Creditor, to be deemed a "Qualifying Bid," a bid must be received from a Qualifying Bidder on or before the Bid Deadline and satisfy each of the following requirements, as determined by the Debtors in consultation with the Consultation Parties (each, a "Bid Requirement"):

- (a) be in writing;
- (b) fully disclose the identity of the Qualifying Bidder (and any other party participating in the bid) and provide the contact information of the specific person(s) whom the Debtors or their advisors should contact in the event that the Debtors have any questions or wish to discuss the bid submitted by the Qualifying Bidder;
- (c) set forth the purchase price to be paid by such Qualifying Bidder for the Assets in question;

- (d) if a bid includes a credit bid under section 363(k) (other than a bid by the Prepetition Loan Lenders), evidence of the amount of the claim, the Assets constituting the collateral securing the claim, and evidence of the grant, perfection, priority, and validity of the lien (the “Secured Claim Documentation”);
- (e) not propose payment in any form other than cash (except as otherwise expressly set forth in these Bidding Procedures and the Bidding Procedures Order);
- (f) if applicable, state the liabilities proposed to be paid or assumed by such Qualifying Bidder;
- (g) specify the Assets that are included in the bid and state that such Qualifying Bidder offers to purchase the applicable Assets;
- (h) state that such Qualifying Bidder’s offer is formal, binding, and unconditional and is irrevocable until two (2) business days after the closing of the sale of the Assets;
- (i) state that such Qualifying Bidder is financially capable of consummating the Sale contemplated by the bid by **February 24, 2022**, and provide written evidence in support thereof;
- (j) contain such financial and other information to allow the Debtors to make a reasonable determination as to the Qualifying Bidder’s financial and other capabilities to close the Sale contemplated by the proposal by **February 24, 2022**, including, without limitation, such financial and other information supporting the Qualifying Bidder’s ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code, including the Qualifying Bidder’s financial wherewithal and willingness to perform under any Target Contracts that are assumed and assigned to the Qualifying Bidder, in a form that allows the Debtors to serve, within one (1) business day after such receipt, such information on any counterparties to any contracts or leases being assumed and assigned (or assumed) in connection with the Sale that have requested, in writing, such information;
- (k) identify with particularity every executory contract and unexpired lease the assumption and assignment of which is a condition to close the contemplated Sale;
- (l) a commitment to close the Sale by **February 24, 2022**, or such other date as agreed to by the Debtors in consultation with the Consultation Parties;
- (m) not request or entitle such Qualifying Bidder to any break-up fee, termination fee, expense reimbursement, or similar type of fee or payment;
- (n) provide aggregate consideration which either when considered alone or in combination with other Qualifying Bidders equals or exceeds the sum of (A) the purchase price under the Stalking Horse Bid, (B) any Break-Up Fee (as defined

below), (C) any Expense Reimbursement (as defined below), and (D) \$100,000, unless otherwise agreed by the Debtors in consultation with the Consultation Parties;

- (o) not contain any contingencies of any kind, including, without limitation, contingencies related to financing, internal approval, or due diligence;
- (p) contain a written acknowledgement and representation that the Qualifying Bidder (i) has had an opportunity to conduct any and all due diligence regarding the Assets in question, (ii) has relied solely upon its own independent review, investigation, and inspection of any documents and other information in making its Qualifying Bid, and (iii) 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 documents or other information provided in connection with the Bidding Procedures and the proposed Sale;
- (q) provides for the Qualifying Bidder to serve as a backup bidder (the “Back-Up Bidder”) if the Qualifying Bidder’s bid is the next highest or best bid (the “Back-Up Bid”) after the Successful Bid (as defined below) for the applicable Assets;
- (r) includes a copy of an asset purchase agreement (in **both** PDF and MS-WORD format) acceptable to the Debtors and the Prepetition Loan Lenders reflecting the terms and conditions of its bid, which agreement must be marked to show any proposed amendments and modifications to the form of purchase agreement posted by the Debtors in the Data Room.
- (s) includes written evidence of authorization and approval with respect to the submission, execution, and delivery of the subject term sheet;
- (t) provides a good faith cash deposit (the “Deposit”) in an amount equal to ten percent (10%) of the cash purchase price stated in the proposal (or such additional amount as may be determined by the Debtors in their reasonable discretion and in consultation with the Consultation Parties) to be held in a noninterest-bearing escrow account to be identified and established by the Debtors; and
- (u) provides for liquidated damages in the event of the Qualifying Bidder’s breach of, or failure to perform under, the modified Purchase Agreement equal to the amount of the Deposit.

The Debtors reserve the right, in consultation with the Consultation Parties, to negotiate with any Qualifying Bidder in advance of the Auction to cure any deficiencies in a bid that is initially deemed not a Qualifying Bid.

Each Qualifying Bidder submitting a bid shall be deemed to: (a) acknowledge and represent that it is bound by all of the terms and conditions of the Bidding Procedures and (b) have

waived the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the submission of its bid, the Bidding Procedures, and a Sale.

7. Bid Deadline

A Qualifying Bidder, other than the Stalking Horse Bidder, that desires to make a bid shall deliver a written and electronic copy of its bid in **both** PDF and MS-WORD format to (i) counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: M. Blake Cleary, Esq. and Allison Mielke, Esq. (mbcleary@ycst.com and amielke@ycst.com); (ii) proposed counsel to any official committee of unsecured creditors appointed in these Chapter 11 Cases; (iii) counsel to the Debtors' prepetition lenders, Stoll Keenon Ogden PLLC, Attn: Lea Pauley Goff, Esq. (Lea.Goff@skofirm.com), 500 West Jefferson Street, Suite 2000, Louisville, KY 40202-2828 and Attn: Amelia Martin Adams, Esq. (Amelia.Adams@skofirm.com), 300 West Vine Street, Suite 2100, Lexington, KY 40507-1801 and Stevens & Lee, P.C., Attn: Joseph H. Huston, Jr., Esq. (joseph.huston@stevenslee.com), 919 North Market Street, Suite 1300, Wilmington, DE 19801; and (iv) (a) for furniture, fixtures and equipment, Robert Raskin or Ziggy Schaffer at SB360 by email at rraskin@sb360.com or zschafter@sb360.com; and (b) for intangible property, David Peress, Richelle Kalnit, or Jordon Parker at Hilco Streambank by email at dperess@hilcoglobal.com, rkalnit@hilcoglobal.com, or jparker@hilcoglobal.com (collectively, the "Bid Package Notice Parties"), so as to be received on or before **February 11, 2022, at 12:00 p.m. (ET)** (the "Bid Deadline"); *provided* that the Debtors may extend the Bid Deadline without further order of the Court, subject to providing notice to the Consultation Parties. To the extent that the Bid Deadline is extended for all parties, the Debtors shall file a notice on the docket of these Chapter 11 Cases indicating the same. **Any party that does not submit a bid by the Bid Deadline (including as extended in accordance with the prior two sentences) may not be allowed to (a) submit any offer after the Bid Deadline or (b) participate in the Auction, except as agreed otherwise by the Debtors and the Prepetition Loan Lenders.**

8. Evaluation of Qualifying Bids

The Debtors shall deliver by no later than 5:00 p.m. (ET) on the day of the Bid Deadline, copies of all bids from Qualifying Bidders to each of the Consultation Parties.

The Debtors, in consultation with the Consultation Parties, shall make a determination regarding whether a timely submitted bid from a Qualifying Bidder is a Qualifying Bid and shall notify all Qualifying Bidders whether their bids have been determined to be a Qualifying Bid by no later than 8:00 p.m. (ET) on the day before the commencement of the Auction. In the event that a bid is determined not to be a Qualifying Bid, including with respect to any proposed credit bid amount, the Non-Qualifying Bidder shall be notified by the Debtors and shall have until the commencement of the Auction to modify its bid to increase the purchase price or otherwise improve the terms of the Qualifying Bid for the Debtors and to provide additional Secured Claim Documentation; provided that any Qualifying Bid may be improved at the Auction as set forth herein.

Prior to commencing the Auction, the Debtors shall determine, in consultation with the Consultation Parties, which of the Qualifying Bids, at such time, is the highest or best bid as

to the applicable Assets for purposes of constituting the opening bid of the Auction (each a “Baseline Bid” and the Qualifying Bidder(s) submitting each such Baseline Bid, a “Baseline Bidder”) and shall notify the Stalking Horse Bidder and all Qualifying Bidders with Qualifying Bids of the Baseline Bid or Baseline Bids no later than the opening of the Auction.

9. No Qualifying Bids

If no timely Qualifying Bids—other than the Stalking Horse Bidder’s Qualifying Bid—are submitted on or before the Bid Deadline, the Debtors, after consultation with the Prepetition Loan Lenders, shall not hold an Auction and shall request at the Sale Hearing that the Stalking Horse Bidder be deemed the Successful Bidder (as defined below) and that the Court approve the Stalking Horse Bid, and the Sales contemplated thereunder.

10. Right to Credit Bid

The Prepetition Loan Lenders and any party who has a valid, perfected and enforceable lien on any Assets of the Debtors’ estates that is not subject to an objection filed in these Chapter 11 Cases by the commencement of the Auction (a “Secured Creditor”) shall have the right to credit bid all or a portion of the value of such Secured Creditor’s claim within the meaning of section 363(k) of the Bankruptcy Code and to the extent demonstrated by the Secured Claim Documentation; *provided* that a Secured Creditor shall have the right to credit bid its claim only with respect to the collateral by which such Secured Creditor is secured by a first-priority lien (subject to any agreed carve-outs); *provided, further*, that if the Secured Creditor’s lien is subsequently avoided, then such Qualified Bidder shall be subject to disgorgement.

11. Auction

If the Debtors timely receive one or more Qualifying Bids for any of the Assets (inclusive of the Stalking Horse Bidder’s Qualifying Bid), then the Debtors shall conduct an auction (the “Auction”). Following the Auction, the Debtors will determine, in consultation with the Consultation Parties, which Qualifying Bid is the highest or best bid for the Assets or subsets thereof, which will be determined by considering, among other things, the following non-binding factors:

- i. the terms of the Purchase Agreement requested by each Auction Bidder;
- ii. the extent to which such terms are likely to delay closing of a Sale beyond February 24, 2022, the cost to the Debtors and their estates of such modifications or delay, and any incremental financing being offered to accommodate any delay;
- iii. the total consideration to be received by the Debtors and their estates and the return to the Secured Creditors;
- iv. the Sale structure and execution risk, including conditions to, timing of, and certainty of closing, termination provisions, availability of financing and

financial wherewithal to meet all commitments, and required governmental or other approval;

- v. the net benefit to the Debtors' estates, except that any Break-Up Fee and any Expense Reimbursement provided for in the Stalking Horse Bid shall not be taken into account, nor shall the Stalking Horse Bidder be permitted to credit bid any portion of any Break-Up Fee or any Expense Reimbursement;
- vi. the impact on interested parties, including, but not limited to, Secured Creditors, employees, landlords, and vendors; and
- vii. any other factors the Debtors, in consultation with the Consultation Parties may reasonably deem relevant.

The Auction shall be governed by the following procedures:

- i. the Auction shall commence on **February 15, 2022, at 10:00 a.m. (ET)** (the "Auction Date"), at Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Rodney Square, Wilmington, Delaware 19801 and virtually by videoconference for parties electing to appear remotely;
- ii. only the Stalking Horse Bidder and the other Qualifying Bidders with Qualifying Bids (collectively, the "Auction Bidders") shall be entitled to make any bids at the Auction;
- iii. the Auction Bidders shall appear in person at the Auction or by videoconference, on camera, through a duly authorized representative;
- iv. only the Debtors, the Auction Bidders, the Consultation Parties, and members of any official committee of unsecured creditors, and the professional advisors to each of the foregoing parties, may attend the Auction; provided that any creditors and equity holders who are not among the Consultation Parties desiring to attend the Auction must provide one (1) business day's written notice of their intent to attend the Auction to counsel for the Debtors;
- v. the Debtors and their professional advisors shall direct and preside over the Auction, which shall be transcribed;
- vi. the Auction Bidders shall confirm that they have not engaged in any collusion with respect to the Bidding Procedures, the Auction, or the Sale;
- vii. bidding shall commence at the amount of the Baseline Bid or Baseline Bids, and the Auction Bidders may submit successive bids in increments to be identified at or prior to the commencement of the Auction, which may include sealed bids (the "Bid Increment"); *provided* that: (i) each such successive bid must be a Qualifying Bid; (ii) if the then-highest or best bid

was made by the Stalking Horse Bidder, such bid shall be deemed to include the sum of the amount of (A) the Break-Up Fee and (B) the Expense Reimbursement (meaning the amount of the Break-Up Fee and Expense Reimbursement will be deemed included in each bid of the Stalking Horse Bidder); and (iii) the Debtors, in consultation with the Consultation Parties, reserve the right to modify the Bid Increment during the course of the Auction and shall do so on the record at the Auction; *provided*, however, that Bid Increments shall not include sealed bids during the first three complete rounds of bidding;

- viii. the Auction may include individual negotiations with any of the Auction Bidders, but all bids shall be made on the record and in the presence of all of the Auction Bidders;
- ix. all material terms of the bid that is deemed to be the highest or best bid for the Assets or a specific subset thereof for each round of bidding shall be fully disclosed to the Auction Bidders, and the Debtors shall use reasonable efforts to clarify any and all questions that the Auction Bidders may have regarding the Debtors' announcement of the then-current highest or best bid or bids;
- x. the Debtors and their professional advisors, in consultation with the Consultation Parties, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make subsequent bids or to move to an open outcry or sealed bid format, or a combination thereof) for conducting the Auction, provided that such rules are (i) not inconsistent with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or any applicable order of the Court entered in connection with these Chapter 11 Cases, including, without limitation, the Bidding Procedures Order, and (ii) disclosed to the Auction Bidders;
- xi. any Potential Bidder shall (i) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating the Bidding Procedures, the Sale, the Auction, and the construction and enforcement of the contemplated Sale documents of the Auction Bidders, (ii) bring any such action or proceeding in the Court, and (iii) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law;
- xii. Auction Bidders shall have the right to make additional modifications to their respective Purchase Agreements or the Stalking Horse Bid, as applicable, in conjunction with each Qualifying Bid submitted in each

round of bidding during the Auction, provided that (i) any such modifications on an aggregate basis and viewed in whole, shall not, in the Debtors' discretion, in consultation with the Consultation Parties, be less favorable to the Debtors and their estates than the terms of the Auction Bidders' respective Purchase Agreements or the Stalking Horse Bid, as applicable, and (ii) each Qualifying Bid shall constitute an irrevocable offer and shall be binding on the Auction Bidder submitting such bid until such party shall have submitted a subsequent Qualifying Bid at the Auction or the conclusion of the Sale Hearing, whichever occurs sooner, unless such bid is selected as the Successful Bid or the Back-Up Bid, which shall remain binding as provided for herein;

- xiii. the Debtors and the Consultation Parties shall have the right to request any additional financial information that will allow the Debtors and the Consultation Parties to make a reasonable determination as to an Auction Bidder's financial and other capabilities to consummate the Sales contemplated by their proposal or the Stalking Horse Bid, as applicable, as may be amended during the Auction, and any further information that the Debtors, in consultation with the Prepetition Loan Lenders may believe is reasonably necessary to clarify and evaluate any bid made by an Auction Bidder during the Auction;
- xiv. upon the conclusion of the Auction, the Debtors shall determine, in consultation with the Consultation Parties and subject to Court approval, the offer or offers for the Assets that is or are the highest or best from among the Qualifying Bids submitted at the Auction, which may be the Stalking Horse Bid or a credit bid (each a "Successful Bid"). In making this decision, the Debtors shall consider, in consultation with the Consultation Parties, the amount of the purchase price, the particular assets to be sold, the likelihood of the bidder's ability to close a Sale and the timing thereof, the nature and impact of any variances from the form Purchase Agreement requested by each bidder, and the net benefit to the Debtors' estates and Secured Creditors. The bidders submitting such Successful Bids, which may be the Stalking Horse Bidder or credit bidder, shall each become a "Successful Bidder," and shall have such rights and responsibilities of the purchaser as set forth in the subject Purchase Agreement, as applicable. The Debtors may, in their sole discretion and in consultation with the Consultation Parties, designate Back-Up Bids (and corresponding Back-Up Bidders) to purchase the applicable Assets in the event that the Successful Bidder or Successful Bidders do not close the Sale;
- xv. prior to the Sale Hearing, each Successful Bidder shall complete and execute all agreements, contracts, instruments, and other documents evidencing and containing the terms and conditions upon which the applicable Successful Bid was made; and

- xvi. as soon as reasonably practicable after the conclusion of the Auction, the Debtors shall file with the Court and post to the Claims Agent Website a notice identifying the Successful Bidder(s) (the “Notice of Successful Bidder”), which shall set forth, among other things, (i) the Successful Bidder(s) and Back-Up Bidder(s) (if any), (ii) the executory contract(s) and/or unexpired lease(s) to be assumed and assigned to such Bidder(s), and (iii) the proposed assignee(s) of such executory contract(s) and unexpired lease(s). No later than one (1) business day after the conclusion of the Auction, the Debtors will cause the Notice of Successful Bidder to be served by overnight mail or email, where available, upon all counterparties to such executory contract(s) and unexpired lease(s) proposed to be assumed and all parties requesting notice under Bankruptcy Rule 2002.

EACH SUCCESSFUL BID AND ANY BACK-UP BIDS SHALL EACH CONSTITUTE AN IRREVOCABLE OFFER AND BE BINDING ON THE APPLICABLE SUCCESSFUL BIDDER AND ANY BACK-UP BIDDER, RESPECTIVELY, FROM THE TIME THE BID IS SUBMITTED UNTIL TWO (2) BUSINESS DAYS AFTER THE SALE HAS CLOSED. EACH QUALIFYING BID THAT IS NOT A SUCCESSFUL BID OR BACK-UP BID SHALL BE DEEMED WITHDRAWN AND TERMINATED AT THE CONCLUSION OF THE SALE HEARING.

12. Bid Protections to the Stalking Horse Bidder.

The Stalking Horse Bidder shall be granted the right to a Termination Payment comprising a break-up fee of \$194,000, plus reimbursement for up to \$150,000 of expenses, as set forth in more detail in the Stalking Horse Bid.

13. Sale Hearing and Closing

Each Successful Bid and any Back-Up Bid (or if no Qualifying Bid other than that of the Stalking Horse Bidder is received, then the Stalking Horse Bid) will be subject to approval by the Court. The hearing to approve each Successful Bid and any Back-Up Bid (the “Sale Hearing”) shall take place on **February 17, 2022, at a time to be determined**. The Sale Hearing may be adjourned by the Debtors from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or by filing a hearing agenda or notice on the docket of the Chapter 11 Cases. **For the avoidance of doubt, by no later than the time of announcement of any Baseline Bid for the Auction, the Debtors may determine, in consultation with the Consultation Parties, to withdraw the Assets or any subset thereof, from the Auction and sale process, and adjourn the Sale Hearing with respect to the withdrawn Assets on the terms set forth herein.**

At the Sale Hearing, the Debtors will seek entry of an order that is in form and substance acceptable to the Prepetition Loan Lenders and, the Successful Bidder that provides, among other things:

- i. authorizes and approves each Sale to a Successful Bidder (and, if applicable, the Back-Up Bidder), pursuant to the terms and conditions set forth in the Stalking Horse Bid or Purchase Agreement executed by the Successful Bidder (and, if applicable the Back-Up Bidder), and that the Assets being transferred in such Sale shall be transferred free and clear of all Encumbrances (including any claim of successor liability) pursuant to section 363(f) of the Bankruptcy Code, with such Encumbrances, attaching to the sale or transfer proceeds, if any, with the same validity, extent, and priority as had attached to such sold Assets immediately prior to such sale or transfer;
- ii. unless otherwise ordered by the Court, directs that all Encumbrances on the Assets that are sold shall attach to the cash proceeds generated from the sale of such Assets in the same order of priority as they existed prior to the consummation of such sale;
- iii. finds that the Stalking Horse Bidder or Successful Bidder, as applicable, is a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code;
- iv. as appropriate, exempts the Sale(s) and conveyance(s) of the applicable Assets from any transfer tax, stamp tax, or similar tax, or deposit under any applicable bulk sales statute;
- v. notwithstanding anything to the contrary herein, provides for the distribution to the Prepetition Loan Lenders of certain net sale proceeds of all Assets in which the Prepetition Loan Lenders have first-priority security interests promptly following the closing, which shall occur on or before **February 24, 2022**; and
- vi. permits the Successful Bidder(s) to, up to the time of closing, decline to take title to any assets otherwise included in the sale, but without adjusting the purchase price.

14. Back-Up Bidder

Notwithstanding any of the foregoing, in the event that a Successful Bidder fails to close a Sale by **February 24, 2022**, or such date as may be extended by the Debtors, in consultation with the Consultation Parties, and with the agreement of the applicable Back-Up Bidder, the Back-Up Bid will be deemed to be the Successful Bid, the applicable Back-Up Bidder will be deemed to be a Successful Bidder, and the Debtors will be authorized, but not directed, to close the Sale to the applicable Back-Up Bidder subject to the terms of the Back-Up Bid without the need for further order of the Court and without the need for further notice to any interested parties, as soon as practicable, but not later than **March 11, 2022**, which deadline may be extended by the Debtors in consultation with the Consultation Parties.

15. Return of Deposits

All Deposits shall be returned to each bidder not selected by the Debtors as a Successful Bidder or a Back-Up Bidder no later than three (3) business days following the conclusion of the Sale Hearing. The deposit of each Successful Bidder or, if a Sale is closed with the relevant Back-Up Bidder, the deposit of the Back-Up Bidder, shall be applied to the purchase price for applicable Sale. If a Successful Bidder (or, if a Sale is to be closed with a Back-Up Bidder, then the Back-Up Bidder) fails to consummate a Sale because of a breach or failure to perform on the part of such bidder, then, subject to the terms of the Purchase Agreement or the Stalking Horse Bid, as applicable, the Debtors and their estates shall be entitled to retain the Deposit of the Successful Bidder (or, if the Sale is to be closed with the Back-Up Bidder, then the Back-Up Bidder) as part of the damages resulting to the Debtors and their estates for such breach or failure to perform.

16. Notice and Consultation Parties

- (a) The term “Notice Parties” as used in these Bidding Procedures shall mean:
 - (i) the Debtors, Attn: Spencer Ware (spencer.ware@riveron.com); and
 - (ii) counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Attn: M. Blake Cleary, Esq. and Allison Mielke, Esq.; (mbcleary@ycst.com and amielke@ycst.com).
- (b) The term “Consultation Parties” as used in these Bidding Procedures shall mean:
 - (i) the Prepetition Loan Lenders and their counsel, including, but not limited to, Stoll Keenon Ogden PLLC, Attn: Lea Pauley Goff, Esq. (Lea.Goff@skofirm.com), 500 West Jefferson Street, Suite 2000, Louisville, KY 40202-2828, and Attn: Amelia Martin Adams, Esq. (Amelia.Adams@skofirm.com) and Stevens & Lee, P.C., Attn: Joseph H. Huston, Jr., Esq. (joseph.huston@stevenslee.com), 919 North Market Street, Suite 1300, Wilmington, DE 19801; and
 - (ii) counsel to the official committee of unsecured creditors appointed in the Debtors’ chapter 11 cases (the “Creditors’ Committee”).

For the avoidance of doubt, any consultation rights provided to the Consultation Parties by these Bidding Procedures shall not limit the Debtors’ discretion in any way and shall not include the right to veto any decision made by the Debtors in the exercise of their business judgment.

17. Reservation of Rights

Notwithstanding any of the foregoing, the Debtors and their estates reserve the right to, after consultation with the Consultation Parties, modify these Bidding Procedures at or prior to the Auction, including, without limitation, to extend the deadlines set forth herein, modify bidding increments, waive terms and conditions set forth herein with respect to any or all Potential Bidders

(including, without limitation, the Bid Requirements), impose additional terms and conditions with respect to any or all Potential Bidders, adjourn or cancel the Auction at or prior to the Auction, and adjourn the Sale Hearing.