

**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 (CSS)

(Joint Administration Requested)

Objection Deadline: TBD

Hearing Date: TBD

**DEBTORS' MOTION FOR ENTRY OF AN ORDER (I) APPROVING
DE MINIMIS ASSET SALE PROCEDURES AND RELATED DE MINIMIS
SALE TRANSACTIONS; AND (II) GRANTING RELATED RELIEF**

BHCosmetics Holdings, LLC and its affiliated debtors and debtors in possession (collectively, the “Debtors”) hereby submit this motion (this “Motion”) pursuant to sections 105(a) and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), and rule 2002 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”) authorizing the Debtors to (i) implement the De Minimis Asset Sale Procedures (as defined below), including 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; (ii) consummate sales and transfers of the De Minimis Assets (as defined below), free and clear of any liens, claims, or encumbrances (collectively, “Liens”) without further

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.

notice or order from the Court; (iii) pay any necessary fees and expenses incurred in connection with the sale of such assets. 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(a) and 363 of title 11 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Local Rules 2002-1 and 6004-1.

BACKGROUND

A. 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.

B. 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 their assets, the Debtors entered into an agreement with each of Hilco IP Services, LLC d/b/a Hilco Streambank ("Hilco

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.

Streambank)³ and SB360 Capital Partners LLC (“SB360”). Hilco 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. After an exhaustive prepetition marketing and solicitation process, and in consultation with their professional advisors and prepetition lenders, 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 their assets, including a majority of the Debtors’ intellectual property and inventory assets. The total estimated cash consideration for the Stalking Horse Bid is approximately \$4.3 million, subject to higher or otherwise better offers and certain adjustments. Separately, the Debtors have filed a motion seeking (i) authority to enter into the Stalking Horse Bid with the Stalking Horse Bidder; and (ii) approval of a bidding and auction process (the “Auction Process”) for a majority of their assets (the “363 Sale Motion”).

C. The De Minimis Assets

8. The Debtors maintain various assets, which are currently, or in the foreseeable future may become, unnecessary or cannot be used profitably in their operations. The Debtors will attempt to sell or otherwise dispose of a number of these nonessential or burdensome assets, including, without limitation: (a) office equipment and furniture; (b) certain contracts that are not being assumed and assigned pursuant to the Auction Process; (c) intellectual property that is not sold pursuant to the 363 Sale Motion; and (d) other minor assets that, in some cases, are of

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

relatively *de minimis* value as compared to the Debtors' total asset base, all of which are not contemplated to be purchased pursuant to the Stalking Horse Bid (collectively, the "De Minimis Assets") and each, a "De Minimis Asset").

9. The Debtors believe that obtaining Court approval of the disposition of each individual De Minimis Asset would be administratively burdensome and costly to the Debtors' estates. In some cases, the cost and delay associated with seeking Court approval for each disposition could eliminate or substantially undermine the economic benefit to the Debtors' estates realized from the sale of De Minimis Assets. Additionally, the Debtors are mindful of their duty to maximize the value of their estates and are working to obtain the highest consideration for all of their assets but are concerned that, among other things, unnecessary delays and substantial administrative expenses will decrease the net income to their estates.

10. Accordingly, to alleviate the cost and delay of having to file a separate motion for each proposed disposition, the Debtors seek approval of the sale procedures described herein (the "De Minimis Asset Sale Procedures"). These De Minimis Asset Sale Procedures are intended to minimize and, in some instances, eliminate the process for obtaining court approval with respect to the sale of particular assets falling within certain specified economic parameters. The Debtors propose to utilize the De Minimis Asset Sale Procedures to obtain more expeditious and cost-effective review by interested parties of certain sales involving De Minimis Assets.

D. De Minimis Asset Sale Procedures

11. The Debtors propose to sell or transfer De Minimis Assets for the highest or otherwise best offer received, taking into consideration the circumstances of each such sale or transfer (the "De Minimis Asset Sale"), under the following procedures (the "De Minimis Asset Sale Procedures"). In particular, with regard to sales or transfers of the De Minimis Assets in any individual transaction or series of related transactions (a "De Minimis Sale Transaction") to a

single buyer or group of related buyers (each a “De Minimis Asset Purchaser”) with an aggregate selling price⁴ equal to or less than \$150,000; *provided, however*, that any De Minimis Sale Transaction to a De Minimis Asset Purchaser with an aggregate selling price equal to or less than \$15,000 shall not be subject to the following procedures, and such transaction may be consummated without further notice or hearing following entry of the Proposed Order:

- a. The Debtors are authorized to consummate De Minimis Asset Sale transaction(s), with the consent of 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, the “Prepetition Loan Lenders”), if the Debtors determine in the reasonable exercise of their business judgment that such sales or transfers are in the best interest of their estates without further order of the Court or notice to any party (other than notice to the De Minimis Notice Parties as set forth below);
- b. Any such transaction(s) shall be free and clear of all Liens, with such Liens attaching only to the sale or transfer proceeds, if any, pursuant to section 363 of the Bankruptcy Code, with the same validity, extent, and priority as had attached to the De Minimis Assets immediately prior to such sale or transfer;
- c. At least eight (8) calendar days prior to the proposed closing of any De Minimis Asset Sale, the Debtors shall give written notice of each sale substantially in the form attached hereto as **Exhibit B** (the “De Minimis Asset Sale Notice”) by email, if available, or otherwise by overnight delivery to (i) proposed counsel to any official committee of unsecured creditors appointed in these Chapter 11 Cases; (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) the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801, Attn: Timothy J. Fox, Jr., Esq. (Timothy.J.Fox@usdoj.gov); (iv) any known affected creditor asserting a lien on or security interest in the De Minimis Asset subject to sale; and (v) any counterparty to a contract (each, a “Target”

⁴ For purposes of these De Minimis Asset Sale Procedures, “selling price” shall refer to the gross sale price or value set forth in the applicable purchase and sale agreement.

Contract”) proposed to be assumed and assigned (collectively, the “De Minimis Asset Notice Parties”).

- d. The content of the De Minimis Asset Sale Notice shall consist of (i) reasonably specific identification of the proposed De Minimis Assets being sold or transferred; (ii) identification of the proposed De Minimis Asset Purchaser and their relationship (if any) to the Debtors; (iii) the proposed selling price; (iv) any liabilities to be assumed in such De Minimis Asset Sale, (v) cure amounts, if any, to be satisfied by the proposed De Minimis Asset Purchaser; and (vi) the material terms of the sale or transfer agreement, including, but not limited to, any payments to be made by the Debtors on account of commissions or other fees to agents, brokers, auctioneers, and liquidators.
- e. For each of the Target Contracts to be sold pursuant to these procedures, an “Adequate Assurance Package” will be sent to the applicable counterparty not later than 24 hours after a De Minimis Asset Purchaser executes an assignment agreement without the need for the applicable counterparty to execute a confidentiality agreement, provided that such counterparty agrees to keep the Adequate Assurance Package confidential and only use or disclose the information as may be necessary to conduct due diligence on the proposed De Minimis Asset Purchaser or object to a proposed assignment of its Target Contract. The Adequate Assurance Package may also include financial statements, tax returns, bank account statements (to the extent such financial statements, tax returns, and bank account statements exist), and any other reasonably necessary documentation that the Debtors deem appropriate.
- f. If no written objections from the (i) De Minimis Asset Notice Parties are filed with the Court within seven (7) calendar days after service of such De Minimis Asset Sale Notice (or such longer period as agreed to by the Debtors) or (ii) to the extent that the sale involves a Target Contract, no objections from the counterparties to the Target Contracts are filed with the Court within seven (7) calendar days after service of the Adequate Assurance Package (or such longer period as agreed to by the Debtors), then the Debtors are authorized to immediately consummate such sale or transfer; provided that in the event a De Minimis Asset Purchaser requests an order of the Court approving an assumption and assignment, the Debtors shall be permitted to obtain such order through the filing of a certification of counsel.
- g. If (i) any De Minimis Asset Notice Party files a written objection to any such sale or transfer with the Court within seven (7) calendar days after service of such De Minimis Asset Sale Notice (or such longer period as agreed to by the Debtors) or (ii) any counterparty files a written objection to the De Minimis Asset Purchaser’s adequate assurance of future performance within seven (7) calendar days after service of the Adequate

Assurance Package, then the relevant De Minimis Asset shall be sold or transferred only upon submission of a consensual form of order resolving the objection as between the Debtors and the objecting party (to which the Prepetition Loan Lenders agree in form and substance, if the De Minimis Asset is subject to such lenders' first-priority liens) or further order of the Court after notice and a hearing. Any such objections shall be served on the De Minimis Asset Notice Parties.

- h. In the event a hearing is required to resolve an objection and a written objection has not otherwise been filed with the Court, the objecting party shall file an objection within seven (7) calendar days of a demand by the Debtors and such objection shall be heard at the next scheduled omnibus hearing date that is at least seven (7) calendar days from the date of the filing of such notice or such other date set by the Court based upon the exigencies of the circumstances surrounding such assignment.

12. The Debtors reserve their rights to withdraw from any De Minimis Asset Sale prior to the consummation of the assumption and assignment of a Target Contract, in their sole discretion, in the event that there is a dispute regarding a cure amount or adequate assurance of future performance, which cannot be resolved in a manner that is satisfactory to the Debtors.

13. Additionally, during these Chapter 11 Cases, the Debtors will provide a written report or reports, within thirty (30) days after the last day of each calendar month (to the extent De Minimis Asset Sales were consummated for the relevant month), concerning any such sales or transfers made in accordance with the relief granted pursuant to the Proposed Order (including the names of the purchasing parties and the types of amounts of the sales) to the De Minimis Notice Parties and those parties requesting notice under Bankruptcy Rule 2002.

RELIEF REQUESTED

14. By this Motion, the Debtors seek entry of the Proposed Order, authorizing the Debtors to (i) implement the De Minimis Asset Sale Procedures, including the Assumption and Assignment Procedures, and the form and manner of notice thereof; (ii) consummate sales and transfers of the De Minimis Assets, free and clear of any Liens without further notice or order from

the Court; and (iii) pay any necessary fees and expenses incurred in connection with the sale of such De Minimis Assets.

BASIS FOR RELIEF

I. APPROVAL OF THE DE MINIMIS ASSET SALE PROCEDURES AND RELATED SALE TRANSACTIONS 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

15. 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.”⁵ 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.”⁶ 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.⁷ 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.”⁸

⁵ 11 U.S.C. § 105(a).

⁶ 11 U.S.C. § 363(b).

⁷ 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).

⁸ *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)).

16. 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.⁹ 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.¹⁰ 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."¹¹ 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."¹² 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.

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

⁹ 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).

¹⁰ 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).

¹¹ *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).

¹² *In re Integrated Res., Inc.*, 147 B.R. at 656 (quoting *Smith v. Van Gorkcom*, 488 A.2d 858, 872 (Del. 1985)).

18. Given the limited value of the De Minimis Assets, the Debtors submit that selling the De Minimis Assets through efficient procedures will reduce costs and other administrative expenses that would otherwise be incurred by selling such assets by separate motions. Conducting the sale of De Minimis Assets will streamline the Debtors' operations by eliminating the cost of maintaining nonessential property and generating additional cash for the estates. Given the small monetary value of such De Minimis Assets in relation to the Debtors' overall operations, it would be inefficient to seek court approval every time the Debtors have an opportunity to sell such De Minimis Assets.

19. Accordingly, the proposed De Minimis Asset Procedures are a reasonably and efficient mechanism for maximizing recoveries to the Debtors' estates, their creditors, and all parties in interest. The Debtors submit that ample business justification exists to implement the De Minimis Asset Procedures and the De Minimis Sale Transactions and, therefore, request that the Court approve them.

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

20. 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.¹³

¹³ 11 U.S.C. § 363(f).

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 the provisions of [the Bankruptcy Code].”¹⁴ 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 De Minimis Assets “free and clear” of liens and interests.¹⁵ Furthermore, a debtor possesses broad authority to sell assets free and clear of liens.¹⁶

21. The Debtors submit that, to attract the highest or otherwise best value for creditors, it is appropriate to sell their De Minimis Assets on a final “as is” basis, free and clear of any and all encumbrances 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 sales.

22. In particular, the Debtors will meet section 363(f)(2) of the Bankruptcy Code with respect to the Debtors’ Prepetition Loan Lender, to the extent that it has a first priority lien on the De Minimis Assets, because the Debtors’ prepetition secured lenders will consent to the sale of the De Minimis Assets. Moreover, with respect to any other party asserting a Lien against the De Minimis 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.¹⁷

¹⁴ 11 U.S.C. § 105(a).

¹⁵ 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).

¹⁶ See *In re Trans World Airlines, Inc.*, 322 F.3d 283, 289 (3d Cir. 2003).

¹⁷ 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

Consistent with the foregoing, the Proposed Order provides that the absence of a timely objection to the sale of the De Minimis Assets in accordance therewith shall be “consent” to such sale within the meaning of section 363(f)(2) of the Bankruptcy Code.

23. Furthermore, the Debtors propose that any Liens asserted against the De Minimis Assets be transferred to and attach to the proceeds of such sale.

C. The Assumption and Assignment of the Target Contracts in Connection with the De Minimis Asset Sales Satisfies Section 365 of the Bankruptcy Code

24. 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.”¹⁸ 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.’”¹⁹

25. The standard applied to determine whether the assumption of a contract or an unexpired lease should be authorized is the “business judgment” standard.²⁰ 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

(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).

¹⁸ 11 U.S.C. § 365(a).

¹⁹ *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)).

²⁰ 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).

the action taken was in the best interest of the company.”²¹ Further, the business judgment rule is crucial in Chapter 11 Cases and shields a debtor’s management from judicial second-guessing.²² Generally, courts defer to a debtor in possession’s business judgment to assume or reject an executory contract or lease,²³ and here, the Debtors have exercised their sound business judgment in determining that assumption and assignment of the Target Contracts 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.²⁴

26. As set forth above, the De Minimis Asset Sales will yield the maximum value for the Debtors’ De Minimis Assets, and the Debtors expect that value may be achieved through the assumption, assignment, and sale of a Target Contract. 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.”²⁵ Thus, following an assignment of a Target Contract, the Debtors will be relieved from any liability for any subsequent breach associated therewith.

²¹ *Integrated Res., Inc.*, 147 B.R. at 656 (quoting *Smith v. Van Gorkom*, 488 A.2d at 872).

²² *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.”).

²³ *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).

²⁴ *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”).

²⁵ 11 U.S.C. § 365(k).

27. 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.²⁶ The Debtors propose to file with the Court, and serve on each counterparty to a Target Contract, the De Minimis Asset Sale Notice that indicates the proposed cure amount for each such contract. As such, each counterparty will have the opportunity to object to the proposed assumption and assignment to the applicable proposed De Minimis Asset Purchaser and to the proposed cure amount, if applicable.

28. In addition, 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.”²⁷ 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.²⁸ Specifically, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned.²⁹

29. Here, the Debtors propose to provide counterparties with an Adequate Assurance Package with respect to any Target Contract and an opportunity to object to the assumption and assignment of a Target Contract. Therefore, the Debtors respectfully request that

²⁶ 11 U.S.C. § 365(b)(1).

²⁷ 11 U.S.C. § 365(f)(2).

²⁸ 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.”).

²⁹ See *In re Bygraph, 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).

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.³⁰

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

30. 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.”³¹ Furthermore, Bankruptcy Rule 6006(d) provides 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.”³²

31. As set forth herein and in the First Day Declaration, any delay in the Debtors’ ability to consummate sales of De Minimis Assets would be detrimental to the Debtors, their creditors and estates, cause the Debtors’ estates to incur unnecessary administrative expenses, and impair the Debtors’ ability to maximize value of the De Minimis Assets through an expeditious sale process. 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.

³⁰ 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).

³¹ Fed. R. Bankr. P. 6004(h).

³² Fed. R. Bankr. P. 6006(d).

NOTICE

32. 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 Prepetition Loan Lenders; (iii) the holders of the twenty (20) largest unsecured claims on a consolidated basis against the Debtors; and (iv) all parties that have requested notice in these Chapter 11 Cases under Bankruptcy Rule 2002.

CONCLUSION

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

Dated: January 15, 2022
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Allison S. Mielke

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Proposed Counsel to the Debtors and Debtors in Possession

EXHIBIT A

Proposed 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 (CSS)

(Joint Administration Requested)

Docket Ref. No. _____

**ORDER (I) ESTABLISHING PROCEDURES FOR DE MINIMIS
ASSET SALES; (II) APPROVING SALE TRANSACTIONS RELATED
THERE TO; AND (III) GRANTING RELATED RELIEF**

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 the entry of this for entry of an order (this “Order”) authorizing the Debtors to (i) implement the De Minimis Asset Sale Procedures, including the Assumption and Assignment Procedures, and the form and manner of notice thereof; (ii) consummate sales and transfers of the De Minimis Assets, free and clear of any Liens without further notice or order from the Court; (iii) pay any necessary fees and expenses incurred in connection with the sale of such assets; 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,

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 Motion.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED to the extent provided herein.
2. Pursuant to Section 363(b) of the Bankruptcy Code, the Debtors are authorized, but not directed, to sell or transfer the De Minimis Assets without any further order of the Court in accordance with the De Minimis Sale Procedures as set forth herein.
3. With regard to sales or transfers of the De Minimis Assets in any individual transaction or series of related transactions to a single buyer or group of related buyers (each a “De Minimis Asset Purchaser”) with an aggregate selling price equal to or less than \$150,000, the following De Minimis Asset Sale Procedures are hereby approved; *provided, however*, that any De Minimis Sale Transaction to a De Minimis Asset Purchaser with an aggregate selling price equal to or less than \$15,000 shall not be subject to the following procedures, and such transaction may be consummated without further notice or hearing following entry of this Order:
 - a. The Debtors are authorized to consummate De Minimis Asset Sale transaction(s), with the consent of 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, the “Prepetition Loan Lenders”), if the Debtors determine in the reasonable exercise of their business judgment that such sales or transfers are in the best interest of their estates without further order of the Court or notice to any party (other than notice to the De Minimis Notice Parties as set forth below);
 - b. Any such transaction(s) shall be free and clear of all Liens, with such Liens attaching only to the sale or transfer proceeds, if any, pursuant to section 363 of the Bankruptcy Code, with the same validity, extent, and priority as had attached to the De Minimis Assets immediately prior to such sale or transfer;
 - c. At least eight (8) calendar days prior to the proposed closing of any De Minimis Asset Sale, the Debtors shall give written notice of each sale substantially in the form attached to the Motion as **Exhibit B** (the “De Minimis Asset Sale Notice”) by email, if available, or otherwise by overnight delivery to (i) proposed counsel to any official committee of unsecured creditors appointed in these Chapter 11 Cases; (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) the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801, Attn: Timothy J. Fox, Jr., Esq. (Timothy.J.Fox@usdoj.gov); (iv) any known affected creditor asserting a lien on or security interest in the De Minimis Asset subject to sale; and (v) any counterparty to a contract (each, a “Target Contract”) proposed to be assumed and assigned (collectively, the “De Minimis Asset Notice Parties”).

- d. The content of the De Minimis Asset Sale Notice shall consist of (i) reasonably specific identification of the proposed De Minimis Assets being sold or transferred; (ii) identification of the proposed De Minimis Asset Purchaser and their relationship (if any) to the Debtors; (iii) the proposed selling price; (iv) any liabilities to be assumed in such De Minimis Asset Sale, (v) cure amounts, if any, to be satisfied by the proposed De Minimis Asset Purchaser; and (vi) the material terms of the sale or transfer agreement, including, but not limited to, any payments to be made by the Debtors on account of commissions or other fees to agents, brokers, auctioneers, and liquidators.
- e. For each of the Target Contracts to be sold pursuant to these procedures, an “Adequate Assurance Package” will be sent to the applicable counterparty not later than 24 hours after a De Minimis Asset Purchaser executes an assignment agreement without the need for the applicable counterparty to execute a confidentiality agreement, provided that such counterparty agrees to keep the Adequate Assurance Package confidential and only use or disclose the information as may be necessary to conduct due diligence on the proposed De Minimis Asset Purchaser or object to a proposed assignment of its Target Contract. The Adequate Assurance Package may also include financial statements, tax returns, bank account statements (to the extent such financial statements, tax returns, and bank account statements exist), and any other reasonably necessary documentation that the Debtors deem appropriate.
- f. If no written objections from the (i) De Minimis Asset Notice Parties are filed with the Court within seven (7) calendar days after service of such De Minimis Asset Sale Notice (or such longer period as agreed to by the Debtors) or (ii) to the extent that the sale involves a Target Contract, no objections from the counterparties to the Target Contracts are filed with the Court within seven (7) calendar days after service of the Adequate Assurance Package (or such longer period as agreed to by the Debtors), then the Debtors are authorized to immediately consummate such sale or transfer; provided that in the event a De Minimis Asset Purchaser requests

an order of the Court approving an assumption and assignment, the Debtors shall be permitted to obtain such order through the filing of a certification of counsel.

- g. If (i) any De Minimis Asset Notice Party files a written objection to any such sale or transfer with the Court within seven (7) calendar days after service of such De Minimis Asset Sale Notice (or such longer period as agreed to by the Debtors) or (ii) any counterparty files a written objection to the De Minimis Asset Purchaser's adequate assurance of future performance within seven (7) calendar days after service of the Adequate Assurance Package, then the relevant De Minimis Asset shall be sold or transferred only upon submission of a consensual form of order resolving the objection as between the Debtors and the objecting party (to which the Prepetition Loan Lenders agree in form and substance, if the De Minimis Asset is subject to such lenders' first-priority liens) or further order of the Court after notice and a hearing. Any such objections shall be served on the De Minimis Asset Notice Parties.
- h. In the event a hearing is required to resolve an objection and a written objection has not otherwise been filed with the Court, the objecting party shall file an objection within seven (7) calendar days of a demand by the Debtors and such objection shall be heard at the next scheduled omnibus hearing date that is at least seven (7) calendar days from the date of the filing of such notice or such other date set by the Court based upon the exigencies of the circumstances surrounding such assignment.

4. The De Minimis Asset Sale Notice, substantially in the form attached to the Motion as Exhibit B, is approved.

5. All buyers shall take assets sold by the Debtors pursuant to the De Minimis Sale Procedures "as is" and "where is," without any representations or warranties from the Debtors as to quality or fitness of such assets for either their intended or any particular purpose.

6. All buyers shall take the De Minimis Assets sold by the Debtors pursuant to the De Minimis Sale Procedures approved by this Order free and clear of liens, claims and encumbrances, pursuant to section 363(f) of the Bankruptcy Code. All such liens, claims and encumbrances shall attach to the proceeds of the sale transaction with the same validity, extent and priority such Lien had immediately prior to the sale of the De Minimis Assets, subject to any rights and defenses of the Debtors with respect thereto.

7. The Debtors shall provide a written report or reports, within thirty (30) days after the last day of each calendar month (to the extent De Minimis Asset Sales were consummated for the relevant month), concerning any such sales or transfers made in accordance with the relief granted by this Order (including the names of the purchasing parties and the types of amounts of the sales) to the De Minimis Notice Parties and those parties requesting notice under Bankruptcy Rule 2002.

8. The Debtors may withdraw from any De Minimis Asset Sale prior to the consummation of the assumption and assignment of a Target Contract, in their sole discretion, in the event that there is a dispute regarding a cure amount or adequate assurance of future performance, which cannot be resolved in a manner that is satisfactory to the Debtors.

9. This Order shall be immediately effective, notwithstanding any stay imposed by Bankruptcy Rule 6004(h).

10. This Order shall be sole and sufficient evidence of the transfer of title to any purchaser of a De Minimis Asset pursuant to this Order.

11. Nothing in this Order shall be construed to prevent the Debtors, in their sole discretion, from seeking approval at any time of any proposed sale after notice and an opportunity for a hearing.

12. The Debtors are authorized to execute and deliver all instruments and documents, and take such other action as may be necessary or appropriate to implement and effectuate the transactions contemplated by this Order.

13. This Court shall retain jurisdiction over any and all matters arising from the interpretation or implementation of this Order.

EXHIBIT B

De Minimis Asset Sale Notice

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

In re:

)
) Chapter 11
)

BHCOSMETICS HOLDINGS, LLC, *et al.*,¹

) Case No. 22-10050 (CSS)
)

Debtors.

) (Jointly Administered)
)

) **Docket Ref. No. ____**
)
)

**NOTICE OF ENTRY OF DE MINIMIS ASSET SALE ORDER
AND PROPOSED DE MINIMIS ASSET 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 certain of their assets with a fair market value of under \$150,000 (the “De Minimis Assets”), free and clear of all liens, claims, encumbrances, and other interests.

PLEASE TAKE FURTHER NOTICE that by order dated January [●], 2022 [Docket No. [●]] (the “De Minimis Asset Sale Order”),² the Bankruptcy Court approved, among other things, certain procedures for the sale of De Minimis Assets (the “De Minimis Asset Sale Procedures”). All interested parties should carefully read the De Minimis Asset Sale Order and the De Minimis Asset Sale Procedures set forth therein. De Minimis Asset Sale Order 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>.

PLEASE TAKE FURTHER NOTICE that, in accordance with the De Minimis Asset Sale Procedures, the Debtors intend to sell or transfer the De Minimis Assets (the “De Minimis Asset Sale”) set forth on **Schedule 1** attached hereto (the “Sale Schedule”). In accordance with the De Minimis Asset Sale Procedures, the Asset Schedule identifies The content of the De Minimis Asset Sale Notice shall consist of (i) reasonably specific identification of the proposed De Minimis Assets being sold or transferred; (ii) identification of the proposed De Minimis Asset Purchaser and their relationship (if any) to the Debtors; (iii) the proposed selling price; (iv) any liabilities to be assumed in such De Minimis Asset Sale, (v) cure amounts, if any, to be satisfied by the proposed De Minimis Asset Purchaser; and (vi) the material terms of the sale or transfer agreement, including, but not limited to, any payments to be made by the Debtors on

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 De Minimis Asset Sale Order.

account of commissions or other fees to agents, brokers, auctioneers, and liquidators. **Information regarding adequate assurance of future performance, if applicable, is being served concurrently herewith.**

PLEASE TAKE FURTHER NOTICE that any objections to the De Minimis Asset Sale, the adequate assurance of future performance of the De Minimis Asset Sale Purchaser, or the relief requested in connection therewith (a “Sale Objection”), 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 **[seven days following service]** (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) proposed counsel to any official committee of unsecured creditors appointed in these Chapter 11 Cases; (ii) 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 (iii) the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801, Attn: Timothy J. Fox, Jr., Esq. (Timothy.J.Fox@usdoj.gov).

PLEASE TAKE FURTHER NOTICE THAT, SHOULD AN OBJECTION BE TIMELY FILED, A HEARING ON THE OBJECTION WILL BE HELD BEFORE THE HONORABLE [•] ON [•] AT [•].M. (EST) IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 MARKET STREET, [•]TH FLOOR, COURTROOM NO. [•], WILMINGTON, DELAWARE 19801, OR AT SUCH OTHER DATE AND TIME AS MAY BE DETERMINED BY THE DEBTORS OR THE COURT MAY DESIGNATE UPON NOTICE TO AFFECTED PARTIES.

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 DE MINIMIS ASSET SALE ORDER, THEN THE DEBTORS SHALL BE AUTHORIZED, PURSUANT TO THE DE MINIMIS ASSET SALE ORDER, TO CONSUMMATE THE PROPOSED DE MINIMIS ASSET SALE IN ACCORDANCE WITH THE TERMS SET FORTH ON THE ATTACHED SALE SCHEDULE WITHOUT FURTHER NOTICE OR HEARING, AND YOU SHALL BE DEEMED TO HAVE WAIVED AND RELEASED ANY RIGHT TO ASSERT SUCH AN OBJECTION.

[Signature Page Follows]

Dated: January __, 2022
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/

M. Blake Cleary (No. 3614)
Allison S. Mielke (No. 5934)
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Proposed Counsel to the Debtors and Debtors in Possession

Schedule 1 to De Minimis Asset Sale Notice

Sale Schedule