

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

In re: : X  
: Chapter 11  
: :  
SEQUENTIAL BRANDS GROUP, INC., *et* : Case No. 21-11194 (JTD)  
*al.*,<sup>1</sup> : :  
: (Jointly Administered)  
Debtors. : :  
: **Ref. Docket Nos. 138, 176**  
: X

**CERTIFICATION OF NO OBJECTION REQUESTING ENTRY OF ORDER  
AUTHORIZING AND APPROVING (I) STALKING HORSE DESIGNATION  
AND (II) STALKING HORSE PURCHASE AGREEMENT WITH BID PROTECTIONS  
(RE: WITH YOU, INC.)**

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The undersigned hereby certifies that:

1. On August 31, 2021, Sequential Brands Group, Inc., and its debtor affiliates as debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases, filed with the United States Bankruptcy Court for the District of Delaware (the “Court”) a motion [Docket No. 19] (the “Motion”) seeking entry of (a) an order (the “Bidding Procedures Order”) (i) approving bidding procedures (the “Bidding Procedures”) <sup>2</sup> to be used in connection with one or more sales (each, a “Sale Transaction”) of substantially all of the Debtors’ assets (the

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<sup>1</sup> The Debtors, along with the last four digits of each Debtor’s tax identification number, are: Sequential Brands Group, Inc. (2789), SQBG, Inc. (9546), Sequential Licensing, Inc. (7108), William Rast Licensing, LLC (4304), Heeling Sports Limited (0479), Brand Matter, LLC (1258), SBG FM, LLC (8013), Galaxy Brands LLC (9583), The Basketball Marketing Company, Inc. (7003), American Sporting Goods Corporation (1696), LNT Brands LLC (3923), Joe’s Holdings LLC (3085), Gaiam Brand Holdco, LLC (1581), Gaiam Americas, Inc. (8894), SBG-Gaiam Holdings, LLC (8923), SBG Universe Brands, LLC (4322), and GBT Promotions LLC (7003). The Debtors’ corporate headquarters and the mailing address for each Debtor is 1407 Broadway, 38th Floor, New York, NY 10018.

<sup>2</sup> Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Motion or the Bidding Procedures, as applicable. Any summary of the Bidding Procedures or the Bidding Procedures Order (or any provision thereof) contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any inconsistency between any summary in this Additional Stalking Horse Notice and the terms and conditions of either of the Bidding Procedures or the Bidding Procedures Order, the actual terms and conditions in those documents shall control.



“Assets”); (ii) authorizing the Debtors to enter into one or more asset purchase agreements with one or more “stalking horse” bidders (each such agreement, a “Stalking Horse Agreement” and, each such bidder, a “Stalking Horse Bidder,” and the bid of any such Stalking Horse Bidder, a “Stalking Horse Bid”) and to provide certain bidding protections; (iii) scheduling an auction of the Assets (the “Auction”) and a final hearing to consider approval of any proposed Sale Transactions (the “Sale Hearing”); (iv) approving the form and manner of notice of the Bidding Procedures, the Auction and the Sale Hearing; (v) approving procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, the “Contracts”) in connection with any Sale Transaction; (vi) approving the form and manner of notice to each relevant non-debtor counterparty to a Contract of the Debtors’ calculation of the amount necessary to cure any defaults under an applicable Contract and certain other information regarding the potential assumption and assignment of Contracts in connection with a Sale Transaction; (vii) authorizing one or more Sale Transactions for a sale of the Assets free and clear of all liens, claims, interests and encumbrances, except certain permitted encumbrances as determined by the Debtors and any Successful Bidder (as defined below) for the applicable Assets, with liens to attach to the proceeds of the applicable Sale Transaction; and (viii) authorizing the assumption and assignment of certain Contracts in connection with the approved Sale Transactions; and (ix) granting related relief.

2. On September 24, 2021, the Court entered the Bidding Procedures Order [Docket No. 138]. Pursuant to the Bidding Procedures Order, the Debtors were authorized to enter into one or more additional agreements with one or more other bidders that the Debtors designate to serve as a stalking horse bidder for Assets other than those Assets subject to the Galaxy APA and the Centric APA.

3. In accordance with the terms of the Bidding Procedures Order, the Debtors have designated With You, Inc. (“With You”), a California corporation, as the stalking horse bidder (the “With You Stalking Horse Bidder”) of the Purchased Assets (as defined in the With You APA (as defined below)) and have entered into that certain Membership Interest Purchase Agreement by and between Sequential Brands Group, Inc. and With You (the “With You APA”), as an Additional Stalking Horse APA.

4. On October 8, 2021, the Debtors filed the *Notice of (I) Stalking Horse Designation and (II) Filing of With You Stalking Horse Purchase Agreement with Bid Protections* [Docket No. 176] (the “Notice”). Pursuant to the Notice, objection to the designation of the With You Stalking Horse Bidder or to the provision of a “break-up fee” and/or expense reimbursement offered to the With You Stalking Horse Bidder were be filed with the Court on or before October 11, 2021 at 4:00 p.m. The undersigned certifies that the Court’s docket has been reviewed in this case and no answer, objection or other responsive pleading to the Notice appears thereon.

5. A proposed form of order (the “Proposed Order”) approving With You as the Stalking Horse Bidder and the With You APA is attached hereto as **Exhibit A**.

6. The U.S. Trustee has no objection to the entry of the Proposed Order.

7. Accordingly, the Debtors respectfully request entry of the Proposed Order at the Court’s convenience.

Dated: October 12, 2021

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*Counsel to the Debtors and Debtors in Possession*

# **Exhibit A**

## **Proposed Order**

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

<p>In re:</p> <p>Sequential Brands Group, Inc., <u>et al.</u>,<sup>1</sup></p> <p style="padding-left: 40px;">Debtors.</p>	<p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p>	<p>Chapter 11</p> <p>Case No. 21-11194 (JTD)</p> <p>(Jointly Administered)</p> <p><b>Docket Ref. Nos. 138 and 176</b>_____</p>
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**ORDER AUTHORIZING AND APPROVING (I) STALKING HORSE DESIGNATION AND (II) STALKING HORSE PURCHASE AGREEMENT WITH BID PROTECTIONS**

Upon the procedures set forth in the *Order (I) Approving Bidding Procedures for the Sale of Substantially All of the Debtors’ Assets, (II) Authorizing the Debtors to Enter into One or More Stalking Horse Agreements and to Provide Bidding Protections Thereunder, (III) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (IV) Approving Assumption and Assignment Procedures, (V) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof, and (VI) Granting Related Relief* [Docket No. 138] (the “Order”)<sup>2</sup> entered by Court in the above-captioned chapter 11 cases (the “Chapter 11 Cases”); and in compliance with the Bidding Procedures as approved pursuant to the Order; and the Debtors having demonstrated good, sufficient and sound business justifications for the relief granted herein;

<sup>1</sup> The Debtors, along with the last four digits of each Debtor’s tax identification number, are: Sequential Brands Group, Inc. (2789), SQBG, Inc. (9546), Sequential Licensing, Inc. (7108), William Rast Licensing, LLC (4304), Heeling Sports Limited (0479), Brand Matter, LLC (1258), SBG FM, LLC (8013), Galaxy Brands LLC (9583), The Basketball Marketing Company, Inc. (7003), American Sporting Goods Corporation (1696), LNT Brands LLC (3923), Joe’s Holdings LLC (3085), Gaiam Brand Holdco, LLC (1581), Gaiam Americas, Inc. (8894), SBG-Gaiam Holdings, LLC (8923), SBG Universe Brands, LLC (4322), and GBT Promotions LLC (7003). The Debtors’ corporate headquarters and the mailing address for each Debtor is 1407 Broadway, 38th Floor, New York, NY 10018.

<sup>2</sup> Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Order or in the Bidding Procedures, as applicable.

**IT IS HEREBY FOUND AND DETERMINED THAT:<sup>3</sup>**

A. Jurisdiction and Venue. 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 February 29, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Designation of the With You Stalking Horse Bid. The stalking horse bid (the “With You Stalking Horse Bid”) of With You Inc. (the “With You Stalking Horse Bidder”) as reflected in the purchase agreement attached hereto as Exhibit 1 (the “With You APA”) represents the highest and otherwise best offer the Debtors have received to date to purchase the Purchased Assets, as defined and set forth in the With You APA (the “With You Assets”). The With You APA provides the Debtors with the opportunity to sell the With You Assets in a manner designed to preserve and maximize their value and provide a floor for a further marketing and auction process. Without the With You Stalking Horse Bid, the Debtors are at a significant risk of realizing a lower price for the With You Assets. As such, the contributions of the With You Stalking Horse Bidder to the process have indisputably provided a substantial benefit to the Debtors, their estates, and the creditors in these Chapter 11 Cases. The With You Stalking Horse Bid will enable the Debtors to minimize disruption to the Debtors’ restructuring process and secure a fair and adequate Baseline Bid (as defined in the Bidding Procedures) for the With You Assets at the Auction(s) (if any), and, accordingly, will provide a clear benefit to the Debtors’ estates, their creditors, and all other parties in interest.

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<sup>3</sup> The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. Designation of the With You Stalking Horse Bidder. The With You Stalking Horse Bidder shall act as a “stalking horse bidder” pursuant to the With You APA and the With You Stalking Horse Bid shall be subject to higher or otherwise better offers in accordance with the With You APA and the Bidding Procedures. Pursuit of the With You Stalking Horse Bidder as a “stalking horse bidder” and the With You APA as a “stalking horse purchase agreement” is in the best interests of the Debtors and the Debtors’ estates and their creditors, and it reflects a sound exercise of the Debtors’ business judgment.

D. The With You 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 stakeholders exist between the With You Stalking Horse Bidder and the Debtors. The With You Stalking Horse Bidder and its counsel and advisors have acted in “good faith” within the meaning of section 363(m) of the Bankruptcy Code in connection with the With You Stalking Horse Bidder’s negotiation of the Bid Protections and the Bidding Procedures and entry into the With You APA.

E. With You Stalking Horse Bid Protections. The With You Break-Up Fee and Expense Reimbursement (each as defined in the With You APA) (collectively, the “With You Stalking Horse Bid Protections”), to the extent payable under the With You APA, (a) provide a substantial benefit to the Debtors’ estates and stakeholders and all parties in interest herein, (b)(x) are an actual and necessary cost and expense of preserving the Debtors’ estates within the meaning of section 503(b) of the Bankruptcy Code and (y) shall be treated as an allowed superpriority administrative expense claim against the Debtors’ estates pursuant to sections 105(a), 364, 503(b), and 507(a)(2) of the Bankruptcy Code, (c) are commensurate to the real and material benefits conferred upon the Debtors’ estates by the With You Stalking Horse Bidder, and (d) are fair,



reasonable, and appropriate, including in light of the size and nature of the transactions and the efforts that have been and will be expended by the With You Stalking Horse Bidder. Unless it is assured that the With You Stalking Horse Bid Protections will be available, the With You Stalking Horse Bidder is unwilling to remain obligated to consummate the With You APA or otherwise be bound under the With You APA, including, without limitation, the obligations to maintain its committed offer while such offer is subject to higher or otherwise better offers as contemplated by the Bidding Procedures. The With You Stalking Horse Bid Protections are a material inducement for, and condition of, the With You Stalking Horse Bidder's execution of the With You APA.

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

1. With You is approved as the With You Stalking Horse Bidder for the With You Assets pursuant to the terms of the With You APA.

2. The Debtors entry into the With You APA is authorized and approved, and the With You Stalking Horse Bid shall be subject to higher or better Qualified Bids, in accordance with the terms and procedures of the With You APA and the Bidding Procedures.

3. The Debtors are authorized to perform any obligations under the With You APA that are intended to be performed prior to the entry of the order approving the Sale Transaction.

4. The With You Stalking Horse Bid Protections are approved in their entirety. The With You Stalking Horse Bid Protections shall be payable in accordance with, and subject to the terms of, the With You APA. The automatic stay provided by section 362 of the Bankruptcy Code shall be automatically lifted and/or vacated to permit any With You Stalking Horse Bidder action expressly permitted or provided in the With You APA, without further action or order of the Court.

5. The With You Stalking Horse Bid Protections (to the extent payable under the With You APA) shall constitute an allowed superpriority administrative expense claim pursuant to sections 105(a), 503(b)(1)(A), and 507(a)(2) of the Bankruptcy Code in the Debtors' cases, which in each case, shall be senior to and have priority over all other administrative expense claims of the kind specified in section 503(b) of the Bankruptcy Code. Debtors are hereby authorized and directed to pay the With You Stalking Horse Bid Protections, if and when due, in accordance with the terms of the With You APA and this Order without further order of the Court. The Debtors' obligation to pay the With You Stalking Horse Bid Protections, if applicable, shall survive termination of the With You APA, dismissal or conversion of any of the Chapter 11 Cases, and confirmation of any plan of reorganization or liquidation.

6. "Initial Bid Increment" shall mean with respect to the With You Stalking Horse Bid, \$500,000.

7. This Order shall be binding on the Debtors and its successors and assigns, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the estates of the Debtors.

8. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

9. To the extent any provisions of this Order are inconsistent with the Motion, the terms of this Order shall control. To the extent any provisions of this Order are inconsistent with the Bidding Procedures, the terms of this Order shall control.

10. Notwithstanding the applicability of any of Bankruptcy Rules 6004(h), 6006(d), 7062, 9014 or any other provisions of the Bankruptcy Rules or the Local Rules stating the contrary, the terms and provisions of this Order shall be immediately effective and enforceable

upon its entry, and any applicable stay of the effectiveness and enforceability of this Order is hereby waived.

11. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

# **Exhibit 1**

**With You APA**

**MEMBERSHIP INTEREST PURCHASE AGREEMENT**

**by and between**

**SEQUENTIAL BRANDS GROUP, INC.**

**and**

**WITH YOU, INC.**

**October 7, 2021**

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Schedule 2.01(c)	Domain Names
Schedule 2.02(a)	Assumed Contracts and Cure Costs
Schedule 2.05(c)	Approved Marketing Activities
Schedule 3.04	Consents and Approvals
Schedule 3.09	Litigation
Schedule 3.10	Intellectual Property
Schedule 3.11(b)	Taxes
Schedule 5.01	Conduct of the Business
Schedule 6.04	Certain Seller Representatives



## MEMBERSHIP INTEREST PURCHASE AGREEMENT

THIS **MEMBERSHIP INTEREST PURCHASE AGREEMENT**, dated as of October 7, 2021 (the “**Agreement**”), is made and entered into by and between Sequential Brands Group, Inc., a Delaware corporation (“**Seller**”), and With You, Inc., a California corporation (“**Buyer**”). Seller and Buyer are sometimes referred to collectively herein as the “**Parties**” and individually as a “**Party**”. Capitalized terms used herein and not otherwise defined herein have the meanings set forth in Article 1.

### WITNESSETH:

**WHEREAS**, the issued and outstanding membership interests (the “**Membership Interests**”) of With You LLC, a Delaware limited liability company (the “**Company**”), are owned as follows: Seller owns 62.5% of the Membership Interests (the “**Seller Interests**”) and Buyer owns 37.5% of the Membership Interests;

**WHEREAS**, the Parties, along with the Company, have entered into that certain Amended and Restated Operating Agreement of the Company, dated as of April 8, 2015 (as amended or supplemented, the “**Operating Agreement**”);

**WHEREAS**, subject to the terms and conditions set forth in this Agreement, Seller desires to sell, assign, transfer, and convey to Buyer, and Buyer desires to purchase and acquire from Seller all of Seller’s right, title and interest in and to the Purchased Assets (as defined below), including without limitation, one hundred percent (100%) of the Seller Interests such that after giving effect to such purchase of the Seller Interests, Buyer shall own 100% of the Membership Interests of the Company;

**WHEREAS**, Seller and certain of its affiliates (the “**Debtors**”) have filed voluntary petitions for relief under Chapter 11 of Title 11, §§ 101-1330 of the United States Code (as amended, the “**Bankruptcy Code**”): (a) commencing cases (the “**Chapter 11 Cases**”) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”), which Chapter 11 Cases are jointly administered under Case No. 21-11194 (JTD); and (b) to seek approval of the Bankruptcy Court to consummate the transactions contemplated by this Agreement.

**NOW, THEREFORE**, in consideration of the premises and the mutual promises herein made, and in consideration of the foregoing and of the representations, warranties, covenants, agreements and conditions herein contained, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound hereby, agree as follows:

### ARTICLE 1

#### DEFINITIONS

##### SECTION 1.01 *Definitions.*

- (a) The following terms, as used herein, have the following meanings:

“**Action**” means any claim, action, suit, arbitration or proceeding by or before any Governmental Authority.

“**Administrative Manager**” has the meaning set forth in the Operating Agreement.

“**Affiliate**” means, with respect to any Person, another Person that, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person, where “control” means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether through the ownership of voting securities, by contract or otherwise. For the avoidance of doubt, ownership of more than fifty percent (50%) of the voting securities shall be deemed to be “control” for purposes of this definition.

“**Alternative Transaction**” means any reorganization, merger, transaction, consolidation, business combination, joint venture, partnership, sale of assets, financing (debt or equity), or restructuring or similar transaction of or by Seller or the Company involving any of the Purchased Assets; provided, however, that an Alternative Transaction shall not include (a) after the entry of the Bid Procedures Order, a sale for the Purchased Assets determined by the Debtors to be higher or otherwise better in accordance with the Bid Procedures (as defined in the Bid Procedures Order), or (b) pursuit of confirmation of a Chapter 11 plan of liquidation, confirmation of which plan shall take place solely following the Bankruptcy Court’s entry of the Sale Order, with the occurrence of any “effective date” or similar concept under such plan subject to the occurrence of the Closing Date.

“**Auction**” means any auction for the sale of the Debtors’ assets conducted pursuant to the terms and conditions of the Bid Procedures and the Bid Procedures Order.

“**Backup Bidder**” has the meaning set forth in the Bid Procedures Order.

“**Bankruptcy Rules**” means the Federal Rules of Bankruptcy Procedure.

“**Bid Procedures**” means the bidding procedures for the solicitation and submission of bids for a sale, reorganization, or other disposition of the Debtors, any portion of, or all or substantially all of their assets approved by the Bankruptcy Court pursuant to the Bid Procedures Order.

“**Bid Procedures Motion**” means the motion seeking entry of the Bid Procedures Order and the Sale Order.

“**Bid Procedures Order**” means an order of the Bankruptcy Court in the form attached hereto as Exhibit B that, among other things, approves (a) the Bid Procedures, (b) bid protections granted to Buyer, including the Break-Up Fee and Expense Reimbursement and provides that such bid protections shall constitute allowed administrative expenses of Debtors’ estates under section 503(b) of the Bankruptcy Code, (c) the form and manner of notice of auction(s), sale transaction(s), and hearing(s), (d) the procedures for assumption and assignment of the Assumed Contracts, and (e) the date for auction(s), if necessary; with any material changes thereto in form and substance reasonably acceptable to Buyer.

“**Break-Up Fee**” means a cash amount equal to \$1,950,000.00.

**“Business”** means (i) the worldwide business of creating, designing, developing, manufacturing, marketing, selling and licensing of all consumer related lifestyle products including but not limited to all categories within the Fashion, Home, Beauty, Personal Care, Baby, Crafts, Pets, Holiday, Seasonal, Bridal, Celebrations, Travel, Floral, and Food industry segments, but specifically excluding only the Retained Assets (as defined in the Operating Agreement), (ii) the exploitation of the Endorsement Rights (as defined in the Operating Agreement), (iii) all lines of business reasonably related or ancillary thereto (including the establishment and operating of retail stores), and (iv) any other line of business approved by Buyer and Seller (in their capacity as members of the Company) as of the date of this Agreement, in each case as conducted as of the date of this Agreement.

**“Business Day”** means a day other than Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to close.

**“Causes of Action”** means any Claim, action, suit, arbitration or proceeding by or before any Governmental Authority.

**“Claim”** means a “claim” as defined in Section 101 of the Bankruptcy Code.

**“Closing Date”** means the date of the Closing.

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

**“Confidentiality Agreement”** means the Confidentiality and Nondisclosure Agreement, dated as of February 5, 2021 by and among Seller, Buyer and Threadstone Advisors LLC.

**“Contract”** means any contract, agreement, license, sublicense, sales order, purchase order, instrument or other commitment, that is binding on any Person under applicable Law.

**“COVID-19”** means SARS-CoV-2 or COVID-19, and any evolutions thereof or related or associated epidemics, pandemic or disease outbreaks.

**“Cure Costs”** means with respect to any Assumed Contract, the Liabilities that must be paid or otherwise satisfied to cure all monetary defaults under such Assumed Contract to the extent required by Section 365(b) of the Bankruptcy Code.

**“Disclosure Schedules”** means the Disclosure Schedules attached hereto, as may be supplemented and amended pursuant to Section 5.03.

**“Encumbrance”** means any charge, claim, limitation, condition, equitable interest, mortgage, lien, option, pledge, security interest, easement, covenant, encroachment, right of first refusal, adverse claim or restriction of any kind, including any restriction on transfer or other assignment, as security or otherwise, of or relating to use, quiet enjoyment, voting, transfer, receipt of income or exercise of any other attribute of ownership.

**“Expense Reimbursement”** means an amount in cash equal to the lesser of (a) \$400,000.00 and (b) all reasonable and documented out-of-pocket third-party expenses actually

incurred by Buyer in connection with the negotiation of this Agreement and the transactions contemplated hereby.

“**Final Deficiency**” means the amount, if any, by which the Final Purchase Price (as finally determined in accordance with Section 2.05) is less than the Estimated Purchase Price.

“**Final Excess**” means the amount, if any, by which the Final Purchase Price (as finally determined in accordance with Section 2.05) exceeds the Estimated Purchase Price.

“**Final Order**” means a judgment or Order of the Bankruptcy Court (or any other court of competent jurisdiction) entered by the clerk of the Bankruptcy Court (or such other court) on the docket in the Chapter 11 Cases (or the docket of such other court), which has not been modified, amended, reversed, vacated or stayed (other than such modifications or amendments that are consented in writing to by Buyer); provided that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedures, or any analogous rule under the Federal Rules of Bankruptcy Procedure, may be filed relating to such Order, shall not cause an Order not to be a Final Order.

“**Final Purchase Price**” means (a) the Base Purchase Price *plus* (b) the amount by which the Final Closing Working Capital Amount is greater than zero (0), if any, *minus* (c) the amount by which the Final Closing Working Capital Amount is less than zero (0), if any.

“**GAAP**” means United States generally accepted accounting principles and practices, consistently applied.

“**Governmental Authority**” means any (a) multinational, federal, state, municipal, local or other governmental or public department, court, tribunal, bureau, agency or instrumentality of government, domestic or foreign, (b) any subdivision or authority of any of the foregoing or (c) any regulatory or administrative authority.

“**Intellectual Property**” means, with respect to any Person, all of the following in any jurisdiction in which the applicable Person operates and currently, sells its products and services: (i) all patents and patent applications, (ii) all trademarks, service marks, trade dress, logos, slogans, trade names, corporate names, URLs and Internet domain names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith, (iii) all published and unpublished works of authorship, copyrights therein and thereto and registrations and applications for each of the foregoing, (iv) all mask works and all applications, registrations, and renewals in connection therewith, (v) all trade secrets and confidential business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals), (vi) all advertising and promotional materials, and (vii) all copies and tangible embodiments thereof (in whatever form or medium).

“**Knowledge of Seller**” means the actual knowledge of each of Tina Simpson, Beth Pliker, Norma Renner, and following due inquiry, the knowledge of Chad Wagenheim and Tracy Soinger.

“**Law**” means any law, treaty, statute, ordinance, code, decree, Order, rule or regulation of any Governmental Authority.

“**Liability**” means any and all debts, liabilities, commitments and obligations of any kind, whether fixed, contingent or absolute, matured or unmatured, liquidated or unliquidated, accrued or not accrued, asserted or not asserted, known or unknown, determined, determinable or otherwise, whenever or however arising (including, whether arising out of any Contract or tort based on negligence or strict liability) and whether or not the same would be required to be reflected in financial statements or disclosed in the notes thereto.

“**Licensed Intellectual Property**” means Intellectual Property that the Company licensed or is otherwise permitted by other Persons to use.

“**Lien Release Letters**” means one or more release letters or termination statements or customary release documentation in the applicable jurisdiction with respect to the Encumbrances set forth on Schedule 1.01 on the Purchased Assets, in form and substance reasonably satisfactory to Buyer, which letters and other instruments provide that all such Encumbrances set forth on Schedule 1.01 on the Purchased Assets shall be released and terminated effective concurrently with the Closing with no Liability to Buyer or any of its Affiliates, unless, in each case above, such release has been included in the Sale Order.

“**Material Adverse Effect**” means any change, effect, event, circumstance, occurrence or state of facts that, individually or in the aggregate, (a) would be reasonably likely to prevent or materially delay or materially impair the ability of Seller to consummate the transactions contemplated by this Agreement, or (b) has had or would reasonably be expected to have a material adverse effect on the Business, taken as a whole, excluding, however, for purposes of clause (b) only, any change, effect, event, circumstance, occurrence or state of facts that results from or arises out of: (i) the execution and delivery of this Agreement or the announcement thereof or the pendency or consummation of the transactions contemplated by this Agreement and the other Transaction Documents; (ii) general changes or developments in global or national political, economic, business, monetary, financial or capital or credit market conditions or trends; (iii) general political, economic, business, monetary, financial or capital or credit market conditions or trends (including interest rates); (iv) geopolitical conditions or any outbreak or escalation of hostilities, acts of terrorism or war, civil unrest, epidemic, pandemic, disease outbreak or other health crisis or public health event (including COVID-19), regional, national or international emergency, earthquakes, floods, hurricanes, tornadoes, wildfires, natural disasters or any other acts of God or similar force majeure events, or any escalation or worsening of the foregoing; (v) the failure of the financial or operating performance of the Company or its business to meet internal, Buyer or analyst or other external projections, forecasts or budgets for any period (it being understood that the underlying cause of such failure to meet such projections and forecasts may be taken into account in determining whether a Material Adverse Effect has occurred); (vi) any action taken or omitted to be taken after the date hereof by or at the written request of Buyer, or in compliance with the express covenants and agreements contained in this Agreement; (vii) changes in (or proposals to change) Laws or accounting regulations or principles; or (viii) the Chapter 11 Cases, including the Auction and any announced liquidation of Seller or any of its assets; provided, that any change, effect, event, circumstance, occurrence or state of facts described in clauses (ii), (iii), (iv) and (viii) shall be taken into account in determining whether a Material Adverse Effect

has occurred or would reasonably be expected to occur to the extent that such change, effect, event, circumstance, occurrence or state of facts has a materially disproportionate effect on the Business, taken as a whole, as compared to the effects on other participants in the same industry as the Business.

“**Milestones**” means the milestones set forth on Exhibit A.

“**Order**” means any award, writ, injunction, judgment, order, ruling, decision, subpoena, precept, directive, consent, approval, award, decree or similar determination or finding entered, issued, made or rendered by any Governmental Authority.

“**Owned Intellectual Property**” means Intellectual Property owned by or exclusively licensed to the Company.

“**Permitted Encumbrances**” means the following Encumbrances: (a) Encumbrances for Taxes, assessments or other governmental charges or levies that are not yet due or payable or that are being contested in good faith by appropriate Causes of Action; (b) Encumbrances set forth on Schedule 1.01 that will be released at the Closing with no Liability to Buyer or its Affiliates; (c) Encumbrances incurred by or at the written direction of Buyer at the Closing; and (d) outbound Intellectual Property licenses, covenants not to sue and similar rights that are subject to Section 365(n) of the Bankruptcy Code or other outbound non-exclusive licenses to Intellectual Property entered into in the ordinary course of business.

“**Person**” means any individual, corporation (including any non-profit corporation), partnership, limited liability company, joint venture, unincorporated organization, estate, trust, association, organization or other legal entity or group (as defined in Section 13(d)(3) of the Securities Exchange Act of 1934, as amended) or Governmental Authority.

“**Pre-Closing Tax Period**” means any taxable period ending on or before the Closing Date and, with respect to any Straddle Period, the portion of such taxable period ending on and including the Closing Date.

“**Receivables**” means all receivables (including, without limitations, accounts receivable, loans receivables and customer advances) of the Company.

“**Registered**” means issued by, registered, recorded or filed with, renewed by or the subject of a pending application before any Governmental Authority or internet domain name registrar.

“**Representatives**” means, with respect to any Person, the officers, directors, principals, employees, counsel, accountants, agents, auditors, advisors, bankers and other representatives of such Person.

“**Sale Order**” means an Order by the Bankruptcy Court, in form and substance reasonably acceptable to Buyer and Seller, among other things, (a) approving this Agreement, (b) authorizing the sale of the Purchased Assets to Buyer pursuant to section 363 of the Bankruptcy Code, pursuant to the terms and conditions set forth herein, free and clear of any Encumbrances, including the Permitted Encumbrances set forth on Schedule 1.01 but subject to the other Permitted Encumbrances, (c) authorizing the assumption and assignment to Buyer of the Assumed Contracts

pursuant to Section 365 of the Bankruptcy Code and (d) authorizing the other transactions contemplated by this Agreement.

“**Successful Bidder**” has the meaning set forth in the Bid Procedures Order.

“**Tax**” means (a) all federal, state, local or foreign income, gross receipts, franchise, estimated, alternative minimum, add-on minimum, sales, use, transfer, real property gains, registration, value added, excise, natural resources, severance, stamp, occupation, premium, windfall profit, environmental, customs, duties, real property, special assessment, personal property, capital stock, social security, unemployment, disability, payroll, license, employee or other withholding tax, or any other taxes, fees, assessments or charges of any kind whatsoever including any interest, penalties or additions to tax or additional amounts in respect of the foregoing; (b) any Liability for payment of amounts described in clause (a), whether as a result of transferee Liability, of being a member of an affiliated, consolidated, combined or unitary group for any period or otherwise through operation of law; and (c) any Liability for the payment of amounts described in clauses (a) or (b) as a result of any tax sharing, tax indemnity, tax receivable or tax allocation agreement or express or implied obligation (other than any such agreement or obligation entered into in the ordinary course of business that is not primarily related to Taxes).

“**Tax Return**” means any report, return, election, extension or similar document (including schedules or any related or supporting information) filed or required to be filed with respect to Taxes with any Governmental Authority or other authority in connection with the determination, assessment or collection of any Tax or the administration of any Laws or administrative requirements relating to any Tax, including any information return, claim for refund, amended return or declaration of estimated Taxes.

“**Transaction Documents**” means this Agreement, the Assignment and Assumption Agreement and any other agreements, instruments or documents entered into pursuant to, or as contemplated by, this Agreement or the transactions contemplated hereby.

“**Transition Services Agreement**” means a Transition Services Agreement, to be negotiated in good faith between Seller and Buyer prior to the Closing, in form and substance reasonably acceptable to Seller and Buyer.

“**Transfer Taxes**” means any sales, use, property transfer or gains, documentary, stamp, registration, intangible, conveyance, recording or similar Tax (including, for certainty, goods and services tax and harmonized sales tax) and any recording costs or fees, however styled or designated, or other amounts in the nature of transfer Taxes payable in connection with the sale or transfer of the Seller Interests, including filing costs and attorneys’ fees.

“**With You Avoidance Actions**” means: any and all claims for relief of the Debtors against the Company, any of the Company’s licensees, the Buyer, Tina Simpson, or Jessica Simpson solely under chapter 5 of the Bankruptcy Code, including section 544 through 553, section 558 and any other applicable provisions of the Bankruptcy Code, or state fraudulent conveyance, fraudulent transfer, voidable transaction or similar Laws.

“**Working Capital**” means (i) the sum of the current assets (excluding (A) Receivables, (B) deferred Tax assets and income Tax assets and (C) cash, which will be distributed by the

Company to Seller and Buyer immediately prior to the Closing pursuant to the first sentence of Section 2.05(c) of the Company, *minus* (ii) the sum of the current liabilities (excluding deferred Tax Liabilities and income Tax payables) of the Company.

(b) Each of the following terms is defined in the Section set forth opposite such term:

<b><u>Term</u></b>	<b><u>Section</u></b>
Agreement	Preamble
Assignment and Assumption Agreement	Section 2.06(b)(iv)
Assumed Contracts	Section 2.02(a)
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
Bankruptcy and Equity Exception	Section 3.03
Base Purchase Price	Section 2.03
Buyer	Preamble
Chapter 11 Cases	Recitals
Closing	Section 2.06
Closing Statement	Section 2.05
Company	Recitals
Debtors	Recitals
Disputed Matters	Section 2.05(f)
Domain Names	Section 2.01(c)
E-Commerce Termination Letter	Section 2.06(iv)
End Date	Section 10.01(b)
Estimated Closing Working Capital Amount	Section 2.05
Estimated Purchase Price	Section 2.03
Final Closing Working Capital Amount	Section 2.05(d)
Good Faith Deposit	Section 2.04(a)
Marketing Budget	Section 2.05(c)
Marketing Spend Period	Section 2.05(c)
Objections Statement	Section 2.05(e)
Operating Agreement	Recitals
Party or Parties	Preamble
Post-Closing Statement	Section 2.05(d)
Purchased Assets	Recitals
Seller	Preamble
Straddle Period	Section 7.04(a)(i)
Surviving Post-Closing Covenants	Section 9.01

SECTION 1.02 *Construction.* In construing this Agreement, including the Exhibits and Schedules hereto, the following principles shall be followed: (a) the terms “herein,” “hereof,” “hereby,” “hereunder” and other similar terms refer to this Agreement as a whole and not only to the particular Article, Section or other subdivision in which any such terms may be employed unless otherwise specified; (b) except as otherwise set forth herein, references to Articles, Sections, Schedules and Exhibits refer to the Articles, Sections, Schedules and Exhibits of this Agreement, which are incorporated in and made a part of this Agreement; (c) a reference to any Person shall



include such Person's successors and assigns; (d) the word "includes" and "including" and their syntactical variants mean "includes, but is not limited to" and "including, without limitation," and corresponding syntactical variant expressions; (e) a defined term has its defined meaning throughout this Agreement, regardless of whether it appears before or after the place in this Agreement where it is defined, including in any Schedule; (f) the word "dollar" and the symbol "\$" refer to the lawful currency of the United States of America; (g) unless the context of this Agreement clearly requires otherwise, words importing the masculine gender shall include the feminine and neutral genders and vice versa, (h) the words "to the extent" shall mean "the degree by which" and not "if"; (i) the word "will" will be construed to have the same meaning and effect as the word "shall," and the words "shall," "will," or "agree(s)" are mandatory, and "may" is permissive, (j) where a word is defined herein, references to the singular will include references to the plural and vice versa, (k) all references to a day or days will be deemed to refer to a calendar day or calendar days, as applicable, unless Business Days are expressly specified, (l) any reference to any agreement or Contract will be a reference to such agreement or Contract, as amended, modified, supplemented or waived; (m) any reference to any particular Code section or any Law will be interpreted to include any amendment to, revision of or successor to that section or Law regardless of how it is numbered or classified; provided that, for the purposes of the representations and warranties set forth herein, with respect to any violation of or non-compliance with, or alleged violation of or non-compliance, with any Code section or Law, the reference to such Code section or Law means such Code section or Law as in effect at the time of such violation or non-compliance or alleged violation or non-compliance; (n) references to "written" or "in writing" include in electronic form; (o) the headings contained in this Agreement and the other Transaction Documents are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement and the other Transaction Documents; (p) 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 and if the last day of such period is not a Business Day, the period shall end on the next succeeding Business Day; and (q) the word "or" shall not be exclusive.

## ARTICLE 2

### PURCHASE AND SALE

SECTION 2.01 *Purchase and Sale.* Subject to the entry of the Bid Procedures Order and the Sale Order and upon the terms and subject to the conditions of this Agreement and the Sale Order, on the Closing Date, Seller shall sell, transfer, assign, convey and deliver to Buyer, and Buyer shall purchase, acquire and accept from Seller, free and clear of all Encumbrances, including the Permitted Encumbrances set forth on Schedule 1.01, but subject to the other Permitted Encumbrances, all of Seller's right, title and interest in the following assets, interests, and rights (collectively, the "**Purchased Assets**"):

- (a) The Seller Interests;
- (b) The Assumed Contracts;

(c) Any domain names, websites, or social media handles owned by Seller that are exclusively used or necessary for the Business, as set forth in Schedule 2.01(c), including related passwords (collectively, the “**Domain Names**”);

(d) Any other Intellectual Property owned or licensed by Seller and exclusively used or necessary for the Business that is not otherwise owned or exclusively licensed by the Company; and

(e) The With You Avoidance Actions.

SECTION 2.02 *Assignment of Contracts and Rights.*

(a) Schedule 2.02(a) sets forth a list of all Contracts to which Seller is a party and that Buyer intends to have Seller assume and assign to Buyer on the Closing Date (the “**Assumed Contracts**”), together with the applicable Cure Costs, if any, for each such Assumed Contract as reasonably estimated in good faith by Seller. At any time prior to the date that is five (5) Business Days prior to the date of the hearing on the Sale Order, Buyer may, by written notice to Seller, designate in writing any Contract exclusively related to the Business not designated as an Assumed Contract and, upon such designation, such Assumed Contract will constitute a Purchased Asset and will be conveyed to Buyer under, and in accordance with the terms of, this Agreement at Closing. All Contracts of Seller which do not constitute Assumed Contracts or which otherwise cannot be assumed and assigned to Buyer shall not be considered Purchased Assets.

(b) At Closing, (i) Seller shall, pursuant to the Sale Order and the Assignment and Assumption Agreement, assume and assign, or cause to be assigned, to Buyer each of the Assumed Contracts that is capable of being assumed and assigned and the consideration for which is included in the Purchase Price, and (ii) Buyer shall pay promptly all Cure Costs in connection with such assumption and assignment.

SECTION 2.03 *Estimated Purchase Price.* On the terms and subject to the conditions contained herein, the purchase price for the Purchased Assets shall be equal to \$65,000,000 (the “**Base Purchase Price**”) plus (b) the amount by which the Estimated Closing Working Capital Amount is greater than zero (0), if any, minus (c) the amount by which the Estimated Closing Working Capital Amount is less than zero (0), if any (the Base Purchase Price, as adjusted pursuant to subsections (b) and (c), if any, the “**Estimated Purchase Price**”).

SECTION 2.04 *Good Faith Deposit.*

(a) No later than one (1) Business Day following the date of this Agreement, Buyer shall deposit (or cause to be deposited) in a trust account maintained on behalf of Seller (and to be designated by Seller prior to the date hereof) cash in the amount of \$5,000,000.00 (the “**Good Faith Deposit**”) to be held in escrow in accordance with the terms of this Agreement and to be released as provided in Section 2.04(b).

(b) If the Closing occurs, the Good Faith Deposit (and any interest accrued thereon) shall be transferred to and retained by Seller at the Closing as a credit against the Purchase Price. If this Agreement is terminated in accordance with the terms hereof, the

Good Faith Deposit (together with any interest accrued thereon) shall be treated in the manner set forth in Section 10.02(b).

SECTION 2.05 *Closing Statement; Post-Closing Adjustment.*

(a) Within three (3) Business Days prior to the Closing Date, Seller shall provide to Buyer a statement (the “**Closing Statement**”) setting forth Seller’s good faith calculation of Working Capital as of 12:01 a.m. Eastern time on the Closing Date, without taking into account any of the transactions occurring as part of the Closing (the “**Estimated Closing Working Capital Amount**”), and on the basis of the foregoing, Seller’s good faith calculation of the Estimated Purchase Price.

(b) As of the date hereof and as of the Closing Date, the Company does not and will not have any indebtedness for borrowed money or any cash. Buyer hereby acknowledges and agrees that there shall be no adjustment to the Purchase Price, prior to or after the Closing, with respect to any indebtedness of the Company for borrowed money or any cash held by the Company.

(c) The Parties hereby acknowledge and agree that all cash of the Company will be distributed to Seller and Buyer in accordance with Section 3.01 of the Operating Agreement immediately prior to the Closing. In addition, the Parties hereby acknowledge and agree that, as of the date of this Agreement, the Seller (as Administrative Manager) has approved, and the Company has allocated, \$320,000 of the cash of the Company (such amount, the “**Marketing Budget**”) towards marketing and advertising fees and expenses between the period beginning from the date of this Agreement and ending on the Closing Date (such period, the “**Marketing Spend Period**”). The Marketing Budget can only be spent by the Company during the Marketing Spend Period and only for the marketing and advertising activities described on Schedule 2.05(c), unless otherwise agreed by the Parties in writing. Following the Marketing Spend Period, the Company shall not utilize any portion of the Marketing Budget or incur any further marketing or advertising fees or expense, and the Buyer agrees that any such amount taken from the Marketing Budget or incurred by the Company following the Marketing Spend Period shall be solely at the Buyer’s expense. To the extent there is any amount that remains in the Marketing Budget following the Marketing Spend Period, the Parties hereby agree that all such amount shall be distributed (along with other cash of the Company) to Seller and Buyer in accordance with Section 3.01 of the Operating Agreement immediately prior to the Closing.

(d) Within twenty (20) Business Days after the Closing Date, Buyer shall prepare and deliver to Seller a statement (the “**Post-Closing Statement**”) setting forth Buyer’s good-faith calculation of Working Capital as of 12:01 a.m. Eastern time on the Closing Date, without taking into account any of the transactions occurring as part of the Closing (“**Final Closing Working Capital Amount**”), and on the basis of the foregoing, Buyer’s calculation of the Final Purchase Price, together with reasonable detail and supporting documentation. The Post-Closing Statement shall be prepared using the same methodologies and accounting principles used to prepare the Closing Statement.

(e) During the ten (10) Business Days following Seller's receipt of the Post-Closing Statement, and during any period of dispute in accordance with this Section 2.05, Buyer shall (i) provide Seller and its Representatives upon prior written notice with reasonable but confidential access during normal business hours to the books and records of Buyer, the personnel of, and work papers prepared by, Buyer and/or its accountants to the extent relating to the Post-Closing Statement and to such historical financial information relating to the calculations set forth in the Post-Closing Statement, (ii) reasonably cooperate with the Seller and its Representatives in connection with such review, including providing on a timely basis all other information in connection with such review as is reasonably requested by the Seller or its Representatives, and (iii) use its commercially reasonable efforts to cause its accountants, Representatives and employees to timely and reasonably cooperate with the Seller and its Representatives in connection with such review. If Seller has any objections to the Post-Closing Statement, then Seller shall deliver to Buyer a written statement (an "**Objections Statement**") setting forth in reasonable detail each item that Seller disputes (including the specific adjustments that Seller proposes to be made to the Post-Closing Statement taking into account the information then available to Seller). If an Objections Statement is not delivered to Buyer within ten (10) Business Days following the Seller's receipt of the Post-Closing Statement, or if Seller delivers, before the expiration of such ten (10) Business Day period, written notice to Buyer that it has no objections to the Post-Closing Statement, then the Post-Closing Statement shall be final and binding on, and non-appealable by, the Parties. Any matters and amounts not raised in the Objections Statement shall be deemed to be final and binding on, and non-appealable by, the Parties.

(f) If a timely Objections Statement is received by Buyer in accordance with Section 2.05(e), then Seller and Buyer shall negotiate in good faith to resolve the objections raised therein. If Buyer and Seller are unable to reach a final resolution of all of such objections within ten (10) Business Days after the delivery of the Objections Statement to Buyer (or such longer period as Seller and Buyer may agree in writing), then Seller and Buyer shall submit any and all matters and amounts (but only such matters and amounts) that were included in the Objections Statement and remain in dispute (the "**Disputed Matters**") to the Bankruptcy Court for the purpose of resolving the Disputed Matters.

**SECTION 2.06** *Closing*. The closing (the "**Closing**") of the purchase and sale of the Purchased Assets hereunder shall take place remotely by conference call and by exchange of signature pages by email or fax, or at such other place as Seller and Buyer mutually may agree in writing, as soon as possible following entry of the Sale Order, but in no event later than three (3) Business Days, after satisfaction of the conditions set forth in Article 8, or at such other time or place as Buyer and Seller may agree in writing. At the Closing:

(a) Buyer shall deliver, or cause to be delivered, to Seller:

(i) the Estimated Purchase Price (less the Good Faith Deposit as set forth in Section 2.04(a)) by wire transfer of immediately available funds, to the bank account(s) designated in writing by Seller prior to the Closing Date;

(ii) the Assignment and Assumption Agreement, duly executed by Buyer;

(iii) the Transition Services Agreement, duly executed by Buyer;

(iv) a letter confirming the termination of that certain agreement between Buyer and the Company dated May 1, 2019 with respect to the Jessica Simpson e-commerce platform and website (“**E-Commerce Termination Letter**”);

(v) each other Transaction Document to which Buyer is a party, duly executed by Buyer; and

(vi) such other assignments and other good and sufficient instruments of assumption and transfer, in form satisfactory to Buyer and Seller, as Seller may reasonably request to transfer and assign the Purchased Assets to Buyer.

(b) Seller shall deliver, or cause to be delivered, to Buyer:

(i) the Seller Interests and certificates representing the Seller Interests, duly endorsed in blank or accompanied by powers duly endorsed in blank in proper form for transfer, with appropriate transfer stamps, if any, affixed;

(ii) Seller’s books and records, to the extent exclusively related to the Business, including all corporate records, all technical information and data, databases, computer files, schematics, all filings made with or records required to be kept by any Governmental Authority, all research and development reports, all financial and accounting records (including without limitation, the unaudited balance sheets and related statements of income as of and for (i) the fiscal year ended December 31, 2020, (ii) the fiscal year ended December 31, 2019 and (iii) the period ended the month prior to the Closing Date), all creative, promotional or advertising materials, and any other ledgers, files, documents, correspondence and business records relating to the foregoing; provided, however, in no event shall Seller be required to deliver to Buyer any books and records of any kind or medium, communications, corporate records, minute books, emails, correspondence or any other transmission, records or materials that, in each case, are related to the sale of the Business by Seller, including, without limitation, the transactions contemplated by this Agreement, the negotiation thereof and hereof and the consummation of the transactions contemplated hereby; provided, further, that Seller shall be entitled to retain a copy of such books and records described in this Section 2.06(b)(ii) for recordkeeping purposes, which such copies shall be retained in accordance with the terms of the Confidentiality Agreement;

(iii) the Domain Names, and a list of all user names, passwords and other relevant login information needed to access the foregoing;

- (iv) an assignment and assumption agreement, in form and substance reasonably acceptable to Seller and Buyer (the “**Assignment and Assumption Agreement**”), with respect to the Assumed Contracts, duly executed by Seller;
- (v) the With You Avoidance Actions;
- (vi) the Transition Services Agreement, duly executed by Seller;
- (vii) the E-Commerce Termination Letter;
- (viii) each other Transaction Document to which Seller is a party, duly executed by Seller;
- (ix) the resignation of the Administrative Manager as a manager of the Company;
- (x) a certificate of non-foreign status executed by Seller (or, if applicable, a direct or indirect owner of Seller) for U.S. federal income tax purposes, prepared in accordance with Treasury Regulation Section 1.1445-2(b) and a properly executed IRS Form W-9;
- (xi) Lien Release Letters; and
- (xii) such other assignments and other good and sufficient instruments of assumption and transfer, in form satisfactory to Buyer and Seller, as Buyer may reasonably request to vest in Buyer all right, title and interest in and to the Purchased Assets.

SECTION 2.07 *Post-Closing Payment.* After determination of the Final Purchase Price in accordance with Section 2.05, an adjustment payment shall be calculated as set forth in this Section 2.07:

(a) If there is a Final Deficiency, then, no later than three (3) Business Days after the determination of the Final Purchase Price in accordance with Section 2.05, Seller shall pay the amount of the Final Deficiency by wire transfer of immediately available funds to the account(s) designated by Buyer.

(a) If there is a Final Excess, then, no later than three (3) Business Days after the determination of the Final Purchase Price in accordance with Section 2.05, Buyer shall pay to Seller the amount of the Final Excess by wire transfer of immediately available funds to the account designated by Seller.

SECTION 2.08 *Seller Receivables.* The Parties acknowledge and agree that Receivables that relate to any period prior to the Closing Date shall be allocated to Seller and Buyer in accordance with Section 3.01 of the Operating Agreement, other than Receivables that are royalties payable by Buyer to the Company pursuant to that certain License Agreement, dated as of May 1, 2019, by and between Buyer and the Company, which the Parties acknowledge and agree shall be allocated 100% to Seller. From and after the Closing, with respect to Receivables

that relate to any period prior to the Closing Date, (a) to the extent that such Receivables are paid to and actually collected by Buyer or any of its Affiliates, Buyer shall promptly remit, or cause its Affiliates to promptly remit, Seller's portion of such Receivables as set forth in the first sentence of this Section 2.08 to Seller by wire transfer of immediately available funds no later than fifteen (15) days following the end of each calendar month following the Closing Date, and (b) in furtherance of the foregoing, (i) Buyer shall, and shall cause the Company to, use commercially reasonable efforts to collect on such Receivables and (ii) Buyer shall not, and shall cause the Company not to, take any action that would have the effect of reducing the Receivables payable to the Company or delaying the payment of Receivables due to the Company.

### ARTICLE 3

#### REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the Disclosure Schedules, Seller hereby represents and warrants to Buyer as of the date of this Agreement and the Closing Date as follows:

**SECTION 3.01**      *Organization and Qualification.* Seller is a corporation duly organized and is validly existing and in good standing (where applicable) under the Laws of the State of Delaware, with the requisite power and authority to own its properties and conduct its business as currently conducted, except for any failure to be in good standing as would not, individually or in the aggregate, have a Material Adverse Effect.

**SECTION 3.02**      *Corporate Authorization.* Subject to entry of the Sale Order, the execution, delivery and performance by Seller of this Agreement and all other Transaction Documents to which Seller is or will be a party and the consummation of the transactions contemplated hereby and thereby have been, or prior to the Closing will be, duly authorized by all necessary corporate or other action on the part of Seller. Subject to entry of the Sale Order, Seller has all necessary power and authority to execute and deliver this Agreement and the other Transaction Documents to which Seller is or will be a party, and to consummate the transactions contemplated hereby and thereby and to performs its obligations hereunder and thereunder.

**SECTION 3.03**      *Execution and Delivery; Enforceability.* This Agreement has been duly and validly executed and delivered by Seller and, subject to the Bankruptcy Court's entry of the Bid Procedures Order and the Sale Order and subject to the effect of any Laws relating to bankruptcy, reorganization, insolvency, moratorium, fraudulent conveyance or preferential transfers, or similar Laws relating to or affecting creditors' rights generally and subject, as to enforceability, to the effect of general principles of equity (regardless of whether such enforceability is considered in any Causes of Action in equity or at Law) (the "**Bankruptcy and Equity Exception**"), will constitute the valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

**SECTION 3.04**      *Consents and Approvals.* No consent, approval, authorization or Order of or with any third party, or Governmental Authority having jurisdiction over Seller or any of its properties, is required for the execution and delivery by Seller of this Agreement and performance of and compliance by Seller with all of the provisions hereof and the consummation of the transactions contemplated herein, except: (a) as set forth on Schedule 3.04(a); (b) the entry

of the Sale Order and the expiration, or waiver by the Bankruptcy Court, of the fourteen (14) day period set forth in Rules 6004(h) and 3020(e) of the Federal Rules of Bankruptcy Procedure, as applicable; (c) for notices, filings and consents required in connection with the Chapter 11 Cases; and (d) for such consents, approvals, authorizations and Orders, the failure of which to provide, make or obtain, would not, individually or in the aggregate, be material to the Company, taken as a whole.

SECTION 3.05 *No Conflicts.* The execution, delivery and performance by Seller of this Agreement and the other Transaction Documents to which Seller is or will be a party and the consummation by Seller of the transactions contemplated hereby and thereby do not and will not (a) conflict with or violate any of the organizational documents of Seller; (b) conflict with or violate any Law applicable to Seller; (c) result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under or require any consent of any Person pursuant to, any note, bond, mortgage, indenture, agreement, lease, license, permit, franchise, instrument, obligation or other contract to which Seller is a party; or (d) subject to entry of the Sale Order, require any consent or approval of, registration or filing with, or notice to any Governmental Authority, except, in the causes of clauses (b) through (d), as would not, individually or in the aggregate, be material to the Company, taken as a whole.

SECTION 3.06 *Membership Interests.* The Membership Interests have been duly authorized, validly issued and are fully paid and nonassessable. There are no Encumbrances to which the Company is subject, or other Contract to which the Company is subject, relating to the ownership, transfer or voting of any Membership Interests in the Company. There are no outstanding options, warrants, convertible securities, subscriptions or other rights obligating the Company to issue any additional Membership Interests.

SECTION 3.07 *Title to the Purchased Assets.* Seller is the sole legal and beneficial owner of the Purchased Assets. Upon delivery to Buyer on the Closing Date of the instruments of transfer contemplated hereby and subject to the terms of the Sale Order, Seller will thereby transfer to Buyer, all of Seller's right, title and interest in and to the Purchased Assets free and clear of all Encumbrances (other than Permitted Encumbrances). Immediately following the Closing, Buyer will own one hundred percent (100%) of the Membership Interests.

SECTION 3.08 *Equity Interests.* The Company (a) does not directly or indirectly own any equity, partnership, membership or similar interest in any Person, or any interest convertible into, exercisable for the purchase of or exchangeable for any such equity, partnership, membership or similar interest in such Person, and (b) is not under any current or prospective obligation to form or participate in, provide funds to, make any loan, capital contribution or other investment in or assume any liability or obligation of, any Person.

SECTION 3.09 *Litigation.* Except as set forth on Schedule 3.09, as of the date hereof, there are no Causes of Action to which the Company is a party pending, or, to the Knowledge of Seller, threatened (a) to restrain or prevent the transactions contemplated by this Agreement, or (b) otherwise affecting any material property or asset of the Company, except as would not be material to the Company, taken as a whole. Except as set forth on Schedule 3.09, the Company is not a party to any outstanding Order.



SECTION 3.10 *Intellectual Property.*

(a) Schedule 3.10(a) sets forth a true and complete list of all material Owned Intellectual Property that is Registered.

(b) Except as set forth on Schedule 3.10(b), no Owned Intellectual Property has been in the last twelve (12) months or is now involved in any opposition, cancellation, public protest, domain name dispute resolution, interference, reissue, reexamination, mediation or arbitration proceeding and, to the Knowledge of Seller, no such proceeding is or has been threatened with respect to any of the Owned Intellectual Property, except as would not, individually or in the aggregate, be material to the Company.

(c) The Company owns or otherwise holds valid rights to use all Intellectual Property used in the operation of the Business as currently conducted. The Company exclusively owns, free and clear of any and all Encumbrances (other than Permitted Encumbrances and licenses granted under third-party Intellectual Property exclusively licensed to the Company), all Owned Intellectual Property and, to the Knowledge of Seller, all other Intellectual Property used in the Business other than Licensed Intellectual Property.

(d) Except as would not, individually or in the aggregate, be material to the Company, the Company has taken reasonable steps in accordance with standard industry practices to protect its rights in its Owned Intellectual Property.

(e) All material Owned Intellectual Property is subsisting and, to the Knowledge of Seller, valid and enforceable.

(f) The Company has not transferred ownership of, or granted any exclusive license with respect to, any Owned Intellectual Property, other than the license agreements with licensees of the Jessica Simpson brand to manufacture, import, sell, distribute, market and/or promote products bearing the Jessica Simpson brand. Upon the consummation of the Closing, the Company shall continue to own all of the Owned Intellectual Property rights reasonably necessary for the conduct of the Business as it is currently conducted and all of such rights shall be exercisable by the Company to the same extent as prior to the Closing. To the Knowledge of Seller, other than as set forth on Schedule 3.10(f), no loss or expiration of any of the Owned Intellectual Property used by the Company is threatened or, within three (3) months preceding the date hereof, pending.

SECTION 3.11 *Taxes.*

(a) The Company has timely filed all income or other material Tax Returns required to be filed with the appropriate Governmental Authorities, and all such Tax Returns are true, correct and complete in all material respects. All income and other material Taxes due and payable by the Company with respect to the Business whether or not shown to be payable on such Tax Returns, have been timely paid. No claim has been made in writing within the last three (3) taxable years by a Governmental Authority in a jurisdiction where Seller does not file Tax Returns that Seller or the Business is or may be subject to taxation by that jurisdiction.

(b) Other than as set forth on Schedule 3.11(b), there are no Encumbrances on any of the Membership Interests that arose in connection with any failure (or alleged failure) of Seller or the Company to pay any Tax, other than Encumbrances for Taxes not yet due and payable.

SECTION 3.12 *No Other Representations or Warranties.* Buyer acknowledges that, except for the representations and warranties expressly set forth in this Article 3, neither Seller nor any other Person or Representative acting on behalf of Seller or otherwise makes any express or implied representation or warranty with respect to Seller or with respect to any information provided by or on behalf of Seller to Buyer.

## ARTICLE 4

### REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer represents and warrants to Seller as of the date of this Agreement as follows:

SECTION 4.01 *Corporate Existence and Power.* Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of California and has all power and authority to carry on its business as presently conducted.

SECTION 4.02 *Corporate Authorization.* The execution, delivery and performance by Buyer of this Agreement and all other Transaction Documents to which Buyer is or will be a party and the consummation of the transactions contemplated hereby and thereby are within the corporate powers of Buyer and have been duly authorized by all necessary corporate action on the part of Buyer.

SECTION 4.03 *Execution and Delivery; Enforceability.* This Agreement and all other Transaction Documents to which Buyer is or will be a party have been, or prior to the Closing will be, duly and validly executed and delivered by Buyer, and constitute the valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, subject to the Bankruptcy and Equity Exception.

SECTION 4.04 *No Conflicts.* The execution, delivery and performance by Buyer of this Agreement and the other Transaction Documents to which it is or will be a party and the consummation by Buyer of the transactions contemplated hereby and thereby do not and will not (a) conflict with or violate any of the organizational documents of Buyer; (b) conflict with or violate any Law applicable to Buyer; (c) result in any breach of, constitute a default (or an event that, with notice or lapse of time or both, would become a default) under or require any consent of any Person pursuant to, any note, bond, mortgage, indenture, agreement, lease, license, permit, franchise, instrument, obligation or other contract to which Buyer is a party; or (d) require any consent or approval of, registration or filing with, or notice to any Governmental Authority, except for such consents or approvals that would not, individually or in the aggregate, reasonably be expected to have a materially adverse effect on Buyer's ability to consummate the transactions contemplated by this Agreement.

SECTION 4.05 *Availability of Funds; Solvency.* Buyer shall have at the Closing sufficient funds to pay all of the Purchase Price and any other costs, fees and expenses which may

be required to be paid by or on behalf of Buyer under this Agreement and the other Transaction Documents. Notwithstanding anything to the contrary contained herein, Buyer acknowledges and agrees that its obligations to consummate the transactions contemplated hereby are not contingent upon its ability to obtain any third party financing. As of the Closing and immediately after consummating the transactions contemplated by this Agreement and the other transactions contemplated by the Transaction Documents, Buyer and its subsidiaries (taken as a whole) will not, (a) be insolvent (either because their financial condition is such that the sum of their debts is greater than the fair value of their assets or because the present fair value of their assets will be less than the amount required to pay their Liability (calculated as the amount that would reasonably be expected to become an actual and matured Liability) on their debts as they become absolute and matured); (b) have unreasonably small capital with which to engage in their respective businesses; or (c) have incurred or plan to incur debts beyond their ability to repay such debts as they become absolute and matured.

SECTION 4.06 *Litigation.* There are no Actions to which Buyer is a party pending, or, to the knowledge of Buyer, threatened (a) to restrain or prevent the transactions contemplated by this Agreement or any other Transaction Documents, or (b) that would affect in any material respect Buyer's ability to perform its obligations under this Agreement or any other Transaction Documents or to consummate the transactions contemplated hereby or thereby.

SECTION 4.07 *Investment Intent.* Buyer is acquiring the Purchased Assets for its own account for investment purposes only and not with a view to any public distribution thereof or with any intention of selling, distributing or otherwise disposing of the Purchased Assets in a manner that would violate the registration requirements of the Securities Act.

SECTION 4.08 *Brokers.* No broker, finder or agent will have any claim against Seller for any fees or commissions in connection with the transactions contemplated by this Agreement or any other Transaction Document based on arrangements made by or on behalf of Buyer.

SECTION 4.09 *Independent Investigation.* BUYER HAS CONDUCTED ITS OWN INDEPENDENT REVIEW AND ANALYSIS OF THE COMPANY, INCLUDING ITS OPERATIONS, ASSETS, LIABILITIES, RESULTS OF OPERATIONS, FINANCIAL CONDITION, SOFTWARE, TECHNOLOGY AND PROSPECTS OF THE BUSINESS, AND ACKNOWLEDGES THAT IT HAS BEEN PROVIDED ACCESS TO PERSONNEL, PROPERTIES, PREMISES AND RECORDS OF THE COMPANY AND THE DATA ROOM ESTABLISHED BY SELLER FOR SUCH PURPOSE. IN ENTERING INTO THIS AGREEMENT, BUYER HAS RELIED SOLELY UPON ITS OWN INVESTIGATION AND ANALYSIS AND THE INFORMATION CONTAINED IN SUCH DATA ROOM, AND SELLER'S REPRESENTATIONS AND WARRANTIES SET FORTH IN ARTICLE 3 AND ACKNOWLEDGES THAT NEITHER SELLER NOR ANY OF ITS AFFILIATES OR REPRESENTATIVES MAKES OR HAS MADE ANY REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE ACCURACY OR COMPLETENESS OF ANY OF THE INFORMATION PROVIDED OR MADE AVAILABLE TO BUYER OR ITS REPRESENTATIVES (INCLUDING ANY INFORMATION PROVIDED OR MADE AVAILABLE TO BUYER IN THE DATA ROOM, EXCEPT AS EXPRESSLY PROVIDED IN ARTICLE 3). EXCEPT AS SPECIFICALLY SET FORTH IN ARTICLE 3, (A) SELLER

MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AT LAW OR IN EQUITY, IN RESPECT OF OR OTHERWISE IN ANY WAY RELATING TO THE COMPANY OR ITS ASSETS, LIABILITIES OR OPERATIONS, OR ITS BUSINESS, INCLUDING WITH RESPECT TO VALUE, CONDITION OR PERFORMANCE OR MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR ANY PURPOSE (BOTH GENERALLY OR FOR ANY PARTICULAR PURPOSE) AND WITH RESPECT TO FUTURE REVENUE, PROFITABILITY OR THE SUCCESS OF THE COMPANY AND THE BUSINESS AND (B) ANY SUCH OTHER REPRESENTATIONS OR WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. BUYER ACKNOWLEDGES THAT, SHOULD THE CLOSING OCCUR, BUYER SHALL ACQUIRE THE ASSETS OF THE BUSINESS WITHOUT ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS THEREOF FOR ANY PARTICULAR PURPOSE, IN AN "AS IS" CONDITION AND ON A "WHERE IS" BASIS.

## ARTICLE 5

### COVENANTS OF SELLER

SECTION 5.01 *Conduct of the Business.* Except (1) as may be reasonably advisable to carry out any of the transactions contemplated by the Transaction Documents or as set forth on Schedule 5.01, (2) as consented to by Buyer (which consent shall not be unreasonably withheld, conditioned or delayed), with an email from Tina Simpson on behalf of Buyer being sufficient, (3) as expressly permitted pursuant to the Bid Procedures Motion, Bid Procedures Order, and Bid Procedures or this Agreement, (4) as required or approved by the Bankruptcy Code or any Orders entered by the Bankruptcy Court in the Chapter 11 Cases, including, without limitation, any debtor-in-possession financing order or any order permitting the use of cash collateral, (5) as otherwise necessary to comply with applicable Law, or (6) for any actions taken in good faith as reasonably necessary to respond to COVID-19 (provided, that prior to taking (or abstaining from taking) any action pursuant to this clause (6), Seller shall use commercially reasonable efforts to provide reasonable advance notice to Buyer and consult in good faith with Buyer with respect to the appropriateness of such action or inaction), from the date hereof until the Closing Date, (x) Seller shall use commercially reasonable efforts to conduct the Business in the ordinary course of business and (y) Seller shall cause the Company not to, and the Company shall not:

(a) take any actions with respect to Company's capital structure or organizational structure, or amend or otherwise change Company's certificate of formation or operating agreement or equivalent organizational documents;

(b) issue, sell, pledge, transfer, dispose of or otherwise subject to any Encumbrance, except a Permitted Encumbrance, (i) any Membership Interests, or any options, warrants, convertible securities or other rights of any kind to acquire any such Membership Interests, or any other equity or ownership interest in the Company or the Business or (ii) any properties or assets of the Company or the Business, other than sales of inventory or other products by licensees of the Business in the ordinary course of business;

(c) acquire any corporation, partnership, limited liability company, other business organization or division thereof or any material amount of assets, or enter into any

joint venture, strategic alliance, exclusive dealing, noncompetition or similar Contract or arrangement;

(d) incur any indebtedness or issue any debt securities or assume, guarantee or endorse, or otherwise become responsible for, the obligations of any Person, or make any loans or advances;

(e) enter into, amend, waive, modify or consent to the termination of any lease, any material Contract in respect of any Licensed Intellectual Property or any other material Contract of the Company, or amend, waive, modify or consent to the termination of the Company's rights thereunder in any material respect;

(f) permit the lapse of any right relating to Owned Intellectual Property (or any other Intellectual Property that constitutes a Purchased Asset) that is material to the Business as currently conducted; or

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

SECTION 5.02 *Access to Information.*

(a) From the date hereof until the Closing Date, Seller will use commercially reasonable efforts, subject to the terms of the Confidentiality Agreement, to give, on reasonable prior written notice and during normal business hours, Buyer, its counsel, and financial advisors, reasonable access to the offices, properties, books and records of Seller relating (and solely to the extent relating) to the Company, and (ii) to furnish to Buyer, its counsel, financial advisors, auditors and other authorized Representatives such financial and operating data and other information relating (and solely to the extent relating) to the Company as such Persons may reasonably request. Buyer agrees that any investigation undertaken pursuant to the access granted under this Section 5.02(a) shall be conducted in such a manner as not to unreasonably interfere with the operation of Seller's business.

(b) Notwithstanding anything to the contrary in this Agreement, Seller shall not be required to provide access to, or otherwise furnish, any information if Seller determines, in its reasonable discretion, that (i) such access would be reasonably likely to jeopardize any attorney-client or other similar privilege, (ii) such access would contravene any applicable Laws, fiduciary duty or binding agreement entered into prior to the date of this Agreement, (iii) the information to be accessed is pertinent to any existing or potential litigation between Seller or any of their Affiliates, on the one hand, and Buyer or any of its Affiliates, on the other hand or (iv) any information, guidance or advice received by the Company and its Affiliates related to the transactions contemplated by this Agreement.

(c) All requests for access or information by or on behalf of Buyer shall be submitted to Stifel, Nicolaus & Co. or such other person(s) as Seller may designate in writing, and none of Buyer or any of its Affiliates or Representatives shall communicate with any other employees or officers of Seller without the prior written consent of Seller. For the avoidance of doubt, and notwithstanding anything contained herein to the contrary, Buyer shall not have access to personnel records of Seller relating to individual

performance or evaluation records, medical histories or other information related to employees of Seller.

(d) At and following the Closing, Seller may retain copies of the books and records of the Business to the extent Seller determines, in its sole discretion, that Seller (i) should retain them to comply with applicable Law or (ii) may require such copies for Tax purposes.

SECTION 5.03 *Update of Disclosure Schedules.* Until the Closing Date, Seller may deliver any new schedules or supplement or amend the Disclosure Schedules with respect to any matter that, if existing, occurring or known as of the date hereof, would have been required to be set forth or described in the Disclosure Schedules. Any such supplement or amendment shall be deemed to modify the Disclosure Schedules for purposes of this Agreement except to the extent that, absent such modification(s) to the Disclosure Schedules, Seller would then be in breach of the representations, warranties, covenants or other agreements contained herein such that the condition to Closing set forth in Section 8.02(a) would not then be satisfied.

SECTION 5.04 *Use of Name.* After the Closing, Seller shall not, and shall cause its Affiliates not to, use, authorize the use, register, or attempt to register the name “Jessica Simpson” or any confusingly similar variations thereof as a trademark, domain name, or any other form of Intellectual Property.

SECTION 5.05 *Notices of Certain Events.* Seller shall promptly (and in any event within five (5) Business Days) notify Buyer in writing (which notice shall include, to the extent reasonably practicable, any relevant details and information in Seller’s possession or control) of (a) the occurrence of any change, effect, event, circumstance, occurrence or state of facts of which it is or becomes aware, which does, or which could be reasonably be expected to, cause any condition set forth in Article 8 to fail to be satisfied or which would otherwise prevent, delay or impede the Closing, (b) any written notice or other communication from any Governmental Authority (other than the Bankruptcy Court) related to or in connection with the transactions contemplated by this Agreement and (c) the receipt of any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement. Any required to provide notice to be provided under this Section 5.05 may be fully satisfied by providing notice to counsel to Buyer at the email address for such counsel as set forth in Section 11.01.

SECTION 5.06 *Wrong Pockets.* Within twelve (12) months following the Closing Date, (a) in the event that any asset, right or property of Seller or its Affiliates exclusively used or necessary for the Business is found to have been retained by Seller or its Affiliates, (i) Seller shall, or shall cause its Affiliates to, transfer and convey such asset, right or property (and any related Liability) as soon as reasonably practicable to Buyer, in each case for no additional consideration, and (ii) Seller shall hold such asset, right or property in trust for Buyer until such transfer and conveyance is completed, or (b) any asset, right or property of Seller or its Affiliates that are not related to or used in the Business is found to have been transferred and conveyed to Buyer, (i) Buyer shall transfer and convey such asset, right or property (and any related Liability) as soon as reasonably practicable to Seller, in each case for no additional consideration and (ii) Buyer shall hold such asset, right or property in trust for Seller until such transfer and conveyance is completed.

ARTICLE 6

COVENANTS OF BUYER

SECTION 6.01 *Confidentiality.* Buyer acknowledges and agrees that at any time prior to the Closing Date and after any termination of this Agreement, the Confidentiality Agreement shall remain in full force and effect and Buyer and its Affiliates shall remain bound thereby during such periods.

SECTION 6.02 *Notices of Certain Events.* Buyer shall promptly (and in any event within five (5) Business Days) notify Seller in writing (which notice shall include, to the extent reasonably practicable, any relevant details and information in Buyer's possession or control) of (a) the occurrence of any change, effect, event, circumstance, occurrence or state of facts of which it is or becomes aware, which does, or which could be reasonably be expected to, cause any condition set forth in Article 8 to fail to be satisfied or which would otherwise prevent, delay or impede the Closing, (b) any written notice or other communication from any Governmental Authority (other than in or related to the Bankruptcy Court) related to or in connection with the transactions contemplated by this Agreement and (c) the receipt of any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement. Any requirement to provide notice under this Section 6.02 may be fully satisfied by provided notice to counsel to Seller at the email address for such counsel as set forth in Section 11.01.

SECTION 6.03 *Preservation of Books and Records.* After the Closing Date, Buyer shall provide to Seller and its Affiliates and Representatives (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 included in and otherwise related to the Company, to the extent necessary to permit Seller to determine any matter relating to their respective 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) or otherwise related to the Company, for periods prior to the Closing and shall preserve such books and records until the latest of (a) such period as shall be consistent with Buyer's records retention policy in effect from time to time, (b) the retention period required by applicable Law, (c) the conclusion of all bankruptcy proceedings relating to the Chapter 11 Cases, including the closing of the Chapter 11 Cases and (d) 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 has the right to retain originals or copies of all of books and records related to the Company for periods prior to the Closing.

SECTION 6.04 *Communication.* On and after the date hereof and through the Closing Date, other than the Representatives of Seller set forth on Schedule 6.04, Buyer shall not (and shall not permit any of Buyer's Representatives or Affiliates to) contact or communicate with the employees, licensees, customers, service providers and vendors of Seller without the prior consultation with and written approval of Seller; provided that, subject to Section 6.01, this Section 6.04 shall not prohibit ordinary course communications that are unrelated to this Agreement or the transactions contemplated hereby.

SECTION 6.05 *Buyer's Knowledge.* Notwithstanding anything herein to the contrary, Buyer acknowledges and agrees that, in the event that Buyer has entered into this Agreement with any knowledge by Buyer or any Affiliate of Buyer of any breach by Seller of any representation, warranty or covenant in this Agreement, Buyer shall not have any claim or recourse against Seller or any of its Affiliates with respect to such breach under this Agreement, including under Article 8 and Article 10.

## ARTICLE 7

### COVENANTS OF BUYER AND SELLER

#### SECTION 7.01 *Further Assurances.*

(a) At and after the Closing, and without further consideration therefor, Seller and Buyer shall use commercially reasonable efforts to take, or cause to be taken, all appropriate action to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable Law or otherwise to consummate and make effective the transactions contemplated by this Agreement and the other Transaction Documents as promptly as practicable .

(b) The Parties agree to (and shall cause each of their respective Affiliates to) provide each other with such information and assistance as is reasonably necessary for the preparation of any Tax Returns or for the defense of any Tax claim or assessment, whether in connection with an audit or otherwise, including the furnishing or making available on a timely basis of records, personnel (as reasonably required), books of account, or other necessary materials.

SECTION 7.02 *Certain Filings.* Seller and Buyer shall use their commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary under applicable Law to consummate and make effective the transactions contemplated by this Agreement, including furnishing all information required by applicable Law in connection with approvals of or filings with any Governmental Authority, and filing, or causing to be filed, as promptly as practicable, any required notification and report forms under other applicable competition Laws with the applicable Governmental Authority.

SECTION 7.03 *Public Announcements.* On and after the date hereof and through the Closing Date, the Parties shall consult with each other before issuing any press release or otherwise making any public statements with respect to this Agreement or the transactions contemplated hereby, and no Party shall issue any press release or make any public statement prior to obtaining the written consent of all other Parties hereto (which consent shall not be unreasonably withheld, conditioned or delayed); provided, however, that that no such prior consultation or consent shall be required for disclosure by either Party (a) to its current, former or prospective lenders and their respective Representatives, provided that the recipient of such information is subject to a customary confidentiality obligation, (b) in earnings releases or earnings calls or as otherwise advised by accountants, or (c) as required by applicable Law or applicable securities exchange rules.



SECTION 7.04 *Tax Matters.*

(a) Allocation of Straddle Period Taxes.

(i) For purposes of this Agreement, in order to apportion appropriately any Taxes relating to a taxable period beginning before and ending after the day immediately prior to the Closing Date (a “**Straddle Period**”), the amount of Taxes that are allocable to the portion of the Straddle Period ending on and including the day immediately prior to the Closing Date shall be:

(A) in the case of Taxes imposed on a periodic basis with respect to the business or assets of a Seller (such as ad valorem and property Taxes) and exemptions, allowances or deductions that are calculated on an annual basis, such as depreciation, the amount of such Taxes, exemptions, allowances or deductions for the entire Straddle Period multiplied by a fraction, the numerator of which is the number of calendar days in the portion of the Straddle Period ending on and including the Closing Date, and the denominator of which is the number of calendar days in the entire Straddle Period (provided that any Tax exemption or allowance with respect to an annual period shall be pro-rated on an equal daily basis between the pre-Closing Tax period and the remainder of the Straddle Period); and

(B) in the case of all other Taxes, determined on a “closing of the books basis” as if the taxable period ended on the Closing Date.

(b) Tax Cooperation. The Parties shall furnish or cause to be furnished to each other, upon request, and at the sole cost of the requesting Party, as promptly as practicable, such information and assistance relating to the Company as is reasonably necessary for the filing of Tax Returns and the preparation for, or the prosecution or defense of, any audit, claim, demand, proposed adjustment or deficiency relating to Taxes, and any other matter or proceeding relating to Taxes.

(c) Transfer Taxes. To the extent Seller is required by applicable Law to pay Transfer Taxes, Buyer shall reimburse Seller the amount of such Transfer Taxes at least five Business Days prior to the applicable due date for such Transfer Taxes, and Seller shall provide timely payment thereof (if any payment is due) to the applicable Governmental Authority and promptly provide a copy of such Tax Return to Buyer. Further, each Party hereto agrees to timely sign and deliver (or to cause to be timely signed and delivered) such certificates or forms as may be necessary or appropriate and otherwise to cooperate to establish any available exemption from (or otherwise reduce) such Transfer Taxes. Closing. The Parties hereto shall cooperate in good faith to establish any available exemption from (or reduction of) any Transfer Taxes.

SECTION 7.05 *Bulk Transfer Laws.* The Parties intend that pursuant to Section 363(f) of the Bankruptcy Code, the transfer of the Purchased Assets shall be free and clear of any security interests, including any liens or claims arising out of the bulk transfer Laws, and the Parties shall take such steps as may be necessary or appropriate to so provide in the Sale Order. In

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

SECTION 7.06 *Bankruptcy Court Approval.*

(a) The Parties shall use their respective commercially reasonable efforts to have (i) the Bankruptcy Court enter the Bid Procedures Order as promptly as practicable and (ii) the Bankruptcy Court enter the Sale Order as promptly as practicable after the completion of the Auction but, in any event, in each case in compliance with the Milestones. Debtors and Buyer shall cooperate in good faith to obtain the Bankruptcy Court’s entry of the Bid Procedures Order, the Sale Order, and any other Order reasonably necessary in connection with the transactions contemplated by this Agreement, including furnishing affidavits, nonconfidential financial information, or other documents or information for filing with the Bankruptcy Court and making such advisors of Debtors and Buyer and their respective Affiliates available to testify before the Bankruptcy Court for the purposes of, among other things, providing adequate assurances of performance by Buyer as required under Section 365 of the Bankruptcy Code, and demonstrating that Buyer is a “good faith” purchaser under Section 363(m) of the Bankruptcy Code. Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining entry of the Bid Procedures Order, the Sale Order, and any other Order reasonably necessary, consistent with the above.

(b) The Debtors shall give notice under the Bankruptcy Code and the Bankruptcy Rules of the request for the relief specified in the Bid Procedures and Sale Motion to all Persons entitled to such notice, including all Persons that have asserted Encumbrances on the Purchased Assets and all non-debtor parties to the Assumed Contracts, and other appropriate notice as required by the Bankruptcy Rules and the local rules of the Bankruptcy Court, including such additional notice as the Bankruptcy Court shall direct or as Buyer may reasonably request, and provide appropriate opportunity for hearing, to all parties entitled thereto, of all motions, orders, hearings or other proceedings in the Bankruptcy Court relating to this Agreement or the transactions contemplated hereby. Debtors shall be responsible for making all appropriate filings relating to this Agreement with the Bankruptcy Court, and shall use commercially reasonable efforts to submit such filings to Buyer no less than two Business Days prior to their filing with the Bankruptcy Court for Buyer’s prior review and comment, which comments the Debtors shall consider and attempt to incorporate in good faith, in consultation with Buyer.

(c) In the event the entry of the Bid Procedures Order, the Sale Order or any other Orders of the Bankruptcy Court relating to this Agreement or the transactions contemplated hereby shall be appealed by any Person (or if any petition for certiorari or motion for reconsideration, amendment, clarification, modification, vacation, stay, rehearing or reargument shall be filed with respect to the Bid Procedures Order, the Sale Order or other such Order), Debtors shall use commercially reasonable efforts to defend such appeal.

(d) The Debtors and Buyer acknowledge that this Agreement and the transactions contemplated hereby are subject to (i) entry of, as applicable, the Bid Procedures Order and the Sale Order and (ii) the consideration by the Debtors and Seller of higher or better competing bids (whether through any and all types of consideration, including, without limitation, cash, assumed liabilities or credit bid) in respect of a sale, reorganization, or other disposition of the Debtors or Seller, the Business or the Purchased Assets. In the event of any discrepancy between this Agreement and the Bid Procedures Order and the Sale Order, the Bid Procedures Order and the Sale Order shall govern; provided, however, that nothing in this Section 7.07(d) shall limit the rights of Buyer hereunder in the event that any Bid Procedures Order or any Sale Order does not comply with the terms of this Agreement.

(e) During the period commencing on the date hereof and ending on the earlier of (i) the date of entry of the Bid Procedures Order or (ii) the date this Agreement is terminated as provided in Article 10, Seller will not, nor will it permit any of its Affiliates or anyone acting on behalf of any of them to, solicit, negotiate or enter into any discussions or negotiations with any Person (other than Buyer or its Representatives) in connection with any Alternative Transaction; provided that Seller shall be permitted to furnish or cause to be furnished to any Person any information concerning the Purchased Assets or the Business. Seller shall, immediately upon the execution of this Agreement, cease any and all ongoing discussions with any other potential purchaser of all or any portion of the Purchased Assets and/or the Business and shall cause its Representatives and Affiliates and their respective Representatives to do the same. Notwithstanding anything to the contrary herein, from the date of entry of the Bid Procedures Order and until the transactions contemplated hereby are consummated, Buyer agrees and acknowledges that Seller, Debtors and their Affiliates, including through their Representatives, are and may continue soliciting and/or responding to inquiries, proposals or offers from third parties in connection with any Alternative Transaction, including, without limitation, inquiries, proposals or offers related to the Purchased Assets, and may facilitate (and perform any and all other acts related thereto), including, without limitation, furnishing any information (subject to entering into a customary confidentiality agreement) with respect to, any effort or attempt by any Person to seek to do any of the foregoing in connection with an Alternative Transaction. Seller shall promptly notify Buyer of receipt by Debtors or any of their Representatives of any such inquiries, proposals or offers; provided that, as to any inquiries, proposals or offers received prior to entry of the Bid Procedures Order, Seller shall provide Buyer with a copy of any such inquiries, proposals or offers within two (2) Business Days of receipt by the Debtors or their Representatives.

(f) The Sale Order shall, among other things, (i) approve, pursuant to sections 105, 363, and 365 of the Bankruptcy Code, (A) the execution, delivery and performance by Seller of this Agreement, (B) the sale of the Purchased Assets to Buyer on the terms set forth herein and free and clear of all Encumbrances, including the Permitted Encumbrances set forth on Schedule 1.01 but subject to the other Permitted Encumbrances, and (C) the performance by Debtors of their respective obligations under this Agreement; (ii) authorize and empower Seller to assume and assign to Buyer the Assumed Contracts; (iii) find that Buyer is a “good faith” buyer within the meaning of section 363(m) of the Bankruptcy Code, find that Buyer is not a successor to any Seller, and grant Buyer the protections of

section 363(m) of the Bankruptcy Code; (iv) find that Buyer shall have no Liability or responsibility for any Liability or other obligation of Seller arising under or related to the Purchased Assets other than as expressly set forth in this Agreement, including successor or vicarious Liabilities of any kind or character, including any theory of antitrust, successor, or transferee Liability, labor law, de facto merger, or substantial continuity; and (v) find that Buyer has provided adequate assurance (as that term is used in Section 365 of the Bankruptcy Code) of future performance in connection with the assumption of the Assumed Contracts.

(g) Debtors shall comply with the Milestones.

(h) If an Auction is conducted, and Buyer is not the Successful Bidder at the Auction but is the next highest bidder after the Successful Bidder at the Auction, Buyer shall serve as a Backup Bidder and keep its bid to consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement (as the same may be improved upon in the Auction) open and irrevocable, notwithstanding any right of Buyer to otherwise terminate this Agreement pursuant to Article 10 hereof, until the earlier of (i) the Backup Bid Expiration Date (as defined in the Bid Procedures) or (ii) the first Business Day after the closing of a transaction with a Successful Bidder for the Purchased Assets that is not Buyer; provided, however, that if prior to the Backup Bid Expiration Date, a Successful Bidder for the Purchased Assets that is not Buyer fails to consummate its transaction as a result of a breach or failure to perform on the part of such Successful Bidder, or because a condition in such Successful Bidder's purchase agreement cannot otherwise be met, and the purchase agreement with such Successful Bidder is terminated, Buyer (as the Backup Bidder) will be deemed to have the new prevailing bid, and Seller will be authorized, without further order of the Bankruptcy Court, to, and Buyer (as the Backup Bidder) shall, subject to the terms and conditions of this Agreement, consummate the transactions contemplated by this Agreement by the later of (x) ten (10) days of becoming the Successful Bidder and (ii) the Backup Bid Expiration Date, on the terms and conditions set forth in this Agreement (as the same may be improved upon in the Auction).

SECTION 7.07 *Bidding Protections.*

(a) If this Agreement is terminated by Buyer or Seller pursuant to (i) Section 10.01(c), (ii) Section 10.01(h) or (iii) Section 10.01(j), then, in each case, Seller shall (or shall cause the Debtors to), without the requirement of any notice or demand by Buyer, pay to Buyer the Break-Up Fee, such payment to be made upon the earlier of (x) the consummation of an Alternative Transaction, (y) the consummation of a sale to the "Successful Bidder" or "Next Highest Bidder" at the Auction or (z) the date that is forty-five (45) days following such termination, in immediately available funds to one or more bank accounts of Buyer (or any of its Affiliates) designated in writing by Buyer to Seller.

(b) If this Agreement is terminated by Buyer or Seller pursuant to (i) Section 10.01(c), (ii) Section 10.01(e), (iii) Section 10.01(h), (iv) Section 10.01(i) or (v) Section 10.01(j), then, in each case, Seller shall (or shall cause the Debtors to), without the requirement of any notice or demand by Buyer, pay to Buyer the Expense Reimbursement,

such payment to be made upon the earlier of (x) the consummation of an Alternative Transaction, (y) the consummation of a sale to the “Successful Bidder” or “Next Highest Bidder” at the Auction or (z) the date that is forty-five (45) days following such termination by wire transfer(s) in immediately available funds to one or more bank accounts of Buyer (or any of its Affiliates) designated in writing by Buyer to Seller.

(c) The Parties acknowledge and agree that (i) the Parties have expressly negotiated the provisions of this Section 7.07 and the payment of the Break-Up Fee and the Expense Reimbursement are integral parts of this Agreement, (ii) in the absence of Seller’s obligations to make these payments, Buyer would not have entered into this Agreement, and (iii) subject to approval by the Bankruptcy Court, the Break-Up Fee and the Expense Reimbursement shall constitute allowed superpriority Administrative Expense Claims pursuant to sections 105(a), 503(b), and 507(a)(2) of the Bankruptcy Code with priority over all other administrative expenses of the kind specified in section 503(b) of the Bankruptcy Code. Seller shall seek the approval of the Break-Up Fee and the Expense Reimbursement as set forth in this Section 7.07 and this Agreement in the Bid Procedures Order. Buyer acknowledges and agrees that in the event the Break-Up Fee becomes payable, the right to receive the Break-Up Fee and the Expense Reimbursement and the return of the Good Faith Deposit shall be the sole and exclusive remedy of Buyer against Debtors, Seller, and any of their respective Affiliates for any liability, damage or other loss resulting from, the termination of this Agreement, breach of any representation, warranty covenant or agreement contained herein or the failure of the transactions contemplated hereby to be consummated, and none of Buyer nor any of its Affiliates shall have any other remedy or cause of action under or relating to this Agreement or any applicable Law. Notwithstanding the foregoing, nothing set forth herein shall limit or restrict Buyer’s rights to pursue a grant of specific performance pursuant to Section 11.08 prior to any termination of this Agreement by Buyer.

## ARTICLE 8

### CONDITIONS TO CLOSING

SECTION 8.01 *Conditions to Obligations of the Parties.* The obligations of each of the Parties to consummate the Closing are subject to the satisfaction or valid waiver at or prior to the Closing of the following conditions:

- (a) no provision of any applicable Law and no judgment, injunction or Order shall then be in effect prohibiting or making illegal the consummation of the Closing;
- (b) the Bankruptcy Court shall have entered the Bid Procedures Order and the Bid Procedures Order shall be a Final Order; and
- (c) the Bankruptcy Court shall have entered the Sale Order in form and substance reasonably acceptable to Buyer and Seller and the Sale Order shall be a Final Order.

SECTION 8.02 *Conditions to Obligation of Buyer.* The obligation of Buyer to consummate the Closing is subject to the satisfaction (or valid waiver) at or prior to the Closing of the following further conditions:

(a) (i) each of the representations and warranties of Seller contained in Section 3.01, Section 3.02, Section 3.03, and Section 3.07 shall be true and correct in all respects (except for any failure to be so true and correct that is de minimis in nature) on and as of the date hereof and on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date (provided that representations and warranties which speak to a specified date shall speak only as of such date) and (ii) each other representation and warranty of Seller contained in Article 3 shall be true and correct on and as of the date hereof and as of Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date (provided that representations and warranties which speak to a specified date shall speak only as of such date) except where the failure to be so true and correct (without giving effect to any limitation or qualification as to “materiality” (including the word “material”) or “Material Adverse Effect” or other similar term set forth therein) would not, individually or in the aggregate, have a Material Adverse Effect and Buyer shall have received a certificate of the Company certifying as to the matters set forth in this Section 8.02(a) signed by a duly authorized Representative of the Company;

(b) the material covenants and agreements that Seller is required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been performed and complied with in all material respects and Buyer shall have received a certificate of the Company to such effect signed by a duly authorized Representative of the Company.

(c) From the date hereof, there shall not have occurred any Material Adverse Effect.

SECTION 8.03 *Conditions to Obligation of Seller.* The obligation of Seller to consummate the Closing is subject to the satisfaction (or valid waiver) at or prior to the Closing of the following further conditions:

(a) the representations and warranties of Buyer contained in Article 4 shall be true and correct on and as of the Closing Date with the same effect as though such representations and warranties had been made on and as of the Closing Date (provided that representations and warranties which speak to a specified date shall speak only as of such date) except where the failure to be so true and correct (without giving effect to any limitation or qualification as to “materiality” (including the word “material”) or similar term set forth therein) would not, individually or in the aggregate, prevent, materially impede or delay the consummation of the Closing in accordance with its terms and Seller shall have received a certificate of Buyer to such effect signed by a duly authorized officer of Buyer;

(b) the material covenants and agreements that Buyer is required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been

performed and complied with in all material respects and Seller shall have received a certificate of Buyer to such effect signed by a duly authorized officer of Buyer; and

(c) Buyer shall have delivered (or caused to be delivered) each of the documents and instruments to be delivered by Buyer at the Closing pursuant to Section 2.06.

## ARTICLE 9

### SURVIVAL

SECTION 9.01 *Survival*. The Parties, intending to modify any applicable statute of limitations, agree that (a) (i) the representations and warranties in this Agreement and in any certificate delivered pursuant hereto and (ii) the covenants in this Agreement only requiring performance prior to the Closing shall, in each case, terminate and be of no further force and effect effective as of the Closing and shall not survive the Closing for any purpose, and thereafter there shall be no Liability on the part of, nor shall any claim be made by or on behalf of, any Party or any Party's Affiliates in respect thereof and (b) the covenants in this Agreement that contemplate performance at or after the Closing or expressly by their terms survive the Closing shall survive the Closing in accordance with their respective terms (the "**Surviving Post-Closing Covenants**"). Except with respect to the Surviving Post-Closing Covenants, no other remedy shall be asserted or sought by Buyer, and Buyer shall cause its Affiliates not to assert or seek any other remedy, against Seller or any of its Affiliates under any contract, misrepresentation, tort, strict liability, or statutory or regulatory Law or theory or otherwise, all such remedies being hereby knowingly and expressly waived and relinquished to the fullest extent permitted under applicable law.

## ARTICLE 10

### TERMINATION

SECTION 10.01 *Grounds for Termination*. This Agreement may be terminated at any time prior to the Closing:

- (a) by mutual written agreement of Seller and Buyer;
- (b) by either Seller or Buyer, if the Closing shall not have been consummated on or before November 14, 2021 (the "**End Date**"); provided, however, that the right to terminate this Agreement pursuant to this Section 10.01(b) shall not be available to a Party whose breach of any of its representations, warranties, covenants or agreements contained herein has been the primary cause of the failure of the Closing to occur on or before the End Date;
- (c) by either Seller or Buyer, if at the end of the Auction for the Purchased Assets (if any), Buyer is not determined by the Debtors to be either the "Successful Bidder" or "Backup Bidder" (each as defined in the Bid Procedures Order);
- (d) by Seller, if Seller is not then in material breach of its obligations under this Agreement and Buyer breaches or fails to perform any of its representations, warranties,

covenants or agreements contained in this Agreement and such breach or failure to perform (i) would prevent the satisfaction of a condition set forth in Section 8.01 or Section 8.03, (ii) cannot be, or has not been, cured within ten (10) Business Days following delivery of written notice to Buyer of such breach or failure to perform and (iii) has not been waived by Seller;

(e) by Buyer, if Buyer is not then in material breach of its obligations under this Agreement and Seller breaches or fails to perform any of its representations, warranties, covenants or agreements contained in this Agreement and such breach or failure to perform (i) would prevent the satisfaction of a condition set forth in Section 8.01 or Section 8.02, (ii) cannot be, or has not been, cured within ten (10) Business Days following delivery of written notice to the Company of such breach or failure to perform and (iii) has not been waived by Buyer;

(f) by either Seller or Buyer upon the conversion of any of Seller's Chapter 11 Cases to cases under Chapter 7 of the Bankruptcy Code, the dismissal of any of Seller's Chapter 11 Cases, or if a trustee or examiner with expanded powers to operate or manage the financial affairs of Seller is appointed;

(g) by either Seller or Buyer, if the Bankruptcy Court enters a final, non-appealable order that precludes the consummation of the transactions contemplated hereby on the terms and conditions set forth in this Agreement;

by either Seller or Buyer, if any court of competent jurisdiction or other competent Governmental Authority shall have enacted or issued a Law or decree or taken any other action permanently restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement and such Law or decree or other action shall have become final and non-appealable; provided, however, that the right to terminate this Agreement under this 0 shall not be available to a Party if the failure to consummate the Closing because of such action by a Governmental Authority shall be due to the failure of such Party to have fulfilled, in any material respect, any of its obligations under this Agreement;

(h) by either Seller or Buyer, if the Bankruptcy Court enters an order approving an Alternative Transaction with one or more Persons other than Buyer;

(i) by Buyer, if any of the Milestones are not met; or

(j) by Seller, if Seller or its board of directors (or similar governing body), based on the advice of counsel, determines that proceeding with the transactions contemplated by this Agreement or failing to terminate this Agreement would be inconsistent with its or such Person's or body's fiduciary duties or applicable law.

The Party desiring to terminate this Agreement pursuant to this Section 10.01 (other than pursuant to Section 10.01(a)) shall give written notice of such termination to the other Party in accordance with Section 11.01.

SECTION 10.02 *Effect of Termination.*



(a) If this Agreement is terminated as permitted by Section 10.01, (i) this Agreement shall become null and void and of no further force and effect, except for the provisions of Section 2.04, Section 6.01, Section 7.06, Section 10.03, Article 11 and this Section 10.02, which shall survive such termination of this Agreement and (ii) no Party (nor any stockholder, director, officer, employee, agent, consultant or Representative of any such Party) shall thereafter have any Liability hereunder; provided, nothing in this Section 10.02 shall be deemed to release any Party from any Liability (x) for any breach of any covenants contained in this Agreement occurring prior to its termination and (y) that may otherwise be provided in, or contemplated by, the provisions of Section 2.04 or Section 10.02(b).

(b) If this Agreement is terminated pursuant to Section 10.01(d), the Good Faith Deposit (together with any interest accrued thereon) shall be retained by Debtors for their own account as damages, and the Parties acknowledge and agree that such payment of the Good Faith Deposit to Debtors shall constitute liquidated damages (and not a penalty) and shall be the sole and exclusive remedy of Seller and any other Person against Buyer and its Affiliates arising under this Agreement in connection with any such termination, and upon payment of the Good Faith Deposit to the Debtors, neither seller nor any other Person shall be entitled to bring or maintain any other Action against Buyer or any of its Affiliates and neither Buyer nor any of its Affiliates shall have any further liability or obligation to Seller arising out of this Agreement, the transactions contemplated by this Agreement or any matters forming the basis of such termination. The Parties acknowledge and agree that (i) the agreements contained in this Section 10.01(b) are an integral part of this Agreement and the transactions contemplated hereby and (ii) in light of the difficulty of accurately determining actual damages with respect to the foregoing, the right to any such receipt of the Good Faith Deposit constitutes a reasonable estimate of the damages that will compensate Seller in the circumstances in which such fee is payable for the efforts and resources expended and the opportunities forgone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the transactions contemplated hereby. If this Agreement is terminated pursuant to any provision of Section 10.01 (other than Section 10.01(d)), Debtors shall promptly (but in any event within two (2) Business Days of such termination) return the Good Faith Deposit (together with any interest accrued thereon) to Buyer by wire transfer of immediately available funds.

SECTION 10.03 *Costs and Expenses.*

(a) Except as otherwise expressly provided in this Agreement, including as set forth in Section 10.02(b) whether or not the transactions contemplated by this Agreement are consummated, all costs and expenses incurred in connection with this Agreement shall be paid by the Party incurring such cost or expense.

(b) All transfer, sales, use, value added, excise, stock transfer, stamp, recording, registration and any similar Tax that become payable in connection with the transactions contemplated hereby and not exempted by the Bankruptcy Code shall be paid one-half by Seller and one-half by Buyer.

ARTICLE 11

MISCELLANEOUS

SECTION 11.01 *Notices.* All notices, requests and other communications to any Party hereunder shall be in writing and shall be delivered to the addresses set forth below (or pursuant to such other address(es) as may be designated in writing by the Party to receive such notice):

if to Buyer (or after the Closing, the Company):

DL Business Management  
244 West 54th Street - 9th Floor  
New York, NY 10019  
Attention: David Levin, CPA, Esq.  
E-mail: davidlevin@dlbm.com

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

Littman Krooks LLP  
655 Third Avenue, 20th Floor  
New York, NY 10017  
Attention: Mitchell C. Littman, Esq.  
E-mail: mlittman@littmankrooks.com

and to:

Culhane Meadows, PLLC  
3411 Silverside Road  
Baynard Building, Suite 104-13  
Wilmington, Delaware 19810  
Attention: Mette H. Kurth, Esq.  
E-mail: mkurth@cm.law

if to Seller (or prior to the Closing, the Company):

Sequential Brands Group, Inc.  
1407 Broadway, 38th Floor  
New York, NY 10001  
Attention: Eric Gul  
Email: EGul@sbg-ny.com

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

Gibson, Dunn & Crutcher LLP  
200 Park Avenue  
New York, NY 10166-0193

Attention: Joshua Brody, Esq; Saeed Muzumdar, Esq.  
Email: jbrody@gibsondunn.com; smuzumdar@gibsondunn.com

All such notices, requests and other communications shall be deemed received (a) if delivered prior to 5:00 p.m. New York time on a day which is a Business Day, then on such date of delivery if delivered personally, or, if by e-mail, upon written confirmation of delivery by e-mail (which may be electronic), and if delivered after 5:00 p.m. New York time (whether personally or by email) then on the next succeeding Business Day, (b) on the first (1st) Business Day following the date of dispatch if delivered utilizing a next-day service by a recognized next-day courier or (c) on the earlier of confirmed receipt or the fifth (5th) Business Day following the date of mailing if delivered by registered or certified mail, return receipt requested, postage prepaid.

SECTION 11.02 *Amendments and Waivers.*

(a) Any provision of this Agreement may be amended or waived if, but only if, such amendment or waiver is in writing and is signed by each of Buyer and Seller.

(b) No failure or delay by any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Law.

SECTION 11.03 *Successors and Assigns.* The provisions of this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Buyer, on the one hand, may not assign, delegate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of Seller, and Seller, on the other hand, may not assign, delegate or otherwise transfer any of their respective rights or obligations under this Agreement without the prior written consent of Buyer; provided, however, that Buyer may assign any or all of its rights and obligations under this Agreement (including the right to receive the Purchased Assets) to one or more subsidiaries of Buyer, in each case, without the prior written consent of Seller; provided, further, that no such assignment will relieve Buyer of its obligations hereunder. Any attempted assignment in violation of this Section 11.03 shall be null and void, *ab initio*.

SECTION 11.04 *Governing Law.* This Agreement shall be governed by and construed in accordance with the Laws of the State of Delaware, without regard to the conflicts of law rules of such State.

SECTION 11.05 *Jurisdiction.* Without limiting any Party's right to appeal any order of the Bankruptcy Court, (i) the Bankruptcy Court will 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 proceedings related to the foregoing will be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court for such purposes and will receive notices at such

locations as indicated in Section 11.01; provided, however, that if the Chapter 11 Cases have been closed pursuant to Section 350 of the Bankruptcy Code, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York, or in the event (but only in the event) that such court does not have subject matter jurisdiction over such Action, in the Supreme Court of the State of New York, New York County, for the resolution of any such claim or dispute. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such Action brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Process in any such Action may be served on any party anywhere in the world, whether within or without the jurisdiction of the Bankruptcy Court, the United States District Court for the District of New York or any state court of the State of New York. Without limiting the foregoing, each Party agrees that service of process on such Party as provided in Section 11.01 shall be deemed effective service of process on such Party.

SECTION 11.06 *WAIVER OF JURY TRIAL.* TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW THAT CANNOT BE WAIVED, EACH PARTY HEREBY WAIVES, AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE, CLAIM, DEMAND, ACTION OR CAUSES OF ACTION ARISING IN WHOLE OR IN PART UNDER, RELATED TO, BASED ON OR IN CONNECTION WITH THIS AGREEMENT OR ANY ANCILLARY DOCUMENT OR THE SUBJECT MATTER HEREOF OR THEREOF, WHETHER NOW EXISTING OR HEREAFTER ARISING AND WHETHER SOUNDING IN TORT OR CONTRACT OR OTHERWISE. ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 11.06 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF EACH SUCH PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

SECTION 11.07 *Counterparts; Third Party Beneficiaries.* This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. This Agreement shall become effective when each Party shall have received a counterpart hereof signed by the other Party. Delivery of a .pdf version of one or more signatures to this Agreement shall be deemed adequate delivery for purposes of this Agreement. No provision of this Agreement is intended to confer upon any Person other than the Parties any rights, benefits, Causes of Action or remedies hereunder.

SECTION 11.08 *Specific Performance.* It is understood and agreed by the Parties that money damages (even if available) would not be a sufficient remedy for any breach of this Agreement by Seller or Buyer and as a consequence thereof, Seller and Buyer shall each be entitled to seek specific performance and injunctive or other equitable relief as a remedy for any such breach or threatened breach in addition to any other remedy to which such Party may be entitled in Law or in equity, including an Order of the Bankruptcy Court or other court of competent jurisdiction requiring Buyer or Seller, as may be applicable, to comply promptly with any of their obligations hereunder. Each of the Parties agrees that it will not oppose the granting of an injunction, specific performance and other equitable relief on the basis that the other Party has an

adequate remedy at Law or that any award of specific performance is not an appropriate remedy for any reason at Law or in equity. Any Party seeking an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement shall not be required to provide any bond or other security in connection with such Order.

SECTION 11.09 *Entire Agreement.* This Agreement and the other Transaction Documents (together with the Schedules and Exhibits hereto and thereto), and the Confidentiality Agreement, constitutes the entire agreement between the Parties with respect to the subject matter hereof and thereof and supersede all prior agreements and understandings, both oral and written, between the Parties with respect to such subject matter. No Party to this Agreement shall be liable or bound to any other Party in any manner by any representations, warranties, covenants or agreements relating to such subject matter except as specifically set forth herein and therein. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, the terms and provisions of the execution version of this Agreement will control and prior drafts of this Agreement and the documents referenced herein will not be considered or analyzed for any purpose (including in support of parol evidence proffered by any Person in connection with this Agreement), will be deemed not to provide any evidence as to the meaning of the provisions hereof or the intent of the Parties with respect hereto and will be deemed joint work product of the Parties.

SECTION 11.10 *No Strict Construction.* Buyer, on the one hand, and Seller, on the other hand, participated jointly in the negotiation and drafting of this Agreement, and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by Buyer, on the one hand, and Seller, on the other hand, and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any provision of this Agreement. Without limitation as to the foregoing, no rule of strict construction construing ambiguities against the draftsman shall be applied against any Person with respect to this Agreement.

SECTION 11.11 *Severability.* If any term, provision, covenant or restriction of this Agreement is held by a court of competent jurisdiction or other authority to be invalid, void or unenforceable, the remainder of the terms, provisions, covenants and restrictions of this Agreement shall remain in full force and effect and shall in no way be affected, impaired or invalidated so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any Party. Upon such a determination, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transaction contemplated hereby be consummated as originally contemplated to the fullest extent possible.

SECTION 11.12 *Disclosure Schedules.* The representations and warranties of Seller set forth in this Agreement are made and given subject to the disclosures in the Disclosure Schedules. Where a reference is made only to a particular disclosed document, the full contents of the document are deemed to be disclosed. Inclusion of information in the Disclosure Schedules will not be construed as an admission that such information is material to the business, operations or condition (financial or otherwise) of Seller, in whole or in part, or as an admission of Liability or obligation of Seller to any third Person. The specific disclosures set forth in the Disclosure Schedules have been organized to correspond to section references in this Agreement to which the disclosure is most likely to relate, together with appropriate cross-references when disclosure is

applicable to other sections of this Agreement; provided, however, that any disclosure in any section of the Disclosure Schedules will apply to and will be deemed to be disclosed in any other section of the Disclosure Schedules, so long as the applicability of such disclosure is reasonably apparent on its face. It is understood and agreed that the specification of any dollar amount in the representations and warranties or covenants contained in this Agreement or the inclusion of any specific item in the Disclosure Schedules is not intended to imply that such amounts or higher or lower amounts, or the items so included or other items, are or are not material, and no Party or other Person shall use the fact of the setting of such amounts or the fact of the inclusion of any such item in the Disclosure Schedules in any dispute or controversy as to whether any obligation, item or matter not described in this Agreement or included in the Disclosure Schedules is or is not material for purposes of this Agreement. Nothing in this Agreement (including the Disclosure Schedules) shall be deemed an admission by either Party or any of its Affiliates, in any Causes of Action, that such Party or any such Affiliate, or any third party, is or is not in breach or violation of, or in default in, the performance or observance of any term or provisions of any Contract or Law.

*[Signature Pages Follow]*

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

**SEQUENTIAL BRANDS GROUP, INC.**

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

Name: Lorraine DiSanto

Title: Chief Financial Officer

**WITH YOU, INC.**

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

Name: Jessica Simpson


Title: CEO

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

**SEQUENTIAL BRANDS GROUP, INC.**

By: \_\_\_\_\_  
Name: Lorraine DiSanto  
Title: Chief Financial Officer

**WITH YOU, INC.**

DocuSigned by:  
  
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By: \_\_\_\_\_  
Name: Jessica Simpson  
Title: CEO



**EXHIBIT A**  
**Milestones**

1. **Deadline for Entry of Bidding Procedures Order:** No later than 23 days after the Petition Date.
2. **Deadline to Consummate Approved Sale Transactions:** No later than 75 days after the Petition Date.

**EXHIBIT B**  
**Bid Procedures Order**

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

<p>In re:</p> <p>Sequential Brands Group, Inc., <u>et al.</u>,<sup>1</sup></p> <p style="text-align: center;">Debtors.</p>	<p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p> <p>⋮</p>	<p>Chapter 11</p> <p>Case No. 21-11194 (JTD)</p> <p>(Jointly Administered)</p>
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**ORDER (I) APPROVING BIDDING PROCEDURES  
FOR THE SALE OF SUBSTANTIALLY ALL OF THE  
DEBTORS' ASSETS; (II) AUTHORIZING THE DEBTORS  
TO ENTER INTO ONE OR MORE STALKING HORSE  
AGREEMENTS AND TO PROVIDE BIDDING PROTECTIONS  
THEREUNDER; (III) SCHEDULING AN AUCTION AND  
APPROVING THE FORM AND MANNER OF NOTICE THEREOF;  
(IV) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES,  
(V) SCHEDULING A SALE HEARING AND APPROVING THE FORM AND  
MANNER OF NOTICE THEREOF AND (VI) GRANTING RELATED RELIEF**

*Upon the Motion of the Debtors for Entry of Orders (I)(A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors' Assets, (B) Authorizing the Debtors to Enter into One or More Stalking Horse Agreements and to Provide Bidding Protections Thereunder, (C) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures. and (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests and Encumbrances and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting*

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<sup>1</sup> The Debtors, along with the last four digits of each Debtor's tax identification number, are: Sequential Brands Group, Inc. (2789), SQBG, Inc. (9546), Sequential Licensing, Inc. (7108), William Rast Licensing, LLC (4304), Heeling Sports Limited (0479), Brand Matter, LLC (1258), SBG FM, LLC (8013), Galaxy Brands LLC (9583), The Basketball Marketing Company, Inc. (7003), American Sporting Goods Corporation (1696), LNT Brands LLC (3923), Joe's Holdings LLC (3085), Gaiam Brand Holdco, LLC (1581), Gaiam Americas, Inc. (8894), SBG-Gaiam Holdings, LLC (8923), SBG Universe Brands, LLC (4322), and GBT Promotions LLC (7003). The Debtors' corporate headquarters and the mailing address for each Debtor is 1407 Broadway, 38th Floor, New York, NY 10018.

*Related Relief* [Docket No. 19] (the “Motion”)<sup>2</sup> filed by the debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”); the Court having reviewed the Motion and the First Day Declaration [Docket No. 3] and the Herbert Declaration [Docket No. [●]], and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court on September 24, 2021 to consider certain of the relief requested in the Motion (the “Bidding Procedures Hearing”); and after due deliberation, this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates and their creditors, and the Debtors having demonstrated good, sufficient and sound business justifications for the relief granted herein;

**IT IS HEREBY FOUND AND DETERMINED THAT:**<sup>3</sup>

A. Jurisdiction and Venue. 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 February 29, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Statutory and Legal Predicates. The statutory and legal predicates for the relief requested in the Motion are sections 105(a), 363, 365, 503, and 507 of the Bankruptcy Code,

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<sup>2</sup> Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Motion or in the Bidding Procedures, as applicable.

<sup>3</sup> The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

Bankruptcy Rules 2002, 6004, 6006, 9007, 9008, and 9014 and Local Rules 2002-1, 6004-1, and 9006-1.

C. Sale Process. The Debtors and their advisors, including Stifel/Miller Buckfire, engaged in a robust and extensive prepetition sale process prior to the execution of the Stalking Horse Agreements to solicit and develop the highest and otherwise best offers for the Assets.

D. Bidding Procedures. The Debtors have articulated good and sufficient business reasons for the Court to approve the bidding procedures attached hereto as Exhibit 1 (the "Bidding Procedures"). The Bidding Procedures are fair, reasonable and appropriate and are designed to maximize the value of the proceeds of one or more sales (each, a "Sale Transaction") of all or substantially all of the Debtors' assets (the "Assets"). The Bidding Procedures were negotiated in good faith and at arm's-length and are reasonably designed to promote a competitive and robust bidding process to generate the greatest level of interest in the Debtors' Assets. The process for selecting the Galaxy Stalking Horse Bidder and the Centric Stalking Horse Bidder (as defined below) as Stalking Horse Bidders, respectively, was fair and appropriate under the circumstances and in the best interests of the Debtors' estates. The Bidding Procedures comply with the requirements of Local Rule 6004-1(c).

E. Designation of the Galaxy Stalking Horse Bid. The Galaxy Stalking Horse Bid as reflected in the Galaxy APA represents the highest and otherwise best offer the Debtors have received to date to purchase the Transferred Assets, as defined and set forth in the Galaxy APA (the "Active Division Assets"). The Galaxy APA provides the Debtors with the opportunity to sell the Active Division Assets in a manner designed to preserve and maximize their value and provide a floor for a further marketing and auction process. Without the Galaxy Stalking Horse

Bid, the Debtors are at a significant risk of realizing a lower price for the Active Division Assets. As such, the contributions of the Galaxy Stalking Horse Bidder to the process have indisputably provided a substantial benefit to the Debtors, their estates, and the creditors in these Chapter 11 Cases. The Galaxy Stalking Horse Bid will enable the Debtors to minimize disruption to the Debtors' restructuring process and secure a fair and adequate Baseline Bid (as defined in the Bidding Procedures) for the Active Division Assets at the Auction(s) (if any), and, accordingly, will provide a clear benefit to the Debtors' estates, their creditors, and all other parties in interest.

F. Designation of the Galaxy Stalking Horse Bidder. The Galaxy Stalking Horse Bidder shall act as a "stalking horse bidder" pursuant to the Galaxy APA and the Galaxy Stalking Horse Bid shall be subject to higher or otherwise better offers in accordance with the Galaxy APA and the Bidding Procedures. Pursuit of the Galaxy Stalking Horse Bidder as a "stalking horse bidder" and the Galaxy APA as a "stalking horse purchase agreement" is in the best interests of the Debtors and the Debtors' estates and their creditors, and it reflects a sound exercise of the Debtors' business judgment.

G. The Galaxy 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 stakeholders exist between the Stalking Horse Bidder and the Debtors. The Galaxy Stalking Horse Bidder and its counsel and advisors have acted in "good faith" within the meaning of section 363(m) of the Bankruptcy Code in connection with the Galaxy Stalking Horse Bidder's negotiation of the Bid Protections and the Bidding Procedures and entry into the Galaxy APA.

H. Galaxy Stalking Horse Bid Protections. The Debtors have articulated compelling and sufficient business reasons for the Court to approve the Debtors' provision of the

Galaxy Termination Payment. The Galaxy Termination Payment (i) has been negotiated by the Galaxy Stalking Horse Bidder and the Debtors and their respective advisors at arm's length and in good faith and the Galaxy APA (including the Galaxy Termination Payment) is the culmination of a process undertaken by the Debtors and their professionals to negotiate a transaction with a bidder that was prepared to pay the highest or otherwise best purchase price to date for the Active Division Assets; (ii) is fair, reasonable and appropriate in light of, among other things, the size and nature of the proposed Sale Transaction, the substantial efforts that have been and will be expended by the Galaxy Stalking Horse Bidder, notwithstanding that the proposed Sale Transaction is subject to higher or better offers, and the substantial benefits that the Galaxy Stalking Horse Bidder has provided to the Debtors, their estates, their creditors and parties in interest herein, including, among other things, by increasing the likelihood that the best possible purchase price for the applicable assets will be received; and (iii) provides protections that were material inducements for, and express conditions of, the Galaxy Stalking Horse Bidder's willingness to enter into the Galaxy APA, and is necessary to ensure that the Galaxy Stalking Horse Bidder will continue to pursue the Galaxy APA and the transactions contemplated thereby. The Galaxy Termination Payment, to the extent payable under the Galaxy APA, (a) provides a substantial benefit to the Debtors' estates and stakeholders and all parties in interest herein, (b)(x) is an actual and necessary cost and expense of preserving the Debtors' estates within the meaning of section 503(b) of the Bankruptcy Code and (y) shall be treated as an allowed superpriority administrative expense claim against the Debtors' estates pursuant to sections 105(a), 364, 503(b), and 507(a)(2) of the Bankruptcy Code, (c) is commensurate to the real and material benefits conferred upon the Debtors' estates by the Galaxy Stalking Horse Bidder, and (d) is fair, reasonable, and appropriate, including in light of the size and nature of the transactions and the efforts that have been and will

be expended by the Galaxy Stalking Horse Bidder. Unless it is assured that the Galaxy Stalking Horse Bid Protections will be available, the Galaxy Stalking Horse Bidder is unwilling to remain obligated to consummate the Galaxy APA or otherwise be bound under the Galaxy APA, including, without limitation, the obligations to maintain its committed offer while such offer is subject to higher or otherwise better offers as contemplated by the Bidding Procedures. The Galaxy Stalking Horse Bid Protections are a material inducement for, and condition of, the Galaxy Stalking Horse Bidder's execution of the Galaxy APA. Notwithstanding anything contained herein, in the Motion, in the Bidding Procedures, or in the Galaxy APA to the contrary, the Seller Termination Fee in the Galaxy APA shall be reduced and capped at \$12,154,500.

I. Designation of the Centric Stalking Horse Bid. The Centric Stalking Horse Bid as reflected in the Centric APA<sup>4</sup> represents the highest and best offer the Debtors have received to date to purchase the Purchased Assets, as defined and set forth in the Centric APA (the "Joe's Assets"). The Centric APA provides the Debtors with the opportunity to sell the Joe's Assets in a manner designed to preserve and maximize their value and provide a floor for a further marketing and auction process. Without the Centric Stalking Horse Bid, the Debtors are at a significant risk of realizing a lower price for the Joe's Assets. As such, the contributions of the Centric Stalking Horse Bidder to the process have indisputably provided a substantial benefit to the Debtors, their estates, and the creditors in these Chapter 11 Cases. The Centric Stalking Horse Bid will enable the Debtors to minimize disruption to the Debtors' restructuring process and secure a fair and adequate Baseline Bid for the Joe's Assets at the Auction(s) (if any), and, accordingly, will provide a clear benefit to the Debtors' estates, their creditors, and all other parties in interest.

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<sup>4</sup> The Centric APA refers to the Amended and Restated Asset Purchase Agreement, dated as of September 23, 2021, by and among Centric and Joe's Holdings LLC.



J. Designation of the Centric Stalking Horse Bidder. Centric Brands LLC (“Centric”), or such other person or entity to which the Centric APA is assigned, in whole or in part, pursuant to sections 11.03(a) or (b) thereof (the “Centric Stalking Horse Bidder”) shall act as a “stalking horse bidder” pursuant to the Centric APA and the Centric Stalking Horse Bid shall be subject to higher or otherwise better offers in accordance with the Centric APA and the Bidding Procedures. Pursuit of the Centric Stalking Horse Bidder as a “stalking horse bidder” and the Centric APA as a “stalking horse purchase agreement” is in the best interests of the Debtors and the Debtors’ estates and their creditors, and it reflects a sound exercise of the Debtors’ business judgment.

K. The Centric 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 stakeholders exist between the Stalking Horse Bidder and the Debtors. The Centric Stalking Horse Bidder and its counsel and advisors have acted in “good faith” within the meaning of section 363(m) of the Bankruptcy Code in connection with the Centric Stalking Horse Bidder’s negotiation of the Bid Protections and the Bidding Procedures and entry into the Centric APA.

L. Centric Stalking Horse Bid Protections. The Debtors have articulated compelling and sufficient business reasons for the Court to approve the Debtors’ provision of the Centric Expense Reimbursement (the “Centric Stalking Horse Bid Protections”). The Centric Stalking Horse Bid Protections (i) have been negotiated by the Centric Stalking Horse Bidder and the Debtors and their respective advisors at arm’s length and in good faith and the Centric APA (including the Centric Expense Reimbursement) is the culmination of a process undertaken by the Debtors and their professionals to negotiate a transaction with a bidder that was prepared to pay the highest or otherwise best purchase price to date for the Joe’s Assets; (ii) are fair, reasonable

and appropriate in light of, among other things, the size and nature of the proposed Sale Transaction, the substantial efforts that have been and will be expended by the Centric Stalking Horse Bidder, notwithstanding that the proposed Sale Transaction is subject to higher or better offers, and the substantial benefits that the Centric Stalking Horse Bidder has provided to the Debtors, their estates, their creditors and parties in interest herein, including, among other things, by increasing the likelihood that the best possible purchase price for the applicable assets will be received; and (iii) provide protections that were material inducements for, and express conditions of, the Centric Stalking Horse Bidder's willingness to enter into the Centric APA, and were necessary to ensure that the Centric Stalking Horse Bidder will continue to pursue its Centric APA and the transactions contemplated thereby. The Centric Stalking Horse Bid Protections, to the extent payable under the Centric APA, (a) provide a substantial benefit to the Debtors' estates and stakeholders and all parties in interest herein, (b)(x) are actual and necessary costs and expenses of preserving the Debtors' estates within the meaning of section 503(b) of the Bankruptcy Code and (y) shall be treated as an allowed superpriority administrative expense claim against the Debtors' estates pursuant to sections 105(a), 364, 503(b), and 507(a)(2) of the Bankruptcy Code, (c) are commensurate to the real and material benefits conferred upon the Debtors' estates by the Centric Stalking Horse Bidder, and (d) are fair, reasonable, and appropriate, including in light of the size and nature of the transactions and the efforts that have been and will be expended by the Centric Stalking Horse Bidder. Unless it is assured that the Centric Stalking Horse Bid Protections will be available, the Centric Stalking Horse Bidder is unwilling to remain obligated to consummate the Centric APA or otherwise be bound under the Centric APA, including, without limitation, the obligations to maintain its committed offer while such offer is subject to higher or otherwise better offers as contemplated by the Bidding Procedures. The Centric Stalking Horse

Bid Protections are a material inducement for, and condition of, the Centric Stalking Horse Bidder's execution of the Centric APA.

M. Sale Notice. The Sale Notice, the form of which is attached as Exhibit 4, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the Sale Hearing, the Bidding Procedures, the Sale Transaction(s), and all relevant and important dates and objection deadlines with respect to the foregoing, and no other or further notice of the Sale Motion, the Sale Transaction(s) or the Auction shall be required.

N. Assumption and Assignment Provisions. The Debtors have articulated good and sufficient business reasons for the Court to approve the Assumption and Assignment Procedures and the Assumption and Assignment Notice attached hereto as Exhibit 5, which are fair, reasonable, and appropriate. The Assumption and Assignment Procedures comply with the provisions of section 365 of the Bankruptcy Code and Bankruptcy Rule 6006.

O. Assumption and Assignment Notice. The Assumption and Assignment Notice, the form of which is attached hereto as Exhibit 5, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Assumption and Assignment Procedures, as well as any and all objection deadlines related thereto, and no other or further notice shall be required for the Motion and the procedures described therein, except as expressly required herein.

P. Notice. Notice of the Motion, the proposed Bidding Procedures, the proposed designation of the Galaxy Stalking Horse Bidder and the Centric Stalking Horse Bidder, and the Bidding Procedures Hearing was (i) appropriate and reasonably calculated to provide all interested parties with timely and proper notice, (ii) in compliance with all applicable requirements of the Bankruptcy Code, the Bankruptcy Rules and the Local Rules and (iii) adequate and sufficient

under the circumstances of the Debtors' chapter 11 cases, such that no other or further notice need be provided except as set forth in the Bidding Procedures and the Assumption and Assignment Procedures. A reasonable opportunity to object and be heard regarding the relief granted herein has been afforded to all parties in interest.

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

1. The Motion is GRANTED as set forth herein.
2. All objections to the relief granted in this 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. For the avoidance of doubt, notwithstanding any provision in this Order or the Bidding Procedures, all rights of With You, Inc., in its capacity as a member of With You, LLC, to object to any terms of the sale which are inconsistent with the Operating Agreement or applicable Delaware law are fully reserved.

**A. The Bidding Procedures**

3. The Bidding Procedures attached hereto as Exhibit 1 are hereby approved, are incorporated herein by reference, and shall govern the bids and proceedings related to the sale(s) of the Assets and the Auctions. The procedures and requirements set forth in the Bidding Procedures, including those associated with submitting a "Qualified Bid," are fair, reasonable and appropriate, and are designed to maximize recoveries for the benefit of the Debtors' estates, creditors, and other parties in interests. The Debtors are authorized to take all actions necessary or appropriate to implement the Bidding Procedures.

4. The failure to specifically include or reference any particular provision of the Bidding Procedures in the Motion or this Order shall not diminish or otherwise impair the

effectiveness of such procedures, it being the Court's intent that the Bidding Procedures are approved in their entirety, as if fully set forth in this Order.

5. Subject to this Order and the Bidding Procedures, the Debtors, in the exercise of their reasonable business judgment and in a manner consistent with their fiduciary duties and applicable law, shall have the right to (a) determine which bidders qualify as Qualified Bidders and which bids qualify as Qualified Bids, (b) make final determinations as to which Assets or combinations of Assets for which the Debtors will conduct an Auction (each such Asset or group of Assets, an "Auction Package"), (c) select the Baseline Bid for each Auction Package; (d) determine the amount of each Minimum Overbid, (e) determine the Leading Bid (as defined in the Bidding Procedures) for each Auction Package; (f) determine which Qualified Bid is the highest or otherwise best bid for each Auction Package (each such Qualified Bid, a "Successful Bid") and which Qualified Bid is the Backup Bid (as defined in the Bidding Procedures) after the Successful Bid for an Auction Package; (g) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of this Order or any other applicable order of the Court, the Bidding Procedures, the Bankruptcy Code or other applicable law, and/or (iii) contrary to the best interests of the Debtors and their estates, (h) cancel the Auction with respect to any or all of the Assets in accordance with the Bidding Procedures, and (i) adjourn or reschedule the Sale Hearing with respect to a Sale Transaction involving any or all of the Assets in accordance with the Bidding Procedures.

6. The Galaxy Stalking Horse Bidder is a Qualified Bidder and the bid reflected in the Galaxy Stalking Horse Bid (including as it may be increased at the Auction (if any)) is a Qualified Bid, as set forth in the Bidding Procedures.

7. The Centric Stalking Horse Bidder is a Qualified Bidder and the bid reflected in the Centric Stalking Horse Bid (including as it may be increased at the Auction (if any)) is a Qualified Bid, as set forth in the Bidding Procedures.

8. Without prejudice to the rights of a Stalking Horse Bidder under the applicable Stalking Horse Agreement, the Debtors shall have the right to, in their reasonable business judgment, and in a manner consistent with their fiduciary duties and applicable law, modify the Bidding Procedures, including to, among other things, (a) extend or waive deadlines or other terms and conditions set forth therein, (b) adopt new rules and procedures for conducting the bidding and Auction process, (c) if applicable, provide reasonable accommodations to a Stalking Horse Bidder, or (d) otherwise modify the Bidding Procedures to further promote competitive bidding for and maximizing the value of the Assets; provided, that such extensions, waivers, new rules and procedures, accommodations and modifications (i) do not conflict with and are not inconsistent with this Order, the Bidding Procedures, the Bankruptcy Code or any order of the Bankruptcy Court, (ii) are promptly communicated to each Qualified Bidder, (iii) do not extend the Bid Deadline, the date of the Auction or the closing of the Auction, and (iv) do not allow the submission (or the Debtors' acceptance) of additional bids after, as applicable, the Bid Deadline or the close of Auction.

**B. The Galaxy Stalking Horse Bid and the Galaxy Stalking Horse Bid Protections**

9. Galaxy is approved as the Galaxy Stalking Horse Bidder for the Active Division Assets pursuant to the terms of the Galaxy APA.

10. The Debtors entry into the Galaxy APA is authorized and approved, and the Galaxy Stalking Horse Bid shall be subject to higher or better Qualified Bids, in accordance with the terms and procedures of the Galaxy APA and the Bidding Procedures.

11. The Debtors are authorized to perform any obligations under the Galaxy APA that are intended to be performed prior to the entry of the order approving the Sale Transaction.

12. The Galaxy Termination Payment is approved in its entirety. The Galaxy Termination Payment shall be payable in accordance with, and subject to the terms of, the Galaxy APA. The automatic stay provided by section 362 of the Bankruptcy Code shall be automatically lifted and/or vacated to permit any Galaxy Stalking Horse Bidder action expressly permitted or provided in the Galaxy APA, without further action or order of the Court.

13. The Galaxy Termination Payment (to the extent payable under the Galaxy APA) shall constitute an allowed superpriority administrative expense claim pursuant to sections 105(a), 503(b)(1)(A), and 507(a)(2) of the Bankruptcy Code in the Debtors' cases, which in each case, shall be senior to and have priority over all other administrative expense claims of the kind specified in section 503(b) of the Bankruptcy Code. Debtors are hereby authorized and directed to pay the Galaxy Termination Payment, if and when due, in accordance with the terms of the Galaxy APA and this Order without further order of the Court. The Debtors' obligation to pay the Galaxy Termination Payment, if applicable, shall survive termination of the Galaxy APA, dismissal or conversion of any of the Chapter 11 Cases, and confirmation of any plan of

reorganization or liquidation. Notwithstanding anything contained herein, in the Motion, in the Bidding Procedures, or in the Galaxy APA to the contrary, the Seller Termination Fee in the Galaxy APA shall be reduced and capped at \$12,154,500.

**C. The Centric Stalking Horse Bid and the Centric Stalking Horse Bid Protections**

14. Centric, or such other person or entity to which the Centric APA is assigned, in whole or in part, pursuant to sections 11.03(a) or (b) thereof, being a subsidiary of Centric, WH BUYER LLC or any affiliate thereof (together, "WH"), or a joint venture between WH and Centric or any subsidiary of Centric (the "Assignee") is approved as the Centric Stalking Horse Bidder for the Joe's Assets pursuant to the terms of the Centric APA. Such assignment may occur without further order of this Court. Following such assignment, the Assignee shall have the benefit of all factual findings, orders, and other provisions of this Order related to Centric and the Centric Stalking Horse Bidder.

15. The Debtors entry into the Centric APA is authorized and approved, and the Centric Stalking Horse Bid shall be subject to higher or better Qualified Bids, in accordance with the terms and procedures of the Centric APA and the Bidding Procedures.

16. The Debtors are authorized to perform any obligations under the Centric APA that are intended to be performed prior to the entry of the order approving the Sale Transaction.

17. The Centric Expense Reimbursement is approved in its entirety. The Centric Expense Reimbursement shall be payable in accordance with, and subject to the terms of, the Centric APA. The automatic stay provided by section 362 of the Bankruptcy Code shall be automatically lifted and/or vacated to permit any Centric Stalking Horse Bidder action expressly permitted or provided in the Centric APA, without further action or order of the Court.



18. The Centric Expense Reimbursement (to the extent payable under the Centric APA) shall constitute an allowed superpriority administrative expense claim pursuant to sections 105(a), 503(b)(1)(A), and 507(a)(2) of the Bankruptcy Code in the Debtors' cases, which shall be senior to and have priority over all other administrative expense claims of the kind specific in section 503(b) of the Bankruptcy Code. Debtors are hereby authorized and directed to pay the Centric Expense Reimbursement, if and when due, in accordance with the terms of the Centric APA and this Order without further order of the Court. The Debtors' obligation to pay the Centric Expense Reimbursement shall survive termination of the Centric APA, dismissal or conversion of any of the Chapter 11 Cases, and confirmation of any plan of reorganization or liquidation.

**D. Bid Deadline and Auction**

19. Any Prospective Bidder that intends to participate in the Auction must submit in writing to the Bid Notice Parties (as defined in Section X.A of the Bidding Procedures) a Qualified Bid on or before **October 25, 2021 at 4:00 p.m. (prevailing Eastern Time)** (the "Bid Deadline").

20. Subject to the terms of the Bidding Procedures, if the Debtors receive more than one Qualified Bid for an Asset, the Debtors shall conduct an Auction for such Asset. With respect to Assets for which the Debtors only receive one Qualified Bid, the Debtors, in their reasonable business judgment, may determine to consummate a Sale Transaction with the applicable Qualified Bidder (subject to Court approval).

21. The Auction, if required, will be conducted on **October 28, 2021, at 10:00 a.m. (prevailing Eastern Time)**, virtually through Zoom, or if permitted, at the offices of Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, or at such other time and location

as designated by the Debtors, after providing notice to the Sale Notice Parties. If held, the Auction proceedings shall be transcribed or video recorded.

22. Only a Qualified Bidder that has submitted a Qualified Bid shall be eligible to participate in the Auction, subject to any other limitations as the Debtors may reasonably impose in accordance with the Bidding Procedures. Qualified Bidders participating in the Auction must appear in person or virtually (if applicable) at the Auction or through a duly authorized representative. The Debtors may establish a reasonable limit on the number of representatives and/or professional advisors that may appear on behalf of or accompany each Qualified Bidder at the Auction. Notwithstanding the foregoing, the Auction shall be conducted openly, and all creditors shall be permitted to attend.

23. Each Qualified Bidder participating in the Auction shall confirm in writing on the record at the Auction that (a) it has not engaged in any collusion with respect to the Auction or the submission of any bid for any of the Assets and (b) its Qualified Bid that gained the Qualified Bidder admission to participate in the Auction and each Qualified Bid submitted by the Qualified Bidder at the Auction constitutes a binding, good-faith and *bona fide* offer to purchase the Assets identified in such bids.

24. In the event the Debtors determine not to hold an Auction for some or all of the Assets, the Debtors shall file with the Court, serve on the Sale Notice Parties (as defined in Section X.B of the Bidding Procedures) and cause to be published on the website maintained by Kurtzman Carson Consultants LLC (“KCC”) located at <http://kccllc.net/SQBG> (the “KCC Website”), a notice containing the following information (as applicable): (a) a description of the Assets available for sale in accordance with the Bidding Procedures, (b) the date, time and location of the Sale Hearing, (c) the Sale Objection Deadline and Post-Auction Objection Deadline (each

as defined in Section X.D of the Bidding Procedures) and the procedures for filing such objections, and, if applicable, (d) a summary of the material terms of any Stalking Horse Agreement, including the terms and conditions of any Termination Payment to be provided thereunder, as of the date of the Sale Notice.

25. By the **later of (a) October 29, 2021 and (b) one day after the conclusion of the Auction**, the Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the KCC Website, a notice setting forth the results of the Auction (the “Notice of Auction Results”), which shall (i) identify each Successful Bidder and each Backup Bidder, (ii) include a copy of each Successful Bid and each Backup Bid or a summary of the material terms of such bids, including any assumption and assignment of Contracts contemplated thereby, and (iii) set forth the Post-Auction Objection Deadline, the date, time and location of the Sale Hearing and any other relevant dates or other information necessary to reasonably apprise the Sale Notice Parties of the outcome of the Auction.

**E. Credit Bidding**

26. Any bidder holding a perfected security interest in any of the Assets may seek to credit bid all, or a portion of, such bidder’s claims for its respective collateral in accordance with section 363(k) of the Bankruptcy Code (each such bid, a “Credit Bid”); *provided*, that such Credit Bid complies with the terms of the Bidding Procedures.

**F. Sale Hearing and Objection Procedures**

27. Consummation of any Sale Transaction pursuant to a Successful Bid shall be subject to Court approval. The Sale Hearing shall be held before the Court on **November 4, 2021, at 10:00 a.m. (prevailing Eastern Time)**; *provided*, that the Debtors may seek an adjournment or rescheduling of the Sale Hearing, consistent with the Bidding Procedures and

without prejudice to the rights of the Galaxy Stalking Horse Bidder or Centric Stalking Horse Bidder under the Galaxy APA and Centric APA, respectively.

28. All general objections to any Sale Transaction (each, a “Sale Objection”) shall be (i) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof, (ii) be filed with the Court, and (iii) served on the Objection Notice Parties (as defined in Section X.D of the Bidding Procedures) by no later than **October 21, 2021, at 4:00 p.m. (prevailing Eastern Time)** (the “Sale Objection Deadline”).

29. Following service of the Notice of Auction Results, parties may object to the conduct of the Auction and/or the particular terms of any proposed Sale Transaction in a Successful Bid, other than with respect to a the Galaxy Stalking Horse Bid, the Centric Stalking Horse Bid, or any other Stalking Horse Bid (each such objection, a “Post-Auction Objection”). Any Post-Auction Objection shall be (a) in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof, (b) be filed with the Court, and (c) served on the Objection Notice Parties by no later than the later of **(i) November 1, 2021, at 4:00 p.m. (prevailing Eastern Time) and (ii) three days prior to the Sale Hearing** (the “Post-Auction Objection Deadline”).

30. Any party who fails to file and serve a timely Sale Objection or Post-Auction Objection in accordance with the terms of this Order shall be forever barred from asserting, at the Sale Hearing or thereafter, any Sale Objection or Post-Auction Objection to the relief requested in the Motion, or to the consummation or performance of the applicable Sale Transaction(s), including the transfer of Assets to the applicable Successful Bidder free and clear of liens, claims, interests and encumbrances pursuant to section 363(f) of the Bankruptcy Code,

and shall be deemed to “consent” to such sale for purposes of section 363(f) of the Bankruptcy Code.

**G. Notice of Sale Transaction**

31. The Sale Notice, substantially in the form attached hereto as Exhibit 4, is approved, and no other or further notice of the proposed sale of the Assets, the Auction, the Sale Hearing, the Sale Objection Deadline or the Post-Auction Objection Deadline shall be required if the Debtors serve and publish the Sale Notice in the manner provided in the Bidding Procedures and this Order.

32. By **no later than the later of (a) September 27, 2021 and (b) two business days after the entry of this Order**, the Debtors shall file with the Court, serve on the Sale Notice Parties and cause to be published on the KCC Website, the Sale Notice.

33. Within four business days after the entry of this Order, the Debtors shall cause the information contained in the Sale Notice to be published once in the national edition of *USA Today* and once in the *New York Times* (the “Publication Notice”).

34. The Publication Notice complies with the provisions of Bankruptcy Rule 9008 and is deemed sufficient and proper notice of the proposed sale of the Assets, the Auction, the Sale Hearing, the Sale Objection Deadline, and the Post-Auction Objection Deadline to any other interested parties whose identities are unknown to the Debtors.

**H. Assumption and Assignment Procedures**

35. The Assumption and Assignment Procedures are reasonable and appropriate under the circumstances, fair to all non-Debtor parties, comply in all respects with the Bankruptcy Code, Bankruptcy Rules and Local Rules, and are approved.

36. The Assumption and Assignment Notice, substantially in the form attached hereto as Exhibit 5, is approved, and no other or further notice of the Debtors' proposed Cure Costs with respect to Contracts listed on an Assumption and Assignment Notice is necessary or required.

37. By **no later than the later of (a) September 28, 2021 and (b) three business days after the entry of this Order**, the Debtors shall file with the Court, serve on the applicable Counterparties and cause to be published on the KCC Website, the Assumption and Assignment Notice.

38. Any objection to the Debtors' proposed Cure Costs or assumption and assignment on any basis (each such objection, a "Contract Objection") (except objections solely related to (a) adequate assurance of future performance by a Successful Bidder other than a Stalking Horse Bidder or (b) the assumption and assignment of the With You LLC Operating Agreement or the Creative Services Agreement with Tina Simpson to a Successful Bidder or designee) shall (a) be in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof, (b) be filed with the Court; and (c) served on the Objection Notice Parties by no later than the date that is **14 calendar days after service of the Cure Notice** (the "Contract Objection Deadline").

39. The Debtors and the objecting Counterparty shall first confer in good faith to attempt to resolve the Contract Objection without Court intervention. If the parties are unable to consensually resolve the Contract Objection prior to the commencement of the Sale Hearing, the Court shall make all necessary determinations relating to the applicable Cure Costs or assumption and assignment and the Contract Objection at a hearing scheduled pursuant to paragraph 40 of this Order. If a Contract Objection is resolved in a manner that is not in the best interests of the Debtors and their estates, whether or not such resolution occurs prior to or after the

closing of the applicable Sale Transaction, the Debtors may determine that any Contract subject to such resolved Contract Objection no longer will be assumed and assigned in connection with the applicable Sale Transaction (subject to the terms of the applicable Sale Transaction). All other objections to the Debtors' proposed assumption and assignment of the Debtors' right, title and interest in, to and under a Contract shall be heard at the Sale Hearing.

40. If a timely Contract Objection cannot otherwise be resolved by the parties, the Contract Objection may be heard at the Sale Hearing or, at the Debtors' option and with the consent of the applicable Successful Bidder, be adjourned to a subsequent hearing (each such Contract Objection, an "Adjourned Contract Objection"). An Adjourned Contract Objection may be resolved after the closing date of the applicable Sale Transaction. Upon resolution of an Adjourned Contract Objection and the payment of the applicable cure amount or resolution of the assumption and assignment issue, if any, the Contract that was the subject of such Adjourned Contract Objection shall be deemed assumed and assigned to the applicable Successful Bidder as of the closing date of the applicable Sale Transaction.

41. If a Counterparty fails to file with the Court and serve on the Objection Notice Parties a timely Contract Objection, the Counterparty forever shall be barred from asserting any objection with regard to the proposed assumption and assignment of such Contract and the cost to cure any defaults under the applicable Contract and shall be deemed to have consented to the assumption and assignment of the Contract in connection therewith. The Cure Costs set forth in the applicable Assumption and Assignment Notice shall be controlling and will be the only amount necessary to cure outstanding defaults under the Contract and satisfy the requirements of section 365(b) of the Bankruptcy Code, and the Counterparty to the Contract shall be bound by and deemed to have consented to the Cure Costs.

42. In accordance with the Bidding Procedures, Qualified Bids shall be accompanied by Adequate Assurance Information (as defined in Section VI.A.8 of the Bidding Procedures). The Debtors shall use commercially reasonable efforts to furnish all available Adequate Assurance Information to applicable Counterparties as soon as reasonably practicable following their receipt of such information.

43. Any objection to the proposed assumption and assignment of a Contract, other than with respect to a Stalking Horse Bidder, the subject of which objection is: (a) a Successful Bidder's (or any other relevant assignee's) proposed form of adequate assurance of future performance with respect to the Contract or (b) the assumption and assignment of the With You LLC Operating Agreement or the Creative Services Agreement with Tina Simpson to a Successful Bidder (each, such objection, an "Adequate Assurance Objection"), shall (a) be in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof, (b) be filed with the Court, and (c) served on the Objection Notice Parties by no later than the Post-Auction Objection Deadline.

44. The Debtors and a Counterparty that has filed an Adequate Assurance Objection shall first confer in good faith to attempt to resolve the Adequate Assurance Objection without Court intervention. If the parties are unable to consensually resolve the Adequate Assurance Objection prior to the commencement of the Sale Hearing, the Adequate Assurance Objection and all issues of adequate assurance of future performance of the applicable Successful Bidder, the assumption and assignment of the With You LLC Operating Agreement or the Creative Services Agreement with Tina Simpson to a Successful Bidder or designee (or any other relevant assignee) shall be determined by the Court at the Sale Hearing.



45. If a Counterparty fails to file with the Court and serve on the Objection Notice Parties a timely Adequate Assurance Objection, the Counterparty shall be forever barred from asserting any objection to the assumption and/or assignment of a Contract with regard to adequate assurance of future performance. The applicable Successful Bidder (or any other relevant assignee) shall be deemed to have provided adequate assurance of future performance with respect to a Contract in accordance with Bankruptcy Code sections 365(b)(1)(C), 365(f)(2)(B) and, if applicable, Bankruptcy Code section 365(b)(3), notwithstanding anything to the contrary in the Contract or any other document.

46. Successful Bidders (including any Stalking Horse Bidder or Backup Bidder ultimately named a Successful Bidder) may, pursuant to the terms of an applicable asset purchase agreement executed with the Debtors (including any applicable Stalking Horse Agreement), designate (a) for assumption and assignment Contracts that were not originally included in the Assets to be acquired in connection with the applicable Successful Bid and (b) Contracts that previously were included among the Assets to be acquired in connection with the applicable Successful Bid as “excluded assets” that will not be assigned to or otherwise acquired by the Successful Bidder; *provided, however*, that the With You LLC Operating Agreement and the Creative Services Agreement with Tina Simpson must in all events be designated for assumption and assignment such that With You, Inc. receives actual notice of such designation no later than four days prior to the Sale Hearing unless such notice is waived by With You, Inc. in writing. The Debtors shall use commercially reasonable efforts to, as soon as reasonably practicable after the Debtors receive notice of any such designation, file with the Court, serve on the applicable Counterparties and cause to be published on the KCC Website, a notice of such designation (a

“Designation Notice”) containing sufficient information to apprise Counterparties of the designation of their respective Contracts.

47. As soon as reasonably practicable after the closing of a Sale Transaction, the Debtors will file with the Court, serve on the applicable Counterparties and cause to be published on the KCC Website, a notice containing the list of Contracts that the Debtors assumed and assigned pursuant to any asset purchase agreement with a Successful Bidder.

48. The inclusion of a Contract or Cure Costs with respect to any Contract on any Assumption and Assignment Notice or any Notice of Auction Results, shall not constitute or be deemed a determination or admission by the Debtors, any Successful Bidder or any other party that such Contract is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code, and shall not be a guarantee that such Contract ultimately will be assumed or assigned. The Debtors reserve all of their rights, claims and causes of action with respect to each Contract listed on any Assumption and Assignment Notice.

#### **I. Other Related Relief**

49. All persons and entities that participate in the Auction or bidding for any Asset during the Sale Process shall be deemed to have knowingly and voluntarily (i) consented to the core jurisdiction of the Court to enter any order related to the Bidding Procedures, the Auction or any other relief requested in the Motion or granted in this Order, (ii) waived any right to a jury trial in connection with any disputes relating to the Bidding Procedures, the Auction or any other relief requested in the Motion or granted in this Order, and (iii) consented to the entry of a final order or judgment in connection with any disputes relating to the Bidding Procedures, the Auction or any other relief requested in the Motion or granted in this Order, if it is determined that the

Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the relevant parties.

50. The Debtors are authorized to take all steps and pay all amounts necessary or appropriate to implement the relief granted in this Order.

51. This Order shall be binding on the Debtors and its successors and assigns, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the estates of the Debtors.

52. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

53. To the extent any provisions of this Order are inconsistent with the Motion, the terms of this Order shall control. To the extent any provisions of this Order are inconsistent with the Bidding Procedures, the terms of this Order shall control.

54. Notwithstanding the applicability of any of Bankruptcy Rules 6004(h), 6006(d), 7062, 9014 or any other provisions of the Bankruptcy Rules or the Local Rules stating the contrary, the terms and provisions of this Order shall be immediately effective and enforceable upon its entry, and any applicable stay of the effectiveness and enforceability of this Order is hereby waived.

55. The Debtors are authorized to make non-substantive changes to the Bidding Procedures, the Assumption and Assignment Procedures, and any related documents without further order of the Court, including, without limitation, changes to correct typographical and grammatical errors.

56. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.



Dated: \_\_\_\_\_, 2021  
Wilmington, Delaware

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United States Bankruptcy Judge