

Bidding Procedures Hearing Date: _____, 2017 at 10:00 a.m. (Prevailing Eastern Time)
Bidding Procedures Objection Deadline: _____, 2017 at 4:00 p.m. (Prevailing Eastern Time)

Proposed Sale Hearing Date: _____, 2017 at 10:00 a.m. (Prevailing Eastern Time)
Proposed Sale Hearing Objection Deadline: _____, 2017 at 4:00 p.m. (Prevailing Eastern Time)

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

GRACIOUS HOME LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 16-13500 (MKV)

(Jointly Administered)

**DEBTORS' MOTION FOR (I) AN ORDER (A) APPROVING
THE BIDDING PROCEDURES FOR A SALE, (B) ESTABLISHING THE NOTICE
PROCEDURES, (C) SCHEDULING A HEARING ON THE SALE, AND (D) GRANTING
RELATED RELIEF AND (II) AN ORDER (A) APPROVING THE SALE OF THE
ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND
OTHER INTERESTS, (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS AND LEASES, AND (C) GRANTING RELATED RELIEF**

¹ The Debtors in these chapter 11 cases and the last four digits of their tax identification numbers are: Gracious Home LLC (6822); Gracious Home Holdings LLC (3251); Gracious Home Payroll LLC (3681); GH East Side LLC (3251); GH West Side LLC (3251); GH Chelsea LLC (3251) and Gracious (IP) LLC (3251). The latter four entities are disregarded for tax purposes and do not have their own tax identification numbers, but use that of Gracious Home Holdings LLC. The address of the Debtors' corporate headquarters is 1210 Third Avenue, New York, New York 10021.

TO THE HONORABLE MARY KAY VYSKOCIL,
UNITED STATES BANKRUPTCY JUDGE:

Gracious Home LLC and its affiliated debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), respectfully represent:

PRELIMINARY STATEMENT

1. The Debtors have used the breathing spell afforded them by section 362 of title 11 of the United States Code (the “Bankruptcy Code”) to re-start their business and prepare for emergence from bankruptcy protection through a sale of the Debtors’ business under an asset purchase agreement.²

2. In this regard, the Debtors and their advisors have met with numerous entities, including the lender (the “DIP Lender”) under their debtor in possession financing facility (the “DIP Facility”), who have expressed an interest in purchasing substantially all the Debtors’ assets (the “Assets”),³ pursuant to an asset purchase agreement (“APA”) under sections 363 and 365 of the Bankruptcy Code. Rosen Declaration at ¶¶ 7-8. The purchaser of the Assets under an APA is hereafter referred to as “Purchaser”.

3. Negotiations remain ongoing but the Debtors do not have a definitive agreement at this time. While the Debtors would prefer having a signed agreement in hand when making this Motion, they cannot afford to delay the process, even while the Debtors’ operations are

² The Debtors’ re-start of their business operations at its New York City location has been successful thus far. As set forth in the declaration of Adam M. Rosen (the “Rosen Declaration”) at ¶ 5 filed herewith, the Debtors’ in-store sales have increased in general on a weekly basis by 38% on average since the arrival of new inventory. The Debtors’ on-line business re-launched on April 28, 2017.

³ The assets subject to sale include accounts receivable, inventory, supplies and material related to assumed contracts and/or the assets, books records, information, goodwill, intellectual property, certain specified litigation, but excludes contracts that are not assumed, refunds of insurance premiums, causes of action other than that specifically purchased, all bank and deposit accounts. A further description of the assets subject to sale is set forth in the Form APA (defined below), annexed hereto as Exhibit C.

improving steadily, because the DIP Facility requires the Debtors to file a plan of reorganization and disclosure statement by June 30, 2017. See February 2, 2017 Senior Secured, Super-Priority Debtor-in-Possession Loan and Security Agreement with lender Gracious Home Lending LLC, at §8.1(b). [ECF 201])

4. Accordingly, the Debtors in this Motion seek approval of a two-step process. First, the Debtors request entry of an order substantially in the form attached hereto as **Exhibit A** (the “Bidding Procedures Order”) authorizing and approving: (i) the proposed auction and bidding procedures (the “Bidding Procedures”), attached to the Bidding Procedures Order as Schedule 1, for soliciting bids for the sale of the Assets (the “Sale”), (ii) establishing notice procedures and approving the form of notice and manner of all procedures, protections, schedules, and agreements in connection with the Sale, (iii) scheduling a hearing to approve the Sale (the “Sale Hearing”), (iv) approving the assumption and assignment of certain executory contracts and leases related to the Sale; and (v) granting related relief.

5. Second, depending upon the results of the Debtors’ marketing process and any subsequent auction, the Debtors will seek entry of an order, substantially in the form attached hereto as **Exhibit B**, authorizing and approving, but not directing, the sale of the Assets and granting related relief (the “Sale Order”).

6. For the reasons set forth herein, the Debtors believe that the requested relief is in the best interests of the Debtors, their estates and creditors and respectfully request that the Court grant this Motion.

**JURISDICTION AND VENUE
AND APPLICABLE LAW**

7. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

8. The legal predicates for the relief requested herein are Bankruptcy Code sections 105, 363, 365, 503, and 507, Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 6004-1 and 6006-1 of the Local Rules (the “Local Bankruptcy Rules”) for the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court or Court”) and the Guidelines for the Conduct of Assets Sales promulgated by General Order M-383 of the Bankruptcy Court (the “Guidelines”).

BACKGROUND

A. The Debtors’ Bankruptcy

9. On December 14, 2016, the Debtors each commenced a case under chapter 11 of the Bankruptcy Code. The Debtors’ Chapter 11 Cases are jointly administered pursuant to Bankruptcy Rule 1015(b).

10. The Debtors continue to operate their businesses as debtors and debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

11. On January 6, 2017, the Office of the United States Trustee for the Southern District of New York (the “United States Trustee”) appointed the Statutory Committee of Unsecured Creditors (the “Committee”) pursuant to section 1102 of the Bankruptcy Code.

12. As set forth above, since obtaining the DIP Facility, the Debtors have re-started their business and have continued marketing their business to potential purchasers or investors.

B. The Marketing and Proposed Sale Process

13. Beginning in December 2016, the Debtors engaged B. Riley & Co. (“B. Riley”) to provide investment banking services, including exploring restructuring, financing and sale options for the Debtors. Rosen Declaration at ¶ 7. As part of these efforts, B. Riley and the Debtors have solicited interest in a potential acquisition of the Debtors’ business. Id. At ¶ 7-8. Certain potential buyers/investors have already signed non-disclosure agreements and begun due diligence in consideration of a potential acquisition of the Debtors’ business operations. Id. Despite strong interest, no party has yet submitted a final proposal for purchasing the Assets. Id. at 9.

14. The Debtors and their advisors continue to market the Debtors’ business and will do so until the Bid Deadline (as defined in the Bidding Procedures). If the Debtors receive a competitive offer, the Debtors intend to conduct an auction to determine the highest or best offer for their business under an APA. The Debtors believe that conducting an auction for the right to acquire the Debtors’ business pursuant to a Sale will maximize the value of the Debtors’ estate for the benefit of all their creditors, stakeholders and other parties in interest.

15. For the reasons set forth herein, the Debtors submit that the relief requested herein is in the best interest of the Debtors, their estates, creditors, stakeholders, and other parties in interest, and therefore, should be granted.

C. Extraordinary Provisions Under the Sale Guidelines

16. The proposed Bidding Procedures Order, the proposed Sale Order, and the Stalking Horse Agreement contain the following items that may be considered Extraordinary Provisions under the Sale Guidelines:⁴

⁴ The following list of possible Extraordinary Provisions, as such term is defined in the Sale Guidelines, is not intended to be an admission that any of these items are unusual relief in a sale of significant assets of a large chapter

- a. **Good Faith Deposit:** All Qualified Bidders are required to submit a good faith deposit in the amount of 10% of the Purchase Price. See proposed Bidding Procedures.
- b. **Bid Protections:** The Debtors seek approval of the right to offer bid protections to a Stalking Horse Bidder (defined below), to be agreed upon, including a break-up fee not to exceed 3% of the total consideration of the Stalking Horse Bid (defined below) plus reimbursement of the Stalking Horse Bidder's reasonable out-of-pocket expenses not to exceed \$75,000.
- c. **Sale Free and Clear:** The Assets shall be transferred free and clear of all Encumbrances (as defined herein) to the fullest extent permitted by Bankruptcy Code section 363.
- d. **Relief from Bankruptcy Rule 6004(h):** The Debtors seek relief from the fourteen (14) day stay imposed by Bankruptcy Rule 6004(h).

The Bidding Procedures⁵

17. The Debtors seek approval of the Bidding Procedures. The Bidding Procedures ensure an orderly process for the acquisition of the Debtors' business through an APA. The Bidding Procedures describe, among other things, the procedures for interested parties to access due diligence, the manner in which bidders become Qualified Bidders (as defined in the Bidding Procedures) and bids become Qualified Bids (as defined in the Bidding Procedures), the receipt and negotiation of bids received, the conduct of any auction, the selection and approval of any

¹¹ debtor pursuant to Bankruptcy Code section 363. Extraordinary Provisions that are not applicable here have not been included in the following list.

⁵ The following summary is qualified in its entirety by reference to the provisions of the Bidding Procedures, a full copy of which are included as part of the proposed Bidding Procedures Order attached hereto as **Exhibit A**. In the event of any inconsistencies between the provisions of the Bidding Procedures and the terms herein, the terms of the Bidding Procedures shall govern. Unless otherwise defined in the summary set forth in the accompanying text, capitalized terms shall have the meanings ascribed to them in the Bidding Procedures.

ultimately successful bidders, and the deadlines with respect to the foregoing (the “Bidding Process”).

18. Stalking Horse Bids and Bid Protections. The Bidding Procedures contemplate that the Debtors will, prior to the auction, continue to solicit a “stalking horse” bid, which bid (the “Stalking Horse Bid,” and any agreement governing the Stalking Horse Bid that memorializes the proposed Sale by and between the Stalking Horse Bidder and the Debtors for the Assets, a “Stalking Horse Agreement”) will be binding on such a bidder (the “Stalking Horse Bidder”) and will set the floor for all Qualified Bids at the auction. A Stalking Horse Bidder will be entitled to certain standard bidder protections to be agreed upon of a break-up fee not to exceed 3% of the total consideration of the Stalking Horse Bid (the “Break-up Fee”) plus reimbursement of the Stalking Horse Bidder’s reasonable out-of-pocket expenses (including attorneys’ fees and expenses) not to exceed \$75,000 (the “Expense Reimbursement” and together with the Break-up Fee, the “Bid Protections”); *provided however*, that a Stalking Horse Bidder that credit bids all or a portion of the purchase price for the Assets shall only be entitled to the Expense Reimbursement.

19. If a Stalking Horse Bid that is acceptable to the Debtors, in consultation with the Committee, is obtained before the auction, the Debtors will announce the designation of such Stalking Horse Bidder by filing a notice (the “Stalking Horse Bid Notice”) on the Court’s docket containing the identity of the Stalking Horse Bidder, attaching any agreement accompanying the Stalking Horse Bid and setting forth the adjusted Minimum Bid which shall equal the sum of (A) the value of the Stalking Horse Bid, (B) the Bid Protections, and (C) \$150,000 (the “Stalking Horse Overbid”).

20. If no Stalking Horse Bid is submitted and selected prior to the auction, the Debtors will select the highest or otherwise best Qualified Bid for the Assets, and such bids must be based upon the form APA (“Form APA”) annexed hereto as **Exhibit C**.

21. Moreover, the Debtors, in consultation with the Committee, may delay the auction for any reason, including if no Stalking Horse Bid is selected and, based upon discussions with potential bidders, it appears that additional time would lead to a higher or better offer.

22. Other key elements of the Bidding Procedures include:

- **Bid Deadlines:** All bids are due no later than June 15, 2017 at 4:00 p.m. (EST).
- **Form and Content of Qualified Bids:** A Qualified Bid is a written offer to purchase the Assets submitted to the notice parties set forth in the Bidding Procedures, so as to be received by the Bid Deadline that:
 - identifies the assets subject to the bid;
 - is accompanied by a good faith deposit equal to 10% of the Purchase Price offered by such bid;
 - (i) if there is no Stalking Horse Bid, offers consideration that is an amount not less than the sum of the consideration set forth in the Form APA; and (ii) if there is a Stalking Horse Bid, provides for consideration equal to or greater than the Stalking Horse Overbid;
 - is irrevocable until (a) the conclusion of the auction to the extent such Qualified Bidder is not the Successful Bidder or the Backup Bidder, or (b) in the event the relevant Qualified Bidder is chosen as the Successful Bidder or the Backup Bidder, until (x) the Debtors and the Successful Bidder consummate the Sale or (y) forty-five (45) days after the Sale Hearing;
 - includes evidence satisfactory to the Debtors of authorization and approval from the bidder’s board of directors (or comparable governing body) with respect to the submission, execution, delivery, and closing of the APA, financing agreements and any other ancillary documents or agreements;
 - sets forth each regulatory and third-party approval required for the bidder to consummate the Sale and provide evidence satisfactory to the Debtors (in

consultation with the Committee) that each such approval can be obtained on a timeframe acceptable to the Debtors;

- includes (a) an APA on substantially the terms of, or on terms that are more favorable to the Debtors than those set forth in any Stalking Horse Agreement, and if no Stalking Horse Agreement, than those set forth in the Form APA, and shall specify the amount of cash or other consideration offered by the bidder for the assets, include all exhibits and schedules, and be signed by an authorized representative of such bidder, and (b) a proposed Sale Order. The APA, together with its exhibits and schedules, and the proposed Sale Order shall be marked to show the required amendments and modifications to any Stalking Horse Agreement, or Form APA and the Sale Order;
 - identifies all liabilities which the bidder proposes to assume;
 - includes an acknowledgement and representation that the bidder has had an opportunity to conduct any and all required due diligence regarding the Assets and the Debtors' business prior to making its offer;
 - does not request any Bid Protections (if not a Stalking Horse Bid);
 - contains sufficient and adequate information to demonstrate, to the satisfaction of the Debtors (in consultation with the Committee), that the relevant Qualified Bidder has the financial wherewithal and ability to consummate the Sale;
 - states that the relevant Qualified Bidder consents to the core jurisdiction of the Bankruptcy Court to enter an order or orders, which shall be binding in all respects, in any way related to the Debtors and their Assets, and have waived any right to a jury trial in connection with any disputes relating to the Debtors, the Chapter 11 Cases, the Bidding Procedures, any Stalking Horse Agreement, the auction, or the construction and enforcement of any Stalking Horse Agreement, the APA or any documents related thereto;
 - confirms that the relevant Qualified Bidder has not engaged in any collusion with respect to the bidding, the Auction or the Assets; and
 - contains such other information as the Debtors (in consultation with the Committee) deem appropriate.
- **Auction and Auction Procedures:** At the Auction, Qualified Bidder(s) must appear in person, through a duly authorized represented, or as otherwise agreed by the Debtors. Bidding at the Auction will begin with the Auction Baseline Bid and continue in bidding increments (each a "Subsequent Bid") providing a net value to the estate of at least an additional \$150,000 above the prior bid; *provided however*, that the Debtors may in their sole discretion (in consultation with the Committee) increase or decrease the amount of Subsequent Bids after the first round of bidding. After the first round of bidding and

between each subsequent round of bidding, the Debtors shall announce the bid that they believe, in consultation with the Committee, to be the highest or otherwise best offer.

- **Backup Bidder.** If an Auction is conducted, the Qualified Bidder with the next highest or otherwise best bid at the Auction, as determined by the Debtors, after consultation with the Committee, will be designated as the backup bidder (the “Backup Bidder”). For the avoidance of doubt, (a) in the event that the Stalking Horse Bidder is not the winning bidder at the Auction and (b) the Stalking Horse Bidder submits the second highest or second best bid at the Auction, the Stalking Horse Bidder shall have the right but not the obligation to be the Backup Bidder. Subject to the other terms and conditions of these Bidding Procedures, the Backup Bidder shall be required to keep its bid (the “Backup Bid”) open and irrevocable until the earlier of (x) the consummation of a sale with a Successful Bidder and (y) forty-five (45) days after the Sale Hearing; provided, however, that if the Stalking Horse Bidder is the Backup Bidder its Backup Bid shall be on the terms set forth in the Stalking Horse Agreement. If the Stalking Horse Bidder does not serve as the Backup Bidder, the Debtors, in consultation with the Committee, shall have the right to select the next highest or otherwise best bidder after the Successful Bidder at the Auction (other than the Stalking Horse Bidder) as the Backup Bidder.
- **Reservation of Rights:** Subject to the Bidding Procedures Order, the Debtors reserve their rights, as they may determine to be in their best interests and in the exercise of their fiduciary obligations to, in consultation with the Committee: (a) after consultation with any Stalking Horse Bidder, modify the Bidding Procedures or impose, at or prior to the Auction, different and/or additional terms and conditions or procedural rules on the sale of the Assets; (b) determine which bidders are Qualified Bidders; (c) determine which bids qualify as Qualified Bids; (d) determine whether to enter into or accept a Qualified Bid or Subsequent Bid; (e) determine which Qualified Bid is the highest or otherwise best proposal and which is the next highest or otherwise best proposal; (f) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code, or (iii) contrary to the best interests of the Debtors; (g) waive terms and conditions set forth herein with respect to all potential bidders; and (h) extend the deadlines set forth herein; provided, however, that (i) nothing in the Bidding Procedures shall, or shall be construed to, in any way amend, impair, alter or otherwise modify the terms of any Stalking Horse Agreement or any Stalking Horse Bidder’s rights thereunder.
- **Sale Hearing.** The Successful Bid will be subject to approval of the Bankruptcy Court.

23. The Debtors believe that the Bidding Procedures are fair and reasonable and will ensure that the bidding process and any Auction (to the extent necessary) will yield the maximum value for the Debtors’ estates and creditors. The Bidding Procedures also provide an appropriate framework for the Debtors to review, analyze and compare all bids received to

determine which bid(s) are in the best interests of the Debtors and their economic stakeholders. The Bidding Procedures clearly set forth the participation requirements for Qualified Bidders and bid requirements for Qualified Bids (as such terms are defined in the Bidding Procedures). Accordingly, approval of the Bidding Procedures, including any applicable dates established thereby for the Auction and the Sale Hearing, should be granted.

**The Relief Requested Is Warranted
And in the Best Interests of the Debtors and Their Stakeholders**

24. Section 363 of the Bankruptcy Code provides, in relevant part, “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). The Debtors’ proposed use or sale of property outside the ordinary course of business should be approved if it is based upon the debtor’s sound business judgment. See In re Chateaugay Corp., 973 F.2d 141 (2d Cir. 1992) (holding that a judge reviewing a section 363(b) application must find from the evidence presented a good business reason to grant such application); Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983) (same); In re Gen. Motors Corp., 407 B.R. 463, 493-94 (Bankr. S.D.N.Y. 2009).

25. In this case, the Debtors, relying upon the advice of their financial advisors and based upon the Debtors’ financial condition and upcoming Purchasers, have determined that the Auction process is the best means for obtaining a definitive APA, to enable the Debtors to emerge from bankruptcy protection. See Declaration of Robert Morrison submitted herewith.

26. The APA that results from the Auction process will have been negotiated at arms-length, with the input of the Committee. As set forth below, all interested parties will have had adequate notice of a proposed sale.

27. Notice of Sale and Sale Hearing. Once a court is satisfied that there is a sound business justification for the proposed sale, the court must then determine whether (i) the debtor has provided the interested parties with adequate and reasonable notice, (ii) the sale price is fair and reasonable, and (iii) the purchaser is proceeding in good faith. Gen. Motors, 407 B.R. at 493-94; In re Betty Owens Sch., 1997 U.S. Dist. Lexis 5877 (S.D.N.Y. 1997); accord In re Delaware and Hudson Ry. Co., 124 B.R. at 166; In re Decora Indus., Inc., Case No. 00-4459, 2002 WL 32332749 at *3 (Bankr. D. Del. May 20, 2002).

28. The Debtors propose that within two (2) business days after the entry of the Bidding Procedures Order, or as soon thereafter as practicable (the “Mailing Date”), the Debtors (or their agents) shall serve this Motion, the Bidding Procedures Order, and the Bidding Procedures by first-class mail, postage prepaid, upon (a) the United States Trustee; (b) the U.S. Attorney for the Southern District of New York; (c) counsel to the Committee; (d) the Internal Revenue Service; (e) the Securities and Exchange Commission; and (f) all affected federal, state and local regulatory and taxing authorities. The Debtors shall serve the Notice of Sale, attached hereto as **Exhibit D**, upon (x) any party known to hold or assert any lien, hypothecation, encumbrance, claim, liability, security interest, interest, mortgage, pledge, restriction, or charge (including any conditional sale or other title retention agreement) (the “Encumbrances”) in any of the Assets; (y) all entities known to have expressed an interest in a Sale with respect to all or part of the Assets during the six (6) months preceding the date hereof; and (z) any such other party entitled to notice pursuant to Bankruptcy Rule 2002 and Rule 9013-1(b) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York. All parties receiving notice hereunder are referred to as the “Notice Parties”. **Those Notice Parties who do not object or withdrew their objections to the Sale on or before the Sale**

Hearing, shall be deemed to have consented to the Sale for purposes of section 363(f)(2) of the Bankruptcy Code.

29. As set forth above, the notice procedures described herein with respect to approval of the sale to the Stalking Horse Bidder or the Successful Bidder are substantially similar to the notice procedures set forth in the Guidelines and are fair and reasonable in light of the nature of the Assets and of the proposed Sale. The only notable deviation from the Guidelines is that the Debtors do not intend to publish notice of this Motion and related relief. The Debtors believe that the costs associated with publishing such a notice outweigh any potential benefit to the Debtors' estates.⁶ By the time that the Debtors serve notice of entry of the Bidding Procedures Order, the bar date will have passed and the Debtors will know whether there are additional non-governmental creditors asserting Encumbrances. Furthermore, the Debtors have fully marketed (and continue to market) the Debtors' business to potential strategic and financial investors. See Rosen Declaration at 7-8. It is highly unlikely that publication notice would lead to additional investors stepping forward. Based upon the foregoing, the Debtors request that the Court approve the notice provisions of the Bidding Procedures Order without requiring the Debtors to publish notice thereof.

30. Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Pursuant to Section 365 of the Bankruptcy Code. In connection with the Sale, the Debtors may be required to assume and assign certain executory contracts and unexpired leases to the purchaser of the Assets. To facilitate the assumption and assignment of any such executory contracts and unexpired leases, the Debtors propose the following procedures (the "Assumption Procedures"):

⁶ For example, the Debtors incurred \$13,000 to publish notice of the bar date.

- (a) Within five (5) days after entry of the Bidding Procedures Order, the Debtors shall serve on all non-Debtor counterparties to any executory contract or unexpired lease that may be assumed and assigned to a purchaser of the Assets (the “Assumed Contracts”), a notice substantially in the form attached hereto as Exhibit E (the “Assumption Notice”), that identifies (i) the title of the contract or lease, (ii) the name of the non-debtor counterparty to such contract and (iii) the Debtor’s good faith estimate as to the cure amount (the “Cure Amount”) that must be paid to cure all prepetition defaults under such contract in the event it is ultimately assumed by a Purchaser. In the event the Debtors are unable to establish that a default exists, the relevant Cure Amount shall be set at \$0.00.
- (b) In the event that the list of Assumed Contracts is changed, by way of addition or removal of executory contracts or unexpired leases from the list, the Debtors shall notify the non-Debtor counterparty to such added or removed executory contract or unexpired lease of any such modification.
- (c) Objections, if any, to (i) the proposed Cure Amount (a “Cure Objection”) or (ii) the assumption and assignment of any Assumed Contract to Purchaser, including, but not limited to, objections relating to whether Purchaser can provide adequate assurance of future performance (a “Purchaser Assumption Objection”), must be filed on or before the date of the Sale Hearing; provided, however, that in the event that a Purchaser has not been identified prior to such deadline, or if an executory contract or unexpired lease is added to the list of Assumed Contracts it proposes to be assumed and assigned subsequent to such deadline, any Cure or Purchaser Assumption Objection as to any such added executory contract or unexpired lease shall be filed no later than seven (7) days following service of notice on the non-Debtor counterparty to such added executory contract or unexpired lease. Any Cure Objection or Purchaser Assumption Objection must be served so as to be actually received by on or before the applicable deadline. Any Cure Objection must state with specificity what cure is required (with appropriate documentation in support thereof). If a Cure Objection and/or Purchaser Assumption Objection is timely filed and served, a hearing with respect to the Purchaser Assumption Objection will be held at the Sale Hearing, or such other date set by the Bankruptcy Court. In the event an executory contract or unexpired lease is added to the list of Purchaser Assumed Contracts, or the Purchaser is identified later than seven (7) days before the Sale Hearing, a hearing with respect to a Cure or Purchaser Assumption Objection related to such added executory contract or unexpired lease will not be heard by the Court at the Sale Hearing absent consent of the non-Debtor counterparty; rather, such hearing will be scheduled by the parties to take place as soon as practicable but no later than the Closing Date.

31. The assumption and assignment of the Assumed Contracts is an integral part of the proposed Sale and should be approved by the Bankruptcy Court. Section 365(a) of

the Bankruptcy Code authorizes a debtor in possession to assume and assign an executory contract or unexpired lease subject to Court approval. Section 365(b) of the Bankruptcy Code requires a debtor in possession to satisfy certain requirements at the time of assumption if a default exists under the contract to be assumed.

32. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor in possession, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). By enacting section 365(a) of the Bankruptcy Code, Congress intended to allow a debtor to assume those leases/contracts that benefit the estate, and to reject those that are of no value or are burdensome to the estate. See Cinicloa v. Scharffenberger, 248 F.3d 110, 119 (3d Cir. 2001); In re Whitcomb & Keller Mortgage Co., Inc., 715 F.2d 375, 379 (7th Cir. 1983).

33. It is well established that decisions to assume or reject executory contracts or unexpired leases are matters within the “business judgment” of the debtor. See In re G Survivor Corp., 171 B.R. 755, 757 (Bankr. S.D.N.Y. 1994) (noting that “[i]n determining whether a debtor may be permitted to reject an executory contract, courts usually apply the business judgment test. Generally, absent a showing of bad faith, or an abuse of discretion, the debtor’s business judgment will not be altered”) (citations omitted). See also Sharon Steel Corp. v. National Fuel Gas Dist Corp., 872 F.2d 36, 40 (3d Cir. 1989); NLRB v. Bildisco & Bildisco, 465 U.S. 513, 523 (1984). Accordingly, courts approve the assumption or rejection of an executory contract or unexpired lease unless evidence is presented that the debtor’s decision to assume or reject was “so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice.” In re Richmond Metal Finishers, Inc., 756 F.2d 1043, 1047 (4th Cir. 1985), cert. denied, 475 U.S. 1057 (1986).

Indeed, to impose more exacting scrutiny would slow a debtor's reorganization, thereby increasing its cost and undermining the "Bankruptcy Code's provisions for private control" of the estate's administration. Richmond Leasing Co. v. Capital Bank, N.A., 762 F.2d 1303, 1311 (5th Cir. 1985).

34. Adequate business justification exists to merit judicial approval of the proposed assumption and assignment of the Assumed Contracts. The Assumed Contracts are valuable assets of the Debtors' estates and the inclusion of such Assumed Contracts will serve to increase the purchase price for the Acquired Assets. Accordingly, the Debtors respectfully request that the Bankruptcy Court approve the assumption and assignment of the Assumed Contracts.

35. Post Auction Notice. As soon as possible after the conclusion of the Auction, if any, the Debtors shall file, but not serve, a notice identifying any Successful Bidder and the date and time of the Sale Hearing, substantially in the form attached hereto as **Exhibit F** (the "Post Auction Notice"). The Debtors shall also post the Post Auction Notice on the website of the Debtors' claims and noticing agent, available at: <https://cases.primeclerk.com/gracioushome/>.

36. Special Provisions Applicable to Sale. Pursuant to section 363(f) of the Bankruptcy Code, the Debtors seek authority to sell the Assets "free and clear of any interest in such property of an entity other than the estate." Section 363(f) permits such free and clear sales if applicable non-bankruptcy law permits sale of such property free and clear of such interest, if such entity consents, if such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property, if such interest is in bona fide dispute, or if such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. 11 U.S.C. § 363(f)(1) – (5). With respect to any party

asserting a lien, claim, encumbrance or other interest against the Assets, the Debtors anticipate that they will be able to satisfy one or more of the conditions set forth in section 363(f).

37. Section 363(m) of the Bankruptcy Code protects a good faith purchaser's interest in property purchased from a debtor notwithstanding that the sale conducted under section 363(b) is later reversed or modified on appeal. Specifically, Bankruptcy Code section 363(m) states that:

The reversal or modification on appeal of an authorization under [section 363(b)] ... does not affect the validity of a sale ... to an entity that purchased ... such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale ... were stayed pending appeal.

Section 363(m) fosters the “policy of not only affording finality to the judgment of the [B]ankruptcy [C]ourt, but particularly to give finality to those orders and judgments upon which third parties rely.” Reloeb Co. v. LTV Corp (In re Chateaugay Corp., No. 92 Civ. 7054 (PKL), 1993 U.S. Dist. Lexis 6130, at *9 (S.D.N.Y. May 10, 1993) (quoting In re Abbotts Dairies of Pa., Inc., 788 F.2d 143, 147 3d Cir. 1986). See also Allstate Ins. Co. v. Hughes, 174 B.R. 884, 888 (S.D.N.Y. 1994) (“Section 363(m) . . . provides that good faith transfers of property will not be affected by the reversal or modification on appeal of an unstayed order, whether or not the transferee knew of the pendency of the appeal”); In re Stein & Day, Inc., 113 B.R. 157, 162 (Bankr. S.D.N.Y. 1990) (“pursuant to 11 U.S.C. § 363(m), good faith purchasers are protected from the reversal of a sale on appeal unless there is a stay pending appeal”).

38. The selection of the Successful Bidder will be the product of arm's-length, good faith negotiations in as competitive a purchasing process as is possible under the circumstances. Based upon this Motion and the evidence submitted in support thereof, the Debtors will request a

finding that the Successful Bidder is a good faith purchaser entitled to the protections of section 363(m) of the Bankruptcy Code.

Request for Relief Pursuant to Bankruptcy Rules 6004(h)

39. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of fourteen (14) days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h).

40. In light of the current circumstances, the financial condition of the Debtors and the nature of the Assets, the Debtors believe that in order to maximize value the sale of the Assets should be consummated as soon as practicable. Accordingly, the Debtors request that the Order approving the Sale be effective immediately upon entry of such order and that the fourteen (14) day stay under Bankruptcy Rule 6004(h) be waived.

NOTICE

41. Notice of this Application shall be given to (a) the United States Trustee; (b) counsel to secured creditor(s); (c) counsel to the Committee; and (d) any such other party entitled to notice pursuant to Rule 9013-1(b) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York. The Debtors submit that no other or further notice need be provided.

42. No previous request for the relief sought herein has been made by the Debtors to this or any other Court.

CONCLUSION

WHEREFORE the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as is just.

Dated: New York, New York
May 23, 2017

**TRENK, DiPASQUALE,
DELLA FERA & SODONO, P.C.**

By: /s/ Joseph J. DiPasquale
347 Mount Pleasant Avenue, Suite 300
West Orange, New Jersey 07052
(973) 243-8600
-and-
45 Rockefeller Plaza, Suite 2000
New York, New York 10111
(212) 899-5245
Joseph J. DiPasquale
Irena M. Goldstein

Counsel for Debtors and Debtors in Possession

4847-0895-3414, v. 4

EXHIBIT A

Bidding Procedures Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

GRACIOUS HOME LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 16-13500 (MKV)

(Jointly Administered)

**ORDER (I) APPROVING THE BIDDING PROCEDURES FOR THE
SALE OF THE ASSETS; (II) ESTABLISHING THE NOTICE PROCEDURES
AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF; (III)
SCHEDULING A SALE HEARING; AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² dated May 23, 2017 of the above-captioned debtors (collectively, the “Debtors”) for among other things, entry of an order (the “Order”) (i) approving the proposed auction and bidding procedures (the “Bidding Procedures”), which are attached as **Schedule 1** hereto, for the sale of the Assets; (ii) approving the form and manner of notice of all procedures, protections, schedules, and agreements; (iii) scheduling a hearing (the “Sale Hearing”) to approve such sale (the “Sale Transaction”); and (iv) granting other related relief; and the Court having considered the Motion, and the arguments of counsel made, and the evidence adduced, at the hearing on the Motion (the “Bidding Procedures Hearing”); as more fully described in the Motion; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and all other interested parties; and upon the record of the

¹ The Debtors in these chapter 11 cases and the last four digits of their tax identification numbers are: Gracious Home LLC (6822); Gracious Home Holdings LLC (3251); Gracious Home Payroll LLC (3681); GH East Side LLC (3251); GH West Side LLC (3251); GH Chelsea LLC (3251) and Gracious (IP) LLC (3251). The latter four entities are disregarded for tax purposes and do not have their own tax identification numbers, but use that of Gracious Home Holdings LLC. The address of the Debtors’ corporate headquarters is 1210 Third Avenue, New York, New York 10021.

² Capitalized terms used but not defined herein shall have the same meaning ascribed to such terms in the Motion.

Bidding Procedures Hearing and the Chapter 11 Cases, and after due deliberation thereon, and good cause appearing therefor, it is hereby,

FOUND, CONCLUDED AND DECLARED THAT:

A. The Court has jurisdiction to consider the Sale Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and the Sale Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409. The legal predicates for the relief requested in the Sale Motion are Bankruptcy Code sections 105, 363, 365 503. and 507. Such relief is also warranted pursuant to Bankruptcy Rules 2002, 6004, 6006, 9007. and 9014 and Local Bankruptcy Rules 6004-1 and 6006-1 and the Sale Guidelines.

B. The relief granted herein is in the best interests of the Debtors, their estates, and other parties in interest.

C. The Debtors have articulated good and sufficient business reasons for the Court to (i) approve the Bidding Procedures, (ii) approve the form and manner of notice of the Sale Motion, the Auction, and the Sale Hearing, and (iii) set the date of the Auction and the Sale Hearing.

D. Due, sufficient, and adequate notice of the Bidding Procedures Hearing, the relief requested in the Sale Motion, the relief granted herein, the Bidding Procedures, and the Auction has been given in light of the circumstances and the nature of the relief requested, and no other or further notice thereof is required.

E. The Bidding Procedures, substantially in the form attached hereto as **Schedule 1**, and incorporated herein by reference as if fully set forth herein, are fair, reasonable, and appropriate; and represent the best way to maximize the value of the Assets.

IT IS HEREBY ORDERED that:

1. The Motion is GRANTED, as set forth herein.

2. The Bidding Procedures, as attached hereto as **Schedule 1**, are approved and incorporated into this Order by reference, as though fully set forth herein. Accordingly, the failure to recite or reference any particular provision of the Bidding Procedures shall not diminish the effectiveness of such provision, it being the intent of the Court that the Bidding Procedures be authorized and approved in their entirety. The Debtors are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures, including to provide the Bid Protections.

The Bid Deadline

Except as expressly set forth herein or in the Bidding Procedures, for a bid to be a Qualified Bid, the following parties must receive such bid in writing **on or before June 15, 2017 at 4:00 p.m. (prevailing Eastern Time)** or such earlier date as may be agreed to by the Debtors (the “**Bid Deadline**”): (a) the Debtors, 1210 Third Avenue, New York, New York Attn: Robert Morrison (rmorrison@gracioushome.com); (b) counsel for the Debtors, Trenk, DiPasquale, Della Fera & Sodono, P.C., 347 Mount Pleasant Ave., Suite 300, West Orange, New Jersey 07052, Attn: Joseph J. DiPasquale (jdipasquale@trenklawfirm.com) and Irena M. Goldstein (igoldstein@trenklawfirm.com); (c) financial advisor and investment banker to the Debtors, B. Riley & Co., 420 Lexington Avenue, Suite 3001, 420 Lexington Avenue, New York, New York 10022, Attn: Perry M. Mandarino (pmandarino@brileyco.com) and Adam M. Rosen (arosen@briley.com); (d) counsel for the Committee, Seward & Kissel LLP, One Battery Park Plaza, New York, New York 10004, Attn: John R. Ashmead (ashmead@sewkis.com) and Robert J. Gayda (gayda@sewkis.com); and (e) financial advisor to the Committee, Wyse Advisors LLC, 85 Broad Street, 18th Floor, New York, NY 10004, Attn: Mike Wyse, (mwyse@wyseadvisorsllc.com) (collectively, the “**Bid Notice Parties**”).

3. Notwithstanding anything herein to the contrary, the Stalking Horse Bidder, if any,

is deemed a Qualified Bidder for all purposes, and the Stalking Horse Agreement is deemed a Qualified Bid for all purposes.

Notice of the Sale Transaction and the Sale Hearing

4. Within two (2) business days after the entry of this Order, or as soon thereafter as practicable (the “Mailing Date”), the Debtors (or their agents) shall serve notice of the Sale Motion, this Order, and the Bidding Procedures by first-class mail, postage prepaid upon (a) the Office of the United States Trustee for the Southern District of New York; (b) the U.S. Attorney for the Southern District of New York; (c) counsel to the DIP Lender; (d) counsel to the Committee; (e) the Internal Revenue Service; (f) the Securities and Exchange Commission; (g) any party known to hold or assert any liens, hypothecations, encumbrances, claims, liabilities, security interests, interests, mortgages, pledges, restrictions or charges (including any conditional sale or other title retention agreement) (the “Encumbrances”) in any of the Purchased Assets; (h) all affected federal, state, and local regulatory, and taxing authorities; (i) all entities known to have expressed an interest in a transaction with respect to all or part of the Purchased Assets during the six (6) months preceding the date hereof; and (j) any such other party entitled to notice pursuant to Rule 9013-1(b) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York.

5. On the Mailing Date or as soon thereafter as practicable, the Debtors (or their agents) shall serve by first-class mail, postage prepaid, the Sale Notice upon all other known creditors and all other known creditors of the Debtors. The Debtors shall also post the Sale Notice on the website of the Debtors’ claims and noticing agent, available at <https://cases.primeclerk.com/GraciousHome>.

6. The Debtors shall identify the Successful Bidder at the Auction and shall file, but not serve, a notice identifying any Successful Bidder and the date and time of the Sale Hearing.

The Debtors shall also post the identity of the Successful Bidder on the website of the Debtors' claims and noticing agent, available at <https://cases.primeclerk.com/GraciousHome>.

7. The Debtors' proposed notice of (a) the Sale Motion, (b) the proposed Sale, (c) the Successful Bidder, and (d) the Bidding Procedures are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of each, and no further notice of, or hearing on, each is necessary or required.

8. The Sale Hearing to approve the sale of the Assets to the Successful Bidder shall be held on **June __, 2017 at 10:00 a.m. (Prevailing Eastern Time)**.

9. Objections, if any, to the selection of the Successful Bidder or to the conduct of the Auction must be filed and served on the Bid Notice Parties prior to the Sale Hearing. **If a party with an Encumbrance fails to object by the objection deadline, it will be deemed to consent to the Sale Transaction free and clear of Encumbrances (other than Assumed Liabilities) under Bankruptcy Code section 363(f)(2).**

10. The Auction shall take place on **June 19, 2017 at 10:00 a.m. (Prevailing Eastern Time)** at 45 Rockefeller Plaza, Suite 2000, New York, New York 10111, or such other location and time as the Debtors shall timely communicate to all parties entitled to attend the Auction, including all Qualified Bidders, any Stalking Horse Bidder and its counsel, the United States Trustee, and counsel for the Committee.

11. Only the Debtors, the Committee, any Stalking Horse Bidder, and any other Qualified Bidder, in each case, along with their representatives and counsel, shall be entitled to attend and participate in the Auction (such attendance to be in person).

12. The Debtors and their professionals shall direct and preside over the Auction, and the Auction shall be transcribed. Each Qualified Bidder participating in the Auction must confirm

that it (a) has not engaged in any collusion with respect to the bidding or sale of any of the assets described herein, (b) has reviewed, understands, and accepts the Bidding Procedures, and (c) has consented to the core jurisdiction of the Bankruptcy Court.

Related Relief

13. This Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon execution hereof.

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

15. Notwithstanding Bankruptcy Rules 6004(h), 6006(d), or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

16. The Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: New York, New York
June __, 2017

HONORABLE MARY KAY VYSKOCIL
UNITED STATES BANKRUPTCY JUDGE

Schedule 1

Bidding Procedures

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

GRACIOUS HOME LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 16-13500 (MKV)

(Jointly Administered)

BIDDING PROCEDURES

The bidding procedures set forth below (the “Bidding Procedures”) detail the process by which Gracious Home LLC and certain of its affiliated debtors in the above-captioned chapter 11 cases, as the debtors and debtors in possession (collectively, the “Debtors”), are authorized to solicit bids for the right to purchase substantially all of the Debtors’ assets (subject to certain exclusions) (the “Assets”), free and clear of all liens, claims and encumbrances thereon (a “Sale”), pursuant to a duly authorized and executed purchase and sale agreement (an “APA”). A form of an APA (“Form APA”) acceptable to the Debtors, and which contains a description of the Assets subject to sale, is included with these Bidding Procedures.

These Bidding Procedures were approved by order of the Bankruptcy Court dated [____], 2017 (the “Bidding Procedures Order”), pursuant to the motion of the Debtors for (I) an Order (A) Approving the Bidding Procedures for a Sale of the Assets, (B) Establishing the Notice Procedures, (C) Scheduling a Hearing on the Sale, and (D) Granting Related Relief and (II) an Order (A) Approving the Sale of the Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, (B) Approving the Assumption and Assignment of Executory Contracts and Leases, and (C) Granting Related Relief (the “Motion”). Capitalized terms used but not otherwise defined herein shall have the meanings ascribed them in the Motion and/or the Bidding Procedures Order, as applicable. These documents can be found on the website of the Debtors’ claims and noticing agent, Prime Clerk, at <https://cases.primeclerk.com/GraciousHome>, or the Bankruptcy Court’s internet site <http://www.nysb.uscourts.gov>, or for a fee through an account obtained from the PACER website at <http://pacer.psc.uscourts.gov>. The documents may also be obtained by contacting counsel to the Debtors, Trenk, DiPasquale, Della Fera & Sodono, P.C., 347 Mt. Pleasant Ave., Suite 300, West Orange, New Jersey 07052, Attn: Joseph J. DiPasquale (jdipasquale@trenklawfirm.com) and Irena M. Goldstein (igoldstein@trenklawfirm.com).

¹ The Debtors in these chapter 11 cases and the last four digits of their tax identification numbers are: Gracious Home LLC (6822); Gracious Home Holdings LLC (3251); Gracious Home Payroll LLC (3681); GH East Side LLC (3251); GH West Side LLC (3251); GH Chelsea LLC (3251) and Gracious (IP) LLC (3251). The latter four entities are disregarded for tax purposes and do not have their own tax identification numbers, but use that of Gracious Home Holdings LLC. The address of the Debtors’ corporate headquarters is 1210 Third Avenue, New York, New York 10021.

Bid Requirements

1. Access to Diligence; Due Diligence from Interested Parties

Upon execution of a confidentiality agreement, in form and substance satisfactory to the Debtors, a qualified party that wishes to conduct due diligence on any of the Assets may be granted access to information related thereto, subject to these Bidding Procedures and the Bidding Procedures Order. For a party to be considered a “qualified party” and provided diligence access, such party must demonstrate, in the Debtors’ judgment, in consultation with the Committee, that such party has the ability to close promptly on the Sale following the Bankruptcy Court’s approval of such party’s Qualified Bid (as defined below). The information to be provided to such qualified parties will be information that the Debtors believe is appropriate in light of the Debtors’ need to protect their trade secrets and confidential research, development, and commercial information.

Each party expressing an interest in any of the Assets shall comply with all requests for additional information and due diligence access requested by the Debtors or their advisors (in consultation with the Committee) regarding such party and its ability to consummate its obligations under the APA. Failure by a party to comply with such requests for additional information and due diligence access may be a basis for the Debtors (in consultation with the Committee) to determine that such bidder is not a Qualified Bidder or that a bid made by such party is not a Qualified Bid.

By submitting a bid, each bidder shall be deemed to acknowledge and represent that it has had an opportunity to conduct due diligence on the Debtors prior to making its bid; that it has relied solely upon its own independent due diligence in making its bid; and that it did not rely upon any written or oral statement, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the Debtors, or the completeness of any information provided in connection therewith.

2. Qualified Bids

A written offer by a potential bidder that is delivered so as to be received **by no later than June 15, 2017 at 4:00 p.m. Prevailing Eastern Time (the “Bid Deadline”)** by email to (a) the Debtors, 1210 Third Avenue, New York, New York Attn: Robert Morrison (rmorrison@gracioushome.com); (b) counsel for the Debtors, Trenk, DiPasquale, Della Fera & Sodono, P.C., 347 Mount Pleasant Ave., Suite 300, West Orange, New Jersey 07052, Attn: Joseph J. DiPasquale (jdipasquale@trenklawfirm.com) and Irena M. Goldstein (igoldstein@trenklawfirm.com); (c) financial advisor and investment banker to the Debtors, B. Riley & Co., 420 Lexington Avenue, Suite 3001, 420 Lexington Avenue, New York, New York 10022, Attn: Perry M. Mandarino (pmandarino@brileyco.com) and Adam M. Rosen (arosen@briley.com); (d) counsel for the Committee, Seward & Kissel LLP, One Battery Park Plaza, New York, New York 10004, Attn: John R. Ashmead (ashmead@sewkis.com) and Robert

J. Gayda (gayda@sewkis.com); and (e) financial advisor to the Committee, Wyse Advisors LLC, 85 Broad Street, 18th Floor, New York, NY 10004, Attn: Mike Wyse, (mwyse@wyseadvisorsllc.com), and that complies with all of the following requirements, as determined by the Debtors, shall constitute a "Qualified Bid" for the Assets:

- a) Assets: each Qualified Bid must identify which Assets are subject to the bid;
- b) Good Faith Deposit: each Qualified Bid must be accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtors) or certified check payable to the order of the Gracious Home LLC (or such party as the Debtors may determine) or such other form acceptable to the Debtors, in an amount no less than 10% of the consideration of any such Qualified Bid. For the avoidance of doubt, this requirement shall apply to any party with a right to credit bid;
- c) Minimum Bid: each Qualified Bid must provide for consideration that is in an amount not less than the sum of the consideration set forth in the Form APA; *provided however*, if there is a Stalking Horse Bid (defined below) for the Assets designated prior to the Bid Deadline, the consideration must be in the amount of the Stalking Horse Overbid (as defined below);
- d) Irrevocable (Qualified Bids): each Qualified Bid must state that it is irrevocable until the conclusion of the Auction to the extent such bidder is not the Successful Bidder or the Backup Bidder (as defined below);
- e) Irrevocable (Successful Bid and Backup Bid): each Qualified Bid must state that in the event the relevant bidder is chosen as the Successful Bidder (as defined below) or the Backup Bidder, it shall remain irrevocable until the earlier of (x) the consummation of the Sale with a Successful Bidder and (y) forty-five (45) days after the Sale Hearing;
- f) Regulatory and Third-Party Approvals: each Qualified Bid shall set forth each regulatory and third-party approval required for the bidder to consummate the Sale and provide evidence satisfactory to the Debtors (in consultation with the Committee) that each such approval can be obtained on a timeframe acceptable to the Debtors;
- g) Corporate Approvals: each Qualified Bid shall include evidence satisfactory to the Debtors of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery, and closing of the APA, financing agreements and any other ancillary documents or agreements;
- h) Form of Bid: each Qualified Bid shall include (a) an APA on substantially the terms of, or on terms that are more favorable to the Debtors than those set forth in any Stalking Horse Agreement (defined below), and if no Stalking Horse Agreement, than those set forth in the Form APA, which shall specify the amount of cash or other consideration offered by the bidder for the Assets, include all exhibits and schedules, and be signed by an authorized representative of such bidder, and (b) a proposed Sale Order. The APA, together with its exhibits and schedules, and the proposed Sale Order shall be marked to

show the required amendments and modifications to any Stalking Horse Agreement, or as applicable, the Form APA and the Sale Order; *provided however*, that a Bid submitted by the DIP Lender that contemplates it credit bidding the amount of its secured claim pursuant to Bankruptcy Code section 363(k) and which Bid has total consideration lower than the Purchase Price set forth in the Form APA shall be deemed a Qualified Bid if all other requirements herein are satisfied and such Bid contains a cash component sufficient to satisfy allowed administrative and priority claims in full;

- i) Designation of Assumed Liabilities: each Qualified Bid shall identify all liabilities which the bidder proposes to assume;
- j) Due Diligence: each Qualified Bid shall include an acknowledgement and representation that the bidder has had an opportunity to conduct any and all required due diligence regarding the Assets prior to making its offer and shall not be subject to satisfaction of a due diligence condition;
- k) Privacy Policy: each Qualified Bid shall provide assurances that, if the Assets include a customer list or other personally identifiable information, the bidder will substantially follow the Debtors' current privacy policy;
- l) Fees: except for any Stalking Horse Bid, no Qualified Bid may request Bid Protection (defined below);
- m) Proof of Financial Ability to Perform: each Qualified Bid shall contain sufficient and adequate financial and other information to demonstrate, to the satisfaction of the Debtors (in consultation with the Committee), that the relevant bidder has the financial wherewithal and ability to purchase the Assets; *provided however*, that the DIP Lender (as defined in the Sale Motion) shall be deemed to have the financial ability to perform;
- n) Consent to Jurisdiction: each Qualified Bid shall state that the relevant bidder consents to the core jurisdiction of the Bankruptcy Court to enter an order or orders, which shall be binding in all respects, in any way related to the Debtors and their Assets, and have waived any right to a jury trial in connection with any disputes relating to the Debtors, the Chapter 11 Cases, the Bidding Procedures, any Stalking Horse Agreement, the Auction, or the construction and enforcement of any Stalking Horse Agreement, an APA or any documents related thereto;
- o) No Collusion: each Qualified Bid shall confirm that the relevant bidder has not engaged in any collusion with respect to the bidding, the Auction or the Assets; and
- p) Other Information: each Qualified Bid shall contain such other information as the Debtors deem appropriate (in consultation with the Committee).

By submitting a bid, a bidder (other than any Stalking Horse Bidder) shall be deemed to waive the right to assert or seek payment of any "break-up" fee, expense reimbursement, or other post-filing claim, including administrative expense claims, and to the extent otherwise applicable, a substantial contribution claim under section 503 of the Bankruptcy Code, with

respect to its bid or the marketing or auction process. The Stalking Horse Bidder, in its capacity as such, shall be deemed to waive the right to assert or seek payment of any post-filing claim, including administrative expense claims, and to the extent otherwise applicable, a substantial contribution claim under section 503 of the Bankruptcy Code, with respect to the Stalking Horse Agreement or the marketing or auction process, other than claims for any Bid Protections approved by the Court.

Each bidder who submits a Qualified Bid shall be a “Qualified Bidder.” Any Stalking Horse Bidder is deemed a Qualified Bidder and any Stalking Horse Agreement is deemed a Qualified Bid for all purposes in connection with the bidding process, the Auction, and the Sale of the Assets. Subject to the terms and conditions set forth herein, the Debtors, in their sole and absolute discretion in consultation with the representatives and advisors for the Committee, shall make a determination regarding whether a bid is a Qualified Bid and whether any of the above-listed requirements may be waived and notify all bidders before the Auction whether their bids have been determined to be Qualified Bids.

3. Modifications of Qualified Bids Prior to Auction

Between the date that the Debtors notify a bidder that it is a Qualified Bidder and the Auction, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the written consent of the Debtors (in consultation with the Committee), a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period of time such Qualified Bid remains binding as specified herein; provided that any Qualified Bid may be improved at the Auction as set forth herein.

4. Designation of Stalking Horse Bid

The Debtors may declare, in consultation with the Committee, a Qualified Bid received prior to the Bid Deadline (which may have been modified pursuant to the paragraph above after the Bid Deadline) to be a “stalking horse bid” (any such bid, a “Stalking Horse Bid,” and the provider of such a bid, a “Stalking Horse Bidder”) at any time prior to seventy-two (72) hours prior to the Auction, which bid shall set the floor for all bids for a Sale at the Auction, and enter into an APA with the Stalking Horse Bidder memorializing the proposed Sale (the “Stalking Horse Agreement”).

Recognizing a Stalking Horse Bidder’s expenditure of time, energy and resources, and that a Stalking Horse Bid provides a floor bid with respect to the relevant Assets, the Debtors will provide the Stalking Horse Bidder with customary bid protections to be agreed upon. If the Stalking Horse Bidder attends the Auction with its Stalking Horse Bid in place, the Stalking Horse Bidder is outbid, and the Successful Bidder is a party other than the Stalking Horse Bidder, the Stalking Horse Bidder shall be entitled to receive (i) Bid Protections a break-up fee not to exceed 3% of the total consideration of the Stalking Horse Bid (the “Break-Up Fee”); and (ii) the reimbursement of the Stalking Horse Bidder’s reasonable out-of-pocket expenses incurred in connection with the negotiation, execution and performance under the Stalking Horse

Agreement and the transactions contemplated thereunder (including attorneys' fees and expenses) not to exceed \$75,000 ("Expense Reimbursement", and together with the Break-Up Fee, the "Bid Protections"); *provided however* that a Stalking Horse Bidder that credit bids a portion of the purchase price for the Assets shall only be entitled to the Expense Reimbursement. The Debtors will announce the designation of the Stalking Horse Bidder(s), if one or more is selected, by filing a notice on the Bankruptcy Court's docket (a "Stalking Horse Bid Notice"). A Stalking Horse Bid Notice shall:

- a) State the identity of the Stalking Horse;
- b) Attach the Stalking Horse Agreement; and
- c) Contain a statement setting forth the adjusted Minimum Bid (the Stalking Horse Overbid"), which amount shall equal the sum of (A) the value of the Stalking Horse Bid (calculated in the Debtors' sole discretion (in consultation with the Committee), (B) the Bid Protections, and (C) \$150,000.

5. Auction Baseline Bid; No Qualified Bids

On or prior to 5:00 p.m. (prevailing Eastern Time) one (1) business day before the Auction, the Debtors shall provide each Qualified Bidder, including any Stalking Horse Bidder, the representatives and advisors for the Committee, with notice of the terms of the highest or otherwise best Qualified Bid or Qualified Bids received (such highest or otherwise best Qualified Bid, the "Auction Baseline Bid").

If the Debtors do not receive any Qualified Bids other than a Stalking Horse Bid by the Bid Deadline, the Debtors will not hold an Auction, and any Stalking Horse Bidder will be named the Successful Bidder (as defined below) for the Assets. The Debtors shall promptly submit the Stalking Horse Bid to the Bankruptcy Court for approval at the Sale Hearing.

Auction

If the Debtors determine that they have received one (1) or more Qualified Bids (in addition to the Stalking Horse Bidder's bid), the Debtors are authorized to conduct an Auction. Other than as expressly set forth herein, the Debtors may conduct an Auction in the manner they determine (in consultation with the Committee) will result in the highest or otherwise best offer for the Assets. If the Auction is held, it shall take place on **June 19, 2017 at 10:00 a.m. (Prevailing Eastern Time)** (the "Auction Date") at 45 Rockefeller Plaza, Suite 2000, New York, New York 10111 or on such other date or at such other location as shall be timely communicated to all parties entitled to attend the Auction.

Auction Process

1. Auction Procedures

The Auction shall be conducted in accordance with the following procedures:

- a) Participation: only the Debtors, Qualified Bidder(s), the Committee, along with their respective representatives and advisors, may attend the Auction. The bidding shall commence and proceed as solely determined by the Debtors (in consultation with the Committee). Only Qualified Bidders will be entitled to make bids at the Auction;
- b) Bidding Increments: bidding at the Auction will begin with the Auction Baseline Bid and continue in bidding increments (each a “Subsequent Bid”) providing a net value to the estate (after taking into consideration any required Bid Protections) of at least an additional \$150,000 above the prior bid; *provided however*, that the Debtors may in their sole discretion (in consultation with the Committee) increase or decrease the amount of Subsequent Bids after the first round of bidding. After the first round of bidding and between each subsequent round of bidding, the Debtors shall announce the bid that they believe, in consultation with the Committee, to be the highest or otherwise better offer (the “Leading Bid”);
- c) In-Person Bidding: the Qualified Bidder(s) shall appear in person at the Auction, through a duly authorized representative, or as otherwise agreed by the Debtors;
- d) No Collusion: each Qualified Bidder shall be required to represent that it has not been engaged in any collusion with respect to the bidding or the sale;
- e) Auction Record: the Auction will be transcribed or video recorded to ensure an accurate recording of the bidding at the Auction;
- f) Aggregation of Bids: the Debtors shall have the ability to decide, at any point (upon consultation with the Committee), that bids may be aggregated, joined, disjoined, or otherwise separated;
- g) Assets Sold: with the consent of the Stalking Horse Bidder, the Debtors shall have the ability to decide (in consultation with the Committee), at any point, that they are not selling any or all of the Assets, or that they are removing certain Assets from the Auction, and only selling others; and
- h) Conclusion of Auction: the Auction shall continue until the Debtors determine that a bid is the Successful Bid (as defined below).

2. Selection of Successful Bid

The Debtors will review and evaluate each Qualified Bid and determine, after consultation with the Committee, which offer is the highest or otherwise best offer from among the Qualified Bids submitted at the auction (such bid, the “Successful Bid,” and the Qualified Bidder submitting such Successful Bid, the “Successful Bidder”), which shall be subject to Bankruptcy Court approval. In selecting the Successful Bid, the Debtors may consider all factors, including the amount of the purchase price, the form and total amount of consideration being offered, the likelihood of each Qualified Bidder’s ability to close a Sale and the timing thereof, the form and substance of the APA requested by each Qualified Bidder, and the net benefit to the Debtors’ estates.

Promptly and no later than one (1) business day following the Debtors' selection of the Successful Bid and the conclusion of the Auction (if held), the Debtors shall announce the Successful Bid and Successful Bidder and shall file (but not serve) with the Bankruptcy Court and post on the Debtors' noticing agent's website <https://cases.primeclerk.com/GraciousHome> notice of the Successful Bid, the Successful Bidder and the APA(s) relevant thereto.

3. Backup Bidder

Notwithstanding anything in the Bidding Procedures to the contrary, if an Auction is conducted, the Qualified Bidder with the next highest or otherwise best bid at the Auction, as determined by the Debtors, after consultation with the Committee, will be designated as the backup bidder (the "Backup Bidder"). For the avoidance of doubt, (a) in the event that the Stalking Horse Bidder is not the winning bidder at the Auction and (b) the Stalking Horse Bidder submits the second highest or second best bid at the Auction, the Stalking Horse Bidder shall have the right (in its sole discretion) but not the obligation to be the Backup Bidder. Subject to the other terms and conditions of these Bidding Procedures, the Backup Bidder shall be required to keep its bid (the "Backup Bid") open and irrevocable until the earlier of (x) the consummation of a sale with a Successful Bidder and (y) forty-five (45) days after the Sale Hearing; provided, however, that if the Stalking Horse Bidder is the Backup Bidder its Backup Bid shall be on the terms set forth in the Stalking Horse Agreement. If the Stalking Horse Bidder does not serve as the Backup Bidder, the Debtors, in consultation with the Committee, shall have the right to select the next highest or otherwise best bidder after the Successful Bidder at the Auction (other than the Stalking Horse Bidder) as the Backup Bidder.

Following the Sale Hearing, if the Successful Bidder fails to consummate an approved Sale following the Sale Hearing because of a breach on the part of such Successful Bidder (which allows Debtors to terminate, and which results in a termination of such Sale), the Backup Bidder will be deemed to be the new Successful Bidder, and the Debtors will be authorized, but not required, to consummate a Sale with the Backup Bidder without further order of the Bankruptcy Court. In such case, the defaulting Successful Bidder's deposit, if any, shall be forfeited to the Debtors' estates, and the Debtors specifically, reserve the right to seek all available damages from the defaulting Successful Bidder.

Sale Hearing

The Successful Bid will be subject to approval by the Bankruptcy Court. The Sale Hearing to approve the sale of the Assets to the Successful Bidder is scheduled to take place on **June __, 2017 at 10:00 a.m. (Prevailing Eastern Time)** before the Honorable Mary Kay Vyskocil, at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004, or at such times thereafter as counsel may be heard. The Sale Hearing may be adjourned from time to time by the Debtors (after consultation with the Committee) without further notice to any other party in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or a notice filed with the Bankruptcy Court.

Return of Good Faith Deposits

Except for the Backup Bidder, all deposits shall be returned to each bidder not selected by the Debtors as the Successful Bidder no later than five (5) business days following the conclusion of the Auction. The deposit of a Backup Bidder shall be held by the Debtors until the earliest of two (2) business days after (a) ninety-one (91) days after the date of the Sale Hearing; and (b) the closing of the Successful Bid with the Successful Bidder provided, however, that if the Stalking Horse Bidder is the Backup Bidder, the Stalking Horse Bidder's deposit shall be held by the Debtors until the earliest of (a) the closing of the Successful Bid with the Successful Bidder and (b) 91 days after execution of the Stalking Horse Agreement.

Reservation of Rights

Subject to the Bidding Procedures Order, the Debtors reserve their rights, as they may determine to be in their best interests and in the exercise of their fiduciary obligations to, in consultation with the Committee: (a) after consultation with any Stalking Horse Bidder, modify the Bidding Procedures or impose, at or prior to the Auction, different and/or additional terms and conditions or procedural rules on the sale of the Assets; (b) determine which bidders are Qualified Bidders; (c) determine which bids qualify as Qualified Bids; (d) determine whether to enter into or accept a Qualified Bid or Subsequent Bid; (e) determine which Qualified Bid is the highest or otherwise best proposal and which is the next highest or otherwise best proposal; (f) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code, or (iii) contrary to the best interests of the Debtors; (g) waive terms and conditions set forth herein with respect to all potential bidders; and (h) extend the deadlines set forth herein; provided, however, that nothing in these Bidding Procedures shall, or shall be construed to, in any way amend, impair, alter or otherwise modify the terms of any Stalking Horse Agreement or any Stalking Horse Bidder's rights thereunder.

Consent to Jurisdiction

Any Stalking Horse Bidder, all Qualified Bidders, and all participants at the Auction shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court to enter an order or orders, which shall be binding in all respects, in any way related to the Debtors or their Assets, and have waived any right to a jury trial in connection with any disputes relating to the Debtors, the Chapter 11 Cases, the Bidding Procedures, any Stalking Horse Agreement, the Auction, or the construction and enforcement of any Stalking Horse Agreement, APA or any documents related thereto.

EXHIBIT B

Sale Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

GRACIOUS HOME LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 16-13500 (MKV)

(Jointly Administered)

**ORDER (I) AUTHORIZING THE SALE OF THE ASSETS
FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES,
AND INTERESTS; (II) APPROVING THE ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS AND LEASES AND (III) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)² dated May 23, 2017 of the above captioned debtors (collectively, the “Debtors”) for entry of an order (this “Order”) pursuant to sections 105, 363, 365, 503 and 507 of title 11 of the United States Code (the “Bankruptcy Code”), and Rules 2002, 6004, 6006, 9006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 6004-1 and 6006-1 of the Local Rules for the United States Bankruptcy Court for the Southern District of New York (the “Local Rules”) (i) authorizing the Debtors to sell or transfer the Assets (the “Sale”) to [_____] (the “Purchaser”) pursuant to an asset purchase agreement (“APA”) by and among the Debtors and the Purchaser, free and clear of all liens, claims and encumbrances, with such liens attaching to the proceeds of the Sale with the same validity, extent, and priority as had attached to the Assets immediately prior to the Sale, (ii) approving the assumption and assignment of executory

¹ The Debtors in these chapter 11 cases and the last four digits of their tax identification numbers are: Gracious Home LLC (6822); Gracious Home Holdings LLC (3251); Gracious Home Payroll LLC (3681); GH East Side LLC (3251); GH West Side LLC (3251); GH Chelsea LLC (3251) and Gracious (IP) LLC (3251). The latter four entities are disregarded for tax purposes and do not have their own tax identification numbers, but use that of Gracious Home Holdings LLC. The address of the Debtors’ corporate headquarters is 1210 Third Avenue, New York, New York 10021.

² Capitalized terms used but not defined herein shall have the same meaning ascribed to such terms in the Sale Motion.

contracts and leases (the “Contracts”) and (iii) granting certain related relief; and the Court having held a hearing on June [], 2017 (the “Sale Hearing”) to approve the proposed Sale as set forth in the APA; and the Court having reviewed and considered (a) the Motion, (b) the First Day Declaration, (c) the Rosen Declaration, (d) the Morrison Declaration, (e) the objections to the Motion, if any, and (f) the arguments made by counsel, and the evidence proffered or adduced at the Sale Hearing; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice need be provided; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, their stakeholders, and other parties in interest; and after due deliberation thereon; and sufficient cause appearing therefor;

FOUND, CONCLUDED AND DECLARED THAT:

A. Jurisdiction and Venue. This Court has jurisdiction (i) to consider the Motion and (ii) over the property of Debtors, including the Assets to be sold, transferred, and conveyed pursuant to the APA, under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

B. Legal Predicates. The legal predicates for the relief sought in the Motion are Bankruptcy Code sections 105, 363, 365, 503, 507, 1107, and 1108, and Bankruptcy Rules 2002, 6004, 6006, 9006, 9007, and 9014.

C. Final Order. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 7062, and to the extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for

delay in the implementation of this Order and expressly directs entry of this Order as set forth herein.

D. Notice. As evidenced by the affidavits of service filed with the Court at Docket No. ___, and based on the representations of counsel at the Sale Hearing, (i) proper, timely, adequate, and sufficient notice of the Motion, the Sale Hearing, the APA, and the Sale has been provided in accordance with Bankruptcy Code sections 102(1), 363, 365 and Bankruptcy Rules 2002, 6004, 6006, 9006 and 9014, to each party entitled to such notice, (ii) such notice was good, sufficient, and appropriate under the particular circumstances, and (iii) no other or further notice of the Motion, the Sale Hearing, the APA, and the Sale is or shall be required.

E. On May ___, 2017, in accordance with the Bidding Procedures Order, the Debtors served the Sale Notice upon (a) the Office of the United States Trustee for the Southern District of New York; (b) the U.S. Attorney for the Southern District of New York; (c) counsel to the DIP Lender; (d) counsel to the Committee in these Chapter 11 Cases; (e) the Internal Revenue Service; (f) the Securities and Exchange Commission; (g) any party known to have asserted a lien, encumbrance, claim or other interest in any of the Assets; (h) all affected federal, state and local regulatory and taxing authorities, including the Internal Revenue Service; (i) the Securities and Exchange Commission; (j) all entities known to have expressed an interest in a transaction with respect to all or part of the Assets; and (k) any such other party entitled to notice pursuant to Rule 9013-1(b) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York, providing such parties actual written notice of the Sale Hearing, the Auction, the Motion and the Sale and a reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein.

F. As evidenced by the affidavits of service previously filed with this Court, proper,

timely, adequate and sufficient notice of the Auction, Sale Hearing and the Sale has been provided in accordance with sections 105(a) and 363 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 9014. The Debtors have also complied with all obligations to provide notice of the Auction, Sale Hearing and Sale required by the Bidding Procedures Order. The notices described above were good, sufficient, and appropriate under the circumstances, provided all interested parties with timely and proper notice of the Auction, Sale Hearing and the Sale, and no further or other notice of the Auction, Sale Hearing and the Sale is required.

G. On June __, 2017, the Debtors filed with the Court a notice stating that Purchaser is the Successful Bidder, and that the Successful Bidder's bid pursuant to the APA is the Successful Bid. A copy of the APA is attached hereto as **Exhibit 1**.

H. The disclosures made by the Debtors concerning the APA, Auction, Sale Hearing and the Sale were good, complete and adequate.

I. Opportunity to Object. A fair and reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein has been afforded to all interested persons and entities, including: (a) all entities known to have expressed an interest in a transaction with respect to the Assets; (b) counsel to the Purchaser; (c) the Office of the United States Trustee for the Southern District of New York; (d) the U.S. Attorney for the Southern District of New York; (e) counsel to the DIP Lender; (f) counsel to the Committee; (g) the Internal Revenue Service; (h) the Securities and Exchange Commission; (i) all entities known to have asserted any Lien or Claim in or upon any of the Assets; and (j) any such other party entitled to notice pursuant to Bankruptcy Rule 2002, Rule 9013-1(b) of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York, or the Case Management Order.

J. Sale in Best Interests. The consideration provided by the Purchaser under the APA constitutes the highest or otherwise best offer for the Assets and provides fair consideration and reasonably equivalent value to the Debtor in exchange for the Assets. The transaction contemplated by the APA represents the best opportunity to maximize and realize the value of the Assets for the Debtors' estate. Consummation of the Sale at this time is in the best interests of the Debtors, their creditors, estate, stakeholders, and other parties in interest.

K. Highest and/or Best Offer. The Debtors engaged in an extensive marketing process for the Assets prior to entering into the APA and conducted an auction process in accordance with, and have otherwise complied in all respects with, the Bidding Procedures Order. The auction process set forth in the Bidding Procedures Order afforded a full, fair and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase the Auction. The Auction was duly noticed and conducted in a non-collusive, fair and good faith manner and a reasonable opportunity has been given to any interested party to make a higher and/or better offer for the Assets.

L. Based upon the Bidding Procedures approved pursuant to the Bidding Procedures Order, the Debtors determined that the bid evidenced by the APA is the highest and/or best offer for the Assets.

M. The transaction contemplated by the APA constitutes the highest and/or best offer for the Assets, and will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. The Debtors' determination that the APA constitutes the highest and/or best offer constitutes a valid and sound exercise of the Debtors' business judgment.

N. The APA represents a fair and reasonable offer to purchase the Assets under the

circumstances of these Chapter 11 Cases. No other person or entity or group of entities has offered to purchase the Assets for greater value to the Debtors' estates than the Purchaser.

O. Business Justification. Sound business reasons exist for the Sale. Entry into the APA, and the consummation of the transactions contemplated thereby, including the Sale, constitutes the Debtors' exercise of sound business judgment and such acts are in the best interests of the Debtors, their estates and all other parties in interest.

P. The Debtors have demonstrated compelling circumstances and a good, sufficient and sound business purpose and justification for the Sale prior to, and outside of, a plan of reorganization.

Q. The terms of the APA and the Sale are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with its fiduciary duties and are the best available to the Debtors under the circumstances. For these reasons and based on the other evidence of record, the Court finds that (i) the APA constitutes the highest or otherwise best offer for the Assets under the circumstances, (ii) the APA and the closing of the Sale present the best opportunity to realize value for the Assets, and (iii) any other transaction would create a substantial risk of delay and a significant reduction in value.

R. Condition to Sale. Entry of this Order approving the APA and all the provisions thereof is a condition precedent to the Purchaser's obligation to consummate the Sale.

S. Good Faith Purchaser. The Purchaser (i) is a good faith purchaser for value and, as such, is entitled to all of the protections afforded under 11 U.S.C. § 363(m) and any other applicable or similar bankruptcy and non-bankruptcy law, and (ii) has otherwise proceeded in good faith in all respects in connection with this proceeding. Specifically: (a) all payments to be made by the Purchaser in connection with the Sale have been disclosed; (b) the negotiation and

execution of the APA was at arm's-length and in good faith, and at all times each of the Purchaser and the Debtors were represented by competent counsel of their choosing; (c) the Purchaser did not in any way induce or cause the filing of the Chapter 11 Cases; and (d) the Purchaser has not acted in a collusive manner with any person. Neither the Debtors nor the Purchaser has engaged in any conduct that would cause or permit the APA or the Sale to be avoided or result in the imposition of any costs or damages under 11 U.S.C. § 363(n) and the Purchaser will be acting in good faith within the meaning of 11 U.S.C. § 363(m) in closing the transactions contemplated by the APA.

T. Free and Clear. Debtors have provided notice as set forth in this Order to (i) Counsel to the DIP Lender and (ii) all other entities asserting or holding liens or claims on the Assets. Such notice expressly stated that the failure of any person holding any lien, encumbrance or other interest with respect to the Assets to object to the relief requested in the Motion may be deemed to consent to the sale of the Assets free and clear and the assumption and assignment of such person's liens, encumbrances or interests. The Debtors have complied with the requirements of Bankruptcy Code section 363(f) because in each case, one or more of the standards set forth in in section 363(f)(1)-(5) has been satisfied, and may sell the Assets and assume and assign the Contracts free and clear of all liens and claims against the Debtors, their estates or the Assets. All other holders of liens, claims or encumbrances in or against the Assets have either expressly consented or did not object, or withdrew their objections to the Motion and are deemed to have consented in accordance with section 363(f)(2) of the Bankruptcy Code.

U. Legal and Factual Bases. The legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein.

IT IS HEREBY ORDERED that:

1. The Sale Motion is GRANTED, as set forth herein.
2. All objections to the Motion or the relief requested therein that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are overruled on the merits and denied with prejudice. All persons and entities given notice of the Sale Motion that failed to timely object thereto are deemed to consent to the relief sought therein.
3. The APA, including any amendments, supplements, and modifications thereto, and all of the terms and conditions therein, is hereby approved.
4. The Debtors are hereby authorized and empowered to: (1) execute the APA, along with any additional instruments or documents that may be necessary to implement the APA, provided that such additional documents do not materially change its terms; (2) do all things and take all actions necessary to consummate the Sale in accordance with the terms and conditions of the APA and the instruments and agreements contemplated thereby; and (3) take all further actions as may reasonably be requested by the Purchaser for the purpose of transferring or reducing to possession the Assets, in each case without further application to, or order of, the Court.
5. Except as otherwise expressly provided in the APA and the terms of this Order, pursuant to 11 U.S.C. §§ 363(b), 363(f) and 365, the Assets and the Contracts shall be transferred or assumed and assigned on the Closing Date free and clear of all (i) claims, liabilities, interests, rights, and encumbrances, in each case against or otherwise in respect of the Assets being transferred, including, without limitation, all restrictions (including, without limitation, any restriction on the use, voting rights, transfer rights, claims for receipt of income, or other exercise of any attributes of ownership), hypothecations, charges, indentures,

instruments, options, security interests, conditional sale rights or other title retention agreements, pledges, judgments, demands, rights of first refusal, consent rights, contract rights, rights of recovery, reimbursement rights, contribution claims, indemnity rights, exoneration rights, alter-ego claims, tax claims, regulatory violations by any governmental entity, decrees of any court or foreign or domestic governmental entity, charges of any kind or nature, debts arising in any way in connection with any agreements, acts, or failures to act, obligation claims, demands, guaranties, contractual or other commitment rights and claims, and all other matters of any kind and nature, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of the Debtors' Chapter 11 Cases, and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under any theory, law or doctrine of successor liability or related theories, as well as any and all "claims" as that term is defined and used in the Bankruptcy Code, including section 101(5) thereof (all of the foregoing, collectively, "Claims"), (ii) liens, and (iii) to the maximum extent permitted by law, any other interests within the meaning of section 363(f) of the Bankruptcy Code.

6. The Purchaser has agreed to abide by the Debtors' privacy policy in place as of the Closing. Accordingly, no consumer privacy ombudsman need be appointed under Section 363(b)(1) of the Bankruptcy Code.

7. At the Closing, all of the Debtors' legal, equitable, and beneficial right, title and interest in and to, and possession of, the respective Assets being transferred at such Closing shall be immediately vested in the Purchaser pursuant to Bankruptcy Code sections 105(a), 363(b),

and 363(f) free and clear of any and all liens and Claims. Such transfer shall constitute a legal, valid, binding, and effective transfer of such Assets and shall vest the Purchaser with good and marketable title to such Assets. All persons or entities, presently, or on or after each Closing, in possession of some or all of the respective Assets being transferred are directed to surrender possession of such Assets directly to the Purchaser or its designees on the Closing or at such time thereafter as the Purchaser may request.

8. The Purchaser is hereby authorized in connection with the consummation of the Sale to assign, transfer, allocate, or otherwise dispose of any of the Assets to and among its affiliates, designees, assignees, and/or successors (i) in a manner as it, in its sole discretion, deems appropriate and (ii) with all of the rights and protections accorded under this Order and the APA, and the Debtors shall cooperate with and take all actions reasonably requested by the Purchaser to effectuate any of the foregoing.

9. All persons and entities are hereby forever prohibited and permanently enjoined from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Assets in accordance with the APA and this Order; provided, however, that the foregoing restriction shall not prevent any party from appealing this Order in accordance with applicable law or opposing any appeal of this Order.

10. The Purchaser has acted without collusion, in good faith in undertaking the Sale contemplated by the APA. The Sale may not be avoided, nor may any costs or damages be imposed, under 11 U.S.C. § 363(n) and the Purchaser is entitled to all of the protections afforded by Bankruptcy Code section 363(m).

11. The terms and provisions of the APA and this Order shall be binding in all respects upon, and shall inure to the benefit of, the Debtors and their respective affiliates and

subsidiaries, successors and assigns, their estates, and their creditors, the Purchaser, and its affiliates, successors and assigns, and any affected third parties including, but not limited to, all persons asserting liens or Claims on or against the Assets to be sold to the Purchaser pursuant to the APA, notwithstanding any subsequent appointment of any trustee(s), examiner with expanded powers, or other responsible person or officer under any chapter of the Bankruptcy Code, as to which persons such terms and provisions likewise shall be binding. Nothing contained in any chapter 11 plan confirmed in any of the Debtors' Chapter 11 Cases, any order confirming any such chapter 11 plan, any order approving wind-down or dismissal of any of the Debtors' Chapter 11 Cases or any subsequent chapter 7 cases, or any other order of any type or kind entered in the Debtors' Chapter 11 Cases shall conflict with or derogate from the provisions of the APA or this Order, and to the extent of any conflict or derogation between this Order or the APA and such future plan or order, the terms of this Order and the APA shall control.

12. The APA and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by all parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment, or supplement does not have a material adverse effect on the Debtors' estates. To the extent that any such proposed modification, amendment, or supplement has a material adverse effect on the Debtors' estates, such proposed modification, amendment, or supplement shall be subject to the consent of the Committee. To the extent that any provision of the APA conflicts with or is, in any way, inconsistent with any provision of this Order, this Order shall govern and control.

13. Pursuant to the APA, the Debtors are hereby authorized to assume the Contracts listed on **Exhibit 2**, including, where applicable all amendments to the Contracts, whether

currently in effect or intended to become effective upon assumption and assignment pursuant hereto to the Purchaser pursuant to sections 363 and 365 of the Bankruptcy Code, effective upon entry of this Order.

14. The non-debtor parties to the Contracts set forth on **Exhibit 2** either failed to object timely to the assumption and assignment of such Contracts or to the respective Cure Amounts set forth in the applicable notices and/or such objections were overruled.

15. Pursuant to section 365(f) of the Bankruptcy Code, to the extent applicable, each party to the Contracts has been provided with adequate assurance of future performance under the Contracts by the Purchaser.

16. Upon entry of this Order, all defaults arising under the Contracts in accordance with section 365(b) of the Bankruptcy Code shall be deemed to have been cured.

17. Upon entry of this Order, the Purchaser shall be deemed to be substituted for the Debtors as a party to each respective Contract and the Debtors shall be released, pursuant to section 365 of the Bankruptcy Code, to the extent allowable under applicable law, from any liability or obligations under the Contracts, except that the Debtors shall not be released from any claims or liability to the extent such release would result in the forfeiture or impairment of any applicable insurance coverage, in which case, the counterparty under any Contract shall retain the right to assert any such claims or liabilities solely to the extent necessary to recover from any third-party insurer, but in no event shall any such claims or liabilities be recoverable from the Debtors or their estates.

18. Upon entry of this Order, each party to a Contract, whether entered into before or after the Petition Date, will be forever barred, estopped and permanently enjoined from (a) asserting against (i) the Debtors, the Purchaser or the property of any of them, any default

existing as of the date hereof, or (ii) the Purchaser, any counterclaim, defense, setoff or any other interest asserted or assertable, under the Contract or applicable law, against the Debtors; and (b) imposing or charging against Purchaser any accelerations, assignment fees, increases or any other fees solely as a result of the Debtors' assumption and assignment to Assignee of the Contract.

19. The assumption and assignment of the Contracts authorized hereunder shall be free and clear of all interests. Following the entry of this Order, no holder of an interest in or claim against the Debtors or their estates shall interfere with Assignee's right to use and enjoyment of any of the assumed and assigned Contracts based on or related to such interest or claims.

20. The requirements set forth in Bankruptcy Rules 6004 have been satisfied or otherwise deemed waived.

21. The requirements set forth in Local Bankruptcy Rule 9013-1(b) are satisfied by the contents of the Sale Motion.

22. This Court shall retain exclusive jurisdiction to, among other things, interpret, enforce, and implement the terms and provisions of this Order and the APA, including all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connections therewith in all respects, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale.

Dated: New York, New York
June ____, 2017

HONORABLE MARY KAY VYSKOCIL
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT C

Form Asset Purchase Agreement

ASSET PURCHASE AGREEMENT

This asset purchase agreement (this “**Agreement**”) is made as of [REDACTED], 2017, by and among GRACIOUS HOME LLC, a Delaware limited liability company (“**GH**”), GRACIOUS HOME HOLDINGS LLC, a Delaware limited liability company (“**Holdings**”), GRACIOUS HOME PAYROLL LLC, a Delaware limited liability company (“**GH Payroll**”), GH EAST SIDE LLC, a Delaware limited liability company (“**GHE**”), GH WEST SIDE LLC, a Delaware limited liability company (“**GHWS**”), GH CHELSEA LLC, a Delaware limited liability company (“**GHC**”), and GRACIOUS (IP) LLC, a Delaware limited liability company (“**GHIP**,” and collectively with GH, Holdings, GH Payroll, GHE, GHWS, and GHC, “**Sellers**”), and [REDACTED] (“**Purchaser**”). Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in Section 1.1.

WHEREAS, on December 14, 2016 (the “**Petition Date**”), Sellers filed in the Bankruptcy Court voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “**Filings**”); and

WHEREAS, Sellers own and operate a business, both online and through a brick-and-mortar store in New York, New York, that offers a wide range of customized products and services, including personal shopping, corporate and bridal gifts, decorative hardware, lighting and plumbing, key making, knife sharpening, lamp re-wiring, vacuum repairs, and custom window treatments (the “**Business**”); and

WHEREAS, the Bankruptcy Court approved the Bidding Procedures Order on [REDACTED], 2017; and

WHEREAS, Purchaser, by execution of this Agreement, desires to become the “Stalking Horse Bidder” (as defined in the Bidding Procedures);

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained and other good and valuable consideration the sufficiency of which is hereby acknowledged, the parties agree as follows:

SECTION 1. **DEFINITIONS**

Section 1.1. Definitions.

In this Agreement, the following terms have the meanings specified or referred to in this Section 1.1 and shall be equally applicable to both the singular and plural forms.

“**Accounts Receivable**” means, with respect to Sellers, all present and future accounts receivable, accounts, general intangibles, guarantees, supporting obligations, collection accounts, notes receivable, and any supporting data and information in respect of goods shipped or products sold or services rendered to customers by Sellers, and any claim, remedy or other right of Sellers related to any of the foregoing.

“Action” means any material legal action, suit or arbitration, or any inquiry, proceeding or investigation, by or before any Governmental Authority.

“Affiliate” means, as to any Person, any other Person which directly or indirectly controls, or is under common control with, or is controlled by, such Person. As used in this definition, “control” (including, with its correlative meanings, “controlled by” and “under common control with”) shall mean possession, directly or indirectly, of the power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise) of such Person.

“Aggregate Cash Consideration” has the meaning specified in Section 3.1.

“Agreement” has the meaning specified in the preamble.

“Allocation Schedule(s)” has the meaning specified in Section 3.3.

[**“Alternative Transaction”** means the Sellers’ entry into a definitive agreement for the sale of the Purchased Assets to a party other than Purchaser (or any affiliate of Purchaser) which agreement has been approved by the Bankruptcy Court.]

“Ancillary Documents” means the Bill of Sale, Assumption and Assignment of Patents, Assignment of Trademarks, Assignment of Copyrights, Assignment of Domain Names, and each other agreement, document or instrument (other than this Agreement) executed and delivered by the parties hereto in connection with the consummation of the transactions contemplated by this Agreement.

“Assignment of Copyrights” has the meaning specified in Section 3.6(b).

“Assignment of Domain Names” has the meaning specified in Section 3.6(b).

“Assignment of Patents” has the meaning specified in Section 3.6(b).

“Assignment of Trademarks” has the meaning specified in Section 3.6(b).

“Assumed Contracts” has the meaning specified in Section 2.1(c).

“Assumed Liabilities” has the meaning specified in Section 2.3.

“Avoidance Actions” means any and all claims, causes of action, and proceeds of any and all avoidance power claims for relief of Sellers under chapter 5 of the Bankruptcy Code.

“Bankruptcy Cases” means the Debtors’ respective bankruptcy cases, currently being jointly administered in the Bankruptcy Court under lead case number 16-13500.

“Bankruptcy Code” means title 11 of the United States Code.

“Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of New York with jurisdiction over the Bankruptcy Cases.

“**Bidding Procedures**” means the bidding procedures in connection with the Auction as annexed as an exhibit to the Bidding Procedures Order.

“**Bidding Procedures Order**” means the Order of the Bankruptcy Court, dated [], approving the Bidding Procedures.

[“**Bid Protection Amount**” has the meaning set forth in Section 9.3 hereof.]

“**Bill of Sale**” means the Bill of Sale substantially in the form of **Exhibit B**.

“**Business**” has the meaning specified in the recitals.

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

“**Claim**” has the meaning given that term in Section 101(5) of the Bankruptcy Code and includes, *inter alia*, all rights, claims, causes of action, defenses, debts, demands, damages, offset rights, setoff rights, recoupment rights, obligations, and liabilities of any kind or nature under contract, at law or in equity, known or unknown, contingent or matured, liquidated or unliquidated, and all rights and remedies with respect thereto.

“**Closing**” has the meaning specified in Section 3.4.

“**Closing Date**” has the meaning specified in Section 3.4.

“**COBRA**” means the United States Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

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

“**Commercial Tort Claims**” means any claim or cause of action (other than Avoidance Actions) brought on behalf of the Debtors or their estates for the benefit of the Debtors’ estates or their creditors.

“**Computers**” means all of Sellers’ computer equipment and hardware, including, without limitation, all central processing units, terminals, disk drives, tape drives, electronic memory units, printers, keyboards, screens, peripherals (and other input/output devices), modems and other communication controllers, and any and all parts and appurtenances thereto, together with all intellectual property used in connection with the operation of such computer equipment, including, without limitation, all Software and rights under any licenses related to such use.

“**Consumer Obligations**” means Sellers’ obligations under pre-paid gift cards sold to customers prior to the Closing.

“Contract” means any agreement, contract, obligation, lease, promise, instrument, undertaking or other arrangements (whether written or oral), and any amendment thereto, that is legally binding, to which Sellers is party.

“Copyrights” means all United States and foreign copyrights and copyrightable subject matter belonging to Sellers, whether registered or unregistered, including all United States copyright registrations and applications for registration and foreign equivalents, all moral rights, all common-law copyright rights, and all rights to register and obtain renewals and extensions of copyright registrations, together with all other copyright rights accruing by reason of any international copyright convention.

“Cure Costs” has the meaning specified in Section 2.5(a).

“Debtors” means the debtors in the Bankruptcy cases.

“Deposits” means all deposits (including, without limitation, customer deposits, trade show deposits, and security deposits for rent and electricity) and prepaid charges and expenses of Sellers.

“Disclosure Schedules” or **“Schedule(s)”** means the disclosure schedules attached hereto that Sellers have prepared and delivered to Purchaser pursuant to the terms of this Agreement, setting forth information regarding the Business, the Purchased Assets, the Assumed Liabilities, and other matters with respect to Sellers as set forth therein.

“Documents” means all books, records, files, invoices, inventory records, product specifications, advertising materials, customer lists, cost and pricing information, supplier lists, business plans, catalogs, customer literature, quality control records and manuals, research and development files, records and laboratory books, safety and environmental reports and documents, accounting records, Tax records and information, credit records of customers, and, to the extent permitted by applicable law, all books, files and records relating to Employees (including with respect to the foregoing all data and other information stored on discs, tapes or other media) in Sellers’s possession to the extent used in or to the extent relating to the assets, properties, including the Intellectual Property, business or operations of the Business.

“Domain Names” means any alphanumeric designation registered with or assigned by a domain name registrar, registry or domain name registration authority as part of an electronic address on the Internet that belong to Sellers

“Employees” has the meaning specified in Section 7.2(a).

“Encumbrance” means any interest, charge, Lien, mortgage, sublease, hypothecation, deed of trust, pledge, security interest, option, right of use, license, lease, sublicense, adverse claim, title defect, first offer or first refusal, easement, servitude, restrictive covenant, encroachment, encumbrance, assessment, levy, or other similar restriction of any kind.

“Environmental Laws” means any and all federal, state or local Legal Requirements concerning public health and safety, worker health and safety, pollution or protection of the environment, including but not limited to the Comprehensive Environmental

Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et seq.; the Solid Waste Disposal Act, also known as the Resource Conservation and Recovery Act, 42 U.S.C. § 6901, et seq.; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11011, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 801, et seq.; the Clean Air Act, 42 U.S.C. § 7401, et seq.; the Clean Water Act, 33 U.S.C. § 1251, et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651, et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2602, et seq.; the Rivers and Harbors Act of 1899, 33 U.S.C. § 401, et seq.; the Oil Pollution Act of 1990, 33 U.S.C. § 2701, et seq.; each as amended; any state or local law similar to the foregoing; all regulations and guidance documents issued pursuant to the foregoing; all permits issued to Sellers pursuant to the foregoing; and any other state, federal or local Legal Requirement pertaining to: (i) the existence, cleanup and/or remedy of contamination on property; (ii) the emission or release or any threatened release of any Hazardous Substance into the environment (including ambient air, surface water, ground water or land), or otherwise relating to the manufacture, processing, generation, distribution, use, treatment, storage, disposal, recycling, transport, removal, recovery or handling of any Hazardous Substance; (iii) the control of any Hazardous Substance; or (iv) worker or community protection.

“Equipment” means all furniture, fixtures and improvements, equipment, manufacturing equipment, computers, machinery, apparatus, appliances, tooling, spare parts, signage, supplies, vehicles, forklifts and all other tangible personal property of every kind and description owned by Sellers.

“ERISA” means the United States Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means, with respect to any Person, any trade or business (whether or not incorporated) (i) under common control within the meaning of Section 4001(b)(1) of ERISA with such Person or (ii) which together with such Person is treated as a single employer under Sections 414(b), (c), (m), (n) or (o) of the Code.

“Escrow Agent” means an escrow agent to be mutually agreed upon by Sellers and Purchaser, who shall act in accordance with its obligations as set forth in the Escrow Agreement.

“Escrow Agreement” means the escrow agreement between Sellers, Purchaser, and the Escrow Agent, in form substantially similar to **Exhibit _**.

“Excluded Assets” has the meaning specified in Section 2.2.

“Excluded Contracts” has the meaning specified in Section 2.2(d).

“Excluded Liabilities” has the meaning specified in Section 2.4.

“Filings” has the meaning specified in the recitals.

“Final Order” means an action taken or Order issued by the applicable Governmental Authority as to which: (i) no request for stay of the action or Order is pending, no such stay is in effect, and, if any deadline for filing any such request is designated by statute or

regulation, it is passed, including any extensions thereof; (ii) no petition for rehearing or reconsideration of the action or Order, or protest of any kind, is pending before the Governmental Authority and the time for filing any such petition or protest is passed; (iii) the Governmental Authority does not have the action or Order under reconsideration or review on its own motion and the time for such reconsideration or review has passed; and (iv) the action or Order is not then under judicial review, there is no notice of appeal or other application for judicial review pending, and the deadline for filing such notice of appeal or other application for judicial review has passed, including any extensions thereof.

“**GAAP**” means generally accepted accounting principles in the United States, consistently applied.

“**Good Faith Deposit**” has the meaning set forth in Section 3.1(a).

“**Governmental Authority**” means any federal, state, local or foreign, governmental entity or any subdivision, agency, instrumentality, authority, department, commission, board, bureau, official or other regulatory, administrative or judicial authority thereof or any federal, state, local or foreign court, tribunal or arbitrator or any self-regulatory organization, agency or commission.

“**Hazardous Substance**” means any chemical, material or substance in any form, whether solid, liquid, gaseous, semisolid or any combination thereof, whether waste material, raw material, chemical, finished product, byproduct or any other material or article, that is listed or regulated under applicable Environmental Laws as a “hazardous” or “toxic” substance or waste, or as a “contaminant,” or is otherwise listed or regulated under applicable Environmental Laws, including, without limitation, particulate matter of any size, hazardous substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, et seq., petroleum products, byproducts or derivatives thereof, asbestos, polychlorinated biphenyls, pollutants, pesticides, urea formaldehyde foam insulation and lead-containing paints or coatings.

“**Indebtedness**” of any Person means, without duplication, (i) the principal of and premium (if any) in respect of (A) indebtedness of such Person for borrowed money and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable; (ii) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable and other accrued current liabilities arising in the Ordinary Course of Business (other than the current liability portion of any indebtedness for borrowed money)); (iii) all obligations of such Person under leases required to be capitalized in accordance with GAAP; (iv) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker’s acceptance or similar credit transaction; (v) all obligations of such Person under interest rate or currency swap transactions (valued at the termination value thereof); (vi) the liquidation value, accrued and unpaid dividends; prepayment or redemption premiums and penalties (if any), unpaid fees or expenses and other monetary obligations in respect of any redeemable preferred stock of such Person; (vii) all obligations with respect to any factoring programs of Sellers; (viii) all obligations of the type referred to in clauses (i) through (vii) of any Persons for the payment

of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations; (ix) all obligations of the type referred to in clauses (i) through (v) of other Persons secured by any lien on any property or asset of such Person (whether or not such obligation is assumed by such Person); and (x) all interest, penalties, premiums, fees and expenses related to any of the foregoing.

“Independent Accounting Firm” has the meaning specified in Section 3.3.

“Independent Third Party” means the mutually agreed upon party selected on or before the Closing Date by the Purchaser and the Sellers who will prepare and deliver to the Sellers an Inventory Statement specified in Section 3.1.

“Intellectual Property” means all intellectual property rights owned, used, held for use, or licensed (as licensor or licensee) by Sellers, including, but not limited to, all Software, Copyrights, Patents, Trademarks, Trade Secrets, Domain Names, all rights to privacy and personal information, proprietary know-how and confidential business information owned, used or licensed by any Seller and used or held for use in conducting the Business and all rights and remedies related thereto (including the right to sue for and recover damages, profits and any other remedy in connection therewith) for past, present or future infringement, misappropriation or other violation relating to any of the foregoing.

“Interests” means any claims to rights of ownership or otherwise owned by Sellers.

“Inventory” means all finished goods, raw materials, work in process and other supplies owned by Sellers on the Closing Date.

“IRS” means the United States Internal Revenue Service.

“Knowledge” of a particular fact or matter by an individual means that individual is actually aware of that fact.

“Landlord” mean the landlords under the Leases.

“Lease” mean the real property leases set forth on **Schedule __** hereto.

“Legal Requirement” means any federal, state, provincial, local, municipal, foreign, international, multinational, or other administrative Order, constitution, law, ordinance, principle of common law, regulation, legislation, resolution, code, rule, statute or treaty.

“Liability” means any debt, loss, claim (as defined in section 101(5) of the Bankruptcy Code), damage, demand, fine, judgment, penalty, liability or obligation (whether direct or indirect, known or unknown, absolute or contingent, asserted or unasserted, accrued or unaccrued, matured or unmatured, determined or determinable, liquidated or unliquidated, or due or to become due, and whether in contract, tort, strict liability, successor liability or otherwise) of Sellers, and including all costs and expenses relating thereto (including fees, discounts and expenses of legal counsel, experts, engineers and consultants and costs of investigations, and any liability for Taxes).

“Lien” has the meaning given to that term in Section 101(37) of the Bankruptcy Code.

“Party or Parties” means, individually or collectively, Purchaser and Sellers.

“Non-Assignable Asset” has the meaning specified in Section 2.5(c).

“Order” means any order, injunction, judgment, decree, ruling, writ, determination, charge, direction, assessment, or arbitration award of a Governmental Authority.

“Patents” means United States and foreign patents (including certificates of invention and other patent equivalents), patent applications, provisional applications and patents issuing therefrom, as well as any continuations, continuations-in-part, divisions, extensions, reexaminations, reissues, renewals, patent disclosures, technology, inventions (whether or not patentable or reduced to practice) or improvements thereto that are owned by Sellers

“Permits” means all franchises, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals, registrations, clearances, orders, and similar consents granted or issued by any Governmental Authority which are necessary for Sellers to own, lease and operate its properties and assets or to carry on the Business as it is now being conducted.

“Permitted Encumbrances” means the list of Permitted Encumbrances set forth on Schedule 4.4.

“Person” means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated organization, Governmental Authority or other entity.

“Petition Date” has the meaning specified in the recitals.

“Proceeding” means any action, arbitration, audit, claim, cause of action, hearing, investigation, litigation, or suit (whether civil, criminal, administrative or investigative) commenced, brought, conducted, or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

“Products” means any and all products and services currently marketed or sold by Sellers.

“Purchase Price” has the meaning specified in Section 3.1.

“Purchased Assets” has the meaning specified in Section 2.1.

“Purchaser” has the meaning specified in the preamble.

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

“**Sale Hearing**” means the hearing conducted by the Bankruptcy Court to approve the transactions contemplated by this Agreement or a competing transaction.

“**Sale Motion**” means the motion filed on [REDACTED], 2017 by Sellers pursuant to, *inter alia*, sections 363 and 365 of the Bankruptcy Code to secure entry of the Sale Order by the Bankruptcy Court.

“**Sale Order**” means a final, nonappealable Order of the Bankruptcy Court in form and substance reasonably approved by Purchaser, pursuant to, *inter alia*, sections 105, 363 and 365 of the Bankruptcy Code (i) authorizing and approving, *inter alia*, the sale of the Purchased Assets to Purchaser on the terms and conditions set forth herein free and clear of all Liabilities, Liens, Claims, Interests, Encumbrances (other than the Permitted Encumbrances), and successor liability, the assumption and assignment of the Assumed Liabilities, and the assumption and assignment of the Assumed Contracts to Purchaser and (ii) containing certain findings of facts, including, without limitation, a finding that Purchaser is a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code.

“**Sellers**” has the meaning specified in the preamble.

“**Software**” means all computer software programs (whether in source code, object code, or other form) and systems, databases and platforms owned, licensed or used by Sellers, including all databases, compilations, tool sets, compilers, higher level or “proprietary” languages, related documentation, technical manuals and materials, and any licenses to use or other rights relating to the foregoing.

“**Successful Bidder**” has the meaning specified in the Sale Order.

“**Tax**” or “**Taxes**” (and with correlative meaning, “**Taxable**” and “**Taxing**”) means (i) any federal, state, provincial, local, foreign or other income, alternative, minimum, add-on minimum, accumulated earnings, personal holding company, franchise, capital stock, net worth, capital, profits, intangibles, windfall profits, gross receipts, value added, sales, use, goods and services, excise, customs duties, transfer, conveyance, mortgage, registration, stamp, documentary, recording, premium, severance, environmental, natural resources, real property, personal property, ad valorem, intangibles, rent, occupancy, license, occupational, employment, unemployment insurance, social security, disability, workers’ compensation, payroll, health care, withholding, estimated or other similar taxes, duty, levy or other governmental charge or assessment or deficiencies thereof (including all interest and penalties thereon and additions thereto whether disputed or not) and (ii) any transferee liability in respect of any items described in clause (i) above.

“**Tax Return**” means any return, report or similar statement required to be filed with respect to any Taxes (including any attached schedules), including any information return, amended return or declaration of estimated Tax.

“**Third Party Consents**” has the meaning specified in Section 4.5.

“**Trademarks**” means United States, state and foreign trademarks, service marks, logos, slogans, trade dress and trade names (including all assumed or fictitious names under

which the Business is conducted), and any other indicia of source of goods and services, designs and logotypes related to the above, in any and all forms, whether registered or unregistered, and registrations and pending applications to register the foregoing (including intent to use applications), and all goodwill related to or symbolized by the foregoing, that are owned by Sellers.

“**Trade Secrets**” means confidential or proprietary information and trade secrets (including, without limitation, ideas, research and development, know-how, formulae, algorithms, procedures, methods, creations, reports, improvements, readings, graphs, compositions, processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals).

“**Transferred Actions**” means the actions set forth on **Schedule** ___. For the avoidance of doubt, Transferred Actions shall not include Avoidance Actions or Commercial Tort Claims.

“**Transfer Taxes**” has the meaning specified in Section 7.1(b).

Section 1.2. Other Definitional and Interpretive Matters. Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

(a) *Calculation of Time Period.* When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

(b) *Dollars.* Any reference in this Agreement to \$ shall mean U.S. dollars.

(c) *Exhibits/Schedules.* All exhibits and schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement. Notwithstanding the foregoing or anything to the contrary contained herein, Purchaser reserves the right, in its sole discretion, to amend and or supplement any schedules and exhibits attached hereto at any time prior to Closing.

(d) *Gender and Number.* Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(e) *Headings.* The provision of a Table of Contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any “Section” are to the corresponding Section of this Agreement unless otherwise specified.

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

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

(h) *No Strict Construction.* The parties 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 the parties 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.

SECTION 2. **PURCHASE AND SALE**

Section 2.1. Purchased Assets.

Upon the terms and subject to the conditions set forth in this Agreement, on the Closing Date, Sellers shall sell, transfer, assign, convey and deliver, or cause to be sold, transferred, assigned, conveyed and delivered, to Purchaser, and Purchaser shall purchase, free and clear of all Liabilities, Liens, Claims, Interests and Encumbrances (other than the Permitted Encumbrances), all right, title and interest of Sellers in, to or under all of the properties and assets of Sellers (other than the Excluded Assets) of every kind and description, wherever located, real, personal or mixed, tangible or intangible, owned, leased, licensed, used or held for use in or relating to the Business (herein collectively called the “**Purchased Assets**”), including, but not limited to, all right, title and interest of Sellers in, to or under:

- (a) all Accounts Receivable;
- (b) all Equipment;
- (c) all Contracts and Leases listed or described on Schedule 2.1(c) as well as any orders received by Sellers in the ordinary course of business which have not been filled on or prior to the Closing Date (the “**Assumed Contracts**”);
- (d) all Permits and pending applications therefor, in each case to the extent assignable, including those Permits listed on Schedule 2.1(d);
- (e) all Intellectual Property (including all goodwill associated therewith), including the Intellectual Property listed on Schedule 2.1(e);
- (f) all Products, including all products in development by Sellers;

(g) all Documents except those (i) relating solely to any Excluded Asset or Excluded Liability; or (ii) relating to employees of Sellers who are not Transferred Employees;

(h) all telephone, telex and telephone facsimile numbers and other directory listings used in connection with the Business and/or owned by Sellers, to the extent assignable under applicable law;

(i) all goodwill and other intangible assets associated with the Business or the Purchased Assets;

(j) all Domain Names and Internet protocol addresses;

(k) to the extent assignable under applicable law, any proprietary rights in Internet protocol addresses, Domain Names, ideas, concepts, methods, processes, formulae, models, methodologies, algorithms, reports, data, customer lists, mailing lists, business plans, market surveys, market research studies, websites, information contained on drawings and other documents, information relating to research, development or testing, and documentation and media constituting, describing or relating to the Intellectual Property, including memoranda, manuals, technical specifications and other records wherever created throughout the world, but excluding reports of accountants, investment bankers, crisis managers, turnaround consultants and financial advisors or consultants;

(l) all advertising, marketing and promotional materials, studies, reports and all other printed or written materials relating to the Business and/or owned by Sellers;

(m) all Inventory of Sellers, wherever located, including, without limitation, any outstanding sale orders for Inventory held by third parties on a consignment basis and Inventory held by third party suppliers, manufacturers or processors that has been paid for by Sellers prior to the Closing Date; all rights of Sellers under non-disclosure or confidentiality, non-disparagement, non-compete, or non-solicitation agreements with former employees of Sellers, agents of Sellers, or with third parties;

(n) the Transferred Actions;

(o) any and all other personal property, assets, possessions, or belongings of Sellers acquired prior to the Closing Date, except any Excluded Assets, provided, however, that the parties do not intend that Purchaser or its Affiliates shall be deemed to be a successor to Sellers, or any of their Affiliates, with respect to the Purchased Assets.

Section 2.2. Excluded Assets.

Nothing herein contained shall be deemed to sell, transfer, assign or convey the Excluded Assets to Purchaser, and Sellers shall retain all right, title and interest to, in and under the Excluded Assets. For all purposes of and under this Agreement, the term “**Excluded Assets**” means:

(a) all cash and cash equivalents, including checks, commercial paper, treasury bills, certificates of deposit and other bank deposits, and Deposits;

(b) all shares of capital stock or other equity interest of Sellers or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interest of Sellers;

(c) all minute books, stock ledgers, corporate seals and stock certificates of Sellers;

(d) any Contracts or Leases not listed or described in Schedule 2.1(c) (the “**Excluded Contracts**”);

(e) any rights, claims or causes of action of Sellers under this Agreement or the Ancillary Documents, including all right, title and interest to the Aggregate Cash Consideration;

(f) all receivables, claims, or causes of action related solely to any Excluded Asset;

(g) all insurance policies, including but not limited to rights under director and officer liability policies, ERISA and trustee liability policies and employment practices liability policies, and all rights under insurance policies to the extent relating to claims for losses to any Excluded Asset or Excluded Liability to the extent applicable;

(h) any rights, claims, refunds, causes of action, choses in action, rights of recovery and rights of setoff of Sellers against third parties arising out of events occurring prior to the Closing Date (not including any Transferred Action), including but not limited to any rights under or pursuant to any and all warranties, representations, guarantees or licenses made or granted by suppliers, manufacturers and contractors relating to Equipment, Inventory or other products sold, or services provided, to Sellers;

(i) all Documents relating solely to an Excluded Asset or an Excluded Liability;

(j) all benefit plans currently or previously sponsored or maintained by Sellers or any of Sellers’s ERISA Affiliates or their respective predecessors, or with respect to which any of the foregoing has made or is required to make payments, transfers or contributions in respect of any present or former employees, directors, officers, shareholders, consultants or independent contractors of Sellers or any of Sellers’s ERISA Affiliates, and all insurance policies or other Contracts primarily relating to any benefit plan;

(k) all assets of Sellers set forth on Schedule 2.2(k);

(l) all refunds of insurance premiums under any contract of insurance;

(m) all Tax refunds for Tax Returns filed for Tax periods occurring prior to the Petition Date;

(n) all intercompany claims and liabilities (i) between and among the Sellers and the Debtors and (ii) between and among the Debtors; and

(o) any Action that is not a Transferred Action, including Avoidance Actions and Commercial Tort Claims.

Section 2.3. Assumed Liabilities.

Upon the terms and subject to the conditions set forth in this Agreement, on the Closing Date, Purchaser shall execute and deliver to Sellers the Assumption and Assignment Agreement pursuant to which Purchaser shall assume and agree to discharge, when due (in accordance with its respective terms and subject to the respective conditions thereof), only the following Liabilities (without duplication) (collectively the “**Assumed Liabilities**”) and no others:

(a) all Liabilities arising at and accruing after the Closing under the Assumed Contracts, including Taxes;

(b) all Liabilities of Sellers arising after the Petition Date in the ordinary course of the Business;

(c) the obligations to Sellers’ trade creditors set forth on **Schedule ____** (the “**Trade Creditor Obligations**”); and

(d) the Consumer Obligations.

Section 2.4. Excluded Liabilities.

Purchaser shall not assume and shall not be obligated to assume or be obliged to pay, perform or otherwise discharge any Liability, Liens, Claims and Encumbrances or other obligation of Sellers, and Sellers shall be solely and exclusively liable with respect to all Liabilities, Liens, Claims, and Encumbrances or other obligation of Sellers, *other than the Assumed Liabilities* (the “**Excluded Liabilities**”).

Section 2.5. Assignments; Cure Amounts.

(a) Sellers shall transfer and assign all Assumed Contracts to Purchaser, and Purchaser shall assume all Assumed Contracts from Sellers, as of the Closing Date pursuant to section 365 of the Bankruptcy Code and the Sale Order. The costs to cure any arrears (the “**Cure Costs**”) for each Assumed Contract, which shall be borne by the particular Seller who is a party to such Assumed Contract, are set forth opposite the name of each Assumed Contract set forth on Schedule 2.5. Purchaser shall be responsible for all Cure Costs. Purchaser further acknowledges and agrees that it shall be responsible for providing to the counterparty to any Assumed Contract any information necessary to provide “adequate assurance of future performance” pursuant to Section 365(f)(2)(B) of the Bankruptcy Code.

(b) The Sale Order shall provide that as of the Closing, Sellers shall assign to Purchaser the Assumed Contracts and the Assumed Contracts shall be identified by the name and date of the Assumed Contract (if available), the other party to the Assumed Contract as the case may be, and the address of such party for notice purposes, all included on an exhibit attached to either the motion filed in connection with the Sale Order or a motion for authority to assume and assign such Assumed Contracts. Such exhibit shall also set forth the Cure Costs for each of the Assumed Contracts as determined by Sellers based on Sellers' books and records or as otherwise determined by the Bankruptcy Court.

(c) In the case of Permits, Assumed Contracts and other commitments included in the Purchased Assets that cannot be transferred or assigned effectively without the consent of third parties ("**Non-Assignable Assets**"), which consent has not been obtained prior to the Closing (after giving effect to the Sale Order and the Bankruptcy Code), this Agreement shall not be deemed to constitute an agreement to transfer or assign any Non-Assignable Asset until such consent is obtained if an attempted assignment thereof, without the consent of a third party, would constitute a breach or other contravention of any such Non-Assignable Asset or law to which any Seller is a party or by which a Seller is bound, or in any way adversely affect the rights of any Seller or, upon transfer, Purchaser under such Non-Assignable Asset; and Purchaser shall assume no Liabilities under such Non-Assignable Assets. With respect to such Non-Assignable Assets for which required consent has not been obtained prior to Closing, Sellers shall, subject to any approval of the Bankruptcy Court that may be required and the terms set forth in Section 6.3, (i) reasonably cooperate with Purchaser, at Purchaser's expense, in endeavoring to obtain such consent, and (ii) cooperate with Purchaser, at Purchaser's expense, in any lawful and commercially reasonable manner under which Purchaser would obtain the economic claims, rights and benefits under such Non-Assignable Assets.

Section 2.6. Further Assurances.

(a) At the Closing, and at all times thereafter as may be necessary, Sellers and Purchaser shall execute and deliver such other instruments of transfer as shall be reasonably necessary to vest in Purchaser title to the Purchased Assets free and clear of all Liabilities, Liens, Claims, Interests and Encumbrances (other than the Permitted Encumbrances) and such other instruments as shall be reasonably necessary to evidence the assignment by Sellers and the assumption by Purchaser of the Assumed Liabilities, including the Assumed Contracts. Sellers and Purchaser shall cooperate with one another to execute and deliver such other documents and instruments as may be reasonably required to carry out the transactions contemplated hereby.

(b) At the Closing, and at all times thereafter as may be necessary, Sellers shall, at the reasonable request of Purchaser, execute, deliver, and file, or cause to be executed, delivered, and filed, such other instruments of conveyance and transfer and take such other actions as Purchaser may reasonably request, in order to more effectively consummate the transactions contemplated by this Agreement and to vest in Purchaser good and marketable title to the Intellectual Property included in the Purchased Assets, including, without limitation, executing, filing, and recording, with all appropriate intellectual property registration authorities and other relevant entities, all assignment instruments and other filings that are necessary to

correctly record the prior chain of title with respect to ownership of the Intellectual Property included in the Purchased Assets.

SECTION 3. **PURCHASE PRICE; CLOSING**

Section 3.1. Purchase Price and Purchase Price Adjustments.

(a) Within one (1) Business Day of the date hereof, Purchaser shall deliver to the Escrow Agent a wire transfer (to a bank account specified by the Sellers) or a certified check payable to the order of Gracious Home LLC (or such part as the Debtors may determine) or such other form acceptable to the Debtors, in the amount of \$[] (the “**Good Faith Deposit**”),¹ to be held in escrow by the Escrow Agent subject to the terms and conditions of the Escrow Agreement.

(b) Subject to the terms and conditions set forth in this Agreement, and in reliance upon the representations and warranties of the Parties set forth herein, at the Closing, the purchase price to be paid by Purchaser to Sellers in exchange for the Purchased Assets (the “**Purchase Price**”) shall be the sum of (i) cash in the aggregate amount of [\$3.75 million] (the “**Aggregate Cash Consideration**”) and (ii) the amounts necessary to satisfy Cure Costs in full. In the event there is a dispute between a Debtor and any non-Debtor counterparty to an Assumed Contract regarding the amount of the Cure Cost with respect to such Assumed Contract, the full amount of the Cure Cost alleged by such counterparty to be owed shall be deposited by Purchaser into Escrow.

Section 3.2. Payments.

(a) On the Closing Date, Purchaser shall pay to Sellers the Aggregate Cash Consideration, less the Good Faith Deposit, in the manner set forth in Section 3.5 below.

(b) On the Closing Date, Purchaser shall deposit the Closing Reserve with the Escrow Agent, and such Closing Reserve shall be administered pursuant to the terms of the Escrow Agreement.

Section 3.3. Allocation of Purchase Price.

As soon as practicable after the date hereof, Purchaser shall deliver to Sellers for Sellers’ review and approval allocation schedule(s) (the “**Allocation Schedule(s)**”) allocating the Purchase Price in accordance with the percentages set forth on the Allocation Schedule(s), including the Assumed Liabilities that are liabilities for federal income Tax purposes, among the Purchased Assets. The Allocation Schedule(s) shall be reasonable and shall be prepared in accordance with Section 1060 of the Code and the regulations thereunder. Sellers agree that, following their approval of the Allocation Schedule(s), Sellers shall sign the Allocation Schedule(s) and return an executed copy thereof to Purchaser, it being understood and agreed that on or before the tenth (10th) Business Day following their receipt of the Allocation

¹ The Good Faith Deposit shall be in an amount not less than 10% of the consideration being offered by Purchaser under this Agreement.

Schedule(s) from Purchaser as herein provided, Sellers shall either deliver an executed copy thereof to Purchaser or, in the event that Sellers shall have objections to all or any portion of the Allocation Schedule(s), Sellers shall deliver to Purchaser a written objection to such Allocation Schedule(s), which written objection shall set forth in reasonable detail the basis for the objections of Sellers thereto. In the event that Sellers fails to deliver to Purchaser either an executed Allocation Schedule(s) or a written objection on or before the tenth (10th) Business Day following their receipt of the Allocation Schedule(s) from Purchaser, Sellers will be deemed to have accepted and be bound by the Allocation Schedule(s) in the form delivered by Purchaser. In the event that Sellers shall deliver a written objection to the Allocation Schedule(s), Sellers and Purchaser shall thereafter work in good faith for a period of fifteen (15) Business Days to resolve any and all objections set forth therein, and upon the resolution of all such objections, Sellers and Purchaser shall execute and deliver to the other Party a signed copy of such agreed upon Allocation Schedule(s). In the event that Purchaser and Sellers are unable to resolve such dispute within such fifteen (15) Business Day period, Purchaser and Sellers shall jointly retain a nationally recognized firm of independent certified public accountants mutually acceptable to Purchaser and Sellers (an “**Independent Accounting Firm**”) to resolve the disputed items and the determinations of such Independent Accounting Firm shall be conclusive and binding upon the Parties for the purposes of this Section 3.3. Upon resolution of the disputed items, the allocation reflected on the Allocation Schedule(s) shall be adjusted to reflect such resolution. The costs, fees, and expenses of the Independent Accounting Firm shall be borne equally by Purchaser and Sellers. Purchaser and Sellers will each file IRS Form 8594, and all Tax Returns, in accordance with the Allocation Schedule(s) that are agreed upon by the Parties pursuant to the terms of this Section 3.3. Purchaser, on the one hand, and Sellers, on the other hand, each agrees to provide the other promptly with any other information required to complete Form 8594.

Section 3.4. Closing Date.

Upon the terms and conditions set forth in this Agreement the closing of the transactions contemplated herein (the “**Closing**”) shall take place at [REDACTED], as promptly as practicable, and at no time later than the tenth Business Day following the date on which the conditions set forth in Section 8 have been satisfied or waived (other than the conditions which by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), or at such other place or time as Purchaser and Sellers may mutually agree. The date and time at which the Closing actually occurs is hereinafter referred to as the “**Closing Date**.”

Section 3.5. Purchaser’s Deliveries.

At or prior to the Closing, Purchaser shall deliver to Sellers:

- (a) the Assumption and Assignment Agreement, and each other Ancillary Document to which Purchaser is a party, duly executed by Purchaser;
- (b) the Purchase Price, less the Good Faith Deposit;
- (c) the officers’ certificates required to be delivered pursuant to Sections 8.3(a) and 8.3(b); and

(e) such other assignments and other good and sufficient instruments of assumption and transfer, in form reasonably satisfactory to Sellers, as Sellers may reasonably request to transfer and assign the Assumed Liabilities and the Assumed Contracts to Purchaser.

Section 3.6. Sellers' Deliveries.

At or prior to the Closing, Sellers shall deliver to Purchaser:

(a) the Bill of Sale and Assumption and Assignment Agreement and each other Ancillary Document to which Sellers is a party, duly executed by Sellers;

(b) instruments of assignment of the Patents (the "**Assignment of Patents**"), Trademarks (the "**Assignment of Trademarks**"), Copyrights (the "**Assignment of Copyrights**") and Domain Names (the "**Assignment of Domain Names**") that are owned by Sellers and included in the Purchased Assets, if any, duly executed by Sellers, in form for recordation with the appropriate Governmental Authorities, in form reasonably acceptable to the parties, and any other assignments or instruments with respect to any Intellectual Property included in the Purchased Assets for which an assignment or instrument is required to assign, transfer, and convey such assets to Purchaser in a mutually acceptable form;

(c) evidence of receipt of the Third Party Consents to the extent such consents are not provided for or satisfied by the Sale Order;

(d) a copy of the final Sale Order entered by the Bankruptcy Court;

(e) the officers' certificates required to be delivered pursuant to Sections 8.2(a) and 8.2(b);

(f) certificates executed by Sellers, in the form prescribed under Treasury Regulation Section 1.1445-2(b), that Sellers are not foreign persons within the meaning of Section 1445(f)(3) of the Code;

(g) a certificate of good standing, or equivalent document, for Sellers, as certified by the applicable Government Authority in Sellers's state of incorporation.

(h) all instruments and documents necessary to release any and all Liabilities, Liens, Claims, Interests and Encumbrances (other than the Permitted Encumbrances), including appropriate UCC financing statement amendments (termination statements); and

(i) such other bills of sale, required consents, deeds, endorsements, assignments and other good and sufficient instruments of conveyance and transfer, in form reasonably satisfactory to Purchaser and Sellers, as Purchaser may reasonably request to vest in Purchaser all the right, title and interest of Sellers in, to or under any or all the Purchased Assets.

Section 3.7. Possession.

Right to exclusive possession of the Purchased Assets shall transfer to Purchaser upon Closing. Sellers shall transfer and deliver to Purchaser on the Closing Date such keys,

locks, and safe combinations and other similar items as Purchaser shall require to obtain immediate and full occupation and control of the Purchased Assets, and shall also make available to Purchaser at Sellers' location(s) all Documents that are required to be transferred to Purchaser by this Agreement.

SECTION 4. **REPRESENTATIONS AND WARRANTIES OF SELLERS**

As an inducement to Purchaser to enter into this Agreement and to consummate the transactions contemplated hereby, Sellers represents and warrant to Purchaser, and agree, as follows:

Section 4.1. Organization of Sellers.

Each of Sellers is an entity duly organized, validly existing and in good standing under the laws of the state of Delaware.

Section 4.2. Subsidiaries and Investments.

Except as set forth on Schedule 4.2, Sellers does not, directly or indirectly, own, of record or beneficially, any outstanding voting securities, membership interests or other equity interests in any Person.

Section 4.3. Authority of Sellers.

(a) Sellers have full power and authority to execute, deliver and, subject to the entry of the Sale Order and Bidding Procedures Order, perform its obligations under, and consummate the transactions contemplated by, this Agreement and each of the Ancillary Documents to which Sellers is a party. The execution, delivery and performance of this Agreement and such Ancillary Documents by Sellers, and consummation of the transactions contemplated hereby and thereby, have been duly authorized and approved by all required action on the part of Sellers, including by Sellers's board of directors (or similar governing body) and, subject to the entry of the Sale Order, does not require any authorization or consent of Sellers's shareholders that has not been obtained. This Agreement has been duly authorized, executed and delivered by Sellers and, subject to the entry of the Sale Order, is the legal, valid and binding obligation of Sellers enforceable in accordance with its terms, and each of the Ancillary Documents to which Sellers is a party has been duly authorized by Sellers and upon execution and delivery by Sellers and subject to the entry of the Sale Order, will be a legal, valid and binding obligation of Sellers enforceable in accordance with its terms.

(b) Subject to receipt of the Third Party Consents, and after giving effect to the Sale Order, none of the execution and delivery of this Agreement or any of the Ancillary Documents by Sellers, the consummation by Sellers of any of the transactions contemplated hereby or thereby, or compliance with or fulfillment of the terms, conditions and provisions hereof or thereof by Sellers, will conflict with, result in a breach of the terms, conditions or provisions of, or constitute a default or an event of default, or permit the acceleration of any Liabilities or obligation or loss of a material benefit, or result in the creation of any Liabilities, Liens, Claims, Interests and Encumbrances on any of the assets or properties of the Business (in

each case with or without notice or lapse of time or both), under (i) any charter (or similar governing instrument) or by-laws (or similar governing document) of Sellers, (ii) any Permits, (iii) any Order to which Sellers is bound or any Purchased Asset is subject, (iv) any Legal Requirement affecting Sellers or the Purchased Assets, or (v) any Contract to which Sellers or any of the Purchased Assets is a party or otherwise bound.

Section 4.4. Title to Purchased Assets.

Sellers has, and, upon delivery to Purchaser on the Closing Date of the instruments of transfer contemplated by Section 3.6, and subject to the terms of the Sale Order, Sellers will thereby transfer to Purchaser, good and valid title to, or, in the case of property leased or licensed by Sellers, a valid and subsisting leasehold interest in or a legal, valid and enforceable licensed interest in or right to use, all of the Purchased Assets, free and clear of all Liabilities, Liens, Claims, Interests and Encumbrances (other than the Permitted Encumbrances), except for the Assumed Liabilities. Except for the Excluded Assets, the Purchased Assets include all of the assets, whether tangible or intangible, that Sellers owns, and/or has been using, holding or operating in the Business to conduct (including utilization of assets) the Business as currently conducted by Sellers. Sellers is not aware of any Permitted Encumbrances other than those disclosed on Schedule 4.4. Sellers has not granted to any third party any license or other right to use any of the Purchased Assets.

Section 4.5. Consent and Approvals.

Schedule 4.5 sets forth a true and complete list of each material consent, waiver, authorization or approval of any governmental or regulatory authority, domestic or foreign, or of any other Person, and each declaration to or filing or registration with any such governmental or regulatory authority, that is required in connection with the execution and delivery of this Agreement and the Ancillary Documents by Sellers or the performance by Sellers of its obligations thereunder (the “**Third Party Consents**”).

Section 4.6. Litigation.

There are no material Actions or Proceedings pending, or to the best of Sellers’s Knowledge threatened against or affecting the Purchased Assets or Assumed Liabilities, at law or in equity or before or by any federal, state, municipal or other governmental court, tribunal, or department (other than any Actions or Proceedings listed on Sellers’ respective Statements of Financial Affairs that they filed with the Bankruptcy Court or set forth on Schedule 4.6 hereto), and Sellers are not operating under or subject to, or in default with respect to, any Order with respect to the Purchased Assets, the Assumed Liabilities, or the consummation of the transactions contemplated hereby.

Section 4.7. Insurance.

Schedule 4.7 sets forth a correct and complete list of all current insurance policies covering Sellers, complete and correct copies of which have been provided to Purchaser. All premiums required to be paid under each insurance policy required to be set forth on Schedule 4.7 have been paid when due, and all such policies are in full force and effect.

Section 4.8. No Finder.

Neither Sellers nor any Person acting on their behalf have paid or become obligated to pay any fee or commission to any broker, finder or intermediary for or on account of the transactions contemplated by this Agreement for which Purchaser is or will become liable, and Sellers shall hold harmless and indemnify Purchaser from any claims with respect to any such fees or commissions.

PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT EXCEPT AS EXPRESSLY SET FORTH ABOVE, (A) THE PURCHASED ASSETS ARE BEING TRANSFERRED ON AN AS-IS, WHERE-IS BASIS, (B) SELLERS MAKE NO FURTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, IN RESPECT OF THE PHYSICAL CONDITION OF THE PURCHASED ASSETS, THE MERCHANTABILITY OR FITNESS OF THE PURCHASED ASSETS FOR ANY PARTICULAR PURPOSE, OR ANY OTHER MATTER OR THING RELATING TO THE PURCHASED ASSETS OR ANY PORTION THEREOF, AND ANY SUCH REPRESENTATION AND WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

SECTION 5.
REPRESENTATIONS AND WARRANTIES OF PURCHASER

As an inducement to Sellers to enter into this Agreement and to consummate the transactions contemplated hereby, Purchaser hereby represents and warrants to Sellers and agrees as follows:

Section 5.1. Organization and Authority of Purchaser.

(a) Purchaser is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Purchaser has full corporate power and authority to execute, deliver and perform its obligations under this Agreement and all of the Ancillary Documents to which it is a party. The execution, delivery and performance of this Agreement and such Ancillary Documents by Purchaser have been duly authorized and approved by all corporate action and do not require any further authorization or consent of Purchaser or its, shareholders, managers or members. This Agreement has been duly authorized, executed and delivered by Purchaser and is the legal, valid and binding agreement of Purchaser enforceable against Purchaser in accordance with its terms, and each Ancillary Document to which Purchaser is a party has been duly authorized by Purchaser and upon execution and delivery by Purchaser will be a legal, valid and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms.

(b) Neither the execution and delivery of this Agreement or any of such Ancillary Documents or the consummation of any of the transactions contemplated hereby or

thereby nor compliance with or fulfillment of the terms, conditions and provisions hereof or thereof will:

(i) conflict with, result in a breach of the terms, conditions or provisions of, or constitute a default, or an event of default under (1) Purchaser's organizational documents, (2) any Order to which Purchaser is a party or by which it is bound or (3) any Legal Requirement affecting Purchaser; or

(ii) require the approval, consent, authorization or act of, or the making by Purchaser of any declaration, filing or registration with, any Person, other than filings with the Bankruptcy Court, that has not already been obtained.

Section 5.2. Financing.

Purchaser has available to it sufficient liquidity in the form of equity and debt financing to satisfy the Purchase Price and all other funds necessary to consummate the transactions contemplated by this Agreement and operate the Business, including to promptly pay, when due, all of the Assumed Liabilities.

SELLERS HEREBY ACKNOWLEDGE AND AGREE THAT EXCEPT AS EXPRESSLY SET FORTH ABOVE, PURCHASER MAKES NO FURTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, IN RESPECT OF PURCHASER, ITS AFFILIATES, OR THEIR RESPECTIVE ASSETS LIABILITIES OR OPERATIONS, AND ANY SUCH REPRESENTATION AND WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

SECTION 6. **ACTION PRIOR TO THE CLOSING DATE**

The Parties covenant and agree to take the following actions between the date hereof and the earlier of the termination of this Agreement and the Closing Date:

Section 6.1. Third Party Consents.

Sellers and Purchaser shall use their best efforts to obtain all Third Party Consents to the extent such consents are not provided for or satisfied by the Sale Order. Notice of the Sale Motion will be sent to all other parties to the Assumed Contracts by Sellers immediately upon filing of the Sale Motion.

Section 6.2. Governmental Approvals.

(a) During the period prior to the Closing Date, Sellers and Purchaser shall act diligently and reasonably, and shall cooperate with each other, to do or cause to be done, all things necessary, proper or advisable consistent with applicable confidentiality and Legal Requirements, to the extent commercially reasonable, to cause the conditions precedent to the Closing to be satisfied and to cause the Closing to occur, including to secure any consents and approvals of any governmental authority required to be obtained by them, in order to assign or transfer any Permits to Purchaser, to permit the consummation of the transactions contemplated

by this Agreement, or to otherwise satisfy the conditions set forth in Section 8, in each case as necessary to the extent such consents are not provided for or satisfied by the Sale Order; provided, however, that Sellers shall not make any agreement or understanding affecting the Purchased Assets or the Business (excluding the Excluded Assets or Excluded Liabilities) as a condition for obtaining any such consents or approvals except with the prior written consent of Purchaser. Subject to the limitations set forth in this Section 6.2, Purchaser shall act diligently and reasonably to cooperate with Sellers, to the extent commercially reasonable, to obtain the consents and approvals contemplated by this Section 6.2(a); provided, however, Purchaser shall not be required to waive any of the conditions to Closing set forth in Section 8.

(b) Subject to all applicable confidentiality and Legal Requirements, Sellers and Purchaser (i) shall promptly inform each other of any communication from any Person concerning this Agreement, the transactions contemplated hereby, and any filing, notification or request for approval and (ii) shall permit the other Party to review in advance any proposed written communication or information submitted to any such Governmental Authority in response thereto; provided, that a Party may request entry into a joint defense agreement as a condition to providing any such materials and that, upon receipt of that request, the Parties shall work in good faith to enter into a joint defense agreement to create and preserve attorney-client privilege in a form and substance mutually acceptable to the Parties. In addition, none of Parties shall agree to participate in any meeting with any Governmental Authority in respect of any filings, investigation or other inquiry with respect to this Agreement or the transactions contemplated hereby, unless such Party consults with the other Parties in advance and, to the extent permitted by any such Governmental Authority, gives the other Parties the opportunity to attend and participate thereat, in each case to the maximum extent practicable. Subject to any restrictions under applicable laws, rules or regulations, each Party shall furnish the other with copies of all correspondence, filings and communications (and memoranda setting forth the substance thereof) between it and its Affiliates and their respective Representatives on the one hand, and the Governmental Authority or members of its staff on the other hand, with respect to this Agreement, the transactions contemplated hereby (excluding documents and communications which are subject to preexisting confidentiality agreements or to the attorney-client privilege or work product doctrine) or any such filing, notification or request for approval. Each Party shall also furnish the other Party with such necessary information and assistance as such other party and its Affiliates may reasonably request in connection with their preparation of necessary filings, registration or submissions of information to the Governmental Authority in connection with this Agreement, the transactions contemplated hereby and any such filing, notification or request for approval. Sellers and Purchaser shall prosecute all required requests for approval with all necessary diligence and otherwise use their respective commercially reasonable efforts to obtain the grant thereof by an Order as soon as possible including in order to resolve such objections or suits which, in any case if not resolved, could reasonably be expected to prevent, materially impede or materially delay the consummation of the transactions contemplated hereunder or the other transactions contemplated hereby, including by Purchaser selling, holding separate or otherwise disposing of or conducting its business in a manner which would resolve such objections or suits or agreeing to sell, hold separate or otherwise dispose of or conduct its business in a manner which would resolve such objections or suits or permitting the sale, holding separate or other disposition of, any of its assets or the assets of its subsidiaries or the conducting of its business in a manner which would resolve such objections or suits.

(c) Notwithstanding anything else to the contrary in this Agreement, in the event that any administrative or judicial action or proceeding is instituted (or threatened to be instituted) by a Governmental Authority or private party challenging the transactions hereunder or any other agreement contemplated hereby, Purchaser shall cooperate, at its own cost and expense, in all respects with each other and use its respective best efforts to contest and resist any such action or proceeding and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other order, whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents or restricts consummation of the transactions contemplated by this Agreement.

Section 6.3. Conduct of Business Prior to the Closing Date.

From and after the date hereof until the earlier of the Closing Date or the termination of this Agreement in accordance with the terms of Section 9 hereof, Sellers shall maintain the Purchased Assets and operate and carry on the Business only in the Ordinary Course of Business, except as otherwise expressly required by this Agreement or with the express written consent of Purchaser. Consistent with the foregoing and to the extent not prohibited by the Bankruptcy Case, Sellers shall use commercially reasonable efforts to (i) continue operating the Business as a going concern, (ii) maintain the Purchased Assets and the assets and properties of, or used by, Sellers relating to the Business in their current condition (ordinary wear and tear excepted), (iii) maintain the business organization of the Business intact, (iv) maintain the Documents of the Business, (v) comply with all Legal Requirements, and (vi) preserve the goodwill of the manufacturers, suppliers, contractors, licensors, employees, customers, distributors and others having business relations with the Business. In connection therewith, Sellers shall not (1) offer employment for any period on or after the Closing Date to any employee or agent of the Business regarding whom Purchaser makes offers of employment in accordance with the terms set forth herein, (2) otherwise attempt to persuade any such employee or agent to terminate his or her relationship with the Business, (3) offer new material offsets, reductions or discounts to Accounts Receivable, (4) incur any additional Indebtedness outside of the Sellers's ordinary course of business operations, (5) increase the compensation, incentive arrangements or other benefits to any officer or employee outside the Ordinary Course of Business, (6) redeem, purchase or otherwise acquire directly or indirectly any of its issued outstanding capital stock, or any outstanding rights or securities exercisable or exchangeable for or convertible into its capital stock, (7) enter into any transaction, arrangement or Contract with any Person except on an arm's length basis in the Ordinary Course of Business, (8) purchase, sell, lease or dispose of any Purchased Assets other than in the Ordinary Course of Business, (9) delay or postpone the payment of accounts payable or other Liabilities Outside the Ordinary Course of Business, (10) permit the loss, lapse or abandonment of, or transfer, assign, enter into or grant any license or sublicense of any rights under or with respect to any Intellectual Property, (11) amend, terminate or modify any of the Assumed Contracts, (12) discontinue, close or dispose of any plant, facility or other business operation, or lay off any employees or implement any early retirement or separation program, or any program providing early retirement window benefits within the meaning of Section 1.401 (a)(4)-3(f)(4)(ii) of the Treasury Regulations or announce or plan any such action or program for the future, (13) hire employees or terminate the employment of any employee other than for "cause" or in the Ordinary Course of Business, or

(14) fail to maintain the material plant, property and equipment of Sellers in good repair and operating condition in all material respects, ordinary wear and tear excepted.

Section 6.4. Notification of Breach; Disclosure.

Each Party shall promptly notify the other (a) of any event, condition or circumstance of which such Party becomes aware prior to the Closing Date that would cause, or would reasonably be expected to cause, a violation or breach of this Agreement (or a breach of any representation or warranty contained in this Agreement), and (b) any material failure of such Party to comply with or satisfy any covenant, condition or agreement contained in this Agreement or any Ancillary Document. During the period prior to the Closing Date, each Party will promptly advise the other in writing of any written 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. It is acknowledged and understood that no notice given pursuant to this Section 6.4 shall have any effect on the representations, warranties, covenants or agreements contained in this Agreement for purposes of determining satisfaction of the conditions contained herein or rights or remedies of the Parties.

Section 6.5. Insurance.

Until the Closing, Sellers shall maintain (including necessary renewals thereof) insurance policies against risk and liabilities to the extent and in the manner and at the levels maintained by Sellers as of the date hereof with respect to the Business and the Purchased Assets.

Section 6.6. Bankruptcy Court Approval; Bidding Procedures; Auction.

(a) [The Parties acknowledge that, notwithstanding anything to the contrary herein, under the Bankruptcy Code and applicable law, Sellers must take reasonable steps to demonstrate that it has sought to obtain the highest or best price for the Purchased Assets, including, but not limited to, giving notice of the transactions contemplated by this Agreement to creditors and other interested parties as ordered by the Bankruptcy Court, providing information about the Business to responsible bidders subject to appropriate confidentiality agreements, entertaining higher or better offers from responsible bidders, and if necessary, conducting an auction. To facilitate the foregoing, Sellers obtained entry of the Bidding Procedures Order. Purchaser acknowledges that if Sellers receive a proposal for an Alternative Transaction, an Auction may be held for the Purchased Assets.]

(b) Sellers and Purchaser acknowledge that this Agreement and the sale of the Purchased Assets are subject to Bankruptcy Court approval and entry of the Sale Order.

(c) In the event an appeal is taken or a stay pending appeal is requested, with respect to the Sale Order, Sellers shall promptly notify Purchaser of such appeal or stay request and shall promptly provide to Purchaser a copy of the related notice of appeal or order of stay. Sellers shall also provide Purchaser with written notice of any motion or application filed in connection with any appeal from either of such orders.

(d) From and after the date hereof, Sellers shall not take any action that is intended to result in, or fail to take any action the intent of which failure to act would result in, the reversal, voiding, modification or staying of the Sale Order.

Section 6.7. Bankruptcy Filings.

(a) From and after the date hereof, at least two (2) Business Days prior to filing any papers or pleadings in the Bankruptcy Case that relate, in whole or in part, to this Agreement or Purchaser, Sellers shall provide Purchaser with a copy of such papers or pleadings and a reasonable opportunity to comment on the same.

(b) Purchaser shall provide Sellers with prompt notice of any papers or pleadings filed by a party other than Purchaser in the Bankruptcy Case that relate, in whole or in part, to the Purchased Assets, this Agreement or Purchaser.

SECTION 7.
ADDITIONAL AGREEMENTS

Section 7.1. Taxes.

(a) Sellers shall be liable for and shall pay, and pursuant to Section 7.1(c) shall reimburse Purchaser for, all Taxes (whether assessed or unassessed) applicable to the Business and the Purchased Assets, in each case attributable to periods (or portions thereof) ending on or prior to the Closing Date. Without limiting the obligations of Purchaser contained elsewhere in this Agreement, including in respect of Assumed Liabilities, Purchaser shall be liable for and shall pay, and pursuant to Section 7.1(c) shall reimburse Sellers for, all Taxes (whether assessed or unassessed) applicable to the Business and the Purchased Assets and the Assumed Liabilities, in each case attributable to periods (or portions thereof) beginning after the Closing Date. For purposes of this paragraph (a), any period beginning before and ending after the Closing Date shall be treated as two partial periods, one ending on the Closing Date and the other beginning on the day after the Closing Date except that Taxes (such as property Taxes) imposed on a periodic basis shall be allocated on a daily basis.

(b) Without limiting the other terms set forth in this Agreement, real property transfer or gains Tax, real property records recordation fees, documentary stamp Tax or similar Tax attributable to the sale or transfer of the Purchased Assets and not exempted under the Sale Order or by section 1146(c) of the Bankruptcy Code (“**Transfer Taxes**”) shall be borne by Sellers.

(c) Sellers or Purchaser, as the case may be, shall provide reimbursement for any Tax paid by one Party all or a portion of which is the responsibility of the other Party in accordance with the terms of this Section 7.1. Within a reasonable time prior to the payment of any such Tax, the Party paying such Tax shall give notice to the other of the Tax payable and

each Party's respective liability therefor, although failure to do so will not relieve the other Party from its liability hereunder.

(d) Purchaser and Sellers agree to furnish or cause to be furnished to each other, upon request, as promptly as practicable, such information and assistance relating to the Business and the Purchased Assets (including access to books and records) as is reasonably necessary for the filing of all Tax Returns, the making of any election relating to Taxes, the preparation for any audit by any taxing authority, and the prosecution or defense of any claim, suit or proceeding relating to any Tax.

(e) Purchaser and Sellers shall retain all books and records with respect to Taxes pertaining to the Purchased Assets for a period of at least six (6) years following the Closing Date. On or after the end of such period, each party shall provide the other with at least twenty-one (21) days prior written notice before destroying any such books and records, during which period the party receiving such notice can elect to take possession, at its own expense, of such books and records.

(f) Sellers and Purchaser shall cooperate with each other in the conduct of any audit or other proceeding relating to Taxes involving the Purchased Assets or the Business.

Section 7.2. Employees and Employee Benefit Plans.

(a) Employees. Prior to the Closing, Purchaser shall have the sole and exclusive discretion, but not the obligation, to offer employment to all of Sellers's employees on terms subject to the sole and exclusive discretion of Purchaser. Those employees who accept Purchaser's offer of employment and commence working for Purchaser on the Closing Date (or upon return to work from approved leave of absence) shall be deemed to have terminated their employment with Sellers upon the earlier of such acceptance or the Closing Date, and will hereafter be referred to as the "**Employees**." Purchaser will have no Liability with respect to any employee of Sellers who is not an Employee (the "**Non-Hired Employees**"). Sellers shall be solely responsible for providing notice of any plant closing or mass layoff in accordance with WARN. Sellers will bear all Liability with respect to the federal Workers Adjustment and Retraining Notification Act, similar state laws or any other Legal Requirements to the extent applicable to the transactions contemplated by this Agreement.

(b) Credit Under Purchaser Plans. With respect to any Employees, Purchaser will use commercially reasonable efforts, to the extent permitted by the third party providers of such plan(s), to cause any employee benefit plans of Purchaser (or any Affiliate thereof sponsoring or maintaining such plans) which the Employees are entitled to participate in from and after the Closing Date (the "**Purchaser Plans**") to take into account for purposes of eligibility and vesting thereunder, but not with respect to accrual of benefits, service by the Employees with Sellers prior to the Closing as if such service were with Purchaser, to the same extent such service was credited under a comparable benefit plan of Sellers prior to the Closing (except to the extent it would result in the duplication of benefits). In addition, with respect to each Purchaser Plan that is a "welfare benefit plan" (as defined in Section 3(1) of ERISA), Purchaser shall use commercially reasonable efforts, or shall use commercially reasonable efforts to cause an Affiliate of Purchaser sponsoring or maintaining such Purchaser Plan, to the extent

permitted by the third party providers of such plan, to (i) cause there to be waived any pre-existing condition exclusions, actively at work requirements, insurability requirements or other eligibility limitations to the extent such exclusions, requirements or limitations were waived or were inapplicable under a comparable benefit plan of Sellers prior to the Closing, and (ii) give effect, in determining any deductible, co-insurance and maximum out-of-pocket limitations, to claims incurred and amounts paid by, and amounts reimbursed to, the Employees and their dependents under a comparable benefit plan of Sellers prior to the Closing. Such Employees shall receive benefits and be covered by employment policies on substantially similar terms and conditions as other employees of Purchaser or its Subsidiaries or Affiliates with similar titles and functions. Without limiting the generality of the foregoing, such employee benefits shall include immediate eligibility to participate in medical and health insurance plans and 401(k) (including rolling-over any funds maintained by any Employee in any 401(k) account maintained by Sellers) or retirement plans sponsored by Purchaser.

(c) Employment Tax Reporting. With respect to any Employees, Purchaser and Sellers shall use the standard procedure set forth in Revenue Procedure 2004-53 2004-34 I.R.B. 320, for purposes of employment tax reporting.

(d) No Obligation. Nothing contained in this Agreement shall be construed to require the employment of (or prevent the termination of employment of) any individual, require minimum benefit levels or prevent any change in the employee benefits provided to any individual Employee. No provision of this Agreement shall create any third party beneficiary rights in any employee or former employee of Sellers or any other Person (including any beneficiary or dependent thereof) of any nature or kind whatsoever, including without limitation, in respect of continued employment (or resumed employment) for any specified period. Except as provided for in any employment or other agreement with Purchaser, nothing in this Section 7.2 is intended to interfere with Purchaser's right from and after the Closing to terminate the employment of, or change the compensation and benefits available to, any employees that are not Employees.

(e) Employee List. As soon as practicable, but in no event later than ten (10) Business Days following the execution of this Agreement by all parties, Sellers shall deliver to Purchaser a list of all of Sellers's employees, together with particulars of the date of commencement of employment, period of continuous employment, job description or grade, age, holiday entitlements, salary, and commissions.

Section 7.3. Collection of Receivables.

Sellers shall provide reasonable assistance to Purchaser in the collection of any Accounts Receivable included in the Purchased Assets. If, after the Closing Date, Sellers shall receive payment from any account debtor with respect to any Accounts Receivable included in the Purchased Assets, Sellers shall promptly thereafter deliver such funds and assets to Purchaser and take all steps necessary to vest title to such funds and/or assets in Purchaser. Effective as of the Closing Date, Sellers hereby designates Purchaser and its respective officers as Sellers's true and lawful attorney-in-fact, with full power of substitution, to execute and endorse for the benefit of Purchaser all checks, notes or other documents received by Sellers in payment of or in substitution or exchange for any of the Purchased Assets. Sellers hereby acknowledges and

agrees that the power of attorney set forth in the preceding sentence in favor of Purchaser is coupled with an interest, and further agrees to execute and deliver to Purchaser from time to time any documents or other instruments reasonably requested by Purchaser to evidence such power of attorney.

Section 7.4. Certain Actions.

Within one (1) day after the Closing Date, Sellers shall take such corporate and other actions necessary to change its corporate or company name, as the case may be, to a name that is not similar to, or confusing with, the current name of Sellers, including any necessary filings required by the general corporation or other law of the states in which Sellers is incorporated or otherwise qualified or registered to transact business. Sellers acknowledges that the name “Gracious” and all other Intellectual Property shall be and remain, after the Closing, the sole and exclusive property of Purchaser. Prior to the Closing Date, unless otherwise requested by Purchaser, Sellers shall terminate any Contract granting any third party the right to use any Intellectual Property.

Section 7.5. Reasonable Access to Records and Certain Personnel.

In order to facilitate Sellers’ efforts to (a) administer and close the Bankruptcy Cases, and (b) prepare Tax Returns (together, the “**Post-Close Filings**”), for a period of two (2) years following the Closing, Purchaser shall permit Sellers and Sellers’ counsel and accountants (collectively, “**Permitted Access Parties**”) during regular business hours, with reasonable notice, and subject to reasonable rules and regulations, reasonable access to the financial and other books and records which comprised part of the Purchased Assets that are required to complete the Post-Close Filings, which access shall include (x) the right of such Permitted Access Parties to copy, at such Permitted Access Parties’ expense, such required documents and records and (y) Purchaser’s copying and delivering to the relevant Permitted Access Parties such documents or records as they require, but only to the extent such Permitted Access Parties furnish Purchaser with reasonably detailed written descriptions of the materials to be so copied and applicable Permitted Access Party reimburses Purchaser for the costs and expenses thereof; provided, however, that the foregoing rights of access shall not be exercisable in such a manner as to interfere with the normal operations of Purchaser’s business. Notwithstanding anything contained in this Section 7.5 to the contrary, in no event shall Sellers have access to any information that, based on advice of Purchaser’s counsel, could (1) reasonably be expected to create liability under applicable law, or waive any legal privilege, (2) result in the discharge of any Trade Secrets of Purchaser, its affiliates or any third parties or (3) violate any obligation of Purchaser with respect to confidentiality. Purchaser shall retain all books and records pertaining to the Purchased Assets for a period of at least two (2) years following the Closing Date. On or after the end of such period, Purchaser shall provide the Sellers and the Permitted Access Parties other with at least twenty-one (21) days prior written notice before destroying any such books and records, during which period the Sellers can elect to take possession, at its own expense, of such books and records.

SECTION 8. **CONDITIONS TO CLOSING**

Section 8.1. Conditions to Obligations of Each Party.

The respective obligations of each Party to effect the sale and purchase of the Purchased Assets shall be subject to the fulfillment (or, if permitted by applicable law, waiver) on or prior to the Closing Date, of the following conditions:

(a) all requisite authorizations or consents from Governmental Authorities or waiting periods following governmental filings, including the Required Consents, shall have been obtained or expired, as the case may be;

(b) the Sale Order shall be unstayed (other than the 14-day period set forth in Rules 6004 and 6006 of the Federal Rules of Bankruptcy Procedure, which Sellers shall request that the Court waive); and

(c) no Governmental Authority shall have enacted, issued, promulgated or entered any Order that is in effect and has the effect of making illegal or otherwise prohibiting the consummation of the transactions contemplated by this Agreement that has not been withdrawn or terminated.

Section 8.2. Conditions to Obligations of Purchaser.

The obligation of Purchaser to purchase the Purchased Assets contemplated by this Agreement shall be subject to the fulfillment on or prior to the Closing Date of the following additional conditions:

(a) the representations and warranties of Sellers contained in this Agreement shall be true and correct in all material respects as of the Closing Date;

(b) the Sale Order shall have been entered and shall have become a Final Order and shall be in form and substance reasonably satisfactory to Purchaser;

(c) each covenant and obligation that Sellers are required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been duly performed and complied with in all material respects, and Purchaser shall have received a certificate of Sellers to such effect signed by a duly authorized officer thereof;

(d) each of the deliveries required to be made to Purchaser pursuant to Section 3.6 shall have been so delivered;

(e) Sellers shall not have rejected any Assumed Contracts; and

(f) Sellers shall not have abandoned or otherwise relinquished its interest in any Purchased Asset, other than assets disposed of or abandoned in the ordinary course of business, nor, without the consent of Purchaser, shall Sellers have taken any actions to dispose of or abandon any Purchased Assets other than ordinary course of business.

Any condition specified in this Section 8.2 may be waived by Purchaser; provided, however, that no such waiver shall be effective against Purchaser unless it is set forth in a writing executed by Purchaser.

Section 8.3. Conditions to Obligations of Sellers.

The obligation of Sellers to sell the Purchased Assets contemplated by this Agreement shall be subject to the fulfillment on or prior to the Closing Date of the following additional conditions:

(a) the representations and warranties of Purchaser contained in this Agreement shall be true and correct in all material respects when made and on and as of the Closing Date with the same effect as if such representations and warranties had been made on and as of such date and Sellers shall have received a certificate of Purchaser to such effect signed by a duly authorized officer thereof;

(b) each covenant and obligation that Purchaser is required to perform or to comply with pursuant to this Agreement at or prior to the Closing shall have been duly performed and complied with in all material respects, and Sellers shall have received a certificate of Purchaser to such effect signed by a duly authorized officer thereof;

(c) each of the deliveries required to be made to Sellers pursuant to Section 3.5 shall have been so delivered; and

(d) The Sale Order and Bidding Procedures Order shall have been entered and become Final Orders.

Any condition specified in this Section 8.3 may be waived by Sellers; provided, however, that no such waiver shall be effective against Sellers unless it is set forth in writing executed by Sellers.

SECTION 9.
TERMINATION

Section 9.1. Termination. Notwithstanding anything to the contrary in this Agreement, this Agreement may be terminated at any time prior to the Closing:

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

(b) if the Chapter 11 Cases are dismissed or converted to cases under chapter 7 of the Bankruptcy Code and neither such dismissal or conversion expressly contemplates the transactions under the Agreement or a trustee is appointed for the Debtors and such trustee rejects the transactions contemplated by this Agreement.

(c) by the Sellers, if Purchaser shall have breached or failed to perform in any material respect any of its respective representations, warranties, covenants or other agreements

contained in this Agreement, and such breach or failure to perform (i) would give rise to the failure of a condition set forth in section 8.3, and (ii) cannot be or has not been cured prior to the date that is five (5) days from the date that Purchaser is notified by the Sellers of such breach or failure to perform; provided, however, that the Sellers shall not have a right to terminate this Agreement under this Section 9.1(b) if the Sellers is then in material breach of this Agreement;

(d) by Sellers, if Sellers have closed on an Alternative Transaction;²

(e) by Purchaser, if the Sellers shall have breached or failed to perform in any material respect any of its respective representations, warranties, covenants or other agreements contained in this Agreement, and such breach or failure to perform (i) would give rise to the failure of a condition set forth in section 8.2, and (ii) cannot be or has not been cured prior to the date that is five (5) days from the date that the Sellers is notified by Purchaser of such breach or failure to perform; provided, however, that Purchaser shall not have a right to terminate this Agreement under this section 9.1(c) if Purchaser is then in material breach of this Agreement.

Section 9.2. Effect of Termination. In the event of termination by the Sellers or Purchaser pursuant to section 9.1, written notice thereof shall forthwith be given to the other Party and the Agreement shall be terminated, without further action by any party. Notwithstanding a termination by either party, the terminating party shall remain liable for any breach that occurred prior to such termination.

Section 9.3. [Bid Protection Amount. Sellers agree and acknowledge that Purchaser's negotiation and execution of this Agreement has resulted from an investment of management time and has required a commitment of financial and other resources by Purchaser, and that the negotiation and execution have provided value to Sellers. Therefore, if Sellers enter into an Alternative Transaction, Sellers shall pay to Purchaser the **Bid Protection Amount** comprised of a break-up fee not to exceed [3%] of the Purchase Price plus reimbursement of Purchaser's reasonable out-of-pocket expense (including attorneys' fees and expenses) not to exceed \$[75,000]. The Bid Protection Amount shall be paid simultaneously with the closing of, and with the proceeds from, the Alternative Transaction. To the extent that the proceeds from the Alternative Transaction are insufficient to pay the Bid Protection Amount, Sellers shall pay the remaining balance of the Bid Protection Amount from other sources. The Bid Protection Amount shall constitute an administrative expense of Sellers under sections 503(b) and 507(a)(1) of the Bankruptcy Code.]³

SECTION 10.

NO SURVIVAL OF REPRESENTATIONS AND WARRANTIES

The representations and warranties of Purchaser and Sellers made in this Agreement and the covenants of Purchaser and Sellers contained in this Agreement that, by their terms, are to be

² Pursuant to the Bidding Procedures Order, if Purchaser is not a Stalking Horse Bidder, its APA must make clear that its bid is irrevocable until the earlier of (a) the consummation of the Alternative Transaction and (b) nine-one (91) days after the Sale Hearing.

³ Section 9.3 is applicable only in the event that Sellers designate Purchaser as a Stalking Horse Bidder pursuant to the Bidding Procedures Order, *provided however*, that a Purchaser that credit bids all or a portion of the purchase price for the Assets shall only be entitled to the expense reimbursement portion of the Bid Protection Amount.

performed prior to the Closing shall not survive the Closing Date and shall be extinguished by the Closing and the consummation of the transactions contemplated by this Agreement. Absent fraud or willful misconduct, Purchaser shall not have any remedy against Sellers, and Sellers shall not have any remedy against Purchaser or its Affiliates for (i) any breach of a representation or warranty contained in this Agreement (other than to terminate the Agreement in accordance with the terms hereof and as provided in Section 9.1) and (ii) if the Closing occurs, any breach of a covenant contained in this Agreement with respect to the period prior to the Closing Date.

SECTION 11. **GENERAL PROVISIONS**

Section 11.1. Confidential Nature of Information.

Each Party agrees that it will treat in confidence all documents, materials and other information that it shall have obtained regarding the other Party during the course of the negotiations leading to the consummation of the transactions contemplated hereby (whether obtained before or after the date of this Agreement), the investigation provided for herein and the preparation of this Agreement and other related documents. Such documents, materials and information shall not be disclosed or communicated to any third Person (other than, in the case of Purchaser, to its Representatives and potential lenders, and in the case of Sellers, to its Representatives). No Party shall use any confidential information referred to in the second immediately preceding sentence in any manner whatsoever except solely for the purpose of evaluating the proposed purchase and sale of the Purchased Assets and the enforcement of its rights hereunder and under the Ancillary Documents. The obligation of each Party to treat such documents, materials and other information in confidence shall not apply to any information that (i) is or becomes available to such Party from a source other than the disclosing Party, provided such other source was not, and such Party would have no reason to believe such source was, subject to a confidentiality obligation in respect of such information, (ii) is or becomes available to the public other than as a result of disclosure by such Party or its agents, (iii) is required to be disclosed under applicable law or judicial process, including the Bankruptcy Case, but only to the extent it must be disclosed, or (iv) such Party reasonably deems necessary to disclose to obtain any of the consents or approvals contemplated hereby.

Section 11.2. No Public Announcement.

Neither Sellers nor Purchaser shall, without the approval of Sellers (in the case of a disclosure by Purchaser) or Purchaser (in the case of a disclosure by Sellers), make any press release or other public announcement concerning the transactions contemplated by this Agreement, except as and to the extent that any such Party shall be so obligated by applicable Legal Requirements, including as may be required by the Bankruptcy Case, securities laws, or the rules of any stock exchange, in which case the other Party or parties shall be advised prior to such disclosure and the parties shall use their reasonable best efforts to cause a mutually agreeable release or announcement to be issued. For the avoidance of doubt, Sellers's filing of pleadings or notices in the Bankruptcy Case in connection with the Transaction shall not be deemed a public announcement by Sellers.

Section 11.3. Notices.

All notices or other communications required or permitted hereunder shall be in writing and shall be given or delivered by electronic mail, and by one of the following means of service: personal delivery, by facsimile or by a nationally recognized private overnight courier service addressed as follows:

(a) If to Purchaser, to:

(b) If to Seller, to:

or to such other address or facsimile number as such party may indicate by a notice delivered to the other party hereto.

Any notice, consent, authorization, direction or other communication delivered as aforesaid shall be deemed to have been effectively delivered and received, if sent by a nationally recognized private overnight courier service, on the date following the date upon which it is delivered for overnight delivery to such courier service, if delivered personally (with written confirmation of receipt), on the date of such delivery or, if sent via facsimile, on the date of the transmission of the facsimile, provided that the sender thereof receives written confirmation that the facsimile was successfully delivered to the intended recipient.

Section 11.4. Successors and Assigns.

(a) Except as expressly permitted in this Agreement, the rights and obligations of the Parties under this Agreement shall not be assignable by such parties without the written consent of the other parties hereto.

(b) This Agreement shall be binding upon and inure to the benefit of the Parties and their successors and permitted assigns. The successors and permitted assigns hereunder shall include any permitted assignee as well as the successors in interest to such permitted assignee (whether by merger, consolidation, liquidation (including successive mergers, consolidations or liquidations) or otherwise). Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon any Person other than the parties and successors and assigns permitted by this Section 11.4 any right, remedy or claim under or by reason of this Agreement.

Section 11.5. Entire Agreement; Amendments; Disclosure Schedules.

This Agreement, the Ancillary Documents and Disclosure Schedules referred to herein contain the entire understanding of the parties hereto with regard to the subject matter contained herein or therein, and supersede all prior agreements, understandings or letters of intent between or among any of the parties hereto with respect to such subject matter. This Agreement shall not be amended, modified or supplemented except by a written instrument signed by an authorized representative of each of the Parties.

Section 11.6. Waivers.

Any term or provision of this Agreement may be waived, or the time for its performance may be extended, by the party or parties entitled to the benefit thereof. Any such waiver shall be validly and sufficiently authorized for the purposes of this Agreement if, as to any party, it is authorized in writing by an authorized representative of such party. Except as otherwise provided herein, the failure of any party hereto to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or any part hereof or the right of any party thereafter to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to constitute a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.

Section 11.7. Expenses.

Except as set forth herein, each party hereto will pay all of its own costs and expenses incident to its negotiation and preparation of this Agreement and its performance and compliance with all agreements and conditions contained herein on its part to be performed or complied with, including the fees, expenses and disbursements of its counsel and accountants.

Section 11.8. Partial Invalidity.

Wherever possible, each provision hereof shall be interpreted in such manner as to be effective and valid under applicable law, but in case any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such provision shall be ineffective to the extent, but only to the extent, of such invalidity, illegality or unenforceability without invalidating the remainder of such invalid, illegal or unenforceable provision or provisions or any other provisions hereof, unless such a construction would be unreasonable.

Section 11.9. Execution in Counterparts.

This Agreement may be executed in counterparts, each of which shall be considered an original instrument, but all of which shall be considered one and the same agreement, and shall become binding when one or more counterparts have been signed by and delivered to each of the Parties hereto. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or electronic mail shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 11.10. Governing Law.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts executed in and to be performed in that State.

(b) All actions and proceedings arising out of or relating to this Agreement, including the resolution of any and all disputes hereunder, shall be heard and determined in the Bankruptcy Court, and the Parties hereby irrevocably submit to the exclusive jurisdiction of the Bankruptcy Court in any such action or proceeding and irrevocably waive the defense of an inconvenient forum to the maintenance of any such action or proceeding. The Parties hereby consent to service of process by mail (in accordance with Section 11.3) or any other manner permitted by law.

(c) THE PARTIES HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ACTIONS OF SELLER, PURCHASER, OR THEIR RESPECTIVE REPRESENTATIVES IN THE NEGOTIATION OR PERFORMANCE HEREOF.

Section 11.11. No Third Party Beneficiaries.

This Agreement is for the sole benefit of the Parties and their permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable benefit, claim, cause of action, remedy or right of any kind.

[Signatures appear on the following page.]

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

PURCHASER:

[]

By: _____

Name:

Title:

SELLERS:

EXHIBIT D

Sale Notice

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

GRACIOUS HOME LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 16-13500 (MKV)

(Jointly Administered)

NOTICE OF SALE, BIDDING PROCEDURES, AUCTION, AND SALE HEARING

1. On, May 23, 2017, the above-captioned debtors and debtors-in-possession (the “Debtors”) filed with the Bankruptcy Court for the Southern District of New York, filed their motion for entry of (I) an Order (A) Approving the Bidding Procedures for the Sale of the Assets, (B) Establishing the Notice Procedures and Approving the Form and Manner of Notice Thereof, and (C) Scheduling a Sale Hearing, and (D) Granting Related Relief and (II) an Order (A) Approving the Sale of the Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, (B) Approving the Assumption and Assignment of Certain Executory Contracts and Leases Related Thereto, and (C) Granting Related Relief (the “Motion”).²

2. The Debtors are seeking to sell all or substantially all of the Debtors’ assets, including, but not limited to the inventory, receivables, equipment, intellectual property, unexpired leases, contract rights and other assets related to or necessary to operate the business currently operated by the Debtors, but excluding causes of action arising under chapter 5 of the Bankruptcy Code (the “Assets”).

3. Pursuant to the Bidding Procedures Order, in the event that the Debtors timely receive one or more Qualified Bids for the Purchased Assets, including any Stalking Horse Bid, the Auction for the Assets shall be held on **June __, 2017 at 10:00 a.m. (prevailing Eastern Time)** at 45 Rockefeller Plaza, Suite 2000, New York, New York 10111, or such other location and time as the Debtors timely communicate to all entities entitled to attend the Auction, including all Qualified Bidders, the Stalking Horse Bidder and its counsel, the United States Trustee, and counsel for the Committee.

¹ The Debtors in these chapter 11 cases and the last four digits of their tax identification numbers are: Gracious Home LLC (6822); Gracious Home Holdings LLC (3251); Gracious Home Payroll LLC (3681); GH East Side LLC (3251); GH West Side LLC (3251); GH Chelsea LLC (3251) and Gracious (IP) LLC (3251). The latter four entities are disregarded for tax purposes and do not have their own tax identification numbers, but use that of Gracious Home Holdings LLC. The address of the Debtors’ corporate headquarters is 1210 Third Avenue, New York, New York 10021.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion. Any summary of the Bidding Procedures and the Bidding Procedures Order contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any conflict between any such summary and such actual terms and conditions, the actual terms and conditions shall control.

4. Only Qualified Bidders will be entitled to make bids at the Auction. Each bidder who submits a Qualified Bid shall be a “Qualified Bidder.” A Qualified Bidder, that desires to make a bid shall deliver a written offer to the Bid Notice Parties **by no later than May __, 2017 at 4:00 p.m. prevailing Eastern Time (the “Bid Deadline”)** and otherwise comply with the Bidding Procedures. **FAILURE TO ABIDE BY THE BIDDING PROCEDURES MAY RESULT IN A BID FOR THE PURCHASED ASSETS TO NOT BE CONSIDERED.** A bid must be submitted to (a) the Debtors, 1210 Third Avenue, New York, New York Attn: Robert Morrison (rmorrison@gracioushome.com); (b) counsel for the Debtors, Trenk, DiPasquale, Della Fera & Sodono, P.C., 347 Mt. Pleasant Ave., Suite 300, West Orange, New Jersey 07052, Attn: Joseph J. DiPasquale (jdipasquale@trenklawfirm.com) and Irena M. Goldstein (igoldstein@trenklawfirm.com); (c) financial advisor and investment banker to the Debtors, B. Riley & Co., 420 Lexington Avenue, Suite 3001, 420 Lexington Avenue, New York, New York 10022, Attn: Perry M. Mandarino (pmandarino@brileyco.com) and Adam M. Rosen (arosen@briley.com); (d) counsel for the Committee, Seward & Kissel LLP, One Battery Park Plaza, New York, New York 10004, Attn: John R. Ashmead (ashmead@sewkis.com) and Robert J. Gayda (gayda@sewkis.com); and (e) financial advisor to the Committee, Wyse Advisors LLC, 85 Broad Street, 18th Floor, New York, NY 10004, Attn: Mike Wyse, (mwyse@wyseadvisorsllc.com) (collectively, the “Bid Notice Parties”). Instructions for how to submit a “Qualified Bid” can be found in the Bidding Procedures Order and the Bidding Procedures, which are available for download at <https://cases.primeclerk.com/GraciousHome>. The failure to abide by the procedures and deadlines set forth in the Bidding Procedures Order and the Bidding Procedures may result in the denial of your bid. The Debtors, in their sole and absolute discretion in consultation with the respective representatives and advisors for the Committee, shall make a determination regarding whether a bid is a Qualified Bid and whether any of the Bidding Procedures may be waived and will notify all bidders before the Auction whether their bids have been determined to be Qualified Bids.

5. The Debtors will review and evaluate each Qualified Bid and determine, after consultation with the respective representatives and advisors for the DIP Lender and the Committee, which offer is the highest or otherwise best offer from among the Qualified Bids submitted at the auction (such bid, the “Successful Bid,” and the Qualified Bidder submitting such Successful Bid, the “Successful Bidder”), which shall be subject to Bankruptcy Court approval.

6. The Bankruptcy Court will conduct a hearing (the “Sale Hearing”) to consider the proposed sale on **June __, 2017 at 10:00 a.m. (prevailing Eastern Time)**.

7. Copies of any Stalking Horse Agreement and the proposed Sale Order are available upon request to the Debtors’ noticing agent, Prime Clerk, at (855) 388-4575 for U.S. – based parties or (646) 795-6966 for International parties, and are available for download at <https://cases.primeclerk.com/GraciousHome>.

8. **ANY INTERESTED BIDDER SHOULD CONTACT THE DEBTORS’ ADVISORS AT:** B. Riley & Co., 420 Lexington Avenue, Suite 3001, 420 Lexington Avenue, New York, New York 10022, Attn: Perry M. Mandarino and Adam M. Rosen and by e-mail at pmandarino@brileyco.com and arosen@brileyco.com.

9. The deadline to file an objection with the Bankruptcy Court to the proposed sale of the Assets (the "Objection Deadline") is **June __, 2017 at 4:00 p.m. (prevailing Eastern Time)**.

10. Objections must be filed and served in accordance with the Bid Procedures Order and be served on the Bid Notice Parties.

THE FAILURE OF ANY PERSON OR ENTITY TO FILE AND SERVE AN OBJECTION BY THE OBJECTION DEADLINE SHALL BE A BAR TO THE ASSERTION BY SUCH PERSON OR ENTITY OF ANY OBJECTION TO THE SALE MOTION, THE SALE ORDER, THE SALE TRANSACTION, OR THE SELLERS' CONSUMMATION AND PERFORMANCE OF ANY STALKING HORSE AGREEMENT.

THE FAILURE OF ANY PERSON OR ENTITY WITH AN ENCUMBRANCE ON THE PURCHASED ASSETS WHO DOES NOT FILE AND SERVE AN OBJECTION BY THE OBJECTION DEADLINE, SHALL BE DEEMED TO CONSENT TO THE SALE TRANSACTION BEING FREE AND CLEAR OF ALL ENCUMBRANCES (OTHER THAN ASSUMED LIABILITIES). UPON THE CLOSING, SUCH ENCUMBRANCES WILL ATTACH TO THE PROCEEDS OF THE SALE TRANSACTION WITH THE SAME VALIDITY, PRIORITY, AND FORCE AND EFFECT AS SUCH ENCUMBRANCE HAD IMMEDIATELY PRIOR TO THE CLOSING OF THE SALE TRANSACTION. IN ADDITION, ALL SUCH PERSONS COULD BE COMPELLED TO ACCEPT MONEY SATISFACTION FOR THEIR INTERESTS.

EXHIBIT E

Assumption Notice

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

GRACIOUS HOME LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 16-13500 (MKV)

(Jointly Administered)

**NOTICE OF POSSIBLE ASSUMPTION AND ASSIGNMENT
OF EXECUTORY CONTRACT OR UNEXPIRED LEASE**

PLEASE TAKE NOTICE OF THE FOLLOWING:

On May 23, 2017, Gracious Home LLC, *et al.*, the within debtors-in-possession (the “Debtors”), filed with the Bankruptcy Court for the Southern District of New York (the “Court”) a motion (the “Motion”) for entry of an order (the “Bidding Procedures Order”) (i) approving (a) procedures (the “Bidding Procedures”)² for submitting bids for the purchase of substantially all of the Debtors’ assets, including assumption of substantially all of their liabilities, as well as other obligations (collectively, the “Assets”), (b) form and manner of sale notices, and (c) sale-related dates, including the bid deadline, auction and sale hearing date; and (ii) subject to the terms of the Bidding Procedures Order, at a hearing to be scheduled by the Bankruptcy Court (the “Sale Hearing”), entry of an order authorizing and approving (a) the sale of the Assets to free and clear of liens, claims, encumbrances, and interests, and (b) assumption and assignment of certain executory contracts and unexpired leases.

On June __, 2017, the Bankruptcy Court entered the Bidding Procedures Order. Pursuant to the Bidding Procedures Order, the Court authorized the Debtors to enter into an asset purchase agreement (the “APA”), substantially in the form attached as Exhibit D to the Motion, for the sale of substantially all of the Debtors’ assets, subject to higher or better offers.

At the Sale Hearing, which is scheduled to take place on **June __, 2017 at 10:00 a.m. (Prevailing Eastern Time)** before the Honorable Mary Kay Vyskocil, U.S.B.J., United States Bankruptcy Court for the Southern District of New York, Courtroom 501, One Bowling Green, New York, NJ 10004, the Debtors may seek to assume and assign to a purchaser of the Assets certain executory contracts (“Contracts”) or unexpired leases (“Leases”). You have been identified

¹ The Debtors in these chapter 11 cases and the last four digits of their tax identification numbers are: Gracious Home LLC (6822); Gracious Home Holdings LLC (3251); Gracious Home Payroll LLC (3681); GH East Side LLC (3251); GH West Side LLC (3251); GH Chelsea LLC (3251) and Gracious (IP) LLC (3251). The latter four entities are disregarded for tax purposes and do not have their own tax identification numbers, but use that of Gracious Home Holdings LLC. The address of the Debtors’ corporate headquarters is 1210 Third Avenue, New York, New York 10021.

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

as a party to a Contract or Lease that the Debtors may seek to assume and assign. The Contract(s) or Lease(s) with respect to which you have been identified as a non-Debtor party, and the corresponding proposed amount that the Debtors have determined to be necessary to be paid to cure any existing default under such Contract or Lease (the “Cure Amount”), are set forth on Exhibit A annexed hereto.³ In the event the Debtors were unable to establish that a default exists, the relevant Cure Amount was set at \$0.00.

In the event that the list of Contracts is changed, by way of addition or removal of executory contracts or unexpired leases from the list, the Debtors shall notify the non-Debtor counterparty to such added or removed executory contract or unexpired lease of any such modification.

Objections, if any, to (i) the proposed Cure Amount (a “Cure Objection”) or (ii) the assumption and assignment of any Assumed Contract to purchaser, including, but not limited to, objections relating to whether Purchaser can provide adequate assurance of future performance (a “Purchaser Assumption Objection”), must be filed seven (7) days before the Sale Hearing; provided, however, that in the event that a Purchaser has not been identified prior to such deadline, or if an executory contract or unexpired lease is added to the list of Assumed Contracts it proposes to be assumed and assigned subsequent to such deadline, any Cure or Purchaser Assumption Objection as to any such added executory contract or unexpired lease shall be filed no later than seven (7) days following service of notice on the non-Debtor counterparty to such added executory contract or unexpired lease. Any Cure Objection or Purchaser Assumption Objection must be served so as to be actually received by on or before the applicable deadline. Any Cure Objection must state with specificity what cure is required (with appropriate documentation in support thereof). If a Cure Objection and/or Purchaser Assumption Objection is timely filed and served, a hearing with respect to the Purchaser Assumption Objection will be held at the Sale Hearing, or such other date set by the Bankruptcy Court. In the event an executory contract or unexpired lease is added to the list of Purchaser Assumed Contracts, or the Purchaser is identified later than seven (7) days before the Sale Hearing, a hearing with respect to a Cure or Purchaser Assumption Objection related to such added executory contract or unexpired lease will not be heard by the Court at the Sale Hearing absent consent of the non-Debtor counterparty; rather, such hearing will be scheduled by the parties to take place as soon as practicable but no later than the Closing Date.

Any Cure Objection or Purchaser Assumption Objection must be filed with the Clerk of the Court, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 1004-1408, and served on (a) the Debtors, 1210 Third Avenue, New York, New York Attn: Robert Morrison (rmorrison@gracioushome.com); (b) counsel for the Debtors, Trenk, DiPasquale, Della Fera & Sodono, P.C., 347 Mt. Pleasant Ave., Suite 300, West Orange, New Jersey 07052, Attn: Joseph J. DiPasquale (jdipasquale@trenklawfirm.com) and Irena M. Goldstein (igoldstein@trenklawfirm.com); (c) counsel for the Committee, Seward & Kissel LLP, One Battery Park Plaza, New York, New York 10004, Attn: John R. Ashmead (ashmead@sewkis.com), Robert J. Gayda (gayda@sewkis.com) and Catherine LoTempio (lotempio@sewkis.com); and (d) counsel for the Debtors’ DIP Lender, Arent Fox LLP, 1675

³ The inclusion of a Contract or Lease on the annexed exhibit does not constitute a determination that such Contract or Lease is an executory contract and/or unexpired lease under section 365 of the Bankruptcy Code. References to all Contracts and Leases listed on the annexed exhibit include any and all amendments, modifications or replacements related thereto, and any and all related agreements. The Debtors reserve the right to add Contracts or Leases to the annexed exhibit.

Broadway, New York, New York 10019, Attn: Robert M. Hirsch, Esq. (Robert.Hirsh@arentfox.com) (collectively, the “Objection Notice Parties”) so as to be actually received on or before the applicable objection deadline.

To the extent the Debtors become aware that a Contract or Lease was not included in Exhibit A annexed hereto (a “Missing Contract”), the Debtors will serve a supplemental notice (the “Supplemental Assumption Notice”) on the non-Debtor counterparty to such Missing Contract setting forth (i) the title of the Missing Contract, (ii) the name of the non-Debtor counterparty to such Missing Contract and (iii) the Debtors’ good faith estimate as to the Cure Amount to cure all existing defaults under such Missing Contract. Any Cure Objection or Purchaser Assumption Objection by a non-Debtor counterparty to a Missing Contract must be filed with the Court and served so as to be actually received by the Objection Notice Parties as set forth above.

If no Cure Objection or Purchaser Assumption Objection is received by the applicable deadline, (a) the Contract or Lease shall be deemed assumed effective as of the date of the closing of the Sale, (b) the Cure Amount set forth in the Assumption Notice shall be controlling, notwithstanding anything to the contrary in any Contract or Lease or any other document, and (c) the non-Debtor counterparty to the Contract or Lease shall be forever barred from asserting any other claims against the Debtors, Purchaser or other Successful Bidder, as applicable, or the property of either of them, as to such Contract or Lease.

Except as may otherwise be agreed to by the parties to a Contract or Lease, upon the closing of the Sale, Purchaser or other Successful Bidder, as applicable, shall pay all Cure Amounts in cash. In the event of a dispute regarding the Cure Amount, and following entry of a final order resolving such dispute, any such payments required shall be made as soon as practicable thereafter.

If you agree with the Cure Amount identified on **Exhibit A** annexed hereto, and have no other objection to the Sale or the potential assumption and assignment of your Contract or Lease to Purchaser or other Successful Bidder, you need not take any further action.

Dated: New York, New York
May __, 2017

**TRENK, DiPASQUALE,
DELLA FERA & SODONO, P.C.**

By: /s/ Joseph J. DiPasquale
347 Mount Pleasant Avenue, Suite 300
West Orange, New Jersey 07052
(973) 243-8600
-and-
45 Rockefeller Plaza, Suite 2000
New York, New York 10111
(212) 899-5245
Joseph J. DiPasquale
Irena M. Goldstein

Counsel for Debtors and Debtors in Possession

Exhibit A to Assumption Notice

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

GRACIOUS HOME LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 16-13500 (MKV)

(Jointly Administered)

EXECUTORY CONTRACTS AND UNEXPIRED LEASES²

Non-Debtor Counter Party to Contract	Contract	Cure Amount

4842-9599-8537, v. 1

¹ The Debtors in these chapter 11 cases and the last four digits of their tax identification numbers are: Gracious Home LLC (6822); Gracious Home Holdings LLC (3251); Gracious Home Payroll LLC (3681); GH East Side LLC (3251); GH West Side LLC (3251); GH Chelsea LLC (3251) and Gracious (IP) LLC (3251). The latter four entities are disregarded for tax purposes and do not have their own tax identification numbers, but use that of Gracious Home Holdings LLC. The address of the Debtors' corporate headquarters is 1210 Third Avenue, New York, New York 10021.

² The inclusion of a Contract or Lease herein does not constitute a determination that such Contract or Lease is an executory contract and/or unexpired lease under section 365 of the Bankruptcy Code. References to all Contracts or Leases listed herein include any and all amendments, modifications or replacements related thereto, and any and all related agreements. The Debtors reserve the right to add Contracts or Leases to this list.

EXHIBIT F

Post Auction Notice

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

GRACIOUS HOME LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 16-13500 (MKV)

(Jointly Administered)

NOTICE OF SUCCESSFUL BIDDER

PLEASE TAKE NOTICE THAT:

1. Pursuant to the Order (I) Approving the Bidding Procedures for the Sale of the Assets; (II) Establishing the Notice Procedures and Approving the Form and Manner of Notice Thereof; (III) Scheduling a Sale Hearing; and (IV) Granting Related Relief (the “Bidding Procedures Order”) entered by the United States Bankruptcy Court for the Southern District of New York on May __, 2017, Gracious Home LLC and certain of its affiliated debtors in the above-captioned chapter 11 cases, as the debtors and debtors in possession (collectively, the “Debtors”) conducted an auction (the “Auction”) on June __, 2017 at 45 Rockefeller Plaza, Suite 2000, New York, New York 10111

2. At the conclusion of the Auction, in accordance with the Bidding Procedures Order, the Debtors identified the following Successful Bidder for the Purchased Assets: _____ (the “Successful Bidder”).² The terms of the bid are set forth in the APA, dated _____, 2017, entered into by and among the Debtors and Successful Bidder.

3. A hearing to approve the Sale Transaction (the “Sale Hearing”) will be held at 10:00 a.m. (Prevailing Eastern Time) on June __, 2017, or as soon thereafter as counsel and interested parties may be heard. The Sale Hearing will take place before the Honorable Mary Kay Vyskocil, at the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing.

¹ The Debtors in these chapter 11 cases and the last four digits of their tax identification numbers are: Gracious Home LLC (6822); Gracious Home Holdings LLC (3251); Gracious Home Payroll LLC (3681); GH East Side LLC (3251); GH West Side LLC (3251); GH Chelsea LLC (3251) and Gracious (IP) LLC (3251). The latter four entities are disregarded for tax purposes and do not have their own tax identification numbers, but use that of Gracious Home Holdings LLC. The address of the Debtors’ corporate headquarters is 1210 Third Avenue, New York, New York 10021.

² Capitalized terms not otherwise defined in this notice shall have the meanings given to them in the Bidding Procedures approved as part of the Bidding Procedures Order.

Dated: New York, New York
_____, 2017

**TRENK, DiPASQUALE,
DELLA FERA & SODONO, P.C.**

By: /s/ Joseph J. DiPasquale
347 Mount Pleasant Avenue, Suite 300
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Irena M. Goldstein

Counsel for Debtors and Debtors in Possession

4815-0134-8681, v. 1

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Counsel for Debtors and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

GRACIOUS HOME LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 16-13500 (MKV)

(Jointly Administered)

**DECLARATION OF ADAM M. ROSEN IN SUPPORT OF
DEBTORS' MOTIONS FOR (I) AN ORDER (A) APPROVING
THE BIDDING PROCEDURES FOR A SALE, (B) ESTABLISHING
THE NOTICE PROCEDURES, (C) SCHEDULING A HEARING ON
THE SALE, AND (D) GRANTING RELATED RELIEF, (II) AN
ORDER (A) APPROVING THE SALE OF THE ASSETS FREE AND
CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND
OTHER INTERESTS, (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS AND LEASES, AND (C) GRANTING RELATED RELIEF
AND (III) AN ORDER SHORTENING TIME FOR HEARING ON THE MOTION TO
APPROVE THE BIDDING PROCEDURES FOR A SALE**

¹ The Debtors in these chapter 11 cases and the last four digits of their tax identification numbers are: Gracious Home LLC (6822); Gracious Home Holdings LLC (3251); Gracious Home Payroll LLC (3681); GH East Side LLC (3251); GH West Side LLC (3251); GH Chelsea LLC (3251) and Gracious (IP) LLC (3251). The latter four entities are disregarded for tax purposes and do not have their own tax identification numbers, but use that of Gracious Home Holdings LLC. The address of the Debtors' corporate headquarters is 1210 Third Avenue, New York, New York 10021.

I, Adam Rosen, make this Declaration, under penalty of perjury, pursuant to 28 U.S.C. § 1746:

1. I am older than 21 years of age and suffer no legal disability.
2. I am a Managing Director at B. Riley & Co. ("BRC"), which is the restructuring advisor to the above captioned debtors-in-possession (the "Debtors"). I submit this Declaration in support of the *Debtors' Motion for (I) an Order (A) Approving the Bidding Procedures for a Sale, (B) Establishing the Notice Procedures, (C) Scheduling a Hearing on the Sale, and (D) Granting Related Relief and (II) an Order (A) Approving the Sale of the Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, (B) Approving the Assumption of Executory and Assignment of Contracts and Leases, and (C) Granting Related Relief* (the "Motion").²
3. I am fully familiar with the facts and circumstances set forth herein. I am authorized to submit this Declaration on behalf of the Debtors, and if called upon to testify, I could and would testify competently to the facts set forth herein.
4. As stated above, I am a Managing Director at BRC, where I have worked since April 2016. Before that, I was a Director at PricewaterhouseCoopers since 2009, and I have over 15 years of experience in the field of rendering financial advisory and corporate finance related services in bankruptcy, workouts, and restructuring scenarios. I have advised private equity firms, hedge funds, corporations, labor unions, and unsecured creditors on a wide array of transactions, including refinancings, recapitalizations, and chapter 11 bankruptcies. I received my M.B.A. from Fordham University and B.S. from Union College.

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

The Debtors' Business

5. The Debtors' re-start of their business operations at its New York City location has been successful thus far. The Debtors' financial performance continues to improve, with in-store sales increasing approximately 35%, on average, on a weekly basis since the arrival of new merchandise.

6. Moreover, the Debtors' recently relaunched their ecommerce business on April 28, 2017 which has already begun generating sales. The Debtors believe the continued growth of the in-store business and launch of the on-line business will continue to attract interest from prospective acquirers currently conducting diligence..

Marketing and Sale Process

7. Beginning in December 2016, B. Riley began a process explore strategic alternatives, including a sale of the business; minority and majority investments (either via debt, equity or both); debt financing and other potential investment/acquisition structures. As part of these efforts, B. Riley and the Debtors solicited interest for a potential acquisition and/or investment in the Debtors' business from approximately 100 parties. B. Riley's marketing efforts included contacting potential strategic and financial acquirors/investors. It is my opinion that the marketing process has been and will continue to be fair to all parties who want to participate, given the extensive search for potential purchasers and the subsequent bid process contemplated by the proposed Bidding Procedures Order.

8. In this regard, the Debtors and their advisors have met, and continue to meet, with numerous entities, including the DIP Lender (defined in the Motion), interested in acquiring the Debtors' business pursuant to sections 363 and 365 of the Bankruptcy Code, free and clear of all liens, claims and encumbrances pursuant to an asset purchase agreement (an "APA"). Certain

potential buyers/investors have signed non-disclosure agreements and conducted due diligence in consideration of a potential acquisition of the Debtors' business operations. In connection with this process, B. Riley contacted approximately 100 parties specifically about the sale of the Debtors' Assets, of which 25 executed a non-disclosure agreement ("NDA"). B. Riley provided due diligence to all of the parties that executed a NDA and maintained a data room containing extensive financial, operating and corporate information.

9. Despite strong interest, no party has yet submitted a final proposal for a sale transaction acceptable to the Debtors. The Debtors and their advisors continue to market the Debtors' business to potential strategic and financial investors and will do so until the Bid Deadline.

10. It is my opinion that proceeding with a post-petition marketing and competitive bidding and auction process will result in the highest or best bids for the Debtors' assets. The goal of the process is to have bidders submit offers for the Debtors' assets, whether or not such assets are included in any Stalking Horse Bid, and, to the extent appropriate and permitted by the Bidding Procedures, consider bids in effort to obtain the maximum value for the Debtors' assets, maximize the value of the Debtors' estates, and preserve the Debtors' business. As set forth herein, the Debtors and their advisors have made extensive marketing efforts in an attempt to secure a purchaser for the Assets, including meeting with prospective. Based on my prior experience in these types of transactions, the marketing process and bidding procedures requested in the Motion will produce the highest and best offer for the Assets.

11. Due to the extensive marketing conducted by B. Riley prior to filing the Motion, it is my opinion that publication notice of the Sale is unnecessary as it is unlikely to bring in additional interested purchasers and will only be a further financial burden on the estate. Moreover, the bar date for both general claims and governmental claims will have passed by the time of the Sale Hearing, so

the Debtors will be aware of any liens, claims, or encumbrances on the Assets.

12. The Debtors need as much time as possible between the entry of the bidding procedures and the ultimate sale hearing to ensure that the marketing of the Assets is as robust as possible. The sale hearing must be heard before the end of June because the DIP Facility requires the Debtors to file a plan of reorganization and disclosure statement by June 30, 2017. See February 2, 2017 Senior Secured, Super-Priority Debtor-in-Possession Loan and Security Agreement with lender Gracious Home Lending LLC, at §8.1(b). [ECF 201]).

13. In addition, the sale process must be commenced as soon as possible to ensure the Debtors have sufficient liquidity to continue marketing the assets and ultimately close a transaction.

14. Accordingly, the motion with respect to the Bidding Procedures must be heard as soon as possible.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: May 23, 2017

/s/ Adam M. Rosen

Adam M. Rosen
Managing Director
B. Riley & Co.

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Counsel for Debtors and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

GRACIOUS HOME LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 16-13500 (MKV)

(Jointly Administered)

**DECLARATION OF ROBERT MORRISON IN SUPPORT OF
DEBTORS' MOTION FOR (I) AN ORDER (A) APPROVING
THE BIDDING PROCEDURES FOR A SALE, (B) ESTABLISHING
THE NOTICE PROCEDURES, (C) SCHEDULING A HEARING ON
THE SALE, AND (D) GRANTING RELATED RELIEF AND (II) AN
ORDER (A) APPROVING THE SALE OF THE ASSETS FREE AND
CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND
OTHER INTERESTS, (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS AND LEASES, AND (C) GRANTING RELATED RELIEF**

I, Robert Morrison, make this Declaration, under penalty of perjury, pursuant to 28

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U.S.C. § 1746:

1. I am older than 21 years of age and suffer no legal disability.

2. I am the Chief Executive Officer of the above-captioned debtors and debtors-in-possession (the “Debtors”). I submit this Declaration in support of *Debtors’ Motion for (I) an Order (A) Approving the Bidding Procedures for a Sale, (B) Establishing the Notice Procedures, (C) Scheduling a Hearing on the Sale, and (D) Granting Related Relief and (II) an Order (A) Approving the Sale of the Assets Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, (B) Approving the Assumption and Assignment of Executory Contracts and Leases and (C) Granting Related Relief* (the “Motion”).² filed simultaneously herewith. Except as otherwise indicated, all facts set forth herein are based upon my personal knowledge or my discussions with other representatives of the Debtors and, if called as a witness, I would testify competently thereto.

3. Since commencing the instant bankruptcy, the Debtors and their advisors have been engaged in a process to market and sell substantially all of the Debtors’ assets, with the goal of maximizing value for the Debtors’ estates, while preserving the Debtors’ business and associated jobs. To that end, the Debtors now seek Court approval of the sale of the Debtors’ Assets (as that term is defined in the Motion).

4. The Debtors, in conjunction with their advisors, have determined that entering into an Asset Purchase Agreement for the sale of the Debtors’ Assets will provide the greatest return to the Debtors’ estates.

5. The Debtors, with the assistance of their advisors, have diligently attempted to obtain a stalking horse bidder for the Debtor’s assets. While the Debtors’ business continues to improve, absent additional investment or infusion of cash the Debtors may run out of cash and be

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

unable to continue operations beyond June 2017.

6. As described in the Motion, the Debtors' assets have been extensively marketed since the beginning of the bankruptcy to a broad group of strategic and financial buyers, and substantial information regarding the Debtor's business and operations was made available during the process. Therefore, in my opinion, a sale hearing is necessary to maximize the value of the Debtors' estate.

7. It is my business judgment that the value of the Debtors' assets is closely tied to and is greatly enhanced by its employees and the greatest value will be realized for creditors in a going-concern sale of substantially all of the Debtors' assets.

I declare under penalty of perjury that to the best of my knowledge and after reasonable inquiry, the foregoing is true and correct.

Executed on this 23rd day of May 2017

/s/ Robert Morrison
Robert Morrison, CEO