

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)

GREENBERG TRAURIG LLP

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Debtors-in-Possession*

In re:

Optical Holdings of Puerto Rico, LLC, *et al.*,

Debtors.

Case No.: 18-29070 (SLM)

Judge: Honorable Stacey L. Meisel

Chapter: 11

NOTICE OF MOTION FOR ENTRY OF AN ORDER APPROVING AND AUTHORIZING (I) BID PROCEDURES AND FORM OF NOTICE IN CONNECTION WITH THE SALE OF OHI OF PUERTO RICO LLC'S ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS, (II) STALKING HORSE AGREEMENT AND BID PROTECTIONS, (III) THE SCHEDULING OF A SALE HEARING, (IV) SALE TO THE PURCHASER SUBMITTING THE HIGHEST OR BEST OFFER, (V) PROCEDURES FOR ASSUMING AND ASSIGNING OR REJECTING EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (VI) WAIVING THE FOURTEEN DAY STAY PROVIDED BY FED. R. BANKR. P. 6004, AND (VII) RELATED RELIEF

PLEASE TAKE NOTICE that, on the date specified in the Order Shortening Time, or as soon thereafter as this matter may be heard, Greenberg Traurig, LLP, counsel for Optical Holdings of Puerto Rico, LLC ("Optical Holdings") and OHI of Puerto Rico LLC ("OHI", and together with Optical Holdings, the "Debtors"), the above-captioned debtors and debtors-in-Possession in the above matter, shall move before the Honorable Stacey L. Meisel, U.S.B.J., at the United States Bankruptcy Court for the District of New Jersey, Martin Luther King, Jr. Federal Building, 50 Walnut Street, Third Floor, Newark, New Jersey 07102 for entry of an Order approving and authorizing, among other things: (I) Bid Procedures and Form of Notice in Connection With the Sale of OHI of Puerto Rico LLC's Assets Free and Clear of All Liens,

Claims, Encumbrances, and Interests, (II) Stalking Horse Agreement and Bid Protections, (III) the Scheduling of a Sale Hearing, (IV) the Sale to the Purchaser Submitting the Highest or Best Offer, (V) Procedures for Assuming and Assigning or Rejecting Executory Contracts and Unexpired Leases, (VI) Waiving the Fourteen Day Stay Provided by Fed. R. Bankr. P. 6004, and (VII) Related Relief (the "Motion").

PLEASE TAKE FURTHER NOTICE that, the Debtors shall rely upon the Certification of Randy Nissinoff and Memorandum of Law filed simultaneously herewith in support of the Motion. Proposed Orders are also being submitted simultaneously herewith relating to the bidding procedures and the approval of the successful bidder.

PLEASE TAKE FURTHER NOTICE that, objections, if any, to the relief requested in the Motion shall be filed in accordance with the applicable rules of this Court and the Order Shortening Time.

PLEASE TAKE FURTHER NOTICE that, unless objections are timely filed, the Motion may be decided on the papers in accordance with D.N.J. LBR 9013-3(d), and the relief requested may be granted without further notice or hearing.

PLEASE TAKE FURTHER NOTICE that, in accordance with D.N.J. LBR 9013-3(e), unless the Court authorizes otherwise prior to the hearing date hereof, no testimony shall be taken at the hearing except by certification or affidavit.

GREENBERG TRAUERIG, LLP
Attorneys for the Debtors and Debtors-in-Possession

By: /s/ Alan J. Brody
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Dated: February 19, 2019

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In re:

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Debtors.

Case No.: 18-29070 (SLM)

Judge: Honorable Stacey L. Meisel

Chapter: 11

**CERTIFICATION OF DR. RANDY NISSINOFF IN SUPPORT OF
MOTION OF DEBTOR FOR THE ENTRY OF AN ORDER APPROVING
AND AUTHORIZING (I) BID PROCEDURES AND FORM OF NOTICE
IN CONNECTION WITH THE SALE OF OHI OF PUERTO RICO LLC'S
ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS,
ENCUMBRANCES AND INTERESTS, (II) STALKING HORSE
AGREEMENT AND BID PROTECTIONS, (III) THE SCHEDULING OF A
SALE HEARING, (IV) SALE TO THE PURCHASER SUBMITTING THE
HIGHEST OR BEST OFFER, (V) PROCEDURES FOR ASSUMING AND
ASSIGNING OR REJECTING EXECUTORY CONTRACTS AND
UNEXPIRED LEASES, (VI) WAIVING THE FOURTEEN DAY STAY
PROVIDED BY FED. R. BANKR. P. 6004, AND (VII) RELATED RELIEF**

I, Randy Nissinoff, of full age, hereby certify as follows:

1. I am the Co-Chief Executive Officer, Co-President, Co-Chief Financial Officer and Co-Secretary of each of Optical Holdings of Puerto Rico, LLC ("Optical Holdings") and OHI of Puerto Rico LLC ("OHI", and together with Optical Holdings, the "Debtors") the above-captioned debtors and debtors-in-possession. As such, I have knowledge of the facts set forth herein. If I were called upon to testify, I would testify to the facts set forth in this Certification.

2. I submit this Certification in support of the Debtors Motion for Entry of an Order pursuant to sections 105(a), 363(b), (f) and (m), and 365 of the Bankruptcy Code, Rules 2002 and 6004 of the Bankruptcy Rules, and D.N.J. LBR 6004, approving and authorizing, among other things: (I) Bid Procedures and Form of Notice in Connection With the Sale of OHI of Puerto Rico LLC's Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (II) Stalking Horse Agreement and Bid Protections, (III) the Scheduling of a Sale Hearing, (IV) the Sale to the Purchaser Submitting the Highest or Best Offer, (V) Procedures for Assuming and Assigning or Rejecting Executory Contracts and Unexpired Leases, (VI) Waiving the Fourteen Day Stay Provided by Fed. R. Bankr. P. 6004, and (VII) Related Relief (the "Motion").¹

3. On September 25, 2018 (the "Petition Date"), the Debtors filed voluntary petitions under chapter 11 of the United States Bankruptcy Code (the "Bankruptcy Code"). The Debtors continue to operate their business and manage its property as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

FACTUAL BACKGROUND

(General Background)

4. The full factual background relating to the Debtors' commencement of these Chapter 11 Cases is set forth in detail in my Declaration in Support of First Day Motions filed on September 25, 2018 [Doc. No. 8] and incorporated herein.

5. The Debtors were formed in 2015 for the purpose of operating eleven (11) Pearle Vision® optical eye care centers through a license agreement with Luxottica Retail North America, Inc.

¹ Capitalized terms not defined herein shall have the same meanings provided in the Motion.

6. Shortly after the Debtors began operating the stores, the Debtors were faced with the reality that many of the stores were operating at a loss or otherwise needed substantial capital to operate. As a result, for the three years after acquiring the stores, the Debtors invested over \$2.5 million to update their stores and divested unprofitable locations.

7. The Debtors' largest capital expenditure was to remodel what is now their remaining operating store -- located in Plaza Las Americas in San Juan, PR. The remodeling took over a year to complete and the Debtors spent over \$725,000. The remodeling was completed in December 2016.

8. The capital-intensive endeavor created liquidity issues and the Debtors fell behind on their payments to vendors. Accordingly, the Debtors spent the first half of 2017 improving their vendor relationships and satisfying outstanding obligations. However, in September 2017, Hurricane Maria devastated the island, significantly disrupting the Debtors' operations and thwarting their restructuring efforts.

9. At the time Hurricane Maria hit the island, the Debtors had ten operating stores. As widely reported in the press, the Hurricane caused an island-wide shut down for nearly three months. Most of the Debtors' stores faced business interruption from September 2017 through November 2017.

10. Further, five of the Debtors' stores experienced significant flooding. The moisture, together with the heat, caused mold that destroyed substantially everything in the stores. These five stores remained closed because, among other reasons, the Debtors did not have sufficient capital to rebuild them. The leases for all of these stores expired prior to the Petition Date.

11. The impact of Hurricane Maria also accelerated the Debtors' divestiture of stores. The Debtors chose not to renew a month-to-month lease for one of their stores in order to conserve capital and reduce corporate overhead. The Debtors also sold three of their stores to another franchisee in 2018 for \$125,000. The sale brought in needed funds; it also cut the Debtors' costs while they sought to stabilize their remaining operations.

12. As a result, as of the Petition Date, the Debtors have only one operating store -- in Plaza Las Americas.

13. OHI submits this Motion seeking to sell, assign, transfer, convey and deliver to the Successful Bidder (defined below) all of its collective rights, title, and interest in all or substantially all of the Seller's assets (the "Purchased Assets").

(Retention of Sun and Marketing of Assets)

14. The Debtors, in the exercise of their business judgment, have determined to sell all or substantially all of OHI's assets and believes that an open sale process will achieve a fair market price and maximize value to its various creditor constituencies. In furtherance of this objective, the Debtors intend to market OHI's business and assets and intend to sell OHI's business and assets to the highest or otherwise best qualified offer submitted by a bidder (the "Successful Bidder").

15. On November 27, 2018, the Debtors filed an application to retain Sun Mergers and Acquisitions, LLC ("Sun") in the Chapter 11 Cases to market and sell the Purchased Assets. On January 8, 2019, the Bankruptcy Court entered an Order authorizing the Debtors to retain Sun as its business broker in the Chapter 11 Cases. Sun has been and will continue to market OHI's assets throughout the sale process in an effort to obtain the highest and best offer for the Assets.

16. Subject to Bankruptcy Court approval, the Debtors propose to pay Sun in accordance with the Retention Agreement attached as Exhibit A to the Certification of Stephen Goldberg filed in support of the Debtors' application to retain Sun in the Chapter 11 Cases. To summarize, at closing, Sun would receive a contingent commission fee of 6% of first \$5 million, 5% of next \$5 million, and 4% thereafter of the total consideration based on its success in closing a sale of OHI's assets. Sun will not receive a commission from a transaction with me, William Noble, or any entity formed by me or William Noble.

(Bid Procedures and Stalking Horse Bidder Protections)

17. Island Optical, LLC, an entity formed by William Noble and I, will be the stalking horse bidder (the "Stalking Horse Bidder") for the Assets.

18. OHI and the Stalking Horse Bidder have substantially negotiated the terms of an asset purchase agreement (the "Stalking Horse Agreement") that will serve as the stalking horse bid (the "Stalking Horse Bid"). In addition, the Debtors are currently working with Sun in compiling information that will be responsive to due diligence requests from the Stalking Horse Bidder so that the same information will be available to other potential bidders.

19. The Stalking Horse Agreement is attached as Exhibit A² to the proposed *Order Approving and Authorizing (I) Bid Procedures and Form of Notice in Connection With the Sale of OHI of Puerto Rico LLC's Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (II) Stalking Horse Agreement and Bid Protections, (III) the Scheduling of a Sale Hearing, (IV) the Sale to the Purchaser Submitting the Highest or Best Offer, (V) Procedures for Assuming and Assigning or Rejecting Executory Contracts and Unexpired Leases (VI) Waiving the Fourteen Day Stay Provided by Fed. R. Bankr. P. 6004, and (VII) Related Relief* (the "Bid Procedures Order") filed simultaneously with the Motion and incorporated herewith by

² The Stalking Horse Agreement attached as Exhibit A is substantially in the form to be executed by the parties.

reference. A proposed *Order (I) Authorizing the Sale of Substantially all of OHI of Puerto Rico LLC's Assets Free and Clear of All Claims, Liens, Rights, Interests and Encumbrance, (II) Approving the Asset Purchase Agreement, and (III) Authorizing OHI of Puerto Rico to Assume and Assign Certain Executory Contracts and Unexpired Leases* is also filed simultaneously with the Motion.

20. OHI has agreed to provide the Stalking Horse Bidder, subject to Bankruptcy Court approval, certain bidding protections, including a breakup fee in the amount of \$150,000 and expense reimbursement in the amount of \$50,000 (the "Stalking Horse Protections").

21. By way of this Motion, OHI seeks the Bankruptcy Court's approval of the bidding procedures (the "Bid Procedures")³ as set forth in detail in the Bid Procedures Order. OHI believes that establishing the procedures described in the Bid Procedures Order for bidding on the Purchased Assets will allow it to promptly review, analyze and compare all bids received and determine if a bid or bids are in the best interests of the Debtors' bankruptcy estates.

22. The Bid Procedures have been negotiated between the Debtors and the Stalking Horse Bidder with compromises from both sides.

23. The goal of the Debtors in negotiating the Bid Procedures was the need to balance (a) the potential Stalking Horse Bidder's request for reasonable protections, in light of its willingness to provide the Debtors with a "floor" transaction, the expenses and other resources it was likely to devote toward a potential transaction, with (b) the Debtors' desire to induce other parties with financial ability to conduct due diligence, make a bid, and participate in an auction that would create competitive bidding toward a higher and better offer. The Debtors believe that the Stalking Horse Protections are appropriate in light of the size of the transaction and the expenses to be incurred by the Stalking Horse Bidder.

³ The Bid Procedures set forth in the Motion are voluminous and thus incorporated by reference herein.

24. The Bid Procedures are required by the Stalking Horse Bidder as an inducement, and the Stalking Horse Bidder is relying on the Stalking Horse Protections and approval of the Bid Procedures in agreeing to serve as the Stalking Horse Bidder.

25. By the same token, the Bid Procedures provide the Debtors with the opportunity to consider competing bids and select the highest or otherwise best offer for the completion of the sale. The Debtors believe that by entering into the Stalking Horse Agreement with the Stalking Horse Bidder it has a better opportunity to obtain fair market value, by setting a minimum purchasing price that will be tested in the marketplace.

26. Subject to Court approval, within three (3) business days after entry of an order approving the Bid Procedures, the Debtors propose sending a Notice of Sale attached as Exhibit B to the Bid Procedures Order (the "Notice of Sale"), upon (i) all entities reasonably known to have expressed an interest in a transaction with respect to some or all of the Assets, (ii) all entities known to have asserted interests against the Assets, (iii) all of the Debtors' creditors, unless otherwise limited by Court order, (iv) the Office of the United States Trustee, and (v) those parties that request notice of pleadings in the Debtors' Chapter 11 Cases pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. The Notice of Sale will include the following: (i) information regarding the filing of this Motion, the entry of the Bid Procedures Order, and how to obtain a copy, (ii) the Bid Deadline, (iii) the date, time, and place of the auction, (iv) the notice of stalking horse bidder, (v) the date, time and place of the Sale Hearing, and (vi) the deadline for objecting to the sale.

27. The proposed Bid Procedures Order provides for a Bid Deadline as of April 8, 2019. The Debtors anticipate conducting an auction on April 15, 2019 at 11:00 a.m., at the

offices of their counsel, Greenberg Traurig, LLP, 500 Campus Drive, Florham Park, New Jersey 07932.

28. The Debtors believe that establishing the Bid Procedures described in the Bid Procedures Order for bidding on the Purchased Assets will allow them to promptly review, analyze and compare all bids received and determine if a bid or bids are in the best interests of the Debtors' bankruptcy estate.

29. The Debtors propose that within one (1) business day after the conclusion of the Auction (or Bid Deadline as the case may be), they will file with the Bankruptcy Court, a supplement outlining the identity of the Successful Bidder of the Purchased Assets and the purchase price received therefore.

30. The Debtors request that the Bankruptcy Court set a Sale Hearing to approve the Debtors' selection of the highest or best bid and the remainder of the relief requested in the Motion on or about April 16, 2019 (the "Sale"), and further requests that any objections to the Sale, must be in writing, filed with the Court, and actually received by (i) the attorneys for the Debtors, (ii) the Office of the U.S. Trustee, and (iii) the attorney for the Stalking Horse Bidder, on or before April 9, 2019 at 1:00 p.m. (Eastern Time) (the "Sale Objection Deadline").

(Terms of Sale)

31. As set forth above, the Stalking Horse Agreement which will serve as the basis for Qualified Bids is attached as Exhibit A to the Bid Procedures Order filed with the Motion.

32. The salient terms of the Stalking Horse Agreement are as follows:

- a. The Stalking Horse Bid consists of the following:
 - i) Assumed Liabilities in the approximate amount of \$564,000.00;
 - ii) Cure Costs; and

- iii) accrued employee vacation and sick pay for transferred employees.
- b. Subject to the terms of a negotiated asset purchase agreement, the Purchased Assets will be sold to the Stalking Horse Bidder (or any Successful Bidder) free and clear of all existing liens, claims, and encumbrances pursuant to section 363 of the Bankruptcy Code for a sum that is determined to be the highest or otherwise best bid, which bid shall provide for, *inter alia*, payment of a minimum cash amount not less than the amount required to satisfy the Assumed Liabilities and Cure Costs.
- c. The Purchased Assets are being sold “AS IS, WHERE IS” with no representations of any kind.
- d. The parties’ target that the closing and consummation of the sale of the Purchased. Assets will occur on or before April 19, 2019.
- e. The Successful Bidder may assume, agree to pay, discharge or satisfy any debt, liability, or obligation of OHI, provided that the Successful Bidder, independent of OHI, reaches an agreement with the affected creditor.
- f. The sale price must at least satisfy the Assumed Liabilities and Cure Costs, and any competitive bids must be at least \$50,000 more than the Stalking Horse Bid (the “Minimum Overbid”).
- g. Sale does not contain any contingencies, including, without limitation, financing conditions or contingencies, other than those agreed to by the Debtors and/or any other affected creditors.
- h. Successful Bidder must include a list of all executory contracts of OHI the buyer will require OHI to assume and assign, a statement that the buyer will assume all cure costs associated with all executory contracts being assumed and sufficient information to satisfy the adequate assurance requirements for the assumption of any executory contracts.

33. Special provisions pursuant to D.N.J. LBR 6004 set forth in the Stalking Horse

Agreement are as follows:

- a. **Sale to Insider.** Stalking Horse Bidder is owned by William Noble and myself, or any entity or entities owned or controlled by William Noble and/or myself.
- b. **Agreements with Management.** Other than that William Noble and myself are affiliated with the Stalking Horse Bidder, there are

no agreements with management in connection with the Sale of the Purchased Assets. Neither I nor William Noble have been provided any kind of payment in connection with the Sale.

- c. **Releases.** The Stalking Horse Agreement provides for releases by OHI, OHI's estate, and OHI's representatives, agents, successors and assigns, to the Stalking Horse Bidder and its affiliates, and each of their representatives, agents, counsel, advisors, successors and assigns. *See* Section 8.2 of the Stalking Horse Agreement.
- d. **Agreement Limiting Marketing or not to Solicit Competing Offers.** Not applicable.
- e. **Interim Agreement with the Proposed Purchaser.** No interim agreements with Stalking Horse Bidder or any other persons.
- f. **Use of Sale Proceeds.** The Debtors do not propose to release any of the proceeds of the sale absent further Bankruptcy Court order.
- g. **Sale of Avoidance Action.** The Stalking Horse Agreement provides for the sale to the Stalking Horse Bidder of all avoidance actions maintained by OHI pursuant to chapter 5 of the Bankruptcy Code. The Stalking Horse Bidder agrees to release the avoidance action claims under the Stalking Horse Agreement. *See* Section 1.1(t) of the Stalking Horse Agreement.
- h. **Limitation of the Proposed Purchaser's Successor Liability.** Stalking Horse Agreement does propose to limit successor liability by requiring any Sale Order provide that the Stalking Horse Bidder and any transferred employees not be subject to successor liability claims.
- i. **Sale Free and Clear of Unexpired Leases.** OHI does not own any real property.
- j. **Relief From Bankruptcy Rule 6004(h).** The Debtors seek waiver of the 14 day stay under Rule 6004(h).

(Executory Contracts and Unexpired Leases)

34. The Motion requests the Bankruptcy Court to approve certain procedures related to OHI's executory contracts and unexpired leases, including, procedures for (a) the assumption and assignment of executory contracts and leases, (b) the rejection of executory contracts and leases, and (c) the fixing of cure amounts (the "Contract and Lease Procedures").

35. The Debtors submit that the Contract and Lease Procedures summarized below are reasonable.

A. Assumption and Assignment of Executory Contracts and Unexpired Leases

36. In connection with the Sale Hearing, the Debtors will provide evidence received from the Successful Bidder that will support meeting the requirements of assumption and/or assignment of the executory contracts and unexpired leases proposed to be assigned to the purchaser of the Purchased Assets. To the extent certain executory contracts are to be assumed and assigned, it is an express condition of the Bid Procedures that Qualified Bidders submit with their Qualified Bid sufficient financial and other information to assess the bidder's compliance with section 365 of the Bankruptcy Code. The Bid Procedures further require Qualified Bidders to cure costs associated with all executory contracts being assumed.

37. The Debtors propose the following procedures in connection with the assumption and assignment of executory contracts and leases:

- a. On or before **April 2, 2019**, the Debtors shall serve a *Notice of Potential Assumption and Assignment of Executory Contracts and Leases* in the form attached as **Exhibit C** to the Bid Procedures Order on all affected parties to executory contracts and unexpired leases (the "Assumption Notice").
- b. Upon request to Debtors' counsel, the Debtors shall make available to parties to executory contracts and unexpired leases that received an Assumption Notice, the adequate assurance package provided by the Successful Bidder to support its Qualified Bid in connection with the assumption and assignment of executory contracts and unexpired leases.
- c. Any objections to the Assumption Notice based on adequate assurance of future performance, or otherwise, (other than objections to cure amounts) by a non-debtor party to such executory contracts and unexpired leases, must be in writing, filed with the Bankruptcy Court, and actually received by (i) the attorneys for the Debtors, and (ii) the Stalking Horse Bidder, and (iii) the Office of the U.S. Trustee, by the Sale Objection Deadline (April 9, 2019 at 1:00 p.m. (Eastern Time)). If a timely objection

is received, the hearing to consider any such objections will be held at the Sale Hearing (or other date to be established by the Bankruptcy Court or other agreed upon adjourned date).

- d. If no timely objection to the Assumption Notice is filed by a non-debtor party to the executory contracts and unexpired leases, (a) each such non-debtor party to the executory contracts and unexpired leases shall be forever barred from objecting to the assumption and assignment of its executory contract and unexpired lease, (b) each such non-debtor party to the executory contracts and unexpired leases is deemed to consent to the assumption and assignment of its executory contract or unexpired lease (subject to any objection to the Cure Notice) and (c) the assumption and assignment of each such executory contract and unexpired lease designated to be assumed by the buyer at the Sale shall be automatically effective as of the Closing without further Order of the Bankruptcy Court.

B. Rejection of Executory Contracts and Unexpired Leases

38. The Debtors propose the following procedures in connection with the rejection of executory contracts and leases:

- a. In the event that there are any executory contracts and unexpired leases that remain unsold at the Closing, the Debtors will serve on affected parties, a rejection notice (the "Rejection Notice") with attached proposed order (the "Rejection Order") rejecting affected executory contracts and unexpired leases in the form attached as **Exhibit D** to the Bid Procedures Order within seven (7) days of the Closing.
- b. Any objections to the Rejection Notice, must be in writing, filed with the Bankruptcy Court, and actually received by (i) the attorneys for the Debtors, (ii) the Stalking Horse Bidder, and (iii) the Office of the U.S. Trustee, within fourteen (14) days after the Debtors served the Rejection Notice. If a timely objection is received, the hearing to consider any objections will be held on a date to be scheduled by the Bankruptcy Court. If the objection is overruled by the Bankruptcy Court or withdrawn, the rejection of the affected executory contract and unexpired lease shall be deemed effective as of the date on which the Bankruptcy Court determines the rejection of the executory contract and unexpired lease effective, or as agreed to by the Debtors and the applicable counterparty (the "Rejection Effective Date"). If no timely objection to the Rejection Notice is filed and served in accordance with this Order, or if a timely objection is filed but the objection is

resolved by the Debtors and affected counterparty, the Debtors may submit the Rejection Order for entry by the Bankruptcy Court under a Certification of no Objection, or Certification of counsel, as applicable. The rejection of such executory contracts and unexpired leases shall become effective upon entry of the Rejection Order by the Bankruptcy Court.

- c. If any personal property or furniture, fixtures or equipment of OHI remain at the premises subject to an unexpired lease of real property subject to a Rejection Notice, OHI is authorized, but not directed, at any time on or before the applicable Rejection Effective Date to remove or abandon any of OHI's personal property that may be located on leased premises that are subject to a rejected lease. Absent a timely objection to the Rejection Notice, the property will be deemed abandoned pursuant to section 554 of the Bankruptcy Code, as is, effective as of the applicable Rejection Effective Date, and the landlords may dispose of any such abandoned property, in their sole discretion, without further notice or order from this Bankruptcy Court, without any liability to OHI and any third party for such disposal and without waiver of any claim the landlords may have against OHI for the disposal of such property.
- d. If an affected landlord or counterparty or any other party in interest (the "Rejection Claimant") asserts a claim or claims against OHI arising from the rejection of a executory contract and unexpired lease, such Rejection Claimant shall submit a proof of claim on or before the later of (a) the date that is thirty (30) days from entry of the Rejection Order or (b) the general bar date established by the Bankruptcy Court for filing proofs of claim against OHI. If the Rejection Claimant does not timely file such proof of claim, such claimant shall be forever barred from asserting a claim against OHI for such rejection damages.
- e. The Debtors reserve all rights to contest any claims related to its rejection of executory contracts or unexpired leases.

39. After conducting the Auction and selling the Purchased Assets, the unsold executory contracts and unexpired leases may be valueless to the Debtors and would only create an administrative expense burden on the Debtors' estates. Therefore, the Debtors request authority to reject such executory contracts and/or unexpired leases in accordance with the rejection procedures set forth above.

C. Cure Amounts

40. To enable the Debtors and its professionals to analyze the net return to the Debtors' estate (e.g., the proposed purchase price less any cure obligations), the Debtors seek to identify and fix all cure amounts set forth on a "Cure Schedule" to be filed with the Bankruptcy Court.

41. The Debtors proposes the following procedures in connection with the cure amounts related to executory contracts and leases:

- a. The Debtors shall file and serve a "Cure Schedule" on the parties to executory contracts and unexpired leases that may be assigned on or before April 2, 2019 (the "Cure Notice"). Any objections to the Cure Notice by a non-debtor party to such Contracts or Leases, must be in writing, filed with the Bankruptcy Court, and actually received by (i) the attorneys for the Debtors, (ii) the Stalking Horse Bidder, and (iii) the Office of the U.S. Trustee, on or before April 9, 2019 at 1:00 p.m. (Eastern Time).
- b. If no objection to the Cure Notice is received by a non-debtor party to the executory contracts and unexpired leases, then the cure amounts set forth in the Cure Schedule shall be binding on such non-debtor party to the executory contracts and unexpired leases for all purposes in this case and will constitute a final determination of total cure amounts required to be paid by the purchaser in connection with the assignment to, and assumption by, the Successful Bidder. Each non-debtor contracting party in connection with a executory contract and unexpired lease shall be forever barred from objecting to the cure information set forth in the Cure Schedule, including, without limitation, the right to assert any additional cure or other amounts with respect to the executory contract and unexpired lease. If a timely objection is received, the hearing to consider any objections to the proposed Cure Schedule will be held at the Sale Hearing (or other date to be established by the Bankruptcy Court or other agreed upon adjourned date).

42. The Debtors submit that the above-procedures related to cure amounts associated with executory contracts and unexpired leases are reasonable.

43. Based on the foregoing and the memorandum of law filed simultaneously herewith, the Debtors respectfully request that the Bankruptcy Court grant the Motion and enter the Bid Procedures Order.

I certify that the foregoing statements made by me are true. I am aware that if any such statements are willfully false, I am subject to punishment.

Dated: February 15, 2019



RANDY NISSINOFF

NJ 231079117v1

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)

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**MEMORANDUM OF LAW IN SUPPORT OF MOTION OF DEBTORS
FOR THE ENTRY OF AN ORDER APPROVING AND AUTHORIZING
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LEASES, (VI) WAIVING THE FOURTEEN DAY STAY PROVIDED
BY FED. R. BANKR. P. 6004, AND (VII) RELATED RELIEF**

Optical Holdings of Puerto Rico, LLC ("Optical Holdings") and OHI of Puerto Rico, LLC ("OHI", and collectively with Optical Holdings, the "Debtors"), by and through their counsel, Greenberg Traurig, LLP, respectfully submits this application and memorandum of law in support of the Motion for Entry of an Order pursuant to Sections 105(a), 363(b), (f) and (m) of the Bankruptcy Code, Rules 2002 and 6004 of the Bankruptcy Rules, and D.N.J. LBR 6004, approving and authorizing, among other things: (I) Bid Procedures and Form of Notice in

Connection With the Sale of OHI of Puerto Rico LLC's Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (II) Stalking Horse Agreement and Bid Protections, (III) the Scheduling of a Sale Hearing, (IV) the Sale to the Purchaser Submitting the Highest or Best Offer, (V) Procedures for Assuming and Assigning or Rejecting Executory Contracts and Unexpired Leases, (VI) Waiving the Fourteen Day Stay Provided by Fed. R. Bankr. P. 6004, and (VII) Related Relief (the "Motion").

JURISDICTION

1. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. Venue of this proceeding and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are sections 105(a), 363(b), (f) and (m) of title 11 of the United States Code, 11 U.S.C. §§ 101 through 1532 (the "Bankruptcy Code"), Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and D.N.J. LBR 6004.

FACTUAL BACKGROUND

A. General Background

4. On November 25, 2018 (the "Petition Date"), the Debtors filed voluntary petitions under chapter 11 of the Bankruptcy Code, commencing these chapter 11 cases (the "Chapter 11 Cases"). The Debtors continue to operate their business and manage their property as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. An official committee of unsecured creditors has not been appointed nor has a trustee or examiner been appointed in these Chapter 11 Cases.

5. The full factual background relating to the Debtors' commencement of these Chapter 11 Cases is set forth in detail in the Declaration of Dr. Randy Nissinoff in Support of First Day Motions filed on [Doc. No. 7] and incorporated herein.

6. The Debtors were formed in 2015 for the purpose of operating eleven (11) Pearle Vision® optical eye care centers through a license agreement with Luxottica Retail North America, Inc.

7. Shortly after the Debtors began operating the stores, the Debtors were faced with the reality that many of the stores were operating at a loss or otherwise needed substantial capital to operate. As a result, for the three years after acquiring the stores, the Debtors invested over \$2.5 million to update their stores and divested unprofitable locations.

8. The Debtors' largest capital expenditure was to remodel what is now their remaining operating store -- located in Plaza Las Americas in San Juan, PR. The remodeling took over a year to complete and the Debtors spent over \$725,000. The remodeling was completed in December 2016.

9. The capital-intensive endeavor created liquidity issues and the Debtors fell behind on their payments to vendors. Accordingly, the Debtors spent the first half of 2017 improving their vendor relationships and satisfying outstanding obligations. However, in September 2017, Hurricane Maria devastated the island, significantly disrupting the Debtors' operations and thwarting their restructuring efforts.

10. At the time Hurricane Maria hit the island, the Debtors had ten operating stores. As widely reported in the press, the Hurricane caused an island-wide shut down for nearly three months. Most of the Debtors' stores faced business interruption from September 2017 through November 2017.

11. Further, five of the Debtors' stores experienced significant flooding. The moisture, together with the heat, caused mold that destroyed substantially everything in the stores. These five stores remained closed because, among other reasons, the Debtors did not have sufficient capital to rebuild them. The leases for all of these stores expired prior to the Petition Date.

12. The impact of Hurricane Maria also accelerated the Debtors' divestiture of stores. The Debtors chose not to renew a month-to-month lease for one of their stores in order to conserve capital and reduce corporate overhead. The Debtors also sold three of their stores to another franchisee in 2018 for \$125,000. The sale brought in needed funds; it also cut the Debtors' costs while they sought to stabilize their remaining operations.

13. As a result, as of the Petition Date, the Debtors have only one operating store -- in Plaza Las Americas.

14. The Debtors submit this Motion seeking to sell, assign, transfer, convey and deliver to the Successful Bidder (defined below) all of the collective rights, title, and interest in all or substantially all of OHI's assets (the "Purchased Assets").

B. Retention of Sun Mergers & Acquisitions and Request for Payment of Professional Under the Local Rules

15. The Debtors submit that it has taken sufficient measures to ensure the fairness of the sale process. On November 27, 2018, the Debtors filed an application to retain Sun Merger & Acquisitions, LLC ("Sun") in the Chapter 11 Cases to market and sell the Purchased Assets. Sun will continue to market OHI's assets throughout the sale process in an effort to obtain the highest and best offer for OHI's assets.

16. D.N.J. LBR 6004-5 provides that a "motion for the use, sale, or lease of property may include a request to pay a commission or fee at closing to a professional person retained to

provide services relating to the use, sale, or lease.” Subject to Bankruptcy Court approval, the Debtors propose to pay Sun in accordance with the Retention Agreement attached as Exhibit A to the Certification of Stephen Goldberg filed in support of the Debtors’ application to retain Sun in the Chapter 11 Cases. To summarize, at closing, Sun would receive a contingent commission fee of 6% of first \$5 million, 5% of next \$5 million, and 4% thereafter of the total consideration based on its success in closing a sale of OHI’s assets. Sun will not receive a commission from a transaction with Dr. Randy Nissinoff, William Noble, or any entity formed by Dr. Randy Nissinoff or William Noble.

17. The Debtors respectfully requests that the Court authorize the Debtors to pay Sun for its earned commissions at the Closing without further Order of the Court.

TERMS OF SALE

18. Island Optical, LLC, an entity formed by Dr. Randy Nissinoff and William Noble, will be the stalking horse bidder (the “Stalking Horse Bidder”) for the Purchased Assets.

19. The Debtors and the Stalking Horse Bidder have substantially negotiated the terms of an asset purchase agreement (the “Stalking Horse Agreement”) that will serve as the stalking horse bid (the “Stalking Horse Bid”). In addition, the Debtors are currently working with Sun in compiling information that will be responsive to due diligence requests from the Stalking Horse Bidder so that the same information will be available to other potential bidders.

20. The Stalking Horse Agreement attached as **Exhibit A** to the proposed order filed simultaneously herewith is substantially in the form to be executed by the parties.¹

21. Subject to the terms of a negotiated asset purchase agreement in the form substantially similar to the Stalking Horse Agreement, the Purchased Assets will be sold to the

¹ The Stalking Horse Agreement is subject to further revisions as agreed to between the Stalking Horse Bidder and the Debtors.

Stalking Horse Bidder (or any Successful Bidder) free and clear of, all existing liens, claims, and encumbrances pursuant to section 363 of the Bankruptcy Code for a sum that is determined to be the highest or otherwise best bid.

22. The salient terms of the Stalking Horse Agreement are as follows:

- (a) Consideration consists of the following:
 - (i) Assumed Liabilities in the approximate amount of \$564,646;
 - (ii) Cure Costs; and
 - (iii) accrued employee vacation and sick pay for transferred employees.
- (b) The Purchased Assets are being sold “AS IS, WHERE IS” with no representations of any kind.
- (c) The Successful Bidder may assume, agree to pay, discharge or satisfy any debt, liability, or obligation of OHI, provided that the Successful Bidder, independent of the Debtors, reaches an agreement with the affected creditor.
- (d) The sale price must at least satisfy the Assumed Liabilities and Cure Costs and any competitive bids must be at least \$50,000 more than the Stalking Horse Bid (the “Minimum Overbid”).
- (e) Sale does not contain any contingencies, including, without limitation, financing conditions or contingencies, other than those agreed to by the Debtors, and/or any other affected creditors.
- (f) Successful Bidder must include a list of all executory contracts of OHI the buyer will require OHI to assume and assign, a statement that the buyer will assume all cure costs associated with all executory contracts being assumed and sufficient information to satisfy the adequate assurance requirements for the assumption of any executory contracts.

23. The Purchased Assets can be sold in their entirety, in lots or separately in the discretion of the Debtors in conjunction with their advisors.

24. The parties’ target that the closing and consummation of the sale of the Purchased Assets will occur on or before April 19, 2019.

25. Special provisions pursuant to D.N.J. LBR 6004 set forth in the Stalking Horse Agreement are as follows:

- (a) **Sale to Insider.** Stalking Horse Bidder is owned by Dr. Randy Nissinoff and William Noble, or an entity or entities owned or controlled by Randy Nissinoff and/or William Noble.
- (b) **Agreements with Management.** Other than that Dr. Randy Nissinoff and William Noble are affiliated with the Stalking Horse Bidder, there are no agreements with management in connection with the Sale of the Purchased Assets. Neither Dr. Randy Nissinoff nor William Noble have been provided any kind of payment in connection with the Sale.
- (c) **Releases.** The Stalking Horse Agreement provides for releases by OHI, its estate, representatives, agents, successors and assigns, to the Stalking Horse Bidder and its affiliates. See Section 8.2 of the Stalking Horse Agreement.
- (d) **Agreement Limiting Marketing or not to Solicit Competing Offers.** Not applicable.
- (e) **Interim Agreement with the Proposed Purchaser.** No interim agreements with Stalking Horse Bidder or any other persons.
- (f) **Use of Sale Proceeds.** Except as set forth in the Bid Procedures Order, the Debtors do not propose to release any of the proceeds of the sale absent further Bankruptcy Court order.
- (g) **Sale of Avoidance Action.** The Stalking Horse Agreement provides for the sale to the Stalking Horse Bidder of all avoidance actions maintained by OHI pursuant to chapter 5 of the Bankruptcy Code. The Stalking Horse Bidder agrees to release the avoidance action claims under the Stalking Horse Agreement. See Section 1.1(t) of the Stalking Horse Agreement.
- (h) **Limitation of the Proposed Purchaser's Successor Liability.** Stalking Horse Agreement does propose to limit successor liability by requiring any Sale Order provide that the Stalking Horse Bidder and any transferred employees not be subject to successor liability claims.
- (i) **Sale Free and Clear of Unexpired Leases.** OHI does not own any real property.
- (j) **Relief From Bankruptcy Rule 6004(h).** The Debtors seek waiver of the 14 day stay under Rule 6004(h).

THE BIDDING PROCEDURES & STALKING HORSE PROTECTIONS

26. The Debtors, in the exercise of their sound business judgment, have determined to sell all or substantially all of OHI's assets and believe that an open sale process will achieve a fair market price and maximize value to their various creditor constituencies. In furtherance of this objective, OHI's business and assets will be subject to a marketing effort and only the highest or otherwise best qualified offer submitted by a bidder will be successful (the "Successful Bidder"). Accordingly, the Debtors seek the Court's approval of the bidding procedures and stalking horse protections set forth below. The bidding procedures and stalking horse protections have been negotiated between the Debtors and the Stalking Horse Bidder with compromises from both sides.

27. The Debtors propose the following bidding procedures (the "Bid Procedures"):

- (a) **Assets to Be Sold.** OHI is offering all or substantially all of its assets for sale (the "Purchased Assets" or "Assets"). OHI shall retain all rights and title to assets that are not subject to a bid accepted by the Debtors, and approved by the Bankruptcy Court at the Sale Hearing (defined below). The Purchased Assets can be sold in their entirety, in lots or separately in the discretion of the Debtors in conjunction with its advisors.
- (b) **The Bidding Process.** The Debtors, in conjunction with its advisors, shall: (i) determine whether any person is a Potential Bidder ("Potential Bidder"); (ii) coordinate the efforts of Potential Bidders in conducting their respective due diligence investigations regarding OHI's businesses; (iii) receive offers from Qualified Bidders (hereinafter defined); and (iv) negotiate any offer made to purchase the Assets, together or separately (collectively, the "Bidding Process"). Neither the Debtors nor their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Assets to any person who is not a Potential Bidder.
- (c) **Participation Requirements.** Unless otherwise ordered by the Bankruptcy Court, for cause shown, or as otherwise determined by the Debtors, in its discretion, in order to participate in the Bidding Process each person (a "Qualified Bidder") must submit a bid that adheres to the following requirements (a "Qualified Bid"):

- (i) All Qualified Bids must be submitted substantially in the form of the APA, which is annexed hereto as **Exhibit A**, to Debtors' Counsel, Alan J. Brody, Esq., Greenberg Traurig, LLP, 500 Campus Drive, Florham Park, New Jersey, 07932 no later than **April 8, 2019 at 5:00 p.m. (Eastern Time)** (the "Bid Deadline").
- (ii) All Qualified Bids shall be in substantially the form of the APA, together with a comparison showing all changes from the APA, and a letter from a person or persons demonstrating that the Qualified Bidder is financially able to consummate the purchase of the Assets, which letter states:
 - (1) that such Qualified Bidder offers to purchase some or all of the Assets upon the terms and conditions set forth in an asset purchase agreement, together with its exhibits and schedules, including terms relating to price and the time of closing (the "Proposed Agreement");
 - (2) that such Qualified Bidder is prepared to consummate the transaction on or before fourteen (14) days following entry of an order of this Court approving the Sale to the Successful Bidder (defined below) (the "Sale Order");
 - (3) that such Qualified Bidder's offer is irrevocable until the earlier to occur of, (a) two (2) business days after the closing of the sale of the Purchased Assets; (b) the Assets have been withdrawn from the Sale or (c) thirty (30) days after the date the Sale Order is entered by this Court;
 - (4) the actual value of such Qualified Bidder's bid to OHI's estate; and
 - (5) which of OHI's leases and executory contracts are to be assumed in connection with the consummation of the Qualified Bidder's bid.
- (iii) The Qualified Bid must be at least \$50,000 plus the Breakup Fee and Expense Reimbursement more than the Stalking Horse Bid (the "Minimum Overbid").
- (iv) All Qualified Bids shall be accompanied by a deposit into escrow with the Debtors' counsel of an amount equal to 10% of the total proposed purchase price (the "Good Faith Deposit").
- (v) All Qualified Bids shall be accompanied by satisfactory evidence, in the opinion of the Debtors and their advisors, of committed financing or other ability to perform all transactions contemplated by the Proposed Agreement.

- (vi) All Qualified Bids must provide for payment of the Assumed Liabilities, in full, in cash at the Closing (defined below).
 - (vii) Qualified Bids cannot contain any contingencies, including, without limitation, financing conditions or contingencies, other than those agreed to by the Debtors, and/or any other affected creditors.
 - (viii) All Qualified Bids shall include a list of all executory contracts of OHI the Qualified Bidder will require OHI to assume or reject, a statement that the Qualified Bidder will assume all cure costs associated with all executory contracts being assumed and sufficient information to satisfy the adequate assurance requirements for the assumption of any executory contracts.
 - (ix) All Qualified Bidders shall submit to the jurisdiction of the Bankruptcy Court.
 - (x) Each Qualified Bidder shall acknowledge that their Qualified Bid is a good faith offer.
- (d) **Due Diligence.** The Debtors shall afford each Potential Bidder (hereinafter defined) due diligence access to the Purchased Assets. Due diligence access may include management presentations as may be scheduled by the Debtors, access to data rooms, on-site inspections and such other matters which a Potential Bidder may request and as to which the Debtors, in their sole discretion, may agree. The Debtors (and any of its representatives) are not obligated to furnish any information relating to the Purchased Assets to any person except to Potential Bidders. Potential Bidders are advised to exercise their own discretion before relying on any information regarding the Assets provided by anyone other than the Debtors or their representatives. To be a "Potential Bidder," each bidder must have delivered the following:
- (i) an executed confidentiality agreement in form and substance satisfactory to the Debtors; and
 - (ii) current audited and unaudited financial statements or other financial information of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of acquiring the Purchased Assets, current audited and unaudited financial statements or other financial information of the Potential Bidder's equity holder or other financial backer, or such other form of financial disclosure and evidence acceptable to the Debtors and their advisors in their sole discretion, demonstrating such Potential Bidder's ability to close the proposed transaction, to finance going concern operations to the extent contemplated, and to provide

adequate assurance of future performance to counterparties to any executory contracts and unexpired leases to be assumed by the Potential Bidder.

- (e) **“As Is, Where Is.”** The sale of the Purchased Assets shall be on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by the Debtors, their agents or estate, except to the extent set forth in the Proposed Agreement of the Successful Bidder. Except as otherwise provided in the Proposed Agreement, all of OHI’s rights, titles and interests in and to the Purchased Assets to be acquired shall be sold free and clear of all liens, claims, charges, security interests, restrictions and other encumbrances of any kind or nature thereon and there against. Each bidder shall be deemed to acknowledge and represent that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or Purchased Assets in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Purchased Assets, or the completeness of any information provided in connection with the Purchased Assets, the Bidding Process or the Auction, except as expressly stated in these Bid Procedures or, as to the Successful Bidder (defined below), in the applicable Proposed Agreement.
- (f) **Auction.** If the Debtors receive more than one Qualified Bid prior to the Bid Deadline, the Debtors shall conduct an auction (the “Auction”) at the offices of Greenberg Traurig, LLP, 500 Campus Drive, Florham Park, New Jersey, 07932 on **April 19, 2019 at 11:00 a.m. (Eastern Time)** or such later time or other place as the Debtors determine (and shall notify all Qualified Bidders who have submitted Qualified Bids of any such change). Only representatives of the Debtors, the United States Trustee, and any Qualified Bidders who have timely submitted Qualified Bids shall be entitled to attend the Auction. The Debtors may announce at the Auction additional procedural rules that are reasonable under the circumstances (*e.g.*, the amount of time allotted to make subsequent overbids) for conducting the Auction, so long as such rules are not inconsistent with these Bid Procedures. Based upon the terms of the Qualified Bids received, the number of Qualified Bidders participating in the Auction, and such other information as the Debtor determines is relevant, the Debtors, in their sole discretion, may conduct the Auction in the manner they determine will achieve the maximum value for the Purchased Assets. At the Auction, the minimum initial bid must provide for cash payment in an amount not less than the Minimum Overbid. Subsequent bids shall be made in minimum increments of \$25,000.
- (g) **Review of Bids and Reservation of Rights.** Within one day after the conclusion of the Auction, the Debtors shall: (i) review each Qualified Bid on the basis of financial and contractual terms and the factors relevant

to the sale process, including those factors affecting the speed and certainty of consummating the sale; and (ii) identify the bidder (the “Successful Bidder”) with highest or otherwise best offer or combination of offers for the Assets (the “Successful Bid”) and any second-highest or best offer. The Debtors may: (i) determine, in their business judgment, which Qualified Bid, if any, is the highest or otherwise best offer; (ii) consult with the representatives of the significant constituents of the Chapter 11 Cases in connection with the Bidding Process and Bid Procedures; and (iii) reject at any time before entry of the Sale Order approving a Qualified Bid, any bid that, in the Debtors’ sole discretion, is: (x) inadequate or insufficient; (y) not in conformity with the requirements of the Bid Procedures, the Bankruptcy Code, or the terms and conditions of sale; or (z) contrary to the best interests of the Debtors, their estates, its creditors and other parties in interest. At or before the Sale Hearing, the Bankruptcy Court, or, consistent with the purposes of the Bid Procedures to obtain the highest or otherwise best offer(s) for the Assets, the Debtors may impose such other terms and conditions as it or they may determine to be in the best interests of the Debtors’ estates, its creditors and other parties in interest.

- (h) **Presentation of Successful Bid.** The Debtors will present the Successful Bid to the Bankruptcy Court for approval at the Sale Hearing. The Debtors reserve all rights to not submit any bid which is not acceptable to the Debtors.
- (i) **Acceptance of Qualified Bids.** The Debtors shall sell the Purchased Assets to the Successful Bidder submitting the highest or otherwise best Qualified Bid at the Auction, after approval of such Qualified Bid by the Bankruptcy Court at the Sale Hearing. The Debtors’ presentation to the Bankruptcy Court for approval of a particular Qualified Bid does not constitute the Debtors’ acceptance of such Qualified Bid. The Debtors shall have accepted a Qualified Bid only when that Qualified Bid has been approved by the Bankruptcy Court at the Sale Hearing.
- (j) **The Sale Hearing.** A hearing to confirm the results of the Auction and to approve the sale of the Purchased Assets (the “Sale Hearing”) will be held before the Honorable Stacey L. Meisel, United States Bankruptcy Judge, Martin Luther King Jr. Federal Building, 50 Walnut Street, Newark, NJ 07102, on **April __, 2019 at __:00 a.m.** (or other date and time determined by the Bankruptcy Court). The Sale Hearing may be adjourned or rescheduled without notice other than by an announcement of the adjourned date in open court.
- (k) **Back up Bid.** Following the entry of the Sale Order approving the Sale, if the Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the next highest or otherwise best Qualified Bid(s), may be deemed to be the

Successful Bid(s), in the discretion of the Debtors and the Debtors shall be authorized to effectuate such sale without further order of the Bankruptcy Court.

- (l) **Return of Good Faith Deposit.** The Good Faith Deposits of all Qualified Bidders shall be retained by the Debtors' counsel, and all Qualified Bids will remain open and irrevocable, notwithstanding Bankruptcy Court approval of a sale pursuant to the terms of a Successful Bid by a Qualified Bidder, until the earlier to occur of **May 5, 2019**, or two (2) business days after the closing of the Sale of the Purchased Assets. If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Debtors will not have any obligation to return the Good Faith Deposit deposited by such Successful Bidder, which shall be retained by the Debtors as liquidated damages.
- (m) **Modifications:** In addition to other rights set forth above, the Debtors may modify these Bid Procedures or impose, at or prior to the Auction, additional terms and conditions on the proposed Sale of the Purchased Assets if, in its reasonable judgment, such modifications would be in the best interests of the Debtors' estates and promote an open and fair sale process.
- (n) **Bankruptcy Court Approval:** The sale of the Assets contemplated herein shall be subject to the entry of an order, or orders as the case may be, by the Court: (a) approving the sale and transfer of the Assets; and (b) containing a finding that the successful Bidder is a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code.
- (o) **Closing:** The closing of the sale of the Purchased Assets shall take place within fourteen (14) days of the Sale Order in accordance with the terms agreed to between the Debtors and the Successful Bidder (the "Closing").

28. Subject to Court approval, within three (3) business days after entry of an order approving the Bid Procedures, the Debtors propose sending a Notice of Sale attached as **Exhibit B** to the Bid Procedures Order (the "Notice of Sale"), upon (i) all entities reasonably known to have expressed an interest in a transaction with respect to some or all of the Assets, (ii) all entities known to have asserted interests against the Assets, (iii) all of the Debtors' creditors, unless otherwise limited by Bankruptcy Court order, (iv) the Office of the United States Trustee, and (v) those parties that request notice of pleadings in the Debtors' Chapter 11 Cases pursuant

to Rule 2002 of the Federal Rules of Bankruptcy Procedure. The Notice of Sale will include the following: (i) information regarding the filing of this Motion, the entry of the Bidding Procedures Order, and how to obtain copies, (ii) the Bid Deadline, (iii) the date, time, and place of the auction, (iv) the notice of stalking horse bidder, (v) the date, time and place of the Sale Hearing, and (vi) the deadline for objecting to the sale.

29. The Debtors propose that within one (1) business day after the conclusion of the Auction, it will file with Court a supplement outlining the identity of the Successful Bidder of the Purchased Assets and the purchase price received therefore.

30. The Debtors request that the Bankruptcy Court set a Sale Hearing to approve the Debtors' selection of the highest or best bid and the remainder of the relief requested in the Motion on April 16, 2019 at 11:00 a.m. (the "Sale"), and further requests that any objections to the Sale, must be in writing, filed with the Bankruptcy Court, and actually received by (i) the attorneys for the Debtors, (ii) the attorneys for the Stalking Horse Bidder, and (iii) the Office of the U.S. Trustee, on or before April 9, 2019 at 1:00 p.m. (Eastern Time) (the "Sale Objection Deadline").

31. The Stalking Horse Bidder, or its designee, is deemed a Qualified Bidder, and the Stalking Horse Agreement is deemed a Qualified Bid for the Assets. The Debtors have agreed to provide the Stalking Horse Bidder, subject to Bankruptcy Court approval, certain bidding protections, including a breakup fee in the amount of \$150,000, expense reimbursement in the amount of \$50,000 (the "Stalking Horse Protections"). The Stalking Horse Protections are payable at closing in the event that the Stalking Horse Agreement is terminated due to (i) OHI's closing or entering into an agreement for any alternative transaction with any person other than the Stalking Horse Bidder or (ii) the Debtors' declaring another bidder to be the Successful

Bidder. The Stalking Horse Protections will be an allowed administrative expense priority claim against OHI pursuant to section 503(b)(1) and 507(a)(2) of the Bankruptcy Code. The Debtors believe that the Stalking Horse Protections are appropriate in light of the size of the transaction and the expenses to be incurred by the Stalking Horse Bidder.

32. The Bid Procedures are required by the Stalking Horse Bidder as an inducement, and the Stalking Horse Bidder is relying on the Stalking Horse Protections and approval of the Bid Procedures in agreeing to serve as the Stalking Horse Bidder.

33. The goal of the Debtors in negotiating the Bid Procedures and Stalking Horse Protections was the need to balance (a) the potential Stalking Horse Bidder's request for reasonable protections in light of its willingness to provide the Debtors with a "floor" transaction and the expenses and other resources it was likely to devote toward a potential transaction, with (b) the Debtors' desire to induce other parties with financial ability to conduct due diligence, make a bid, and participate in an auction that would create competitive bidding toward a higher and better offer.

34. The Bid Procedures provide the Debtors with the opportunity to consider competing bids and select the highest or otherwise best offer for the completion of the sale. Entering into the Stalking Horse Agreement with the Stalking Horse Bidder ensures that the Debtors can obtain fair market value, by setting a minimum purchasing price that will be tested in the marketplace. Thus, the Debtors' estates can be assured that the consideration obtained will be fair and reasonable.

RELIEF REQUESTED

35. By this Motion, pursuant to sections 105(a), 363(b), (1) and (m) of the Bankruptcy Code, Rules 2002 and 6004 of the Bankruptcy Rules, and D.N.J. LBR 6004, the Debtors request that the Bankruptcy Court enter an Order approving and authorizing, among

other things: (i) Bidding Procedures for soliciting bids; (ii) the Stalking Horse Agreement and Bid Protections therein; (iii) the form and the manner of notices provided herein; (iv) the scheduling of the Sale Hearing; (v) procedures for the assumption and assignment of certain executory contracts; and (vi) related relief.

36. At the Sale Hearing, the Debtors will also request entry of the Sale Order that will approve the Sale.

I. The Court Should Approve the Stalking Horse Agreement and the Stalking Horse Protections

37. The Debtors are requesting authority to offer the Stalking Horse Bidder the Stalking Horse Protections.

38. The ability of the Debtors to offer the Stalking Horse Bidder the Stalking Horse Protections is beneficial to the Debtors' estates and creditors in that it provided the incentive required to induce the Stalking Horse Bidder to submit a "floor" bid prior to the Auction. To the extent bids can be improved prior to the Auction based on the initial Stalking Horse Bid, a higher floor is established for further bidding. Thus, even though the Stalking Horse Bidder is offered the Stalking Horse Protections and ultimately may not be the successful bidder, OHI and its estate will have benefited from the floor established by its bid. Thus, the Debtors have exercised prudent business judgment before agreeing to the Stalking Horse Protections.

39. Approval of break-up fees and other forms of bidding protections in connection with the sale of significant assets pursuant to section 363 of the Bankruptcy Code has become an established practice in chapter 11 cases. Bankruptcy courts have approved bidding incentives similar to the Stalking Horse Protections under the "business judgment rule," which proscribes judicial second-guessing of the actions of a corporation's board of directors taken in good faith and in the exercise of honest judgment. See In re Fruit of the Loom, 274 B.R. 631 (D. Del.

2002); In re The Grand Union Company, et al., Case Nos. 00-39613 (NLW) (Bankr. D. N. J., Order dated October 30, 2000). See also, In re 995 Fifth Ave. Assocs., L.P., 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (bidding incentives may be “legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking”) (citation omitted); In re Marrose Corp., 1992 WL 33848 at *5 (Bankr. S.D.N.Y. 1992) (bidding incentives are “meant to compensate the potential acquirer who serves as a catalyst or ‘stalking horse’ which attracts more favorable offers”); In re Integrated Resources, Inc., 135 B.R. 746 (Bankr S.D.N.Y.), *aff’d*, 147 B.R. 650 (S.D.N.Y. 1992).

40. The Debtors submit that the proposed Stalking Horse Protections are reasonable and will enable OHI to maximize the value of its estate. The Stalking Horse Protections further meet the “business judgment rule” standard. The break-up fee is reasonable because (i) it is not excessive compared to fees and reimbursements approved in other cases and (ii) it will not diminish OHI’s estate. Break-up fees such as proposed herein enable a debtor to assure a sale to a contractually committed bidder at a price the debtor believes is fair and reasonable, while providing the debtor with the opportunity of obtaining even greater benefits for the estate through an auction process.

41. Accordingly, the Stalking Horse Protections should be approved pursuant to the Debtors’ business judgment.

II This Court Should Approve the Bid Procedures and Sale Pursuant to the Bidding Procedures

42. Courts have held that a debtor’s business judgment is entitled to substantial deference with respect to the procedures to be used in selling assets of its bankruptcy estate. See, e.g., Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Resources, Inc.), 147 B.R. 650, 656-57 (S.D.N.Y. 1992) (noting that overbid procedures and

break-up fee arrangements that have been negotiated by a debtor are to be reviewed according to the deferential “business judgment” standard, under which such procedures and arrangements are “presumptively valid”); In re 995 Fifth Ave. Assocs., L.P. 96 B.R. 24, 28 (Bank S.D.N.Y. 1989) (same).

43. The proposed Bid Procedures in this case are reasonable, appropriate, and within the Debtors’ sound business judgment under the circumstances. The Bid Procedures will serve to maximize the value that the Debtors will recover for the Assets, and serve the best interests of its bankruptcy estate and all parties in interest.

A. The Bid Procedures Are Appropriate

44. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. See, e.g., Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.), 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate at hand”); Integrated Res., 147 B.R. at 659 (“It is a well-established principle of bankruptcy law that the . . . debtor’s duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.”) quoting Cello Bay Co. v. Champion Intl Corn. (In re Atlanta Packaging Products, Inc.), 99 B.R. 124, 131 (Bankr. N.D. Ga. 1988)).

45. Courts recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy sales. See, e.g., Integrated Res., 147 B.R. at 659 (such procedures “encourage bidding and maximize the value of the debtor’s assets”); In re Fin. News Network, Inc., 126 B.R. 152, 156 (S.D.N.Y. 1991) (“court-imposed rules for the disposition of assets [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estate”).

46. The Debtors assert that the Bid Procedures establish the parameters under which the value of the Assets may be established and maximized at the Auction and the Sale Hearing. The proposed Bid Procedures will generate competitive bidding, and therefore will increase the likelihood that the Debtors will receive the greatest possible consideration for OHI's assets.

B. The Court Should Grant the Debtors Authorization to Sell OHI's Assets Pursuant to the Bid Procedures

47. The Debtors should be authorized to sell OHI's assets outside the ordinary course of business under Section 363 of the Bankruptcy Code and Fed. R. Bankr. P. 6004(f)(1). Courts in the Third Circuit and elsewhere have found that a decision to sell assets outside the ordinary course of business should be approved if a sound business judgment exists for such sale. See In re Martin, 91 F.3d 389, 396 (3d Cir. 1996); In re Abbotts Dairies of Pa., Inc., 788 F.2d 143 (3d Cir. 1986); In re Delaware & Hudson Ry, Co., 124 B.R. 169, 176 (Bankr. D. Del. 1991); In re Phoenix Steel Corp., 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that judicial approval of a section 363 sale requires a showing that the proposed sale is fair and equitable, a good business reasons exists for completing the sale, and the transaction be made in good faith); see also Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983).

(1) The Debtors Have Exercised "Sound Business Purpose"

48. Courts typically consider the following four factors in determining whether proposed sale satisfies the "sound business purpose" standard to sell property outside the ordinary course of business: (a) a "sound business purpose" justifies the sale of assets outside the ordinary course of business, (b) adequate and reasonable notice has been provided to interested persons; (c) the debtor has obtained a fair and reasonable price, and (d) good faith is present. See In re Weatherly Frozen Food. Group, Inc., 149 B.R. 480, 483 (Bankr. N.D. Ohio

1992); Del. & Hudson Ry., 124 B.R. at 176; Phoenix Steel Corp., 82 B.R. at 335-36; In re Titusville Country Club, 128 B.R. 396, 399 (Bankr. W.D.Pa 1991); Abbotts Dairies, supra; In re Sovereign Estates, Ltd., 104 BR. 702, 704 (Bankr. E.D. Pa. 1989); In re Indus. Valley Refrigeration and Air Conditioning Supplies, Inc., 77 B.R. 15, 21 (Bankr. E.D. Pa. 1987).

49. Courts have made it clear that a debtor's showing of a sound business justification need not be unduly exhaustive but, rather, a debtor is "simply required to justify the proposed disposition with sound business reason." In re Baldwin United Corp., 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984).

50. A sound business purpose for the sale of a debtor's assets outside the ordinary course of business may be found where such a sale is necessary to preserve the value of the assets for the debtor's estate and creditors. See In re Lionel Corp., 722 F.2d at 1071.

51. In this case, the Debtors submit that the decision to sell the Assets is based upon their sound business judgment and should be approved. The sale is being accomplished in an expeditious manner, consistent with the Debtors' limited resources. A prompt sale is the best way to preserve going concern value and recover as much as possible for the estate.

(2) The Debtors Will Provide Adequate Notice of the Auction and Sale

52. The form and manner of the notice of this Motion and the Bid Procedures used for soliciting higher and better offers for the Purchased Assets have been submitted for approval to the Bankruptcy Court and will ensure that any and all interested parties will receive adequate notice of the Auction.

(3) The Purchased Assets Will Be Sold For Fair Value

53. The Bankruptcy Court may only approve a sale of OHI's Assets under section 363(b) if the Debtors have obtained a fair and reasonable price for the Assets. In re Delaware & Hudson Ry. Co., 124 B.R. at 176; Industry Valley, 77 B.R. at 20. "The price achieved by an

auction is ordinarily assumed to approximate market value when there is competition by an appropriate number of bidders.” Simantob v. Claims Prosecutor, LLC (In re Lahijani), 325 B.R. 282, 289 (Bankr. App. 9th Cir. 2005); see also In re Trans World Airlines, Inc., 2001 WL 1820326 at *12 (Bankr. D. Del. Apr. 2, 2011).

54. At the Sale Hearing, the Debtors will demonstrate that the Successful Bidder bought the Purchased Assets for “value.” At a minimum, since the sale of the Purchased Assets will have been the subject of rigorous marketing efforts, and all bids will be subject to higher and better offers at the Auction, the Debtors are confident that the value of the Purchased Assets will be maximized and more than fair.

(4) The Successful Bid Will Satisfy the Good Faith Buyer Requirement

55. As set forth above, the Third Circuit has interpreted Section 363(b) to require a finding by the Bankruptcy Court that the purchaser of a debtor’s assets is a good faith buyer. In re Abbotts Dairies, 788 F.2d at 149-50. The Third Circuit construed the “good faith buyer” standard to mean one who purchases “in good faith” and for -value.” Id. At 147.

56. In this case, the Auction pursuant to the Bid Procedures will ensure that any Successful Bidder is a good faith buyer. “[T]he misconduct that would destroy a purchaser’s good faith status at a judicial [or section 363] sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.” Abbotts Dairies, 788 F.2d at 147 (quoting In re Rock Indus. Mach. Corp., 572 F.2d 1195, 1198 (7th Cir. 1978)). The Bid Procedures and this Court’s oversight will safeguard this sale process from any such misconduct.

57. Section 363(m) of the Bankruptcy Code provides that a reversal or modification on appeal of an authorized sale of property under section 363(b) will not affect the validity of such sale to a good faith purchaser. See 11 U.S.C. § 363(m). The sale process and Bid

Procedures proposed are intended to ensure that any Successful Bid and sale consummated will be the product of arms' length, good faith negotiations, and the result of a fair auction process conducted under the supervision of this Bankruptcy Court pursuant to the Bid Procedures Order.

58. Thus, the Debtors submit that the protections of section 363(m) of the Bankruptcy Code should apply to the Successful Bidder(s) presented at the Sale Hearing, and that sound business purpose exists for the Debtors' determination to pursue the sale of OHI's Assets.

III. The Court Should Authorize the Debtors to Sell the Purchased Assets Free and Clear of Liens, Claims, and Encumbrances Pursuant to Section 363(f) of the Bankruptcy Code

59. In accordance with section 363(f) of the Bankruptcy Code, a debtor may sell property under section 363(b) "free and clear of any interest in such property of an entity other than the estate" only if one of the following conditions is satisfied:

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

See 11 U.S.C. 363(f); Folger Adam Sec. Inc. v. DeMatteis/MacGregor, JV, 209 F.3d 252, 257 (3d Cir. 2000) (discussing how section 363(f) of the Bankruptcy Code authorizes the sale of a debtor's assets free and clear of liens, claims, and interests if "any one of [the] five prescribed conditions" is met; In re Kelistrom Indus., Inc., 282 B.R. 787, 793 (Bankr. D. Del. 2002) (stating that a court may approve a sale -free and clear" provided at least one of the subsections of section 363(f) is met); In re Elliot, 94 B.R. 343, 354 (Bankr. E.D. Pa. 1988) (section 363(1)

written in disjunctive; court may approve sale “free and clear” provided at least one of the subsections is met). The Debtors expect that they can satisfy at least three of these requirements, and will overcome any objections to a free and clear sale of the Assets at the hearing on this Motion. Any valid interests, liens, claims and encumbrances asserted against the Assets will attach to any cash consideration received by OHI at the Sale.

60. Any entities asserting interests in the Assets have consented, or the Debtors anticipate will consent, to the Sale of the Assets in accordance with this Motion. There are no known secured creditors with an interest in the Assets. However, in the abundance of caution, all liens, if any, on the Assets will be satisfied, will attach to the cash consideration received for the Assets with the same force, effect and priority as such liens have on the Assets, subject to the rights and defenses, if any, of the Debtors and any party in interest with respect thereto, or the buyer will assume such obligations. Accordingly, the Debtors submit that the Sale of the Assets free and clear of interests, liens, claims and encumbrances satisfies the statutory prerequisites of section 363(f) of the Bankruptcy Code.

61. To the extent that entities asserting interests in the Assets do not consent to the sale of the Purchased Assets, the Debtors, in the exercise of their business judgment, will proceed pursuant section 363(f)(4) of the Bankruptcy Code. “The purpose of 11 U.S.C. § 363(f)(4) is to permit property of the estate to be sold free and clear of interests that are disputed by the representative of the estate so that liquidation of the estate’s assets need not be delayed while such disputes are being litigated.” Moldo v. Clark (In re Clark), 266 B.R. 163, 171 (Bankr. App. 9th Cir. 2001). “This standard does not require the court to resolve the underlying dispute, just to determine its existence.” Union Planters Bank, N.A. v. Burns (In re Gaylord Grain LLC),

306 B.R. 624, 627 (8th Cir. B.A.P. 2004). Further, the lien need not be the subject of an immediate or concurrent adversary proceeding. Id.

62. For all of the foregoing reasons, the Debtors submit that the proposed Sale and Bid Procedures should be approved.

IV. Court Should Approve Procedures For Assumption and Assignment or Rejection of Executory Contracts

63. The Debtors submit that the procedures set forth below for (a) the assumption and assignment of executory contracts and leases, (b) the rejection of executory contracts and leases, and (c) the fixing of cure amounts are reasonable. Thus, any party failing to object to the proposed treatment of its lease or executory contract should be deemed to consent to the treatment of its executory contract and unexpired lease under section 365 of the Bankruptcy Code and this Motion. See Hargrave v. Township of Pemberton (In re Tabone, Inc.), 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to sale motion, creditor deemed to consent); Pelican Homestead v. Wooten (In re Gabel), 61 B.R. 661, 667 (Bankr. W.D. La. 1985) (same). The Debtors further request that each non-objecting party to executory contracts and unexpired leases be deemed to consent to the assumption and assignment of its unexpired lease notwithstanding any anti-alienation provision or other restriction on assignment. See 11 U.S.C. 365(c)(1)(B), (e)(2)(A)(ii) and (f).

A. Assumption and Assignment of Executory Contracts and Unexpired Leases

64. To facilitate the sale of the Assets, the Debtors may seek to assume and assign certain executory contracts and unexpired leases to the purchaser(s) of the Assets to the extent required. Section 365 of the Bankruptcy Code authorizes a debtor to assume and/or assign its executory contracts and unexpired leases subject to the approval of the Bankruptcy Court, and provides:

(a) Except as provided in ... subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor.

(b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee:

(A) cures, or provides adequate assurance that the trustee will promptly cure such default...;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

* * *

(f)(2) The trustee may assign an executory contract or unexpired lease of the debtor only if—

(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

See 11 U.S.C. 365(a), (b)(1), (f)(2). Accordingly, section 365 authorizes proposed assumptions and assignments, provided that the defaults under such contracts and leases are cured and adequate assurance of future performance is provided.

65. The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given “practical, pragmatic construction.” See Carlisle Homes, Inc. v. Arrari (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1989); see also In re Natco Indus., Inc., 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent); In re Bon Ton Rest. & Pastry Shop, Inc., 53 B.R. 789, 803 (Bankr. N.D. III. 1985)

(“Although no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.”).

66. Among other things, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. In re Bygaph, Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective assignee of a lease from debtor has financial resources and has expressed a willingness to devote sufficient funding to business to give it strong likelihood of succeeding; chief determinant of adequate assurance is whether rent will be paid).

67. In connection with the Sale Hearing, the Debtors will provide evidence that all requirements for the assumption and/or assignment of the executory contracts and unexpired leases proposed to be assigned to the purchaser(s) of the Assets will be satisfied. To the extent certain executory contracts are to be assumed and assigned, it is an express condition of the Bid Procedures that Qualified Bidders submit with their Qualified Bid sufficient financial and other information to assess the bidder’s compliance with section 365. The Bid Procedures further require Qualified Bidders to cure costs associated with all executory contracts being assumed.

68. Additionally, the Debtors submit the following procedures in connection with the assumption and assignment of executory contracts and leases:

- (a) On or before April 2, 2019, the Debtors shall serve a notice in the form attached as Exhibit C to the Bid Procedures Order on all affected parties to executory contracts and unexpired leases that the Successful Bidder may potentially assume its executory contract or unexpired lease (the “Assumption Notice”).
- (b) Upon request to Debtors’ counsel, the Debtors shall make available to parties to executory contracts and unexpired leases that received an Assumption Notice, the adequate assurance package provided by the Purchaser to support its Qualified Bid in connection with the assumption and assignment of executory contracts and unexpired leases.

- (c) Any objections to the Assumption Notice based on adequate assurance of future performance, or otherwise, (other than objections to cure amounts) by a nondebtor party to such executory contracts and unexpired leases, must be in writing, filed with the Bankruptcy Court, and actually received by (i) the attorneys for the Debtors, (ii) the attorneys for the Stalking Horse Bidder, and (iii) the Office of the U.S. Trustee, by the Sale Objection Deadline (April 9, 2019 at 1:00 p.m.). If a timely objection is received, the hearing to consider any objections will be held on a date to be scheduled by the Court. If a timely objection is received, the hearing to consider any such objections will be held at the Sale Hearing (or other date to be established by the Bankruptcy Court or other agreed upon adjourned date).
- (d) If no timely objection to the Assumption Notice is filed by a nondebtor party to the executory contracts and unexpired leases, (a) each such nondebtor party to the executory contracts and unexpired leases shall be forever barred from objecting to the assumption and assignment of its executory contract and unexpired lease, (b) each such nondebtor party to the executory contracts and unexpired leases is deemed to consent to the assumption and assignment of its executory contract or unexpired lease (subject to any objection to the Cure Notice) and (c) the assumption and assignment of each such executory contract and unexpired lease designated to be assumed by the buyer at the Sale shall be automatically effective as of the Closing without further Order of the Bankruptcy Court.

69. Based on the above procedures, the Debtors are providing all parties to executory contracts and unexpired leases to be assumed and assigned pursuant to the Motion with an opportunity to review an adequate assurance packages, and an opportunity to be heard on any objections. Thus, the Debtors respectfully submit that by the conclusion of the Sale Hearing, assumption and assignment of the executory contracts and unexpired leases should be approved.

B. Rejection of Unsold Contracts and Leases

70. The Debtors submit the following procedures in connection with the rejection of executory contracts and leases:

- (a) In the event that there are any executory contracts and unexpired leases that remain unsold at the Closing, the Debtors will serve on affected parties, a rejection notice (the “Rejection Notice”) with attached proposed order (the “Rejection Order”) rejecting affected executory contracts and unexpired leases in the form attached as Exhibit D to the Bid Procedures Order within seven (7) days of the Closing.

- (b) Any objections to the Rejection Notice, must be in writing, filed with the Court, and actually received by (i) the attorneys for the Debtors, (ii) the attorneys for the Stalking Horse Bidder, and (iii) the Office of the U.S. Trustee, within fourteen (14) days after the Debtor served the Rejection Notice. If a timely objection is received, the hearing to consider any objections will be held on a date to be scheduled by the Bankruptcy Court. If the objection is overruled by the Bankruptcy Court or withdrawn, the rejection of the affected executory contract and unexpired lease shall be deemed effective as of the date on which the Bankruptcy Court determines the rejection of the executory contract and unexpired lease effective, or as agreed to by the Debtors and the applicable counterparty (the “Rejection Effective Date”). If no timely objection to the Rejection Notice is filed and served in accordance with this Order, or if a timely objection is filed but the objection is resolved by the Debtors and affected counterparty, the Debtor may submit the Rejection Order for entry by the Bankruptcy Court under a Certification of no Objection, or Certification of counsel, as applicable. The rejection of such executory contracts and unexpired leases shall become effective upon entry of the Rejection Order by the Bankruptcy Court.
- (c) If any personal property or furniture, fixtures or equipment of OHI remaining at the premises subject to an unexpired lease of real property subject to a Rejection Notice, OHI is authorized, but not directed, at any time on or before the applicable Rejection Effective Date to remove or abandon any of its personal property that may be located on the leased premises that are subject to a rejected lease. Absent a timely objection to the Rejection Notice, the property will be deemed abandoned pursuant to section 554 of the Bankruptcy Code, as is, effective as of the applicable Rejection Effective Date, and the landlords may dispose of any such abandoned property, in their sole discretion, without further notice or order from this Bankruptcy Court, without any liability to OHI and any third party for such disposal and without waiver of any claim the landlords may have against OHI for the disposal of such property.
- (d) If an affected landlord or counterparty or any other party in interest (the “Rejection Claimant”) asserts a claim or claims against OHI arising from the rejection of a executory contract and unexpired lease, such Rejection Claimant shall submit a proof of claim on or before the later of (a) the date that is thirty (30) days from entry of the Rejection Order or (b) the general bar date established by the Bankruptcy Court for filing proofs of claim against OHI. If the Rejection Claimant does not timely file such proof of claim, such claimant shall be forever barred from asserting a claim against OHI for such rejection damages.
- (e) OHI reserves all rights to contest any claims related to its rejection of executory contracts or unexpired leases.

71. After conducting the Auction and selling the Assets, the unsold executory contracts and unexpired leases may be valueless to the Debtors and would only create an administrative expense burden on the Debtors' estates. Therefore, the Debtors request authority to reject such executory contracts and/or unexpired leases in accordance with the rejection procedures set forth above.

C. The Court Should Fix the Cure Amounts as Set Forth in the Cure Schedule

72. To enable the Debtors and their professionals to analyze the net return to the OHI's estate (e.g., the proposed purchase price less any cure obligations), the Debtors seeks to identify and fix all cure amounts set forth on a "Cure Schedule" to be filed with the Court.

73. The Debtors submit the following procedures in connection with the cure amounts related to executory contracts and leases:

- (a) The Debtors shall file and serve a "Cure Schedule" on the parties to executory contracts and unexpired leases that may be assigned on or before April 2, 2019 (the "Cure Notice"). Any objections to the Cure Notice by a non-debtor party to such Contracts or Leases, must be in writing, filed with the Bankruptcy Court, and actually received by (1) the attorneys for the Debtors, (ii) the attorneys for the Stalking Horse Bidder, and (iii) the Office of the U.S. Trustee, on or before April 9, 2019 at 1:00 p.m. (Eastern Time).
- (b) If no objection to the Cure Notice is received by a non-debtor party to the executory contracts and unexpired leases, then the cure amounts set forth in the Cure Schedule shall be binding on such non-debtor party to the executory contracts and unexpired leases for all purposes in this case and will constitute a final determination of total cure amounts required to be paid by the purchaser in connection with the assignment to, and assumption by, the Successful Bidder. Each non-debtor contracting party in connection with a executory contract and unexpired lease shall be forever barred from objecting to the cure information set forth in the Cure Schedule, including, without limitation, the right to assert any additional cure or other amounts with respect to the executory contract and unexpired lease. If a timely objection is received, the hearing to consider any objections to the proposed Cure Schedule will be held at the Sale Hearing (or other date to be established by the Bankruptcy Court or other agreed upon adjourned date).

74. The Debtors submit that the above procedures related to cure amounts associated with executory contracts and unexpired leases are reasonable.

REQUEST FOR WAIVER OF NOTICE AND STAY OF ORDER

75. Bankruptcy Rule 6004(h) provides that all orders authorizing the sale of property pursuant to Bankruptcy Code Section 363 are automatically stayed for fourteen (14) days after entry of such order “unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). This Bankruptcy Court has approved requests to waive the stay so long as there is a “business need” for same. In re Grand Prix Associates, Inc., No. 09-16545 (DHS), 2009 WL 1850966 at *8 (Bankr. D.N.J. Jun. 26, 2009).

76. In the instant case, waiving the fourteen (14) day stay under Bankruptcy Rule 6004(h) will serve a business need by enabling the Debtors to minimize any costs associated with the proposed Sale by allowing the parties to close the transaction as soon as possible after entry of the proposed Sale Order. Also, waiver of this stay will ensure the smooth facilitation of the Auction and Sale.

77. Accordingly, the Debtors request that the Bankruptcy Court waive the fourteen (14) day stay set forth in Bankruptcy Rule 6004(h).

CONCLUSION

78. Based on the above, the Debtors respectfully request that this Bankruptcy Court enter an Order Pursuant to sections 105(a), 363(b), (t) and (m) of the Bankruptcy Code, Rules 2002 and 6004 of the Bankruptcy Rules, and D.N.J. LBR 6004, approving and authorizing, among other things: (i) the Bid Procedures for soliciting bids; (ii) the Stalking Horse Agreement and Bid Protections herein; (iii) the form and the manner of notices provided herein; (iv) the scheduling of the Sale Hearing; (v) authorizing and approving the sale to the highest or best offer; (vi) procedures for the assumption and assignment or rejection of certain executory

contracts; (vii) waiving the fourteen (14) day stay provided by Bankruptcy Rule 6004(h); and
(viii) related relief.

GREENBERG TRAURIG, LLP
Attorneys for the Debtors and Debtors-in-
Possession

Dated: February 19, 2019

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UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
Caption in Compliance with D.N.J. LBR 9004-1(b)	
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In re: Optical Holdings of Puerto Rico, LLC, <i>et al.</i> , Debtors.	Case No.: 18-29070 (SLM) Judge: Honorable Stacey L. Meisel Chapter: 11

ORDER APPROVING AND AUTHORIZING (I) BID PROCEDURES AND FORM OF NOTICE IN CONNECTION WITH THE SALE OF OHI OF PUERTO RICO LLC'S ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS, (II) STALKING HORSE AGREEMENT AND BID PROTECTIONS, (III) THE SCHEDULING OF A SALE HEARING, (IV) SALE TO THE PURCHASER SUBMITTING THE HIGHEST OR BEST OFFER, (V) PROCEDURES FOR ASSUMING AND ASSIGNING OR REJECTING EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (VI) WAIVING THE FOURTEEN DAY STAY PROVIDED BY FED. R. BANKR. P. 6004, AND (VII) RELATED RELIEF

The relief set forth on the following pages, numbered two (2) through seventeen (17), is hereby **ORDERED**.

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Debtor: Optical Holdings of Puerto Rico, LLC, *et al.*
Case No.: 18-29070 (SLM)
Caption: Order Approving and Authorizing (I) Bid Procedures and Form of Notice in Connection With the Sale of OHI Of Puerto Rico LLC's Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (II) Stalking Horse Agreement and Bid Protections, (III) the Scheduling of a Sale Hearing, (IV) the Sale to the Purchaser Submitting the Highest or Best Offer, (V) Procedures for Assuming and Assigning or Rejecting Executory Contracts and Unexpired Leases, (VI) Waiving the Fourteen Day Stay Provided by Fed. R. Bankr. P. 6004, and (VII) Related Relief

This matter having been opened to the United States Bankruptcy Court for the District of New Jersey (the "Bankruptcy Court") by Greenberg Traurig, LLP, counsel for Optical Holdings of Puerto Rico, LLC ("Optical Holdings") and OHI of Puerto Rico LLC ("OHI", and together with Optical Holdings, the "Debtors"), the above-captioned debtors and debtors-in-possession, upon the Motion of the Debtors for the entry of an Order Pursuant to Sections 105(a), 363(b), (f) and (m), and 365 of the Bankruptcy Code, Rules 2002 and 6004 of the Bankruptcy Rules, and D.N.J. LBR 6004, Approving and Authorizing, Among Other Things: (I) Bid Procedures and Form of Notice in Connection With the Sale of OHI of Puerto Rico LLC's Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (H) Stalking Horse Agreement and Bid Protections, (III) the Scheduling of a Sale Hearing, (IV) the Sale to the Purchaser Submitting the Highest or Best Offer, (V) Procedures for Assuming and Assigning or Rejecting Executory Contracts and Unexpired Leases, (VI) Waiving the Fourteen Day Stay Provided by Fed. R. Bankr. P. 6004, and (VII) Related Relief (the "Motion"); and the Bankruptcy Court having jurisdiction over the matters raised in the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and this being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the relief requested in the Motion being in the best interests of the Debtors, their estates and creditors; and the Bankruptcy Court finding that good and sufficient notice of the Motion having been provided; and the Bankruptcy Court having considered the moving papers and the opposition thereto, if any, and the arguments of counsel, if any; and the Bankruptcy Court having determined that good cause exists for the entry of this Order;

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Debtor: Optical Holdings of Puerto Rico, LLC, *et al.*
Case No.: 18-29070 (SLM)
Caption: Order Approving and Authorizing (I) Bid Procedures and Form of Notice in Connection With the Sale of OHI Of Puerto Rico LLC's Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (II) Stalking Horse Agreement and Bid Protections, (III) the Scheduling of a Sale Hearing, (IV) the Sale to the Purchaser Submitting the Highest or Best Offer, (V) Procedures for Assuming and Assigning or Rejecting Executory Contracts and Unexpired Leases, (VI) Waiving the Fourteen Day Stay Provided by Fed. R. Bankr. P. 6004, and (VII) Related Relief

IT IS ORDERED as follows:

The Stalking Horse Bidder and Stalking Horse Protections

1. Island Optical, LLC, or its designee (the "Stalking Horse Bidder") is a Qualified Bidder (defined below).
2. The asset purchase agreement attached hereto as **Exhibit A** is substantially in the form to be executed by the parties (the "APA"). The APA is deemed a Qualified Bid (defined below) and designated as the stalking horse bid for the Assets (the "Stalking Horse Bid").
3. The form of APA attached hereto as **Exhibit A** is approved by the Bankruptcy Court, as provided for herein.
4. The Stalking Horse Bid is subject to higher or otherwise better offers.
5. OHI may pay the Stalking Horse Bidder (a) a breakup fee of \$150,000 (the "Breakup Fee"), and (b) reimbursement of expenses incurred in an amount not to exceed \$50,000 (the "Expense Reimbursement"), both payable at closing in the event that the Stalking Horse Agreement is terminated due to (i) OHI's closing or entering into an agreement for any alternative transaction with any person other than the Stalking Horse Bidder or (ii) the Debtors' declaring another bidder to be the Successful Bidder (defined below). The Breakup Fee is approved by the Bankruptcy Court, and will be an allowed administrative expense priority claim against OHI pursuant to section 503(b)(1) and 507(a)(2) of the Bankruptcy Code. The Expense Reimbursement will be an allowed administrative expense priority claim against OHI pursuant to section 503(b)(1) and 507(a)(2) of the Bankruptcy Code, subject to a submission filed by the

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Debtor: Optical Holdings of Puerto Rico, LLC, *et al.*
Case No.: 18-29070 (SLM)
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Stalking Horse Bidder for approval by the Bankruptcy Court. All interested parties shall have ten (10) days from the date of submission for approval of the Expense Reimbursement to object to the reasonableness of the expense sought in the Expense Reimbursement. If a timely objection to the approval of the Expense Reimbursement is received, the hearing to consider any objections will be held on a date to be scheduled by the Bankruptcy Court.

The Bidding Procedures

6. The following bidding procedures (the "Bid Procedures") are approved:
- (a) **Assets to Be Sold.** OHI is offering all or substantially all of its assets for sale (the "Purchased Assets" or "Assets"). OHI shall retain all rights and title to assets that are not subject to a bid accepted by the Debtors and approved by the Bankruptcy Court at the Sale Hearing (defined below). The Purchased Assets can be sold in their entirety, in lots or separately in the discretion of the Debtors in conjunction with its advisors.
 - (b) **The Bidding Process.** The Debtors, in conjunction with its advisors, shall: (i) determine whether any person is a Potential Bidder ("Potential Bidder"); (ii) coordinate the efforts of Potential Bidders in conducting their respective due diligence investigations regarding OHI's businesses; (iii) receive offers from Qualified Bidders (hereinafter defined); and (iv) negotiate any offer made to purchase the Assets, together or separately (collectively, the "Bidding Process"). Neither the Debtors nor its representatives shall be obligated to furnish any information of any kind whatsoever relating to the Assets to any person who is not a Potential Bidder.
 - (c) **Participation Requirements.** Unless otherwise ordered by the Bankruptcy Court, for cause shown, or as otherwise determined by the Debtors, in its discretion, in order to participate in the Bidding Process each person (a "Qualified Bidder") must submit a bid that adheres to the following requirements (a "Qualified Bid"):

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- i. All Qualified Bids must be submitted substantially in the form of the APA, which is annexed hereto as **Exhibit A**, to Debtors' Counsel, Alan J. Brody, Esq., Greenberg Traurig, LLP, 500 Campus Drive, Florham Park, New Jersey 07932 no later than **April __, 2019 at 5:00 p.m. (Eastern Time)** (the "Bid Deadline").
- ii. All Qualified Bids shall be in substantially the form of the APA, together with a comparison showing all changes from the APA, and a letter from a person or persons demonstrating that the Qualified Bidder is financially able to consummate the purchase of the Assets, which letter states:
 - (1) that such Qualified Bidder offers to purchase some or all of the Assets upon the terms and conditions set forth in an asset purchase agreement, together with its exhibits and schedules, including terms relating to price and the time of closing (the "Proposed Agreement");
 - (2) that such Qualified Bidder is prepared to consummate the transaction on or before fourteen (14) days following entry of an order of the Bankruptcy Court approving the Sale to the Successful Bidder (defined below) (the "Sale Order");
 - (3) that such Qualified Bidder's offer is irrevocable until the earlier to occur of, (a) two (2) business days after the closing of the sale of the Purchased Assets; (b) the Assets have been withdrawn from the Sale or (c) thirty (30) days after the date the Sale Order is entered by the Bankruptcy Court;
 - (4) the actual value of such Qualified Bidder's bid to OHI's estate; and
 - (5) which of OHI's leases and executory contracts are to be assumed in connection with the consummation of the Qualified Bidder's bid.
- iii. The Qualified Bid must be at least \$50,000 more than the Stalking Horse Bid plus the Breakup Fee and Expense Reimbursement (the

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“Minimum Overbid”); provided however, the Debtors, in their discretion, reserve the right to consider bids that may be submitted in a lesser amount than the Minimum Overbid.

- iv. All Qualified Bids shall be accompanied by a deposit into escrow with the Debtors' counsel of an amount equal to 10% of the total proposed purchase price (the “Good Faith Deposit”).
 - v. All Qualified Bids shall be accompanied by satisfactory evidence, in the opinion of the Debtors and their advisors, of committed financing or other ability to perform all transactions contemplated by the Proposed Agreement.
 - vi. All Qualified Bids must provide for payment of the Assumed Liabilities, in full, in cash at the Closing (defined below).
 - vii. Qualified Bids cannot contain any contingencies, including, without limitation, financing conditions or contingencies, other than those agreed to by the Debtors and/or any other affected creditors.
 - viii. All Qualified Bids shall include a list of all executory contracts of the Debtor the Qualified Bidder will require OHI to assume and reject, a statement that the Qualified Bidder will assume all cure costs associated with all executory contracts being assumed and sufficient information to satisfy the adequate assurance requirements for the assumption of any executory contracts.
 - ix. All Qualified Bidders shall submit to the jurisdiction of the Bankruptcy Court.
 - x. Each Qualified Bidder shall acknowledge that their Qualified Bid is a good faith offer.
- (d) **Due Diligence.** The Debtors shall afford each Potential Bidder (hereinafter defined) due diligence access to the Purchased Assets. Due diligence access may include management presentations as may be scheduled by the Debtors, access to data rooms, on-site inspections and such other matters which a Potential Bidder may request and as to which the Debtors, in their sole discretion, may agree. The Debtors (and any of

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their representatives) are not obligated to furnish any information relating to the Purchased Assets to any person except to Potential Bidders. Potential Bidders are advised to exercise their own discretion before relying on any information regarding the Assets provided by anyone other than the Debtors or their representatives. To be a "Potential Bidder," each bidder must have delivered the following:

- i. an executed confidentiality agreement in form and substance satisfactory to the Debtors; and
 - ii. current audited and unaudited financial statements or other financial information of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of acquiring the Purchased Assets, current audited and unaudited financial statements or other financial information of the Potential Bidder's equity holder or other financial backer, or such other form of financial disclosure and evidence acceptable to the Debtors and their advisors in their sole discretion, demonstrating such Potential Bidder's ability to close the proposed transaction, to finance going concern operations to the extent contemplated, and to provide adequate assurance of future performance to counterparties to any executory contracts and unexpired leases to be assumed by the Potential Bidder.
- (e) **"As Is, Where Is."** The sale of the Purchased Assets shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtors, their agents or estates, except to the extent set forth in the Proposed Agreement of the Successful Bidder. Except as otherwise provided in the Proposed Agreement, all of OHI's rights, titles and interests in and to the Purchased Assets to be acquired shall be sold free and clear of all liens, claims, charges, security interests, restrictions and other encumbrances of any kind or nature thereon and there against. Each bidder shall be deemed to acknowledge and represent that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or Purchased Assets in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Purchased Assets, or the completeness of any information provided in

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connection with the Purchased Assets, the Bidding Process or the Auction, except as expressly stated in these Bid Procedures or, as to the Successful Bidder (defined below), in the applicable Proposed Agreement.

- (f) **Auction.** If the Debtors receive more than one Qualified Bid prior to the Bid Deadline, the Debtors shall conduct an auction (the "Auction") at the offices of Greenberg Traurig, LLP, 500 Campus Drive, Florham Park, New Jersey 07932 on **April __, 2019 at 11:00 a.m. (Eastern Time)** or such later time or other place as the Debtors determine (and shall notify all Qualified Bidders who have submitted Qualified Bids of any such change). Only representatives of the Debtors, the United States Trustee, and any Qualified Bidders who have timely submitted Qualified Bids shall be entitled to attend the Auction. The Debtors may announce at the Auction additional procedural rules that are reasonable under the circumstances (*e.g.*, the amount of time allotted to make subsequent overbids) for conducting the Auction, so long as such rules are not inconsistent with these Bid Procedures. Based upon the terms of the Qualified Bids received, the number of Qualified Bidders participating in the Auction, and such other information as the Debtors determine is relevant, the Debtors, in their sole discretion, may conduct the Auction in the manner they determine will achieve the maximum value for the Purchased Assets. At the Auction, the minimum initial bid must provide for cash payment in an amount not less than the Minimum Overbid. Subsequent bids shall be made in minimum increments of \$25,000.
- (g) **Review of Bids and Reservation of Rights.** Within one day after the conclusion of the Auction, the Debtors shall: (i) review each Qualified Bid on the basis of financial and contractual terms and the factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the sale; and (ii) identify the bidder (the "Successful Bidder") with highest or otherwise best offer or combination of offers for the Assets (the "Successful Bid") and any second-highest or best offer. The Debtors may: (i) determine, in its business judgment, which Qualified Bid, if any, is the highest or otherwise best offer; (ii) consult with the representatives of the significant constituents of the Chapter 11 Cases in connection with the Bidding Process and Bid Procedures; and (iii) reject at any time before entry of the Sale Order approving a Qualified Bid, any bid that, in the Debtors' sole discretion, is: (x) inadequate or insufficient; (y) not in conformity with the requirements of the Bid

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Procedures, the Bankruptcy Code, or the terms and conditions of sale; or (z) contrary to the best interests of the Debtors, their estates, their creditors and other parties in interest. At or before the Sale Hearing, the Bankruptcy Court, or, consistent with the purposes of the Bid Procedures to obtain the highest or otherwise best offer(s) for the Assets, the Debtors may impose such other terms and conditions as it or they may determine to be in the best interests of the Debtors' estates, their creditors and other parties in interest.

- (h) **Presentation of Successful Bid.** The Debtors will present the Successful Bid to the Bankruptcy Court for approval at the Sale Hearing. The Debtors reserve all rights to not submit any bid which is not acceptable to the Debtors.
- (i) **Acceptance of Qualified Bids.** OHI shall sell the Purchased Assets to the Successful Bidder submitting the highest or otherwise best Qualified Bid at the Auction, after approval of such Qualified Bid by the Bankruptcy Court at the Sale Hearing. The Debtors' presentation to the Bankruptcy Court for approval of a particular Qualified Bid does not constitute the Debtors' acceptance of such Qualified Bid. The Debtors shall have accepted a Qualified Bid only when that Qualified Bid has been approved by the Bankruptcy Court at the Sale Hearing.
- (j) **The Sale Hearing.** A hearing to confirm the results of the Auction and to approve the sale of the Purchased Assets (the "Sale Hearing") will be held before the Honorable Stacey L. Meisel, United States Bankruptcy Judge, Martin Luther King Jr. Federal Building, 50 Walnut Street, Newark, NJ 07102, on **April __, 2019 at __:00 a.m.** (or other date and time determined by the Bankruptcy Court). The Sale Hearing may be adjourned or rescheduled without notice other than by an announcement of the adjourned date in open court.
- (k) **Back up Bid.** Following the entry of the Sale Order approving the Sale, if the Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the next highest or otherwise best Qualified Bid(s), may be deemed to be the Successful Bid(s), in the discretion of the Debtors, and the Debtors are authorized but not required in the exercise of its business judgment to effectuate such sale without further order of the Bankruptcy Court.

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- (l) **Return of Good Faith Deposit.** The Good Faith Deposits of all Qualified Bidders shall be retained by the Debtors' counsel, and all Qualified Bids will remain open and irrevocable, notwithstanding Bankruptcy Court approval of a sale pursuant to the terms of a Successful Bid by a Qualified Bidder, until the earlier to occur of **April __, 2019** or two (2) business days after the closing of the Sale of the Purchased Assets. If a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Debtors will not have any obligation to return the Good Faith Deposit deposited by such Successful Bidder, which shall be retained by the Debtors as liquidated damages.
- (m) **Modifications:** In addition to other rights set forth above, the Debtors may modify these Bid Procedures or impose, at or prior to the Auction, additional terms and conditions on the proposed Sale of the Purchased Assets if, in its reasonable judgment, such modifications would be in the best interests of the Debtors' estates and promote an open and fair sale process.
- (n) **Bankruptcy Court Approval:** The sale of the Assets contemplated herein shall be subject to the entry of an order, or orders as the case may be, by the Bankruptcy Court: (a) approving the sale and transfer of the Assets; and (b) containing a finding that the successful Bidder is a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code.

7. The Debtors may sell the Assets, or select Assets, by conducting a sale or an auction in accordance with the Bid Procedures.

8. The Debtors shall conduct the Auction on **April __, 2019 at 11:00 a.m. (Eastern Time)** at the offices of Greenberg Traurig, LLP, 500 Campus Drive, Florham Park, New Jersey 07932.

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9. The closing of the sale of the Purchased Assets shall take place within fourteen (14) days of the Sale Order in accordance with the terms agreed to between the Debtors and the Successful Bidder (the "Closing").

10. The form of Sale Notice attached to this Order as **Exhibit B** is hereby approved as sufficient.

11. Within three (3) business days after entry of this Order, the Debtors shall provide a copy of the Sale Notice to (i) all entities reasonably known to have expressed an interest in a transaction with respect to some or all of the Assets, (ii) all entities known to have asserted interests against the Assets, (iii) all of the Debtors' creditors, unless otherwise limited by Bankruptcy Court order, (iv) the Office of the United States Trustee, and (v) those parties that request notice of pleadings in the Debtor's chapter 11 cases pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure.

12. Within one (1) business day after the conclusion of the Auction, the Debtors shall cause its counsel to file with the Bankruptcy Court a supplement outlining the identity of the Successful Bidder of the Purchased Assets (the "Purchaser") and the purchase price received therefor.

13. The Sale Hearing to approve the Debtors' selection of the highest or best bid and the remainder of the relief requested in the Motion shall be held on **April __, 2019 at __:00 a.m.** (or other date and time determined by the Bankruptcy Court) (the "Sale").

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14. Any objections to the Sale, must be in writing, filed with the Bankruptcy Court, and actually received by (i) the attorneys for the Debtors, (ii) the attorneys for the Stalking Horse Bidder, and (iii) the Office of the U.S. Trustee, on or before **April __, 2019 at 1:00 p.m. (Eastern Time)** (the "Sale Objection Deadline").

15. The Debtors may extend the deadlines set forth in the Bid Procedures and/or adjourn the Auction at the Auction by announcement at the Auction and/or the Sale Hearing may be adjourned by announcement in open court without further notice other than announcement at the Sale Hearing.

16. The Debtors may discontinue the sale process upon notice to the Bankruptcy Court and all parties in interest.

Unexpired Leases and Executory Contracts

A. Cure Amounts

17. The Debtors shall file and serve a "Cure Schedule" on the parties to executory contracts (the "Contracts") and unexpired leases ("Leases") that may be assigned on or before **April __, 2019** (the "Cure Notice"). Any objections to the Cure Notice by a non-debtor party to such Contracts or Leases, must be in writing, filed with the Bankruptcy Court, and actually received by (i) the attorneys for the Debtors, (ii) the attorneys for the Stalking Horse Bidder, and (iii) the Office of the U.S. Trustee, on or before **April __, 2019 at 1:00 p.m. (Eastern Time)**.

18. If no objection to the Cure Notice is filed by a non-debtor party to the Contracts or Leases, then the cure amounts set forth in the Cure Schedule shall be binding on such non-

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debtor party to the Contracts or Leases for all purposes in this case and will constitute a final determination of total cure amounts required to be paid by the purchaser in connection with the assignment to, and assumption by, the Successful Bidder. Each non-debtor contracting party in connection with a Contract or Lease shall be forever barred from objecting to the cure information set forth in the Cure Schedule, including, without limitation, the right to assert any additional cure or other amounts with respect to the Contract or Lease. If a timely objection is received, the hearing to consider any objections to the proposed Cure Schedule will be held at the Sale Hearing (or other date to be established by the Bankruptcy Court or other agreed upon adjourned date).

B. Assumption and Assignment

19. On or before **April __, 2019**, the Debtors shall serve a notice in the form attached hereto as **Exhibit C** on all affected parties to Contracts or Leases that the Successful Bidder may potentially assume its Contract or Lease (the "Assumption Notice"). The form of Assumption Notice attached to this Order as **Exhibit C** is hereby approved as sufficient.

20. Upon request to Debtors' counsel, the Debtors shall make available to parties to Contracts or Leases that received an Assumption Notice, the adequate assurance package provided by the Purchaser to support its Qualified Bid in connection with the assumption and assignment of Contracts and Leases.

21. Any objections to the Assumption Notice based on adequate assurance of future performance, or otherwise, (other than objections to cure amounts) by a non-debtor party to such

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Contracts or Leases, must be in writing, filed with the Bankruptcy Court, and actually received by (1) the attorneys for the Debtors, (ii) the attorneys for the Stalking Horse Bidder, and (iii) the Office of the U.S. Trustee, by the Sale Objection Deadline (**April __, 2019 at 1:00 p.m.**). If a timely objection is received, the hearing to consider any such objections will be held at the Sale Hearing (or other date to be established by the Bankruptcy Court or other agreed upon adjourned date).

22. If no timely objection to the Assumption Notice is filed by a non-debtor party to the Contracts or Leases, (a) each such non-debtor party to the Contracts or Leases shall be forever barred from objecting to the assumption and assignment of its Contract or Lease, (b) each such non-debtor party to the Contracts or Leases is deemed to consent to the assumption and assignment of its Contract or Lease (subject to any objection to the Cure Notice) and (c) the assumption and assignment of each such Contract or Lease designated to be assumed by the buyer at the Sale shall be automatically effective as of the Closing without further Order of the Bankruptcy Court.

C. Rejection

23. In the event that there are any Contracts or Leases that remain unsold at the Closing, the Debtors shall serve on affected parties, a rejection notice (the "Rejection Notice") with attached proposed order (the "Rejection Order") rejecting affected Contracts or Leases in the form attached hereto as **Exhibit D** within seven (7) days of the Closing. The form of

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Rejection Notice and Rejection Order attached to this Order as **Exhibit D** is hereby approved as sufficient.

24. Any objections to the Rejection Notice, must be in writing, filed with the Bankruptcy Court, and actually received by (i) the attorneys for the Debtors, (ii) the attorneys for the Stalking Horse Bidder, and (iii) the Office of the U.S. Trustee, within fourteen (14) days after the Debtor served the Rejection Notice. If a timely objection is received, the hearing to consider any objections will be held on a date to be scheduled by the Bankruptcy Court. If the objection is overruled by the Bankruptcy Court or withdrawn, the rejection of the affected Contract or Lease shall be deemed effective as of the date on which the Bankruptcy Court determines the rejection the Contract or Lease effective, or as agreed to by the Debtors and the applicable counterparty (the "Rejection Effective Date"). If no timely objection to the Rejection Notice is filed and served in accordance with this Order, or if a timely objection is filed but the objection is resolved by the Debtors and affected counterparty, the Debtors may submit the Rejection Order for entry by the Bankruptcy Court under a Certification of no Objection, or Certification of counsel, as applicable. The rejection of such Contract or Lease shall become effective upon entry of the Rejection Order by the Bankruptcy Court.

25. If any personal property or furniture, fixtures or equipment of OHI remains at the premises subject to an unexpired lease of real property subject to a Rejection Notice, OHI is authorized, but not directed, at any time on or before the applicable Rejection Effective Date to remove or abandon any of OHI's personal property that may be located leased premises that are

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Caption: Order Approving and Authorizing (I) Bid Procedures and Form of Notice in Connection With the Sale of OHI Of Puerto Rico LLC's Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (II) Stalking Horse Agreement and Bid Protections, (III) the Scheduling of a Sale Hearing, (IV) the Sale to the Purchaser Submitting the Highest or Best Offer, (V) Procedures for Assuming and Assigning or Rejecting Executory Contracts and Unexpired Leases, (VI) Waiving the Fourteen Day Stay Provided by Fed. R. Bankr. P. 6004, and (VII) Related Relief

subject to a rejected lease. Absent a timely objection to the Rejection Notice, the property will be deemed abandoned pursuant to section 554 of the Bankruptcy Code, as is, effective as of the applicable Rejection Effective Date, and the landlords may dispose of any such abandoned property, in their sole discretion, without further notice or order from this Bankruptcy Court, without any liability to OHI and any third party for such disposal and without waiver of any claim the landlords may have against OHI for the disposal of such property.

26. If an affected landlord or counterparty or any other party in interest (the "Rejection Claimant") asserts a claim or claims against OHI arising from the rejection of a Contract or Lease, such Rejection Claimant shall submit a proof of claim on or before the later of (a) the date that is thirty (30) days from entry of the Rejection Order or (b) the general bar date established by the Bankruptcy Court for filing proofs of claim against OHI. If the Rejection Claimant does not timely file such proof of claim, such claimant shall be forever barred from asserting a claim against OHI for such rejection damages.

27. The Debtors reserve all rights to contest any claims related to the rejection of executory contracts or unexpired leases.

Rule 6004 Waiver & Jurisdiction

28. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 6006, 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable.

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Debtor: Optical Holdings of Puerto Rico, LLC, *et al.*
Case No.: 18-29070 (SLM)
Caption: Order Approving and Authorizing (I) Bid Procedures and Form of Notice in Connection With the Sale of OHI Of Puerto Rico LLC's Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (II) Stalking Horse Agreement and Bid Protections, (III) the Scheduling of a Sale Hearing, (IV) the Sale to the Purchaser Submitting the Highest or Best Offer, (V) Procedures for Assuming and Assigning or Rejecting Executory Contracts and Unexpired Leases, (VI) Waiving the Fourteen Day Stay Provided by Fed. R. Bankr. P. 6004, and (VII) Related Relief

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

30. The Bankruptcy Court shall retain jurisdiction to resolve any dispute relating to the interpretation of the Bid Procedures and this Order. To the extent any provisions of this Order are inconsistent with the Motion or the APA, the terms of this Order shall control.

EXHIBIT A

ASSET PURCHASE AGREEMENT

By and Between

OHI OF PUERTO RICO LLC

AS SELLER

and

ISLAND OPTICAL, LLC or its designee

AS BUYER

Dated as of February 15, 2019

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “*Agreement*”), dated as of February 15, 2019, is made by and between OHI of Puerto Rico LLC, a Puerto Rico limited liability company (the “*Seller*”), and Island Optical, LLC or its designee, a Puerto Rico limited liability company (the “*Buyer*”). Capitalized terms used in this Agreement are defined in **Exhibit A**.

RECITALS

WHEREAS, the Seller owns and operates a Pearl Vision® store in Puerto Rico (the “*Business*”); and

WHEREAS, on September 25, 2017 (the “*Petition Date*”), the Seller filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court, which case is administered under Case No. 18-29071 (SLM), and jointly administered with the Chapter 11 case filed by Optical Holdings of Puerto Rico, LLC (“*Optical Holdings*”, and with the Seller, the “*Debtors*”) Case No. 18-29070 (SLM) pending in the United States Bankruptcy Court for the District of New Jersey (the “*Bankruptcy Cases*”); and

WHEREAS, Seller continues to operate as debtor and debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code; and

WHEREAS, on the terms and subject to the conditions set forth in this Agreement, Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, the Acquired Assets; and

WHEREAS, it is intended that the acquisition of the Acquired Assets would be accomplished through the sale, transfer and assignment of the Acquired Assets by Seller to Buyer; and

WHEREAS, Buyer also desires to assume, and Seller desires to assign and transfer to Buyer, the Assumed Liabilities.

NOW, THEREFORE, in consideration of the foregoing and their respective representations, warranties, covenants and undertakings herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer hereby agree as follows:

ARTICLE 1 PURCHASE AND SALE OF THE ACQUIRED ASSETS

1.1 Purchase and Sale of Acquired Assets. Subject to the terms and conditions of this Agreement and the entry of the Sale Order, at the Closing Seller shall sell, transfer, assign, convey and deliver to Buyer, and Buyer shall purchase and receive from Seller, free and clear of all Liens, all of Seller’s right, title and interest in, to and under all of Acquired Assets. The Acquired Assets shall include, but not be limited to, the following:

- (a) all fixed assets, plant, property and equipment, machinery, tools, specialty tools, parts, office supplies, production supplies, leasehold improvements, office

equipment, furniture, fixtures or other tangible property owned by Seller on the Closing Date (and all of the rights and interests of Seller in and to any such assets held by Seller under lease) (the “***Seller Property***”), whether or not any such item has been expensed, fully depreciated or written off by Seller for accounting purposes and wherever located;

(b) all inventory used principally in, or necessary for, the conduct of the Business (the “***Inventory***”), for which title of ownership has not passed from Seller to its customers or non-Affiliates of Seller prior to the Closing in the ordinary course of business;

(c) all other tangible personal property owned or leased by Seller;

(d) all of Seller’s rights and interests under leases of real property (the “***Real Estate Leases***”) identified by Buyer in writing no less than two (2) business days prior to the Closing Date and listed on **Schedule 4.11**, including rights to security deposits related thereto (the real property leased by Seller pursuant to the Real Estate Leases, the “***Leased Real Property***”), including, but not limited to, Seller’s rights and interests under the easements, rights of way, real property licenses, and other real property entitlements related to the Real Estate Leases and Seller’s rights and interests to the property, improvements and fixtures now or hereafter located on the Leased Real Estate to the extent provided in the Real Estate Leases.

(e) all of Seller’s sales and promotional literature and other sales-related materials related to the Business;

(f) all Intellectual Property Rights of Seller and all rights thereto of Seller, including the right to the name “OHI of Puerto Rico” and any other trade names used by Seller in the Business, and all of Seller’s logos;

(g) all websites, computer software or systems or copyrightable materials owned or licensed to Seller, other than items of the foregoing description identified in Schedule 1.2;

(h) Seller’s telephone numbers, facsimile numbers and email addresses;

(i) all warranty claims relating to the Acquired Assets relating to or arising from the period prior to the Closing Date;

(j) to the extent transferable and subject to any required consents, all rights and benefits in and under the Assigned Contracts, including all rights to receive goods and services purchased pursuant to such Assigned Contracts and to assert claims and take other actions in respect of breaches or other violations thereof. At any time prior to the Closing Date, Buyer, in its sole discretion by written notice to Seller, may elect to exclude any Executory Contract as an Assigned Contract, in which case such Executory Contract shall no longer be deemed an “Assigned Contract” under this Agreement;

(k) all of Seller’s customer lists;

- (l) all of Seller's bank accounts, investment accounts, safety deposit boxes, lock boxes and the like as of the Closing Date and the contents thereof;
- (m) all rights of Seller under non-disclosure or confidentiality, non-compete, or non-solicitation agreements with Employees and agents of Seller or with third parties;
- (n) all of Seller's rights and interests in any Permits;
- (o) all of Seller's accounts or notes receivable (whether current or noncurrent), rebates, refunds, and all causes of action specifically pertaining to the collection of the foregoing as of the Closing Date;
- (p) all financial and other books and records of Seller (other than minute books, stock records and corporate seal of Seller), including all historical records related to the use or operation of the Acquired Assets, in any media;
- (q) all cash and cash equivalents held by or on behalf of the Seller;
- (r) all security and utility deposits, credits, allowances, prepayments, refunds, causes of action, rights of recover, rights of set-off or rights of recoupment related to the Acquired Assets, (except for security deposits relating to Seller's (i) Real Estate Leases which are not Assigned Contracts, or (ii) Contracts which are not Assigned Contracts);
- (s) all of Seller's rights and interests to insurance proceeds or other insurance recoveries;
- (t) all rights, claims or causes of action of Seller relating to or arising out of the operation of the Business or the Acquired Assets, including, but not limited to (i) any actions against or otherwise involving any counterparty to any Assigned Contract, any post-Closing Employees, officers or directors of the Business, including Transferred Employees, and/or any of the Seller's lenders, landlord or vendors (except to the extent released herein), (ii) any actions relating to the ongoing or future operations of the Business, and (iii) the Avoidance Actions. Upon Closing, Buyer irrevocably waives and releases the Avoidance Actions;
- (u) all tax attributes of Seller relating to the Acquired Assets, including all incentives, losses, loss carry forwards and rights to receive refunds, credits and loss carry forwards and rights to receive refunds, credits and loss carry forwards with respect to any and all Taxes of Seller relating to any period, or portion of any period, on or prior to the Closing Date, including, but not limited to, interest receivable with respect thereto and any future tax incentives;
- (v) all of Seller's rights and interests to Tax refunds, rebates, credits and similar items relating to any period, or portion of any period, on or prior to the Closing Date;
- (w) to the extent transferable and subject to any required consents and except for such property referred to in Section 1.2, all intangible personal property to the extent used principally in, or necessary for the conduct of the Business and not otherwise covered

in other clauses of this Section 1.1, including securities (other than any equity of Seller), deferred charges, prepaid expenses, prepaid Taxes, refunds due, advances, insurance claims, and causes of action (whether fixed or contingent), to the extent related to the Acquired Assets, and all similar intangible personal property owned by Seller on the Closing Date, whether or not shown on the books of Seller;

(x) all of Seller's rights and interests to promotional allowances and vendor rebates and similar items;

(y) the right to receive and retain mail, accounts receivable payments and other communications addressed to Seller as of the Closing Date; provided, however, that Buyer's right to receive an accounts receivable payment after the Closing Date shall be subject to such defenses or rights of set off as shall have been held by the account debtor as of the Closing Date; and provided, further, that each account debtor's right to assert any such defense or right of set off against Buyer after the Closing Date shall remain subject to all claims or defenses held by Seller or Buyer with regard to such accounts receivable as of the Closing Date;

(z) all of the goodwill of Seller; and

(aa) all rights under warranties from suppliers of the Business, except to the extent related to Excluded Assets.

1.2 Excluded Assets. Notwithstanding anything foregoing or anything else to the contrary in this Agreement, the Acquired Assets shall not include any of the properties or assets listed on **Schedule 1.2** (the "**Excluded Assets**").

1.3 Assumption of Liabilities. Subject to the terms and conditions set forth in this Agreement, at the Closing, in consideration for the sale, assignment, conveyance, transfer and delivery of the Acquired Assets to Buyer, Buyer will assume and pay, perform and discharge when due and otherwise in accordance with the terms of this Agreement, only the following liabilities (collectively, the "**Assumed Liabilities**"):

(a) all liabilities and obligations of Seller under the Assigned Contracts arising on or after the Closing and the Cure Costs;

(b) all liabilities and obligations of Seller with respect to the Acquired Assets or the operation of the Business arising on or after the Closing;

(c) all administrative claims arising from services received or goods purchased by and/or delivered to the Debtors in the ordinary course of business from the Petition Date through Closing except with regard to Excluded Assets, provided, however, that Buyer reserves the right to object to any claim made by any third party in connection with any allowed claim. For the avoidance of doubt, Buyer shall pay all allowed claims scheduled by the Debtor as section 11 U.S.C. §503(b)(9) claims set forth on **Schedule 1.3(c) (the "503(b)(9) Claims")** no later than five (5) days after the Closing;

(d) all liabilities and obligations of the Debtors with respect to the agreements and debt set forth on Schedule 1.3(h); and

(e) all liabilities and obligations for any Taxes relating to or arising from the Acquired Assets or the Business relating to or arising from the period on or after the Closing Date;

(f) with respect to the Transferred Employees, (a) earned and accrued but unpaid wages and payroll-related Taxes payable by Seller within the two (2) week period prior to the Closing, and (b) unused vacation or sick leave, each as set forth on **Schedule 1.3(g)**; and

(g) Any liability for (i) all costs and expenses incurred by the Debtors or any predecessor or Affiliate of the Debtors or owed in connection with the administration of the Bankruptcy Cases (including, but not limited to, the U.S. Trustee fees, the fees and expenses of attorneys, accountants, financial advisors, consultants and other professionals retained by the Debtors; and (ii) all costs and expenses of the Debtors incurred in connection with the negotiation, execution and consummation of the transactions contemplated under this Agreement;

1.4 Excluded Liabilities. Seller shall retain all liabilities and obligations that are not Assumed Liabilities (collectively, the “**Excluded Liabilities**”), which liabilities shall include, but not be limited to:

(a) Except for Assumed Liabilities set forth in Section 1.3 herein identified by Buyer in writing no less than two (2) business days prior to the Closing Date, liabilities of every kind whether or not asserted, scheduled or evidenced by a filed proof of claim or other form of writing evidencing such claim filed in the Bankruptcy Cases, secured, priority, administrative or unsecured, in each case, accrued prior to, on or after the Petition Date;

(b) All liabilities of Seller or any predecessor or Affiliate of Seller under any Contract of Seller that is not an Assigned Contract whether accruing prior to, at or after the Effective Date;

(c) All liabilities for Taxes arising from or with respect to the Acquired Assets or the Business that are included in or attributable to the operation of the Business prior to the Effective Date, including, but not limited to, any liability for Puerto Rico sales Taxes;

(d) Except as set forth in Section 1.3(g), any and all liabilities to current or former employees or independent contractors of Seller arising prior to the Closing Date;

(e) Any and all liability under the WARN Act (or similar state statute), if applicable, incurred by Seller or any predecessor or Affiliate of Seller prior to the Closing Date;

(f) Any indebtedness or obligation for borrowed money of the Debtors or any predecessor or Affiliate of Seller other than as set forth in this Agreement;

(g) Except as set forth in this Agreement, all compensation liabilities or other obligations relating to any Employees or former employees of Seller or any predecessor or Affiliate of Seller, including (i) accrued vacation, other paid time off, and accrued gross payroll liabilities and obligations (including payroll taxes accrued and unpaid); (ii) any worker's compensation claims (whether reported or not); (iii) any litigation claims, including, but not limited to, any claims for wrongful termination, any claims under Title VII of the Civil Rights Act of 1964, as amended, or similar state Law, and any whistleblower claims; or (iv) any claims under any of the Seller's Employee Benefit Plans;

(h) To the maximum extent permitted by Law, any liabilities arising under any Environmental Law or any other Law including as a result of any action or inaction of Seller or any third party relating to the storage, use or operation of the Acquired Assets on or before the Closing Date;

(i) To the maximum extent permitted by Law, any liability arising out of or relating to any violation of any Law or Order occurring or arising out of or relating to any event or condition occurring or existing at or prior to the Effective Date;

(j) Any and all liabilities incurred by Seller or any predecessor or Affiliate of Seller (whether incurred prior to or after the Petition Date) of whatever kind, other than the Assumed Liabilities; and

(k) Any liability to indemnify, reimburse or advance amounts to any officer, director, Employee or agent of Seller or any predecessor or Affiliate of Seller or to any third party.

1.5 Acquired Assets Sold "As Is, Where Is". BUYER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS SET FORTH IN THIS AGREEMENT OR THE APPROVAL ORDER, (a) THE ACQUIRED ASSETS SOLD PURSUANT TO THIS AGREEMENT ARE SOLD, CONVEYED, TRANSFERRED AND ASSIGNED ON AN "AS IS, WHERE IS" BASIS "WITH ALL FAULTS" AND (b) SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, TERMS, CONDITIONS, UNDERSTANDINGS OR COLLATERAL AGREEMENTS OF ANY NATURE OR KIND, EXPRESS OR IMPLIED, BY STATUTE OR OTHERWISE CONCERNING THE ACQUIRED ASSETS OR THE CONDITION, DESCRIPTION, QUALITY OR USEFULNESS OF THE ACQUIRED ASSETS INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH WARRANTIES ARE ALSO HEREBY EXPRESSLY DISCLAIMED.

BUYER ACKNOWLEDGES THAT IT IS A SOPHISTICATED PURCHASER WHO HAS HERETOFORE HAD OPEN ACCESS TO, AND SUFFICIENT TIME TO REVIEW, ALL INFORMATION, DOCUMENTS, AND AGREEMENTS RELATING TO THE ACQUIRED ASSETS THAT BUYER DEEMED OR DEEMS NECESSARY TO REVIEW, AND HAS

CONDUCTED AN INSPECTION, ANALYSIS AND EVALUATION OF THE ACQUIRED ASSETS.

BUYER HAS UNDERTAKEN SUCH INVESTIGATION AS BUYER DEEMED NECESSARY TO MAKE BUYER FULLY AWARE OF THE CONDITION OF THE ACQUIRED ASSETS AS WELL AS ALL FACTS, CIRCUMSTANCES AND INFORMATION WHICH MAY AFFECT THE USE AND OPERATION OF THE ACQUIRED ASSETS AND THE BUSINESS.

THE PROVISIONS OF THIS SECTION 1.06 SHALL SURVIVE THE CLOSING OR EARLIER TERMINATION OF THIS AGREEMENT AND SHALL BE INCORPORATED INTO THE CLOSING DOCUMENTS TO BE DELIVERED AT CLOSING.

ARTICLE 2 CONSIDERATION

2.1 Consideration. The Buyer shall, as consideration for the sale and transfer of the Acquired Assets, (a) assume the Assumed Liabilities, (b) pay all Cure Costs, (c) pay the 503(b)(9) Claims, (d) deliver to Seller, on the Closing Date, cash payments of 503(b)(9) Claims and Cure Costs, the “*Cash Portion*”) (collectively, (a) – (c) are the “*Purchase Price*”), by wire transfer of immediately available funds.

ARTICLE 3 CLOSING AND DELIVERIES

3.1 Closing. The consummation of the transactions contemplated hereby (the “*Closing*”) shall take place at the offices of Greenberg Traurig, LLP, 500 Campus Drive, Florham Park, New Jersey 07932, at 9:00 a.m. on or before April 19, 2019, following the satisfaction or waiver by the appropriate party of all the conditions contained in Article 11, or on such other date or at such other place and time as may be agreed to by the parties hereto; provided, however, that the date of the Closing shall be automatically extended if any of the conditions set forth in Article 11 shall not be satisfied or waived, subject, however, to the provisions of Article 12 (the date on which the Closing occurs, hereinafter, the “*Closing Date*”).

3.2 Seller’s Deliveries. On the Closing Date, Seller shall deliver or cause to be delivered the following to Buyer:

- (a) a bill of sale in customary form as agreed between Buyer and Seller prior to the Closing Date, executed by Seller;
- (b) an Assignment and Assumption Agreement, in customary form as agreed between Buyer and Seller prior to the Closing Date (the “*Assignment and Assumption Agreement*”), and such other instruments of conveyance as are reasonably necessary for the transfer of the Acquired Assets or assumption of the Assumed Liabilities, executed by Seller;
- (c) a true and correct copy of the Sale Order as entered by the Bankruptcy Court;

(d) the Business Records (it being understood that any Business Records located at one of the locations assigned to Buyer pursuant to one of the acquired leases of real property need not be physically delivered, but shall be deemed delivered at the Closing); and

(e) a certificate, executed by a manager (or an officer) of Seller certifying that attached thereto are true and complete copies of all resolutions adopted by the members and/or managers of Seller authorizing the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

(f) all other agreements, documents, instruments and items as may be reasonably required by Buyer to complete the transactions provided for in this Agreement and to continue operating the Business without disruption as of the Closing Date.

3.3 Buyer's Deliveries. On the Closing Date, Buyer shall deliver or cause to be delivered the following:

(a) to Seller, the Cash Portion, by wire transfer of immediately available funds to a bank account designated by Seller in writing to Buyer on the Closing Date;

(b) to the Seller, the Assignment and Assumption Agreement executed by Buyer; and

(c) a certificate, executed by a manager (or an officer) of Buyer certifying that attached thereto are true and complete copies of all resolutions adopted by the members and/or managers of Buyer authorizing the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

(d) all other agreements, documents, instruments and items as may be reasonably required by Seller to complete the transactions provided for in this Agreement.

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Buyer as of the date hereof as follows:

4.1 Corporate Organization. Seller is a limited liability company duly organized, validly existing and in good standing under the Laws of the Commonwealth of Puerto Rico. Seller has all requisite corporate power and authority to own, lease and operate its properties, to carry on its business as now conducted (including the Business), and to perform its obligations under any of the Transaction Documents to which it is or will be party. Seller is in good standing under the laws of each jurisdiction in which it owns or leases its real property and each other jurisdiction in

which the conduct of its businesses or the ownership or lease of its properties requires such qualification or authorization, except where failure to be so qualified, authorized or in good standing would not have a Material Adverse Effect.

4.2 Authorization. Subject to Bankruptcy Court approval pursuant to the Sale Order, Seller has all requisite power and authority to enter into this Agreement and Transaction Documents to which it is or will be a party, and to carry out its obligations hereunder and thereunder. The execution and delivery of this Agreement and the Transaction Documents to which it is or will be a party and the performance by Seller of its obligations hereunder and thereunder have been duly authorized by all necessary action on behalf of Seller, and, other than the Bankruptcy Court proceedings, no other proceedings on the part of Seller are necessary to authorize such execution, delivery and performance. This Agreement has been, and the Ancillary Agreements when delivered will be, duly executed by Seller, and, subject to Bankruptcy Court approval pursuant to the Sale Order, the Transaction Documents constitute the valid and binding obligations of Seller, enforceable against it in accordance with the terms herein and therein.

4.3 No Conflict or Violation. None of the execution and delivery by Seller of this Agreement or the Transaction Documents to which it is or will be a party, the consummation of the transactions contemplated hereby or thereby, or compliance by Seller with any of the provisions hereof or thereof will conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation under, or result in a loss of a material benefit under, or give rise to any obligation of Seller to make any payment under, or result in the increased, additional, accelerated or guaranteed rights or entitlements of any Person under any provision of (i) the certificate of incorporation and bylaws of the Seller; (ii) any Assigned Contract, except as set forth in any such Assigned Contract, and subject to the effect of applicable bankruptcy law and the Sale Order; or (iii) any Order of any court, Government or arbitrator applicable to Seller or the properties or assets of the Seller; other than, in the case of clauses (ii) and (iii), such conflicts, violations, defaults, terminations, cancellations or accelerations that would not have a Material Adverse Effect.

4.4 Governmental Consents and Approvals. Subject to entry of the Sale Order, the execution, delivery and performance by Seller of the Transaction Documents and the consummation of the transactions contemplated hereby and thereby do not require the consent or approval of, or filing with, any Government (excluding business licenses required in connection with the conduct of the Business), and no consent or waiver of any party to any Assigned Contract is required, except as set forth in any such Assigned Contract, and for such consents, approvals and filings, the failure to obtain or make which would not, individually or in the aggregate, have a Material Adverse Effect.

4.5 Title to Assets. Except as set forth on **Schedule 4.5**, Seller has good and marketable title to or a valid leasehold interest in or all rights to use (as applicable) all of the Acquired Assets. The Acquired Assets constitute all the properties and assets relating to, used or held for use in connection with the Business, other than the Excluded Assets.

4.6 Employees.

(a) Except for non-compliance which would not, individually or in the aggregate, have a Material Adverse Effect, all Employee Benefit Plans are in compliance with ERISA and the Code. There is no pending or, to the Knowledge of Seller, threatened litigation relating to the Employee Benefit Plans. To Seller's Knowledge, Seller has not engaged in any transaction with respect to any Employee Benefit Plan that could subject Buyer, the Acquired Assets or any Employee Benefit Plan to any Taxes or penalty imposed by either Section 4975 of the Code or Section 502(i) of ERISA.

(b) To Seller's Knowledge, (A) no Employee Benefit Plan is subject to Section 302 or Title IV of ERISA or Section 412 of the Code and (B) no facts exist pursuant to which any Liability or obligation under Title IV of ERISA could be incurred by Buyer or with respect to the Acquired Assets.

(c) Seller does not have any obligations for post-employment health or life benefits, to which Buyer would succeed by operation of law.

(d) No Employee Benefit Plan covers any employees employed outside the United States and its territories.

(e) No employee of Seller is represented by a labor union or is a party to any Collective Bargaining Agreements.

(f) Seller does not maintain any Pension Plans for its employees.

(g) Except as set forth in **Schedule 4.8**, Seller is not a party to any litigation, suit, action, investigation, grievance or arbitration proceedings, labor dispute, labor strike, unfair labor practice complaint or any other claim before any Government authority related to the Seller's Employees nor, to Seller's knowledge, is any such litigation, suit, action, investigation, grievance, arbitration, dispute, strike, complaint or claim threatened, except such litigation, suits, actions, investigations, grievances, arbitrations, disputes, strikes, complaints or claims that, if decided against the Seller, would not reasonably be expected to have a Material Adverse Effect on the Acquired Assets, or the ability of the Seller to consummate the transactions contemplated by this Agreement.

(h) Seller's classification and treatment of individuals as either employees or independent contractors, as "exempt" or "nonexempt" under the wage and hour laws, has been done in good faith. Seller is not delinquent in payments to, or on behalf of, any current or former employees, independent contractors or consultants for any wages, salaries, overtime pay, commissions, bonuses, benefits or other compensation for any services or amounts required to be reimbursed or otherwise paid and arising under any policy, practice, contract, plan, program or Law. Seller's employment policies or practices are not currently being audited or investigated by any governmental authority.

(i) Except as set forth on **Schedule 4.8**, to Seller's Knowledge, Seller has complied with all employment laws and has not been charged with, received any notice of or been under investigation with respect to, any alleged default under, violation of or nonconformity with any laws concerning unemployment compensation, worker's

compensation, wages and hours, discrimination in employment, or unfair labor practices under the National Labor Relations Act.

4.7 Labor.

(a) Seller will provide to the Buyer, prior to the Closing, a list of all the employees or other personnel employed in or rendering services to the Business (the "Employees") as of the most recent practicable date showing, for each such employee or other personnel (i) the position(s) held, such employee or other personnel's service recognized by Seller for purposes of any Employee Benefit Plans, such employee's or other personnel's eligible vacation, and any employment management, retention, severance, independent contractor, or other similar agreement to which such employee or other personnel is a party, (ii) to Seller's knowledge, whether such employee or other personnel was actively at work as of such date, and (iii) to Seller's knowledge, if such employee or other personnel is not actively at work as of such date, the nature of his or her absence (e.g., vacation, illness, short-term disability or leave of absence under the Family and Medical Leave Act of 1993).

(b) Seller will provide to Buyer, prior to Closing, all employment contracts and any and all other agreements, notices, records and documents relating to the Employees or independent contractors.

(c) There is no work slowdown, lockout, stoppage, picketing, strike, arbitration, unfair labor practice charge or material grievance or other labor dispute pending, or to Seller's Knowledge, threatened, between Seller, on the one hand, and its Employees, on the other hand. During the past five years there have been no strikes, slowdowns, work stoppages, disputes, lockouts, or threats thereof, by or with respect to any employees of Seller; no petition has been filed or proceedings instituted by an employee or group of employees of Seller with any labor relations board seeking recognition of a bargaining representative; there is no organizational effort currently being made, or to Seller's Knowledge, threatened, by, or on behalf of, any labor union to organize employees of Seller; and no demand for recognition of employees of Seller has been made by, or on behalf of, any labor union.

4.8 Law and Legal Proceedings.

(a) Except as set forth on **Schedule 4.8**, there are no Legal Proceedings pending or, to Seller's knowledge, threatened against Seller before any Government authority, which, if adversely determined, would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect on the Business of the Seller or the Acquired Assets.

(b) There is no action, suit, proceeding or claim relating to the ownership, occupancy, operation, use or maintenance of the Acquired Assets which is pending before any Government authority nor, to Seller's knowledge, is any such action, suit, proceeding or claim threatened, except such actions, suits, proceedings or claims that, if decided against the Seller, would not be a Material Adverse Effect.

(c) Seller has not received any notice of violation of the Code or any ordinance, regulation, law, or statute of any Government agency pertaining to the Acquired Assets or the Seller's Business or any portion thereof or any zoning ordinances, building codes or parking requirements that would constitute a Material Adverse Effect.

4.9 Environmental Matters.

(a) With regard to the Seller Locations, to the Seller's Knowledge, the operations of Seller with respect to the Business and Acquired Assets are in compliance with all applicable Environmental Laws. Seller has not received written or oral notice of any pending, unresolved or, to Seller's Knowledge, threatened claim or investigation or request for information by any Government authority or any other Person concerning material potential liability of any Seller under Environmental Laws in connection with the ownership or operation of the Acquired Assets. To the Seller's Knowledge, there has not been a release of any Hazardous Substance at, upon, in, from or under the Acquired Assets in quantities or under circumstances that would give rise to any liability or require remediation, investigation or clean up pursuant to any Environmental Law.

(b) To the Seller's Knowledge, with regard to the Seller Locations, Seller has obtained and is in material compliance with all material environmental Permits necessary for conduct of the Business as currently conducted or the ownership, lease, operation or use of the Acquired Assets.

(c) Seller has provided or made available to Buyer all written non-privileged reports, if any, in the possession or control of Seller relating to the presence or migration of Hazardous Substances at, upon, in, from or under the Acquired Assets.

(d) To Seller's Knowledge, no material capital or other expenditures are required to reach or maintain compliance with current Environmental Laws with respect to the operation of the Acquired Assets.

4.10 Intellectual Property. To Seller's Knowledge (a) Seller owns and possesses all right, title and interest in and to (or has the right to use pursuant to a license or other permission) the Intellectual Property Rights; (b) Seller has no obligation to compensate any Person for the right to use any of the Intellectual Property Rights (except, in the case of Intellectual Property Rights that are licensed, for obligations pursuant to the applicable license agreement); (c) Seller has not granted to any Person any license, option or other similar rights in or to any of the Intellectual Property Rights; and (d) no Person is infringing upon or has misappropriated any of the Intellectual Property Rights.

4.11 Leased Property. **Schedule 4.11** sets forth all Real Estate Leases of Seller used in connection with the Business, and a list as of the date of this Agreement, of all leases for each Real Estate Lease.

4.12 Broker's and Finder's Fees. Except for Seller's retention of Sun Mergers & Acquisitions, LLC pursuant to an Order of the Bankruptcy Court, Seller has not dealt with any broker or finder in connection with any of the transactions contemplated by this Agreement in a

manner so as to give rise to any claims against the other party for any brokerage commission, finder's fees or other similar payout.

4.13 No Other Representations or Warranties. Except for the representations or warranties contained in this Article 4, neither Seller nor any other Person makes any express or implied representation or warranty with respect to Seller, the Business, the Acquired Assets, the Assumed Liabilities or the transactions contemplated by this Agreement, and Seller disclaims any other representations or warranties, whether made by Seller or any of its representatives. Except for the representations and warranties contained in this Article 4, Seller expressly disclaims and negates any representation or warranty, expressed or implied, at common law, by statute or otherwise, relating to the condition of the Acquired Assets (including any implied or express warranty of merchantability or fitness for a particular purpose). Seller makes no representations or warranties to Buyer regarding the probable success or profitability of the Business and Buyer expressly assumes such risk.

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller as of the date hereof as follows:

5.1 Limited Liability Company Organization. Buyer is a duly formed and validly existing limited liability company in good standing under the laws of Puerto Rico. Buyer has all requisite limited liability company power and authorization to own its properties and assets and to conduct the Business as now conducted.

5.2 Authorization and Validity. Buyer has all requisite power and authority to enter into this Agreement and to execute and deliver each of the Transaction Documents to which it is a party and to carry out its obligations hereunder and thereunder. The execution and delivery of the Transaction Documents and the performance of Buyer's obligations hereunder and thereunder have been duly authorized by all necessary action on behalf of Buyer, and, other than the Bankruptcy Court proceedings, no other proceedings on the part of Buyer are necessary to authorize such execution, delivery and performance. The Transaction Documents have been duly executed by Buyer and, subject to Bankruptcy Court approval pursuant to the Sale Order, constitutes its valid and binding obligation, enforceable against it in accordance with the terms herein and therein.

5.3 No Conflict or Violation. The execution, delivery and performance by Buyer of the Transaction Documents do not and will not violate or conflict with any provision of the Certificate of Formation or Operating Agreement of Buyer and do not and will not violate any provision of Law, or any Order applicable to Buyer, nor will they result in a breach of or constitute (with due notice or lapse of time or both) a default under any material Contract to which Buyer is a party or by which it is bound or to which any of its properties or assets is subject.

5.4 Consents, Approvals and Notifications. The execution, delivery and performance of the Transaction Documents by Buyer do not require the Consent of, or filing with or notification of, any Government or any other Person, the failure of which to obtain, file or notify would

reasonably be expected to materially impair the ability of Buyer to consummate the transactions contemplated by this Agreement.

5.5 Availability of Funds. Buyer has, and on the Closing Date will have, sufficient funds available to consummate the transactions contemplated by this Agreement.

5.6 Broker's and Finder's Fees. Buyer has not dealt with any broker or finder in connection with any of the transactions contemplated by this Agreement in a manner so as to give rise to any claims against the other party for any brokerage commission, finder's fees or other similar payout.

ARTICLE 6 COVENANTS OF SELLER

Seller hereby covenants to Buyer as follows:

6.1 Actions Before Closing. Seller shall use commercially reasonable efforts to perform and satisfy all conditions to Buyer's obligations to consummate the transactions contemplated by this Agreement that are to be performed or satisfied by Seller under this Agreement.

6.2 Conduct of Business Prior to Closing.

(a) Except as required or expressly permitted pursuant to the terms hereof or of any Ancillary Agreement, the Bankruptcy Code, other applicable Law or any ruling or order of the Bankruptcy Court, Seller shall not do any of the following prior to the Closing Date:

(i) without Buyer's prior written consent (which consent may be delivered via electronic mail and may be withheld for any reason or no reason at all), directly or indirectly sell or otherwise transfer, or offer, agree or commit (in writing or otherwise) to sell or otherwise transfer, any of the Acquired Assets other than the sale of Inventory in the ordinary course of business;

(ii) without Buyer's prior written consent (which consent may be delivered via electronic mail and may be withheld for any reason or no reason at all), permit, offer, agree or commit (in writing or otherwise) to permit, any of the Acquired Assets to become subject, directly or indirectly, to any Lien, claim, interest or encumbrance;

(iii) without Buyer's prior written consent (which consent may be delivered via electronic mail and may withheld for any reason or no reason at all), Seller shall not enter into any transaction or take any other action that could be reasonably expected to cause or constitute a breach of any representation or warranty made by Seller in this Agreement;

(iv) without Buyer's prior written consent (which consent may be delivered via electronic mail and may be withheld for any reason or no reason at

all), (i) enter into any new Contract material to Seller (taken as a whole) that is used in or related to the Business or the Acquired Assets or (ii) assume, amend, modify or terminate any material Contract in any material manner to which Seller is a party or by which it is bound and that is used in or related to the Business or the Acquired Assets (including any Assigned Contract);

(v) without Buyer's prior written consent (which consent may be delivered via electronic mail and may be withheld for any reason or no reason at all), cancel or compromise any material debt or claim or waive or release any right of Seller that constitutes an Acquired Asset;

(vi) without Buyer's prior written consent (which consent may be delivered via electronic mail and may be withheld for any reason or no reason at all), enter into any commitment for capital expenditures except pursuant to any budget approved by Buyer; or

(vii) without Buyer's prior written consent (which consent may be delivered via electronic mail and may be withheld for any reason or no reason at all), terminate, amend or modify in any material manner any lease for Leased Real Property.

(b) Except as required or expressly permitted pursuant to the terms hereof or of any Ancillary Agreement, the Bankruptcy Code, other applicable Law or any ruling or order of the Bankruptcy Court, Seller shall do each of the following prior to the Closing Date:

(i) notify Buyer promptly in writing of any Material Adverse Effect;

(ii) comply in all material respects with all Laws applicable to it or having jurisdiction over the Business or any Acquired Asset;

(iii) use commercially reasonable efforts to (a) conduct the Business in substantially the same manner as conducted as of the date of this Agreement and only in the ordinary course, (b) preserve the existing business organization and management of the Business intact, (c) keep available the services of the current officers and Employees of the Business, to the extent reasonably feasible, and (d) maintain the existing relations with customers, distributors, suppliers, creditors, business partners, employees and others having business dealings with the Business, to the extent reasonably feasible;

(iv) at all times maintain, preserve and protect all of their material Intellectual Property Rights, and preserve all the remainder of their material property, in use or useful in the conduct of the Business and keep the same in good repair, working order and condition (taking into consideration ordinary wear and tear) and from time to time make, or cause to be made, all necessary or appropriate repairs, replacements and improvements thereto consistent with industry practices, so that the business carried on in connection therewith may be properly and advantageously conducted at all times; and

(v) Seller shall not take, or agree, commit or offer (in writing or otherwise) to take, any actions in violation of the foregoing.

6.3 Consents and Approvals. Seller shall use commercially reasonable efforts to obtain all necessary consents and approvals identified by Buyer prior to Closing.

6.4 Access to Properties and Records. Seller shall afford to Buyer, and to the accountants, counsel and representatives of Buyer, reasonable access during normal business hours throughout the period prior to the Closing Date (or the earlier termination of this Agreement pursuant to Article 12) to all books and records of Seller relating to the Business if (w) permitted under Law, (x) such books and records are not subject to confidentiality agreements, or (y) disclosing such books and records would not adversely affect any attorney client, work product or other legal privilege; provided that (i) Seller shall use its commercially reasonable efforts to provide such information to Buyer, and (ii) Seller will, at a minimum and to the extent reasonably feasible, inform Buyer of the estimated exposure, if any, of Buyer in the matters to which such information relates. Upon reasonable prior notice, Seller shall also afford Buyer reasonable access, during normal business hours, to the Business, all operations of the Business and to all Acquired Assets throughout the period prior to the Closing Date.

6.5 Name Change. If requested by Buyer, Seller will deliver to Buyer a duly and properly authorized and executed instrument, certificate or other document of evidence (the “*Organizational Amendment*”) changing the Seller’s name to another name which does not include the name “OHI of Puerto Rico”. Upon the Closing, Seller hereby irrevocably authorizes Buyer to file the Organizational Amendment in each state where Seller is qualified to conduct business on Seller’s behalf. As of the Closing Date, Seller shall discontinue the use of its current name (and any other tradenames currently utilized by Seller) and shall not subsequently change its name to or otherwise use or employ any name which includes the term “OHI of Puerto Rico” without the prior written consent of Buyer. From and after the Closing Date, Seller covenants and agrees not to sue or otherwise employ any of the trade names, corporate names, d/b/a names, or similar Intellectual Property Rights utilized by Seller in the conduct of the Business, which rights shall be included in the Acquired Assets purchased hereunder.

6.6 Further Assurances. Upon the request and at the sole expense of Buyer or Seller, as applicable, at any time after the Closing Date, Seller or Buyer, as applicable, shall execute and deliver such documents or take such actions as the other party or its counsel may reasonably request to effectuate the purposes of this Agreement including, without limitation, conveying to Buyer following the Closing Date all Acquired Assets of Seller that should have been, but were not, conveyed to Buyer on the Closing Date.

6.7 Payments and Revenues. If after the Closing, Seller (or any Affiliate of Seller) shall receive any payment or revenue that belongs to Buyer pursuant to this Agreement, Seller shall promptly remit or cause to be remitted the same to Buyer.

6.8 Preservation of Business Records. After the Closing Date, Seller shall provide to Buyer (after reasonable notice and during normal business hours and without charge to Buyer) access to all Eligible Records retained by Seller for periods prior to the Closing and shall preserve such Eligible Records until the Bankruptcy Court enters an Order closing the Bankruptcy Cases.

Such access shall include access to any such information in electronic form. With respect to any litigation and claims that are related to Excluded Assets or Excluded Liabilities, Seller shall render all reasonable assistance that Buyer may request in defending such litigation or claim. From and after the Closing through the date the Bankruptcy Cases is closed in accordance with Section 350(a) of the Bankruptcy Code or dismissed, Buyer shall give the Seller, Seller's professionals, and any fiduciary of the Seller's bankruptcy estate appointed by the Bankruptcy Court in the Bankruptcy Cases (the "***Access Parties***"), reasonable access during normal business hours to the books and records pertaining to the Purchased Assets and Assumed Liabilities (related to the period prior to the Closing Date) and, to the extent that Buyer is in possession of such information, books and records pertaining to the Excluded Assets and Excluded Liabilities (related to the period prior to the Closing Date); provided, however, that such access shall be subject to a confidentiality agreement if Buyer shall request. Buyer shall, and shall cause each of its Affiliates to, cooperate with the Access Parties as may reasonably be requested but the Access Parties as set forth in this paragraph.

ARTICLE 7 COVENANTS OF BUYER

Buyer hereby covenants to Seller as follows:

7.1 Actions Before Closing Date. Buyer shall use its commercially reasonable efforts to perform and satisfy all conditions to Seller's obligations to consummate the transactions contemplated by this Agreement that are to be performed or satisfied by Buyer under this Agreement.

7.2 Consents, Approvals and Notifications. Buyer shall use all commercially reasonable efforts to obtain all Consents and approvals of all Governments, and all other Persons, required to be obtained by Buyer and provide notifications to all Persons required to be notified by Buyer to effect the transactions contemplated by this Agreement.

7.3 Availability of Business Records and Transferred Employees. After the Closing Date, Buyer shall provide to Seller and Related Persons (after reasonable notice and during normal business hours and without charge to Seller) access to all Business Records for periods prior to the Closing and shall preserve such Business Records until the earlier of (a) Bankruptcy Court enters an Order closing the Bankruptcy Cases or (b) two (2) years following the Closing. Such access shall include access to any such information in electronic form to the extent reasonably available. Buyer acknowledges that Seller has the right to retain originals or copies of Business Records for periods prior to the Closing. Prior to destroying any Business Records for periods prior to the Closing, Buyer shall notify Seller no less than thirty (30) days in advance of any such proposed destruction of its intent to destroy such Business Records, and Buyer will permit Seller to retain such Business Records. With respect to any litigation and claims that are Excluded Liabilities, Buyer shall render all reasonable assistance that Seller may request in defending such litigation or claim and shall make available to Seller, Buyer's personnel or Transferred Employees most knowledgeable about the matter in question.

7.4 Notices. Buyer shall provide Seller with prompt written notice of Buyer's knowledge of (i) any breach of any representation or warranty or failure to comply with or satisfy

any covenant by Seller or Buyer or (ii) any other material failure by Seller or Buyer to comply with the obligations of this Agreement.

7.5 Payments and Revenues. If after the Closing, Buyer (or any Affiliate of Buyer) shall receive any payment or revenue that belongs to Seller pursuant to this Agreement, Buyer shall promptly remit or cause to be remitted the same to Seller, without set-off or deduction of any kind or nature.

ARTICLE 8 EMPLOYEES AND EMPLOYEE BENEFITS; RELEASES

8.1 Employment.

(a) Transferred Employees. Buyer may offer employment to any and all individuals employed by Seller in connection with the Business as of the Closing Date to commence immediately following the Closing, each such offer contingent upon the issuance of the Sale Order of the Bankruptcy Court and the Closing. Buyer's employment of the continuing employees shall be on an "at will" basis and on such other terms and conditions of employment as Buyer shall offer in its sole discretion, subject to the terms of Section 8.1(b). Except as otherwise agreed to in writing and as required by Section 8.1(b), Buyer shall be under no obligation to employ or continue to employ any individual for any period. The Employees who accept Buyer's offer of employment and who commence employment with Buyer shall be referred to herein as the "***Transferred Employees.***"

(b) WARN Act. Buyer shall be required to and shall employ such number of Seller's Employees at the current operating Seller Locations, and shall retain for a period of ninety (90) days following the Closing such number of Seller's Employees at the current operating Seller Locations, as shall be necessary to avoid any potential liability by Seller for a violation of the Federal and California Workers Adjustment Retraining and Notification Acts (collectively the "***WARN Act***") attendant to Seller's failure to notify such Employees of a "mass layoff" or "plant closing" as defined in the WARN Act. For purposes of determining compliance by Buyer with the foregoing provisions, Employees terminated by Seller at the Seller Locations during the period of ninety (90) days immediately prior to the Closing for other than cause, retirement or voluntary departure, shall be taken into consideration so long as Seller notifies Buyer of such terminations. Seller shall notify Buyer in writing regarding all Employees terminated by Seller during said ninety (90) day period. In order to determine compliance with this Section 8.1(b), Buyer shall advise Seller in writing within five (5) days prior to Closing of those Employees of Seller that Buyer has elected not to employ. Nothing herein contained shall be deemed either to affect or to limit in any way the management prerogatives of Buyer with respect to Employees, or to create or to grant to such Employees any third party beneficiary rights or claims or causes of action of any kind or nature. The provisions of this Section 8.1(b) shall survive the Closing.

(c) Indemnification. Buyer shall defend, indemnify and hold harmless Seller and its equityholder(s), directors, managers, officers, employees and agents (each a "***Buyer***

Indemnitee”) from and against any and all claims (including without limitation any proceeding, whether instituted by a third party against a Buyer Indemnitee or by a Buyer Indemnitee for the purpose of enforcing its rights hereunder), damages, losses, liabilities, diminution in value, awards, judgments, penalties, Taxes, costs and expenses (including without limitation reasonable attorneys’ and consultants’ fees and expenses, court or arbitration costs and expenses and including any such reasonable out-of-pocket expenses incurred in connection with investigating, defending against or settling any of the foregoing) (collectively “*Losses*”) that constitute, result from or arise out of or in connection with Buyer’s violation of the WARN Act requirements set forth in Section 8.1(b):

(d) Standard Procedure. Pursuant to the “Standard Procedure” provided in Section 5 of Revenue Procedure 96-60, 1996-2 C.B. 399, if applicable, (i) Buyer and Seller shall report on a predecessor/successor basis as set forth therein, (ii) Seller will not be relieved from filing a Form W-2 with respect to any Transferred Employees, and (iii) Buyer will undertake to file (or cause to be filed) a Form W-2 for each such Transferred Employee with respect to the portion of the year during which such Transferred Employees are employed by Buyer that includes the Closing Date, excluding the portion of such year that such Transferred Employee was employed by Seller.

(e) With respect to each Transferred Employee, Seller hereby waives and releases each such individual from any and all contractual, common law or other restrictions enforceable by Seller on the employment, activities or other conduct of such individuals after their termination of employment with Seller; provided, however, that Seller shall assign to the Buyer its rights to all obligations not to disclose confidential information relating to the Business and all obligations not to compete with the Business owed to Seller by such Transferred Employee.

(f) Except as expressly provided herein, nothing herein shall be construed as transferring to Buyer (i) any Contract or agreement with any current or former employee of Seller or for the employment of any Person or engagement of any independent contractor by Seller or (ii) any rights or obligations Seller may owe to or be owed by any current or former employee, officer, director, consultant, independent contractor or agent of Seller.

(g) Nothing herein, express or implied, shall confer upon any employee or former employee of Seller any rights or remedies (including any right to employment or continued employment for any specified period) of any nature or kind whatsoever, under or by reason of this Agreement. Buyer and Seller agree that the provisions contained herein are not intended to be for the benefit of or otherwise be enforceable by, any third party, including any employee or former employee of Seller.

(h) Buyer shall have no obligation to pay severance to any employee who does not accept an offer of employment to join Buyer and any such obligations remain obligations of the Seller.

8.2 Release. Except as expressly set forth in this Agreement, upon entry of the Sale Order and consummation of the sale to Buyer (the “Effective Date”), Buyer and its Affiliates, and

each of their representatives, agents, counsel, advisors, successors and assigns, shall be unconditionally and irrevocably released by the Debtors, their estates and/or their respective representatives, agents, successors and assigns from and against any and all direct, indirect or derivative claims, obligations, suits, judgments, liens, interests, damages, rights, causes of action, liabilities, claims or rights of contribution and indemnification, and all other controversies of every type, kind, nature, description or character whatsoever, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity or otherwise that are based in whole or in part upon any act or omission, transaction, event or other occurrence taking place prior to the Effective Date arising from or relating in any way, directly or indirectly, to the Seller, their property, assets, operations or liabilities, and the Bankruptcy Cases. The Sale Order shall contain releases in accordance with this Section 8.2 satisfactory to the Buyer in its sole and absolute discretion.

8.3 No Reliance. Buyer has had the opportunity to ask questions in connection with its decision to enter into this Agreement and to consummate the transactions contemplated hereby. In connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, Buyer has not relied upon, and Buyer expressly waives and releases Seller from any Losses for any claims relating to or arising from, any representation, warranty, statement, advice, document, projection, or other information of any type provided by Seller or its Affiliates or any of their respective representatives, except for those representations and warranties expressly set forth in Article 4. In deciding to enter into this Agreement, and to consummate the transactions contemplated hereby, Buyer has relied solely upon its own knowledge, investigation, judgment and analysis (and that of its representatives) and not on any disclosure or representation made by, or any duty to disclose on the part of, Seller or its Affiliates or any of their respective representatives, other than the express representations and warranties of Seller set forth in Article 4.

8.4 Limited Duties. Any and all duties and obligations which any party may have to any other party with respect to or in connection with the Acquired Assets, this Agreement or the transactions contemplated hereby are limited to those specifically set forth in this Agreement and the Sale Order. Neither the duties nor obligations of any party, nor the rights of any party, shall be expanded beyond the terms of this Agreement on the basis of any legal or equitable principle or on any other basis whatsoever.

ARTICLE 9 BANKRUPTCY COURT MATTERS

9.1 Competing Bids. This Agreement is subject to approval by the Bankruptcy Court and the consideration by Seller of competing bids that Seller deems in good faith to be superior to the transactions set forth in this Agreement (each such bid, a “*Competing Bid*”). At any time prior to the Closing, Seller may initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Buyer) in connection with any sale or other disposition of Seller’s assets or any business combination involving Seller’s assets or any part of the Business. In addition, Buyer acknowledges that Seller shall have the right to respond to any inquiries or offers to purchase all or any part of Seller’s assets or any business combination involving Seller’s Assets or any part of the Business; to engage in discussions or negotiations with

respect to any such inquiries or offers and to perform any and all other acts related thereto which are required or permitted under the Bankruptcy Code or other applicable Law, including supplying information relating to the Business or Seller's assets to any prospective purchaser. Seller, in its sole discretion, may engage in discussions with its creditor constituencies (and their Representatives) in the Bankruptcy Cases regarding Competing Bids.

9.2 Break-up Fee. In consideration for Buyer having expended considerable time and expense in connection with this Agreement and the negotiation hereof and the identification and quantification of the assets of the Seller, in the event that the Seller sells, transfers, leases or otherwise disposes (other than through a liquidation or foreclosure resulting from action by a Person other than the Seller) directly or indirectly, including through an asset sale, equity interest sale, merger, reorganization or other similar transaction, all or substantially all or a material portion of the Acquired Assets, to a Person other than Buyer, in a transaction or series of transactions (an "***Alternate Transaction***"), Seller shall pay from the proceeds of the Alternative Transaction, at the time of the closing of the Alternative Transaction, in cash in immediately available funds to Buyer, a break-up fee in an amount equal to One Hundred Fifty Thousand Dollars (\$150,000) (the "***Break-Up Fee***"), plus expense reimbursement equal to the reasonable actual costs and reasonable actual out-of-pocket fees and expenses of counsel, accountants, financial and other advisors incurred by Buyer in connection with their legal, financial and business due diligence and the preparation and negotiation of the Transaction Documents, not to exceed Fifty Thousand Dollars (\$50,000) (the "***Expense Reimbursement***"); provided, however, that in no event shall the Break-Up Fee or Expense Reimbursement be payable to Buyer if this Agreement is terminated in accordance with Article 12. Seller hereby acknowledges that its obligation to pay the Break-Up Fee and Expense Reimbursement (to the extent due hereunder) shall survive termination of this Agreement and shall be payable upon the earlier to occur of the closing of the Alternative Transaction and consummation of a plan of reorganization or liquidating plan of reorganization.

9.3 Bankruptcy Court Approval. In conjunction with this Agreement, Seller has contemporaneously filed or shall file with the Bankruptcy Court, a motion (the "***Bidding Procedures Motion***") and Order (the "***Bidding Procedures Order***"), in form and substance satisfactory to Buyer, in its reasonable discretion, seeking approval of certain bidding procedures that are designed to compensate Buyer for its efforts and agreements to date and to facilitate a full and fair process designed to maximize the value of the Acquired Assets for the benefit of the Seller's stakeholders.

9.4 Contracts. Seller shall serve on all non-Seller counterparties to all of the Assigned Contracts a notice specifically stating that Seller is or may be seeking the assumption and assignment of such Contracts and shall notify such non-Seller counterparties of the deadline for objecting to the cure amount fixed for such Assigned Contract, if any, which deadline shall not be less than three (3) business days prior to the Closing Date.

9.5 Seller's Undertakings with Regard to the Bankruptcy Proceedings.

(a) Seller shall use its best efforts to effect the transactions contemplated by this Agreement in accordance with the Bidding Procedures Order and the Sale Order.

(b) Seller agrees to do such further acts and things and to execute and deliver such additional agreements and instruments as may reasonably be required to consummate, evidence, confirm or obtain Bankruptcy Court approval of the sale of the Acquired Assets or any other agreement contemplated hereby and to consummate the transaction contemplated hereby.

(c) From and after the date hereof, except as specifically set forth in this Agreement, or as otherwise required by applicable law, the Bankruptcy Code or Federal Rules of Bankruptcy Procedure, Seller shall not take any action, or fail to take any action, which action or failure to act would reasonably be expected to: (i) prevent or impede the consummation of the transactions contemplated by this Agreement in accordance with the terms of this Agreement; or (ii) result in (A) the reversal, avoidance, revocation, vacating or modification of the Bidding Procedure Order or Sale Order (in any manner that would reasonably be expected to materially and adversely affect Buyer's rights hereunder) or (B) the entry of a stay pending appeal of such Order; provided, however, that Seller shall not be prevented by this Section 9.5 from providing information to or responding to inquiries from potential bidders for the Acquired Assets.

ARTICLE 10 TAXES

10.1 Taxes Related to Purchase of Assets. All state and local sales, use, gross-receipts, transfer, gains, excise, value-added or other similar Taxes required by law or the Bankruptcy Court to be paid in connection with the transfer of the Acquired Assets and the assumption of the Assumed Liabilities (other than any such Taxes that constitutes a franchise Tax or is otherwise imposed in lieu of an income tax), and all recording and filing fees required by law or the Bankruptcy Court to be paid by reason of the sale, transfer, assignment and delivery of the Acquired Assets (collectively, "**Transaction Taxes**"), shall be paid by Buyer on or prior to their due date.

10.2 Proration of Personal Property Taxes. All personal property taxes and assessments on the Acquired Assets for any taxable period commencing on or prior to the Closing Date (the "**Adjustment Date**") and ending on or after the Adjustment Date (a "**Straddle Period**") shall be prorated between Buyer and Seller as of the close of business on the Adjustment Date based on the best information then available, with (a) Seller being liable for such Taxes attributable to any portion of a Straddle Period ending on the day prior to the Adjustment Date and (b) Buyer being liable for such Taxes attributable to any portion of a Straddle Period beginning on or after the Adjustment Date. Information available after the Adjustment Date that alters the amount of Taxes due with respect to the Straddle Period will be taken into account and any change in the amount of such Taxes shall be prorated between Buyer and Seller as set forth in the next sentence. All such prorations shall be allocated so that items relating to the portion of a Straddle Period ending on the day prior to the Adjustment Date shall be allocated to Seller based upon the number of days in the Straddle Period prior to the Adjustment Date and items related to the portion of a Straddle Period beginning after the Adjustment Date shall be allocated to Buyer based upon the number of days in the Straddle Period from and after the Adjustment Date; provided, however, that the parties shall allocate any real property Tax in accordance with Section 164(d) of the Code. The amount of all such prorations that must be paid in order to convey the Acquired Assets to Buyer free and

clear of all Liens shall be calculated and paid on the Closing Date; all other prorations shall be calculated and paid as soon as practicable thereafter.

10.3 Cooperation on Tax Matters. Seller and Buyer shall (and shall cause their respective Affiliates to) cooperate fully with each other and make available or cause to be made available to each other for consultation, inspection and copying (at such other party's expense) in a timely fashion such personnel, Tax data, relevant Tax Returns or portions thereof and filings, files, books, records, documents, financial, technical and operating data, computer records and other information as may be reasonably requested, including, without limitation, (a) for the preparation by such other party of any Tax Returns or (b) in connection with any Tax audit or proceeding including one party (or an Affiliate thereof) to the extent such Tax audit or proceeding relates to or arises from the transactions contemplated by this Agreement.

10.4 Retention of Tax Records. After the Closing Date and until the expiration of all statutes of limitation applicable to Seller's liabilities for Taxes, Buyer shall retain possession of all accounting, business, financial and Tax records and information that (a) relate to the Acquired Assets and are in existence on the Closing Date and (b) come into existence after the Closing Date but relate to the Acquired Assets before the Closing Date, and Buyer shall give Seller notice and a reasonable opportunity to retain any such records in the event that Buyer determines to destroy or dispose of them during such period. After the Closing Date and until the expiration of all statutes of limitations applicable to Seller's liabilities for Taxes, Seller shall retain possession of all accounting, business, financial and Tax records and information that relate to the Excluded Liabilities. In addition, from and after the Closing Date, Buyer shall provide to Seller and its Affiliates (after reasonable notice and during normal business hours and without charge to Seller) access to the books, records, documents and other information relating to the Acquired Assets as Seller may reasonably deem necessary to properly prepare for, file, prove, answer, prosecute and defend any Tax Return, claim, filing, tax audit, tax protest, suit, proceeding or answer. Such access shall include access to any computerized information systems that contain data regarding the Acquired Assets.

10.5 Unbilled Transactional Taxes. If a Tax assessment is levied upon the Seller by an authorized tax jurisdiction for unbilled transactional Taxes related to the Acquired Assets or Business accruing after the Closing Date that are the obligation of the Buyer under this Agreement, then the Buyer shall reimburse the Seller for those Taxes including any interest and penalty (other than any interest and penalties that are due to the actions, or inaction, of the assessed party). Nothing in the foregoing paragraph shall require Buyer to reimburse Seller for Taxes relating to the business activities of Seller prior to the Closing Date.

ARTICLE 11

CONDITIONS PRECEDENT TO PERFORMANCE BY PARTIES

11.1 Conditions Precedent to Performance by Seller. The obligations of Seller to consummate the transactions contemplated by this Agreement are subject to the satisfaction, on or before the Closing Date, of the following conditions, any one or more of which may be waived by Seller in its sole discretion:

(a) Representations and Warranties of Buyer. All representations and warranties made by Buyer in this Agreement shall be true and correct in all material respects on and as of the Closing Date as if again made by Buyer on and as of such date (or, if made as of a specific date in the text of such representations and warranties, at and as of such date, provided that for purposes of this Section 11.1(a), the reference to “as of the date hereof” in the first sentence of Article 5 shall be disregarded), and Seller shall have received a certificate dated as of the Closing Date and signed by a duly authorized signatory of Buyer to that effect.

(b) Performance of the Obligations of Buyer. Buyer shall have performed in all material respects all obligations required under this Agreement to be performed by it on or before the Closing Date (except with respect to the obligation to pay the Purchase Price in accordance with the terms of this Agreement, which obligation shall be performed in all respects as required under this Agreement), and Seller shall have received a certificate dated as of the Closing Date and signed by a duly authorized signatory of Buyer to that effect.

(c) Buyer’s Deliveries. Buyer shall have delivered, and Seller shall have received, all of the items set forth in Section 3.3.

11.2 Conditions Precedent to the Performance by Buyer. The obligations of Buyer to consummate the transactions contemplated by this Agreement are subject to the satisfaction, on or before the Closing Date, of the following conditions, any one or more of which may be waived by Buyer in its sole discretion:

(a) Representations and Warranties of Seller. The representations and warranties made by Seller in Article 4 of this Agreement shall be true and correct in all material respects as of the Closing, in each case as though made at and as of such time (or, if made as of a specific date, at and as of such date, provided that for purposes of this Section 11.2(a), the reference to “as of the date hereof” in the first sentence of Article 4 shall be disregarded), and Buyer shall have received a certificate dated as of the Closing Date and signed by a duly authorized signatory of Seller to that effect.

(b) Performance of the Obligations of Seller. Seller shall have performed in all material respects all obligations required under this Agreement to be performed by it on or before the Closing Date, and Buyer shall have received a certificate dated the Closing Date and signed by a duly authorized signatory of Seller to that effect.

(c) Receipt of Assigned Contracts. Seller shall have delivered, and Buyer shall have received, true and complete copies of all Assigned Contracts no less than ten (10) days prior to the Closing Date.

(d) Cure of Assigned Contracts. Other than the Cure Costs to be paid by Buyer as part of the Cash Portion at Closing, Seller shall have cured, or has provided adequate assurance that Seller will promptly cure, all defaults under the Assigned Contracts.

(e) Material Adverse Effect. There shall not have occurred a Material Adverse Effect since the date hereof.

(f) Seller's Deliveries. Seller shall have delivered, and Buyer shall have received, all of the items set forth in **Section 3.2**.

(g) Sale Order. The Sale Order shall have been entered in the Bankruptcy Cases, and the effectiveness of the Sale Order shall not have been modified, reversed, stayed, vacated, restrained or enjoined as of the Closing Date.

(h) No Violation of Orders. No preliminary or permanent injunction or other Order that declares the Transaction Documents invalid or unenforceable in any respect or that prevents the consummation of the transactions contemplated hereby or thereby shall be in effect.

(i) Entry of Approval Order. The Sale Order shall have been entered by the Bankruptcy Court approving the transactions contemplated under this Agreement in a form satisfactory to Buyer, in its sole and absolute discretion. The Sale Order shall include a provision approving these transactions under Section 363(m) of the Bankruptcy Code and the Order shall not be subject to any subsequent Order by any Court of competent jurisdiction staying the effectiveness of the Order as of the date and time scheduled for the Closing.

ARTICLE 12 TERMINATION AND EFFECT OF TERMINATION

12.1 Right of Termination. Notwithstanding anything to the contrary contained herein, this Agreement may be terminated only as provided in this Article 12. In the case of any such termination, the terminating party shall give notice to the other party specifying the provision pursuant to which the Agreement is being terminated.

12.2 Termination Without Default. This Agreement may be terminated at any time before Closing:

(a) by mutual written consent of Seller and Buyer;

(b) by Buyer:

(i) on or after April 19, 2019 (the "**Termination Date**"), if any condition contained in Section 11.2 has not been satisfied or waived; provided, however, that Buyer shall not have the right to terminate this Agreement pursuant to this Section 12.2 if Buyer's failure to fulfill any of its obligations under this Agreement has been the reason that the Closing has not been consummated on or before such date; or

(ii) immediately, if the Bankruptcy Court has not entered the Sale Order by April 8, 2019 (or such later date as Buyer may have designated in writing to Seller);

(iii) immediately, if Seller's Bankruptcy Cases shall be converted into a case under Chapter 7 of the Bankruptcy Code or shall be dismissed, or if a trustee or examiner with expanded powers is appointed in the Bankruptcy Cases;

(iv) five (5) business days (the "*Cure Period*") after providing written notice to Seller (the "*Cure Notice*") that Seller is in default of any of the representations or covenants of this Agreement, provided that Seller has not cured the default within the Cure Period; provided, however, that Buyer shall not have the right to terminate this Agreement under this Section 12.2(b)(iv) if Buyer's failure to fulfill any of its obligations under this Agreement is the reason that Seller could not cure the default during the Cure Period; or

(v) any condition contained in Section 9.2 has not been satisfied or waived as of the Termination Date; or

(vi) if there shall be excluded from the Acquired Assets any Assigned Contract that is not assignable or transferable to Buyer pursuant to the Bankruptcy Code or otherwise without the consent of any Person other than Seller, to the extent that such consent shall not have been given prior to the Closing and such Assigned Contract shall, in the reasonable opinion of Buyer in its sole and absolute discretion, cause a Material Adverse Effect; or

(vii) upon approval of the Bankruptcy Court of an Alternative Transaction; or

(viii) upon acceptance by Seller of an Alternative Transaction; or

(ix) if Buyer is not declared the winning bidder upon completion of an auction.

(c) by Seller, five (5) business days after providing the Cure Notice to Buyer that Buyer is in default of any of the representations or covenants of this Agreement, provided that Buyer has not cured the default within the Cure Period; provided, however, that Seller shall not have the right to terminate this Agreement under this Section 12.2(c) if Seller's failure to fulfill any of its obligations under this Agreement is the reason that Buyer could not cure the default during the Default Notice Period.

12.3 Effect of Termination. Upon termination of this Agreement pursuant to this Section 12.2, (i) this Agreement shall become null and void and have no effect (other than Sections 8.1(c), 8.3, 8.4, 9.1 and 9.2, this Article 12 and Article 13, which shall survive termination) and (ii) none of Seller, Buyer or any of their respective Related Persons shall have any liability or obligation arising under or in connection with this Agreement.

12.4 Remedies. (i) Each party recognizes that if such party breaches or refuses to perform any covenant set forth in this Agreement, monetary damages alone may not be adequate to compensate the non-breaching party for its injuries, (ii) the non-breaching party shall therefore be entitled, in addition to any other remedies that may be available, to seek specific performance of, or to enjoin the violation of, the terms of such covenants, (iii) if any action is brought by the

non-breaching party to enforce such covenants, the party in breach shall waive the defense that there is an adequate remedy at Law, (iv) each party agrees to waive any requirement for the security or posting of any bond in connection with any action seeking specific performance of, or to enjoin the violation of, such covenants, and (v) each party agrees that the only permitted objection that it may raise in response to any action for specific performance of such covenants is that it contests the existence of a breach or threatened breach of such covenants.

12.5 Survival. The representations and warranties of any party made herein, in any other Transaction Document or in any other instrument delivered pursuant to this Agreement shall terminate at the Closing, or, subject to Section 12.3, upon termination of this Agreement pursuant to Section 12.2. Except with respect to covenants or agreements that are to be performed on or prior to the Closing, all covenants and agreements contained in this Agreement shall survive the Closing in accordance with their respective terms; provided, that any covenant or agreement contained herein whose survival is not limited by its terms shall survive until fully performed in accordance with its terms.

ARTICLE 13 MISCELLANEOUS

13.1 Successors and Assigns.

(a) Except as otherwise provided in Section 13.1(b) or elsewhere in this Agreement, no party hereto shall assign this Agreement or any rights or obligations hereunder without the prior written consent of the other party hereto, and any such attempted assignment without such prior written consent shall be void and of no force and effect.

(b) Notwithstanding the foregoing, and without the prior written consent of the Seller, Buyer may assign all or any portion of its rights and obligations under this Agreement to an Affiliate. This Agreement shall inure to the benefit of and shall be binding upon the successors and permitted assigns of the parties hereto.

13.2 Governing Law; Jurisdiction. This Agreement shall be construed, performed and enforced in accordance with, and governed by, the Laws of the State of New Jersey in accordance with the laws applicable to contracts executed in such state (without giving effect to the principles of conflicts of Laws thereof), provided that, the validity and enforceability of all conveyance documents or instruments executed and delivered pursuant to this Agreement insofar as they affect title to real property shall be governed by and construed in accordance with the Laws of the jurisdiction in which such property is located. The parties agree that the Bankruptcy Court shall retain jurisdiction over any legal action or proceeding with respect to this Agreement. Each of the parties irrevocably waives any objection, including any objection to the laying of venue or based on the grounds of *forum non conveniens*, which it may now or hereafter have to the bringing of any action or proceeding in such jurisdiction in respect of this Agreement or the transactions contemplated hereby.

13.3 Mutual Drafting. This Agreement is the result of the joint efforts of Buyer and Seller, and each provision hereof has been subject to the mutual consultation, negotiation and

agreement of the parties and there is to be no construction against either party based on any presumption of that party's involvement in the drafting thereof.

13.4 Expenses. Except as otherwise provided herein, each of the parties hereto shall pay its own expenses in connection with this Agreement and the transactions contemplated hereby, including any legal and accounting fees, whether or not the transactions contemplated hereby are consummated, except as provided in Section 9.2. Seller shall pay the cost of all Transaction Taxes payable upon or in connection with, and all surveys, title insurance policies and title reports obtained in connection with, this Agreement and the transactions contemplated hereby.

13.5 Intentionally Omitted.

13.6 Severability. In the event that any part of this Agreement is declared by any court or other judicial or administrative body to be null, void or unenforceable, said provision shall survive to the extent it is not so declared, and all of the other provisions of this Agreement shall remain in full force and effect only if, after excluding the portion deemed to be unenforceable, the remaining terms shall provide for the consummation of the transactions contemplated hereby in substantially the same manner as originally set forth at the later of the date this Agreement was executed or last amended.

13.7 Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given: (a) on the date of service if served personally on the party to whom notice is to be given; (b) on the day of transmission if sent via electronic mail to the e-mail address listed below, and proof of receipt is obtained; (c) on the day after delivery to Federal Express or similar overnight courier or the Express Mail service maintained by the United States Postal Service or (d) on the fifth day after mailing, if mailed to the party to whom notice is to be given, by first class mail, registered or certified, postage prepaid and properly addressed, to the party as follows:

If to Buyer:

Island Optical, LLC
275 Route 22 East
Springfield, NJ 07081

Attention: Dr. Randy Nissinoff, Managing Member
E-mail: jetseyes@gmail.com

With a copy to:

Keating Muething & Klekamp PLL
One East 4th Street, Suite 1400
Cincinnati, Ohio 45202
Attention: Steven C. Coffaro, Esq.
Steve.coffaro@kmklaw.com

If to Seller:

OHI of Puerto Rico LLC
275 Route 22 East
Springfield, NJ 07081
Attention: Dr. Randy Nissinoff, Managing Member
E-mail: jetseyes@gmail.com

With a copy to:

Greenberg Traurig, LLP
500 Campus Drive, Suite 400
Florham Park, New Jersey 07932
Attention: Alan Brody, Esq.
Email: brodya@gtlaw.com

Any party may change its address for the purpose of this Section 13.7 by giving the other party written notice of its new address in the manner set forth above.

13.8 Amendments; Waivers. This Agreement may be amended or modified, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the parties hereto, or in the case of a waiver, by the party waiving compliance. Any waiver by any party of any condition, or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall not be deemed to be nor construed as a furthering or continuing waiver of any such condition, or of the breach of any other provision, term, covenant, representation or warranty of this Agreement.

13.9 Public Announcements. Seller shall not make any press release or public announcement concerning the transactions contemplated by this Agreement without the prior written approval of Buyer, unless a press release or public announcement is required by Law or Order of the Bankruptcy Court, or is reasonably necessary for approval of this Transaction by the Bankruptcy Court. If any such announcement or other disclosure is required by Law or Order of the Bankruptcy Court, the disclosing party shall give the nondisclosing party or parties prior notice of, and an opportunity to comment on, the proposed disclosure.

13.10 Entire Agreement. The Transaction Documents contain the entire understanding among the parties hereto with respect to the transactions contemplated hereby and supersede and replace all prior and contemporaneous agreements and understandings, oral or written, with regard to such transactions. All documents and instruments delivered pursuant to any provision hereof are expressly made a part of this Agreement as fully as though completely set forth herein.

13.11 Parties in Interest. Nothing in this Agreement is intended to confer any rights or remedies under or by reason of this Agreement on any Persons other than Seller, Buyer, and their respective successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligations or liability of any third Persons to Seller or Buyer. No provision of this

Agreement shall give any third Persons any right of subrogation or action over or against Seller or Buyer.

13.12 DAMAGES. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NO PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, SPECIAL, INDIRECT OR PUNITIVE DAMAGES (INCLUDING LOST PROFITS, LOSS OF PRODUCTION OR OTHER DAMAGES ATTRIBUTABLE TO BUSINESS INTERRUPTION) ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

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

13.14 Construction. Unless the context of this Agreement otherwise requires, (i) words of any gender include the other gender, (ii) words using the singular or plural number also include the plural or singular number, respectively, (iii) the terms “hereof,” “herein,” “hereby,” and derivative or similar words refer to this entire Agreement as a whole and not to any other particular article, section or other subdivision, (iv) the words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation,” (v) “shall,” “will,” or “agrees” are mandatory, and “may” is permissive, and (vi) “or” is not exclusive.

13.15 Time of Essence. Time is of the essence of this Agreement. 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.

13.16 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute the same agreement. This Agreement and any signed agreement entered into in connection herewith or contemplated hereby, and any amendments hereto or thereto, to the extent signed and delivered by facsimile (or equivalent electronic transmission), shall be treated in all manner and respects as an original contract and shall be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person.

[Signature Page to Follow]

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

SELLER:

OHI OF PUERTO RICO LLC

By: 
Name: Randy Nissinoff
Title: Managing Member

BUYER:

ISLAND OPTICAL, LLC

By: 
Name: Randy Nissinoff
Title: Managing Member

EXHIBIT A

DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

“*Acquired Assets*” shall mean substantially all assets of the Seller related to the Business, to the extent transferable, other than the Excluded Assets.

“*Adjustment Date*” has the meaning ascribed to it in Section 10.2.

“*Affiliate*” means, with respect to any Person, any other Person directly or indirectly controlling, controlled by or under direct or indirect common control with such first Person where “control” means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of a Person, through the ownership of voting securities, by contract, as trustee, executor or otherwise.

“*Agreement*” means this Asset Purchase Agreement.

“*Alternate Transaction*” has the meaning ascribed to it in Section 9.2.

“*Ancillary Agreement*” means, collectively, any agreement to be executed in connection with the transactions contemplated by this Agreement.

“*Assigned Contract*” means all Contracts of Seller which shall include, but not be limited to, (i) all sales orders, customer contracts, or other similar Contracts entered into by Seller with its customers, (ii) outstanding purchase orders or other Contracts entered into by Seller with any supplier, (iii) any Real Property Lease, or (iv) all other Contracts, including but not limited to, executory and capital equipment, sales representative agreements, employment agreements, utility agreements, except in each case as identified by Buyer prior to the Closing Date, but excluding those Contracts listed on **Schedule 1.2**.

“*Assignment and Assumption Agreement*” has the meaning ascribed to it in Section 3.2(b).

“*Assumed Liabilities*” has the meaning ascribed to it in Section 1.3.

“*Avoidance Actions*” means any and all actions which a trustee, a debtor-in-possession or other appropriate party in interest may assert on behalf of the Debtors and/or the Debtors’ estate under possession or other appropriate party in interest may assert on behalf of the Debtor and/or the Debtors’ estates under applicable state statute or Chapter 5 of Bankruptcy Code, including actions under one or more provisions of sections 542, 544, 545, 546, 547, 548, 549, 550 and 551.

“*Bankruptcy Cases*” mean the Debtors’ cases under Case No. 18-29070 (SLM) and Case No. 18-29071 (SLM), pending in the Bankruptcy Court for the District of New Jersey.

“**Bankruptcy Code**” means Title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.*

“**Bankruptcy Court**” means the United States Bankruptcy Court for the District of New Jersey or such other court having jurisdiction over the Bankruptcy Cases.

“**Bidding Procedures Motion**” has the meaning ascribed to it in Section 9.3.

“**Bidding Procedures Order**” has the meaning ascribed to it in Section 9.3.

“**Break-Up Fee**” has the meaning ascribed to it in Section 9.2.

“**Business**” has the meaning ascribed to it in the Recitals.

“**Business Day**” means any day other than Saturday, Sunday and any day that is a legal holiday or a day on which banking institutions in New York, New York are authorized by Law or other Government action to close.

“**Business Records**” means all books, files and records to the extent they relate to the Acquired Assets or the Business, including, without limitation, customer lists, historical customer files, reports, plans, data, accounting and tax records, product specifications, drawings, diagrams, training manuals, safety and environmental reports and documents, maintenance schedules, inventory records, business plans and marketing and all other studies, documents and records regardless of location.

“**Buyer**” has the meaning ascribed to in the introductory paragraph.

“**Buyer Indemnitee**” has the meaning ascribed to it in Section 8.1(c).

“**Cash Portion**” has the meaning ascribed to it in Article 2.

“**Closing**” has the meaning ascribed to it in Section 3.1.

“**Closing Date**” has the meaning ascribed to it in Section 3.1.

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

“**Collective Bargaining Agreement**” means agreements by and between the Seller and labor union representatives on behalf of employees of the Seller with respect to employee benefits, wages, hours and/or working conditions.

“**Consent**” means any consent, approval, authorization, qualification, waiver or notification of a Government or third Person.

“**Contract**” means any written or oral contract, agreement, license, sublicense, lease, sublease, mortgage, instruments, guaranties, commitment, undertaking or other similar arrangement, whether express or implied.

“**Cure Costs**” means any amount paid by Seller to cure monetary defaults of the Assigned Contracts at or prior to the Closing to the extent such cure is required by section 365 of the Bankruptcy Code.

“**Cure Notice**” has the meaning ascribed to it in Section 12.2(b)(iv).

“**Cure Period**” has the meaning ascribed to it in Section 12.2(v)(iv).

“**Debtors**” has the meaning ascribed to it in the Recitals.

“**Effective Date**” has the meaning ascribed to it in Section 8.2.

“**Eligible Records**” means all of the following records of Seller, only to the extent such books and records (i) are existing and in the control and possession of Seller as of the Closing Date (ii) are reasonably accessible by Seller as of the request date: corporate seals, minute books, charter documents, corporate stock record books, original tax and financial records.

“**Employee Benefit Plans**” means any employee benefit plans other than Pension Plans, as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) and any “multi-employer plan” as defined in Section 3(37) of ERISA or each deferred compensation and each bonus or other incentive compensation, stock purchase, stock option and other equity related compensation plan, program, agreement or arrangement; each medical, surgical, hospitalization, life insurance and other “welfare” plan, fund or program (within the meaning of Section 3(1) of ERISA); each employment, termination, change in control, retention or agreement or arrangement; and each other employee benefit plan, fund, program, agreement or arrangement, in each case, that is sponsored, maintained or contributed to, or required to be contributed to, by the Seller or an ERISA Affiliate or to which Seller or an ERISA Affiliate is party, whether written or oral, for the benefit of any director or employee or former director or employee of the Seller or any former subsidiary of the Seller.

“**Employees**” has the meaning ascribed to it in Section 4.7.

“**Employment Agreement**” has the meaning ascribed to it in Section 3.2(d).

“**Environmental Law**” means the following: (i) any federal, state or local law (including, without limitation, the Commonwealth of Puerto Rico), statute, ordinance, rule, regulation, guideline, code, license, permit, authorization, approval, consent, legal doctrine, order, judgment, decree, injunction, requirement or agreement with any governmental entity, relating to (x) the protection, preservation or restoration of the environment (including, without limitation, air, water, vapor, surface water, groundwater, drinking water supply, surface land, subsurface land, plant and animal life or any other natural resource), or to human health or safety, or (y) the exposure to, or the use, storage, recycling, treatment, generation, transportation, processing, handling, labeling, production, release or disposal of Hazardous Materials. The term Environmental Law includes, without limitation, (i) the federal Comprehensive Environmental Response Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act, the federal Water Pollution Control Act of 1972, the federal Clean Air Act, the federal Clean Water Act, the federal Resource Conservation and Recovery Act of 1976 (including the Hazardous and Solid Waste Amendments thereto), the federal Solid Waste Disposal Act and the federal Toxic Substances

Control Act, the Federal Insecticide, Fungicide and Rodenticide Act, the Atomic Energy Act, the Nuclear Waste Policy Act of 1982, the federal Occupational Safety and Health Act of 1970, the Puerto Rico Public Policy Environmental Act and regulations promulgated thereunder, each as amended and as now in effect, and (ii) any common law or equitable doctrine (including, without limitation, injunctive relief and tort doctrines such as negligence, nuisance, trespass and strict liability) that may impose liability or obligations for injuries or damages due to, or threatened as a result of, the presence of or exposure to any Hazardous Materials.

“ERISA Affiliate” means any entity that with the Seller is: (a) a member of a controlled group of corporations within the meaning of Section 414(b) of the IRC Code; (b) a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the IRC Code; (c) a member of an affiliated service group within the meaning of Section 414(m) of the IRC Code; or (d) a member of a group of organizations required to be aggregated under Section 414(o) of the Code.

“Excluded Assets” has the meaning ascribed to it in Section 1.2.

“Excluded Liabilities” has the meaning ascribed to it in Section 1.4.

“Executory Contract” means those Assigned Contracts that constitute an “executory contract” or “unexpired lease” as such terms are used in Section 365 of the Bankruptcy Code as of the Closing Date.

“Expense Reimbursement” has the meaning ascribed to it in Section 9.2.

“Government” means any agency, division, subdivision, audit group, procuring office or governmental or regulatory authority in any event or any adjudicatory body thereof, of the United States, any state thereof or any foreign government.

“Intellectual Property Rights” means (i) all patents and applications therefor, including continuations, divisionals, continuations-in-part or reissue patent applications and patents issuing thereon including any foreign counterparts thereof (collectively, **“Patents”**), (ii) all trademarks, service marks, trade names, service names, brand names, all trade dress rights, logos, Internet domain names and corporate names and general intangibles of a like nature, together with the goodwill associated with any of the foregoing, and all applications, registrations and renewals thereof (collectively, **“Marks”**), (iii) copyrights and registrations and applications therefor and works of authorship and mask work rights (collectively, **“Copyrights”**) and (iv) discoveries, concepts, ideas, research and development, know-how, formulae, inventions (whether patentable or unpatentable and whether or not reduced to practice), invention disclosures, apparatus, creations, improvements, works of authorship and other similar materials, and all recordings, graphs, drawings, reports, analyses, compositions, manufacturing and production processes and techniques, technical data, procedures, designs, drawings, specifications, databases and other proprietary and confidential information, including customer lists, supplier lists, pricing and cost information and business and marketing plans and proposals of Seller, and other writings, and other tangible embodiments of the foregoing, in any form whether or not specifically listed herein and, in each case, all related technology (collectively, **“Trade Secrets”**), whether presently existing

or created or acquired anywhere in the world between the date of this Agreement and the Closing Date.

“**IRS**” means the Internal Revenue Service.

“**Hazardous Materials**” or “**Hazardous Substance**” means any substance presently defined, designated or classified as hazardous, toxic, radioactive or dangerous, or otherwise presently regulated under any Environmental Law, whether by type or by quantity, including any substance containing any such substance as a component. Hazardous Materials includes, without limitation, any toxic waste, pollutant, contaminant, hazardous substance, toxic substance, hazardous waste, special waste, industrial hazardous or toxic substance or petroleum or any derivative or by-product thereof, radon, radioactive material, asbestos, asbestos containing material, urea formaldehyde foam insulation, lead and polychlorinated biphenyl, and any and all of the following, including mixtures thereof: any hazardous substance, pollutant, contaminant, waste, by-product or constituent presently regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.*; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; pesticides presently regulated under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 *et seq.*; asbestos and asbestos-containing materials, PCBs and other substances presently regulated under the federal Solid Waste Disposal Act and the federal Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*; source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes, however produced, presently regulated under the Atomic Energy Act or the Nuclear Waste Policy Act of 1982; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. “1910.1200 *et seq.*”; and industrial process and pollution control wastes, whether or not hazardous within the meaning of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*

“**Knowledge**” means the actual knowledge of Dr. Randy Nissinoff.

“**Law**” means any federal, state, local or foreign law, statute, code, ordinance, rule or regulation.

“**Leased Real Property**” has the meaning ascribed to it in Section 1.1(e).

“**Legal Proceeding**” means any judicial, administrative or arbitral actions, suits, proceeds (public or private), or claims of any proceedings by or before a court or other Government authority.

“**Lien**” means any mortgage, lien (including judicial and statutory liens), security interest, encumbrance, claim (including options and rights of first refusal), charge, pledge, hypothecation, covenant, interest or restriction of any kind or character pursuant to Section 363(b) and (f) of the Bankruptcy Code.

“**Losses**” has the meaning ascribed to it in Section 8.1(c).

“**Material Adverse Effect**” means a state of facts, event, change or effect on the physical condition of the Acquired Assets, or the enforceability of the Transaction Documents or any Assigned Contract, that results in a material adverse effect on the ability to operate or condition of

the Business but excluding any state of facts, event, change or effect caused by events, changes or developments relating to: (i) changes of Laws, (ii) strikes, work stoppages or other labor disturbances, (iii) the transactions contemplated by this Agreement or the announcement thereof; (iv) changes or conditions affecting the industries of which the Business is a part generally; or (v) the effect of any change arising in connection with earthquakes, hostilities, acts of war, sabotage or terrorism or military actions or any escalation or material worsening of any such hostilities, acts of war, sabotage or terrorism or military actions existing or underway as of the date hereof.

“**Order**” means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of the Government.

“**Organizational Amendment**” has the meaning ascribed to it in Section 6.5.

“**Pension Plan**” means any profit-sharing, stock bonus or other “pension” plan, fund or program within the meaning of Section 3(2) of ERISA.

“**Permits**” means any permits, authorizations, approvals, consents, registrations, certificates and licenses relating to the Business issued by any Government (and pending applications for the foregoing), including, but not limited to, any licenses issued or pending before the California Department of Consumer Affairs.

“**Permitted Encumbrances**” means (i) statutory Liens for current Taxes, assessments and other Government charges that are not yet due and payable or that, although due and payable, are being contested in good faith; and (ii) mechanics’, materialmen’s, warehouseman’s and similar Liens that relate to Assumed Liabilities.

“**Person**” means any individual, corporation, partnership, joint venture, association, joint-stock company, trust, unincorporated organization or Government.

“**Petition Date**” has the meaning ascribed to it in the Recitals.

“**Purchase Price**” has the meaning ascribed to it in Article 2.

“**Real Estate Leases**” has the meaning ascribed to it in Section 1.1(e).

“**Related Person**” means, with respect to any Person, all past, present and future directors, officers, members, managers, stockholders, employees, controlling persons, agents, professionals, attorneys, accountants, investment bankers or representatives of any such Person.

“**Sale Order**” shall mean an order, entered by the Bankruptcy Court, that substantially incorporates the provisions below and otherwise in form and substance acceptable to Buyer in Buyer’s sole and absolute discretion, which, among other things, shall:

(a) contain a finding pursuant to section 363(m) of the Bankruptcy Code to the effect that Buyer is a “good faith” purchaser and authorize the Sale of the Acquired Assets, pursuant to the terms and conditions of this Agreement and Sections 363(b) and (f) and 365 of the Bankruptcy Code and to the extent, if any, necessary, section 105 of the

Bankruptcy Code, free and clear of all Liens, Claims (including Excluded Liabilities) and Encumbrances (other than the Assumed Liabilities);

(b) to the extent provided in this Agreement, approve and direct (i) the assumption of all of the Assigned Contracts by Seller, as debtor in possession, (ii) the assignment of all of the Assigned Contracts to Buyer, (iii) except to the extent section 365 of the Bankruptcy Code permits the non-cure of non-payment defaults, the cure by Seller of any non-payment defaults under any of the Assigned Contracts, and (iv) the establishment of the Cure Costs therefor and to authorize and require payment by Seller of all Cure Costs on or before Closing pursuant to sections 365(a), (b), (c), (f) and (k) of the Bankruptcy Code and this Agreement;

(c) provide that the assumption by the applicable Seller and assignment to Buyer of the Assigned Contracts shall not render the Assigned Contracts unenforceable, nor cause an event of default thereunder, on account of such assumption and assignment;

(d) provide that after the Petition Date the Bankruptcy Court shall have and retain jurisdiction to resolve any controversy or Claim arising out of or relating to the Agreement or breach thereof;

(e) provide that after the Closing, the Buyer and the Transferred Employees shall not be subject to any successor liability for claims arising under or in connection with the Acquired Assets or the Business.

“**Seller**” has the meaning ascribed to in in the introductory paragraph.

“**Seller Locations**” means the following locations in which Seller operates its business:

- (a) 275 Route 22 East, Springfield, New Jersey; and
- (b) Plaza Las Americas, Local #140, San Juan, Puerto Rico 009180;

“**Straddle Period**” has the meaning ascribed to it in Section 10.2.

“**Tax Return**” means any report, return, information return, filing or other information, including any schedules, exhibits or attachments thereto, and any amendments to any of the foregoing required to be filed or maintained in connection with the calculation, determination, assessment or collection of any Taxes (including estimated Taxes).

“**Taxes**” means (i) all taxes, however denominated, and all like charges, levies, duties, imposts or other assessments, including any interest, penalties or additions to tax that may become payable in respect thereof, imposed by any Government, which taxes shall include all income taxes, Transaction Taxes, payroll and employee withholding, unemployment insurance, social security (or similar), sales and use, excise, franchise, gross receipts, occupation, real and personal property, stamp, transfer, workmen’s compensation, customs duties, registration, documentary, value added, alternative or add-on minimum, estimated, environmental (including taxes under section 59A of the Code) and other obligations of the same or a similar nature, whether arising before, on or after the Closing Date and (ii) any transferee, successor or other liability in respect

of Taxes of another (whether by contract or otherwise) and any liability in respect of any Taxes as a result of any company being a member of any “affiliated group” as defined in Section 1504 of the Code, or any analogous combined, consolidated or unitary group defined under state, local or foreign Tax Law.

“**Termination Date**” has the meaning ascribed to it in Section 12.2(b)(i).

“**Transferred Employee**” has the meaning ascribed to it in Section 8.1(a).

“**Transaction Documents**” means this Agreement together with the Ancillary Agreements.

“**Transaction Taxes**” has the meaning ascribed to it in Section 10.1.

“**WARN Act**” has the meaning ascribed to it in Section 8.1(b).

Schedule 1.2

Excluded Assets

All of Seller's rights and interests under all Real Estate Leases, except for such Real Estate Leases listed on **Schedule 4.1**;

All of Seller's rights and interests under the following Contracts:

[To Be Determined]

All losses, loss carry forwards and rights to receive refunds, credits and loss carry forwards with respect to any and all Taxes of Seller due as of or prior to 11:59 p.m. on the day immediately prior to the Closing Date, including interest receivable with respect thereto;

All rights of Seller arising under this Agreement and under any other agreement between Seller and Buyer entered into in connection with this Agreement;

All warranty claims related to the Excluded Assets relating to or arising from the period prior to the Closing Date; and

All rights of Seller under its director and officers' liability insurance policy, if any.

Schedule 1.3(c)

503(b)(9) Claims

[To Be Determined]

Schedule 1.3(g)

**Accrued Sick or Vacation Time and Payroll-Related Tax Obligations
for each Transferred Employee of Seller**

[To Be Determined]

Schedule 1.3(h)

Assumed Liabilities

[To Be Determined]

Schedule 4.1

Real Estate Leases

Luxottica Retail North America, Inc. for an office lease of property located at 275 Route 22 East, Springfield, NJ; and

Plaza Las Americas LLC for store lease of property located at Plaza Las Americas, Local #140, San Juan, Puerto Rico.

Schedule 4.6

Transferred Employees

[To Be Provided By Buyer]

Schedule 4.8

Legal Proceedings

See attached

Part 3: Legal Actions or Assignments

7. Legal actions, administrative proceedings, court actions, executions, attachments or governmental audits

Case Title	Nature of Case	Court or agency's name and address	Status of case
7.1 Alicia Rojas Alvarado vs. OHI of Puerto Rico, LLC H/N/C Pearle Vision Case Number CA2018CV00525 (Civil 408)	wrongful termination	Nereida Feliciano Ramos Tribunal de Primera Instancia - Carolina Av. 65 de Infanteria Carolina, PR 00987	judgment
7.2 Dimary Calvente Alvarez vs. OHI of Puerto Rico, LLC Y/O Pearl Vision Center (Aguadilla Mall) Case Number APE2018-0008	wrongful termination	Felix Bartolomei Rodriguez Tribunal de Primera Instancia - Aguadilla Avenida Hostos Num. 828 Edificio Villa Capitan II Oficina 102 Mayaguez, PR 00680	pending
7.3 Yanira M. Perez Colon vs. Pearle Vision Case Number A8-D1-DP-0086-17	wrongful termination	Illian J. Santiago Hernandez Departamento Del Trabajo Y Recursos Humanos 431 Ave. Ponce de Leon Edif. Nacional Plaza, Piso 11/PO Box 21361 San Juan, PR 00928-1361	pending
7.4 Maritza Cortez Cruz vs. OHI of Puerto Rico, LLC, et.al. Case Number APE2018-0008	wrongful termination	Felix Bartolomei Rodriguez Tribunal de Primera Instancia - Aguadilla Avenida Hostos Num. 828 Edificio Villa Capitan II Oficina 102 Mayaguez, PR 00680	judgment
7.5 Yamilka Burgos Diaz vs. OHI of Puerto Rico, LLV Y/O Pearl Vision- Plaza Del Caribe Case Number AC-18-433	wrongful termination	Carmen L. Martinez Reyes Departamento del Trabajo Y Recursos Humanos Oficina De Mediacion Y Adjudicacion 505 Edificio Prudencio Rivera Martinez, Ave. Munoz Rivera Hato Ray, PR 00918	pending
7.6 Anibal Rivera Gonzalez vs. OHI of Puerto Rico LLC DBA Pearle Vision	wrongful termination	Lcda. Marta E. Ortiz Camacho Departamento del Trabajo Y Recursos Humanos	pending

	Case Number OM-17-567		Oficina De Mediacion Y Adjudicacion 505 Edificio Prudencio Rivera Martinez, Ave. Munoz Rivera Hato Ray, PR 00918	
7.7	Ineabelle Santos Gonzalez vs. OHI of Puerto Rico, LLC Y/o Pearl Vision- Palma Real Case Number AC-17-209	wrongful termination	Lcda. Marta E. Ortiz Camacho Departamento del Trabajo Y Recursos Humanos Oficina De Mediacion Y Adjudicacion 505 Edificio Prudencio Rivera Martinez, Ave. Munoz Rivera Hato Ray, PR 00918	pending
7.8	Vilma Claudio Luciano vs. Pearl Vision Cnetr/OHI of Puerto Rico LLC Case Number A5-D1-MISC-0016-16	unpaid vacation	Lcdo. Reynaldo Santiago Gonzalez Departamento del Trabajo Y Recursos Humanos Oficina De Mediacion Y Adjudicacion 505 Edificio Prudencio Rivera Martinez, Ave. Munoz Rivera Hato Ray, PR 00918	pending
7.9	Hector Medina Rosado vs. OHI of Puerto Rico LLC Case Number A3-D4-SL-0124-16	unpaid vacation	Luis A. Domenech Abreu Departamento Del Trabajo y recursos Humanos Borinquen Town Center 2051 Suite 11 Aguadilla, PR 00603	pending
7.10	Luis E. Rivera Negron vs. OHI of Puerto Rico y/o Pearle Vision Case Number AC-18-270	lost wages	Maria Eugenia Santori Aymat Santori Aymat & Rivera LLC PO Box 19115 San Juan, PR 00910	pending
7.11	Frank Abella Padilla vs. OHI of Puerto Rico LLC Y/O Pearl Vision Center Case Number OM-18-639	lost wages	Lcdo. Reynaldo Santiago Gonzalez Departamento del Trabajo Y Recursos Humanos Oficina De Mediacion Y Adjudicacion 505 Edificio Prudencio Rivera Martinez, Ave. Munoz Rivera Hato Ray, PR 00918	pending
7.12	Miguel A. Rodriguez Colon vs. OHI of Puerto Rico, LLC H/N/C Pearle	age discrimination & wrongful termination	Lcda. Nora Cruz Molina Tribunal De Primera Instancia - Arecibo	pending

Vision PO Box 2795
Case Number Arecibo, PR 00613
CPE-2016-0273 (302)

- | | | | | |
|------|--|----------------------|---|----------|
| 7.13 | Guillermo Ortiz Rodriguez vs. OHI of Puerto Rico

Case Number
D PE2017-0321 (401) | wrongful termination | Eduardo R. Rebollo Casalduc
Tribunal De Primera Instancia - Bayamon
2399 RR-2
Bayamon, PR 00959 | judgment |
| 7.14 | Norma Luciano Sanchez vs. OHI of Puerto Rico LLC

Case Number
A7-D1-SL-0091-17 | unpaid vacation | Ines Gerena Medina
Departamento Del Trabajo Y Recursos Humanos
431 Ave. Ponce de Leon Edif. Nacional Plaza, Piso 11/PO Box 21361
San Juan, PR 00928-1361 | pending |
| 7.15 | Josefa Principe Velez vs. OHI of Puerto Rico d/b/a Pearle Vision

Case Number
18-1270 (DRD) | wrongful termination | Alfredo Acevedo Cruz, Esq.
Law Office of Alfredo Acevedo Cruz
PO Box 93
Juana Diaz, PR 00795 | pending |
| 7.16 | Esther Cruz Mangual, Johanna Santini Perez, Keila Santana Suarez, Ruth Ginorio Negron vs. OHI of Puerto Rico, LLC d/b/a Pearle Vision Center | wrongful termination | Lcdo. Luis A. Zayas Monge
PO Box 29685
San Juan, PR 00929-0685 | judgment |

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)

GREENBERG TRAURIG LLP

Alan J. Brody, Esq.
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BrodyA@gtlaw.com

*Counsel for Debtors and
Debtors-in-Possession*

In re:

Optical Holdings of Puerto Rico, LLC, *et al.*,

Debtors.

Case No.: 18-29070 (SLM)

Judge: Honorable Stacey L. Meisel

Chapter: 11

**NOTICE OF BID DEADLINE AND AUCTION IN CONNECTION WITH
THE SALE OF SUBSTANTIALLY ALL OF OHI OF PUERTO LLC'S ASSETS**

PLEASE TAKE NOTICE that, on September 25, 2018 (the "Petition Date"), Optical Holdings of Puerto Rico LLC ("Optical Holdings") and OHI of Puerto Rico, LLC, ("OHI", and together with Optical Holdings, the "Debtors"), the above-captioned debtors and debtors-in-possession, filed chapter 11 petitions commencing chapter 11 cases under the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of New Jersey (the "Bankruptcy Court").

PLEASE TAKE FURTHER NOTICE that, on February ___, 2019, the Debtors filed a motion (the "Sale Motion")¹ seeking approval of, among other things, (A) auction and bidding procedures (the "Bid Procedures") in connection with the sale (the "Sale") of all or substantially all of OHI's assets (the "Assets") and (B) related relief with the United States Bankruptcy Court for the District of New Jersey (the "Bankruptcy Court"). By order dated March ___, 2019, the Bankruptcy Court approved the Bid Procedures set forth in the Bid Procedures Order [*Docket No.* ___] (the "Bid Procedures Order").²

PLEASE TAKE FURTHER NOTICE that, all interested parties are invited to submit a Qualified Bid and to make offers to purchase the Assets in accordance with the terms of the Bid Procedures and the Bid Procedures Order. The deadline to submit bids (the "Bid Deadline") is April ___, 2019.

¹Capitalized terms not defined herein shall have the same meanings provided in the Sale Motion.

²A copy of the Bid Procedures Order (and all exhibits thereto) is available for review on the Bankruptcy Court's electronic filing system or upon written request to the undersigned by contacting Debtors' counsel, Alan J. Brody, Esq., Greenberg Traurig, LLP, 500 Campus Drive, Florham Park, New Jersey 07932 (908) 443-3543, brodyA@gtlaw.com.

April __, 2019 at 5:00 p.m. (prevailing Eastern Time).

PLEASE TAKE FURTHER NOTICE that, the Assets will be sold free and clear of all liens, claims, encumbrances, and interests. Any perfected, enforceable, valid liens shall attach to the proceeds of the sale according to priorities established under applicable law.

PLEASE TAKE FURTHER NOTICE that, on February __, 2019, OHI entered into an asset purchase agreement (the "Stalking Horse Agreement") with a stalking horse bidder (the "Stalking Horse Bid"). As discussed more fully in the Sale Motion, Island Optical, LLC is the stalking horse bidder (the "Stalking Horse Bidder") for the Assets. A copy of the Stalking Horse Agreement is attached as Exhibit A to the Bid Procedures Order and is available upon request of Debtors' counsel, Alan J. Brody, Esq., Greenberg Traurig, LLP, 500 Campus Drive, Florham Park, New Jersey 07932 (908) 443-3543, brody@gtlaw.com.

PLEASE TAKE FURTHER NOTICE that, to the extent multiple Qualified Bids are received, the Debtors will conduct an Auction on April __, 2019 at 11 a.m. (Eastern Time) at the offices of the Debtors' counsel, Greenberg Traurig, LLP, 500 Campus Drive, Florham Park, New Jersey, 07932. Any party in interest wishing to attend the Auction should contact the undersigned in advance.

PLEASE TAKE FURTHER NOTICE that, in connection with the proposed sale of assets contemplated by the Sale Motion and Bidding Procedures Order, OHI may assume and assign executory contracts and unexpired leases (the "Contracts") to the Successful Bidder to the extent the Successful Bidder seeks to acquire any of the Contracts. A list of the Contracts and the proposed amount to be paid, if any, to cure any outstanding default under the respective Contract will be filed on or before April __, 2019. Procedures and deadlines for the Assumption and Assignment and Rejections of Contracts are set forth in the Bid Procedures Order.

PLEASE TAKE FURTHER NOTICE that, a hearing to confirm the results of the Auction and/or approve the sale of the Purchased Assets (the "Sale Hearing") will be held before The Honorable Stacey L. Meisel, United States Bankruptcy Judge, Martin Luther King Jr. Federal Building, 50 Walnut Street, Newark, NJ 07102, on April __, 2019 at __:00 a.m. (the "Sale"). Any objections to the Sale must be in writing, filed with the Court, and actually received by (i) the attorneys for the Debtors, (ii) the attorneys for the Stalking Horse Bidder, and (iii) the Office of the U.S. Trustee, on or before April __, 2019 at 5:00 p.m. (Eastern Time) (the "Sale Objection Deadline").

GREENBERG TRAUIG, LLP
Attorneys for Debtors and Debtors-in-
Possession

Dated: March __, 2019

By: /s/ Alan J Brody
Alan J. Brody, Esq.
500 Campus Drive, Suite 400
Florham Park, NJ 07932
(973) 443-3543
brody@gtlaw.com

EXHIBIT C

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)

GREENBERG TRAURIG LLP

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*Counsel for Debtors and
Debtors-in-Possession*

In re:

Optical Holdings of Puerto Rico, LLC, *et al.*,

Debtors.

Case No.: 18-29070 (SLM)

Judge: Honorable Stacey L. Meisel

Chapter: 11

**NOTICE OF POTENTIAL ASSUMPTION AND ASSIGNMENT
OF EXECUTORY CONTRACTS AND LEASES**

PLEASE TAKE NOTICE that, on March ___, 2019 the United States Bankruptcy Court for the District of New Jersey (the “Bankruptcy Court”)¹ entered the Order Approving and Authorizing (I) Bid Procedures and Form of Notice in Connection With the Sale of OHI of Puerto Rico LLC’s Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (II) Stalking Horse Agreement and Bid Protections, (III) the Scheduling of a Sale Hearing, (IV) the Sale to the Purchaser Submitting the Highest or Best Offer, (V) Procedures for Assuming and Assigning or Rejecting Executory Contracts and Unexpired Leases (VI) Waiving the Fourteen Day Stay Provided by Fed. R. Bankr. P. 6004, and (VII) Related Relief [Docket No. ___] (the “Bid Procedures Order”), which, among other things, approved certain procedures (the “Assumption Procedures”) for the assumption and assignment of executory contracts (the “Contracts”) and unexpired leases (the “Leases”).

PLEASE TAKE FURTHER NOTICE that, in accordance with the terms of the Assumption Procedures, and subject to the terms of the Sale Order, Optical Holdings of Puerto Rico, LLC (“Optical Holdings”) and OHI of Puerto Rico LLC (“OHI”, and together with Optical Holdings, the “Debtors”), the above-captioned debtors and debtors-in-possession, hereby provide this “Notice of Potential Assumption and Assignment of Executory Contracts and Leases” (the “Assumption Notice”) of OHI’s ability to assume and assign its Contract or Lease entered into with you, effective as of the Closing.

¹Capitalized terms not defined herein shall have the meanings ascribed to them under the Bid Procedures Order.

PLEASE TAKE FURTHER NOTICE that, subject to approval of the Bankruptcy Court and the Closing, OHI may be assuming and assigning your Contract or Lease to the Purchaser of OHI's Assets or its designee. At the Sale Hearing, the Debtors intend to demonstrate that the Purchaser has the financial wherewithal to meet all future obligations under the Contract or Lease, and that the Purchaser has the ability to comply with the requirements of adequate assurance of future performance under section 365 of the United States Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that, objections, if any, to the Assumption Notice based on adequate assurance of future performance, or otherwise, by a non-debtor party to such unexpired leases or executory contracts, must be in writing, filed with the Court, and actually received by (i) the attorneys for the Debtors, (ii) the attorneys for the Stalking Horse Bidder, and (iii) the Office of the U.S. Trustee, by the Sale Objection Deadline (April ___, 2019). If a timely objection is received, the hearing to consider any such objections will be held at the Sale Hearing (or other date to be established by the Bankruptcy Court or other agreed upon adjourned date).

PLEASE TAKE FURTHER NOTICE that, if no timely objection to the Assumption Notice is filed and served in accordance with the Bid Procedures Order, any non-debtor party to such Contract or Lease shall be deemed to have consented to the assumption of such Contract or Lease as set forth in this Assumption Notice.

PLEASE TAKE FURTHER NOTICE that, a copy of the Bid Procedures Order (and all exhibits thereto) is available for review on the Bankruptcy Court's electronic filing system or upon written request to the undersigned by contacting Debtors' counsel, Alan J. Brody, Esq., Greenberg Traurig, LLP, 500 Campus Drive, Florham Park, New Jersey 07932 (908) 443-3543, brody@gtlaw.com.

GREENBERG TRAURIG, LLP
Attorneys for the
Debtors and Debtors-in-Possession

Dated: March ___, 2019

By: /s/ Alan J Brody
Alan J. Brody, Esq.
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Florham Park, NJ 07932
(973) 443-3543
brody@gtlaw.com

EXHIBIT D

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)

GREENBERG TRAURIG LLP

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*Counsel for Debtors and
Debtors-in-Possession*

In re:

Optical Holdings of Puerto Rico, LLC, *et al.*,

Debtors.

Case No.: 18-29070 (SLM)

Judge: Honorable Stacey L. Meisel

Chapter: 11

NOTICE OF REJECTION OF EXECUTORY CONTRACTS AND LEASES

PLEASE TAKE NOTICE that, on March __, 2019, the United States Bankruptcy Court for the District of New Jersey (the “Bankruptcy Court”)¹ entered the Order Approving and Authorizing (I) Bid Procedures and Form of Notice in Connection With the Sale of OHI of Puerto Rico LLC’s Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (II) Stalking Horse Agreement and Bid Protections, (III) the Scheduling of a Sale Hearing, (IV) the Sale to the Purchaser Submitting the Highest or Best Offer, (V) Procedures for Assuming and Assigning or Rejecting Executory Contracts and Unexpired Leases (VI) Waiving the Fourteen Day Stay Provided by Fed. R. Bankr. P. 6004, and (VII) Related Relief [Docket No __] (the “Bid Procedures Order”)², which, among other things, approved certain procedures (the “Assumption Procedures”) for the rejection of executory contracts (the “Contracts”) and unexpired leases (the “Leases”).

PLEASE TAKE FURTHER NOTICE that, in accordance with the terms of the Bid Procedures Order, Optical Holdings of Puerto Rico, LLC (“Optical Holdings”) and OHI of Puerto Rico LLC (“OHI”, and together with Optical Holdings, the “Debtors”), the above-captioned debtors and debtors-in-possession (the (“Debtors”) hereby provides this “Notice of Rejection of Executory Contracts and Leases” (the “Rejection Notice”) of OHI’s intent to reject every Contract or Lease that is listed on Exhibit 1 to the proposed form of order approving the

¹Capitalized terms not defined herein shall have the meanings ascribed to them under the Bid Procedures Order.

²A copy of the Bid Procedures Order can be requested by contacting Debtors’ counsel, Alan J. Brody, Esq., Greenberg Traurig, LLP, 500 Campus Drive, Florham Park, New Jersey 07932 (908) 443-3543, brodyA@gtlaw.com.

rejection (the “Rejection Order”), substantially in the form attached as Annex 1 to this Rejection Notice, effective as of the date(s) indicated thereon.

PLEASE TAKE FURTHER NOTICE that, objections, if any, to the Rejection Notice, must be in writing, filed with the Court, and actually received by (i) the attorneys for the Debtors, (ii) the attorneys for Stalking Horse Bidder, and (iii) the Office of the U.S. Trustee, no later than fourteen (14) days after the date the Debtors served this notice. If a timely objection is received, a hearing will be scheduled to consider the objection. If the objection is overruled or sustained by the Bankruptcy Court or withdrawn, the rejection of the affected Contract or Lease shall be deemed effective as of the date on which the Bankruptcy Court determines the rejection the Contract or Lease effective, or as agreed to by the Debtors and the applicable counterparty (the “Rejection Effective Date”).

PLEASE TAKE FURTHER NOTICE that, if no timely objection to the Rejection Notice is filed and served in accordance with the Bid Procedures Order, or if a timely objection is filed but the objection is resolved by the Debtor and affected counterparty, the Debtors may submit the Rejection Order for entry by the Court under a Certification of no Objection, or Certification of counsel, as applicable, which Rejection Order shall provide, among other things, that the rejection of such Contract or Lease shall become effective as of the applicable Rejection Effective Date set forth in the related Rejection Notice or otherwise agreed to by the Debtors and the particular objecting counterparty.

PLEASE TAKE FURTHER NOTICE that, if any personal property or furniture, fixtures or equipment of OHI remains at the premises subject to an unexpired lease of real property subject to a Rejection Notice, OHI is authorized, but not directed, at any time on or before the applicable Rejection Effective Date to remove or abandon any of OHI’s personal property that may be located on leased premises that are subject to a rejected lease. Absent a timely objection to the Rejection Notice, the property will be deemed abandoned pursuant to section 554 of the Bankruptcy Code, as is, effective as of the applicable Rejection Effective Date, and the landlords may dispose of any such abandoned property, in their sole discretion, without further notice or order from this Bankruptcy Court, without any liability to OHI and any third party for such disposal and without waiver of any claim the landlords may have against OHI for the disposal of such property.

PLEASE TAKE FURTHER NOTICE that, if an affected landlord or counterparty or any other party in interest (the “Rejection Claimant”) asserts a claim or claims against OHI arising from the rejection of a Contract or Lease, such Rejection Claimant shall submit a proof of claim on or before the later of (a) the date that is thirty (30) days from entry of the Rejection Order or (b) the general bar date established by the Court for filing proofs of claim against OHI. If the Rejection Claimant does not timely file such proof of claim, such claimant shall be forever barred from asserting a claim against OHI for such rejection damages.

PLEASE TAKE FURTHER NOTICE that, a copy of the Bid Procedures Order (and all exhibits thereto) is available for review on the Bankruptcy Court's electronic filing system or upon written request to the undersigned by contacting Debtors' counsel, Alan J. Brody, Esq., Greenberg Traurig, LLP, 500 Campus Drive, Florham Park, New Jersey 07932 (908) 443-3543, brodya@gtlaw.com.

GREENBERG TRAUIG, LLP
Attorneys for the
Debtors and Debtors-in-Possession

Dated: March __, 2019

By: /s/ Alan J Brody
Alan J. Brody, Esq.
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ANNEX 1
(Proposed Rejection Order)

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-1(b)

GREENBERG TRAURIG LLP

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*Counsel for Debtors and
Debtors-in-Possession*

In re:

Optical Holdings of Puerto Rico, LLC, *et al.*,

Debtors.

Case No.: 18-29070 (SLM)

Judge: Honorable Stacey L. Meisel

Chapter: 11

ORDER APPROVING REJECTION OF EXECUTORY CONTRACTS AND LEASES

The relief set forth on the following pages, numbered two (2) through three (3), is hereby
ORDERED.

Page 2 of 3

Debtor: Optical Holdings of Puerto Rico, *et al.*

Case No.: 18-29070 (SLM)

Caption: Order Approving Rejection of Executors' Contracts and Leases

On March ___, 2019, the Bankruptcy Court entered an Order Approving and Authorizing (I) Bid Procedures and Form of Notice in Connection With the Sale of OHI of Puerto Rico LLC's Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (II) Stalking Horse Agreement and Bid Protections, (III) the Scheduling of a Sale Hearing, (IV) the Sale to the Purchaser Submitting the Highest or Best Offer, (V) Procedures for Assuming and Assigning or Rejecting Executory Contracts and Unexpired Leases (VI) Waiving the Fourteen Day Stay Provided by Fed. R. Bankr. P. 6004, and (VII) Related Relief [Docket No. ___] (the "Bid Procedures Order"); and the Bankruptcy Court having jurisdiction over the this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this being a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and Optical Holdings of Puerto Rico, LLC ("Optical Holdings") and OHI of Puerto Rico LLC ("OHI", and together with Optical Holdings, the "Debtors"), the above-captioned debtors and debtors-in-possession (the "Debtors") having properly served a "Notice of Rejection of Unexpired Leases and Executory Contracts" (the "Rejection Notice") in accordance with the terms of the Bid Procedures Order in connection with the executory contracts (the "Contracts") and unexpired leases (the "Leases") set forth on **Exhibit A** hereto; and no timely objections having been filed to the rejection of the Contracts or Leases; and due and proper notice of the Bid Procedures Order and the Rejection Notice having been provided; and relief requested herein being in the best interests of the Debtors, their estates and creditors; and the Bankruptcy Court having determined that good cause exists for the entry of this Order.

IT IS ORDERED as follows:

1. The Contracts and Leases listed on **Exhibit A** hereto are hereby rejected effective as of the date of entry of this Order (the "Rejection Effective Date").

Page 3 of 3

Debtor: Optical Holdings of Puerto Rico, *et al.*

Case No.: 18-29070 (SLM)

Caption: Order Approving Rejection of Executors' Contracts and Leases

2. Any personal property remaining at the leased premises as of the Rejection Effective Date shall be deemed abandoned pursuant to section 554 of the Bankruptcy Code, as is, by OHI as of the Rejection Effective Date, and the landlord(s) may dispose of any such abandoned property, in their sole discretion, without further notice or order from this Bankruptcy Court, without any liability to OHI and any third party for such disposal and without waiver of any claim the landlords may have against OHI for the disposal of such property.

3. If an affected landlord or counterparty or any other party in interest (the "Rejection Claimant") asserts a claim or claims against OHI arising from the rejection of a Contract or Lease, such Rejection Claimant shall submit a proof of claim on or before the later of (a) the date that is thirty (30) days from entry of the Rejection Order or (b) the general bar date established by the Court for filing proofs of claim against OHI. If the Rejection Claimant does not timely file such proof of claim, such claimant shall be forever barred from asserting a claim against OHI for such rejection damages.

4. The Debtors are authorized to take any action necessary to implement the terms of this Order and the rejection without further order from the Bankruptcy Court.

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