

Mark K. Thomas
Peter J. Young
PROSKAUER ROSE LLP
Three First National Plaza
70 West Madison, Suite 3800
Chicago, Illinois 60602
Telephone: (312) 962-3550
Facsimile: (312) 962-3551

and

Jared D. Zajac
PROSKAUER ROSE LLP
Eleven Times Square
New York, New York 10036
Telephone: (212) 969-3000
Facsimile: (212) 969-2900

Proposed Counsel for the Debtors and Debtors in Possession

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

In re:	)	Chapter 11
)	
HMX ACQUISITION CORP., <i>et al.</i> , ¹	)	Case No. 12-14300 (ALG)
)	
Debtors.	)	(Joint Administration Requested)
)	

**DEBTORS' MOTION FOR ORDERS: (A)(I) AUTHORIZING THE DEBTORS' ENTRY INTO THE STALKING HORSE ASSET PURCHASE AGREEMENT, (II) AUTHORIZING AND APPROVING THE BIDDING PROCEDURES, EXPENSE REIMBURSEMENT, AND BREAK-UP FEE, (III) APPROVING THE NOTICE PROCEDURES, (IV) SETTING A DATE FOR THE SALE HEARING, (V) AUTHORIZING THE DEBTORS TO FILE CERTAIN DOCUMENTS UNDER SEAL; (B) (I) AUTHORIZING AND APPROVING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS, (II) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS; AND
(C) GRANTING RELATED RELIEF**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, to the extent applicable, are: HMX Acquisition Corp. (9861); HMX Poland Sp. z o. o.; HMX, LLC (8971); Quartet Real Estate, LLC (8973); and HMX, DTC Co. (0162).

The above-captioned debtors and debtors in possession (collectively, the “Debtors”), by and through their undersigned counsel, hereby move (the “Motion”) this Court pursuant to sections 105, 363 and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), and rules 6004, 6006, and 9019 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for entry of orders: (a)(i) authorizing the Debtors to enter into that certain Asset Purchase Agreement dated as of October 17, 2012 with Authentic Brands Group, LLC (the “Stalking Horse Purchaser”) for the sale of substantially all assets of the Debtors as a “stalking horse” agreement (attached hereto as **Exhibit A**, the “Stalking Horse Purchase Agreement”); (ii) approving the bidding procedures, break-up fee and expense reimbursement, including granting administrative expense status to the break-up fee and expense reimbursement; (iii) approving the form and manner of notice of an auction (defined below); (iv) setting the time, date and place for a hearing (the “Sale Hearing”) after the conclusion of the auction; and (v) authorizing the Debtors to file certain documents under seal; (b)(i) authorizing and approving the sale of substantially all of the Debtors’ assets free and clear of all liens, claims, encumbrances and other interests, pursuant to section 363 of the Bankruptcy Code; and (ii) approving the assumption and assignment of certain executory contracts pursuant to Section 365 of the Bankruptcy Code; and (c) granting related relief. In support of the Motion, the Debtors respectfully state as follows:

JURISDICTION

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these cases and this Motion is proper pursuant to 28 U.S.C. § 1408. The statutory predicates for the relief requested herein are sections 105(a), 363, and 365 of the Bankruptcy Code, rules 2002, 6004, 6006 and

9019 of the Federal Rules of Bankruptcy Procedure, and rule 9013-1(a) of the Local Rules for the United States Bankruptcy Court for the Southern District of New York (the “Local Rules”).

BACKGROUND

2. On October 19, 2012, HMX Acquisition Corp. and HMX Poland Sp. z o. o. each filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “HMXAC Petition Date”), and, on October 21, 2012, HMX, LLC, Quartet Real Estate, LLC, and HMX, DTC Co each filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “HMX Petition Date”), thereby commencing the Debtors’ chapter 11 cases (the “Chapter 11 Cases”). The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases and, as of the date of the filing of this Motion, no official committees have been appointed or designated.

3. The factual background relating to the Debtors’ commencement of these Chapter 11 Cases is set forth in detail in the *Declaration of Douglas Williams, Chief Executive Officer for Debtors HMX Acquisition Corp., HMX, LLC, Quartet Real Estate, LLC, and HMX, DTC Co., and Authorized Signatory for Debtor HMX Poland Sp. z o. o., in Support of First Day Pleadings* (the “Williams Declaration”) filed on the Petition Date and incorporated herein by reference.

THE DEBTORS’ DECISION TO SELL THE PURCHASED ASSETS

4. As described in more detail in the Williams Declaration, the Debtors are facing severe liquidity constraints, decreasing revenues, and do not have the financial wherewithal to continue to operate their businesses throughout a prolonged chapter 11 process.

5. The Debtors, headquartered in New York City, are leading American designers, manufacturers, licensors, and licensees of men’s and women’s business and leisure apparel

focused primarily on the luxury, bridge, and better price points. The Debtors are the largest manufacturer and marketer of U.S.-made men's tailored clothing, with an attractive portfolio of owned and licensed brands sold primarily through upscale department stores, specialty stores, and boutiques. The Debtors also sell their brands directly to consumers through their e-commerce site and retail locations.

6. On January 23, 2009, Hartmarx Corporation, the Debtors' predecessor in interest, filed for chapter 11 bankruptcy protection and, in the summer of 2009, the Debtors were acquired by their existing equity owners against the backdrop of a U.S. recession and difficult retail environment, with the need to improve the Debtors' operations. Despite the efforts of the Debtors' new owners and management, revenues have continued to drop over the past several years as demand for the Debtors' products, particularly moderately priced tailored clothing products, has decreased. The current difficult retail environment, in which slowed consumer spending has been sustained, has exacerbated the problem. Revenues have continued to decline and the Debtors' liquidity has deteriorated significantly.

7. The Debtors reinitiated their refinancing efforts in early 2012 in anticipation of the upcoming maturity date of the Prepetition Credit Agreement. As of July 2012, the Debtors were on target to complete a refinancing of the Prepetition Credit Facility. This refinancing, if consummated, would have generated substantial incremental liquidity for the Debtors' operations. Leading up to the closing, the Debtors were forced to curtail inventory purchases and other expenses to preserve the limited liquidity they had under the Prepetition Credit Agreement, with the reasonable expectation of greater availability upon closing. The proposed refinancing required a new, third party credit facility and a substantial equity infusion from SKNL, the entity that controls 95% of the Debtors' ultimate parent. The third party credit

facility was ready to close on the required closing date of July 16, 2012. Prior to the closing, however, SKNL stated that it did not have the required equity infusion and requested more time to raise the required funds. The failure to close on July 16, 2012 triggered a default under the Prepetition Credit Agreement, an acceleration of all obligations owed thereunder, and severely limited the Debtors' ability to use cash receipts and to borrow under the Prepetition Credit Facility. The failure to close materially and adversely affected the Debtors' ability to timely fill orders or to otherwise maintain the orderly flow of goods.

8. On August 14, 2012, the Debtors entered into a Forbearance Agreement and Amendment No. 7 with respect to the Prepetition Credit Agreement. Concurrently therewith, a new financing source bought the claims of the existing lenders under the Prepetition Credit Agreement. Amendment 7: (a) set forth certain Corporate Governance Provisions, including the appointment by the Debtors of an Independent Director and Independent Manager (Mr. Michael O'Hara) who was "irrevocably" granted the "sole and exclusive power" and authority to make all decisions and execute all documents with respect to a "Sale Process" and a "Bankruptcy Process"; (b) required that the Debtors retain an investment banker to run a marketing and sale process; (c) required the Debtors to produce indications of interest by September 17, 2012 and signed transaction documents by September 28, 2012; (d) provided SKNL more time, through August 22, 2012, to provide the required equity infusion and provided that, upon the timely new equity investment, the Corporate Governance Provisions would unwind; (e) contained SKNL's signature acknowledging and agreeing to not, under any circumstances, contest any of the provisions in Amendment 7, including the Corporate Governance Provisions; (f) provided the Debtors with much needed additional liquidity and access to funds; and, (g) set a termination date of September 29, 2012. The required equity infusion was not made and SKNL requested

more time to raise the needed funds. Amendment 7, however, enabled the Debtors to access additional liquidity to pursue a sale or recapitalization of the Debtors. To that end, the Debtors' engaged William Blair & Company, LLC ("Blair") to pursue a sale of the Debtors' business on an integrated or disaggregated basis or a recapitalization.

9. Mr. O'Hara, the Debtors' management and Blair developed a strategy for pursuing a sale of the Debtors' business. Blair compiled a comprehensive list of close to 200 potential strategic and financial buyers in the United States, Canada, Asia, and Europe. Mr. O'Hara, Blair and the Debtors' management team reviewed and analyzed the list, notably with respect to identifying key strategic buyers in the apparel industry. After these discussions, Blair finalized the buyer list, which included approximately 180 parties, approximately 30% of which were strategic buyers and 70% of which were financial buyers (the "Buyer List").

10. Blair began to market the Debtors' assets on or about August 15, 2012. Blair contacted the parties on the Buyer List to gauge interest in a potential transaction. The initial contact with the parties on the Buyer List resulting in 150 parties receiving a "teaser" letter, which set forth an overview of the Debtors, pictures of the Debtors' product portfolio, select sales information, investment highlights, and growth strategies. Thereafter, on or about August 28, 2012, 60 parties executed confidentiality agreements and received a 42-page confidential information memorandum which included an executive summary, investment highlights, growth opportunities, company overview, corporate information, and financial overview.

11. Also, on or about August 28, 2012, Blair distributed instructions for submissions of initial indications of interest (the "IOI Instructions"). The IOI Instructions indicated that initial indications of interest could contemplate the purchase of all of the Debtors' assets (including the Coppley assets) or certain of the Debtors' brands. The IOI Instructions

established September 17, 2012 as the deadline for submission of initial indications of interest, which was later extended to September 21, 2012 to allow parties additional time to conduct diligence.

12. By close of business on September 24, 2012, ten initial indications of interest had been submitted by nine different parties. After a review and analysis of the initial indications of interests, Mr. O'Hara and Blair determined it would be best to pursue a stand-alone sale of Copley's assets.²

13. On October 17, 2012, the Debtors' entered into a Stalking Horse Asset Purchase Agreement with Authentic Brands Group LLC (the "Stalking Horse Purchase Agreement"). In sum, the Stalking Horse Purchase Agreement provides for a going concern sale and, only if certain conditions are not met, the Stalking Horse Purchase Agreement "toggles" to a liquidation sale. The Stalking Horse Purchase Agreement provides a purchase price that will pay the secured lender in full in cash, provide sufficient additional cash to pay all anticipated administrative claims, and pay a projected dividend to unsecured creditors. Upon the Court's approval of proposed bid procedures, the Stalking Horse Purchase Agreement will be tested in the market and at an auction. The Debtors anticipate spirited, robust bidding at any auction.

14. Accordingly, the Debtors intend to conduct an auction for the going-concern sale of all of the Debtors' business and assets (collectively, the "Purchased Assets") in one or more sale transactions to be implemented pursuant to sections 363 and 365 of the Bankruptcy Code. The Debtors believe that, unless a sale of the Purchased Assets is expeditiously consummated,

² The Debtors made this determination based upon, among other things, the specialized interest in the Copley asset as compared to general interest in other of the Debtors' brands, the complexities of a cross-border transaction, additional costs of a Canadian insolvency proceeding, requirements of the Debtors' existing lender, and assurances from the potential Copley buyers of their ability to close a transaction on an expedited basis.

there will be significant value deterioration. Indeed, the Debtors cannot endure a prolonged stay in chapter 11 without significant risk to the Debtors' survival. Accordingly, a prompt and expeditious sale is essential to a successful result in these cases.

15. The sale of the Purchased Assets is subject to the marketing and auction process proposed herein and, ultimately, this Court's approval. The Debtors believe that an orderly, going concern sale of the Purchased Assets will benefit their creditors and other interested parties.

SUMMARY OF RELIEF REQUESTED

16. The Debtors seek, pursuant to sections 105, 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9014, and Local Rule 9013-1(a), the Court's approval of: (a) the Debtors' entering into the Stalking Horse Purchase Agreement and the institution of certain bidding, auction and notice procedures for the solicitation and consideration of competing offers for the Purchased Assets (collectively, the "Bidding Procedures," annexed as **Schedule 1** to the Bidding Procedures Order (as defined below)); (b) the sale of the Purchased Assets free and clear of all liens, claims, encumbrances and interests (collectively, the "Interests") in accordance with section 363(f) of the Bankruptcy Code; and (c) the assumption, assignment and/or transfer of certain executory contracts to the Successful Bidder (as defined in the Bidding Procedures).

17. More specifically, through this Motion, the Debtors request that the Court enter the following orders:

- **The Bidding Procedures Order**: An order in substantially the form attached hereto as **Exhibit B** (the "Bidding Procedures Order"): (i) authorizing the Debtors to enter into the Stalking Horse Purchase Agreement; (ii) approving the Bidding Procedures setting forth, among other things, procedures for the conduct of the auction, (iii) approving the reimbursement of the Stalking Horse Purchaser's reasonable costs and expenses incurred in connection with its bid up to the maximum amount of \$700,000 (\$425,000 allocable to the Purchaser and \$275,000 allocable to the Licensee); (iv) approving the payment of a

break-up fee in the amount of \$2,200,000 in the event the Stalking Horse Purchase Agreement is terminated pursuant to Section 11.2(l) thereof through the Seller's consummation of an Alternative Transaction, and such amounts shall be treated as an Administrative Expense in the Bankruptcy Cases; (iii) approving the notice establishing (x) the dates, times, and locations of the deadline to bid on the Purchased Assets, (y) the auction date for the Purchased Assets (the "Auction"), and (z) the sale hearing date for the Purchased Assets (the "Sale Hearing") pursuant to the dates proposed in the Bidding Procedures Order, subject to the Court's availability; (iv) approving the notice of the Debtors' intent to assume, assign and/or transfer to the Successful Bidder or Back-Up Bidder, the contracts, commitments, leases, licenses, permits, purchase orders, and any other executory contracts and unexpired leases (collectively, the "Executory Contracts and Unexpired Leases"), and the corresponding cure amounts required to be paid in connection with such assumption, assignment and/or transfer; and (v) authorizing the Debtors to file certain documents under seal.

- The Sale Order: Following the Auction, an order in substantially the form attached hereto as **Exhibit C** (the "Sale Order"): (i) approving the sale of the Purchased Assets free and clear of all liens, claims, encumbrances and other interests (other than certain expressly specified permitted encumbrances and assumed liabilities, all as more specifically set forth in the applicable purchase agreement) pursuant to sections 105, 363(b), (f) and (m), and 365 of the Bankruptcy Code and Bankruptcy Rules 6004, 6006, 9008 and 9014; and (ii) approving the assumption, assignment, and/or transfer of the Executory Contracts and Unexpired Leases to the Successful Bidder or Back-Up Bidder under the Bidding Procedures and pursuant to sections 363 and 365 of the Bankruptcy Code.

18. The sale of the Purchased Assets must occur on an expedited schedule. The Debtors believe that every day spent in chapter 11 increases the risk of business loss and value deterioration. Thus, in order to maximize value and ensure a successful result in these Chapter 11 Cases, a prompt and orderly sale of the Purchased Assets must take place. Moreover, the Debtors believe that the value of the estates' business will be maximized through a going concern sale and not through an internal, restructuring of the Debtors' related debts. Absent a prompt sale pursuant to the procedures and timelines proposed, the Debtors believe that the going concern value of the Purchased Assets will be significantly compromised, and that their viability will be at significant risk.

19. The Debtors expressly reserve the right to modify the relief requested in this Motion, including the proposed Bidding Procedures, prior to or at the applicable hearing.

A. The Stalking Horse Purchase Agreement³

20. The Debtors have determined that the Stalking Horse Purchase Agreement represents the best opportunity for the Debtors to preserve the Debtors' going concern operations, preserve over 1000 jobs, and maximize value by serving as a basis for conducting the Auction to seek higher or otherwise better offers. The Stalking Horse Purchase Agreement was entered into after arm's-length, good-faith negotiations between the Debtors, the Stalking Horse Purchaser and their respective advisors, and contemplates the sale of the Purchased Assets, subject to higher or otherwise better bids for the Assets, on the following material terms:

- Sale of Assets Free and Clear. Upon the terms and subject to the conditions set forth in the Stalking Horse Purchase Agreement, the Sellers shall sell, assign, convey, transfer and deliver to Purchaser, or to the Licensee as designated by the Purchaser if the License Agreement is consummated, and Purchaser shall purchase from Sellers, all of Sellers' right, title and interest in the Assets, free and clear of all Encumbrances other than the Permitted Encumbrances, including all of Sellers' right, title and interest in the following: (a) all tangible personal property owned or used by any Seller including, without limitation, all machinery, equipment, computers, furniture, furnishings, fixtures, office supplies, vehicles, and tools that relate in any way to the Business; (b) all Owned Real Property, together with all buildings, fixtures, structures, improvements and other appurtenances thereto and thereon; (c) all interests of Sellers in the Assumed Contracts; (d) all Avoidance Actions relating to Assumed Contracts; (e) all Inventory that relates in any way to the Business; (f) cash and cash equivalents of Sellers; (g) all interests of Sellers in and to all Intellectual Property (and all Avoidance Actions related thereto); (h) all accounts receivable and other receivables of the Business including, without limitation, all accounts receivable in respect of goods shipped or products sold or services rendered to customers by Sellers on or prior to the Closing Date; (i) all Permits that relate in any way to the Business (to the extent transferrable); (j) all books and records, files, data, reports, computer codes and sourcing data, advertiser and supplier lists, cost and pricing information, business plans, and manuals, blueprints, research and development files, personnel records and other records of any Seller and that

³ All capitalized terms used but not otherwise defined in this summary are to be given the meanings ascribed to them in the Stalking Horse Purchase Agreement. To the extent there are inconsistencies between any summary description of the Stalking Horse Purchase Agreement contained herein and the Stalking Horse Purchase Agreement, the terms of the Stalking Horse Purchase Agreement shall control.

relate in any way to the Business; (k) all marketing, advertising and promotional materials; and (l) all goodwill associated with the Business and/or the Assets. (Stalking Horse Purchase Agreement § 2.1)

- Assumption of Liabilities. Effective as of the Closing Date, Stalking Horse Purchaser or the Licensee to the extent the License Agreement is consummated, shall assume and thereafter in due course pay, fully satisfy, discharge and perform the Liabilities of Sellers under the Assumed Contracts and the other Liabilities of Sellers including: (i) certain trade payables of critical vendors listed on Schedule 2.3(b) of the Stalking Horse Agreement; (ii) all Liabilities relating to ownership or use of the Assets or otherwise relating to the Business, in each case arising after the Closing; (iii) all Cure Amounts with respect to the Assumed Contracts; (iv) Liabilities arising out of any CBAs to the extent that such CBAs are Assumed Contracts; (v) Liabilities relating to all contracts with Douglas Williams, the Debtors' CEO; (vi) Liabilities arising out of any defined contribution plans for Transferred Employees as described in Section 8.3 hereof; and (x) Liabilities relating to the Real Property, including, but not limited to Liabilities relating to the assumption and assignment of the Leased Real Property and the Liabilities relating to the Owned Real Property including all mortgages relating thereto. (Stalking Horse Purchase Agreement § 2.3)
- Licensing Agreement. The Stalking Horse Purchase Agreement contemplates that a new entity formed by Douglas Williams, the Debtors' CEO, (the "Licensee") will enter into a licensing agreement (the "Licensing Agreement") with the Stalking Horse Purchaser. In the event that the Stalking Horse Purchaser is unable to agree with the Licensee upon definitive terms of the Licensing Agreement for any reason no later than three (3) Business Days prior to the Auction, then: (a) all Assumed Liabilities will become Excluded Liabilities except for: (i) all Liabilities relating to ownership or use of the Assets or otherwise relating to the Business (to the extent not related to Excluded Assets), in each case arising after the Closing; and (ii) all Cure Amounts with respect to the Assumed Contracts; and (b) the following Assets will become Excluded Assets: (i) all Owned Real Property, together with all buildings, fixtures, structures, improvements and other appurtenances thereto and thereon; and (ii) all Avoidance Actions. (Stalking Horse Purchase Agreement § 2.5)
- Purchase Price. The aggregate purchase price for the Assets (the "Purchase Price") shall equal the sum of: (A) the aggregate amount of the Salus prepetition and postpetition claims against the Sellers and against Coppley (collectively, the "Salus Claim") plus (B) \$5,100,000 to the Sellers' bankruptcy estates (free and clear of any secured claims of Salus so long as the Salus Claim is paid in full), exclusive of the assumption of any Assumed Liabilities. Upon execution of the License Agreement, the Licensee shall execute a joinder to this Agreement so that it will be bound by the terms of this Agreement that are applicable to the Licensee. The License Agreement

shall require that the Licensee provide evidence of financial ability to perform, satisfactory to Purchaser in its sole discretion, no later than three (3) Business Days prior to the Auction. In the event that the Purchaser and the Licensee fail to execute the License Agreement no later than three (3) Business Days prior to the Auction, then the Purchase Price shall equal the sum of: (X) the Salus Claim plus (Y) \$9,100,000 to the Sellers' bankruptcy estates (free and clear of any secured claims of Salus so long as the Salus Claim is paid in full), exclusive of the assumption of any Assumed Liabilities. (Stalking Horse Purchase Agreement § 2.6)

- Deposit. Simultaneously with the execution of the Stalking Horse Purchase Agreement, in accordance with the terms of the letter attached as Exhibit F and pursuant to the terms of an escrow agreement into which the Sellers and Purchaser agree to enter on terms mutually agreeable to Sellers and Purchaser in the exercise of their reasonable discretion (the "Deposit Escrow Agreement"), Purchaser shall deposit with the escrow agent under the Deposit Escrow Agreement (the "Escrow Agent") the sum of \$2,100,000 by certified check or wire transfer of immediately available funds, and shall deposit an additional \$4,900,000 with the Escrow Agent upon Bankruptcy Court approval of the Bid Procedures Order (the "Purchaser Deposit Amount"), to be released by the Escrow Agent and delivered to either Purchaser or Sellers in accordance with the provisions of the Deposit Escrow Agreement and the terms of this Agreement as follows: (a) If the Closing shall occur, the Purchaser Deposit Amount, together with all accrued interest and investment income thereon, shall be applied in accordance with Section 11.1(b) towards the cash portion of the Purchase Price payable by Purchaser under Section 2.6 thereof; (b) If this Agreement is terminated by Sellers pursuant to Section 11.2(g), the Purchaser Deposit Amount, together with all accrued interest and investment income thereon, shall be delivered to Sellers. Sellers' right to the Purchaser Deposit Amount shall be in lieu of any and all other remedies that the Sellers may otherwise have against Purchaser on account of and in full satisfaction of, any breach, violation or default by Purchaser under this Agreement; and (c) If this Agreement is terminated for any reason other than by Sellers pursuant to Section 11.2(g), the Purchaser Deposit Amount, together with all accrued interest and investment income thereon, shall be returned to Purchaser in lieu of any and all other remedies that Purchaser may otherwise have against Sellers on account of, and in full satisfaction of, any breach, violation or default by Sellers under the Stalking Horse Purchase Agreement. (Stalking Horse Purchase Agreement § 2.8)
- Break-Up Fee and Expense Reimbursement. In the event that the Stalking Horse Purchase Agreement is terminated pursuant to Section 11.2(l) thereof through the Sellers' consummation of an Alternative Transaction, Sellers shall pay to Purchaser a break-up fee of \$2,200,000 (the "Break-Up Fee"), which shall each be treated as an Administrative Expense in the Bankruptcy Cases. In the event that the Stalking Horse Purchase Agreement is terminated

pursuant to Section 11.2(c)(ii), (d), (f) (i), (l) or (m), Sellers shall pay to Purchaser and the Licensee the Expense Reimbursement, in the amount of up to \$700,000 (\$425,000 allocable to the Purchaser and \$275,000 allocable to the Licensee) in cash, which shall each be treated as an Administrative Expense in the Bankruptcy Cases. In the event that the Stalking Horse Purchase Agreement is terminated pursuant to Section 11.2(l) thereof, the Licensee shall be entitled to its portion of the Expense Reimbursement only if the Licensee is not a participant in an Alternative Transaction. The Break-Up Fee and the Expense Reimbursement will be due and payable three (3) Business Days following such termination. (Stalking Horse Purchase Agreement § 5.8)

- Termination. The Stalking Horse Purchase Agreement may be terminated upon the occurrence of certain events specified in Section 11.2 therein, including, without limitation, (a) by the Stalking Horse Purchaser if: (i) the Bid Procedures Order is not entered by twenty (20) days following the HMX Petition Date, (ii) the Auction has not concluded on or before fifty (50) days following the HMX Petition Date, (iii) the Proposed Sale Order is not entered within fifty-five (55) days following the HMX Petition Date, or (iv) if Stalking Horse Purchaser exercises its rights to object to waivers or amendments of the DIP Loan or the DIP Loan budget pursuant to and in accordance with Section 2.7 of the Stalking Horse Purchase Agreement; or (b) automatically upon the consummation of an Alternative Transaction. (Stalking Horse Purchase Agreement § 11.2)

B. The Proposed Bidding Procedures⁴

21. The Debtors believe the proposed Bidding Procedures, which are annexed as **Schedule 1** to the Bidding Procedures Order, will maximize the realizable value of the Purchased Assets for the benefit of the Debtors' estates, creditors and other interested parties. The Bidding Procedures contemplate an auction process pursuant to which bids for the Purchased Assets will be subject to higher or otherwise better offers.

22. As described below and more fully in the Bidding Procedures, only Qualified Bidders who timely submit Qualified Bids will be eligible to participate in the Auction. Specifically, the Bidding Procedures provide, in relevant part, as follows:

⁴ All capitalized terms used but not otherwise defined in this summary are to be given the meanings ascribed to them in the Bid Procedures. To the extent there are inconsistencies between any summary description of the Bid Procedures contained herein and the Bid Procedures, the terms of the Bid Procedures shall control.

Assets to Be Sold. The Debtors' business is comprised of substantially all of the Debtors' operating assets and its intellectual property, along with certain executory contracts. The Debtors are offering to sell the Purchased Assets, together or separately, to one of more bidders. The Debtors shall consider bids for either all or part of the Assets.

Participation Requirements: In order to participate in the sale and bidding process or otherwise be considered for any purpose hereunder, a person interested in some or all of the Purchased Assets (a "Potential Bidder") must first deliver the following materials to the Debtors and their counsel:

- a. an executed confidentiality agreement in form and substance satisfactory to the Debtors and their counsel; and
- b. the most current audited and latest unaudited financial statements (collectively, the "Financials") of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of a sale transaction, (x) Financials of the equity holder(s) of the Potential Bidder or such other form of financial disclosure as is acceptable to the Debtors that demonstrates the Potential Bidder's financial ability to consummate a competing sale transaction and (y) a written commitment acceptable to the Debtors of the equity holder(s) of the Potential Bidder to be responsible for the Potential Bidder's obligations in connection with a sale transaction (including being bound by the terms and conditions of the Bidding Procedures); provided that if a Potential Bidder is unable to provide Financials, the Debtors may accept such other information sufficient to demonstrate to the Debtors' reasonable satisfaction that such Potential Bidder has the financial wherewithal to consummate a sale transaction. A person meeting the requirements set forth in this paragraph shall be considered a "Qualified Bidder."

Qualified Bid. The Debtors shall determine, after consultation with the Prepetition Secured Lenders, whether a bid qualifies as a "Qualified Bid." To constitute a Qualified Bid, a bid must be a written irrevocable offer from a Qualified Bidder and:

- a. include a cover letter identifying whether the Qualified Bidder is interested in purchasing some or all of the Purchased Assets. If the Qualified Bidder is submitting a bid only with respect to certain Assets, such cover letter must identify which Assets the Qualified Bidder is seeking to purchase, whether the Assets are being purchased subject to existing licenses or not, and whether or not such bid is contingent on purchasing all of the identified Assets;
- b. state that the Qualified Bidder offers to consummate the sale pursuant to an executed Purchase Agreement (the "Purchase Agreement"). If any bid is conditioned on the assumption and assignment of executory contracts and/or unexpired leases, then such potential bidder shall be required to

- provide evidence of its ability to provide adequate assurance of future performance of such contracts or leases along with the bid;
- c. contain a list of the Debtors' executory contracts and unexpired leases with respect to which the bidder seeks assignment from the Debtors;
 - d. confirm that the offer shall remain open and irrevocable as provided below;
 - e. enclose a clean signed copy of the proposed Purchase Agreement and a blacklined copy reflecting changes to the Stalking Horse Purchase Agreement;
 - f. be accompanied with a certified or bank check or wire transfer in an amount equal to ten percent (10%) of the proposed cash purchase price set forth in the bid as a minimum good faith deposit plus the Break-Up Fee and the Expense Reimbursement (the "Minimum Deposit"), which Minimum Deposit shall be used to fund a portion of the purchase price provided for in the bid;
 - g. not be conditioned on obtaining financing or the outcome of any due diligence by the Qualified Bidder;
 - h. not request or entitle the Qualified Bidder to any break-up fee, expense reimbursement or similar type of payment;
 - i. fully disclose the identity of each entity that will be bidding for the Purchased Assets or otherwise participating in connection with such bid, and the complete terms of any such participation; and
 - j. identify with particularity each and every condition to closing, all of which must be set forth in the Purchase Agreement.

Bid Deadline and Submission: Bids must be received electronically, with hard copies sent by overnight delivery, no later than 5:00 p.m. (prevailing Eastern Time) on November 28, 2012 (the "Bid Deadline") by delivery to: (i) counsel to the Debtors, Proskauer Rose LLP, 70 W. Madison St., Suite 3800, Chicago, Illinois 60602, Attn: Mark K. Thomas and Peter J. Young; (ii) counsel for the Dip Lender, Jeffrey M. Wolf, Greenberg Traurig, LLP, One International Place, Boston, MA 02110; (iii) counsel to the Unsecured Creditors' Committee; and (iv) the Debtors' Investment Banker, William Blair & Company, Attn: Geoffrey Richards and Sherri Toub, 222 W. Adams Street, Chicago, IL 60606. After the Bid Deadline and before the Auction, each Qualified Bidder that submits a Qualified Bid will be provided with a copy of any other Qualified Bid(s).

Auction. If more than one Qualified Bid by a Qualified Bidder is received by the Bid Deadline, an auction (the "Auction") with respect to a sale of the Purchased Assets shall take place on December 3, 2012 at 10:00 a.m. (prevailing Eastern Time) at the offices of Proskauer Rose LLP, 11 Times Square, New York, NY 10036-8299, or at such other place and time as the Debtors

shall notify all Qualified Bidders, any statutory committee appointed in these cases, and other invitees. If, however, no such Qualified Bids are received by the Bid Deadline, then the Auction will not be held

Auction Rules.

- a. Only Qualified Bidders who have submitted a Qualified Bid and their authorized representatives will be eligible to attend and participate at the Auction. At the Auction, only Qualified Bidders who have submitted a Qualified Bid will be permitted to increase their bids. The bidding at the Auction shall start at the purchase price stated in the highest or otherwise best Qualified Bid (or combination of Qualified Bids) as disclosed to all Qualified Bidders prior to or at commencement of the Auction (the “Starting Qualified Bid”), and then continue in minimum increments to be announced at the Auction (the “Overbid Increment”). The Debtors shall not consider any subsequent bid in the Auction unless any bid after the Starting Qualified Bid exceeds the previous highest bid by at least the Overbid Increment; provided, however, that in the event the Debtors select a combination of Qualified Bids to serve as the Starting Qualified Bid, the Debtors reserve the right to determine an appropriate Overbid Increment for each group of assets comprising the combination Qualified Bid. During the course of the Auction, the Debtors shall inform each participant which Qualified Bid(s) reflects, in the Debtors’ view, after consultation with the Prepetition Secured Lenders, the highest or otherwise best offer or combination of offers for the Purchased Assets.
- b. Adjournment of Auction. The Auction may be adjourned as the Debtors deem appropriate. Reasonable notice of such adjournment and the time and place for the resumption of the Auction shall be given to all Qualified Bidders that have submitted a Qualified Bid and counsel to any statutory committee appointed in this case. The Auction rules may be modified by the Debtors prior to, at, or during the Auction.
- c. Each Qualified Bidder participating at the Auction will be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale.
- d. Bidding at the Auction will be transcribed or videotaped.

Other Terms. All Qualified Bids, the Auction, and the Bidding Procedures are subject to such additional terms and conditions as are announced by the Debtors, after consultation with the Prepetition Secured Lenders, and are not inconsistent with the Bid Procedures Order. At the conclusion of the Auction, the Debtors shall announce the bid or combination of bids made pursuant to the Bid Procedures Order that represents, in the Debtors’ sole discretion, after consultation with the Prepetition Secured Lenders, the highest or otherwise best offer for the Purchased Assets (the “Successful Bid”). Prior to the entry of the Sale Order, the Debtors shall announce the identity of the Qualified Bidder or combination of Qualified Bidders who

submitted the Successful Bid at the Auction (the “Successful Bidder”) and announce their intention to either (i) pursue a transaction with the Successful Bidder, or (ii) not proceed with a sale to the Successful Bidder. If an Auction is held, the Debtors shall be deemed to have accepted a Qualified Bid only when (i) such bid is declared the Successful Bid at the Auction, (ii) definitive documentation has been executed in respect thereof, and (iii) the Court has approved the Sale to the Successful Bidder. Such acceptance by the Debtors is conditioned upon approval by the Court of the Successful Bid and the entry of an order approving such Successful Bid.

Irrevocability of Certain Bids. The bid of the Qualified Bidder or combination of Qualified Bidders (the “Back-Up Bidder”) that submits the next highest or otherwise best bid or combination of bids, as announced at the conclusion of the Auction, (the “Back-Up Bid”) shall be irrevocable until the earlier of: (i) 30 days after entry of the Sale Order approving the Successful Bid; (ii) closing of the sale to the Successful Bidder or the Back-Up Bidder; and (iii) such date as the Debtors affirm in writing that the Debtors do not intend to proceed with a sale to the Successful Bidder. Following the entry of the Sale Order, if the Successful Bidder fails to consummate the Sale because of a breach or failure to perform on the part of the Successful Bidder, the Back-Up Bid will be deemed to be the new Successful Bid, and the Debtors will be authorized, but not required, to consummate the Sale with the Back-Up Bidder, who shall be obligated to consummate the Sale, without further order of the Court. In such case, the defaulting Successful Bidder’s Minimum Deposit shall be forfeited to the Debtors and the Debtors shall have the right to seek any and all other remedies and damages from the defaulting Successful Bidder.

Sale Hearing. The Court shall conduct a hearing to approve the sale of the Purchased Assets on or before December 5, 2012.

Return of Deposit. Except as otherwise provided in this paragraph with respect to any Successful Bid and any Back-Up Bid, the Minimum Deposits of all Qualified Bidders that submitted such a deposit under the Bidding Procedures shall be returned upon or within five (5) business days after the conclusion of the Auction. The Minimum Deposit of the Successful Bidder shall be held until the closing of the Sale of the Purchased Assets and applied in accordance with the Successful Bid. The Minimum Deposit of the Back-Up Bidder shall be returned upon or within the earlier of 30 days after the date of entry of the Sale Order (the “Outside Back-Up Date”) or the closing of the Sale of the Purchased Assets to the Successful Bidder.

Failure to Close. If the Successful Bidder fails to consummate the transaction in accordance with the terms of the purchase agreement executed by the Successful Bidder by the closing date contemplated in the purchase agreement agreed to by the parties for any reason, the Debtors shall: (i) retain the Successful Bidder’s Minimum Deposit; (ii) maintain the right to pursue all available remedies, whether legal or equitable; and (iii) be free to consummate the proposed transaction with the Back-Up Bidder at the highest price bid by the Back-Up Bidder at the Auction, without the need for an additional hearing or Order of the Court.

Reservation of Rights. Except as otherwise provided in the Bid Procedures Order, the Debtors reserve the right as they may reasonably determine to be in the best interests of their estates, after

consultation with the Prepetition Secured Lenders, subject to conformity with the Bidding Procedures, to: (i) determine which bidders are Qualified Bidders; (ii) determine which bids are Qualified Bids; (iii) determine which Qualified Bid or combination of Qualified Bids is the highest or otherwise best proposal and which is the next highest or otherwise best proposal; (iv) reject any bid that is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code or (c) contrary to the best interests of the Debtors and their estates; (v) remove some of the Purchased Assets from the Auction; (vi) waive terms and conditions set forth herein with respect to all potential bidders; (vii) impose additional terms and conditions with respect to all potential bidders; (viii) extend the deadlines set forth herein; (ix) adjourn or cancel the Auction and/or Sale Hearing without further notice; and (x) modify the Bidding Procedures or the Auction rules, as the Debtors may determine to be in the best interests of their estate, or withdraw the Motion at any time with or without prejudice.

Expenses. Any bidders presenting bids shall bear their own expenses in connection with the proposed sale, whether or not such sale is ultimately approved, in accordance with the terms of the purchase agreement.

23. The Debtors believe that the Bidding Procedures are fair and reasonable, are designed to determine whether higher of otherwise better bids exist, and are not likely to dissuade any serious potential bidder from bidding in a manner permitted under the preceding paragraph.

C. Notice of Auction and Sale Hearing

24. The Debtors request that the Court schedule the Sale Hearing on or prior to December 5, 2012. The Debtors further request that the objection deadline, with respect to the sale of the Purchased Assets, be at least three (3) days prior to such hearing.

25. On or before three (3) business days after entry of the Bidding Procedures Order, or as soon thereafter as such parties can be identified, the Debtors will cause: (a) a notice in substantially the form annexed as **Exhibit D** hereto (the “Notice of Auction and Sale Hearing”); and (b) a copy of the Bidding Procedures Order to be sent by first-class mail postage prepaid, to the following: (i) the Office of the United States Trustee; (ii) counsel for any statutory committee in these cases, if and when appointed; (iii) each of the Debtors’ prepetition secured lenders; (iv) each of the Debtors’ postpetition lenders; (v) all taxing authorities and other

governmental agencies having jurisdiction over any of the Purchased Assets, including the Internal Revenue Service; (vi) all parties that have requested or that are required to receive special notice pursuant to Bankruptcy Rule 2002; (vii) all Persons known or reasonably believed to have asserted any lien, claim, encumbrance, right of first refusal, or other Interest in or upon any of the Purchased Assets; (viii) the non-debtor parties to the Executory Contracts and Unexpired Leases and any parties who are known to claim interests therein; (ix) all Persons known or reasonably believed to have expressed an interest in acquiring some or all of the Purchased Assets within the last four months; (x) the Attorneys General in the States where the Purchased Assets are located; (xi) the United States Environmental Protection Agency; and (xii) any applicable state environmental agency.⁵ In addition to the foregoing, (a) electronic notification of this Motion, the Bidding Procedures Order and the Notice of Auction and Sale Hearing also will be posted on: (i) the Court's electronic case filing (ECF) website, <http://ecf.ilnb.uscourts.gov>; and (ii) any case management website maintained by Epiq Systems, Inc., proposed noticing and claims agent for the Debtors; and (b) on or before three (3) business days after entry of the Bidding Procedures Order, the Debtors will: (i) serve the Notice of Auction and Sale Hearing on all known creditors of the Debtors; and (ii) subject to applicable submission deadlines, publish the Notice of Auction and Sale Hearing once in one or more publications the Debtors deem appropriate, including but not limited to The Wall Street Journal (national edition).

⁵ The Notice of Auction and Sale Hearing will direct parties to contact the Debtors' counsel for more information and will provide that any party in interest that wishes to obtain a copy of any related document, subject to any necessary confidentiality agreement, may make a request in writing as specified in the Notice of Auction and Sale Hearing.

26. In addition, to facilitate the sale of the Purchased Assets and the assumption, assignment and/or transfer of the Executory Contracts and Unexpired Leases, the Debtors shall serve a notice of potential assumption, assignment and/or transfer of the Executory Contracts and Unexpired Leases in substantially the form annexed as **Exhibit E** to the Bidding Procedures Order (the “Notice of Assumption and Assignment”) on all non-debtor parties to the Executory Contracts and Unexpired Leases, on or before three (3) business days after the entry of the Bidding Procedures Order by first class mail or hand delivery. If the Debtors identify additional executory contracts or unexpired leases that might be assumed by the Debtors and assigned to the Successful Bidder or not set forth in the original Notice of Assumption and Assignment, the Debtors will promptly send a supplemental notice (a “Supplemental Notice of Assumption and Assignment”) to the applicable counterparties to such additional executory contracts and unexpired leases.

27. In the Notice of Assumption and Assignment, the Debtors will identify the calculation of the cure amounts that the Debtors believe must be paid to cure all defaults under the Executory Contracts and Unexpired Leases (the “Cure Amounts”). If no amount is listed on the Notice of Assumption and Assignment with respect to an Executory Contract or Unexpired Lease, the Debtors believe that there is no Cure Amount applicable to such Executory Contract or Unexpired Lease. The Debtors request that unless the non-debtor party to an Executory Contract or Unexpired Lease files an objection (the “Cure Amount/Assignment Objection”) to (a) their scheduled Cure Amount and/or (b) to the proposed assumption, assignment and/or transfer of such Executory Contract or Unexpired Lease by the later of (i) 5:00 p.m. (prevailing Eastern Time) on the date that is three (3) business days prior to the Bid Deadline or (ii) ten (10) days after service of the relevant Supplemental Notice of Assumption and Assignment (such

later date, the “Cure/Assignment Objection Deadline”) and serves a copy of the Cure Amount/Assignment Objection so as to be received no later than the Cure/Assignment Objection Deadline on the same day by: (i) counsel to the Debtors, Proskauer Rose LLP, 70 W. Madison St., Suite 3800, Chicago, Illinois 60602, Attn: Mark K. Thomas, and Peter J. Young; (ii) the office of the United States Trustee (Region 2), 33 Whitehall Street, 21st Floor, New York, NY 10004 (collectively, the “Notice Parties”) and (iii) counsel to the Stalking Horse Purchasers, DLA Piper LLP (US), Attn: Richard A. Chesley, 203 N. LaSalle St., Suite 1900, Chicago, Illinois 60601; then such non-debtor party should (i) be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts with respect to such Executory Contract and Unexpired Lease and the Debtors shall be entitled to rely solely upon the Cure Amount, and (ii) if the Executory Contract or Unexpired Lease is identified as a Purchased Asset by the Successful Bidder and/or Back-Up Bidder, be deemed to have consented to the assumption, assignment and/or transfer of such Executory Contract and Unexpired Lease and shall be forever barred and estopped from asserting or claiming against the Debtors, the Successful Bidder or Back-Up Bidder or any other assignee of the relevant Executory Contract or Unexpired Lease that any additional amounts are due or defaults exist, or conditions to assumption, assignment and/or transfer must be satisfied, under such Executory Contract or Unexpired Lease. Notwithstanding the foregoing, as provided below, each non-debtor party shall retain the right to object to the assumption, assignment or transfer of its Executory Contract and Unexpired Lease, based solely on the issue of whether the Successful Bidder or Back-Up Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code.

28. The Debtors also request that if an objection challenges a Cure Amount, the objection must set forth the cure amount being claimed by the objecting party (the “Claimed Cure Amount”) with appropriate documentation in support thereof. Upon receipt of a Cure Amount/Assignment Objection, the Debtors request that they be granted the authority, but not direction, to resolve any Cure Amount/Assignment Objection by mutual agreement with the objecting counterparty to any Executory Contract or Unexpired Lease without further order of the Court. In the event that the Debtors and any objecting party are unable to consensually resolve any Cure Amount/Assignment Objection no later than three (3) business days prior to the Sale Hearing, the Debtors request that the Court resolve such Cure Amount/Assignment Objection at the Sale Hearing.

29. The Debtors, with the consent of the Successful Bidder or the Back-Up Bidder, as the case may be, may determine to exclude any Executory Contract or Unexpired Lease from the list of Purchased Assets no later than three (3) business days prior to the Sale Hearing, or, if the Court determines at any hearing on a Cure Amount/Assignment Objection that the applicable cure amount for such contract is greater than the Cure Amount proposed by the Debtors, no later than five (5) business days following such hearing. The non-debtor party or parties to any such excluded contract or lease will be notified of such exclusion by written notice mailed within two (2) business days of such determination.

30. Within two (2) days after the conclusion of the Auction for the Purchased Assets, the Debtors will serve a notice identifying the Successful Bidder and Back-Up Bidder to the non-debtor parties to the Executory Contracts and Unexpired Leases that have been identified in such Successful Bid and Back-Up Bid. The Debtors propose that the non-debtor parties to the Executory Contracts and Unexpired Leases have until 5:00 p.m. (prevailing Eastern Time) on the

date that is one (1) day prior to the Sale Hearing (the “Adequate Assurance Objection Deadline”) to object to the assumption, assignment and/or transfer of such Executory Contract and Unexpired Lease solely on the issue of whether the Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code.

D. Extraordinary Provisions Under the Guidelines

31. The Stalking Horse Purchase Agreement contains the following terms, conditions and provisions, which may be considered “Extraordinary Provisions” under the Amended Guidelines for the Conduct of Asset Sales (General Order M-383) (the “Sale Guidelines”).

32. Relief from Bankruptcy Rule 6004(h). For the reasons discussed below, the Debtors request relief from the 14-day stay imposed by Bankruptcy Rule 6004(h). The Debtors submit that such relief is necessary and supported by legitimate business reasons because the value of the Assets would rapidly decline in value if the Sale is not promptly consummated.

33. Record Retention. The Debtors propose to sell substantially all of their assets, including the Debtors’ books and records; however, the Debtors will retain reasonable access to their books and records sufficient to allow them to administer the Chapter 11 Cases.

34. Agreements with Management. The Stalking Horse Purchase Agreement contemplates that the Debtors’ CEO will create an entity, Licensee, which will attempt to negotiate the terms of a Licensing Agreement with the Stalking Horse Purchaser. The object of this arrangement is to promote a sale of the Debtors’ business as a going concern; thereby, preserving over 1000 American jobs.

35. Sale of Avoidance Actions. The Debtors propose to sell all of their causes of action relating to the Assumed Contracts and Assumed Liabilities, including avoidance claims arising under chapter 5 of the Bankruptcy Code. The avoidance actions held by the Debtors will

only be sold as part of a sale of the Debtors' business, including certain of its liabilities and executory contracts. As such, the Debtors submit that potential purchasers succeeding to substantially all of the Debtors' assets and liabilities may demand rights to any causes of action appurtenant to those assets and liabilities, and a sale of the avoidance actions will further its efforts to maximize the value of their estates for the interests of creditors and interest holders.

ARGUMENT

A. This Court Has The Authority to Approve the Bid Procedures

36. Courts have indicated that a debtor's business judgment is entitled to substantial deference with respect to the procedures to be used in selling assets from the estate. *See, e.g., Official Committee of Subordinated Bondholders v. Integrated Resources, 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 (Bankr. S.D.N.Y. 1989) (same).

37. Here, the proposed Bid Procedures are reasonable, appropriate, and within the Debtor's sound business judgment under the circumstances, because they will serve to maximize the likelihood that higher or otherwise better bids may be received.

B. The Bid Procedures Are Appropriate

38. Courts uniformly recognize that procedures intended to enhance competitive bidding are appropriate in the context of bankruptcy sales. *See, e.g., In re Financial 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”).

39. The Debtors believe that the Bid Procedures establish the parameters under which higher or otherwise better bids for the Purchased Assets may be obtained at the Auction. The proposed Bid Procedures will enhance competitive bidding; therefore, such procedures will increase the likelihood that the Debtors will receive the greatest possible consideration for the Assets by ensuring a competitive and fair bidding process.

C. The Initial and Subsequent Overbids are Appropriate

40. One important component of the Bid Procedures is the “overbid” provision, pursuant to which any initial offer for the Assets must be in an amount of at least \$250,000 more than the purchase price offered by the Stalking Horse (the “Overbid”). A minimum initial overbid is necessary, among other things, to ensure that there is an increase in the net proceeds received by the estates, after deducting amounts to be paid to the Stalking Horse Purchaser in the event of a prevailing overbid. Case law also supports minimum overbids that are up to 10% of the initial purchase price as fair and reasonable. As the court stated in *In re Wintex, Inc.*, 158 B.R. 540 (D. Mass. 1992):

A debtor may avoid the increased costs and complexity associated with considering additional bids unless the additional bids are high enough to justify their pursuit. The 10% increase requirement is one example of a reasonable litmus test.

Id. at 543. *See, e.g., In re Financial News Network*, 126 B.R. 152, 154 (S.D.N.Y. 1991) (requiring minimum overbids to exceed purchaser’s offer of \$105 million by at least \$10 million (9.5%)); *In re Colony Hill Assocs.*, 111 F.3d 269 (2d Cir. 1997) (requiring minimum overbids to exceed purchaser’s initial offer of \$7.5 million by at least \$650,000 (8.6%)); *In re Tempo Technology Corp.*, 202 B.R. 363, 369 (D. Del. 1996) (requiring minimum overbids of \$1.4

million in cash where original purchase price was \$150,000 cash plus \$3 million in stock of the purchaser and \$500,000 of assumed liabilities).

D. The Break-Up Fee and Expense Reimbursement Is Appropriate

41. In order to compensate the Stalking Horse Purchaser for the time, effort, expense, and risk that it incurred in negotiating, documenting, and seeking to consummate the Sale, the Bid Procedures also provide that if the Stalking Horse is not the Successful Bidder, and if an alternative transaction closes, the Stalking Horse Purchaser will be entitled to a break-up fee in the amount of \$2,200,000 (the “Break-Up Fee”), plus provide expense reimbursement of all reasonable costs and expenses of Stalking Horse Purchaser and Licensee incurred in connection with the execution and delivery of the Stalking Horse Purchase Agreement up to a maximum of \$700,000 (\$425,000 allocable to the Purchaser and \$275,000 allocable to the Licensee) (the “Expense Reimbursement”, and collectively with the Overbid and the Break-Up Fee, the “Bid Protections”), which such Bid Protections shall constitute administrative expenses in the Bankruptcy Cases.

42. Bid protections are a normal and, in many cases, necessary components of sales conducted under the Bankruptcy Code:

Break-up fees are important tools to encourage bidding and to maximize the value of the debtor’s assets In fact, because the... corporation ha(s) a duty to encourage bidding, break-up fees can be *necessary* to discharge [such] duties to maximize values.

Integrated Resources, 147 B.R. at 659-60 (emphasis in original). Specifically, “breakup fees and other strategies may be legitimately necessary to convince a ‘white knight’ bidder to enter the bidding by providing some form of compensation for the risks it is undertaking.” 995 *Fifth Ave.*, 96 B.R. at 28 (quotations omitted). *See also Integrated Resources*, 147 B.R. at 660-61 (break-up fees can prompt bidders to commence negotiations and “ensure that a bidder does not retract its bid”); *In re Hupp Indus., Inc.*, 140 B.R. 191, 194 (Bankr. N.D. Ohio 1992) (“without such fees,

bidders would be reluctant to make an initial bid for fear that their first bid will be shopped around for a higher bid from another bidder who would capitalize on the initial bidder's . . . due diligence").

43. As a consequence, courts frequently approve bid protections in connection with proposed bankruptcy sales. Courts considering the propriety of proposed bid protections typically consider "(1) whether the relationship of the parties who negotiated the fee is marked by self-dealing or manipulation; (2) whether the fee hampers, rather than encourages, bidding; and (3) whether the amount of the fee is reasonable in relation to the proposed purchase price." *In re Twenver, Inc.*, 149 B.R. 954, 956 (Bankr. D. Colo. 1992); *accord, In re Bidermann Indus. U.S.A., Inc.*, 203 B.R. 547, 552 (Bankr. S.D.N.Y. 1997); *Integrated Resources*, 147 B.R. at 657.

44. The Bid Protections are fair and reasonable in amount, particularly in view of the efforts that have been and will be expended by the Stalking Horse Purchaser. Moreover, without the proposed Bid Protections, the Debtors risk losing the Stalking Horse Purchaser's offer to the detriment of the estates. Moreover, the Debtors believe that the willingness of the Stalking Horse Purchaser to commit to a sale of the Purchased Assets, subject to higher or otherwise better offers, may encourage third parties to submit bids for the Assets and will encourage customers, employees and vendors to support operations during this case. The Debtors believe that the Bid Protections will not deter or chill bidding.

45. In sum, the Debtor's ability to offer the Bid Protections enables them to ensure the sale of the Debtor's assets at a price that they believe to be fair while, at the same time, providing them with the potential of even greater benefit to the estates. Thus, the Bid Protections should be approved. Accordingly, the proposed Bid Protections are reasonable and appropriate under the circumstances.

E. The Proposed Sale Satisfies the Requirements of Section 363(f) of the Bankruptcy Code

46. Under section 363(f) of the Bankruptcy Code, a debtor-in-possession may sell all or any part of their property free and clear of any and all liens, claims, or interests in such property if: (a) such a sale is permitted under applicable non-bankruptcy law; (b) the party asserting such a lien, claim, or interest consents to such sale; (c) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property; (d) the interest is the subject of a *bona fide* dispute; or (e) the party asserting the lien, claim, or interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest. 11 U.S.C. § 363(f); *Citicorp Homeowners Serv., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (noting that section 363(f) of the Bankruptcy Code is written in the disjunctive; therefore, a court may approve a sale “free and clear” provided at least one of the subsections is met). Furthermore, courts have held that they have the equitable power to authorize sales free and clear of interests that are not specifically covered by section 363(f). *See, e.g., In re Trans World Airlines, Inc.*, 2001 WL 1820325, at *3, 6 (Bankr. D. Del. Mar. 27, 2001); *Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987). Because the Debtors expect that they will satisfy one or more of the requirements of section 363(f), as will be demonstrated at the Sale Hearing, approving the sale of the Purchased Assets free and clear of all Interests is warranted.

F. Protections As a Good Faith Purchaser

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

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

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

48. The selection of the Successful Bidder will be the product of arms’ length, good-faith negotiations in as competitive a sale process as is possible under the circumstances. Based upon the record to be made at the Sale Hearing, the Debtors will request a finding that the Successful Bidder is a good-faith purchaser entitled to the protections of section 363(m) of the Bankruptcy Code.

G. Assumption and Assignment of Executory Contracts and Unexpired Leases Should be Approved

49. To facilitate and effectuate the sale of the Purchased Assets, the Debtors seek authority to assume, assign and/or transfer various Executory Contracts and Unexpired Leases to the Successful Bidder or Back-Up Bidder to the extent required by such Successful Bidder or Back-Up Bidder. Section 365 of the Bankruptcy Code authorizes a debtor to assume and/or assign their executory contracts and unexpired leases, subject to the approval of the Court,

provided that the defaults under such contracts and leases are cured and adequate assurance of future performance is provided. A debtor's decision to assume or reject an executory contract or unexpired lease must only satisfy the "business judgment rule" and will not be subject to review unless such decision is clearly an unreasonable exercise of such judgment. *Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific Ry. Co.*, 318 U.S. 523 (1943) (applying Bankr. Act section 77 subsection (b), predecessor to Bankruptcy Code Section 365, and rejecting test of whether executory contract was burdensome in favor of whether rejection is within debtor's business judgment); *Lubrizol Enter., Inc. v. Richmond Metal Finishers, Inc.*, 756 F.2d 1043, 1046-47 (4th Cir. 1985).

50. 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. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D. N.J. 1989). 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, 605-6 (Bankr. S.D.N.Y. 1986) (finding adequate assurance of future performance present when the prospective assignee of a lease from the debtor has the financial resources and has expressed a willingness to devote sufficient funding to the business in order to give it a strong likelihood of succeeding; "chief determinant of adequate assurance of future performance is whether rent will be paid").

51. The Successful Bidder or Back-Up Bidder will want to take assignment of certain executory contracts and unexpired leases related to the Purchased Assets. To the extent Executory Contracts and Unexpired Leases are identified for assumption, assignment and/or transfer, the Debtors believe that they can and will demonstrate that all requirements for

assumption, assignment and/or transfer of the Executory Contracts and Unexpired Leases will be satisfied at the Sale Hearing. The Debtors, as required by the Bidding Procedures, will evaluate the financial wherewithal of all potential bidders before qualifying such bidders to bid for the Purchased Assets. Further, for the reasons stated throughout this Motion, the Debtors, in exercising their sound business judgment, believe that selling the Purchased Assets and assuming, assigning and/or transferring to the Successful Bidder or Back-Up Bidder the Executory Contracts and Unexpired Leases would be in the best interests of their estates. At the Sale Hearing, to the extent necessary, the Debtors will be prepared to proffer testimony or present evidence to demonstrate the ability of the Successful Bidder or Back-Up Bidder to perform under the Executory Contracts and Unexpired Leases. The Sale Hearing, therefore, will provide the Court and other interested parties with the opportunity to evaluate the ability of the Successful Bidder or Back-Up Bidder to provide adequate assurance of future performance, as required by section 365(b)(1)(C) of the Bankruptcy Code. Moreover, the Debtors will provide all parties to the Executory Contracts and Unexpired Leases an opportunity to be heard.

52. Specifically, the Debtors will serve the Notice of Assumption and Assignment on or before three (3) business days after entry of the Bidding Procedures Order on the non-debtor parties to the Executory Contracts and Unexpired Leases. The Notice of Assumption and Assignment will, among other things, identify respective Cure Amounts, if any. The Debtors request that unless the non-debtor party to an Executory Contract and Unexpired Lease files and serves a Cure Amount/Assignment Objection setting forth the Claimed Cure Amount or objecting to an assumption, assignment and/or transfer to the Successful Bidder or Back-Up Bidder on or before the Cure/Assignment Objection Deadline, such non-debtor party should:

(a) be forever barred from objecting to the Cure Amount and from asserting any additional cure

or other amounts with respect to such Executory Contract and Unexpired Lease and the Debtors shall be entitled to rely solely upon the Cure Amount; and (b) if the Executory Contract or Unexpired Lease is identified as a Purchased Asset by the Successful Bidder and/or the Back-Up Bidder, be deemed to have consented to the assumption, assignment and/or transfer of such Executory Contract and Unexpired Lease and shall be forever barred and estopped from asserting or claiming against the Debtors, the Successful Bidder, the Back-Up Bidder or any other assignee of the relevant Executory Contract and Unexpired Lease that any additional amounts are due or defaults exist, or conditions to assumption, assignment and/or transfer must be satisfied, under such Executory Contract. Notwithstanding the foregoing, as provided below, each non-debtor party shall retain the right to object to the assumption, assignment or transfer of its Executory Contract and Unexpired Lease, based solely on the issue of whether the Successful Bidder or Back-Up Bidder can provide adequate assurance of future performance as required by Section 362 of the Bankruptcy Code.

53. Within two (2) business days after the conclusion of the Auction for the Purchased Assets, the Debtors will serve a notice identifying the Successful Bidders to the non-debtor parties to the Executory Contracts and Unexpired Leases that have been identified in such Successful Bid. The Debtors request that objections by a non-debtor party to the Executory Contracts and Unexpired Leases to the assumption, assignment and/or transfer of such Executory Contract and Unexpired Lease solely on the issue of whether the Successful Bidder or Back-Up Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code be filed and served on or before the Adequate Assurance Objection Deadline.

54. To facilitate the assumption and assignment of the Executory Contracts and Unexpired Leases, the Debtors further request the Court find all anti-assignment provisions of

such Executory Contracts and Unexpired Leases to be unenforceable under section 365(f) of the Bankruptcy Code.⁶

55. Thus, the Debtors request that the assumption, assignment and/or transfer of the Executory Contracts and Unexpired Leases be approved.

H. Relief from the Ten-Day Waiting Periods under Bankruptcy Rules 6004(h) and 6006(d) is Appropriate

56. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property ... is stayed until the expiration of 10 days after entry of the order, unless the court orders otherwise.” Similarly, Bankruptcy Rule 6006(d) provides that an “order authorizing the trustee to assign an executory contract or unexpired lease ... is stayed until the expiration of 10 days after the entry of the order, unless the court orders otherwise.” The Debtors request that the Bidding Procedures Order and the Sale Order be effective immediately by providing that the ten (10) day stays under Bankruptcy Rules 6004(h) and 6006(d) are waived.

57. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to appeal before an order can be implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h) and 6006(d). Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the ten-day stay period, *Collier on Bankruptcy* suggests that the ten (10) day stay period should be eliminated to allow a sale or other transaction

⁶ Section 365(f)(1) provides in part that, “notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease...” 11 U.S.C. § 365(f)(1). Section 365(f)(3) further provides that “Notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such contract or lease or a right or obligation under such contract or lease on account of an assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated or modified under such provision because of the assumption or assignment of such contract or lease by the trustee.” 11 U.S.C. § 365(f)(3).

to close immediately “where there has been no objection to the procedure.” 10 COLLIER ON BANKRUPTCY ¶6064.09 (L. King, 15th rev. ed. 1988). Furthermore, Collier’s provides that if an objection is filed and overruled, and the objecting party informs the court of their intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. *Id.*

58. Accordingly, the Debtors hereby request that the Court waive the ten-day stay period under Bankruptcy Rules 6004(h) and 6006(d).

I. Filing of Documents under Seal

59. Section 107(b) of the Bankruptcy Code provides bankruptcy courts with the power to issue orders that will protect entities from any harm that could result from the disclosure of certain confidential information. This section provides, in relevant part: “On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may (1) protect any entity with respect to a trade secret or confidential research, development, or commercial information.” 11 U.S.C. § 107(b).

Bankruptcy Rule 9018 details the procedures by which a party may move for relief under section 107(b) of the Bankruptcy Code, and provides that “[o]n motion, or on its own initiative, with or without notice, the court may make any order which justice requires . . . to protect the estate or any entity in respect of a trade secret or confidential research, development, or commercial information.” Fed. R. Bankr. P. 9018.

60. The Debtor believes that it is necessary and appropriate that the Court allow Section 10.7 of the Stalking Horse Purchase Agreement, as well as any subsequent Purchase Agreement, to be filed under seal. Section 10.7 contains sensitive information regarding the Sale of the Debtors’ business, and filing such section under seal is necessary because disclosure of such information may provide certain bidders with undue leverage over the sale process. The

filing of Section 10.7 under seal is in the best interests of the Debtors and their estates, creditors and interest holders and all other parties in interest herein.

NOTICE

61. Notice of this Motion has been given to: (a) the Office of the United States Trustee (the “U.S. Trustee”); (b) the creditors on each of the Debtors’ lists of twenty (30) largest unsecured creditors; (c) counsel to the Prepetition Secured Lender; (d) counsel to the Stalking Horse Purchaser, DLA Piper LLP (US), Attn: Richard A. Chesley, 203 N. LaSalle St., Suite 1900, Chicago, Illinois 60601; (e) all known parties with liens of record on assets of the Debtors as of the Petition Date; (f) all financial institutions at which the Debtors maintain deposit accounts; (g) the Internal Revenue Service; (h) the Department of Internal Revenue; and (i) all other parties requesting notice pursuant to Bankruptcy Rule 2002. In addition, the Notice of Auction and Sale Hearing, the Bidding Procedures Order, and the Notice of Assumption and Assignment will be served as set forth in paragraph 12 above. In light of the nature of the relief requested, the Debtors submit that no further notice is required.

NO PRIOR REQUEST

62. No prior motion for the relief requested herein has been made to this or any other Court.

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court grant the relief requested herein and further relief as is just and proper.

Dated: October 21, 2012

/s/ Jared Zajac

PROSKAUER ROSE LLP

Jared D. Zajac
Eleven Times Square
New York, New York 10036
Telephone: (212) 969-3000
Facsimile: (212) 969-2900

and

Mark K. Thomas (*pro hac vice* application pending)
Peter J. Young (*pro hac vice* application pending)
Three First National Plaza
70 West Madison, Suite 3800
Chicago, Illinois 60602
Telephone: (312) 962-3550
Facsimile: (312) 962-3551

Proposed Counsel for the Debtors and Debtors in Possession

Exhibit A to Debtors' Motion

[Stalking Horse Purchase Agreement]

Execution Version

ASSET PURCHASE AGREEMENT

DATED AS OF OCTOBER 16, 2012

BY AND AMONG

**HMX ACQUISITION CORP.
AND THE
DIRECT AND INDIRECT SUBSIDIARIES OF
HMX ACQUISITION CORP.
NAMED HEREIN**

AS SELLERS,

AND

AUTHENTIC BRANDS GROUP, LLC

AS PURCHASER

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Exhibits

Exhibit A – Assignment and Assumption Agreement
Exhibit B – Assignment of Copyrights
Exhibit C – Assignment of Trademarks
Exhibit D – Bill of Sale
Exhibit E – License Agreement
Exhibit F – Deposit Escrow Agreement Letter

ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (this "Agreement") is made as of this 16th day of October, 2012, by and among Authentic Brands Group, LLC, a Delaware Limited Liability Corporation and any entity or entities formed on its behalf to consummate the transaction described herein ("Purchaser"), HMX Acquisition Corp., a Delaware corporation ("Parent"), and each of Parent's direct and indirect Subsidiaries (as defined below) listed on the signature pages hereto (collectively, "Sellers" and each individually a "Seller").

W I T N E S S E T H:

WHEREAS, Sellers are presently engaged in the Business (as defined below); and

WHEREAS, Sellers intend to file voluntary Petitions (as defined below) for relief under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court (each as defined below) on or shortly after this Agreement is executed;

WHEREAS, Purchaser desires to purchase from Sellers, and Sellers desire to sell, transfer and assign to Purchaser and Licensee, the Assets (as defined below) in accordance with this Agreement and in accordance with and subject to the Bid Procedures, the Bid Procedures Order and the Sale Order (each as defined below), pursuant to Sections 105, 363 and 365 of the Bankruptcy Code;

WHEREAS, Sellers, as debtors and debtors-in-possession, will continue in the possession of their respective assets and in the management of their respective Businesses pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual covenants, promises and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

SECTION 1 **INTERPRETATION**

1.1. Definitions. Whenever used in this Agreement, unless there is something in the subject matter or context inconsistent therewith, the following words and phrases shall have the respective meanings ascribed to them as follows.

"Accounts Receivable" has the meaning in Section 2.1(h).

"Administrative Expenses" are claims allowed under section 503 of the Bankruptcy Code.

"Affiliate" means, with respect to any Person, any other Person which directly or indirectly controls, is controlled by or is under common control with such Person. For purposes of this definition "control" means, with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management or

policies of such Person, whether through ownership of voting securities, by contract or otherwise.

“Agreement” has the meaning set forth in the preamble.

“Alternative Transaction” means a transaction or series of transactions involving a sale, transfer or other disposition of all or any material portion of the Assets to another purchaser or purchasers other than the Purchaser.

“Ancillary Agreements” means, together, the Assignment and Assumption Agreement, the Bill of Sale, the Deeds, the Assignment of Patents, the Assignment of Trademarks, the Assignment of Copyrights and the Deposit Escrow Agreement.

“Assets” means, other than the Excluded Assets, all of Sellers’ tangible and intangible assets, properties, rights, claims and contracts owned, leased and/or licensed by any Seller of every kind, character and description, whether accrued, contingent or otherwise, existing as of the Closing (which Assets comprise substantially all of Sellers’ assets, properties, rights, claims and contracts), including, without limitation those Assets set forth in Section 2.1.

“Assignment and Assumption Agreement” means that certain assignment and assumption agreement to be executed at Closing with respect to the Assumed Contracts, substantially in the form attached hereto as Exhibit A.

“Assignment of Copyrights” means that certain copyright assignment to be executed at Closing with respect to the registered copyrights of Sellers, substantially in the form attached hereto as Exhibit B.

“Assignment of Trademarks” means that certain trademark assignment to be executed at Closing with respect to the registered trademarks of Sellers, substantially in the form attached hereto as Exhibit C.

“Assumed Contracts” has the meaning set forth in Section 2.3.

“Assumed Liabilities” has the meaning set forth in Section 2.3.

“Auction” means the auction in connection with the sale of the Assets, as described in the Bid Procedures Order.

“Avoidance Actions” means all causes of action arising under chapter 5 of the Bankruptcy Code or arising under similar laws of Canada or Poland.

“Bankruptcy Cases” means the Chapter 11 cases of Sellers filed in the Bankruptcy Court.

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

“Bankruptcy Court” means the United States Bankruptcy Court for the Southern District of New York.

“Bid Procedures” means bid procedures to be approved by the Bankruptcy Court pursuant to the Bid Procedures Order on substantially the terms and conditions described herein.

“Bid Procedures Order” means the order of the Bankruptcy Court approving the bid procedures on substantially the terms and conditions described herein.

“Bill of Sale” means that certain bill of sale to be executed at Closing with respect to the Assets other than the Assumed Contracts, substantially in the form attached hereto as Exhibit D.

“Break-Up Fee” means an amount equal to \$2,200,000 which shall, subject to Bankruptcy Court approval, be afforded the protections, and be paid, as set forth in this Agreement.

“Business” means the business of designing, manufacturing, marketing, distributing and selling men’s and women’s apparel under the brand names (i) Hickey Freeman, (ii) Hart Schaffner Marx, (iii) Exclusively Misook, (iv) Christopher Blue, (v) JAG Jeans, (vi) Cambridge and (vii) any other brand name (other than Coppley), both owned and under license by the Sellers, through retail, department and specialty stores and directly to consumers through retail stores, catalogs and e-commerce websites.

“Business Day” means a day other than a Saturday, Sunday or any other day on which the principal national banks located in the City of New York are not open for business during normal banking hours.

“CBAs” mean, collectively, Sellers’ collective bargaining agreements with any union.

“COBRA” has the meaning set forth in Section 8.2(b).

“Claim” means any right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured, known or unknown; or any right to an equitable remedy for breach of performance if such breach gives rise to a right of payment, whether or not such right to an equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured or unsecured, known or unknown.

“Closing” has the meaning set forth in Section 11.1.

“Closing Date” has the meaning set forth in Section 11.1.

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

“Coppley” means Coppley Corp., a Canadian corporation.

“Contracts” means all commitments, contracts, leases, licenses, agreements and understandings, written or oral, relating to the Assets or the operation of the Business to which any Seller is a party or by which any Seller or any of the Assets are bound.

“Cure Amounts” means all amounts payable in connection with the cure of defaults under any of the Assumed Contracts.

“Deeds” has the meaning set forth in the Section 11.1(a)(iii).

“Deposit Escrow Agreement” has the meaning set forth in Section 2.8.

“DIP Loan” shall have the meaning set forth in Section 2.7.

“DIP Loan Budget” means the budget, as approved by the Purchaser, and attached to any order of the Bankruptcy Court approving the DIP Loan or use of cash collateral.

“DOJ” has the meaning set forth in Section 7.2(b).

“Employee” means any employee of Sellers as of the Closing Date.

“Encumbrances” means, with respect to any Asset, any mortgage, deed of trust, pledge, security interest, lien, charge, lease, claim, encumbrance, option, right of first refusal, imperfection of title, covenant, encroachment, easement, servitude, proxy, voting trust or agreement, transfer restriction under any shareholder or similar agreement, state of facts or any other restrictions or third party rights.

“Environmental Law” means any Federal, state, local or foreign statute, law, ordinance, rule, regulation, code, order, writ, judgment, injunction, decree or legally binding judicial or agency interpretation, policy or guidance relating to pollution or protection of the environment, natural resources, or health and safety, including those relating to the use, handling, transportation, treatment, storage, disposal, release or discharge of Hazardous Materials.

“Escrow Agent” has the meaning set forth in Section 2.8.

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

“Excluded Contracts” means all Contracts other than the Assumed Contracts.

“Excluded Liabilities” means all of the obligations and liabilities of Sellers other than the Assumed Liabilities.

“Expense Reimbursement” means all reasonable costs and expenses of Purchaser and the Licensee incurred in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby, in the amount of up to \$700,000 (\$425,000 allocable to the Purchaser and \$275,000 allocable to the

Licensee) which shall, subject to Bankruptcy Court approval, be afforded the protections, and be paid, as set forth in this Agreement.

“Former Employee” means any employee of the Company who ceased to work for the Company prior to the Closing Date.

“FTC” has the meaning set forth in Section 7.2(b).

“Governmental Authority” means any United States federal, state or local government or any foreign government (including, but not limited to, Poland and Canada), or political subdivision thereof, or any multinational organization or authority or any authority, agency or commission entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, any court or tribunal (or any department, bureau or division thereof), or any arbitrator or arbitral body.

“Hazardous Materials” means (a) petroleum or petroleum products, by-products or breakdown products, radioactive materials, asbestos-containing materials, polychlorinated biphenyls and radon gas and (b) any other chemicals, materials or substances designated, classified or regulated as hazardous or toxic or as a pollutant or contaminant under any Environmental Law.

“HSR Act” means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

“Intellectual Property” means all intellectual property and proprietary rights of any kind related to the Business or related to any other brand owned by the Sellers, including the following: (i) trademarks, service marks, trade names, slogans, logos, trade dress, internet domain names, uniform resource identifiers, rights in design, brand names, and other similar designations of source or origin, together with all goodwill, registrations and applications related to the foregoing; (ii) patents, utility models and industrial design registrations (and all continuations, divisionals, continuations in part, provisionals, renewals, reissues, re-examinations and applications for any of the foregoing); (iii) copyrights and copyrightable subject matter (including any registration and applications for any of the foregoing); (iv) trade secrets and other confidential or proprietary business information (including manufacturing and production processes and techniques, research and development information, technology, drawings, specifications, designs, plans, proposals, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans, customer and supplier lists and information), know how, proprietary processes, formulae, algorithms, models, and methodologies; (v) computer software, computer programs, and databases (whether in source code, object code or other form); and (vi) all rights to sue for past, present and future infringement, misappropriation, dilution or other violation of any of the foregoing and all remedies at law or equity associated therewith.

“Inventory” means all inventory (including finished goods, supplies, raw materials, work in progress, spare, replacement and component parts) related to the Business maintained or held by, stored by or on behalf of, or in transit to, any of the

Sellers. In the event that any Inventory cannot be transferred to Purchaser, Sellers shall retain title to such portion of the Inventory for liquidation at the direction, and for the benefit, of the Purchaser.

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

“Leased Real Property” has the meaning set forth in Section 3.11.

“Liability” means any debt, liability, obligation, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, or obligation of any kind, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and regardless of when sustained, incurred or asserted or when the relevant events occurred or circumstances existed, including all costs and expenses relating thereto.

“License Agreement” means the License Agreement to be entered into between Purchaser and Licensee, with terms in substantial conformance with the term sheet attached hereto as Exhibit E.

“Licensee” means the entity formed by Douglas Williams that will enter into the License Agreement with the Purchaser.

“Material Adverse Effect” means any event, circumstance, change, occurrence or state of facts that has had, or would reasonably be expected to have, individually or in the aggregate, a material adverse effect on the (i) assets, Liabilities, Business, properties, condition (financial or otherwise) or results of operations of the Sellers or the Business, taken as a whole, or (ii) the ability of any Seller to consummate the transactions contemplated by this Agreement or any Ancillary Document or perform its obligations hereunder or thereunder; provided, however, that in determining whether there has been a Material Adverse Effect, any effect to the extent attributable to any of the following shall be disregarded: (A) the occurrence of any event materially adversely affecting the industry in which the Business operates or in which the Assets are held and not uniquely relating to the Sellers, the Business or the Assets (as applicable), (B) any change in the general political, economic or business condition, including the commencement, continuation or escalation of war, acts of terrorism, natural disasters or acts of God; (C) any change in financial or capital markets, including interest rates or currency exchange rates; (D) the taking of any action required to be taken by a party under the terms of this Agreement, (E) the announcement or existence of this Agreement or the Transactions; or (F) the commencement of the Bankruptcy Cases.

“Material Contract” means any Contract that requires payment by or to Sellers of more than \$50,000 or is otherwise material to the business of the Sellers taken as a whole.

“Nonunion Employees” has the meaning set forth in Section 8.1(b).

“Organizational Documents” means, with respect to any Person (other than an individual), (a) the certificate or articles of incorporation or organization and any joint

venture, limited liability company, operating or partnership agreement and other similar documents adopted or filed in connection with the creation, formation or organization of such Person and (b) all by-laws, voting agreements and similar documents, instruments or agreements relating to the organization or governance of such Person, in each case, as amended or supplemented.

“Ordinary Course of Business” means the ordinary and usual course of normal day to day operations of the Business consistent with past practice.

“Owned Real Property” has the meaning set forth in Section 3.11.

“Parent” has the meaning set forth in the preamble.

“Permits” has the meaning set forth in Section 3.5(b).

“Permitted Encumbrances” means: (i) those Encumbrances set forth on Schedule 1.1; (ii) any other Encumbrances such as utility easements, zoning restrictions, tax liens (for taxes not yet due and payable), other exemptions noted on a current survey, or other customary covenants and restrictions of record that do not materially affect the ownership or leasing of the Real Property or the conduct of the Business; and (iii) Encumbrances related to Assumed Liabilities.

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

“Petition Date” means the date on which the Sellers each file their Petitions.

“Petitions” mean voluntary petitions for Chapter 11 bankruptcy relief.

“Pre-Closing Period” has the meaning set forth in Section 5.3.

“Providing Party” has the meaning set forth in Section 7.1(b).

“Purchase Price” has the meaning set forth in Section 2.6.

“Purchaser” has the meaning set forth in the preamble.

“Purchaser Deposit Amount” has the meaning set forth in Section 2.8.

“Real Property” means all real property owned, leased or subleased by Sellers, each of which is described on Schedule 3.11, together with all buildings, improvements and fixtures thereon and all appurtenances and rights thereto.

“Requesting Party” has the meaning set forth in Section 7.1(b).

“Sale Hearing” means the hearing conducted by the Bankruptcy Court to approve the transactions contemplated by this Agreement or an Alternative Transaction.

“Sale Motion” means the motion, in form and substance reasonably acceptable to Sellers and Purchaser, filed by Sellers pursuant to, inter alia, Sections 363 and 365 of the Bankruptcy Code to obtain entry of the Sale Order.

“Sale Order” means an order of the Bankruptcy Court authorizing and approving the sale of the Assets to Purchaser on the terms and conditions set forth herein.

“Salus” means Salus Capital Partners, LLC, the Sellers’ prepetition secured lender.

“Sellers” has the meaning set forth in the preamble.

“Subsidiary” means, with respect to any Person, any corporation or other business entity, whether or not incorporated, of which more than fifty percent (50%) of the securities or interests having, by their terms, ordinary voting power to elect members of the board of directors or managers, or other persons performing similar functions with respect to such entity, are held, directly or indirectly, by such Person.

“Tax” or “Taxes” means (i) all federal, state, local and foreign taxes, charges, fees, imposts, levies or other assessments, including income, gross receipts, excise, employment, sales, use, transfer, license, payroll, franchise, stamp, withholding, Social Security, unemployment, real property, personal property, alternative or add on minimum, estimated or other taxes, charges, fees, imposts, levies or other assessments, including any interest, penalties or additions thereto, whether disputed or not, and (ii) any liability for any items described in clause (i) payable by reason of contract, transferee liability, operation of law (including Treasury Regulation 1.1502-6) or otherwise.

“Tax Return” means any report, return, information return, filing, claim for refund or other information, including any schedules or attachments thereto, and any amendments to any of the foregoing required to be supplied to a taxing authority in connection with Taxes.

“Termination Date” has the meaning set forth in Section 11.2(d).

“Transactions” mean the transactions contemplated by this Agreement, the Ancillary Agreements and all other transactions and agreements contemplated hereby and thereby.

“Transaction Taxes” has the meaning set forth in Section 12.1.

“Transferred Employees” has the meaning set forth in Section 8.1(c).

“Transferred Nonunion Employees” has the meaning set forth in Section 8.1(b).

“Transferred Union Employees” has the meaning set forth in Section 8.1(a).

“Union Employees” has the meaning set forth in Section 8.1(a).

“WARN Act” means, collectively, the Worker Adjustment and Retraining Notification Act of 1988, as amended, and any other similar statutes or regulations of any jurisdiction relating to any plant closing or mass layoff.

SECTION 2
PURCHASE, SALE AND ASSIGNMENT OF PURCHASED ASSETS

2.1. Sale of Assets. Subject to the terms and conditions of this Agreement, at Closing, Sellers shall sell, assign, convey, transfer and deliver to Purchaser or to the Licensee as designated by the Purchaser if the License Agreement is consummated, and Purchaser shall purchase from Sellers, all of Sellers’ right, title and interest in the Assets, free and clear of all Encumbrances other than the Permitted Encumbrances, including all of Sellers’ right, title and interest in the following:

- (a) all tangible personal property owned or used by any Seller including, without limitation, all machinery, equipment, computers, furniture, furnishings, fixtures, office supplies, vehicles, and tools that relate in any way to the Business;
- (b) all Owned Real Property, together with all buildings, fixtures, structures, improvements and other appurtenances thereto and thereon;
- (c) all interests of Sellers in the Assumed Contracts;
- (d) all Avoidance Actions relating to Assumed Contracts;
- (e) all Inventory that relates in any way to the Business;
- (f) cash and cash equivalents of Sellers;
- (g) all interests of Sellers in and to all Intellectual Property (and all Avoidance Actions related thereto);
- (h) all accounts receivable and other receivables of the Business including, without limitation, all accounts receivable in respect of goods shipped or products sold or services rendered to customers by Sellers on or prior to the Closing Date (“Accounts Receivable”);
- (i) all Permits that relate in any way to the Business (to the extent transferrable);
- (j) all books and records, files, data, reports, computer codes and sourcing data, advertiser and supplier lists, cost and pricing information, business plans, and manuals, blueprints, research and development files, personnel records and other records of any Seller and that relate in any way to the Business;
- (k) all marketing, advertising and promotional materials; and
- (l) all goodwill associated with the Business and/or the Assets.

2.2. Excluded Assets. Notwithstanding the generality of Section 2.1, the following assets are not a part of the sale and purchase contemplated by this Agreement and are excluded from the Assets (collectively, the “Excluded Assets”):

- (a) any Contracts other than the Assumed Contracts;
- (b) those assets of Sellers set forth on Schedule 2.2(b);
- (c) the Purchase Price;
- (d) all Avoidance Actions that are not otherwise Assets as described in Section 2.1;
- (e) all rights, claims and causes of action of Sellers that do not relate to this Agreement;
- (f) all corporate minute books, stock transfer books, the corporate seal of Sellers and all other corporate books and records relating to Sellers’ organization and existence; and
- (g) any shares of stock or other equity interests in any Subsidiary of Parent.

2.3. Assumed Liabilities. Schedule 2.3, which shall be completed three (3) days prior to the Bankruptcy Court hearing to approve Bid Procedures, will set forth those Contracts that Purchaser may elect to assume, assume and assign to the Licensee and/or request Sellers to assume and assign to Purchaser and/or Licensee at the Closing. No less than three (3) days prior to the Sale Hearing, Purchaser shall designate which of such Contracts it wishes to have Sellers assume and assign to Purchaser and/or Licensee (the “Assumed Contracts”). A Schedule of Assumed and Assumed and Assigned Contracts and any Cure Amounts relating thereto shall be filed by Sellers with the Bankruptcy Court prior to the Sale Hearing and served on the counterparties to the Assumed Contracts in accordance with the Bid Procedures Order. Effective as of the Closing Date, Purchaser or the Licensee to the extent the License Agreement is consummated, shall assume and thereafter in due course pay, fully satisfy, discharge and perform the Liabilities of Sellers arising after the Closing under the Assumed Contracts and the other Liabilities of Sellers referred to in this Section 2.3 (collectively, the “Assumed Liabilities”), as follows:

- (a) certain trade payables of critical vendors listed on Schedule 2.3(a);
- (b) all Liabilities relating to ownership or use of the Assets or otherwise relating to the Business, in each case arising after the Closing;
- (c) all Cure Amounts with respect to the Assumed Contracts;
- (d) Liabilities arising out of any CBAs to the extent that such CBAs are Assumed Contracts;
- (e) Liabilities relating to all contracts with Douglas Williams;

(f) Liabilities arising out of any defined contribution plans for Transferred Employees as described in Section 8.3 hereof; and

(g) Liabilities relating to the Real Property, including, but not limited to Liabilities relating to the assumption and assignment of the Leased Real Property and the Liabilities relating to the Owned Real Property including all mortgages relating thereto.

2.4. Excluded Liabilities. Under no circumstance shall Purchaser assume or be obligated to pay, and none of the Assets shall be or become liable for or subject to, any of the Excluded Liabilities, including, but not limited to, the following liabilities, which shall be and remain Liabilities of Sellers:

(a) Liabilities which are not Assumed Liabilities, including but not limited to any claims under Sections 503 and 507 of the Bankruptcy Code;

(b) Liabilities associated with any Excluded Assets;

(c) Liabilities associated with any and all indebtedness of any Seller for borrowed money not included in the Assumed Liabilities;

(d) Liabilities arising out of or in connection with claims, litigation and proceedings (whether instituted prior to or after Closing) for acts or omissions that occurred, or arise from events that occurred, prior to the Closing Date;

(e) penalties, fines, settlements, interest, costs and expenses arising out of or incurred as a result of any actual or alleged violation by any Seller of any Law prior to the Closing Date;

(f) all Liabilities for Taxes attributable to the operation of the Business prior to the Closing Date;

(g) Liabilities arising out of or resulting from layoffs or termination of employees by any Seller prior to Closing and/or the consummation of the Transactions sufficient in the aggregate to require notice under the WARN Act; and

(h) all Liabilities for expenses (i) relating to the negotiation and preparation of this Agreement and (ii) relating to the Transactions, in each case to the extent incurred by Sellers and including those related to legal counsel, accounting, brokerage and investment advisors fees and disbursements.

2.5. Failure to Consummate the Licensing Agreement. In the event that the Purchaser is unable to agree with the Licensee upon definitive terms of the Licensing Agreement for any reason no later than three (3) Business Days prior to the Auction, then:

(a) All Assumed Liabilities will become Excluded Liabilities except for: (i) all Liabilities relating to ownership or use of the Assets or otherwise relating to the Business (to the extent not related to Excluded Assets), in each case arising after the Closing; and (ii) all Cure Amounts with respect to the Assumed Contracts;

(b) The following Assets will become Excluded Assets: (i) all Owned Real Property, together with all buildings, fixtures, structures, improvements and other appurtenances thereto and thereon; and (ii) all Avoidance Actions.

2.6. Purchase Price. (a) The aggregate purchase price for the Assets (the "Purchase Price") shall equal the sum of: (A) the aggregate amount of the Salus prepetition and postpetition claims against the Sellers and against Coppley (collectively, the "Salus Claim") plus (B) \$5,100,000 to the Sellers' bankruptcy estates (free and clear of any secured claims of Salus so long as the Salus Claim is paid in full), exclusive of the assumption of any Assumed Liabilities. (b) Upon execution of the License Agreement, the Licensee shall execute a joinder to this Agreement so that it will be bound by the terms of this Agreement that are applicable to the Licensee. The License Agreement shall require that the Licensee provide evidence of financial ability to perform, satisfactory to Purchaser in its sole discretion, no later than three (3) Business Days prior to the Auction. (c) In the event that the Purchaser and the Licensee fail to execute the License Agreement no later than three (3) Business Days prior to the Auction, then the Purchase Price shall equal the sum of: (X) the Salus Claim plus (Y) \$9,100,000 to the Sellers' bankruptcy estates (free and clear of any secured claims of Salus so long as the Salus Claim is paid in full), exclusive of the assumption of any Assumed Liabilities.

2.7. Debtor in Possession Financing. Salus will provide the Sellers debtor-in-possession financing pursuant to a DIP Order and a Ratification Agreement (the "DIP Loan") in an amount such that the maximum amount of the Salus pre-petition outstanding loans and the DIP Loan shall not exceed \$65,000,000 (inclusive of amounts loaned to Coppley). In the event that the Sellers and Salus agree to amend the DIP Loan to exceed \$65,000,000 (inclusive of amounts loaned to Coppley), the Sellers shall provide the Purchaser with notice of any such amendment and the right to object to such amendment in the event that the Purchaser determines, in the commercially reasonable exercise of its business judgment, that the proposed DIP Loan amendment will constitute a Material Adverse Effect. The Sellers will provide the Purchaser with the DIP Loan budget, all weekly and other reports regarding the DIP Loan budget that the Sellers provide to Salus, and copies of all notices of default that the Sellers receive from Salus regarding the DIP Loan. In the event that an Event of Default (as that term is defined in the DIP Loan) arises as a result of a Material Budget Deviation (as that term is defined in the DIP Loan), and in the further event that the Sellers and Salus agree upon any waivers or amendments to address such Event of Default, the Sellers shall provide the Purchaser with notice of any such waivers or amendments and the right to object to such waivers or amendments in the event that the Purchaser determines, in the commercially reasonable exercise of its business judgment, that the proposed waivers or amendments will constitute a Material Adverse Effect.

2.8. Purchaser Deposit. Simultaneously with the execution of this Agreement, in accordance with the terms of the letter attached hereto as Exhibit F, and pursuant to the terms of an escrow agreement into which the Sellers and Purchaser agree to enter on terms mutually agreeable to Sellers and Purchaser in the exercise of their reasonable discretion (the "Deposit Escrow Agreement"), Purchaser shall deposit with the escrow agent under the Deposit Escrow Agreement (the "Escrow Agent") the sum of \$2,100,000 by certified check or wire transfer of immediately available funds, and shall deposit an additional \$4,900,000 with the Escrow Agent upon Bankruptcy Court approval of the Bid Procedures Order (the "Purchaser Deposit Amount"), to be released by the Escrow Agent and delivered to either Purchaser or Sellers in

accordance with the provisions of the Deposit Escrow Agreement and the terms of this Agreement as follows:

(a) If the Closing shall occur, the Purchaser Deposit Amount, together with all accrued interest and investment income thereon, shall be applied in accordance with Section 11.1(b) below towards the cash portion of the Purchase Price payable by Purchaser under Section 2.6 hereof;

(b) If this Agreement is terminated by Sellers pursuant to Section 11.2(g), the Purchaser Deposit Amount, together with all accrued interest and investment income thereon, shall be delivered to Sellers. Sellers' right to the Purchaser Deposit Amount shall be in lieu of any and all other remedies that the Sellers may otherwise have against Purchaser on account of and in full satisfaction of, any breach, violation or default by Purchaser under this Agreement; and

(c) If this Agreement is terminated for any reason other than by Sellers pursuant to Section 11.2(g), the Purchaser Deposit Amount, together with all accrued interest and investment income thereon, shall be returned to Purchaser in lieu of any and all other remedies that Purchaser may otherwise have against Sellers on account of, and in full satisfaction of, any breach, violation or default by Sellers under this Agreement.

2.9. Allocation of Purchase Price. To the extent required by Law after the Closing Date, Purchaser and Sellers shall prepare and file those statements or forms (including Form 8594) required by Section 1060 of the Code and the Treasury regulations thereunder and shall file such statements or forms with their respective federal income Tax Returns no later than one hundred twenty (120) days after the Closing Date. The parties shall prepare such statements or forms consistently with any agreed allocation of all or a portion of the Purchase Price and the Assumed Liabilities among the Assets, which allocation they shall seek to agree upon prior to the Closing. Each party shall provide the other party with a copy of such statements or forms as filed. Each party agrees that it shall take no position with respect to allocation of the Purchase Price that is adverse to any other party.

2.10. Sale at Closing Date. The sale, transfer, assignment, conveyance and delivery by Sellers of the Assets to Purchaser and, in the event the License Agreement is consummated to the Licensee, and the assumption by Purchaser of the Assumed Liabilities and, to the Licensee in the event the License Agreement is consummated, as provided herein and in the Ancillary Agreements, shall be effected on the Closing Date by: (a) the execution and delivery by Sellers and Purchaser of the Assignment and Assumption Agreement with respect to the Assumed Contracts and the Assumed Liabilities; (b) the execution and delivery by Sellers to Licensee of Deeds with respect to the Owned Real Property; (c) the execution and delivery by Sellers of the Assignment of Trademarks, and Assignment of Copyrights with respect to Sellers' patents, trademarks, and copyrights, respectively; and (d) the execution and delivery by Sellers to Purchaser of the Bill of Sale with respect to all of the Assets other than the Assumed Contracts and the Owned Real Property. In the event that the License Agreement is consummated, those Assets and Assumed Liabilities that the Purchaser designates to be transferred to the Licensee, shall be directly transferred and assigned to the Licensee, and the Purchaser shall have no Liability with respect to such Assets and Assumed Liabilities.

2.11. Excluded Assets and Liabilities. Notwithstanding anything to the contrary contained herein, Purchaser shall not purchase any of the Excluded Assets nor assume any liability for any of the Excluded Liabilities.

SECTION 3 **REPRESENTATIONS AND WARRANTIES OF SELLERS**

Sellers hereby jointly and severally represent and warrant to Purchaser as follows:

3.1. Organization and Good Standing. Schedule 3.1 sets forth for each Seller its name and jurisdiction of organization. Each Seller is (a) validly existing and in good standing under the laws of the jurisdiction of its organization and (b) duly qualified to do business and in good standing in each jurisdiction in which the ownership, use or leasing of its assets and properties, or the conduct or nature of its business, makes such qualification necessary, except for such failures to be so qualified and in good standing which, individually or in the aggregate, could not be reasonably expected to have a Material Adverse Effect.

3.2. Authorization. Subject to entry of the Sale Order, each Seller has all requisite power and authority to execute and deliver, and carry out its obligations under, this Agreement and the Ancillary Agreements and consummate the Transactions. Each of this Agreement and the Ancillary Agreements has been or will be duly executed and delivered by each Seller and, assuming due authorization, execution and delivery by Purchaser, constitutes or will constitute the legal, valid and binding obligation of such Seller, enforceable against it in accordance with its terms, subject to entry of the Sale Order.

3.3. No Conflicts. Subject to entry of the Sale Order and approval under the HSR Act if required and other than as set forth on Schedule 3.3 hereto, the execution, delivery and performance by each Seller of this Agreement and each of the Ancillary Agreements and the consummation by each Seller of the Transactions shall not, with or without the giving of notice or lapse of time (a) violate any provision of the Organizational Documents of such Seller, (b) violate any Law to which such Seller is subject, (c) conflict with, result in any violation of any term or condition of, result in a breach or termination of, or constitute a default under any Contract to which such Seller is a party or result in the creation of any Encumbrance upon any of the Assets (including any Assumed Contract) or (d) conflict with, or result in a breach or default under, any term or condition of any other agreement or other instrument to which such Seller is a party or by which such Seller is bound, except in each case as would not have a Material Adverse Effect.

3.4. Consents and Approvals. Subject to entry of the Sale Order and approval under the HSR Act and other than as set forth on Schedule 3.4 hereto, the execution, delivery and performance by each Seller of this Agreement and the Ancillary Agreements and the consummation of the Transactions do not require the consent or approval of, or filing with, any Governmental Authority.

3.5. Compliance with Law.

(a) Sellers are in compliance with Sellers' Organizational Documents and with all Laws relating to the Assets, including all Environmental Laws, except as would not have a Material Adverse Effect on the Sellers or the Assets.

(b) Schedule 3.5(b) sets forth a true and complete list of all material approvals, permits, certificates, qualifications, authorizations, licenses, franchises, consents, orders and registrations, together with all modifications, amendments, supplements and extensions thereof, of all United States federal, state and local Governmental Authorities and any other Person that are necessary for Sellers to own the Assets (collectively, the "Permits"). To Sellers' knowledge, the Permits are valid and in full force and effect and are fully and freely transferable by Sellers to Purchaser except as would not have a Material Adverse Effect. Except as set forth on Schedule 3.5(b), none of the Permits shall be terminated or become terminable as a result of the Transactions.

3.6. Title to Assets. Except as set forth in Schedule 3.6 hereto, Sellers are the owners of the Assets as of the date hereof. Subject to entry of the Sale Order, Sellers have, and at the Closing Purchaser and Licensee to the extent the License Agreement is consummated, shall receive, good, valid and marketable title to the Assets, free and clear of any and all Encumbrances except for the Permitted Encumbrances.

3.7. Cure Amounts. Schedule 3.7, which shall be completed three (3) days prior to the Bankruptcy Court hearing to approve the Bid Procedures, will set forth the monetary Cure Amounts currently set forth on Sellers' books and records with respect to all of the Assumed Contracts.

3.8. Litigation. Except as set forth in Schedule 3.8 hereto, no lawsuit, governmental investigation or legal, administrative or arbitration action or proceeding is pending or, to the Sellers' knowledge, has been threatened against any Seller which questions the validity of this Agreement or seeks to prohibit, enjoin or otherwise challenge the consummation of the Transactions, or which, if adversely determined, would have a Material Adverse Effect on, the Assets.

3.9. Intellectual Property. Except as set forth in Schedule 3.9, one or more Sellers own, or is licensed or otherwise possesses legally enforceable rights to use, all Intellectual Property without any Permitted Encumbrances.

(a) As of the date hereof, there are no pending or, to the Sellers' knowledge, threatened claims by any Person alleging infringement of any material Intellectual Property rights of any Person by Sellers as a result of their use of the Intellectual Property used in the Business;

(b) To the Sellers' knowledge, the conduct of the Business does not infringe any intellectual property rights of any Person, which infringement would have a Material Adverse Effect on the Assets;

(c) No Seller has made any claim of a violation or infringement by others of its rights to or in connection with the Intellectual Property included in the Assets;

(d) To the Sellers' knowledge, no person is infringing any material Intellectual Property included in the Assets;

(e) To the Sellers' knowledge, there is no Intellectual Property developed by any shareholder, director, officer, consultant or employee of any of the Sellers that is used by the Business and that has not been transferred to the Sellers, or is not owned by the Sellers free and clear of any Encumbrances, other than Permitted Encumbrances.

(f) To the Sellers' knowledge, the Sellers have taken all necessary action, including the payment of maintenance and renewal fees due and owing prior to the date of this Agreement, in all appropriate jurisdictions to register and maintain the registration or to otherwise preserve the proprietary nature of all of the Intellectual Property, except for such actions that would not have a Material Adverse Effect.

3.10. Material Contracts. True and complete copies (including all amendments) of each of the Material Contracts have been made available by Sellers to Purchaser. Except as has not had or would not have a Material Adverse Effect, or as would be cured pursuant to this Agreement or the Sale Order, no Seller and, to the Sellers' knowledge, no other party to any Material Contract is in material default, violation or failure to perform under any Material Contract. To the Sellers' knowledge, no party to any of the Material Contracts has threatened or is intending to cancel, terminate, materially alter, or not renew any of the Material Contracts.

3.11. Real Property. Schedule 3.11 sets forth a list of real property currently owned ("Owned Real Property") or leased by Sellers (or by any Subsidiary of Parent) and used in the operation of the Business ("Leased Real Property"). One or more Sellers (or Subsidiary of Parent) own and has valid title to all of the Owned Real Property and has valid leasehold interests in all of the leased properties used in the operation of the Business, free and clear of any and all Encumbrances (except for Permitted Encumbrances). To Sellers' knowledge, each material lease agreement to which any Seller is a party is valid and enforceable and no Seller is in material default under any such agreement other than as would be cured pursuant to this Agreement and the Sale Order, and to the Sellers' knowledge, no circumstances exist which, with notice, the passage of time or both, would reasonably be expected to constitute a material default by any Seller under any such lease agreement. None of Sellers have received any written notice of, or to the Knowledge of Sellers, oral notice of, condemnation or eminent domain proceedings pending or threatened that affect the Owned Real Property or the Leased Real Property. None of the Sellers have received any written notice of, or to the Knowledge of Sellers, any oral notice of, any zoning, ordinance, building, fire or health code or other legal violation affecting any such Owned Real Property or the Leased Real Property except where any such violations would not have a Material Adverse Effect. There are no encroachments or other facts or conditions affecting any of the Owned Real Property or the Leased Real Property that would be revealed by an accurate survey or inspection thereof, which encroachments, facts or conditions or would have a Material Adverse Effect. None of the buildings and structures on such Owned Real Property or Leased Real Property encroaches, in any material respect, upon real property of another Person or upon the area of any easement affecting the Owned Real

Property or the Leased Real Property. To the Knowledge of the Sellers (a) each of the Sellers in is in compliance with all Environmental Laws, except for such non-compliance as would not result in a Material Adverse Effect, (b) there is no material investigation, suit, claim, action or judicial or administrative proceeding relating to or arising under Environmental Laws that is pending or, to the Knowledge of Sellers, threatened against any Seller or any real property owned, operated or leased by any Seller, or any of the Purchased Assets, and (c) no Seller has received any written notice of or entered into any order, writ, injunction, judgment or decree involving uncompleted, outstanding or unresolved material obligations, liabilities or requirements relating to or arising under Environmental Laws.

3.12. Customers, Vendors and Suppliers. Except as set forth on Schedule 3.12, no material customer, vendor, supplier or distributor has during the prior twelve (12) months canceled, terminated or, to the Knowledge of the Sellers, made any threat to cancel or otherwise terminate any of such customer's, vendor's, supplier's or distributor's Contracts with any of the Sellers or to materially decrease such customer's usage of any of the Sellers's services or products or such vendor's, supplier's or distributor's supply of services or products to any of the Sellers.

3.13. No Broker or Finder. Except for William Blair & Company, LLC, no broker, finder or financial advisor has been engaged by any Seller in connection with the Transactions.

3.14. Insurance. All insurance policies maintained by Sellers are with reputable insurance carriers, and provide coverage deemed by Sellers to be appropriate in character and amount for the Assets. Each such insurance policy is in full force and effect.

3.15. Inventory. Subject to reserves consistent with past practice and except as set forth in Schedule 3.15: (a) all Inventory is in good and merchantable quality and is useable and saleable in the Ordinary Course of Business, and (b) none of it is slow-moving, obsolete, materially damaged or materially defective, except in the case of clauses (a) and (b), for those items the value of which has been reduced in accordance with GAAP and Sellers' inventory policies consistently applied by Sellers and for those items which would not result in a Material Adverse Effect.

3.16. Accounts Receivable. All Accounts Receivable of the Sellers (a) represent monies due for goods sold and delivered or services rendered in each case in the Ordinary Course of Business and (b) are current and collectible, subject to reserves consistent with past practice and except for those items which would not result in a Material Adverse Effect.

3.17. Disclaimer of Other Representations and Warranties. Except as expressly set forth in this Section 3, Sellers make no representation or warranty, statutory, express or implied, at law or in equity, in respect of Sellers, the Assets or the Business, and any such other representations or warranties are hereby expressly disclaimed, and there are no other warranties, statutory, express or implied that extend beyond the warranties contained in this Agreement. Purchaser hereby acknowledges and agrees that, except to the extent specifically set forth in this Section 3, Purchaser is purchasing the Assets on an "as-is, where-is" basis and "with all faults."

SECTION 4
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser hereby represents and warrants to Sellers as follows:

4.1. Organization and Good Standing. Purchaser is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware and has full corporate power and authority to enter into and carry out its obligations under this Agreement.

4.2. Authorization. Purchaser has all requisite power and authority to execute and deliver and carry out its obligations under this Agreement and the Ancillary Agreements, and consummate the Transactions, and is not under any prohibition or restriction, contractual, statutory or otherwise, against doing so. Each of this Agreement and the Ancillary Agreements has been or will be duly executed and delivered by Purchaser and, assuming due authorization, execution and delivery by each Seller, constitutes or will constitute the legal, valid and binding obligation of Purchaser, enforceable against it in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other Laws affecting the rights of creditors generally and by general principles of equity (regardless of whether enforcement is considered in a proceeding at law or in equity).

4.3. No Conflicts. Subject to approval under the HSR Act if required, the execution, delivery and performance by Purchaser of this Agreement and the consummation by Purchaser of the Transactions shall not, with or without the giving of notice or lapse of time, (a) violate any provision of the Organizational Documents of Purchaser, (b) violate any Law to which Purchaser is subject, or (c) conflict with, or result in a breach or default under, any term or condition of any other agreement or other instrument to which Purchaser is a party or by which Purchaser is bound.

4.4. Consents and Approvals. Subject to entry of the Sale Order and approval under the HSR Act, the execution, delivery and performance by Purchaser of this Agreement and the Ancillary Agreements and the consummation of the Transaction do not require the consent or approval of, or filing with, any Governmental Authority.

4.5. Litigation. No lawsuit, governmental investigation or legal, administrative or arbitration action or proceeding is pending or, to the best of Purchaser's knowledge, has been threatened against Purchaser which questions the validity of this Agreement or seeks to prohibit, enjoin or otherwise challenge the consummation of the Transactions or would otherwise have a material adverse effect on Purchaser's ability to finance or otherwise consummate the Transactions.

4.6. No Broker or Finder. No broker, finder or financial advisor has been engaged by Purchaser in connection with the Transactions.

4.7. Financing. Purchaser has sufficient funds, in an aggregate amount necessary to pay the Purchase Price and to perform the Assumed Liabilities and to consummate all of the

other transactions contemplated by this Agreement and the Ancillary Documents to which it is a party.

4.8. **“AS IS” TRANSACTION.** PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS EXPRESSLY PROVIDED IN SECTION 3 OF THIS AGREEMENT, SELLERS MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER RELATING TO THE ASSETS OR THE BUSINESS. WITHOUT IN ANY WAY LIMITING THE FOREGOING, SELLERS HEREBY DISCLAIM ANY WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO ANY PORTION OF THE ASSETS. PURCHASER FURTHER ACKNOWLEDGES THAT PURCHASER HAS CONDUCTED AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE PHYSICAL CONDITION OF THE ASSETS AND ALL SUCH OTHER MATTERS RELATING TO OR AFFECTING THE ASSETS OR THE BUSINESS AND THAT IN PROCEEDING WITH ITS ACQUISITION OF THE ASSETS, EXCEPT FOR ANY REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN SECTION 3 HEREOF, PURCHASER IS DOING SO BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS. ACCORDINGLY, PURCHASER WILL ACCEPT THE ASSETS AT THE CLOSING “AS IS,” “WHERE IS,” AND “WITH ALL FAULTS.”

SECTION 5 **CERTAIN COVENANTS OF SELLERS**

5.1. **Provision of Records.** Sellers shall arrange at Purchaser’s cost as soon as practicable following the Closing Date for transportation to Purchaser of the documents in the possession of any Seller relating to the Assets, to the extent not previously delivered in connection with the Transactions, but excluding documents relating to the Excluded Assets or the Excluded Liabilities.

5.2. **Receipt of Property Relating to Assets.** If, following the Closing, any of the Sellers shall receive any money, check, note, draft, instrument, payment or other property as proceeds of the Assets or any part thereof, each such Person shall receive all such items in trust for, and as the sole and exclusive property of, Purchaser and, upon receipt thereof, shall notify Purchaser in writing of such receipt and shall remit the same (or cause the same to be remitted) to Purchaser in the manner specified by Purchaser.

5.3. **Conduct of Business Pending the Closing.** From the date hereof through the Closing Date or the earlier termination of this Agreement (the “Pre-Closing Period”), except as may be expressly permitted or contemplated by this Agreement, provided in the DIP Loan, ordered by the Bankruptcy Court, or as otherwise agreed to in writing by Purchaser, each Seller shall continue to operate its business in the ordinary course (it being understood that such ordinary course may take into account the fact that the Business is to be operated while in bankruptcy) and as a debtor and debtor-in-possession in the Bankruptcy Cases. Without limiting the generality of the foregoing, during the Pre-Closing Period, except as may be expressly permitted or contemplated by this Agreement or as otherwise agreed to in writing by Purchaser, no Seller shall, to the extent that any of the following shall have a Material Adverse Effect on the Assets:

- (a) conduct the Business and operate and maintain the Assets other than in the Ordinary Course of Business
- (b) fail to use its commercially reasonable efforts to preserve the goodwill of and relationships with customers, suppliers, vendors, lessors, licensors, licensees, contractors, distributors, agents, Employees and others having business dealings with the Business
- (c) sell (including by sale-leaseback), lease, transfer, license, mortgage or otherwise dispose of, encumber or subject to any Encumbrance, any material Assets or interests therein;
- (d) fail to maintain in full force and effect insurance covering the Assets;
- (e) incur or permit the incurrence of any Liability that would constitute a material Assumed Liability, except in the Ordinary Course of Business;
- (f) sell or otherwise dispose of Inventory in a manner inconsistent with the Ordinary Course of Business;
- (g) collect Accounts Receivable in a manner inconsistent with the Ordinary Course of Business;
- (h) except as previously disclosed to or known by Purchaser, materially modify, amend, supplement or terminate any Assumed Contract, except in the Ordinary Course of Business; or
- (i) authorize any of, or commit or agree to take any of, the foregoing actions.

5.4. Access to Information. Upon reasonable notice by Purchaser, Purchaser and its representatives shall have reasonable access during normal business hours during the Pre-Closing Period, or the earlier termination of this Agreement in accordance with its terms, to the Assets and documents relating thereto, and during such period Sellers shall furnish to Purchaser, at Purchaser's expense, all information concerning the Assets as Purchaser may reasonably request. Sellers shall provide or cause to be provided to Purchaser, at Purchaser's expense, such copies or extracts of documents relating to the Assets as Purchaser may reasonably request. Any inspections, examinations and audits shall be conducted during normal business hours by Purchaser's employees or agents upon reasonable advance notice.

5.5. Bankruptcy Action.

- (a) As soon as practicable, but not later than October 22, 2012, Sellers shall file Petitions for relief under chapter 11 of the Bankruptcy Code. On the Petition Date, Sellers shall file, together with other customary "first day" motions, the Sale Motion with the Bankruptcy Court.
- (b) Sellers shall comply in all material respects with all of the obligations of Sellers under the Bid Procedures Order (after entry of such Order by the Bankruptcy

Court) and the Sale Order (after the entry of such Order by the Bankruptcy Court). The Bid Procedures Order and Sale Order shall be subject to the approval of the Purchaser in its sole discretion.

(c) Sellers shall use reasonable efforts to comply (or obtain an order from the Bankruptcy Court waiving compliance) with all requirements under the Bankruptcy Code and Bankruptcy Rules in connection with obtaining approval of the transactions contemplated by this Agreement. Sellers shall serve on all required Persons in the Bankruptcy Case, including (i) all Persons who are known to possess or assert a Claim against or interest in any of the Assets, (ii) the Internal Revenue Service, (iii) all applicable Government Authorities, (iv) all applicable state and local Government Authorities with taxing authority, (v) all other Persons required by any order of the Bankruptcy Court, (vi) all parties to Assumed Contracts, and (vii) using its commercially reasonable efforts to serve any other Persons that Purchaser reasonably may request, any notice of the Sale Motion, the Sale Hearing, the Bid Procedures Order, the Sale Order, and all objection deadlines in accordance with all applicable Bankruptcy Rules, the Bid Procedures Order, and any applicable local rules of the Bankruptcy Court.

5.6. Bid Procedures Order. Each Seller shall use its commercially reasonable efforts to obtain entry of the Bid Procedures Order by the Bankruptcy Court no later than twenty (20) days following the Petition Date.

5.7. Sale Order. The Sale Order shall, among other things: (a) approve, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, (i) the execution, delivery and performance by Sellers of this Agreement, (ii) the sale of the Purchased Assets to the Purchaser on the terms set forth herein and free and clear of all Encumbrances (other than Encumbrances included in the Assumed Liabilities and Permitted Encumbrances), and (iii) the performance by Sellers of their respective obligations under this Agreement; (b) authorize and empower Sellers to assume and assign to the Purchaser the Assigned Contracts; and (c) find that Purchaser is a "good faith" buyer within the meaning of Section 363(m) of the Bankruptcy Code and grant the Purchaser the protections of Section 363(m) of the Bankruptcy Code. The Purchaser agrees that it will promptly take such actions as are reasonably requested by Sellers to assist in obtaining Bankruptcy Court approval of the Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of: (x) demonstrating that the Purchaser is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code and (y) establishing adequate assurance of future performance within the meaning of Section 365 of the Bankruptcy Code. In the event that the Bankruptcy Court's approval of the Sale Order shall be appealed, Sellers shall use reasonable efforts to defend such appeal.

5.8. Stalking Horse Bidder Matters.

(a) In the event that this Agreement is terminated pursuant to Section 11.2(l), Sellers shall pay to Purchaser the Break-Up Fee, which shall each be treated as an Administrative Expense in the Bankruptcy Cases. In the event that this Agreement is terminated pursuant to Section 11.2(c)(ii), (d), (f), (i), (l), or (m), Sellers shall pay to Purchaser and the Licensee the Expense Reimbursement in cash, which shall each be

treated as an Administrative Expense in the Bankruptcy Cases. In the event that this Agreement is terminated pursuant to Section 11.2(I), Licensee shall be entitled to its portion of the Expense Reimbursement only if the Licensee is not a participant in an Alternative Transaction. The Break-Up Fee and the Expense Reimbursement will be due and payable three (3) Business Days following such termination.

(b) Notwithstanding Section 5.8(a), Sellers' agreement to pay the Break-Up Fee and Expense Reimbursement is subject to Bankruptcy Court approval of this Agreement, including approval of payment of the Break-Up Fee and Expense Reimbursement, which approval shall be requested in the Bid Procedures Order.

5.9. Transfer of Permits. Except for those Permits that are not transferable by Law, Sellers shall use commercially reasonable efforts to cause the issuance or transfer at Purchaser's expense of all Permits relating to the Assets to Purchaser. Sellers shall give and make all notices and reports Sellers are required to make to the appropriate Governmental Authorities and other Persons, each at Purchaser's expense, with respect to the Permits that may be necessary for the sale of the Assets to Purchaser at the Closing.

5.10. Release of Encumbrances. Sellers' obligation to deliver the Assets free and clear of any Encumbrances (other than Permitted Encumbrances) shall be limited to Sellers' efforts to obtain the Sale Order that provides for the delivery of the Assets free and clear of any Encumbrances (other than Permitted Encumbrances). If Purchaser and Licensee in the event the License Agreement is consummated, desires to have any Encumbrances released and discharged other than by means of the Sale Order, Purchaser, at its sole cost and expense, shall obtain such releases or discharges.

5.11. Assignability of Certain Contracts. To the extent that the assignment to the Purchaser, or the Licensee in the event the License Agreement is consummated, of any Assumed Contract pursuant to this Agreement is not permitted without the consent of a third party and such restriction cannot be effectively overridden or canceled by the Sale Order or other related order of the Bankruptcy Court, then this Agreement will not be deemed to constitute an assignment of or an undertaking or attempt to assign such Contract or any right or interest therein unless and until such consent is obtained; provided, however, that the Parties will use their commercially reasonable efforts, before the Closing, to obtain all such consents; provided, further, that if any such consents are not obtained prior to the Closing Date, Sellers and the Purchaser will reasonably cooperate with each other in any lawful and feasible arrangement designed to provide the Purchaser with the benefits and obligations of any such Contract and the Purchaser shall be responsible for performing all obligations under such Contract required to be performed by Sellers on or after the Closing Date to the extent set forth in this Agreement.

5.12. Rejected Contracts. No Seller shall reject any Assumed Contract in any bankruptcy proceeding following the Agreement Date without the prior written consent of the Purchaser.

5.13. Further Assurances. Upon the request of Purchaser, each Seller shall, at Purchaser's expense, forthwith execute and deliver such documents as Purchaser or its counsel may reasonably request to effectuate the purposes of this Agreement.

SECTION 6
CERTAIN COVENANTS OF PURCHASER.

6.1. Performance with Respect to the Assets and the Assumed Contracts. Purchaser agrees that from and after the Closing Date, that it shall (a) assume all Assumed Liabilities, and (b) take all actions necessary to satisfy its obligations and liabilities with respect to the Assumed Liabilities (including, without limitation, under the terms and conditions of each Assumed Contract).

6.2. Cure Amounts. Purchaser shall pay all Cure Amounts with respect to the Assumed Contracts within ten (10) Business Days from the Closing Date in accordance with the Sale Order.

6.3. Further Assurances. Upon the request of Sellers, Purchaser shall, at Sellers' expense, forthwith execute and deliver such documents as Sellers or their counsel may reasonably request to effectuate the purposes of this Agreement.

6.4. Alternative Transaction. This Agreement is subject to approval by the Bankruptcy Court and the consideration by Sellers and the Bankruptcy Court of higher or otherwise better competing bids. From and after the date hereof until the earlier of (a) the date on which the Bankruptcy Court enters the Bid Procedures Order, or as otherwise agreed to in writing by Sellers, or (b) the termination of this Agreement (the "Exclusivity Period"), neither the Sellers nor any of their respective Affiliates or representatives shall directly or indirectly (i) negotiate, initiate contact with, or solicit or encourage submission of any inquiries, proposals or offers related to an Alternative Transaction or (ii) provide any confidential information regarding the Sellers or any of the Assets to any Person other than the Purchaser, except to the extent expressly permitted herein. During the Exclusivity Period, the Sellers will promptly (and in all events within 24 hours) inform and provide a summary to Purchaser of any other offer, proposal or expression of interest for the Sellers or the Assets or any portion thereof that they or any of their Affiliates or representatives may receive. Nothing contained herein shall be construed to prohibit the Sellers and their representatives from soliciting, considering, negotiating, agreeing to or otherwise taking action in furtherance of, any Alternative Transaction after the entry of the Bid Procedures Order; *provided, however*, neither the Sellers nor any of their Affiliates or their respective representatives shall provide any confidential information to any strategic bidders without appropriate assurances of confidentiality.

SECTION 7
CERTAIN MUTUAL COVENANTS

7.1. Mutual Cooperation.

(a) Sellers, on one hand, and Purchaser, on the other hand, shall promptly give notice to the other upon becoming aware that any action is pending or threatened by or before any Governmental Authority with respect to the Transactions. Sellers, on the one hand, and Purchaser, on the other hand, (i) shall cooperate with each other in connection with the prosecution, investigation or defense of any such action, (ii) shall supply promptly all information requested by the other, by any such Governmental Authority or

by any party to any such action that is legally required to be produced, and (iii) shall each use commercially reasonable efforts to cause any such action to be determined as promptly as practicable and in a manner which does not impact adversely on, and is consistent with, the Transactions.

(b) After the Closing Date, each of Sellers and Purchaser shall use commercially reasonable efforts to provide to any other party to this Agreement (the "Requesting Party") such records and information and to make available to the Requesting Party such employees or other personnel, in each case as may be reasonably requested in writing by the Requesting Party, for the purpose of assisting the Requesting Party in responding to governmental inquiries, making required governmental filings or defending or prosecuting any action or other proceeding involving any Person other than the party providing such information or records or making available such employees or other personnel (the "Providing Party") and in resolving all claims, preparing all tax returns, and handling all matters necessary to administer and close the Bankruptcy Cases; provided, however, that no Providing Party shall be required to (i) incur any out-of-pocket expenses, (ii) provide information, records or employees or other personnel under circumstances which the Providing Party believes in its sole reasonable determination may expose it to liability to any Person or may prejudice any commercial, legal or other interest of the Providing Party, or (iii) take any action that in the Providing Party's reasonable determination unreasonably interferes with its business.

7.2. Approvals and Filings.

(a) Subject to the terms and conditions of this Agreement, including the possible closing of an Alternative Transaction, each of the parties hereto shall use all commercially reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable under applicable Laws and regulations to consummate and make effective the Transactions, including using commercially reasonable efforts to obtain all necessary or appropriate waivers, consents and approvals, and effecting all necessary registrations and filings. Purchaser shall make or cause to be made all filings and submissions under Laws applicable to Purchaser, if any, as may be required for the consummation of the Transactions. Sellers shall make or cause to be made all such other filings and submissions under Laws applicable to any Seller, if any, as may be required for the consummation of the Transactions. Purchaser, on the one hand, and Sellers, on the other hand, shall coordinate and cooperate in exchanging such information and reasonable assistance as may be requested by either of them in connection with the filings and submissions contemplated by this Section 7.2. Purchaser, on the one hand, and Sellers, on the other hand, shall each promptly provide the other or their respective counsel with copies of all filings made by such party with any Governmental Authority in connection with this Agreement and the Ancillary Agreements and the Transactions.

(b) HSR. Each of Purchaser and Sellers shall, as promptly as practicable after the date of this Agreement, file with the United States Federal Trade Commission (the "FTC") and the United States Department of Justice (the "DOJ") the notification and report form, if any, required for the consummation of the Transactions and any

supplemental information requested in connection therewith pursuant to the HSR Act. Any such notification and report form and supplemental information shall be in substantial compliance with the requirements of the HSR Act. Each of Purchaser and Sellers shall furnish to the other such necessary information and reasonable assistance as the other may reasonably request in connection with its preparation of any filing or submission which is necessary under the HSR Act. Sellers and Purchaser shall keep each other apprised of the status of any communications with, and any inquiries or requests for additional information from, the FTC and the DOJ. If such a filing is made, each of Purchaser and Sellers shall seek early termination of the waiting period under the HSR Act and use its commercially reasonable efforts to obtain as promptly as possible any clearance required under the HSR Act for the consummation of the Transactions.

7.3. Public Statements. The parties shall consult with each other prior to issuing any press release or making any public announcement with respect to this Agreement, the Ancillary Agreements, or the Transactions (including the financial terms hereunder and thereunder), and shall not issue any such press release or public announcement prior to such consultation or to which the other party shall reasonably object, except as may be required by Law or judicial process. Purchaser shall not make any statement to, or otherwise communicate (whether orally or in writing) with, any employee or supplier to any Seller regarding this Agreement, the Ancillary Agreements or the Transactions except for any statement or communication with respect to which the Sellers shall have previously consented in writing.

7.4. Notification of Certain Matters. Sellers shall give prompt notice to the Purchaser, and the Purchaser shall give prompt notice to Sellers, of (a) any notice or other communication from any Person alleging that the consent of such Person which is or may be required in connection with the transactions contemplated by this Agreement or the Ancillary Documents is not likely to be obtained prior to Closing, (b) any written objection or proceeding that challenges the transactions contemplated hereby or the entry of the approval of the Bankruptcy Court and (c) the status of matters relating to the completion of the transactions contemplated hereby, including promptly furnishing the other with copies of notices or other communications received by Sellers or the Purchaser or by any of their respective Affiliates (as the case may be), from any third party and/or any Governmental Body with respect to the transactions contemplated by this Agreement. To the extent permitted by applicable Law, Sellers shall give prompt notice to the Purchaser of (x) any notice of any alleged violation of Law applicable to any Seller, (y) the commencement of any Action by any Governmental Body with respect to the Business or that any such Action, to the Knowledge of any Seller, is contemplated, and (z) the infringement or unauthorized use by any Person of any material Intellectual Property (of which any Seller has Knowledge).

SECTION 8

EMPLOYEE MATTERS

8.1. Employment.

(a) In the event that the License Agreement is consummated, Licensee may offer to employ, commencing upon Closing, each Employee of Sellers who is, as of immediately prior to the Closing, subject to any of the CBAs and (i) actively at work in

connection with the Business, (i) on short-term disability or workers' compensation in connection with the Business, (iii) on a leave of absence approved by Sellers in connection with the Business or (iv) on layoff with recall rights as provided under any of the CBAs (collectively, the "Union Employees"), but not including any person on long-term disability, layoff without recall rights under any of the CBAs or on a leave of absence with no prior agreement or understanding to return to employment with Sellers at the end of such disability, layoff or leave, on terms and conditions in compliance with any of the CBAs. Union Employees who accept such offer of employment will be referred to in this Agreement as "Transferred Union Employees." From and after the Closing, Licensee will retain all rights and obligations it may have pursuant to the CBAs, as modified (as applicable), and applicable labor law. Schedule 8.1(a) sets forth all Employees who are subject to any of the CBAs and who are on long-term disability, layoff with recall rights under any of the CBAs or on a leave of absence with a prior agreement or understanding to return to employment with Sellers at the end of such disability, layoff or leave.

(b) In the event that the License Agreement is consummated, Licensee, in its sole discretion, may offer to employ on substantially the same terms and conditions as those in effect pre-Closing, commencing upon the Closing, certain Employees of Sellers who are, as of immediately prior to the Closing, not subject to any of the CBAs and (i) actively at work in connection with the Business, (ii) on short-term disability or workers' compensation in connection with the Business, or (iii) on a leave of absence approved by Sellers in connection with the Business, but not including any Employee on long-term disability or on a leave of absence with no prior agreement or understanding to return to employment with the Sellers at the end of such disability or leave collectively, the "Nonunion Employees"). Nonunion Employees who accept such offer of employment will be referred to in this Agreement as "Transferred Nonunion Employees." Notwithstanding the foregoing, nothing in this Agreement will, after the Closing Date, impose on the Licensee any obligation to retain any Transferred Nonunion Employee in its employment. Schedule 8.1(b) sets forth all Employees who are not subject to any of the CBAs and who are on long-term disability or leave who have a prior arrangement or understanding to return to employment which such leave or disability ends. Nothing in this Agreement shall restrict the Licensee's right to terminate the employment of any Person following the Effective Time.

(c) Transferred Nonunion Employees and Transferred Union Employees will collectively be referred to as "Transferred Employees." Except as described in the remaining sentences of this Section 8.1(c), the employment of each such Transferred Employee with Licensee will commence immediately upon the Closing. In the case of any individual who is absent from active employment and receiving short-term disability or workers' compensation benefits, the employment of such individual with Licensee will commence upon his or her return to active work, and such individual will become an Transferred Employee as of such date.

(d) Nothing contained in Section 8.1 shall confer any Liability for any Employee on the Purchaser.

8.2. Employee Benefit Matters.

(a) As of the Closing, all of the Transferred Employees will cease participation in any of Sellers' Employee benefit plans and fringe benefit programs that such transferred Employees participated in immediately prior to the Closing.

(b) In the event that the License Agreement is consummated, in accordance with Treasury Regulation Section 54.4980B-9 Q&A-7, as of the Closing Date, Licensee will assume all liability for providing and administering all required notices and benefits under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA") to all Transferred Employees. Sellers will have no COBRA liability or obligations to such Transferred Employees after the Closing Date.

(c) Licensee and Sellers acknowledge and agree that if the License Agreement is consummated, Licensee constitutes a "successor employer" within the meaning of Code Section 3121(a)(1) and Code Section 3306(b)(1) and the regulations thereunder. Accordingly, the Licensee agrees to treat all wages paid to the Employees as paid by a successor employer for all federal and state income tax and employment tax purposes.

8.3. Defined Contribution Plans. In the event the License Agreement is consummated, as of the Closing Date, with respect to any defined contribution plan of Sellers maintained by or for the benefit of any of the Transferred Employees, the Transferred Employees will cease to participate in such defined contribution plan. As of the Closing Date or as soon as practicable thereafter, each Transferred Employee will be permitted to elect a distribution of his or her account balance in the defined contribution plan of Sellers and will be permitted to rollover his or her account balances in such plan (or any portion thereof) to the defined contribution plan of Licensee, including the ability to rollover any existing loans under such plan of Sellers for sixty (60) days after the Closing Date.

8.4. Compliance with WARN Act. In the event the License Agreement is consummated, with respect to the Employees, Licensee will have full responsibility under the WARN Act caused by Licensee on or after the Closing Date. Sellers shall be responsible for all other WARN Act liabilities relating to the periods prior to the Closing Date and in the event the License Agreement is not consummated. In no event shall the Purchaser have any Liability with respect to the WARN Act.

SECTION 9
CONDITIONS TO SELLERS' OBLIGATIONS

The obligations of Sellers to consummate the Transactions are subject to the satisfaction (unless waived in writing by Sellers) of each of the following conditions on or prior to the Closing Date:

9.1. Representations and Warranties. The representations and warranties of Purchaser contained in this Agreement that are not qualified by materiality or a Material Adverse Effect shall be true and correct in all material respects on and as of the Closing Date, except to the extent expressly made as of an earlier date, in which case as of such earlier date, and the representations and warranties of Purchaser contained in this Agreement that are qualified by

materiality or a Material Adverse Effect shall be true and correct in all respects on and as of the Closing Date, except to the extent expressly made as of an earlier date, in which case they shall be true and correct as of such earlier date.

9.2. Compliance with Agreements. Purchaser shall have performed and complied in all material respects with all covenants and conditions under this Agreement and the Ancillary Agreements to be performed or complied with by it on or prior to the Closing Date.

9.3. Approvals; No Injunctions. The approvals and Permits set forth on Schedule 9.3 shall have been obtained or provided by an order of the Bankruptcy Court, including the expiration or termination of the waiting period (and each extension thereof, if any) applicable to the sale of the Assets under the HSR Act. Such Permits or approvals shall be in full force and effect on the Closing Date. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation or non appealable judgment, decree, injunction or other order that is in effect on the Closing Date and prohibits the consummation of the Closing.

9.4. Purchaser's Closing Deliveries and Obligations. Purchaser shall have delivered all items and satisfied all obligations pursuant to Sections 11.1(b) and 11.1(c).

9.5. Auction. Purchaser shall be the successful bidder at the Auction in accordance with the Bid Procedures Order.

9.6. Entry of the Sale Order. The Bankruptcy Court shall have entered the Sale Order.

SECTION 10

CONDITIONS TO PURCHASER'S OBLIGATIONS

The obligation of Purchaser to consummate the Transactions is subject to the satisfaction (unless waived in writing by Purchaser) of each of the following conditions on or prior to the Closing Date:

10.1. Representations and Warranties. The representations and warranties of the Sellers contained in this Agreement that are not qualified by materiality or a Material Adverse Effect shall be true and correct in all material respects on and as of the Closing Date, except to the extent expressly made as of an earlier date, in which case as of such earlier date, and the representations and warranties of the Sellers contained in this Agreement that are qualified by materiality or a Material Adverse Effect shall be true and correct in all respects on and as of the Closing Date, except to the extent expressly made as of an earlier date, in which case they shall be true and correct as of such earlier date.

10.2. Compliance with Agreements. Each Seller shall have performed and complied in all material respects with all covenants and conditions under this Agreement and the Ancillary Agreements to be performed or complied with by it on or prior to the Closing Date.

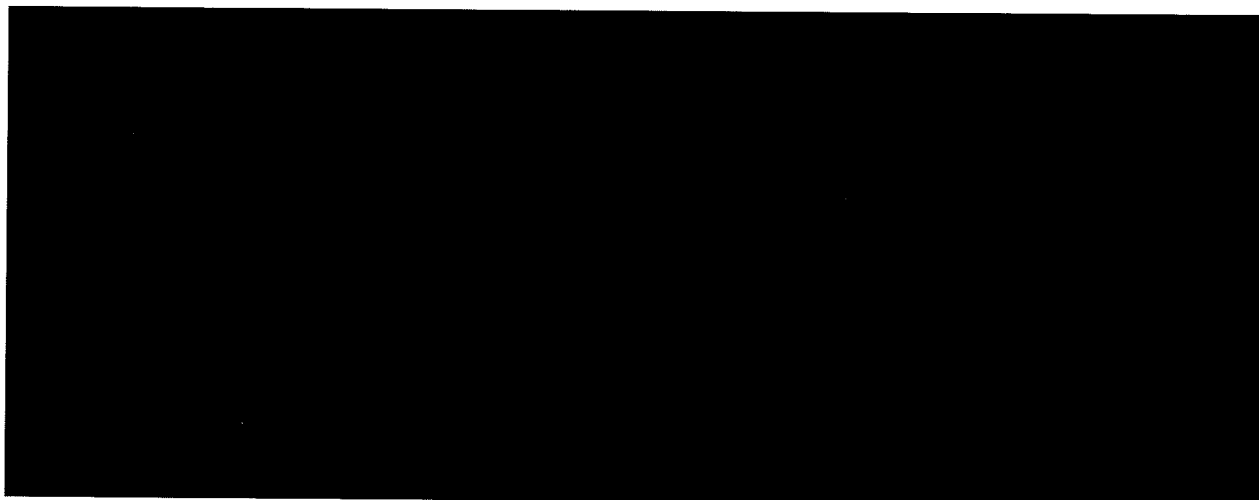
10.3. Approvals; No Injunctions. The approvals and Permits set forth on Schedule 9.3 shall have been obtained or provided by an order of the Bankruptcy Court, including the expiration or termination of the waiting period (and each extension thereof, if any) applicable to

the sale of the Assets under the HSR Act. Such Permits or approvals shall be in full force and effect on the Closing Date. No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any statute, rule, regulation or non-appealable judgment, decree, injunction or other order that is in effect on the Closing Date and prohibits the consummation of the Closing.

10.4. Sellers' Closing Deliveries and Obligations. Each Seller shall have delivered all items and satisfied all obligations pursuant to Sections 5.10 and 11.1(a).

10.5. Auction. Purchaser shall be the successful bidder at the Auction in accordance with the Bid Procedures Order.

10.6. Entry of the Sale Order. The Bankruptcy Court shall have entered the Sale Order.



SECTION 11 CLOSING; TERMINATION

11.1. The Closing. The Closing of the purchase by Purchaser from Sellers and sale by Sellers to Purchaser of the Assets (the "Closing") shall be held on the second (2nd) Business Day after the satisfaction or waiver of the conditions set forth in Sections 9 and 10 of this Agreement (excluding those conditions which by their nature are to be satisfied as part of the Closing), or at such other time as the parties hereto may agree (the "Closing Date"). The Closing shall be held at the offices of Proskauer Rose LLP, Eleven Times Square, New York, New York 10036 or at such other location as the parties hereto may agree. At the Closing, all of the transactions provided for in Section 2 hereof shall be deemed to be consummated on a concurrent and simultaneous basis.

(a) Sellers' Deliveries at Closing. At the Closing, Sellers shall deliver (or cause to be delivered) to Purchaser the following:

- (i) the duly executed Assignment and Assumption Agreement;
- (ii) the duly executed Bill of Sale;

(iii) the duly executed deeds (the "Deeds") conveying to Purchaser fee title to the Owned Real Property free and clear of all Encumbrances other than the Permitted Encumbrances;

(iv) the duly executed Assignment of Trademarks and Assignment of Copyrights;

(v) a certified copy of the Sale Order and case docket reflecting that the Sale Order is in effect;

(vi) certified resolutions of the governing body of each Seller approving and authorizing the Transactions;

(vii) officer's certificates, executed by a duly authorized officer of each Seller to the effect that all conditions to Closing set forth in Section 10.1 and Section 10.2 have been satisfied;

(viii) affidavits executed by each Seller organized under the laws of the United States stating that such Seller is not a "foreign person" within the meaning of Section 1445(f)(3) of the Code; and

(ix) such other documents as Purchaser or its counsel shall reasonably require in order to effect the Transactions.

(b) Purchaser's Payment of Purchase Price. At the Closing, Purchaser shall deliver (or cause to be delivered) the Purchase Price (less the Purchaser Deposit Amount, together with all accrued interest and investment income thereon (which shall be released by the Escrow Agent to Sellers in accordance with Section 2.6)).

(c) Purchaser's Deliveries to Sellers at Closing. At the Closing, Purchaser shall deliver (or cause to be delivered) to Sellers the following:

(i) the duly executed Assignment and Assumption Agreement;

(ii) certified resolutions of the governing body of Purchaser approving and authorizing the Transactions;

(iii) a certificate, executed by a duly authorized officer of Purchaser, to the effect that all conditions to Closing set forth in Section 9.1 and Section 9.2 have been satisfied; and

(iv) such other documents as Sellers or their counsel shall reasonably require in order to effect the Transactions.

11.2. Termination. Anything in this Agreement to the contrary notwithstanding, this Agreement and the Transactions may be terminated in any of the following ways at any time before the Closing and in no other manner, subject to the provisions hereof:

(a) at any time by mutual written consent of Purchaser and Sellers;

(b) by Purchaser if the Bankruptcy Court has not entered the Bid Procedures Order on or before twenty (20) days following the Petition Date, provided however, that Purchaser shall only be permitted to terminate this Agreement pursuant to this Section 11.2(b) if Purchaser is not then itself in material breach of any of its representations, warranties, covenants or agreement contained herein or in the Bid Procedures Order;

(c) by Purchaser if (i) the Auction has not concluded on or before fifty (50) days following the Petition Date; or (ii) the Sale Order has not been entered by the Bankruptcy Court on or before fifty five (55) days following the Petition Date, provided however, that Purchaser shall only be permitted to terminate this Agreement pursuant to this Section 11.2(c) if Purchaser is not then itself in material breach of any of its representations, warranties, covenants or agreement contained herein or in the Bid Procedures Order;

(d) by Purchaser, if the Closing shall not have occurred on or before the sixtieth day following the Petition Date, or such later date as Sellers and Purchaser agree or is necessary due solely to the scheduling and availability of the Bankruptcy Court (the "Termination Date"); provided, however, that Purchaser may not terminate this Agreement pursuant to this Section 11.2(d) if the Closing shall not have occurred on or before the Termination Date due to a breach of any representations, warranties, covenants or agreements contained in this Agreement by Purchaser;

(e) by Sellers, if any condition to the obligations of Sellers set forth in Section 9 shall have become incapable of fulfillment (including failure of Purchaser to be the successful bidder at the Auction) other than as a result of a material breach by Sellers of any covenant or agreement contained in this Agreement, and such condition is not waived by Sellers;

(f) by Purchaser, if any condition to the obligations of Purchaser set forth in Section 10 shall have become incapable of fulfillment (including failure of Purchaser to be the successful bidder at the Auction) other than as a result of a breach by Purchaser of any covenant or agreement contained in this Agreement, and such condition is not waived by Purchaser;

(g) by Sellers, if Purchaser is in breach in any respect of any of its representations made in this Agreement that are qualified by materiality or Material Adverse Effect or in material breach in any respect of any of its representations not so qualified, or is in violation or default in any material respect of any of its covenants or agreements in this Agreement, if such breach, violation or default has not been cured or waived within ten (10) days following receipt of written notice from Sellers specifying, in reasonable detail, such claimed breach, violation or default and demanding its cure or satisfaction;

(h) by Sellers, if in compliance with the terms of the Bid Procedures Order;

(i) by Purchaser, if the Sellers are in breach in any respect of any of their representations made in this Agreement that are qualified by materiality or Material Adverse Effect or in material breach in any respect of any of their representations not so qualified, or are in violation or default in any material respect of any of their covenants or agreements in this Agreement, if such breach, violation or default has not been cured or waived within ten (10) days following receipt of written notice from Purchaser specifying, in reasonable detail, such claimed breach, violation or default and demanding its cure or satisfaction;

(j) by Sellers or Purchaser if there shall be in effect a final non-appealable order of a Governmental Authority of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Transactions, it being agreed that the parties hereto shall promptly appeal any adverse determination which is not non-appealable (and pursue such appeal with reasonable diligence);

(k) by Purchaser, if, as a result of an order of the Bankruptcy Court, the Bankruptcy Cases are converted to Chapter 7 and a Chapter 7 trustee is appointed with respect to Sellers; or

(l) automatically, if the Sellers close or consummate an Alternative Transaction; or

(m) by Purchaser, if Purchaser exercises its rights to object to waivers or amendments of the DIP Loan or the DIP Loan budget pursuant to and in accordance with Section 2.7 of this Agreement.

11.3. Effects of Termination.

(a) If this Agreement is terminated pursuant to Section 11.2, this Agreement (other than Section 11.3 (Effects of Termination), Section 5.7 (Stalking-Horse Bidder Matters), Section 13 (Expenses, Employees, Attorneys' Fees and Brokers' Fees) and Section 14.6 (Governing Law; Jurisdiction), each of which shall remain in full force and effect) shall forthwith become null and void and no party hereto shall have any liability or further obligation to any other party hereto, except as provided in this Section 11.3.

(b) Notwithstanding anything in Section 11.3(a) to the contrary, (x) if this Agreement is terminated by Sellers pursuant to Section 11.2(e), Section 2.8(b) shall remain in full force and effect, and (y) if this Agreement is terminated for any reason other than by Sellers pursuant to Section 11.2(e), Section 2.8(c) shall remain in full force and effect.

(c) In all cases, Sellers' liability to Purchaser under or arising from this Agreement is and shall be limited to Sellers' return to Purchaser of the Purchaser Deposit Amount.

(d) In all cases, Purchaser's liability to Seller under or arising from this Agreement is and shall be limited to the Purchaser Deposit Amount.

SECTION 12
TAXES

12.1. Taxes Related to Purchase of Assets. Purchaser shall be solely responsible for the payment of any state and local sales, transfer, recording, stamp or other similar transfer taxes (collectively "Transaction Taxes") that may be imposed by reason of the sale, transfer, assignment and delivery of the Assets and not exempted under the Sale Order, along with any recording and filing fees. Purchaser and Sellers agree to cooperate to determine the amount of Transaction Taxes payable in connection with the Transactions. At the Closing, Purchaser shall remit to Sellers such properly completed resale exemption certificates and other similar certificates or instruments as are applicable to claim available exemptions from the payment of sales, transfer, use or other similar taxes under applicable law. Purchaser and Sellers shall cooperate in preparing such forms and shall execute and deliver such affidavits and forms as are reasonably requested by the other party.

12.2. Cooperation. Purchaser and Sellers agree to furnish or cause to be furnished to each other, as promptly as practicable, such information and assistance relating to the Assets as is reasonably necessary for the preparation and filing of any Tax Return, for the preparation for and proof of facts during any tax audit, for the preparation for any tax protest, for the prosecution or defense of any suit or other proceeding relating to tax matters and for the answer of any governmental or regulatory inquiry relating to tax matters. Purchaser agrees to retain possession of all tax files, books and records delivered to Purchaser by Sellers for a period of at least five years from the Closing Date. If Purchaser determines to destroy or discard any of such files, books or records after the end of such five-year period, Purchaser shall give Sellers reasonable notice thereof and shall allow Sellers to take possession of such files, books and records at Sellers' expense. From and after the Closing Date, Purchaser agrees that it shall provide reasonable access to Sellers and their attorneys, accountants and other representatives (after reasonable notice and during normal business hours and without charge) to such files, books and records as Sellers may reasonably deem necessary to prepare for, file, prove, answer, prosecute or defend any claim, suit, inquiry or other proceeding, related to Taxes in connection with the Assets.

SECTION 13
EXPENSES, EMPLOYEES, ATTORNEYS' FEES AND BROKERS' FEES

13.1. Expenses. Except as otherwise provided under this Agreement, Sellers shall be responsible for all expenses, liabilities and obligations arising out of or relating to the Assets and the Assumed Liabilities or the use, possession, ownership or operation thereof accruing on or prior to the Closing, other than expenses relating to HSR approval of the Transactions. Purchaser shall be responsible for all expenses, liabilities and obligations (a) relating to HSR approval of the Transactions, and (b) arising out of or relating to the Assets and the Assumed Liabilities or the use, possession, ownership or operation thereof accruing after the Closing.

13.2. Attorneys' Fees; Brokers' Fees; Expenses. Each party shall be responsible for the payment of its own attorneys', brokers' and other fees and expenses in connection with the Transactions.

SECTION 14
MISCELLANEOUS

14.1. Sale of Assets Subject to Bankruptcy Court Approval. This Agreement, the sale of the Assets hereunder, and the Sellers' obligations and ability to perform under this Agreement is conditioned and contingent upon Bankruptcy Court entry of the Bid Procedures Order and of the Sale Order.

14.2. Survival of Representations and Warranties. Until the Closing, all representations and warranties herein shall be operative and in full force and effect. All representations and warranties and covenants contained herein shall terminate and shall not survive the Closing, except the covenants contained in Sections 5.2, 5.3, 5.8, 6, 7, 8, 12, and 13.

14.3. Entirety of Agreement; Amendments and Waivers. This Agreement (including all schedules and exhibits hereto), together with the Ancillary Agreements and certificates delivered hereunder, state the entire agreement of the parties with respect to the subject matter hereof, merge all prior negotiations, agreements and understandings, if any, and state in full all representations, warranties, covenants and agreements which have induced this Agreement. Each of Sellers and Purchaser otherwise makes no other representations or warranties including any implied representations or warranties. Each party agrees that in dealing with third parties no contrary representations shall be made. This Agreement can be amended, supplemented or changed, and any provision hereof can be waived, only by written instrument making specific reference to this Agreement signed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other or subsequent breach. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

14.4. Assignment. Except with respect to the Purchaser's ability to designate that certain Assets and Assumed Liabilities be assigned to the Licensee in the event the License Agreement is consummated, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties without the prior written consent of the other party except, in the case of Purchaser, to an Affiliate (but only if such Affiliate becomes a party to this Agreement and agrees to be bound by the representations, warranties, covenants and obligations herein and Purchaser guarantees such Affiliate's obligations herein and; provided, however, that no such assignment shall relieve Purchaser of its obligations assigned to a an Affiliate hereunder). Except as specifically set forth in Sections 2.1 and 8.1, no party shall be relieved of any liability hereunder in respect of any assignment pursuant to this Section 14.4, unless such assignor has received a written release expressly excepting such assignor from any liability that may arise hereunder.

14.5. Successors and Assigns; No Third Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. This Agreement shall not confer any rights or remedies upon any Person other than the

parties hereto and their respective heirs, personal representatives, legatees, successors and permitted assigns.

14.6. Governing Law; Jurisdiction. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of New York applicable to contracts made and to be entirely performed therein. In the event of any controversy or claim arising out of or relating to this Agreement or the breach or alleged breach hereof, each of the parties hereto irrevocably (a) submits to the exclusive jurisdiction of the Bankruptcy Court, (b) waives any objection which it may have at any time to the laying of venue of any action or proceeding brought in the Bankruptcy Court, (c) waives any claim that such action or proceeding has been brought in an inconvenient forum, and (d) agrees that service of process or of any other papers upon such party by registered mail at the address to which notices are required to be sent to such party under Section 14.12 shall be deemed good, proper and effective service upon such party.

14.7. Gender and Number. In this Agreement, words importing the singular include the plural and vice versa and words importing a specific gender include all genders.

14.8. Headings. The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

14.9. Construction. In this Agreement (a) words denoting the singular include the plural and vice versa, (b) "it" or "its" or words denoting any gender include all genders, (c) the word "including" shall mean "including without limitation," whether or not expressed, (d) any reference to a statute shall mean the statute and any regulations thereunder in force as of the date of this Agreement or the Closing Date, as applicable, unless otherwise expressly provided, (e) any reference herein to a Section, Exhibit or Schedule refers to a Section of, or Exhibit or Schedule to, this Agreement, unless otherwise stated, (f) any reference to "knowledge" shall mean, with respect to Sellers the actual knowledge of Douglas Williams and Marty Weinberg, and with respect to Purchaser the actual knowledge of James Salter and Kevin Clarke, and (g) when calculating the period of time within or following which any act is to be done or steps taken, the date which is the reference day in calculating such period shall be excluded and if the last day of such period is not a Business Day, then the period shall end on the next day which is a Business Day.

14.10. Severability. If any one or more of the provisions contained in this Agreement or in any other instrument referred to herein, shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, then to the maximum extent permitted by Law, such invalidity, illegality or unenforceability shall not affect any other provision of this Agreement or any other such instrument.

14.11. Negotiated Agreement. Each of Sellers and Purchaser acknowledges that it has been advised and represented by counsel in the negotiation, execution and delivery of this Agreement and accordingly agrees that, if an ambiguity exists with respect to any provision of this Agreement, such provision shall not be construed against any party because such party or its representatives drafted such provision.

14.12. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given or made as follows: (a) if sent by registered or certified mail in the United States return receipt requested, upon receipt; (b) if sent designated for overnight delivery by nationally recognized overnight air courier (such as Federal Express), one Business Day after delivery to such courier; (c) if sent by facsimile transmission before 5:00 p.m. in New York, when transmitted and receipt is confirmed; (d) if sent by facsimile transmission after 5:00 p.m. in New York and receipt is confirmed, on the following Business Day; and (e) if otherwise actually personally delivered, when delivered, provided that such notices, requests, demands and other communications are delivered to the address set forth below, or to such other address as any party shall provide by like notice to the other parties to this Agreement:

Purchaser: Authentic Brands Group, LLC
100 West 33rd Street, Suite 1007
New York, New York 10001
Facsimile: (212) 760-2419
Attn: James Salter and Kevin Clarke

with a copy to: DLA Piper (US), LLP
203 N. LaSalle Street, Suite 1900
Chicago, Illinois 60601
Facsimile: (312) 630-5330
Attn: Richard A. Chesley, Esq.

Sellers: HMX Acquisition Corp.
125 Park Avenue, 7th Floor
New York, New York 10017
Facsimile: (646) 742-0511
Attention: Douglas Williams

with a copy to: Proskauer Rose LLP
Three First National Plaza
70 West Madison, Suite 3800
Chicago, Illinois 60602
Facsimile: (312) 962-3551
Attention: Mark K. Thomas, Esq.
Peter J. Young, Esq.

Any party hereto may change its address for service from time to time by notice given to other parties hereto in accordance with the foregoing.

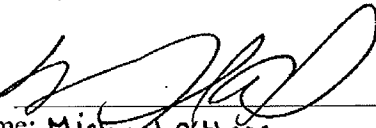
14.13. Counterparts; Facsimile Copies. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signed facsimile copies of this Agreement shall legally bind the parties to the same extent as original documents.

[Remainder of Page Intentionally Left Blank]

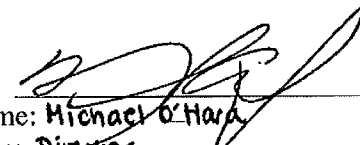
IN WITNESS WHEREOF, the parties hereto have duly executed and delivered this Agreement as of the date first above written.

SELLERS:

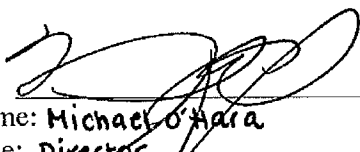
HMX ACQUISITION CORP.

By: 
Name: Michael O'Hara
Title: Director

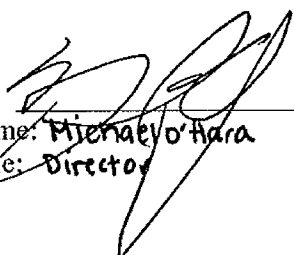
HMX, DTC CO.

By: 
Name: Michael O'Hara
Title: Director

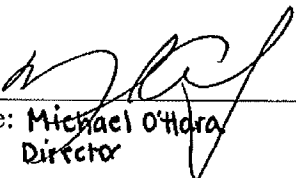
HMX DES PLAINES, LLC

By: 
Name: Michael O'Hara
Title: Director

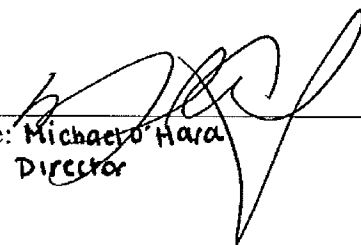
HMX TOUHY AVENUE, LLC

By: 
Name: Michael O'Hara
Title: Director

QUARTET REAL ESTATE, LLC

By: 
Name: Michael O'Hara
Title: Director

HMX, LLC

By: 
Name: Michael O'Hara
Title: Director

PURCHASER:

AUTHENTIC BRANDS GROUP, LLC

By: 

Name: _____

Title: _____

JAMES SALTER
CEO

SELLERS DISCLOSURE SCHEDULES

These Schedules (these "Schedules") are being delivered pursuant to that certain Asset Purchase Agreement, dated as of October 16, 2012 (the "Agreement"), by and among Authentic Brand Group, LLC, a Delaware Limited Liability Corporation and any entity or entities formed on its behalf to consummate the transaction described herein ("Purchaser"), HMX Acquisition Corp., a Delaware corporation ("Parent"), and each of Parent's direct and indirect Subsidiaries listed on the signature pages thereto (collectively with Parent, "Sellers" and each individually a "Seller"). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Agreement.

Information set forth in these Schedules may not be required to be disclosed pursuant to the Agreement. The disclosure of any information shall not be deemed to constitute an acknowledgment that such information is required to be disclosed in connection with the representations and warranties made by the Sellers in the Agreement or that such information is material, nor shall such information be deemed to establish a standard of materiality, nor shall it be deemed an admission of any liability of, or concession as to any defense available to, the Sellers. These Schedules correspond to the section numbers in the Agreement, and any information disclosed in any Schedule shall be deemed to be disclosed and incorporated into any other Schedules where such disclosure would be reasonably apparent.

These Schedules do not, and shall not be construed to, broaden or otherwise amplify the representations, warranties, agreements or covenants in the Agreement.

These Schedules include brief descriptions or summaries of certain agreements and instruments. Such descriptions or summaries do not purport to be comprehensive.

In disclosing the information in these Schedules, the Sellers expressly do not waive any attorney-client privilege associated with any such information or any protection afforded by the "work product doctrine" with respect to any of the matters disclosed or discussed herein.

* * * * *

Schedule 1.1

Permitted Encumbrances

Debtor	Secured Party	Jurisdiction	Filing Date
HMX, LLC	S-Net Communications, Inc.	Delaware	11/1/2011
HMX, LLC	AT&T Capital Services, Inc.	Delaware	11/2/2011
HMX, LLC	AT&T Capital Services, Inc.	Delaware	11/4/2011
HMX, LLC	AT&T Capital Services, Inc.	Delaware	11/23/2011
HMX, LLC	Canon Financial Services	Delaware	1/6/2012
HMX, LLC	Destiny USA Holdings LLC	Delaware	6/14/2012
HMX, LLC	S-Net Communications, Inc.	Illinois	11/1/2011

Schedule 2.2(b)

Excluded Assets

1. Receivables and other assets related to Remala Trading B.V., SKNL North America BV and affiliated companies.
2. Nontransferable deferred tax assets.
3. Leasehold improvements and other permanent non moveable assets related to retail and warehouse locations for leases that are not Assumed Contracts.
4. All offshore piece goods for the special markets division.
5. All raw material at subcontractors for non-continuing FG brands.
6. Trim related to non-continuing brands.

Schedule 2.3

Assumed Liabilities

List of Assumed Contracts to be provided by Purchaser at least three (3) days prior to entry of the Bid Procedures Order.

(a)

Class	Sub Class	Vendor Name	Total Amount (as of 10/13/12)
INVENTORY	FINISHED GOODS	AURORA APPAREL PVT. LTD	-236,102.30
INVENTORY	FINISHED GOODS	CAMICERIA ELLEGI SRL	-17,966.00
INVENTORY	FINISHED GOODS	CASHMERE CLASSIC	-101,910.00
		CHANGZHOU DAHUA IMP &	
INVENTORY	FINISHED GOODS	EXP CORP	-96,482.35
INVENTORY	FINISHED GOODS	CI EXPOFARO SAS	-90,146.16
INVENTORY	FINISHED GOODS	DD BEST APPAREL	-115,534.06
INVENTORY	FINISHED GOODS	FIORDALISO SRL	-12,910.00
INVENTORY	FINISHED GOODS	FRANKY & RICKY S.A.	-74,489.89
INVENTORY	FINISHED GOODS	GRUBIG INT CO LTD	-90,150.00
INVENTORY	FINISHED GOODS	MAKLIHON MFG CORP	-30,456.20
INVENTORY	FINISHED GOODS	MFH KNITS	-48,564.20
INVENTORY	FINISHED GOODS	OTTO INT, (USA) LLC	-771,797.43
INVENTORY	FINISHED GOODS	PENG FLOURISHING MAN CO	-88,897.00
		PERFORMAX GOLF &	
INVENTORY	FINISHED GOODS	COMPOSITE INC	-310,205.09
		PT BINTANG MANDIRI	
INVENTORY	FINISHED GOODS	HANAFINDO	-25,937.53
		PT. TRISULA GARMINDO	
INVENTORY	FINISHED GOODS	MANUFACTU	-20,927.00
		SHANGHAI NEWISER TEXTILE	
INVENTORY	FINISHED GOODS	CO LT	-122,487.78
INVENTORY	FINISHED GOODS	SHINA ITS CORP	-746,124.00
INVENTORY	FINISHED GOODS	TARVAS DIS TIC LTD STI	-58,787.20
INVENTORY	FINISHED GOODS	WAYFOON GARMENT LTD	-137,864.89
		WUXI NATURAL TEXTILE	
INVENTORY	FINISHED GOODS	INDUSTRIE	-67,927.60
		ZHEJIANG JIAXIN SILK CORP.	
INVENTORY	FINISHED GOODS	LTD	-57,115.60
INVENTORY	PIECE GOODS	AMY KEATS, LLC	-1,142.70
INVENTORY	PIECE GOODS	BOTTO GIUSEPPE & FIGLI SPA	-1,706.52
INVENTORY	PIECE GOODS	CANCLINI TESSILE SPA	-145.92
INVENTORY	PIECE GOODS	COMERO S.P.A.	-5,574.78
INVENTORY	PIECE GOODS	E. THOMAS S.P.A.	-125,041.14
		EIGHTEEN INTERNATIONAL	
INVENTORY	PIECE GOODS	LTD	-261,617.83
INVENTORY	PIECE GOODS	FILATI DRAGO S.P.A	-92,070.21
INVENTORY	PIECE GOODS	GETZNER TEXTIL AG	-125.88
INVENTORY	PIECE GOODS	HERBERT GLADSON LTD.	-89,092.04
INVENTORY	PIECE GOODS	HMS INTERNATIONAL	-102,448.73

INVENTORY	PIECE GOODS	LANIFICIO DI PRAY SPA	-38,423.25
INVENTORY	PIECE GOODS	LANIFICIO ZIGNONE	-13,099.72
INVENTORY	PIECE GOODS	LEOMASTER SPA	-192.56
INVENTORY	PIECE GOODS	LORO PIANA	-481,666.67
INVENTORY	PIECE GOODS	SCABAL USA INC	-28,980.00
INVENTORY	PIECE GOODS	SUCCESSORI REDA S.P.A.	-49,891.94
INVENTORY	PIECE GOODS	TEXTILE IMPORT	-154,161.09
		VITALE BARBERIS CANONICO	
INVENTORY	PIECE GOODS	SPA	-1,875.80
INVENTORY	PIECE GOODS	WARREN CORPORATION	-571,527.68
INVENTORY	TRIM	ACE BINDING COMPANY	-13,963.33
INVENTORY	TRIM	BEIJING GBSN TEXTILE CO.	-19,157.36
INVENTORY	TRIM	BWF FACOL	-6,140.59
INVENTORY	TRIM	CERVOTESSILE CHINA	-29,243.48
INVENTORY	TRIM	CERVOTESSILE S.P.A.	-90,852.45
INVENTORY	TRIM	DURO TEXTILES LLC	-79,686.42
INVENTORY	TRIM	FVL S.R.L	-44,348.09
		FVL TEXTILE(SHENYANG) CO.	
INVENTORY	TRIM	LTD	-13,955.07
INVENTORY	TRIM	GUTERMANN OF AMERICA INC	-8,777.58
INVENTORY	TRIM	HELSAFORM GMBH	-18,670.06
INVENTORY	TRIM	Interpad MANUFACTURING INC.	-45,787.85
INVENTORY	TRIM	KUFNER TEXTILE CORP	-37,589.84
		LES ENTOILAGES INTERFORME	
INVENTORY	TRIM	INC.	-58,864.18
INVENTORY	TRIM	QST INDUSTRIES INC	-15,816.46
INVENTORY	TRIM	ROVAGNATI VINCENZO SPA	-8,650.00
INVENTORY	TRIM	SHANTZ ASSOCIATES INC	-4,645.87
		TESSITURA MARCO	
INVENTORY	TRIM	PASTORELLI SRA	-224,839.46
INVENTORY	TRIM	TIGER BUTTON CORP	-68,445.58
INVENTORY	TRIM	YKK (U.S.A.) INC.	-491.04
		ADVT & SPACE	
OVERHEAD	MEDIA	PGA MERCHANDISE SHOW 2013	-80,875.00
		AMUNEAL MANUFACTURING	
OVERHEAD	EXPENDITURE	CORP	-41,489.75
OVERHEAD	CONSULTANTS	AMBAR SHRIVASTAVA	-2,205.00
OVERHEAD	CONSULTANTS	CAROL MACK	-1,620.00
OVERHEAD	CONSULTANTS	COURTNEY BUTTON	-200.00
OVERHEAD	CONSULTANTS	DAVID SANCHEZ	-1,480.00
OVERHEAD	CONSULTANTS	DISKIN, JOSEPH	-3,321.35
OVERHEAD	CONSULTANTS	GAYLE ADAMS	-227.10
OVERHEAD	CONSULTANTS	JENNY HAN	-1,826.67
OVERHEAD	CONSULTANTS	LISEL ARROYO	-4,317.50
OVERHEAD	CONSULTANTS	LUDMILLA BARBUSH	-80.53
OVERHEAD	CONSULTANTS	MARY CAMPBELL	-4,250.00
OVERHEAD	CONSULTANTS	MELINDA SATTERFIELD	-3,397.50
OVERHEAD	CONSULTANTS	PHILIPPE IGAWA	-4,125.00
OVERHEAD	CONSULTANTS	RADA SHADICK	-2,167.50
OVERHEAD	CONSULTANTS	SHERRY JETTER	-7,500.00
OVERHEAD	CONSULTANTS	STUDIO 58	-2,900.00
OVERHEAD	CONSULTANTS	WILCOXON, RICHARD	-554.00

OVERHEAD	CUSTOMS	MOHAWK GLOBAL LOGISTICS ROC	-26,523.67
OVERHEAD	ECOMMERCE	EXPERIAN MARKETING SOLUTIONS	-30,178.62
OVERHEAD	ECOMMERCE	GOOGLE INC.	-180,913.47
OVERHEAD	ECOMMERCE	LINKSHARE CORPORATION	-59,444.78
OVERHEAD	ECOMMERCE	MINISOFT, INC.	-1,950.00
OVERHEAD	ECOMMERCE	REDPRAIRIE CORP.	-1,260.00
OVERHEAD	ECOMMERCE	SIQUIS LIMITED	-13,032.42
OVERHEAD	ECOMMERCE	THE HOLCOMBE GROUP, INC.	-33,954.88
OVERHEAD	ECOMMERCE	WEBLINC	-121,246.47
OVERHEAD	IT SERVICE		
OVERHEAD	VENDORS	ARCHERPOINT LLC	-20,527.58
OVERHEAD	IT SERVICE	COMPETITIVE SUPPORT OPTIONS	-899.73
OVERHEAD	VENDORS	COMPUTER GENERATED SOLUTIONS	-4,039.00
OVERHEAD	IT SERVICE		
OVERHEAD	VENDORS	GXS, INC	-10,591.08
OVERHEAD	IT SERVICE		
OVERHEAD	VENDORS	INTERTRADE SYSTEMS, INC	-125.00
OVERHEAD	IT SERVICE		
OVERHEAD	VENDORS	IRON MOUNTAIN	-41,691.10
OVERHEAD	IT SERVICE		
OVERHEAD	VENDORS	KLEINSCHMIDT INC	-382.88
OVERHEAD	IT SERVICE		
OVERHEAD	VENDORS	LMT COMPUTER SYSTEMS	-9,357.00
OVERHEAD	IT SERVICE	MANAGESERVE TECHNOLOGY INC	-77,066.00
OVERHEAD	VENDORS	NEW GENERATION COMPUTING INC	-23,793.75
OVERHEAD	IT SERVICE		
OVERHEAD	VENDORS	USA.NET INC.	-5,940.72
OVERHEAD	MFG		
OVERHEAD	SERVICES/SUPPLIE	AMERIPRIDE SERVICES INC	-1,250.10
OVERHEAD	MFG		
OVERHEAD	SERVICES/SUPPLIE	BEISLER AMERICA LLC	-1,123.15
OVERHEAD	MFG		
OVERHEAD	SERVICES/SUPPLIE	CEP Exhibit Productions, Inc.	-102,507.00
OVERHEAD	MFG		
OVERHEAD	SERVICES/SUPPLIE	CHECKPOINT SYSTEMS INC.	-80.05
OVERHEAD	MFG		
OVERHEAD	SERVICES/SUPPLIE	COMPO MACHINERY CORP	-629.39
OVERHEAD	MFG		
OVERHEAD	SERVICES/SUPPLIE	CONTRACT SEW & REPAIR INC	-30,740.97
OVERHEAD	MFG		
OVERHEAD	SERVICES/SUPPLIE	CY PLASTICS WORKS INC	-1,000.03
OVERHEAD	MFG		
OVERHEAD	SERVICES/SUPPLIE	DURKOPP ADLER AMERICA INC	-5,791.59
OVERHEAD	MFG		
OVERHEAD	SERVICES/SUPPLIE	GERBER TECHNOLOGY	-450.24
OVERHEAD	MFG		
OVERHEAD	SERVICES/SUPPLIE	H FIELD & SONS INC	-14,096.66
OVERHEAD	MFG		
OVERHEAD	SERVICES/SUPPLIE	HANGERLOGIC INC	-17,601.00

OVERHEAD	MFG SERVICES/SUPPLIE	INTERNATIONAL HANGER	-11,295.00
OVERHEAD	MFG SERVICES/SUPPLIE	INTERTRADE SYSTEMS INC.	-2,525.00
OVERHEAD	MFG SERVICES/SUPPLIE	MAINETTI CANADA INC	-7,550.00
OVERHEAD	MFG SERVICES/SUPPLIE	MARK BRIC INC.	-292.50
OVERHEAD	MFG SERVICES/SUPPLIE	PFAFF INDUSTRIAL OF AMERICA	-164.48
OVERHEAD	MFG SERVICES/SUPPLIE	S. WALTER PACKAGING CORP	-19,058.70
OVERHEAD	MFG SERVICES/SUPPLIE	SUPERIOR IMPRINTS	-8,433.11
OVERHEAD	MFG SERVICES/SUPPLIE	THE BOX MAKER INC	-7,023.19
OVERHEAD	MFG SERVICES/SUPPLIE	VEIT-AMERICAS	-8,882.00
OVERHEAD	OFFICE SUPPLIES	CULLIGAN	-507.37
OVERHEAD	SAMPLES	SWATCHCRAFT	-42,520.00
OVERHEAD	SHIPPING & POSTAGE	ALPI USA INC.	-55,498.25
OVERHEAD	SHIPPING & POSTAGE	ALPI USA INC. (NY)	-343,377.32
OVERHEAD	SHIPPING & POSTAGE	C&M FORWARDING COMPANY INC.	-57,140.68
OVERHEAD	SHIPPING & POSTAGE	FED EX	-2,060.28
OVERHEAD	SHIPPING & POSTAGE	FEDERAL EXPRESS CORP	-34,899.82
OVERHEAD	SHIPPING & POSTAGE	JAMESTOWN CONTAINER COMPANIES	-6,994.75
OVERHEAD	SHIPPING & POSTAGE	UPS	-460,283.55
OVERHEAD	SHIPPING & POSTAGE	UPS SUPPLY CHAIN SOLUTIONS	-37,416.96
OVERHEAD	SOFTWARE	AMS INC.	-84,000.00
OVERHEAD	MAINTENANCE SOFTWARE	LECTRA SYSTEMS	-62,757.14
OVERHEAD	MAINTENANCE	JAMES LINDELL	-1,173.00
CRITICAL VENDORS			(8,386,069.78)
OVERHEAD	ROYALTIES	ARGYLE CULTURE	-37,500.00
OVERHEAD	ROYALTIES	JONESHEIRS, INC.	-2,078.16
ROYALTIES			(39,578.16)
EMPLOYEES			(2,000,000.00)
TOTAL			(10,425,647.94)

Schedule 3.1

Organization and Good Standing

Legal Name	Jurisdiction of Organization
HMX Acquisition Corp.	Delaware
HMX, DTC Co.	Delaware
Quarter Real Estate, LLC	Delaware
HMX, LLC	Delaware
HMX Des Plaines, LLC	Delaware
HMX Touhy Avenue, LLC	Delaware

Schedule 3.3

No Conflicts

Substantially all of the Contracts require consent for the assignment of such Contract.

Schedule 3.4

Consents and Approvals

None.

Schedule 3.5(b)

Compliance with Law

None.

Schedule 3.6

Title to Assets

None.

Schedule 3.7

Cure Amounts

List of Cure Amounts to be provided by Purchaser at least three (3) days prior to entry of the Bid Procedures Order.

Schedule 3.8

Litigation

1. *Emerisque Brands Limited v. SKNL North America BV, HMX, LLC, et al.* Remala Trading B.V., HMX, LLC, HMX DTC Co., Quartet Real Estate, LLC, Coppley Corp., REMALA Trading B.V., HMX Poland SP. ZO.O., and HMX Acquisition Corp. have been joined into a court action in the Dutch courts on May 12, 2010, brought by Emerisque Brands Limited (“Emerisque”) against SKNL North America BV (“SKNL”), which is the majority equity owner of Remala. The complaint alleged breaches of a shareholder’s agreement between Emerisque and SKNL. This dispute is subject to English law and is subject of subject of arbitration in the The London Court of International Arbitration. The Dutch court proceedings are suspended pending the outcome of the arbitration proceedings.
2. *Beverly-Dayton, LLC v. HMX, LLC, et al.*, Case No. SC118330, Los Angeles County Superior Court (Santa Monica Courthouse), California. On October 5, 2012, plaintiff (lessor) filed an amended complaint for unlawful detainer – eviction, seeking forfeiture of the leased premises, past due rent, attorneys’ fees, damages and other relief.
3. *Milberg Factors, Inc. v. HMX, DTC Co.*, Index No. 156507/2012, Supreme Court of the State of New York, County of New York. On September 19, 2012, plaintiff (vendor) filed a verified complaint, seeking damages, interest, costs, disbursements and other relief.
4. *New York Environmental Tech Inc. v. HMX, LLC*, Index No. CC-011570-12/RO, State of New York, County of Monroe, Rochester City Court – Civil Division Commercial Claim Part. On September 12, 2012, plaintiff (vendor) filed a notice of claim for failure to pay for services rendered, seeking damages, plus costs.
5. *Sebert Landscaping v. HMX, LLC and HMX Touhy Avenue, LLC*, Case No. 12 M3 3114, Circuit Court of Cook County, Illinois, Municipal Department, Third District. On September 11, 2012, plaintiff (vendor) filed a verified complaint at law for breach of contract and quantum meruit, seeking damages, plus costs. The court entered a default judgment against HMX, LLC and HMX Touhy Avenue, LLC, in the amount of \$5,050.
6. *Talon International, Inc. v. adidas America, Inc.*, Civil Action No. 2:12-cv-02572, United States District Court for the Northern District of New York. Defendant served HMX, LLC with a third-party subpoena to testify at a deposition in a civil action, seeking testimony and document production in connection with a pending trademark infringement action.

7. *Staiger Hardware Company, Inc. v. HMX, LLC*, Cause No. 46004-1209-PL-1144, LaPorte, Indiana Superior Court No. 4 Sitting at Michigan City, Indiana. On September 5, 2012, plaintiff (landlord) filed a complaint and related documents, seeking possession of leased premises, past due rent and late fees, plus unpaid rent to date of judgment, plus late fees, court costs and attorney fees.
8. *Germar Properties, LLC v. HMX, LLC t/a "Streets of Georgetown"*, Case No. 21489 LTB 2012, Superior Court of the District of Columbia Civil Division, Landlord and Tenant Branch. On August 9, 2012, plaintiff (landlord) filed a verified complaint for possession of real property, seeking possession of leased premises, past due rent, utility charges, taxes, late fees, attorneys' fees, insurance, HVAC repair fees and maintenance and pest control fees.
9. *HMX, LLC v. Gonzalez*, EEOC charge filed and dismissed. Gonzalez filed suit in the State of Indiana. HMX filed Verified Response. Hearing pending.
10. *HMX, LLC v. Galas*, EEOC charge filed with the Illinois Human Rights Commission. HMX responding to additional discovery.

Schedule 3.9

Intellectual Property

Certain of the Sellers' Intellectual Property is currently in the name of EMBU Investments Spolka Z Ograniczona Odpowiedzialnoscia Branch In Luxembourg (“EMBU”), the predecessor entity to HMX Poland SP.Z O.O., or in the name of a predecessor in interest to EMBU. The Sellers are currently in the process of transferring such Intellectual Property to HMX, LLC.

Schedule 3.11

Real Property

Owned Real Property

Seller Party	Address
HMX, LLC	1155 Clinton Ave, Rochester, New York 14621
Quartet Real Estate, LLC	2613 Fifth Avenue, Rock Island, Illinois
HMX Touhy Avenue, LLC	1680-1700, East Touhy Avenue, Des Plaines, Illinois

Leased Real Property

Seller Party	Address
HMX, LLC*	767B Market Street, San Francisco, California
HMX, LLC	1225 Jefferson Road, Henrietta, New York
HMX, LLC	Manchester Center, 32 Center Hill Road, Manchester, Vermont
HMX, LLC	Tidewater Outlet Mall, 375 S. Route #1, Kittery, Maine
HMX, LLC	Woodbury Common Premium Outlets, 821 Grapevine Court, Central Valley, New York
HMX, LLC*	1209 South Third Street, Suite #7, Naples, Florida
HMX, LLC	125 Park Avenue, 7-8 th Floor New York, NY
HMX, LLC*	Building O 8509 South 208 Street Kent, Washington
HMX, LLC*	St. Augustine Prime Outlets, 510 Prime Outlets Blvd. Ste. 1070, St. Augustine, Florida
HMX, LLC*	208 South LaSalle Street Chicago, Illinois
HMX, LLC	543 Madison Ave. New York, NY
HMX, LLC*	522 Franklin Street Michigan City, IN
HMX, LLC*	132 Cayuga Road Cheektowaga, NY
HMX, LLC	1725 West Lake Ave, Ste 210 Seattle, Washington
HMX, LLC*	310 N Beverly Drive

	Beverly Hills, California
HMX, LLC	1254 Wisconsin Avenue NW Washington, DC
HMX, LLC	304 Hiawatha Boulevard W Syracuse, NY
HMX, LLC	3582 Arden Road Hayward, California
HMX, LLC	1680-1700 East Touhy Avenue Des Plaines, IL

*As a result of the Sellers' distressed financial situation, the lease payments for these properties are past due and the Sellers intend to terminate these leases going forward.

Schedule 3.12

Customers, Vendors and Suppliers

As a result of the Sellers' distressed financial situation, a substantial number of the customers, vendors, suppliers and distributors of the Sellers have threatened to cancel or terminate their relationship with the Sellers.

Schedule 3.15

Inventory

1. Damaged or imperfect goods on the system.
2. Damaged or imperfect goods off the system (no value).

Schedule 8.1

Employee Matters

(a)

<u>Payroll Name</u>	<u>Status</u>
Fang, Wen	On Leave
Garcia, Tony	On Leave
Gutierrez, Esperanza	On Leave
Jin, Ying	On Leave
Lam, Shuet	On Leave
Lee, Angela	On Leave
Li, Xing C	On Leave
Luu, Nu	On Leave
Nguyen, Tam	On Leave
Padilla, Hernan	On Leave
Patel, Nayana	On Leave
Powell, Shakela	On Leave
Ruan, Xiuyun	On Leave
Yagmur, Sengul	On Leave
Zhou, Jian	On Leave
Zizumbo, Berta	On Leave
Zou, Yingci	On Leave
Egan, Donald	On Leave

(b)

<u>Payroll Name</u>	<u>Status</u>
Fung Yip, Helen	On Leave
Rivkind, Vyacheslav	On Leave
Salvato, Dominick	On Leave
Smith, Jennifer	On Leave

Schedule 9.3

Approvals; No Injunctions

None.

EXHIBIT A

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (this “**Assumption Agreement**”) is made and entered into this ___ day of October, 2012, by and among Authentic Brand Group, LLC, a Delaware Limited Liability Corporation and any entity or entities formed on its behalf to consummate the transaction described herein (“**Purchaser**”), HMX Acquisition Corp., a Delaware corporation (“**Parent**”), and each of Parent’s direct and indirect Subsidiaries listed on the signature pages hereto (collectively with Parent, “**Sellers**” and each individually a “**Seller**”).

A. The Sellers and Purchaser are parties to that certain Asset Purchase Agreement of dated October 16, 2012 (the “**Purchase Agreement**”), pursuant to which Purchaser has agreed to purchase the Assets; and

B. Pursuant to the Purchase Agreement, Purchaser has agreed to assume certain obligations of the Sellers, as set forth herein.

For and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Capitalized Terms.** Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Purchase Agreement.
2. **Assignment and Assumption.** Effective as of the on the Closing Date, the Sellers hereby assigns, sets over and transfers unto Purchase all of its right, title and interests in, to and under the Assumed Contracts (other than as set forth in Section 2.4 of the Purchase Agreement), and Purchaser hereby accepts the within assignment and assumes and agrees with the Sellers to perform and comply with and to be bound by all the terms, covenants, agreements, provisions and conditions of each Assumed Contract on the part of the Sellers to the extent such obligations accrue after the Closing Date, are not required to be performed on or prior to the Closing Date and are disclosed in the text of such Assumed Contracts and do not arise out of or relate to a default or breach of the applicable Assumed Contracts prior to the Closing Date;
3. **Accrued Obligations.** Certain of the accrued obligations under the Assumed Contracts, as of the close of business on the Closing Date shall be assumed and performed by Purchaser.
4. **Terms of the Purchase Agreement.** The terms of the Purchase Agreement are incorporated herein by this reference. In the event of any conflict or inconsistency between the terms of the Purchase Agreement and the terms hereof, the terms of the Purchase Agreement shall govern.
5. **General.**

(a) **Headings.** The headings in this Assumption Agreement are inserted for convenience of reference only and shall not be a part of or control or affect the meaning hereof.

(b) Severability. If any provision of this Assumption Agreement shall be declared void or unenforceable by any judicial or administrative authority, the validity of any other provision shall not be affected thereby.

(c) Counterparts; Facsimile Signatures. This Assumption Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Assumption Agreement may be executed by facsimile signature.

(d) Assumption Agreement Binding. This Assumption Agreement and the rights and duties hereunder shall be binding upon and inure to the benefit of the successors, assigns, heirs and legal and personal representatives of the parties hereto.

(e) Gender. In this Assumption Agreement, unless the context requires otherwise the singular includes the plural, the plural the singular, the masculine gender includes the neuter, masculine and feminine genders and vice versa.

(f) Governing Law. This Assumption Agreement shall be governed exclusively by the laws of the State of New York, without regard to its choice of law provisions.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date first written above.

SELLERS:

HMX ACQUISITION CORP.

By: _____
Name:
Title:

HMX, DTC CO.

By: _____
Name:
Title:

HMX DES PLAINES, LLC

By: _____
Name:
Title:

HMX TOUHY AVENUE, LLC

By: _____
Name:
Title:

QUARTET REAL ESTATE, LLC

By: _____
Name:
Title:

HMX, LLC

By: _____
Name:
Title:

PURCHASER:

AUTHENTIC BRANDS GROUP, LLC

By: _____

Name:

Title:

EXHIBIT B

COPYRIGHT ASSIGNMENT

This Copyright Assignment (this "**Assignment**") made as of October __, 2012, by HMX, LLC, a Delaware corporation ("**Assignor**") to Authentic Brand Group, LLC, a Delaware Limited Liability Corporation and any entity or entities formed on its behalf to consummate the transaction described herein ("**Assignee**").

For good and valuable consideration, receipt of which is hereby acknowledged, Assignor hereby sells, assigns and transfers to Assignee, its successors and assigns, its entire right, title and interest in and to the works of authorship listed on the attached Schedule A (collectively "**Works**"), including but not limited to worldwide copyright rights, any and all registrations and applications relating thereto, and any renewals, extensions and continuations thereof, and in and to all income, royalties, damages, claims and payments now or hereafter due or payable with respect thereto, and in and to all causes of action, either in law or in equity for past, present or future infringement, and in and to all rights corresponding to the foregoing throughout the world.

Assignor agrees to execute all documents and assist in all proceedings (at the sole cost and expense of the Assignee) to perfect, register, or record the rights of the Assignee to the Works as Assignee may reasonably deem appropriate. If Assignor does not, within fifteen (15) days of presentment, return the requested executed documents, then Assignee is hereby granted a limited power of attorney to execute all such documents on behalf of Assignor. This power of attorney is coupled with an interest and is irrevocable.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Copyright
Assignment on the date first written above.

ASSIGNOR:

HMX, LLC

By: _____
Name:
Title:

ASSIGNEE:

AUTHENTIC BRANDS GROUP, LLC

By: _____

Name:

Title:

SCHEDULE A

EXHIBIT C

TRADEMARK ASSIGNMENT

This Trademark Assignment is made as of October __, 2012, by HMX, LLC, a Delaware corporation ("**Assignor**") to Authentic Brand Group, LLC, a Delaware Limited Liability Corporation and any entity or entities formed on its behalf to consummate the transaction described herein ("**Assignee**").

WHEREAS, Assignor is the owner of the right, title and interest in and to the trademarks set forth on Schedule A attached hereto (the "**Marks**"), along with the goodwill of the business developed through the use of any symbolized by the Marks.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

Assignor hereby transfers, conveys, and assigns to Assignee all of Assignor's right, title, and interest in, to, and under the Marks, including any and all common law rights thereof and applications therefor, together with the goodwill associated with the Marks, and any and all renewals and extensions thereof that may hereafter be secured under the laws now or hereafter in effect in the United States or any other country or jurisdiction throughout the world. This assignment is made in connection with the transfer of the business to which the Marks pertain. Assignee will now stand in the shoes of Assignor as Licensor under the License, and assumes all rights and obligations thereunder. As part of this Trademark Assignment, Assignor hereby assigns to Assignee all of its rights under the License.

Without limiting the generality of the foregoing, Assignee will have the sole right to sue and collect damages and/or profits for any past, present or future infringements or other violations of the Marks.

Assignor agrees to execute all documents and assist in all proceedings (at the sole cost and expense of the Assignee) to perfect, register, or record the rights of the Assignee to the Marks as Assignee may reasonably deem appropriate.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Assignor and Assignee have executed this
Trademark Assignment on the date first written above.

ASSIGNOR:

HMX, LLC

By: _____
Name:
Title:

ASSIGNEE:

AUTHENTIC BRANDS GROUP, LLC

By: _____

Name:

Title:

SCHEDULE A

TRADEMARKS

<u>Trademark Description</u>	<u>Jurisdiction</u>	<u>Application No.</u>	<u>Application Date</u>

EXHIBIT D

BILL OF SALE

BILL OF SALE, dated as of October ___, 2012, by and among Authentic Brand Group, LLC, a Delaware Limited Liability Corporation and any entity or entities formed on its behalf to consummate the transaction described herein ("**Purchaser**"), HMX Acquisition Corp., a Delaware corporation ("**Parent**"), and each of Parent's direct and indirect Subsidiaries listed on the signature pages hereto (collectively with Parent, "**Sellers**" and each individually a "**Seller**").

WHEREAS the Sellers and Purchaser have entered into an Asset Purchase Agreement, dated as of October 16, 2012 (the "**Agreement**") under which the Sellers has agreed to sell to the Purchaser, and the Purchaser has agreed to buy from the Sellers, all of Assets (as such term is defined in the Agreement). Unless otherwise defined, capitalized terms used in this Bill of Sale have the meanings given to them in the Agreement.

NOW, THEREFORE, in accordance with the provisions of the Agreement, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The Sellers hereby sell, assign, convey, transfer and deliver to Purchaser or to the Licensee as designated by the Purchaser if the License Agreement is consummated, and Purchaser shall purchase from Sellers, all of Sellers' right, title and interest in the Assets, free and clear of all Encumbrances other than the Permitted Encumbrances, including all of Sellers' right, title and interest in the following:

- (a) all tangible personal property owned or used by any Seller including, without limitation, all machinery, equipment, computers, furniture, furnishings, fixtures, office supplies, vehicles, and tools that relate in any way to the Business;
- (b) all Owned Real Property, together with all buildings, fixtures, structures, improvements and other appurtenances thereto and thereon;
- (c) all interests of Sellers in the Assumed Contracts;
- (d) all Avoidance Actions relating to Assumed Contracts;
- (e) all Inventory that relates in any way to the Business;
- (f) cash and cash equivalents of Sellers;
- (g) all interests of Sellers in and to all Intellectual Property (and all Avoidance Actions related thereto);
- (h) all Accounts Receivable;
- (i) all Permits that relate in any way to the Business (to the extent transferrable);

(j) all books and records, files, data, reports, computer codes and sourcing data, advertiser and supplier lists, cost and pricing information, business plans, and manuals, blueprints, research and development files, personnel records and other records of any Seller and that relate in any way to the Business;

(k) all marketing, advertising and promotional materials; and

(l) all goodwill associated with the Business and/or the Assets.

2. Notwithstanding anything to the contrary in this Bill of Sale, the Excluded Assets specified in Section 2.2 of the Agreement are not being sold, assigned, conveyed or transferred to the Purchaser by this Bill of Sale.

3. The Sellers will, at any time and from time to time upon the reasonable request of the Purchaser, execute and deliver or cause to be executed and delivered such other instruments of transfer and take such other actions as may be reasonably requested by the Purchaser in order to sell, assign, transfer, convey and deliver to the Purchaser any or all of the Assets.

4. Nothing contained in this Bill of Sale shall be deemed to supersede, amend or modify any of the terms, conditions or provisions of the Agreement or any rights or obligations of the parties (or their permitted assigns) under the Agreement and, to the extent of any conflict between the Agreement and this Bill of Sale, the terms and provisions of the Agreement shall prevail.

5. This Bill of Sale shall be governed by and construed in accordance with the law of the State of [New York] applicable to agreements made and to be performed entirely within such State, without regard to the conflicts of law principles of such State. This Bill of Sale shall inure to the benefit of the Purchaser, its successors and permitted assigns and shall be binding upon the Sellers and its successors and permitted assigns.

[SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the parties have executed this Bill of Sale as of the
date first above written.

SELLERS:

HMX ACQUISITION CORP.

By: _____
Name:
Title:

HMX, DTC CO.

By: _____
Name:
Title:

HMX DES PLAINES, LLC

By: _____
Name:
Title:

HMX TOUHY AVENUE, LLC

By: _____
Name:
Title:

QUARTET REAL ESTATE, LLC

By: _____

Name:

Title:

HMX, LLC

By: _____

Name:

Title:

PURCHASER:

AUTHENTIC BRANDS GROUP, LLC

By: _____

Name:

Title:

EXHIBIT E

Summary Terms of License Agreement

1. Trademarks to be sold and licensed back to Operating Co:

- a. Hart Schaffner Marx
- b. Hickey Freeman
- c. Exclusively Misook
- d. Christopher Blue

2. Product

- a. Limited to existing product categories

3. Territory

- a. Limited to existing territories where product is currently sold

4. Term

- a. Five-year initial term, automatically extended for two additional five-year terms, in each case terminable by Licensor only in the event that minimum royalties are not timely paid

5. Royalty Rates

- a. *Full Price Wholesale Net Sales*
 - i. 8%
- b. *Off Price Wholesale Net Sales*
 - i. 3%
 - ii. Off Price Wholesale Defined as greater than 30% off of the standard wholesale price
 - iii. Off Price Wholesale may not exceed 50% of total Hickey Freeman or Hart Schaffner Marx sales. In the event licensee exceeds the 50% cap, any additional sales above 50% shall have the 8% royalty rate applied.
- c. *Full Price Retail Stores & Ecommerce Net Sales*
 - i. 4%
- d. *Outlet Stores and Warehouse Sales*
 - i. 2%
- e. *Minimum Royalty Payment*
 - i. Year 1 & 2 – \$8.5 million
 - ii. Thereafter – greater of 80% of the prior actual earned royalty or \$9.5 million

6. Sublicense Rights for Product and International

- a. Licensee has the right to sublicense for the categories & territories defined in the license agreement with Licensor approval, not to be unreasonably withheld.

- b. These terms only apply to the territories & categories licensee is responsible for as defined in the license agreement
- c. ABG keeps first \$1 million per year of royalties paid by other licensees of the brands. Amounts above \$1 million per year are split 80% to IPCO and 20% to Operating Co.

7. All design, marketing, distribution decisions are the sole right of Licensee

EXHIBIT F



DLA Piper US LLP
203 North LaSalle Street, Suite 1900
Chicago, Illinois 60601-1263
www.dlapiper.com

Richard A. Chesley
richard.chesley@dlapiper.com
T 312.368.3430
F 312.630.5330

October 16, 2012

VIA OVERNIGHT DELIVERY

HMX Acquisition Corp.
125 Park Avenue, 7th Floor
New York, New York 10017
Attn: Doug Williams

Re: Asset Purchase Agreement Escrow Agreement

To Whom It May Concern:

Reference is hereby made to that certain Asset Purchase Agreement (together with any amendments, exhibits, schedules or other documents thereto, including, without limitation, the Escrow Agreement, the "APA") of even date herewith by and among Authentic Brands Group, LLC and any entity or entities formed on its behalf to consummate the transactions described in the Agreement ("Purchaser"), HMX Acquisition Corp., and HMX Poland sp. Z o.o. (together, the "Sellers").


Pursuant to Section 2.8 of the APA, the Purchaser is required to provide to the Escrow Agent an initial deposit of \$2,100,000.00 (the "Initial Deposit") upon the execution of the APA. As the Escrow Agent has not been appointed, upon the execution of the APA, the Purchaser shall remit the Initial Deposit into the client trust account at DLA Piper LLP (US) ("DLA"), and shall be held for safekeeping pending transfer into the Escrow Account as that term is defined in the APA (the "Escrow Account"). DLA shall provide the Sellers with prompt notice upon receipt of the Initial Deposit. Within one business day following the formation of the Escrow Account, DLA shall provide written instructions to DLA Piper LLP (US) to transfer the entirety of the funds to the Escrow Account.

If you should have any questions or comments, please do not hesitate to contact me.

Very truly yours,

DLA Piper US LLP

Richard Chesley

Agreed and acknowledged
AUTHENTIC BRANDS GROUP, LLC
By: 

EAST52398946.1

Exhibit B to Debtors' Motion

[Bid Procedures Order]

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

In re:	)	Chapter 11
)	
HMX ACQUISITION CORP., <i>et al.</i> , ¹	)	Case No. 12-14300 (ALG)
)	
Debtors.	)	(Joint Administration Requested)
)	

**ORDER (A) AUTHORIZING THE DEBTORS' ENTRY INTO THE STALKING HORSE
ASSET PURCHASE AGREEMENT, (B) AUTHORIZING AND APPROVING THE
BIDDING PROCEDURES AND BREAK-UP FEE, (C) APPROVING THE NOTICE
PROCEDURES, (D) SETTING A DATE FOR THE SALE HEARING, AND
(E) AUTHORIZING THE DEBTORS TO FILE CERTAIN
DOCUMENTS UNDER SEAL**

Upon consideration of the motion (the "Motion")² of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), by and through their undersigned counsel, hereby move this Court pursuant to sections 105, 363 and 363 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the "Bankruptcy Code"), and rules 6004, 6006, and 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for entry of orders (i) authorizing the Debtors to enter pursuant to sections 105(a), 363, 365, 503 and 507 of title 11 of the United States Code (the "Bankruptcy Code"), as supplemented by Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for entry of an order (this "Bidding Procedures Order"): (i) authorizing the Debtors to enter into the Stalking Horse Asset Purchase Agreement; (ii) approving the Bidding Procedures; (iii) approving the notice establishing the dates, times, and locations of the deadline to bid on the Purchased Assets,

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, to the extent applicable, are: HMX Acquisition Corp. (9861); HMX Poland Sp. z o. o.; HMX, LLC (8971); Quartet Real Estate, LLC (8973); and HMX, DTC Co. (0162).

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

the auction of the Purchased Assets (the “Auction”), and the sale hearing for the Purchased Assets (the “Sale Hearing”) pursuant to the dates proposed in the Bidding Procedures Order, subject to the Court’s availability; (iv) approving the notice of the Debtors’ intent to assume, assign and/or transfer to the Successful Bidder or Back-Up Bidder, the contracts, commitments, leases, licenses, permits, purchase orders, and any other executory contracts and unexpired leases (collectively, the “Executory Contracts and Unexpired Leases”), and the corresponding cure amounts required to be paid in connection with such assumption, assignment and/or transfer; (v) authorizing the Debtors to file certain documents under seal; and (v) granting related relief; the Court having determined that the relief provided herein is in the best interest of the Debtors, their estates, creditors and other parties in interest; and due and adequate notice of the Motion having been given under the circumstances; and upon the record of the hearing on the Motion, and the full record of these cases; and after due deliberation thereon; and good and sufficient cause appearing therefore, it is hereby:

IT IS HEREBY FOUND AND DETERMINED THAT:⁴

A. This Court has jurisdiction over the Motion and the transactions contemplated therein pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M) and (O). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

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

⁴ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when applicable. *See* Bankruptcy Rule 7052.

C. Good and sufficient notice of the Motion and the relief sought therein has been given under the circumstances, and no other or further notice is required except as set forth herein with respect to the Auction and Sale Hearing. A reasonable opportunity to object or be heard regarding the relief provided herein has been afforded to parties-in-interest.

D. The Debtors' proposed notice of the Bidding Procedures is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction (as defined in the Bidding Procedures), the sale of the Purchased Assets, and the Bidding Procedures to be employed in connection therewith.

E. The Debtors have articulated good and sufficient business reasons for this Court to (i) approve the Bidding Procedures (ii) approve the Bid Protections as provided in the Stalking Horse Purchase Agreement; (iii) approve the scheduling of a bid deadline, auction and sale hearing for the sale of the Purchased Assets; and (iv) approve the establishment of procedures to fix the Cure Amounts to be paid under section 365 of the Bankruptcy Code in connection with the assumption, assignment and/or transfer of the Executory Contracts and Unexpired Leases.

F. The Bid Protections, to the extent payable under the Stalking Horse Purchase Agreement, (i) shall be deemed an actual and necessary cost and expense of preserving the Debtors' estates, (ii) are of substantial benefit to the Debtors' estates, (iii) are reasonable and appropriate, including in light of the size and nature of the transaction, the necessity to announce a sale transaction for the Debtors, and the efforts that have been and will be expended by the Stalking Horse Purchaser, (iii) have been negotiated by the parties and their respective advisors at arms' length and in good faith, and (iv) are necessary to ensure that the Stalking Horse Purchaser will continue to pursue the proposed transaction. The Stalking Horse Purchaser is

unwilling to commit to purchase the Debtors' assets under the terms of the Stalking Horse Purchase Agreement unless the Stalking Horse Purchaser is assured the Bid Protections.

G. The Bidding Procedures are reasonably designed to enable the Debtors to receive bids for the Purchased Assets and represent the best method for maximizing the realizable value of the assets.

H. The entry of this Bidding Procedures Order is in the best interests of the Debtors, their estates, creditors, and other parties-in-interest.

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

1. The Motion is granted as set forth herein.
2. All objections to the Motion or the relief provided herein that have not been withdrawn, waived or settled, and all reservations of rights included therein, hereby are overruled and denied on the merits.
3. The Bidding Procedures, in substantially the form attached hereto as **Schedule 1**, are hereby incorporated herein and approved, and shall apply with respect to the sale of the Debtors' Assets. The failure specifically to include or reference a particular provision of the Bidding Procedures in this Order shall not diminish or impair the effectiveness of such provision. The Debtors are authorized to take all actions necessary or appropriate to implement the Bidding Procedures.
4. The Debtors are authorized and directed to pay the Break-Up Fee and Expense Reimbursement, to the extent incurred, as provided in the Purchase Agreement without further order of the Court.

5. The Debtors' obligation to pay the Break-Up Fee and Expense Reimbursement, as provided in the Stalking Horse Purchase Agreement shall survive termination of the Stalking Horse Bid, shall constitute a superpriority administrative claim against the Debtors' estates pursuant to sections 105(a), 503(b) and 364(c)(1) of the Bankruptcy Code and shall be senior to, and have priority over, all other claims against the Debtors, including all claims with respect to the DIP Financing.

6. As further described in the Bidding Procedures, the deadline for submitting bids for the Purchased Assets (the "Bid Deadline") is November 28, 2012 at 5:00 p.m. (prevailing Eastern Time). No bid shall be deemed to be a Qualified Bid (as defined in the Bidding Procedures) or otherwise considered for any purposes unless such bid meets the requirements set forth in the Bidding Procedures.

7. The Debtors may sell the Purchased Assets by conducting an Auction in accordance with the Bidding Procedures. If Qualified Bids are timely received by the Debtors in accordance with the Bidding Procedures, the Auction shall take place on December 3, 2012 at 10:00 a.m. (prevailing Eastern Time) at the offices of Proskauer Rose LLP, 11 Times Square, New York, NY 10036, or such other place and time as the Debtors shall notify all Qualified Bidders, any statutory committee appointed in these cases, and other invitees. If, however, no such Qualified Bid is received by the Bid Deadline, then the Auction will not be held.

8. Each Qualified Bidder participating at the Auction will be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale.

9. The Auction will be conducted openly.

10. Bidding at the Auction will be transcribed or videotaped.

11. The Sale Hearing shall be held before this Court on December 5, 2012 at 10:00 a.m. (prevailing Eastern Time), or as soon thereafter as counsel and interested parties may be heard.

12. On or before three (3) business days after entry of this Bidding Procedures Order, or as soon thereafter as such parties can be identified, the Debtors will cause (a) a notice in substantially the form annexed as **Exhibit D** hereto (the “Notice of Auction and Sale Hearing”); and (b) a copy of the Bidding Procedures Order to be sent by first-class mail postage prepaid, to the following: (i) counsel to the Stalking Horse Purchaser, DLA Piper LLP (US), Attn: Richard A. Chesley, 203 N. LaSalle St., Suite 1900, Chicago, Illinois 60601; (ii) the Office of the United States Trustee; (iii) counsel for any statutory committee in these cases, if and when appointed; (iv) each of the Debtors’ prepetition secured lenders; (v) each of the Debtors’ postpetition lenders; (vi) all taxing authorities and other governmental agencies having jurisdiction over any of the Purchased Assets, including the Internal Revenue Service; (vii) all parties that have requested or that are required to receive special notice pursuant to Bankruptcy Rule 2002; (viii) all Persons known or reasonably believed to have asserted any lien, claim, encumbrance, right of first refusal, or other Interest in or upon any of the Purchased Assets; (ix) the non-debtor parties to the Executory Contracts and Unexpired Leases and any parties who are known to claim interests therein; (x) all Persons known or reasonably believed to have expressed an interest in acquiring some or all of the Purchased Assets within the last four months; (xi) the Attorneys General in the States where the Purchased Assets are located; (xii) the United States Environmental Protection Agency; and (xiii) any applicable state environmental agency.⁵ In

⁵ The Notice of Auction and Sale Hearing will direct parties to contact the Debtors’ counsel for more information and will provide that any party in interest that wishes to obtain a copy of any related document, subject to any

addition to the foregoing, (a) electronic notification of this Motion, the Bidding Procedures Order and the Notice of Auction and Sale Hearing also will be posted on: (i) the Court's electronic case filing (ECF) website, <http://ecf.ilnb.uscourts.gov>; and (ii) any case management website maintained by Epiq Systems, Inc., proposed noticing and claims agent for the Debtors; and (b) on or before three (3) business days after entry of the Bidding Procedures Order, the Debtors will: (i) serve the Notice of Auction and Sale Hearing on all known creditors of the Debtors; and (ii) subject to applicable submission deadlines, publish an abbreviated version of the Notice of Auction and Sale Hearing once in one or more publications the Debtors deem appropriate, including but not limited to The Wall Street Journal (national edition).

13. On or before three (3) business days after the entry of the Bidding Procedures Order, the Debtors shall serve by first class mail or hand delivery, a notice of potential assumption, assignment and/or transfer of the Executory Contracts and Unexpired Leases (substantially in the form attached to the Motion as **Exhibit D** the "Notice of Assumption and Assignment") on all non-debtor parties to the Executory Contracts and Unexpired Leases. The Notice of Assumption and Assignment shall identify the calculation of the cure amounts that the Debtors believe must be paid to cure all prepetition defaults under the Executory Contracts and Unexpired Leases (the "Cure Amounts"). In addition, if the Debtors identify additional executory contracts or unexpired leases that might be assumed by the Debtors and assigned to the Successful Bidder not set forth in the original Notice of Assumption and Assignment, the Debtor shall promptly send a supplemental notice (a "Supplemental Notice of Assumption and Assignment") to the applicable counterparties to such additional executory contracts and unexpired leases.

necessary confidentiality agreement, may make a request in writing as specified in the Notice of Auction and Sale Hearing.

14. Unless the non-debtor party to an Executory Contract or Unexpired Lease files an objection (the “Cure Amount/Assignment Objection”) to (a) their scheduled Cure Amount and/or (b) to the proposed assumption, assignment and/or transfer of such Executory Contract or Unexpired Lease by the later of (i) 5:00 p.m. (prevailing Eastern Time) on the date that is three (3) business days prior to the Bid Deadline or (ii) ten (10) days after service of the relevant Supplemental Notice of Assumption and Assignment (such later date, the “Cure/Assignment Objection Deadline”) and serves a copy of the Cure Amount/Assignment Objection so as to be received no later than the Cure/Assignment Objection Deadline on the same day by: (i) counsel to the Debtors, Proskauer Rose LLP, 70 W. Madison St., Suite 3800, Chicago, Illinois 60602, Attn: Mark K. Thomas, and Peter J. Young; (ii) counsel to the Stalking Horse Purchaser, DLA Piper LLP (US), Attn: Richard A. Chesley, 203 N. LaSalle St., Suite 1900, Chicago, Illinois 60601; and (iii) the office of the United States Trustee (Region 2), 33 Whitehall Street, 21st Floor, New York, NY 10004 (collectively, the “Notice Parties”); then such non-debtor party (i) will be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts with respect to such Executory Contract and Unexpired Lease and the Debtors shall be entitled to rely solely upon the Cure Amount, and (ii) if the Executory Contract or Unexpired Lease was identified as a Purchased Asset by the Successful Bidder and/or Back-Up Bidder, will be deemed to have consented to the assumption, assignment and/or transfer of such Executory Contract and Unexpired Lease and will be forever barred and estopped from asserting or claiming against the Debtors, the Successful Bidder and/or the Back-Up Bidder, or any other assignee of the relevant Executory Contract or Unexpired Lease that any additional amounts are due or defaults exist, or conditions to assumption, assignment and/or transfer must be satisfied, under such Executory Contract or Unexpired Lease. Notwithstanding

the foregoing, as provided below, each non-debtor party shall retain the right to object to the assumption, assignment or transfer of its Executory Contract and Unexpired Lease, based solely on the issue of whether the Successful Bidder or Back-Up Bidder can provide adequate assurance of future performance as required by Section 362 of the Bankruptcy Code.

15. If an objection challenges a Cure Amount, the objection must set forth the cure amount being claimed by the objecting party (the “Claimed Cure Amount”) with appropriate documentation in support thereof. Upon receipt of a Cure Amount/Assignment Objection, the Debtors are authorized, but not directed, to resolve any Cure Amount/Assignment Objection by mutual agreement with the objecting counterparty to any Executory Contract or Unexpired Lease without further order of the Court. In the event that the Debtors and any objecting party are unable to consensually resolve any Cure Amount/Assignment Objection no later than three (3) business days prior to the Sale Hearing, the Court will resolve any such Cure Amount/Assignment Objection at the Sale Hearing.

16. The Debtors, the Successful Bidder or the Back-Up Bidder, as the case may be, may determine to exclude any Executory Contract or Unexpired Lease from the list of Purchased Assets no later than one (1) business day prior to the Sale Hearing, or, if the Court determines at any hearing on a Cure Amount/Assignment Objection that the applicable cure amount for such contract is greater than the Cure Amount proposed by the Debtors, no later than five (5) business days following such hearing. The non-debtor party or parties to any such excluded contract or lease will be notified of such exclusion by written notice mailed within two (2) business days of such determination.

17. Within two (2) days after the conclusion of the Auction for the Purchased Assets, the Debtors will serve a notice identifying the Successful Bidder and Back-Up Bidder to

the non-debtor parties to the Executory Contracts and Unexpired Leases that have been identified in such Successful Bid and Back-Up Bid. The non-debtor parties to the Executory Contracts and Unexpired Leases will have until one (1) day prior to the Sale Hearing (the “Adequate Assurance Objection Deadline”) to object to the assumption, assignment and/or transfer of such Executory Contract or Unexpired Lease solely on the issue of whether the Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code.

18. Objections to the sale of the Purchased Assets, or the relief requested in the Motion must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) be filed with the clerk of the Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004, on or before five (5) business days prior to the Sale Hearing, or such later date and time as the Debtors may agree; and (d) be served so as to be received no later than 5:00 p.m. (prevailing Eastern Time) on the same day, upon the Notice Parties. All objections must state with specificity the nature of such objection and will be heard by the Court at the Sale Hearing.

19. The Notice of Auction and Sale Hearing and the Notice of Assumption and Assignment to be issued in connection with the proposed sales of the Purchased Assets, substantially in the forms annexed to the Motion as Exhibit D and Exhibit E, respectively, are approved.

20. The Sale Hearing may be adjourned, from time to time, without further notice to creditors or other parties in interest other than by announcement of said adjournment before this Court or on this Court’s calendar on the date scheduled for said hearing.

21. Except as otherwise provided in this Bidding Procedures Order, the Debtors further reserve the right as they may reasonably determine to be in the best interests of

their estates, subject to conformity with the Bidding Procedures, to: (a) determine which bidders are Qualified Bidders; (b) determine which bids are Qualified Bids; (c) determine which Qualified Bid is the highest or otherwise best proposal and which is the next highest or otherwise best proposal; (d) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code, or (iii) contrary to the best interests of the Debtors and their estates; (e) remove some of the Purchased Assets from the Auction; (f) waive terms and conditions set forth herein with respect to all potential bidders; (g) impose additional terms and conditions with respect to all potential bidders; (h) extend the deadlines set forth herein; (i) adjourn or cancel the Auction and/or Sale Hearing without further notice; and (j) modify the Bidding Procedures as the Debtors may determine to be in the best interest of their estates or to withdraw the Motion at any time with or without prejudice.

22. The stays provided for in Bankruptcy Rules 6004(h) and 6006(d) are waived and this Bidding Procedures Order shall be effective immediately upon its entry.

23. This Court shall retain jurisdiction over any matters related to or arising from the implementation of this Order.

Dated: _____, 2012
New York, New York

United States Bankruptcy Judge

Schedule 1 to Bid Procedures Order

[Bid Procedures]

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

In re:	)	Chapter 11
)	
HMX ACQUISITION CORP., <i>et al.</i> , ¹	)	Case No. 12-14300 (ALG)
)	
Debtors.	)	(Joint Administration Requested)
)	

BIDDING PROCEDURES

By motion dated October 21, 2012 (the “Motion”),² the above-captioned debtors and debtors in possession (collectively, the “Debtors”) sought approval of, among other things, the procedures through which they will conduct the sale (collectively, the “Sale”) of substantially all of the assets of the Debtors (collectively, the “Purchased Assets”).

On November [___], 2012, the United States Bankruptcy Court for the Southern District of New York (the “Court”) entered an order (the “Bidding Procedures Order”), which, among other things, authorized the Debtors to conduct the Sale of the Purchased Assets through the process and procedures set forth below (the “Bidding Procedures”). The Debtors reserve the right to modify the Bidding Procedures, provided that any such modification shall not be inconsistent with the Motion or the Bidding Procedures Order.

The Sale will be subject to competitive bidding as set forth herein and approval of the Court pursuant to sections 105, 363 and 365 of chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

Assets to Be Sold

The Debtors’ business is comprised of substantially all of the Debtors’ operating assets and its intellectual property, along with certain executory contracts. The Debtors are offering to sell the Assets, together or separately, to one of more bidders. The Debtors shall consider bids for either all or part of the Assets.

Participation Requirements

In order to participate in the sale and bidding process or otherwise be considered for any purpose hereunder, a person interested in some or all of the Purchased Assets (a “Potential Bidder”) must first deliver the following materials to the Debtors and their counsel:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, to the extent applicable, are: HMX Acquisition Corp. (9861); HMX Poland Sp. z o. o.; HMX, LLC (8971); Quartet Real Estate, LLC (8973); and HMX, DTC Co. (0162).

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

- b. an executed confidentiality agreement in form and substance satisfactory to the Debtors and their counsel; and
- c. the most current audited and latest unaudited financial statements (collectively, the “Financials”) of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of a sale transaction, (x) Financials of the equity holder(s) of the Potential Bidder or such other form of financial disclosure as is acceptable to the Debtors that demonstrates the Potential Bidder’s financial ability to consummate a competing sale transaction and (y) a written commitment acceptable to the Debtors of the equity holder(s) of the Potential Bidder to be responsible for the Potential Bidder’s obligations in connection with a sale transaction (including being bound by the terms and conditions of the Bidding Procedures); provided that if a Potential Bidder is unable to provide Financials, the Debtors may accept such other information sufficient to demonstrate to the Debtors’ reasonable satisfaction that such Potential Bidder has the financial wherewithal to consummate a sale transaction. A person meeting the requirements set forth in this paragraph shall be considered a “Qualified Bidder.”

Qualified Bid

The Debtors shall determine, after consultation with the Prepetition Secured Lenders, whether a bid qualifies as a “Qualified Bid.” To constitute a Qualified Bid, a bid must be a written irrevocable offer from a Qualified Bidder and:

- a. include a cover letter identifying whether the Qualified Bidder is interested in purchasing some or all of the Purchased Assets. If the Qualified Bidder is submitting a bid only with respect to certain Assets, such cover letter must identify which Assets the Qualified Bidder is seeking to purchase, whether the Assets are being purchased subject to existing licenses or not, and whether or not such bid is contingent on purchasing all of the identified Assets;
- b. state that the Qualified Bidder offers to consummate the sale pursuant to an executed Purchase Agreement (the “Purchase Agreement”). If any bid is conditioned on the assumption and assignment of executory contracts and/or unexpired leases, then such potential bidder shall be required to provide evidence of its ability to provide adequate assurance of future performance of such contracts or leases along with the bid;
- c. contain a list of the Debtors’ executory contracts and unexpired leases with respect to which the bidder seeks assignment from the Debtors;
- d. confirm that the offer shall remain open and irrevocable as provided below;
- e. enclose a clean signed copy of the proposed Purchase Agreement and a blacklined copy reflecting changes to the Stalking Horse Purchase Agreement;

- f. be accompanied with a certified or bank check or wire transfer in an amount equal to ten percent (10%) of the proposed cash purchase price set forth in the bid as a minimum good faith deposit plus the Breakup Fee and the Expense Reimbursement (the “Minimum Deposit”), which Minimum Deposit shall be used to fund a portion of the purchase price provided for in the bid;
- g. provide that such bidder’s offer is terminable only in accordance with its terms as agreed to by the Debtors and otherwise irrevocable until (i) the closing of the purchase of the assets if such bidder is the Successful Bidder (as defined below) and (ii) for two (2) business days after the earlier of the closing of the sale transaction with the Successful Bidder or the termination of the Successful Bid, if such bidder is designated the Back-Up Bidder (as defined below) at the conclusion of the Auction;
- h. not be conditioned on obtaining financing or the outcome of any due diligence of any kind by the Qualified Bidder;
- i. not request or entitle the Qualified Bidder to any break-up fee, expense reimbursement or similar type of payment;
- j. fully disclose the identity of each entity that will be bidding for the Purchased Assets or otherwise participating in connection with such bid, and the complete terms of any such participation; and,
- k. identify with particularity each and every condition to closing, all of which must be set forth in the Purchase Agreement.

Bid Deadline and Submission

Bids must be received electronically, with hard copies sent by overnight delivery, no later than 5:00 p.m. (prevailing Eastern Time) on November 28, 2012 (the “Bid Deadline”) by delivery to: (i) counsel to the Debtors, Proskauer Rose LLP, 70 W. Madison St., Suite 3800, Chicago, Illinois 60602, Attn: Mark K. Thomas and Peter J. Young; (ii) counsel for the Dip Lender, Jeffrey M. Wolf, Greenberg Traurig, LLP, One International Place, Boston, MA 02110; (iii) counsel to the Unsecured Creditors’ Committee; and (iv) the Debtors’ Investment Banker, William Blair & Company, Attn: Geoffrey Richards and Sherri Toub, 222 W. Adams Street, Chicago, IL 60606. After the Bid Deadline and before the Auction, each Qualified Bidder that submits a Qualified Bid will be provided with a copy of any other Qualified Bid(s).

Auction

If more than one Qualified Bid by a Qualified Bidder is received by the Bid Deadline, an auction (the “Auction”) with respect to a sale of the Purchased Asset shall take place on December 3, 2012 at 10:00 a.m. (prevailing Eastern Time) at the offices of Proskauer Rose LLP, 11 Times Square, New York, NY 10036-8299, or at such other place and time as the Debtors shall notify all Qualified Bidders, any statutory committee appointed in these cases, and other

invitees. If, however, no such Qualified Bids are received by the Bid Deadline, then the Auction will not be held

Auction Rules

Only Qualified Bidders who have submitted a Qualified Bid and their authorized representatives will be eligible to attend and participate at the Auction. At the Auction, only Qualified Bidders who have submitted a Qualified Bid will be permitted to increase their bids. The bidding at the Auction shall start at the purchase price stated in the highest or otherwise best Qualified Bid (or combination of Qualified Bids) as disclosed to all Qualified Bidders prior to commencement of the Auction (the "Starting Qualified Bid"), and then continue in minimum increments to be announced at the Auction (the "Overbid Increment"). The Debtors shall not consider any subsequent bid in the Auction unless any bid after the Starting Qualified Bid exceeds the previous highest bid by at least the Overbid Increment; provided, however, that in the event the Debtors select a combination of Qualified Bids to serve as the Starting Qualified Bid, the Debtors reserve the right to determine an appropriate Overbid Increment for each group of assets comprising the combination Qualified Bid. During the course of the Auction, the Debtors shall inform each participant which Qualified Bid(s) reflects, in the Debtors' view, after consultation with the Prepetition Secured Lenders, the highest or otherwise best offer or combination of offers for the Purchased Assets.

Adjournment of Auction

The Auction may be adjourned as the Debtors deem appropriate. Reasonable notice of such adjournment and the time and place for the resumption of the Auction shall be given to all Qualified Bidders that have submitted a Qualified Bid and counsel to any statutory committee appointed in this case. The Auction rules may be modified by the Debtors prior to, at, or during the Auction.

Each Qualified Bidder participating at the Auction will be required to confirm that it has not engaged in any collusion with respect to the bidding or the Sale.

Bidding at the Auction will be transcribed or videotaped.

Other Terms

All Qualified Bids, the Auction, and the Bidding Procedures are subject to such additional terms and conditions as are announced by the Debtors, after consultation with the Prepetition Secured Lenders, and are not inconsistent with the Bid Procedures Order. At the conclusion of the Auction, the Debtors shall announce the bid or combination of bids made pursuant to the Bid Procedures Order that represents, in the Debtors' sole discretion, after consultation with the Prepetition Secured Lenders, the highest or otherwise best offer for the Purchased Assets (the "Successful Bid"). Prior to the entry of the Sale Order, the Debtors shall announce the identity of the Qualified Bidder or combination of Qualified Bidders who submitted the Successful Bid at the Auction (the "Successful Bidder") and announce their intention to either (i) pursue a transaction with the Successful Bidder, or (ii) not proceed with a sale to the Successful Bidder. If an Auction is held, the Debtors shall be deemed to have accepted a Qualified Bid only when (i) such bid is declared the Successful Bid at the Auction,

(ii) definitive documentation has been executed in respect thereof, and (iii) the Court has approved the Sale to the Successful Bidder. Such acceptance by the Debtors is conditioned upon approval by the Court of the Successful Bid and the entry of an order approving such Successful Bid.

Irrevocability of Certain Bids

The bid of the Qualified Bidder or combination of Qualified Bidders (the “Back-Up Bidder”) that submits the next highest or otherwise best bid or combination of bids (the “Back-Up Bid”) shall be irrevocable until the earlier of: (i) 30 days after entry of the Sale Order approving the Successful Bid; (ii) closing of the sale to the Successful Bidder or the Back-Up Bidder; and (iii) such date as the Debtors affirm in writing that the Debtors do not intend to proceed with a sale to the Successful Bidder. Following the entry of the Sale Order, if the Successful Bidder fails to consummate the Sale because of a breach or failure to perform on the part of the Successful Bidder, the Back-Up Bid will be deemed to be the new Successful Bid, and the Debtors will be authorized, but not required, to consummate the Sale with the Back-Up Bidder, who shall be required to consummate the Sale, without further order of the Court. In such case, the defaulting Successful Bidder’s Minimum Deposit shall be forfeited to the Debtors and the Debtors shall have the right to seek any and all other remedies and damages from the defaulting Successful Bidder.

Sale Hearing

The Court shall conduct a hearing to approve the sale of the Purchased Assets on or before December 5, 2012.

Return of Deposit

Except as otherwise provided in this paragraph with respect to any Successful Bid and any Back-Up Bid, the Minimum Deposits of all Qualified Bidders that submitted such a deposit under the Bidding Procedures shall be returned upon or within five (5) business days after the conclusion of the Auction. The Minimum Deposit of the Successful Bidder shall be held until the closing of the Sale of the Purchased Assets and applied in accordance with the Successful Bid. The Minimum Deposit of the Back-Up Bidder shall be returned upon or within the earlier of 30 days after the date of entry of the Sale Order (the “Outside Back-Up Date”) or the closing of the Sale of the Purchased Assets to the Successful Bidder.

Failure to Close

If the Successful Bidder fails to consummate the transaction in accordance with the terms of the purchase agreement executed by the Successful Bidder by the closing date contemplated in the purchase agreement agreed to by the parties for any reason, the Debtors shall: (i) retain the Successful Bidder’s Minimum Deposit; (ii) maintain the right to pursue all available remedies, whether legal or equitable; and (iii) be free to consummate the proposed transaction with the Back-Up Bidder at the highest price bid by the Back-Up Bidder at the Auction, without the need for an additional hearing or Order of the Court.

Reservation of Rights

Except as otherwise provided in the Bid Procedures Order, the Debtors reserve the right as they may reasonably determine to be in the best interests of their estates, subject to conformity with the Bidding Procedures, to: (i) determine which bidders are Qualified Bidders; (ii) determine which bids are Qualified Bids; (iii) determine which Qualified Bid or combination of Qualified Bids is the highest or otherwise best proposal and which is the next highest or otherwise best proposal; (iv) reject any bid that is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code or (c) contrary to the best interests of the Debtors and their estates; (v) remove some of the Purchased Assets from the Auction; (vi) waive terms and conditions set forth herein with respect to all potential bidders; (vii) impose additional terms and conditions with respect to all potential bidders; (viii) extend the deadlines set forth herein; (ix) adjourn or cancel the Auction and/or Sale Hearing without further notice; and (x) modify the Bidding Procedures or the Auction rules, as the Debtors may determine to be in the best interests of their estate, or withdraw the Motion at any time with or without prejudice.

Expenses

Any bidders presenting bids shall bear their own expenses in connection with the proposed sale, whether or not such sale is ultimately approved, in accordance with the terms of the purchase agreement.

Exhibit A to Debtors' Motion

[Stalking Horse Purchase Agreement]

Exhibit C to Debtors' Motion

[Sale Order]

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

In re:	)	Chapter 11
)	
HMX ACQUISITION CORP., <i>et al.</i> , ¹⁴	)	Case No. 12-14300 (ALG)
)	
Debtors.	)	(Joint Administration Requested)
)	

**ORDER AUTHORIZING AND APPROVING THE SALE OF SUBSTANTIALLY ALL
OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL CLAIMS AND
INTERESTS, AND (B) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF
CERTAIN EXECUTORY CONTRACTS**

Upon consideration of the motion dated October 21, 2012 [**Docket No.**] (the “Motion”)¹⁵ of the debtors and debtors-in-possession in the above-captioned case (the “Debtors”), pursuant to sections 105(a), 363, and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), Rules 2002, 6004, 6006 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), rule 9013-1(a) of the Local Rules for the United States Bankruptcy Court for the Southern District of New York (the “Local Rules”), and for entry of orders: (a)(i) authorizing the Debtors to enter into that certain Asset Purchase Agreement dated as of October 17, 2012 with Authentic Brands Group, LLC (the “Stalking Horse Purchaser”) for the sale of substantially all assets of the Debtors as a “stalking horse” agreement (the “Stalking Horse Purchase Agreement”), (b) approving the bidding procedures and a break-up fee, including granting administrative expense status to the break-up fee, (c) approving the

¹⁴ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, to the extent applicable, are: HMX Acquisition Corp. (9861); HMX Poland Sp. z o. o.; HMX, LLC (8971); Quartet Real Estate, LLC (8973); and HMX, DTC Co. (0162).

¹⁵ Capitalized terms used and not otherwise defined herein shall have the meaning ascribed to them in the APAs.

form and manner of notice of an auction (defined below), and (d) setting the time, date and place for a hearing (the “Sale Hearing”) after the conclusion of the auction, (e) authorizing the Debtors to file certain documents under seal; (b)(i) authorizing and approving the sale of substantially all of the Debtors’ assets free and clear of all liens, claims, encumbrances and other interests, pursuant to section 363 of the Bankruptcy Code, (ii) approving the assumption and assignment of certain executory contracts; and (c) granting related relief (the “Motion”); the Debtors having conducted an auction for the sale of substantially all of their assets (the “Purchased Assets”) on December 3, 2012 at 10:00 a.m. (prevailing Eastern Time) (the “Auction”); the bidders identified on Exhibit A-1 hereto (collectively, the “Purchasers”) having submitted the highest or otherwise best offers for the respective assets listed on Exhibit A-1; the back-up bidders listed on Exhibit A-2 hereto (collectively, the “Back-Up Bidders”) having submitted the second highest offers for the respective assets listed on Exhibit A-2; the Court having conducted the Sale Hearing on [_____], to consider the approval of the Sale and related transactions pursuant to the terms of the Asset Purchase Agreements (the “APAs”), substantially in the form annexed to this Sale Order (as defined below) as Group Exhibit B, between the Debtors and the respective Purchasers;¹⁶ and all parties in interest having been heard, or having had the opportunity to be heard, regarding the approval of the Motions and the transactions contemplated thereby; and the Court having reviewed and considered the Motions and any objections thereto, and the arguments of counsel and

¹⁶ In certain cases, a Purchaser is also a Back-Up Bidder with respect to certain other Purchased Assets. In other cases, the Back-Up Bidder is not a Purchaser of any other Purchased Assets. The APAs among the Debtors and any Back-Up Bidder that is not also a Purchaser are not attached hereto. Based on representations of counsel at the Sale Hearing, the forms of such Back-Up Bidder APAs do not differ materially from any of the forms of the APAs attached hereto as Group Exhibit B.

evidence adduced related thereto; and upon the record of the Sale Hearing and the full record of this case, including the record established at the Auction and filed on the docket in these chapter 11 cases as Docket Nos. [] (the “Auction Transcript”); and it appearing that the relief requested in the Motions is in the best interests of the Debtors, their creditors and estates and other parties in interest; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby:

FOUND AND DETERMINED THAT:

A. The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

B. This Court has jurisdiction over the Motion and the transactions contemplated by the APAs pursuant to 28 U.S.C. §§ 157 and 1334, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue in this District is proper under 28 U.S.C. §§ 1408 and 1409.

C. Good and sufficient notice of the Motion and the relief sought therein has been given to all interested persons and entities.

D. A sound business purpose justifies the Sale of the Purchased Assets outside of the ordinary course of business.

E. An Order (this “Bidding Procedures Order”): (i) authorizing the Debtors to enter into the Stalking Horse Purchase Agreement, (ii) approving the Bidding Procedures; (iii) approving the notice establishing the dates, times, and locations of the deadline to bid on the Purchased Assets, the auction of the Purchased Assets and the sale hearing for the Purchased Assets pursuant to the dates proposed in the Bidding

Procedures Order, subject to the Court's availability; (iv) approving the notice of the Debtors' intent to assume, assign and/or transfer to the Successful Bidder or Back-Up Bidder, the contracts, commitments, leases, licenses, permits, purchase orders, and any other executory contracts and unexpired leases and the corresponding cure amounts required to be paid in connection with such assumption, assignment and/or transfer; and (v) authorizing the Debtors to file certain documents under seal; and (vi) granting related relief was entered on [] **[Docket No.]**, approving, among other things, the bidding procedures (the "Bidding Procedures") attached thereto as Schedule 1. The Bidding Procedures Order, among other things, established procedures for submitting bids on the Purchased Assets, set November 28, 2012 as the deadline for submitting bids, set December 3, 2012 as the auction date, and set a hearing to approve the sale to successful bidders on December 5, 2012.

F. On [] 2012, in accordance with the Bidding Procedures Order, the Debtors served a Notice of Potential Assumption and Assignment of Leases and Executory Contracts on counterparties to certain executory contracts and unexpired leases of non-residential real property [*see* Docket No.], notifying such parties of the entry of the Bidding Procedures Order, the potential assumption and assignment of their contracts and leases with the Debtors in connection with the Sale, and the amounts, if any, the Debtors would have to pay to cure any then existing defaults (the "Cure Costs"). On [], 2012, the Debtors served a Supplemental Notice on additional counterparties subsequently identified by the Debtors [Docket No.]. The Debtors did not receive any objection from any counterparty to the cure amounts set forth in these Notices.

G. The Debtors provided sufficient notice of the entry of the Bidding Procedures Order and Notice of Auction to all parties in interest in these cases, as set forth in the affidavits of service at Docket Nos. []. The Debtors also published the Notice of Auction in the Wall Street Journal, National Edition on [____], 2012 [*see Docket No.*]. The Debtors have not received any objection or similar notice of any request by a lessee or sublessee seeking adequate protection of any right to possession of any portion of the Purchased Assets.

H. On December 3, 2012, the Debtors conducted the Auction. As set forth in the Auction Transcript, all of the Purchased Assets were subject to extensive competitive bidding from unaffiliated third party bidders. The highest or otherwise best bids for each of the Purchased Assets offered at the Auction are listed on Exhibit A-1 hereto. The second highest or otherwise second best bids for the Purchased Assets offered at the Auction are listed on Exhibit A-2 hereto.

I. On [____], in accordance with the Bidding Procedures Order, the Debtors filed a Notice of Assumption and Assignment of Executory Contracts and Leases [*Docket No.*] with respect to all executory contracts and unexpired leases of non-residential real property that any of the Purchasers included as “Assumed Contracts” as part of their purchase of the Purchased Assets in accordance with their respective APAs, identifying the proposed assignee and Cure Costs for each. On [____], 2012, in accordance with the Bidding Procedures Order, the Debtors filed a Supplemental Notice of Assumption and Assignment of Executory Contracts and Leases (Back-Up Bidders) [*Docket No.*] with respect to all executory contracts and unexpired leases of non-residential real property that any of the Back-Up Bidders included as “Assumed

Contracts” as part of their purchase of the Purchased Assets in accordance with their respective APAs, identifying the proposed assignee and Cure Costs for each. The “Assumed Contracts” identified by both the Purchasers and the Back-Up Bidders are collectively referred to herein as the “Assigned Contracts”. The Debtors have not received any objection to the assignment of the Assigned Contracts or the Cure Costs, or any requests for further assurance of future performance by the proposed assignees. A list of the Assigned Contracts to be assigned to the Purchasers and a separate list of the Assigned Contracts to be assigned to the Back-Up Bidders, as needed, along with the Cure Costs for each (collectively, the “Assigned Contract Schedule”) is attached hereto as Exhibit C-1 (for Purchasers) and Exhibit C-2 (for Back-Up Bidders). Other than any Assigned Contracts, the Purchased Assets do not include any property subject to leases or contracts between either of the Debtors or their affiliates and any third party, including, without limitation, [].

J. The consideration to be provided by each of the Purchasers or, as needed, the Back-Up Bidders: (i) is fair and reasonable; (ii) is the highest or otherwise best offer for the respective Purchased Assets identified in each APA; and (iii) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and the Uniform Fraudulent Conveyance Act (7A part II, U.L.A. 2 (1999)) or the Uniform Fraudulent Transfer Act (7A part II, U.L.A. 66 (1999)) or any similar laws of any state or other jurisdiction whose law is applicable to the contemplated transactions; and (v) will provide a greater recovery for the Debtors’ creditors and other interested parties than would be provided by any other practically available alternative. In reaching this determination, the Court has taken into account both the consideration to be realized

directly by the Debtors, including the assumption of claims against the Debtors' estate, and the indirect benefits of such Sale for the Debtors' vendors and suppliers and the public served, directly and indirectly, by the Debtors' business.

K. Consummation of the Sale contemplated by the Purchasers' APAs will provide the highest and otherwise best value for the Purchased Assets and is in the best interests of the Debtors, their creditors and estates. The consideration to be paid by the Back-Up Bidders, if any of the Purchasers do not close in accordance with their respective APAs, will provide the highest or otherwise best value for the Purchased Assets in the absence of a closing with the respective Purchasers.

L. Entry into the APAs and consummation of the transactions contemplated thereby constitute the exercise of the Debtors' sound business judgment and fiduciary duties and such acts are in the best interests of the Debtors, their creditors and estates.

M. The transactions contemplated by the APAs are undertaken by the Debtors and each of the Purchasers (or, as needed, the Back-Up Bidders) at arms' length, without collusion and in good faith within the meaning of section 363(m) of the Bankruptcy Code. Each of the Purchasers and the Back-Up Bidders is a good faith purchaser under section 363(m) of the Bankruptcy Code and as such, is entitled to all of the protections afforded thereby and otherwise has proceeded in good faith in all respects in connection with this proceeding in that: (a) each Purchaser and Back-Up Bidder recognized that the Debtors were free to deal with any other party interested in acquiring the Purchased Assets; (b) none of the Purchasers or Back-Up Bidders any way induced or caused the chapter 11 filing of the Debtors; (c) based on the Auction Transcript, each

Purchaser made the highest or otherwise best bid for its respective Purchased Assets after extensive competitive bidding with other arms'-length bidders, and each Back-Up Bidder made the second highest or otherwise second best bid for its respective Purchased Assets after extensive competitive bidding with other arms'-length bidders; and (d) the negotiation and execution of the APAs and any other agreements or instruments related thereto was in good faith and an arms' length transaction between each Purchaser or Back-Up Bidder and the Debtors.

N. The Debtors, the Purchasers and the Back-Up Bidders have not engaged in any conduct that would permit the APAs or the Sale to be avoided under section 363(n) of the Bankruptcy Code.

O. The APAs were not entered into for the purpose of hindering, delaying or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession or the District of Columbia.

P. None of the Purchasers or Back-Up Bidders are "insiders" of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code.

Q. The Debtors are the sole and lawful owner of the Purchased Assets, and hold good title thereto, immediately prior to the Closing. Except as permitted under the express terms of the APAs, the consummation of the Sale pursuant to the APAs will be a legal, valid and effective Sale of the Purchased Assets and will vest each Purchaser (and its designees or assignees, as applicable) with all right, title, and interest of the Debtors and their bankruptcy estates in and to the Purchased Assets subject to its respective APA free and clear of all Liens, Claims, encumbrances, interests, leaseholds and possessory rights (other than with respect to Assigned Contracts), including, without

limitation, any such Liens, Claims, encumbrances and interests (i) that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of Debtors, Debtors' estate or such Purchaser's interest in such Purchased Assets, or any similar rights, or (ii) relating to taxes or any other liabilities, arising under or out of, in connection with, or in any way relating to, the Purchased Assets, Debtors, Debtors' estate, or their respective operations or activities prior to the Closing Date. Without limiting the generality, none of the Purchasers or the Back-Up Bidders shall have any liability as a successor to the Debtors for any tax or other obligations of the Debtors to the New York Department of Revenue, including those arising pursuant to any bulk sales act.

R. A Sale of the Purchased Assets other than free and clear of Liens, Claims, encumbrances, interests, leaseholds and possessory rights (other than with respect to Assigned Contracts) would be of substantially less benefit to and would adversely affect the Debtors' bankruptcy estate. The sale of the Purchased Assets outside of a plan of reorganization pursuant to the APAs neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtors. The Sale does not constitute a *sub rosa* chapter 11 plan.

S. Based upon the representations of the Debtors, the Purchased Assets constitute property of the Debtors' estate and title thereto is vested in the Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code. Based upon the representations of the Debtors, the Debtors have all right, title and interest in, to and

under the Purchased Assets to transfer and convey the Purchased Assets as contemplated by the APAs.

T. With respect to all parties asserting Liens, Claims, encumbrances and interests in, to, or against the Purchased Assets, the Sale complies with all the requirements of section 363(f) of the Bankruptcy Code. With respect to each interest in the Purchased Assets: (a) applicable non-bankruptcy law permits the sale free and clear of such interest (including any interest arising under section 365(h) of the Bankruptcy Code); (b) the holder of such interest consents to the Sale; (c) 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 the Purchased Assets; (d) such interest is in bona fide dispute; or (e) the holder of such interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest. Specifically, the Debtors' secured lenders and any other known creditors having Liens on the Purchased Assets have thoroughly reviewed the Debtors' alternatives and have consented to the Sale pursuant to section 363(f) of the Bankruptcy Code.

U. All parties with Liens, Claims, encumbrances, interests, leaseholds and possessory rights in or against the Purchased Assets identified to be sold under the APAs, if any, who did not object to the Motions and the relief requested therein, who did not request adequate protection of any possessory right, or who withdrew their objections to the Motions, are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code; and all parties with Liens, Claims, encumbrances and interests against the Purchased Assets who objected to the Motions, but who did not withdraw any such objection, can be compelled to accept a monetary satisfaction of their Liens, Claims,

encumbrances and interests within the meaning of section 363(f)(5) of the Bankruptcy Code, and in each case, are enjoined from taking any action against any of the Purchasers, their affiliates or any agent of the foregoing to recover any claim which such person or entity has solely against the Debtors, or any of its respective affiliates.

V. Upon the consummation of the Sale of the Purchased Assets to the Purchasers or the Back-Up Bidders, (a) each Purchaser and Back-Up Bidder shall not be, as a result of the purchase of the Purchased Assets or otherwise, considered to have continued the business operations associated with the Purchased Assets without interruption or substantial change, and (b) substantial continuity in the operation of Debtors' business before and after the purchase of the Purchased Assets shall not be considered to exist.

W. By virtue of the APAs or otherwise, the Purchasers and the Back-Up Bidders will not acquire any liabilities of the Debtors, other than the Assumed Liabilities as set forth in Section 2.4 of the APA.

X. Without limiting the generality of the foregoing, other than the Assumed Liabilities, the Purchasers and the Back-Up Bidders would not have entered into the APAs and would not consummate the transactions contemplated thereby, thus adversely affecting the Debtors, their estates and creditors, if the Sale of the Purchased Assets and the assignment of the Assigned Contracts were not free and clear of all Liens, Claims, encumbrances, interests, leaseholds and possessory rights (other than with respect to Assigned Contracts) of any kind or nature whatsoever, other than the Assumed Liabilities, or if the Purchasers would or in the future could, be liable for any Liens, Claims, encumbrances and interests, other than the Assumed Liabilities.

Y. Good and sufficient notice of the possible transfer, assumption and assignment of the Assigned Contracts has been given to all non-Debtors parties to the Assigned Contracts and no other or further notice is required. A reasonable opportunity to object or be heard has been offered to parties in interest.

Z. The Assigned Contracts are valid and binding, in full force and effect, and enforceable in accordance with their terms.

AA. The Cure Costs are deemed to be amounts necessary to “cure” (within the meaning of section 365(b)(1) of the Bankruptcy Code) all “defaults” (within the meaning of section 365(b) of the Bankruptcy Code) under such Assigned Contracts to the extent required by section 365 of the Bankruptcy Code.

BB. The Purchasers and the Back-Up Bidders have demonstrated adequate assurance of future performance with respect to the Assigned Contracts pursuant to section 365(b)(1)(C) of the Bankruptcy Code.

CC. The Assigned Contracts are assignable notwithstanding any provisions contained therein to the contrary. Failure to object to the assumption and assignment of an Assigned Contract is deemed consent to the assumption and assignment.

DD. The assumption and assignment of the Assigned Contracts as set forth in the APAs is integral to each of the APAs and is in the best interests of the Debtors, their creditors and estates and other parties-in-interest, and represents the exercise of sound and prudent business judgment by the Debtors.

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

FF. Upon entry of this Sale Order, the Debtors shall have full power and authority to consummate the Sale contemplated by the APAs. The APAs and the Sale have been duly and validly authorized by all necessary action of the Debtors and no shareholder vote, board resolution or other corporate action is required of the Debtors for the Debtors to consummate such Sale or the other transactions contemplated in the APA.

GG. Cause has been shown as to why this Sale Order should not be subject to the stay provided by Bankruptcy Rules 6004 and 6006.

HH. The entry of this Sale Order is in the best interests of the Debtors, their creditors and estates, and other parties in interest.

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

1. The Motions, the APAs, and the transactions contemplated thereby shall be, and hereby are, granted and approved in all respects as modified by this Sale Order.

2. The Debtors are authorized and directed to close, consummate and comply with each of the APAs and all other agreements and documents related to and contemplated thereby (collectively, the "Sale Documents"), which Sale Documents hereby are authorized and approved in all respects and to execute such other documents and take such other actions as are necessary or appropriate to effectuate the APAs.

3. All objections and responses to the Motions are hereby resolved in accordance with the terms of this Sale Order and as set forth in the record at the Sale Hearing. To the extent such objections or responses were not otherwise overruled,

withdrawn, waived, settled or resolved, they, and all reservations of rights included therein, are hereby overruled and denied.

4. Each Purchaser's offer for its respective Purchased Assets, as embodied in its APA and listed on Exhibit A-1 hereto, is the highest or otherwise best offer for such Purchased Assets, and each offer is hereby approved. Each Back-Up Bidders' offer for its respective Purchased Assets, as embodied in its APA and listed on Exhibit A-2 hereto, is the second highest or otherwise second best offer for such Purchased Assets, and each offer is hereby approved.

5. Pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Sale of the Purchased Assets by the Debtors to the Purchasers or, as needed, the Back-Up Bidders, and the transactions related thereto, upon the Closing under the APAs, are authorized and approved in all respects.

6. Subject to the payment of the consideration provided for in the APAs to the Debtors by the Purchasers or the Back-Up Bidders pursuant to sections 363 and 365(a) of the Bankruptcy Code, the Sale of the Purchased Assets by the Debtors to the Purchasers or the Back-Up Bidders shall constitute a legal, valid, and effective transfer of the Purchased Assets and shall vest each Purchaser or Back-Up Bidder with all right, title and interest of the Debtors in and to its respective Purchased Assets as set forth on Exhibit A free and clear of all Liens, Claims, encumbrances, interests, leaseholds and possessory rights pursuant to section 363(f) of the Bankruptcy Code, effective as of the closing of each transaction under each APA (each, a "Closing").

7. To the greatest extent available under applicable law, each Purchaser or Back-Up Bidder shall be authorized, as of its respective Closing date, to operate under any license, permit, registration and governmental authorization or approval of the Debtors with respect to the Purchased Assets, and all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been, and hereby are, authorized to be transferred to the Purchaser as of the Closing Date. Pursuant to section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license relating to the operation of the Purchased Assets sold, transferred or conveyed to the Purchasers or the Back-Up Bidders on account of the filing or pendency of the chapter 11 cases or the consummation of the transaction contemplated by the APAs.

8. Pursuant to section 363(f) of the Bankruptcy Code, the Sale of the Purchased Assets shall be free and clear of all Liens, Claims, encumbrances, interests, leaseholds and possessory rights (including any interests arising under section 365(h) of the Bankruptcy Code) and all liabilities of the Debtors whether known or unknown, including, but not limited to, Liens, Claims, encumbrances and interests asserted by any of the Debtors' creditors, vendors, suppliers, employees, executory contract counterparties, or lessors. The Purchasers and the Back-Up Bidders shall not be liable in any way for any claims that any of the foregoing parties or any other third party may have against the Debtors. Any and all valid and enforceable Liens, Claims, encumbrances and interests on, against or in the Purchased Assets, including those asserted by the Debtors' lenders, shall be transferred, affixed, and attached to the net proceeds of the Sale with the same validity, priority, force and effect such Liens, Claims,

encumbrances and interests had on the Purchased Assets immediately prior to the Sale and subject to the rights, claims, defenses, and objections, if any, of the Debtors and all interested parties with respect to any such asserted Liens, Claims, encumbrances, interests, leaseholds and possessory rights. The Sale of the Purchased Assets to the Purchasers or the Back-Up Bidders shall vest each Purchaser or Back-Up Bidder with all the right, title and interest of the Debtors to its respective Purchased Assets as set forth on Exhibit A-1 or A-2 hereto (as applicable) free and clear of Liens, Claims, encumbrances, interests, leaseholds and possessory rights.

9. The Purchasers and the Back-Up Bidders have not assumed or otherwise become obligated for any of the Debtors' liabilities other than as set forth in their respective APAs, and the Purchasers and the Back-Up Bidders have not purchased any of the "Excluded Assets," as defined in Section 2.3 of each of the APAs.

10. Except for the "Assumed Liabilities" as defined and provided for in each of the APAs, pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, all persons and entities, including, without limitation, the Debtors, the Debtors' affiliates, all debt security holders, equity security holders, the Debtors' employees or former employees, governmental, tax, and regulatory authorities, lenders, parties to or beneficiaries under any benefit plan, trade and other creditors asserting or holding any Liens, Claims, encumbrances and interests, in or with respect to the Debtors or the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to the Debtors, the Purchased Assets, the

operation of the Debtors' business prior to the Closing date under each APA or the transfer of the Purchased Assets to the Purchasers or the Back-Up Bidders (including any claim for any tax arising under a bulk sales or similar act), shall be forever barred, estopped, and permanently enjoined from asserting, prosecuting or otherwise pursuing such Liens, Claims, encumbrances and interests against the Purchasers or the Back-Up Bidders or any of their affiliates, successors or assigns thereof and each of their respective current and former members, officers, directors, managed funds, investment advisors, attorneys, employees, partners, affiliates and representatives (each of the foregoing in its individual capacity), or the Purchased Assets; including claims under section 365(n) of the Bankruptcy Code against any of the Purchasers or Back-Up Bidders with respect to the Purchased Assets. To avoid doubt, the foregoing shall not prevent the Debtors, their estates, successors, or permitted assigns from pursuing claims, if any, against the Purchasers or the Back-Up Bidders and/or their successors and assigns in accordance with the terms of the APAs.

11. If any person or entity that has filed any financing statement, mortgage, mechanic's lien, *lis pendens* or other document or instrument evidencing liens with respect to any of the Purchased Assets shall have failed to deliver to the Debtors and each Purchaser or Back-Up Bidder (as applicable) prior to the Closing of its respective APA, in proper form for filing and executed by the appropriate entity or entities, termination statements, instruments of satisfaction and releases of all Liens, Claims, encumbrances or interests which such person or entity has with respect to the Purchased Assets, then (a) the Debtors are authorized to execute and file such statements, instruments, releases and other documents on behalf of such person or entity and (b) each

Purchaser and Back-Up Bidder (as applicable) is authorized to file, register, or otherwise record a certified copy of this Sale Order, which, once filed, registered, or otherwise recorded, shall constitute conclusive evidence of the release of all liens, claims, encumbrances, and interests in the Purchased Assets as of the Closing of its respective APA.

12. This Sale Order: (a) is and shall be effective as a determination that, upon Closing, Liens existing as to the Purchased Assets conveyed to the Purchasers or the Back-Up Bidders have been and hereby are adjudged and declared to be unconditionally released, discharged and terminated; and (b) is and shall be binding upon and govern the acts of all entities, including, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies or units, governmental departments or units, secretaries of state, federal, state and local officials and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Purchased Assets conveyed to the Purchaser or Back-Up Bidder.

13. The provisions of this Sale Order authorizing the sale of the Purchased Assets free and clear of Liens, other than Assumed Liabilities, shall be self-executing, and neither the Debtors nor the Purchasers or Back-Up Bidders shall be required to execute or file releases, termination statements, assignments, consents, or other instruments to effectuate, consummate, and implement the provisions of this Sale

Order. However, the Debtors and the Purchasers and Back-Up Bidders (as applicable), and each of their respective officers, employees, and agents, are authorized and empowered to take all actions and execute and deliver any and all documents and instruments that either the Debtors or the Purchasers or Back-Up Bidders deem necessary or appropriate to implement and effectuate the terms of their respective APAs and this Sale Order.

14. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APAs and this Sale Order.

15. After the date of Closing of the APAs, no person or entity, including, without limitation, any federal, state or local taxing authority, may: (a) attach or perfect liens or a security interest against any of the Purchased Assets on account of; or (b) collect or attempt to collect from the Purchasers or the Back-Up Bidders or any of their affiliates, any tax (or other amount alleged to be owing by the Debtors) (i) for any period commencing before and concluding prior to the date of Closing or (ii) assessed prior to and payable after the date of Closing. Without limiting the generality of the foregoing, none of the Purchasers or Back-Up Bidders shall have any liability to the New York Department of Revenue for any tax liability incurred by the Debtors prior to the Closing of the transactions under their respective APA, or for any claim arising under any bulk sales act solely as a result of the Closing.

16. This Sale Order shall be binding upon and govern the acts of all entities, including without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons or entities who may be required by operation of law, the duties of their office or contract to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report to or insure title or state of title in or to any of the Purchased Assets.

17. Pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, all “persons” (as that term is defined in section 101(41) of the Bankruptcy Code) are hereby enjoined from taking any action against the Purchasers or Back-Up Bidders or their affiliates (as they existed immediately prior to the Closing of the transactions under their respective APAs) to recover any claim which such “person” has solely against the Debtors or the Debtors’ affiliates (as they exist immediately following such Closing).

18. The transactions contemplated under the APAs do not amount to a consolidation, merger, or *de facto* merger of any Purchaser or Back-Up Bidder and the Debtors and/or the Debtors’ estates, there is not substantial continuity between any Purchaser and the Debtors, there is no continuity of enterprise between the Debtors and any Purchaser or Back-Up Bidder, no Purchaser is a mere continuation of the Debtors or their estates, and the Purchasers do not constitute a successor to the Debtors or its estates. Other than the Assumed Liabilities under each APA, each Purchaser and Back-Up Bidder shall not assume, nor be deemed to assume or in any way be responsible for any liability

or obligation of any of the Debtors and/or their estates including, but not limited to, any bulk sales law, successor or transferee liability, liability or responsibility for any claim against the Debtors or against any insider of the Debtors or similar liability. The Motions and notice thereof contains sufficient notice of such limitation in accordance with the Bankruptcy Rules.

19. Pursuant to section 365 of the Bankruptcy Code, the Debtors are authorized to assume and assign the Assigned Contracts to the Purchasers as listed on Exhibit C-1 hereto and to the Back-Up Bidders as listed on Exhibit C-2 hereto. Upon assumption and assignment, the respective Purchasers and Back-Up Bidders (as applicable) shall make provisions for the payment of the Cure Costs to the counterparties of any such Assigned Contracts in the amounts set forth in the Assigned Contract Schedule attached as Exhibit C-1 and C-2 to this Sale Order. Except as set forth herein, the Cure Costs set forth in the Assigned Contract Schedule shall be deemed the entire cure obligation of the Debtors due and owing under section 365 of the Bankruptcy Code. Any non-Debtors party to an Assigned Contract is barred, enjoined and prohibited from asserting any claim (as defined in Section 101(5) of the Bankruptcy Code and including any alleged obligation for environmental clean-up or similar liability) (“Claim”) against the Debtors or its property or estate other than the Cure Cost with respect to such Assigned Contract or from asserting a contractual default, offsetting, seeking to offset, recoup, deduct or set-off any Claims such party may have against the Debtors from any amounts that may be or may become due in the future to the corresponding Purchaser or Back-Up Bidder under such Assigned Contract.

20. The failure of the Debtors or the Purchasers or Back-Up Bidders to enforce at any time one or more terms or conditions of any Assigned Contract shall not be a waiver of such terms or conditions, or of the Debtors', the Purchasers' or the Back-Up Bidders' right to enforce every term and condition of the Assigned Contracts.

21. Each of the Purchasers and the Back-Up Bidders has demonstrated adequate assurance of future performance with respect to its respective Assigned Contracts. The proposed assumption and assignment of the Assigned Contracts satisfies the requirements of the Bankruptcy Code including, inter alia, sections 365(b)(1) and (3) and 365(f) of the Bankruptcy Code to the extent applicable.

22. All parties to the Assigned Contracts are forever barred and enjoined from raising or asserting against the Purchasers, the Back-Up Bidders or the Debtors any assignment fee, default or breach under, or any claim or pecuniary loss or condition to assignment, arising under or related to, the Assigned Contracts existing as of the Closing of the transactions under the respective APAs or arising by reason of such Closing.

23. The Assigned Contracts, upon assignment to the Purchasers or the Back-Up Bidders, shall be deemed valid and binding, in full force and effect in accordance with their terms, subject to the provisions of this Sale Order and, pursuant to section 365(k) of the Bankruptcy Code, the Debtors shall be relieved from any further liability thereunder.

24. Any provision in any Assigned Contract that purports to declare a breach, default, or payment right as a result of an assignment or a change of control in

respect of the Debtors is unenforceable and is hereby nullified with respect to the Sale and assignments authorized by this Sale Order, and all Assigned Contracts shall remain in full force and effect, subject only to payment of the appropriate Cure Costs, if any. No sections or provisions of any Assigned Contract that purport to provide for additional payments, penalties, charges, or other financial accommodations in favor of the non-Debtors third party to the Assigned Contracts or restrict use of the premises which are demised by an Assigned Contract to a specific named tenant or business shall have any force and effect with respect to the sale and assignments authorized by this Sale Order, and such provisions constitute unenforceable anti-assignment provisions under section 365(f) of the Bankruptcy Code and/or are otherwise unenforceable under section 365(e) of the Bankruptcy Code.

25. Any party having the right to consent to the assumption and assignment of Assigned Contracts that failed to object to such assumption and assignment is deemed to have consented to such assumption and assignment as required by section 365(c) of the Bankruptcy Code. The Purchasers and the Back-Up Bidders (as applicable) shall enjoy all of the rights and benefits under each such Assigned Contract as of the applicable date of assumption and assignment without the necessity of obtaining such non-Debtors party's written consent to the assumption or assignment thereof. For the avoidance of doubt, any asset that is leased to either of the Debtors or their affiliates under a contract that is not an Assigned Contract, including but not limited to all property subject to leases or contracts with [] that are not Assigned Contracts, shall not be transferred to any of the Purchasers or Back-Up Bidders.

26. Upon assignment, each Purchaser or Back-Up Bidder, its successors and assigns shall have the express right to exercise any and all unexercised extension options, renewal options, and/or non-disturbance rights or protections, notwithstanding any language in the Assigned Contracts making the exercise of such rights personal to any party or limiting the exercise of such rights only to an assignee who is an affiliate of the original named party under such Assigned Contract or an entity that acquires all or substantially all of the assets of the original named party to such Assigned Contract. Upon assignment, the Purchasers shall exercise said rights consistent with the terms of any such Assigned Contract.

27. Each of the Purchasers and the Back-Up Bidders is a good faith purchaser entitled to the benefits and protections afforded by section 363(m) of the Bankruptcy Code (including with respect to the transfer of the Assigned Contracts assigned as part of the Sale of the Purchased Assets pursuant to section 365 of the Bankruptcy Code and this Sale Order); accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale of the Purchased Assets shall not affect the validity of the Sale of the Purchased Assets to the Purchasers or the Back-Up Bidders (including with respect to the transfer of the Assigned Contracts assigned as part of the Sale of the Purchased Assets pursuant to section 365 of the Bankruptcy Code and this Sale Order).

28. The consideration provided by each of the Purchasers and the Back-Up Bidders for its respective Purchased Assets under the APAs is fair and reasonable, and shall be deemed for all purposes to constitute a transfer for reasonably

equivalent value and fair consideration under the Bankruptcy Code and any other applicable law, and the Sale may not be avoided under section 363(n) of the Bankruptcy Code.

29. With respect to the transactions consummated pursuant to this Sale Order, this Sale Order shall be sole and sufficient evidence of the transfer of title to the Purchasers or the Back-Up Bidders, and the Sale consummated pursuant to this Sale Order shall be binding upon and shall govern the acts of all persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the property sold pursuant to this Sale Order, including without limitation, all foreign affiliates and foreign receivers, filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, administrative agencies, governmental departments, secretaries of state, and federal, state, and local officials, and each of such persons and entities is hereby directed to accept this Sale Order as sole and sufficient evidence of such transfer of title and shall rely upon this Sale Order in consummating the transactions contemplated hereby.

30. This Court shall retain exclusive jurisdiction to interpret and enforce the provisions of the APAs, the Bidding Procedures Order, and this Sale Order in all respects and further to hear and determine any and all disputes between the Debtors and/or the Purchasers or Back-Up Bidders, as the case may be, and any non-debtor party to, among other things, any Assigned Contracts; provided, however, that in the event the

Court abstains from exercising or declines to exercise such jurisdiction or is without jurisdiction with respect to the APAs, the Sales Procedures Order, and this Sale Order, such abstention, refusal, or lack of jurisdiction shall have no effect upon, and shall not control, prohibit or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter.

31. The APAs and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, in a writing signed by such parties, in accordance with the terms thereof without further order of the Court.

32. From and after the date hereof, the Debtors shall act in accordance with the terms of the APAs and each Debtor, to the extent it already has not done so, shall execute any Sale Document at or prior to Closing.

33. To the extent of any inconsistency between the provisions of this Sale Order and the APAs, or any documents executed in connection therewith, the provisions contained in this Sale Order shall govern.

34. The provisions of this Sale Order are nonseverable and mutually dependent.

35. This Sale Order shall inure to the benefit of the Purchasers, the Back-Up Bidders the Debtors, and their respective successors and assigns, including but not limited to any chapter 11 or chapter 7 trustee that may be appointed in the Debtors' case and shall be binding upon any trustee, party, entity or fiduciary that may be

appointed in connection with these cases or any other or further case involving the Debtors, whether under chapter 7 or chapter 11 of the Bankruptcy Code.

36. Nothing in any order of this Court or contained in any plan of reorganization or liquidation confirmed in these chapter 11 cases, or in any subsequent or converted case of the Debtors under chapter 7 or chapter 11 of the Bankruptcy Code, shall conflict with or derogate from the provisions of the APAs or the terms of this Sale Order. The provisions of this Sale Order and any actions taken pursuant hereto shall survive the entry of any order which may be entered confirming any chapter 11 plan of the Debtors, converting the Debtors' cases from chapter 11 to cases under chapter 7 of the Bankruptcy Code, or dismissing the Debtors' chapter 11 case.

37. The transactions contemplated by the APAs shall be exempt from any so-called "bulk-sale" law in all necessary jurisdictions arising as a result of or in connection with the Debtors' Sale and transfer of the Purchased Assets to the Purchasers or the Back-Up Bidders.

38. Because time is of the essence, this Sale Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing, and the stay of (i) orders authorizing the sale, use, or lease of property of the estate, as set forth in Bankruptcy Rule 6004(h), (ii) orders authorizing the assignment of an executory contract or unexpired lease, as set forth in Bankruptcy Rule 6006(d), and (iii) proceedings to enforce a judgment, as set forth in Bankruptcy Rule 7062, or otherwise shall not apply to this Sale Order.

39. The Debtors are authorized to close the Sale under each of the APAs immediately upon entry of this Sale Order.

Dated: _____, 2012
New York, New York

United States Bankruptcy Judge

Exhibit A-1

Purchasers

Exhibit A-2

Back-Up Bidders

Group Exhibit B

Exhibit C-1

Assigned Contracts - Purchasers

Exhibit C-2

Assigned Contracts – Back-Up Bidders

Exhibit D to the Debtors' Motion

[Sale Notice]

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

In re:	)	Chapter 11
)	
HMX ACQUISITION CORP., <i>et al.</i> , ¹	)	Case No. 12-14300 (ALG)
)	
Debtors.	)	(Joint Administration Requested)
)	

NOTICE OF AUCTION AND SALE HEARING

PLEASE TAKE NOTICE OF THE FOLLOWING:

On October 17, 2012, HMX Acquisition Corp. (together with its other affiliated debtors-in-possession, the “Debtors”) entered into an asset purchase agreement (the “Stalking Horse Purchase Agreement”) for the sale (the “Sale”) of substantially all of its assets (the “Purchased Assets”) to Authentic Brands Group, LLC.(the “Stalking Horse Purchaser”), free and clear of all liens, claims, interests and encumbrances (except for the Permitted Encumbrances, as defined in the Stalking Horse Purchase Agreement), as more fully set forth in the *Debtors’ Motion for Orders (A)(I) Authorizing the Debtors’ Entry into the Stalking Horse Purchase Agreement, (II) Authorizing and Approving the Bidding Procedures and Break-Up Fee, (III) Approving the Notice Procedures, (IV) Setting a Date for the Sale Hearing, (V) Authorizing the Debtors’ to File Certain Documents under Seal, (B)(I) Authorizing and Approving the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Claims and Interests, and (II) Authorizing the Assumption and Assignment of Certain Executory Contracts, and (C) Granting Related Relief*, filed on [], 2012 [Docket No. []].

The Auction and sale of the Debtors’ Business will occur in accordance with procedures established by the *Order (A) Authorizing Debtors’ Entry Into the Stalking Horse Purchase Agreement, (B) Authorizing and Approving the Bidding Procedures and Break-Up Fee, (C) Approving the Notice Procedures, (D) Authorizing the Filing Of Certain Documents Under Seal, (E) Setting a Date for the Sale Hearing, and (F) Granting Related Relief* (the “Bid Procedures Order”), entered on [], 2012 [Docket No. []], attached hereto as **Exhibit 1**.

Pursuant to the Bid Procedures Order, any party wishing to participate in the Auction must do so in accordance with the Bid Procedures Order, including the submission of a potential bid such that it is actually **received not later than** [], **at** [].**m. (ET)** by the parties identified in the Bid Procedures Order.

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, to the extent applicable, are: HMX Acquisition Corp. (9861); HMX Poland Sp. z o. o.; HMX, LLC (8971); Quartet Real Estate, LLC (8973); and HMX, DTC Co. (0162).

If the Debtors receive qualified competing bids within the requirements and time frame specified by the Bidding Procedures, the Debtors will conduct the Auction on [], 2012 at [].m. (ET) at the offices of Proskauer Rose LLP, 11 Times Square, New York, NY 10036, or such later time or other place as the Debtors shall timely notify all Qualified Bidders and the Notice Parties (as defined in the Bidding Procedures Order).

A hearing (the “**Sale Hearing**”) will be held before the Honorable [], United States Bankruptcy Judge, at the Bankruptcy Court, One Bowling Green, New York, New York, on [] at [].m. (ET), or at such other time as the Bankruptcy Court permits, to confirm the results of the Auction and approve the Sale of the Purchased Assets to the Stalking Horse Purchaser or the Successful Bidder. The Debtors may adjourn the Sale Hearing one or more times without further notice by making an announcement in open Court.

Responses or objections, if any, to the relief requested in the Motion must be filed electronically with the Court on the docket of *In re HMX Acquisition, Corp.*, Case No. 12-14300 pursuant to the Court’s General Order M-399 (available at <http://www.nysb.uscourts.gov/orders/m399.pdf>), by registered users of the Court’s case filing system and by all other parties in interest on a 3.5 inch disc, preferably in portable document format, Microsoft Word or any other Windows-based word processing format and served by U.S. mail, overnight delivery, hand delivery or, with the exception of the Court and the United States Trustee, facsimile upon each of the following: (a) the Chambers of the Honorable [] United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004; (b) the Debtors, c/o []; (c) Proskauer Rose LLP, counsel to the Debtors, 70 W. Madison St., Suite 3800 Chicago, IL 60602 (Attn: Mark K. Thomas and Peter J. Young); (d) counsel to the Stalking Horse Purchasers, DLA Piper LLP (US), Attn: Richard A. Chesley, 203 N. LaSalle St., Suite 1900, Chicago, Illinois 60601 and (e) all parties requesting notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002, so as to be actually received no later than [], 2012 at [].m. (ET). In addition, supplemental objections regarding issues arising from and in connection with the Auction and/or the Debtors’ selection of the Highest Bid made by the Highest Bidder other than the Stalking Horse Purchaser must be actually received no later than [], 2012 at [].m. (ET).

Only those objections that are timely filed, served and received will be considered at the Hearing. Any party failing to timely file and serve an objection to the Sale on or before the applicable Objection Deadlines in accordance with the Bid Procedures Order shall be forever barred from asserting any objection to the Sale, including with respect to the transfer of the property free and clear of all claims and interests effected thereunder. The parties are required to attend the Hearing, and failure to attend in person or by counsel may result in relief being granted or denied upon default.

Copies of the Motion and the Stalking Horse Purchase Agreement may be downloaded from the Court’s docket at <http://www.nysb.uscourts.gov> and from the website of the Debtors’ claims and noticing agent, Epiq Systems, Inc.

Dated: [___], 2012

/s/

PROSKAUER ROSE LLP

Jared Zajac
Eleven Times Square
New York, New York 10036
Telephone: (212) 969-3000
Facsimile: (212) 969-2900

and

Mark K. Thomas (*pro hac vice* application pending)
Peter J. Young (*pro hac vice* application pending)
Three First National Plaza
70 West Madison, Suite 3800
Chicago, Illinois 60602
Telephone: (312) 962-3550
Facsimile: (312) 962-3551

Proposed Counsel for the Debtors and Debtors in Possession

EXHIBIT 1

[Bidding Procedures]

Exhibit E to the Debtors' Motion

[Notice of Assumption and Assignment]

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

In re:	)	Chapter 11
)	
HMX ACQUISITION CORP., <i>et al.</i> , ¹	)	Case No. 12-14300 (ALG)
)	
Debtors.	)	(Joint Administration Requested)
)	

NOTICE OF ASSUMPTION, ASSIGNMENT AND/OR TRANSFER

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On October 17, 2012, HMX Acquisition Corp. (together with its other affiliated debtors-in-possession, the “Debtors”) entered into an asset purchase agreement (the “Stalking Horse Purchase Agreement”) for the sale (the “Sale”) of substantially all of its assets (the “Purchased Assets”) to Authentic Brands Group, LLC.(the “Stalking Horse Purchaser”), free and clear of all liens, claims, interests and encumbrances (except for the Permitted Encumbrances, as defined in the Stalking Horse Purchase Agreement), as more fully set forth in the *Debtors’ Motion for Orders (A)(I) Authorizing the Debtors’ Entry into the Stalking Horse Purchase Agreement, (II) Authorizing and Approving the Bidding Procedures and Break-Up Fee, (III) Approving the Notice Procedures, (IV) Setting a Date for the Sale Hearing, (V) Authorizing the Debtors’ to File Certain Documents under Seal, (B)(I) Authorizing and Approving the Sale of Substantially All of the Debtors’ Assets Free and Clear of All Claims and Interests, and (II) Authorizing the Assumption and Assignment of Certain Executory Contracts, and (C) Granting Related Relief*, filed on [], 2012 [Docket No. []]. The Debtors will assume, assign, and/or transfer the Assumed Agreements to the Successful Bidder or Back-Up Bidder for the Purchased Assets under the bidding procedures (the “Bidding Procedures”) approved by the Bankruptcy Court and attached to the Bidding Procedures Order as Schedule 1.

2. The Debtors believe that any and all defaults (other than the filing of these Chapter 11 Cases) and actual pecuniary losses under the Assumed Agreements can be cured by the payment of the Cure Amounts listed on **Exhibit A** annexed hereto.

3. Any objections to (i) the assumption, assignment and/or transfer of an Assumed Agreement, or (ii) the amount asserted as the Cure Amount (each, a “Cure Amount/Assignment Objection”), must be in writing and set forth with specificity the nature of the objection and the cure amount that the objecting party believes should be paid in connection with the assumption of the Assumed Agreement (the “Claimed Cure Amount”). In addition, if the Debtors identify additional executory contracts or unexpired leases that might be assumed by the Debtors and assigned to the Successful Bidder or Back-Up Bidder not set forth in the original Notice of

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, to the extent applicable, are: HMX Acquisition Corp. (9861); HMX Poland Sp. z o. o.; HMX, LLC (8971); Quartet Real Estate, LLC (8973); and HMX, DTC Co. (0162).

Assumption and Assignment, the Debtors shall promptly send a supplemental notice (a "Supplemental Notice of Assumption and Assignment") to the applicable counterparties to such additional executory contracts and unexpired leases.

4. To be considered a timely Cure Amount/Assignment Objection, the Cure Amount/Assignment Objection must be filed with the Bankruptcy Court and served upon (i) counsel to the Debtors Proskauer Rose LLP, counsel to the Debtors, 70 W. Madison St., Suite 3800 Chicago, IL 60602 (Attn: Mark K. Thomas and Peter J. Young); (ii) counsel to the Stalking Horse Purchasers, DLA Piper LLP (US), Attn: Richard A. Chesley, 203 N. LaSalle St., Suite 1900, Chicago, Illinois 60601; and (iii) the office of the United States Trustee (Region 2), 33 Whitehall Street, Suite 2100, New York, NY 10004 (collectively, the "Notice Parties"), by the later of (i) 5:00 p.m. (prevailing Eastern time) on the date that is three (3) business days prior to the Bid Deadline; or (ii) ten (10) days after service of the relevant Supplemental Notice of Assumption and Assignment.

5. If a Cure Amount/Assignment Objection is timely filed, the Debtors may, in their sole discretion, resolve any Cure Amount/Assignment Objection by mutual agreement with the objecting counterparty to any Executory Contract or Unexpired Lease without further order of the Court. In the event that the Debtors and any objecting party are unable to consensually resolve any Cure Amount/Assignment Objection, a hearing with respect to that objection shall be held before the Honorable [____], United States Bankruptcy Judge, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, Room [____], New York, NY 1004 at such date and time as the Debtor may schedule with the Court.

6. Unless the Cure Amount/Assignment Objection is timely filed and served, the assumption, assignment and/or transfer of the applicable Assumed Agreement will proceed without further notice at the hearing to approve the sale of the Purchased Assets.

7. Parties that fail to file and serve timely Cure Amount/Assignment Objections shall be deemed to have waived and released any and all rights to assert against the Debtors, the Successful Bidder or Back-Up Bidder cure amounts different from the Cure Amounts listed on Exhibit A hereto and shall be forever barred and estopped from asserting or claiming against the Debtors, the Successful Bidder or Back-Up Bidder, or any assignee of any Assumed Agreement that any additional amounts are due or defaults exist, or prohibitions or conditions to assignment exist or must be satisfied, under such Assumed Agreement.

8. The Debtors, the Successful Bidder or the Back-Up Bidder, as the case may be, may determine to exclude any Executory Contract or Unexpired Lease from the list of Purchased Assets no later than one (1) business day prior to the Sale Hearing, or, if the Court determines at any hearing on a Cure Amount/Assignment Objection that the applicable cure amount for such contract is greater than the Cure Amount proposed by the Debtors, no later than five (5) business days following such hearing. The non-debtor party or parties to any such excluded contract or lease will be notified of such exclusion by written notice mailed within two (2) business days of such determination.

9. If no Cure Amounts are due under an Assumed Agreement, and the non-debtor party to the Assumed Agreement does not otherwise object to the Debtors' assumption,

assignment and/or transfer of the Assumed Agreement, no further action needs to be taken on the part of that non-debtor party.

10. Copies of the Bidding Procedures Order and other relevant documents are posted on: (a) the Court's website, <http://ecf.ilnb.uscourts.gov>; and (b) the case management website maintained by Epiq Systems, Inc., noticing and claims agent for the Debtors, [_____].

[The remainder of this page was left intentionally blank.]

11. The Debtors' decision to sell, assign and/or transfer to the Successful Bidder or Back-Up Bidder the Assumed Agreements is subject to Court approval and the Closing. Accordingly, absent such Closing, any of the Assumed Agreements shall not be deemed to be sold, assigned and/or transferred, and shall in all respects be subject to further administration under the Bankruptcy Code. The inclusion of any document on the list of Assumed Agreements shall not constitute or be deemed to be a determination or admission that such document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code (all rights with respect thereto being expressly reserved).

Dated: [___], 2012

/s/

PROSKAUER ROSE LLP

Jared Zajac

Eleven Times Square

New York, New York 10036

Telephone: (212) 969-3000

Facsimile: (212) 969-2900

and

Mark K. Thomas (*pro hac vice* application pending)

Peter J. Young (*pro hac vice* application pending)

Three First National Plaza

70 West Madison, Suite 3800

Chicago, Illinois 60602

Telephone: (312) 962-3550

Facsimile: (312) 962-3551

Proposed Counsel for the Debtors and Debtors in Possession

EXHIBIT A

TO NOTICE OF ASSUMPTION AND ASSIGNMENT

[ASSUMED AGREEMENTS]

[To be provided]