IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
INSTANT BRANDS ACQUISITION HOLDINGS INC., *et al.*,	§	**Case No. 23-90716 (DRJ)**
Debtors.[1]	§	**(Jointly Administered)**

DEBTORS' EMERGENCY MOTION FOR ENTRY OF ORDERS (I)(A) APPROVING BIDDING PROCEDURES FOR SALE OF DEBTORS' ASSETS, (B) AUTHORIZING POTENTIAL SELECTION OF STALKING HORSE BIDDER(S), (C) APPROVING BID PROTECTIONS, (D) SCHEDULING AUCTION FOR, AND HEARING TO APPROVE, SALE OF DEBTORS' ASSETS, (E) APPROVING FORM AND MANNER OF NOTICES OF SALE, AUCTION, AND SALE HEARING, AND (F) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES, (II)(A) APPROVING SALE OF DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES AND (B) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (III) GRANTING RELATED RELIEF

Emergency relief has been requested. Relief is requested not later than 3:30 p.m. (prevailing Central Time) on July 12, 2023.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on July 12, 2023 at 3:30 p.m. (prevailing Central Time) in Courtroom 400, 4th floor, 515 Rusk Street, Houston, Texas 77002.

[1] The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers or registration numbers in the applicable jurisdictions, are as follows: Instant Brands (Texas) Inc. (2526); Instant Brands Acquisition Holdings Inc. (9089); Instant Brands Acquisition Intermediate Holdings Inc. (3303); Instant Brands Holdings Inc. (3318); URS-1 (Charleroi) LLC (7347); Instant Brands LLC (0566); URS-2 (Corning) LLC (8085); Corelle Brands (Latin America) LLC (8862); EKCO Group, LLC (7167); EKCO Housewares, Inc. (0216); EKCO Manufacturing of Ohio, Inc. (7300); Corelle Brands (Canada) Inc. (5817); Instant Brands (Canada) Holding Inc. (4481); Instant Brands Inc. (8272); and Corelle Brands (GHC) LLC (9722). The address of the debtors' corporate headquarters is 3025 Highland Parkway, Suite 700, Downers Grove, IL 60515.

You may participate in the hearing either in person or by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at (832) 917-1510. Once connected, you will be asked to enter the conference room number. Judge Jones's conference room number is 205691. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Jones's homepage. The meeting code is "Judge Jones". Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the "Electronic Appearance" link on Judge Jones's homepage. Select the case name, complete the required fields, and click "Submit" to complete your appearance.

Instant Brands Acquisition Holdings Inc. and certain of its affiliates (collectively, the "**Debtors**"),[2] each of which is a debtor and debtor in possession in the above-captioned chapter 11 cases (the "**Chapter 11 Cases**"), hereby file this *Debtors' Emergency Motion for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Debtors' Assets, (B) Authorizing Potential Selection of Stalking Horse Bidder(s), (C) Approving Bid Protections, (D) Scheduling Auction for, and Hearing To Approve, Sale of Debtors' Assets, (E) Approving Form and Manner of Notices of Sale, Auction, and Sale Hearing, and (F) Approving Assumption and Assignment Procedures, (II)(A) Approving Sale of Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and (B) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases, and (III) Granting Related Relief* (this "**Motion**"). This Motion is supported by (a) the *Declaration of Ronen Bojmel in Support of Debtors' Emergency Motion for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Debtors' Assets, (B) Authorizing Potential Selection of Stalking Horse Bidder(s), (C) Approving Bid Protections, (D) Scheduling Auction for, and Hearing To Approve, Sale of Debtors' Assets, (E) Approving Form and Manner*

[2] The Debtors and their direct and indirect non-Debtor subsidiaries are collectively referred to herein as "**Instant Brands**" or the "**Company**."

of Notices of Sale, Auction, and Sale Hearing, and (F) Approving Assumption and Assignment Procedures, (II)(A) Approving Sale of Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and (B) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases, and (III) Granting Related Relief (the "**Bojmel Declaration**"), which is attached hereto as **Exhibit A** and incorporated by reference herein, and (b) the *Declaration of Adam Hollerbach as Chief Restructuring Officer of the Debtors in Support of Debtors' Chapter 11 Proceedings and First Day Pleadings* [Docket No. 39] (the "**Hollerbach Declaration**" and, together with the Bojmel Declaration, the "**Declarations**"), which was filed on the Petition Date (as defined herein) and is incorporated herein by reference. In further support of this Motion, the Debtors respectfully state as follows:

Relief Requested

1. By this Motion, and pursuant to sections 105(a), 363, 365, 503, and 507 of title 11 of the United States Code (the "**Bankruptcy Code**") and rules 2002, 6004, 6006, and 9007 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), the Debtors request entry of the following:

   a. an order, substantially in the form attached hereto (the "**Bidding Procedures Order**"),

      i. authorizing and approving the bidding procedures, substantially in the form attached to the Bidding Procedures Order as Exhibit 1 (the

"**Bidding Procedures**"), in connection with the sale of the Bid Assets (as defined herein)[3] (the "**Sale Transaction**"[4]);

ii. authorizing, but not obligating, the Debtors to select a Stalking Horse Bidder in consultation with the Consultation Parties (each as defined herein);

iii. approving the Bid Protections (as defined herein) that the Debtors may offer to prospective Stalking Horse Bidders, if any, in accordance with the terms and conditions set forth in the Bidding Procedures;

iv. scheduling an auction of the Bid Assets (the "**Auction**") to be held on August 24, 2023 at 10:00 a.m. (prevailing Eastern Time);

v. scheduling a hearing (the "**Sale Hearing**") to consider approval of the proposed Sale Transaction to be held on August [30], 2023 at [•].m. (prevailing Central Time);[5]

vi. authorizing and approving the (A) notice of the sale of the Bid Assets, the Indication of Interest Deadline, the Bid Deadline (each as defined herein), the Auction, and the Sale Hearing, substantially in the form attached to the Bidding Procedures Order as Exhibit 2 (the "**Sale Notice**"), (B) notice to each relevant non-Debtor counterparty (each, a "**Counterparty**") to an executory contract or unexpired lease listed on the Potential Assumed Contracts Schedule (as defined below) (collectively, the "**Contracts and Leases**" and each, an "**Assumed Contract**" or "**Assumed Lease**") regarding the Debtors' potential assumption and assignment of such Counterparty's Assumed Contracts or Assumed Leases (collectively, the "**Potential Assumed Contracts**") and the amount necessary to cure any defaults thereunder (the "**Cure Costs**"), substantially in the form attached to the Bidding Procedures Order as Exhibit 3 (the "**Potential Assumption and Assignment Notice**"), and (C) notice to each Counterparty listed on the Proposed Assumed Contracts Schedule (as defined herein), substantially in

[3] Notwithstanding the Debtors' request for authorization and approval of the Bidding Procedures, the Debtors reserve the right to seek by separate motion, in the exercise of their sound business judgment and fiduciary duties (in consultation with the Consultation Parties (as defined herein)), the authority to sell assets of the Debtors' estates (that do not constitute all or substantially all of the Debtors' assets) pursuant to section 363 of the Bankruptcy Code.

[4] As described below, the Bidding Procedures provide that there may be one or several Sale Transactions. To the extent that this Motion refers to the Sale Transaction, or terms related thereto, in the singular it shall include the plural, and vice versa.

[5] This date remains subject to Court approval.

the form attached to the Bidding Procedures Order as Exhibit 4 (the "**Proposed Assumption and Assignment Notice**"); and

vii. authorizing and approving procedures for the assumption and assignment of the Contracts and Leases and the determination of Cure Costs with respect thereto (collectively, the "**Assumption and Assignment Procedures**");

b. an order (the "**Sale Order**") authorizing and approving

i. the sale of the Bid Assets free and clear of all liens, claims, interests, and encumbrances, except certain permitted encumbrances as determined by the Debtors and any purchaser of the Bid Assets; and

ii. the assumption and assignment of the proposed Assumed Contracts and Assumed Leases (collectively, the "**Proposed Assumed Contracts**") in connection with the proposed Sale Transaction; and

c. granting related relief.

Jurisdiction, Venue, and Authority

2. The United States Bankruptcy Court for the Southern District of Texas (the "**Court**") has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Order of Reference to Bankruptcy Judges*, General Order 2012-6 (S.D. Tex. May 24, 2012) (Hinojosa, C.J.).

3. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). In addition, the Debtors confirm their consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

4. Venue of the Chapter 11 Cases and related proceedings is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

A. General Background

5. On June 12, 2023 (the "**Petition Date**"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors remain in possession of their property and continue to operate and manage their businesses as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. The Chapter 11 Cases are being jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b) and the *Order Directing Joint Administration of Chapter 11 Cases* [Docket No. 40] entered by the Court on June 13, 2023 in each of the Chapter 11 Cases.

7. On June 15, 2023, the Ontario Superior Court of Justice (Commercial List) issued an order recognizing the Chapter 11 Cases as foreign main proceedings. *See* In Re Instant Brands Inc. (15 June 2023), Toronto, Ont Sup Ct CV-23-00701154-000CL (Initial Recognition Order).

8. On June 27, 2023, the Office of the United States Trustee for the Southern District of Texas (the "**U.S. Trustee**") appointed an Official Committee of Unsecured Creditors (the "**Committee**") pursuant to section 1102 of the Bankruptcy Code. *See United States Trustee's Notice of Appointment of Committee of Unsecured Creditors* [Docket No. 177]. No trustee or examiner has been appointed in the Chapter 11 Cases.

9. Additional information about the Debtors' businesses and affairs, capital structure, and prepetition indebtedness, and the events leading up to the Petition Date, can be found in the Hollerbach Declaration.

B. The Bid Assets[6]

10. The Debtors commenced the Chapter 11 Cases to pursue the consummation of one or more sale transactions, or a standalone restructuring, that would maximize the value of their estates and the recoveries for their stakeholders.

11. Instant Brands designs, manufactures, and markets a global portfolio of innovative and iconic consumer lifestyle brands, including Instant®, Pyrex®, Corelle®, Corningware®, Snapware®, Chicago Cutlery®, and Visions®. With people-first and purpose-driven solutions in mind, Instant Brands is reimagining how people live, eat, connect, and play inside the home—and in the spaces where people gather. Headquartered in Downers Grove, Illinois, Instant Brands sells its products worldwide, employs more than 2,000 people, and operates in several countries outside the United States, including Canada, Singapore, England, South Korea, Australia, Taiwan, and China.

12. As described more fully in the Hollerbach Declaration, Instant Brands sells its consumer dinnerware, bakeware, kitchen and household appliances, cutlery, food storage, and other storage products on an omnichannel basis, both directly to consumers and on a wholesale basis. Instant Brands' products are sold at more than 30 global retailers, including Walmart, Target, and Costco, as well as on eCommerce platforms, such as Amazon and Alibaba. While North America accounted for approximately 74% of Instant Brands' total net sales in 2022, Instant Brands also achieved significant presence in certain international markets, primarily Asia, the United Kingdom, and Australia. Instant Brands' strategy involves driving growth by innovating its core brands and products to meet consumer needs, entering new categories to leverage a portfolio of iconic brands, expanding its global footprint, and leveraging its global infrastructure

[6] The assets and operations described in this section are referred to, collectively, as the "**Bid Assets**" herein.

to do it. Its growth strategy is also focused on creating best-in class consumer connection with Instant Brands engaging more than 30 million consumers worldwide through a variety of social and digital mediums, including the Instant Brands Connect App.

13. Instant Brands enjoys a broad customer base and a diversified lineup of products, with major manufacturing and distribution operations in North America and Asia. Instant Brands' products include well-known best sellers that employ innovative technology that are generally divided into two categories: appliances and housewares. The appliance sector includes, among other things, electric pressure cookers, air fryers, coffee machines, Dutch ovens, air purifiers, and other multi-feature appliances. The houseware division includes various consumer dinnerware, bakeware, cookware, cutlery, and plastic storage containers under the Pyrex®, Corelle®, CorningWare®, Snapware®, and ChicagoCutlery® brands.

14. Instant Brands' go-to-market approach differs depending upon the maturity of the retail distribution and customer concentration in each country. Instant Brands has positions in major channels of distribution for its products in North America and has also achieved significant presence in certain international markets, including South Korea, Australia, and China. The Company's EMEA business based in the United Kingdom is growing at an annual rate of more than 30%. Instant Brands has also established sales subsidiaries in South Korea, Australia, China, and Singapore and also relies on third-party distributor relationships.

15. Instant Brands operates four manufacturing facilities, three of which are owned by the Company. The Corning, New York manufacturing facility is owned by the Company and is the world's only producer of the three-layer Vitrelle® glass dinnerware, which is sold under the Corelle® brand. The Charleroi, Pennsylvania manufacturing operation is also owned by the Company and produces Pyrex® products. The Byhalia, Mississippi location produces the

Company's Snapware® products. The Company-owned Malaysian location decorates Vitrelle® glass products for distribution in Asia. The Company's Corelle®, Pyrex®, and Snapware® products represent a significant portion of the Company's net sales. In addition to its manufacturing facilities, Instant Brands also operates three distribution facilities in the United States.

16. Instant Brands also owns almost 1,300 trademarks and patents around the world and licenses trademarks from many globally recognized companies, including Disney and Sanrio.

C. Marketing and Sale Process

17. The Debtors' formal retention of their proposed investment banker, Guggenheim Securities, LLC ("**Guggenheim Securities**") began on January 1, 2023. The Debtors engaged Guggenheim Securities to assist the Debtors in exploring strategic alternatives, first focusing on raising incremental liquidity, later shifting to a comprehensive restructuring, and, as liquidity worsened, pivoting to the negotiation of bridge financing. The Debtors, together with their advisors at Guggenheim Securities, AlixPartners, LLP, and Davis Polk & Wardwell LLP, aggressively pursued various restructuring alternatives and engaged in arms'-length negotiations with key stakeholders, including (a) an ad hoc group of lenders (the "**Ad Hoc Group of Term Loan Lenders**") holding more than half of the term loans under the Company's Prepetition Term Loan Credit Facility (as defined in the Hollerbach Declaration), (b) the lenders (the "**Prepetition ABL Lenders**") under the Company's Prepetition ABL Credit Facility (as defined in the Hollerbach Declaration), and (c) Cornell Capital LLC, Cornell Capital Partners III LP, and their respective controlled affiliates (together, "**Cornell Capital**"), which collectively control a majority of the existing voting equity interests in Instant Brands. As diligence and negotiations progressed, however, it became clear that the Debtors' liquidity runway did not afford the parties sufficient time to negotiate an out-of-court restructuring. As a result, the Debtors, with the assistance of their advisors, pivoted to negotiating debtor-in-possession financing with the Ad Hoc Group of Term

Loan Lenders and the Prepetition ABL Lenders and commenced the instant Chapter 11 Cases to manage liquidity and pursue the consummation of one or more sale transactions or a plan of reorganization through a court-supervised process.

18. To finance the Debtors' businesses as they pursue such transactions, the Debtors sought and obtained senior secured superpriority post-petition financing in the aggregate amount of $257.5 million. After considering a wide-range of potential strategic alternatives and negotiating with all relevant stakeholders and counterparties, the Debtors, in consultation with their advisors (including Guggenheim Securities), have ultimately determined that a sale of all, substantially all, or a portion of the Debtors' assets would be a potential path to maximizing and preserving value for the benefit of the Debtors' stakeholders.

19. Through the sale process outlined in this Motion, the Debtors intend to execute a broad marketing process for the Bid Assets. The Debtors, with the assistance of Guggenheim Securities, have already begun the post-petition marketing process in connection with the filing of the Chapter 11 Cases, contacting relevant parties from the Company's prepetition restructuring process as well as additional potential purchasers, including those who may be interested in only a subset of the Bid Assets.

20. To elicit the highest or otherwise best offers for the Bid Assets, the Debtors and their advisors (in consultation with the ABL DIP Agent, the Term DIP Agent, the Prepetition Term Agent (all as defined in the DIP Order[7]), the Committee,[8] and, collectively, the "**Consultation**

[7] As used herein, "**DIP Order**" means the *Interim Order (I) Authorizing the Debtors To (A) Obtain Senior Secured Superpriority Post-Petition Financing and (B) Use Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Providing Adequate Protection to Prepetition Secured Parties, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Docket No. 96] and any supplemental and/or final order entered in connection therewith.

[8] The Committee is included at this juncture solely for its incorporation into the definition of "Consultation Parties." The Committee was only appointed on June 27, 2023 and retained counsel and a financial advisor on June 28, 2023 and June 29, 2023, respectively. The Debtors have engaged in discussions with the Committee regarding

Parties"), together with their respective advisors) have developed proposed Bidding Procedures that would allow interested parties to submit bids for (a) all of the Bid Assets, (b) particular lots of individual Bid Assets, or (c) combinations thereof, as specified in the Bidding Procedures, in each case, subject to the terms and provisions of the Bidding Procedures. Pursuant to the Bidding Procedures, the Debtors intend to market the Bid Assets to potential buyers and facilitate access to diligence materials. Such materials would include a non-confidential presentation and, for those executing a confidentiality agreement with the Debtors, access to a virtual data room, which would contain confidential presentation materials, additional legal, financial, operational, and other information on the Debtors, and, as appropriate, meetings with management.

21. The Debtors have carefully evaluated a number of qualitative and quantitative factors in designing a process that they believe would maximize the value of their estates and produce maximum recoveries. This process principally includes approval of the Bidding Procedures that are designed to (a) promote active bidding from interested parties, (b) obtain the highest or otherwise best offers available for the Bid Assets, and/or (c) maximize value in a Chapter 11 Plan Transaction, in each case for the benefit of all stakeholders. Moreover, the Bidding Procedures provide the Debtors with the flexibility to consider bids in the form of chapter 11 plans of reorganization.

22. The Debtors, in consultation with their advisors, believe that the process and time periods set forth in the Bidding Procedures are reasonable and would provide parties with sufficient time and information necessary to formulate bids to purchase the Bid Assets. In

this Motion and the Bidding Procedures, and both reflect certain comments received from the Committee's advisors. However, since the Committee is still conducting diligence, certain issues remain under discussion, including with respect to the proposed timeline, which the Debtors and the Committee hope to resolve prior to the hearing scheduled for July 12, 2023. The Committee reserves all its rights as to such issues, including the right to file an objection prior to the objection deadline.

formulating the Bidding Procedures and time periods contained therein, the Debtors balanced the need to provide adequate and appropriate notice to parties in interest and to potential purchasers with the need to efficiently sell the Bid Assets to maximize realizable value, all the while preventing the disclosure of confidential information to competitors that could be damaging to the business going forward. Speed and efficiency are critical, in light of the Debtors' obligations under their DIP Credit Agreements,[9] the Company's liquidity profile, and the need to ensure that the Debtors maximize and preserve value for all stakeholders.

23. Completion of the sale process in a timely and efficient manner would help maximize the value of the Bid Assets. The time periods set forth in the Bidding Procedures are prudent and consistent with the case milestones set forth in the DIP Credit Agreements (which were negotiated and agreed to among the Debtors, with the advice of their advisors, and the Consultation Parties (other than the Committee)), and failure to adhere to such time periods could jeopardize the closing of a Sale Transaction. Thus, the Debtors have determined that pursuing one or more transactions in the manner and within the time periods prescribed in the Bidding Procedures is in the best interest of the Debtors' estates and would provide interested parties with sufficient opportunity to participate.

24. Accordingly, the Debtors believe that approval of the Bidding Procedures and the related relief requested in this Motion would allow the Debtors to efficiently maximize value and

[9] The "**DIP Credit Agreements**" include (a) that certain Superpriority Senior Secured Priming Debtor-in-Possession Asset-Based Revolving Credit Agreement, dated as of June 15, 2023, by and among, *inter alios*, Instant Brands Holdings Inc. (the "**Borrower**"), Instant Brands Acquisition Intermediate Holdings Inc. ("**Holdings**"), the lenders and issuing banks from time to time party thereto, and Bank of America, N.A., as administrative agent and collateral agent, and (b) that certain Senior Secured Superpriority Priming Debtor-in-Possession Credit Agreement, dated as of June 15, 2023, by and among the Borrower, Holdings, the lenders from time to time party thereto, and Wilmington Trust, National Association, as administrative agent and collateral agent.

is in the best interests of the Debtors' estates and their stakeholders. Therefore, the Debtors respectfully request that the Court grant the relief requested herein.

D. The Stalking Horse Bidder and Bid Protections

25. The Debtors believe that having the maximum flexibility to run their sale process would produce the highest recovery for all stakeholders. Accordingly, the Debtors seek authorization, but not direction, in accordance with the Bidding Procedures, to exercise their business judgment (in consultation with the Consultation Parties) to agree with any Qualified Bidder (as defined herein) that (a) such Qualified Bidder's Qualified Bid (as defined herein) shall serve as the minimum bid for the Bid Assets or any lot thereof (such Qualified Bidder, a "**Stalking Horse Bidder**" and, such Qualified Bid, a "**Stalking Horse Bid**") and (b) the Debtors would enter into the transaction(s) contemplated by such Stalking Horse Bid(s) unless a higher or otherwise better Qualified Bid is submitted with respect to such Bid Assets or lot thereof, as determined by the Debtors (in consultation with the Consultation Parties) in accordance with the Bidding Procedures.

26. In order to incentivize prospective purchasers to agree to become a Stalking Horse Bidder, the Debtors seek authorization, but not direction, to exercise their business judgment to offer (in consultation with the Consultation Parties) the following bid protections to such Stalking Horse Bidder(s), payable if the Debtors consummate a sale pursuant to a Qualified Bid other than the Stalking Horse Bid (if the assets subject to such sale include those to which the Stalking Horse Bid relates): (a) payment of a break-up fee in an amount not to exceed three percent of the cash portion of the purchase price set forth in the Stalking Horse Bid (the "**Break-Up Fee**") and (b) reimbursement of the reasonable and documented fees and out-of-pocket expenses actually incurred by the Stalking Horse Bidder (the "**Expense Reimbursement**" and, together with the Break-Up Fee, the "**Bid Protections**") in an amount up to $500,000; *provided* that (i) the payment

of any Break-Up Fee and/or Expense Reimbursement shall be subject to the terms and conditions of the definitive agreement(s) reached between the Debtors and such Stalking Horse Bidder(s), (ii) the obligation to pay any Break-Up Fee or Expense Reimbursement would not be binding on the Debtors until the approval of such Bid Protections in accordance with the Bidding Procedures, and (iii) no Break-Up Fee or Expense Reimbursement shall be paid to an insider of the Debtors. For the avoidance of doubt, the Debtors would provide Expense Reimbursement only to a Stalking Horse Bidder (and such expenses must be reasonable, documented, and subject to review by the Debtors and the Consultation Parties), and any Bid Protections would be payable solely out of the proceeds of the sale to which they relate.

27. In the event that the Debtors, in consultation with the Consultation Parties, desire to designate a Qualified Bid as a Stalking Horse Bid and enter into an asset purchase agreement (the "**Stalking Horse APA**") that provides for Bid Protections (subject to the limitations set forth herein), the Debtors would file a notice with the Court (the "**Stalking Horse Notice**") that (a) sets forth the identity of the Stalking Horse Bidder, (b) sets forth the amount of the Stalking Horse Bid and what portion of the Stalking Horse Bid (if any) would be in the form of cash, (c) identifies the Bid Assets (or lot thereof) to be purchased and the contracts and leases to be assumed, (d) states whether the Stalking Horse Bidder has any connection to the Debtors other than those that arise from the Stalking Horse Bid, (e) specifies any proposed Bid Protections, and (f) attaches the Stalking Horse APA, including all exhibits, schedules, and attachments thereto. The Debtors propose to serve the Stalking Horse Notice on the Office of the United States Trustee for the Southern District of Texas (the "**U.S. Trustee**"), counsel to each of the Consultation Parties, and those parties requesting notice pursuant to Bankruptcy Rule 2002 of all pleadings filed in the

Chapter 11 Cases (collectively, the "**Stalking Horse Notice Parties**"), with no further notice being required.

28. The Stalking Horse Notice would also specify the deadline to file objections (any such objections, "**Stalking Horse Objections**") to the designation of the Stalking Horse Bidder, the terms of the Stalking Horse Bid, or the Bid Protections set forth therein, which deadline (the "**Stalking Horse Objection Deadline**") would be no earlier than three business days after service of the Stalking Horse Notice on the Stalking Horse Notice Parties. Stalking Horse Objections must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, the Bankruptcy Local Rules for the United States Bankruptcy Court for the Southern District of Texas (the "**Local Rules**"), and the *Procedures for Complex Cases in the Southern District of Texas* (the "**Complex Procedures**"), (c) state, with specificity, the legal and factual bases thereof, and (d) be filed with the Court and served on the Debtors and the Stalking Horse Notice Parties by the Stalking Horse Objection Deadline.

29. If a timely Stalking Horse Objection is filed and served, to the extent the Debtors are unable to resolve it consensually, the Debtors may schedule a hearing (the "**Stalking Horse Hearing**") before the Court on an expedited basis (on not less than three-days' notice). At the Stalking Horse Hearing, the Debtors would seek the Court's authorization to enter into the Stalking Horse APA, including the Bid Protections contained therein.

30. If no Stalking Horse Objection is timely and properly filed and served, upon the expiration of the Stalking Horse Objection Deadline, the Debtors may file a certificate of no objection with the Court and, upon such a filing, the Debtors propose (a) that their designation of the Stalking Horse Bidder and agreement respecting Bid Protections shall be deemed approved

and (b) that the Debtors may enter into the Stalking Horse APA, in each case without further notice or opportunity to be heard.

E. The Proposed Sale and Bidding Procedures

i. Overview

31. The Bidding Procedures are designed to promote a competitive and efficient sale process to maximize the value of the Bid Assets. If approved, the Bidding Procedures would allow the Debtors to solicit and identify bids from potential buyers or investors that constitute the highest or otherwise best offer for the Bid Assets or the highest or otherwise best Chapter 11 Plan Bid on a schedule consistent with the deadlines under the Bidding Procedures, the milestones in the DIP Credit Agreements, and the Debtors' strategy for maximizing value for their stakeholders.

32. As the Bidding Procedures are attached to the Bidding Procedures Order, they are not restated herein in their entirety. Certain of the key terms of the Bidding Procedures are highlighted in the chart below.[10]

MATERIAL TERMS OF THE BIDDING PROCEDURES	
Consultation Rights	Throughout the sale process, the Debtors, with the assistance of their advisors, will regularly and timely consult with the following parties (collectively, the "**Consultation Parties**"): (a) the Committee; (b) the ABL DIP Agent; and (c) the Term DIP Agent (acting at the direction of the requisite Term DIP Lenders) and the Prepetition Term Agent (acting at the direction of the requisite Prepetition Term Lenders) (all as defined in the DIP Order) (the Term DIP Agent and the Prepetition Term Agent, together, the "**Term Agents**"), including in each case the legal and financial advisors thereto. The Debtors will provide updates as reasonably appropriate to the Consultation Parties as to the status of the Sale Process. The ABL DIP Agent and the Term Agents shall be Consultation Parties unless and until the ABL DIP Agent and Term Agent, as applicable, has indicated to the Debtors (including their advisors) in writing (which may be by email) that it intends, on behalf of its respective requisite lenders, to submit a bid in the Bidding Process (as defined herein), at which point such ABL DIP Agent or Term Agent, as applicable, shall not be a Consultation Party with respect to (a) any review of competing bids (including Qualified Bids), (b) any determination regarding which bids constitute Qualified Bids, (c) the designation of any

[10] To the extent that there is any inconsistency between the terms of the Bidding Procedures and the summary of such terms in this Motion, the terms of the Bidding Procedures shall control. Capitalized terms used but not otherwise defined in this summary shall have the meanings ascribed to such terms in the Bidding Procedures or the DIP Order, as applicable.

MATERIAL TERMS OF THE BIDDING PROCEDURES	
	bid as a Stalking Horse Bid, or (d) the selection of a Successful Bidder or an Alternate Bidder (as defined below), unless and until such agent(s) indicates in writing that it no longer intends to submit a bid. In the event that any Prepetition Term Lender, Term DIP Lender, or ABL DIP Lender, or (in each case) any affiliate thereof, becomes a Potential Bidder (as defined below) (such bidder, a "**Bidding Lender**"), the ABL DIP Agent or Term Agents, as applicable, shall not provide any information that they receive in their role as Consultation Parties to such Bidding Lender. The Debtors shall not consult with or provide copies of bids regarding any assets to any insider or affiliate of the Debtors pursuant to the terms of the Bidding Procedures if such party has a bid for the Bid Assets pending or has expressed any interest (written or verbal) in bidding for any of the Debtors' assets; *provided* that, if such insider or affiliate of the Debtors chooses not to submit any bid, and so informs the Debtors and the Consultation Parties in writing on or before the Bid Deadline, then such party may receive copies of all bids following expiration of the latest possible Bid Deadline (as such Bid Deadline may be extended hereunder).
Provisions Governing Qualification of Bidders and Qualified Bids	**Parts 1 and 2 of the Bidding Procedures set forth the Qualified Bid and Qualified Bidder requirements.** A party may participate in the bidding process by submitting a bid for (i) all or substantially all of the Bid Assets and/or (ii) one or more, or any combination of, Bid Assets as that party may desire. The Bidding Procedures also provide that the Debtors, in consultation with the Consultation Parties, may consider competing bids (each, a "**Chapter 11 Plan Bid**") in the form of a chapter 11 plan of reorganization (a "**Chapter 11 Plan Transaction**"), subject to the requirements set forth in the Bidding Procedures. **A. Interested Parties.** Unless otherwise ordered by the Bankruptcy Court for cause shown, to participate in the bidding process, Interested Parties must deliver (unless previously delivered) the following items to Guggenheim Securities: 1. an executed confidentiality agreement in form and substance satisfactory to the Debtors, in consultation with the Consultation Parties; 2. a statement and other factual support demonstrating, to the Debtors' satisfaction, in consultation with the Consultation Parties, that the Interested Party has a *bona fide* interest in purchasing some or all of the Bid Assets; 3. a description of the nature and extent of any due diligence the Interested Party wishes to conduct and the date in advance of the Bid Deadline (as defined below) by which such due diligence will be completed; and 4. sufficient information, as defined by the Debtors, in consultation with the Consultation Parties, to allow the Debtors, in consultation with the Consultation Parties, to determine that the Interested Party has the financial wherewithal and any required internal corporate, legal, or other authorizations to close a sale transaction pursuant to the Bidding Procedures, which may include, but is not limited to, current audited financial statements of the Interested Party (or such other form of financial disclosure acceptable to the Debtors in consultation with the Consultation Parties) or, if the Interested Party is an entity formed for the purpose of acquiring some or all of the Bid Assets, (i) current audited financial statements of the equity holder(s) (the "**Sponsor(s)**") of the Interested Party (or such other form of financial disclosure acceptable to the Debtors in consultation with the Consultation Parties) and (ii) a written commitment acceptable to the Debtors, in consultation with the Consultation Parties, that the Sponsor(s) are

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	responsible for the Interested Party's obligations in connection with the Bidding Process. If the Debtors determine (in consultation with the Consultation Parties) after receipt of the items identified above, that an Interested Party has a *bona fide* interest in purchasing some or all **of** the Bid Assets, such Interested Party will be deemed a "**Potential Bidder**" and the Debtors will provide such Potential Bidder with access to the Debtors' confidential electronic data room concerning the Bid Assets (the "**Data Room**"). Each of the ABL DIP Agent and Term Agents shall automatically be deemed a Potential Bidder and shall not be required to submit any of the foregoing information. **B. Due Diligence.** Until the Bid Deadline, in addition to granting access to the Data Room, the Debtors will provide Potential Bidders with due diligence access and additional information as may be requested by a Potential Bidder, to the extent that the Debtors determine, in consultation with the Consultation Parties, that such requests are reasonable and appropriate under the circumstances. All due diligence requests shall be directed to Guggenheim Securities. The Debtors, with the assistance of Guggenheim Securities, will coordinate all reasonable requests for additional information and due diligence access from Potential Bidders. For any Potential Bidder that is a competitor of the Debtors (or an affiliate thereof), the Debtors reserve the right to withhold any diligence materials that the Debtors determine are commercially sensitive or otherwise not appropriate for disclosure to such Potential Bidder, or to require that the Potential Bidder enter into a "clean team" or similar arrangement acceptable to the Debtors in order to receive such diligence materials. Unless **otherwise** determined by the Debtors, the availability of due diligence to a Potential Bidder will cease if (a) the Potential Bidder does not become a Qualified Bidder or (b) the Bidding Process is terminated in accordance with its terms. **C. Non-Binding Indications of Interest.** Any Potential Bidder interested in purchasing the Bid Assets must submit a non-binding indication of interest (an "**Indication of Interest**") to Guggenheim Securities so as to be received no later than 3:00 p.m. (prevailing Central Time) on July 19, 2023 (the "**Indication of Interest Deadline**"). The Indication of Interest must (i) set forth a proposed purchase price for the proposed transaction, including by identifying separately any cash and non-cash components of the proposed transaction consideration, which non-cash components shall be limited only to assumption of liabilities of any of the Debtors, and (ii) identify any proposed conditions to closing the transaction. Promptly upon receiving the Indications of Interest, the Debtors shall provide the Indications of Interests to the Consultation Parties. Each Potential Bidder will be deemed to consent to the Debtors' sharing its Indication of Interest and any subsequent bid to purchase the Bid Assets (together with any supporting materials submitted in connection therewith) with the Consultation Parties, subject to the terms and conditions of the Bidding Procedures. Submitting an Indication of Interest does not (i) obligate the submitting party to submit a formal bid or participate in the sale process and (ii) exempt the submitting party from also having to submit a Qualified Bid by the Bid Deadline to participate in the Auction. Any Potential Bidder that fails to submit an Indication of Interest by the Indication of Interest Deadline may not be deemed a Qualified Bidder pursuant to section 2 of the Bidding Procedures unless such condition is waived by the Debtors, in consultation with the Consultation Parties. For the avoidance of doubt, neither the ABL DIP Agent nor any Term Agent, on behalf of the DIP Secured Parties or the Prepetition Secured Parties (as applicable), need to submit an Indication of Interest to be deemed a Qualified Bidder.

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	D. Bid Deadline. A Potential Bidder who desires to be deemed a Qualified Bidder must deliver to Guggenheim Securities, with copies to Davis Polk & Wardwell LLP ("**Davis Polk**"), 450 Lexington Avenue, New York, New York 10017 (Attn: Brian M. Resnick, Steven Z. Szanzer, and Joanna McDonald), the Required Bid Documents (as defined below), so as to be received no later than **3:00 p.m. (prevailing Central Time) on August 21, 2023** (the "**Bid Deadline**"). The Debtors, in consultation with the Consultation Parties, and without the need for further Bankruptcy Court approval, may extend the Bid Deadline by a reasonable period of time if the Debtors, in consultation with the Consultation Parties, believe that such extension would further the goal of attaining the highest or otherwise best offer for the Bid Assets. If the Debtors extend the Bid Deadline, the Debtors will promptly notify all Potential Bidders of such extension. **E. Bid Requirements.** 1. Required Bid Documents. All bids must be accompanied by the following items (collectively, the "**Required Bid Documents**"): a. a letter stating that the bidder's offer is irrevocable until consummation of a transaction involving the Bid Assets (or lot thereof) identified in such offer; b. other than for any Chapter 11 Plan Bid, a duly authorized and executed purchase agreement based on the form purchase agreement provided by the Debtors (through their advisors), marked to show any revisions, including, among other things, the purchase price for the Bid Assets (or lot thereof, as applicable), together with all exhibits and schedules thereto (including, among other things, a proposed form of order approving the transaction(s) contemplated in such purchase agreement). For the avoidance of doubt, a "conceptual" or "issues list"-style markup of the form asset purchase agreement would not satisfy this requirement; c. each Chapter 11 Plan Bid must be accompanied by an executed investment agreement, signed by an authorized representative of such bidder, pursuant to which the bidder proposes to effectuate the Chapter 11 Plan Transaction, in the form of a non-taxable recapitalization transaction effectuated pursuant to a chapter 11 plan of reorganization, and must provide for a fully-committed investment of capital in exchange for substantially all of the equity of the reorganized Debtors; d. written evidence acceptable to the Debtors, in their discretion and in consultation with the Consultation Parties, demonstrating financial wherewithal, operational ability, and corporate authorization to consummate the proposed transaction; e. a written acknowledgment that the bidder (i) has had an opportunity to conduct any and all due diligence regarding the Bid Assets, the Sale Transaction, and/or a Chapter 11 Plan Transaction, (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and any other information in making the bid, (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, by the Debtors or any of their advisors (including Guggenheim Securities, AlixPartners, LLP, and Davis Polk) or other representatives regarding the bid, the Bid Assets (or lot thereof), the Sale Transaction, the Chapter 11 Plan Transaction, or the completeness or accuracy of any information provided in connection therewith or with the Auction, except as expressly stated in these Bidding Procedures, and (iv) the bidder did not

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	engage in any collusive conduct and acted in good faith in submitting its bid; and f. written evidence of a firm commitment for financing to consummate the proposed transaction, or other evidence of ability to consummate the proposed transaction without financing, in either case which is satisfactory to the Debtors in their discretion, in consultation with the Consultation Parties. 2. Identity of Purchaser. Full disclosure of the legal identity of the purchaser (including any Sponsor(s), if the purchaser is an entity formed for the purpose of consummating the proposed transaction). 3. Bid Assets; Consideration. a. Other than for a Chapter 11 Plan Bid, identification of Bid Assets (or lot thereof) to be purchased and Contracts and Leases to be assumed. b. Other than for a Chapter 11 Plan Bid, clearly states which liabilities of the Debtors or the Bid Assets (or lot thereof) will be assumed. c. Includes a statement of proposed terms for employees, including with respect to the Debtors' affected collective bargaining agreements and affected labor unions. d. Sets forth the consideration, including the form thereof, for the Bid Assets (or lot thereof) to be purchased and the Contracts and Leases to be assumed (the "**Bid Consideration**"); *provided* that, if there is an Approved Stalking Horse Bid, the consideration must be at least equal to the following: (i) the consideration set forth in the Approved Stalking Horse Bid; *plus* (ii) the aggregate amount of any Approved Bid Protections; *plus* (iii) two percent of the consideration set forth in the Approved Stalking Horse Bid (the "**Minimum Overbid**"). e. Allocates the Bid Consideration among the Bid Assets and Contracts and Leases to be assumed (per lot of Bid Assets). 4. No Financing/Diligence Contingency. No condition on the obtainment of financing or on the outcome of unperformed due diligence. 5. Regulatory Approvals. Includes a description of all governmental, licensing, regulatory, or other approvals or consents that are required to consummate the proposed transaction (including any antitrust approval related to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended), together with evidence satisfactory to the Debtors, in consultation with the Consultation Parties, of the ability to obtain such approvals or consents as soon as reasonably practicable, and in no event later than September 7, 2023, as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, the obtainment or effectiveness of any such approvals or consents. 6. Alternate Bidder. Must expressly state that the bidder agrees to serve as an Alternate Bidder if such bidder's Qualified Bid is selected as the next highest or next best bid after the Successful Bid with respect to the applicable Bid Assets. 7. Good Faith Deposit. Is accompanied by a cash deposit by wire transfer to a Deposit Agent in an amount equal to ten percent of the consideration set forth in connection with such bid.

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	8. Authorized Representatives. A list setting forth the representatives that are authorized to appear and act on behalf of the bidder in connection with the proposed transaction. 9. No Bid Protections. Statement that the bidder will not seek any transaction or break-up fee, expense reimbursement, or similar type of payment (other than if such bid is selected to be a Stalking Horse Bid and subject to Section 4 of the Bidding Procedures) and that it waives any substantial contribution administrative expense claims under section 503(b) of the Bankruptcy Code. 10. Adequate Assurance. Evidence supporting the bidder's ability to comply with section 365 of the Bankruptcy Code (to the extent applicable), including the provision of adequate assurance of such bidder's ability to perform in the future under any contracts and leases proposed in its bid to be assumed by the Debtors and assigned to the bidder, in a form that will permit the Debtors to disseminate immediately such evidence to the non-Debtor counterparties to such contracts and leases. 11. Cure Costs. Indication whether or not the bidder will assume all cure costs associated with any Contracts and Leases it intends to assume. **F. Designation of Qualified Bids; Cure of Non-Qualifying Bids.** The Debtors, in consultation with the Consultation Parties, shall have the right to deem a bid a Qualified Bid. The Debtors will be authorized to approve joint bids in their reasonable discretion, in consultation with the Consultation Parties, on a case-by-case basis. If the Debtors receive a bid prior to the Bid Deadline that is not a Qualified Bid, the Debtors may provide the bidder with the opportunity to remedy any deficiencies through and, in consultation with the Consultation Parties, after the Bid Deadline. If any bid is determined by the Debtors, in consultation with the Consultation Parties, not to be a Qualified Bid, and the applicable bidder fails to remedy such bid in accordance with the Bidding Procedures, the Debtors, to the extent applicable, shall promptly instruct the Deposit Agent to return such bidder's Good Faith Deposit. **G. Deemed Acknowledgments and Representations.** Each Qualified Bidder shall be deemed to acknowledge and represent that such bidder: 1. has reviewed, understands, and accepts the Bidding Procedures; 2. has consented to the jurisdiction of the Bankruptcy Court; and 3. intends to consummate its Qualified Bid if it is selected as the Successful Bidder.
Provisions Governing Credit Bidding	**Part 3 of the Bidding Procedures sets forth the provisions governing Credit Bidding** Pursuant to section 363(k) of the Bankruptcy Code and subject to the terms and conditions set forth in the DIP Order, the DIP Documents, and the Prepetition Credit Documents, the DIP Secured Parties and the Prepetition Secured Parties, to the extent such parties have a valid and perfected lien on any assets of the Debtors' estates, shall have the right to credit bid up to the full amount of the applicable outstanding DIP Obligations and Prepetition Obligations, as the case may be, in any bulk or piecemeal sale of all, substantially all, or any portion of the Bid Assets constituting DIP Collateral or Prepetition Collateral, as applicable; *provided* that any such credit bid must be submitted on or before the Bid Deadline and include cash consideration sufficient to satisfy the Carve Out and any senior liens on the collateral that is subject to the credit bid, except to the extent otherwise agreed by the holders of such senior liens in their sole and absolute discretion. If the DIP Secured Parties or the Prepetition Secured Parties submit a credit bid in accordance with the foregoing, and such bid is received by the Bid Deadline, such bidder shall be deemed to be a Qualified Bidder

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	and any such credit bid shall be deemed to be a Qualified Bid (without the need for any Good Faith Deposit).
Provisions Governing Stalking Horse Bidders and Bid Protections	**Part 4 of the Bidding Procedures sets forth the provisions governing the selection and approval of Stalking Horse Bidders (including offering Bid Protections in connection therewith)** **A. Selection of Stalking Horse Bidder.** The Debtors are authorized, but not obligated, to exercise their business judgment (in consultation with the Consultation Parties) to agree with any Qualified Bidder that (i) such Qualified Bidder's Qualified Bid shall serve as the minimum bid for the Bid Assets or any lot thereof (such Qualified Bidder, a "**Stalking Horse Bidder**" and, such Qualified Bid, a "**Stalking Horse Bid**") and (ii) the Debtors will enter into the transaction(s) contemplated in such Stalking Horse Bid unless a higher or otherwise better Qualified Bid is submitted with respect to such Bid Assets or lot thereof, as determined by the Debtors (in consultation with the Consultation Parties) in accordance with the Bidding Procedures. **B. Bid Protections.** In order to incentivize prospective purchasers to agree to become a Stalking Horse Bidder, the Debtors are authorized, but not obligated, to exercise their business judgment (in consultation with the Consultation Parties) to offer the following bid protections to such Stalking Horse Bidder(s), payable if the Debtors consummate a sale pursuant to a Qualified Bid other than the Stalking Horse Bid (if the assets subject to such sale include those to which such Stalking Horse Bid relates): (i) payment of a break-up fee in an amount not to exceed three percent of the cash portion of the purchase price set forth in the Stalking Horse Bid (the "**Break-Up Fee**") and (ii) reimbursement of the reasonable and documented fees and out-of-pocket expenses actually incurred by the Stalking Horse Bidder (the "**Expense Reimbursement**" and, together with the Break-Up Fee, the "**Bid Protections**") in an amount up to $500,000; *provided* that (a) the payment of any Bid Protections shall be subject to the terms and conditions of the definitive agreement(s) executed between the Debtors and such Stalking Horse Bidder(s), (b) any Bid Protections will not be binding on the Debtors until the approval of such Bid Protections in accordance with the Bidding Procedures, and (c) no Break-Up Fee shall be paid to an insider of the Debtors. For the avoidance of doubt, the Debtors will provide Expense Reimbursement only to the Stalking Horse Bidder(s) and such expenses must be reasonable, documented, and subject to review by the Debtors and the Consultation Parties. To the extent payable, any Bid Protections would be paid out of the proceeds of the sale to which they relate. **C. Stalking Horse Notice.** In the event that the Debtors, in consultation with the Consultation Parties, desire to designate a Qualified Bid as a Stalking Horse Bid and enter into a Stalking Horse APA with a Stalking Horse Bidder that provides for Bid Protections (subject to the limits on those Bid Protections set forth in the Bidding Procedures, the Debtors may file a Stalking Horse Notice with the Bankruptcy Court that (i) sets forth the identity of the Stalking Horse Bidder, (ii) sets forth the amount of the Stalking Horse Bid and what portion of the Stalking Horse Bid (if any) would be in the form of cash, (iii) identifies the Bid Assets (or lot thereof) to be purchased and the contracts and leases to be assumed, (iv) states whether the Stalking Horse Bidder has any connection to the Debtors other than those that arise from the Stalking Horse Bid, (v) specifies any proposed Bid Protections, and (vi) attaches the Stalking Horse APA, including all exhibits, schedules, and attachments thereto and serve such Stalking Horse Notice on the U.S. Trustee, counsel to each of the Consultation Parties, and those parties who have filed the appropriate notice pursuant to Bankruptcy Rule 2002 requesting notice of all pleadings filed in the Chapter 11 Cases (collectively, the "**Stalking Horse Notice Parties**"), with no further notice being required**.**

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	D. Stalking Horse Objections. 1. The Stalking Horse Notice shall also specify the deadline to file Stalking Horse Objections to the designation of the Stalking Horse Bidder, the terms of the Stalking Horse Bid, or the Bid Protections set forth therein, which deadline (the "**Stalking Horse Objection Deadline**") shall be no earlier than three business days after service of the Stalking Horse Notice on the Stalking Horse Notice Parties. Stalking Horse Objections must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and Complex Procedures, (c) state, with specificity, the legal and factual bases thereof, and (d) be filed with the Bankruptcy Court and served on the Debtors and the Stalking Horse Notice Parties by the Stalking Horse Objection Deadline. 2. If a timely Stalking Horse Objection is filed and served, to the extent not resolved consensually, the Debtors may schedule a Stalking Horse Hearing before the Bankruptcy Court to be held on an expedited basis (on not less than three-days' notice) seeking authorization to enter into the Stalking Horse APA (including the Bid Protections contained therein). If no timely Stalking Horse Objection is filed and served, upon the expiration of the Stalking Horse Objection Deadline, the Debtors shall file with the Bankruptcy Court a CNO and, upon such filing, (a) the Debtors' designation of the Stalking Horse Bidder and agreement respecting Bid Protections shall be deemed approved and (b) the Debtors may enter into the Stalking Horse APA, in each case without further notice or opportunity to be heard.
Provisions Governing the Auction and Permitting the Modification of Bidding and Auction Procedures	**Part 5 of the Bidding Procedures sets forth the procedures governing the Auction.** **A. Date, Time, and Location.** The Auction shall be conducted at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017 on August 24, 2023 at 10:00 a.m. (prevailing Eastern Time), or such later time on such day or such other place as the Debtors (in consultation with the Consultation Parties) shall notify all Participating Parties. **B. Participants and Attendees.** Attendance will be limited to the representatives or agents (including legal and financial advisors) of (i) the Debtors, (ii) the Consultation Parties, and (iii) the Qualified Bidders (including any Approved Stalking Horse Bidders). **C. Auction Procedures.** 1. Notice of Qualification. Prior to the Auction, the Debtors will (a) notify each Qualified Bidder that has timely submitted a Qualified Bid that its bid is a Qualified Bid and (b) provide all Qualified Bidders with (i) copies of the Starting Bid, (ii) an explanation of how the Debtors value the Starting Bid, and (iii) a list identifying all of the Qualified Bidders. 2. Starting Bid. The first round of bidding at the Auction shall commence at the Starting Bid. For the avoidance of doubt, the Starting Bid may be comprised of multiple Qualified Bids if the aggregate consideration of such Qualified Bids is higher and better than an Approved Stalking Horse Bid. 3. Subsequent Bids. Bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding in the presence of all parties at the Auction, so long as during each round at least one Subsequent Bid is submitted by a Qualified Bidder that (a) improves upon such Qualified Bidder's immediately prior Qualified Bid and (b) the Debtors, in their discretion and in consultation with the Consultation Parties, determine that such Subsequent Bid is (i) with respect to the first round, a higher or otherwise better offer than the Starting Bid and (ii) with respect to subsequent rounds, a higher or otherwise

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	better offer than the Leading Bid, in each case taking into account other Qualified Bids for other Bid Assets; *provided* that, with respect to the first round, if there is an Approved Stalking Horse Bidder, any Qualified Bid must provide incremental consideration at least equal to the Minimum Overbid. In each subsequent round after the first round, the Debtors, in their discretion and in consultation with the Consultation Parties, may determine appropriate minimum bid increments or requirements for each round of bidding. 4. Highest or Best Offer. After the first round of bidding and between each subsequent round of bidding, as applicable, the Debtors, in their discretion and in consultation with the Consultation Parties, will determine and announce the bid or bids that they believe to be the highest or otherwise best offer or combination of offers (the "**Leading Bid**"). Additional consideration in excess of the amount set forth in the Starting Bid may include cash and/or non-cash consideration; *provided* that the value for such non-cash consideration shall be determined by the Debtors, in their discretion and in consultation with the Consultation Parties. 5. Partial Bids. If any of the Qualified Bids submitted by the Bid Deadline are structured as a Partial Bid, the Debtors (in consultation with the Consultation Parties) may conduct separate auctions at the Auction for each lot of assets (each, an "**Auction Lot**") subject to a Partial Bid. The Debtors may, in consultation with the Consultation Parties, combine multiple Partial Bids into an Auction Lot to compete against an Approved Stalking Horse Bid. The Debtors may designate each Auction Lot at any time prior to the Auction. 6. Modification of Bidding and Auction Procedures. The Debtors, in consultation with the Consultation Parties, may employ and announce at the Auction additional procedural rules for conducting the Auction (*e.g.*, the amount of time allotted to submit Subsequent Bids); *provided* that such rules shall (a) not be inconsistent with the Bankruptcy Code, the Bidding Procedures Order, or any other order of the Bankruptcy Court entered in connection herewith and (b) be disclosed to all Qualified Bidders.
Provisions Regarding Selection of Successful Bid and Alternate Bid	**Part 6 of the Bidding Procedures sets forth procedures by which the Debtors shall select the Successful Bid(s) and Alternate Bid(s).** **A. Selection of Successful Bids.** Prior to the conclusion of the Auction, the Debtors, in consultation with the Consultation Parties, shall (i) review and evaluate each bid made at the Auction on the basis of financial and contractual terms and other factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the sale transaction and, in the case of a Chapter 11 Plan Transaction, the structure, confirmability, and feasibility of any proposed chapter 11 plan (including the proposed time and costs estimated to be necessary to negotiate, document, and obtain confirmation of such proposed chapter 11 plan), (ii) determine and identify the highest or otherwise best offer or collection of offers (the "**Successful Bid(s)**"), (iii) determine and identify the next highest or otherwise best offer or collection of offers (the "**Alternate Bid(s)**"), and (iv) notify all Qualified Bidders participating in the Auction, prior to its adjournment, of (a) the identity of the party or parties that submitted the Successful Bid(s) (the "**Successful Bidder(s)**"), (b) the amount and other material terms of the Successful Bid(s), (c) the identity of the party or parties that submitted the Alternate Bid(s) (the "**Alternate Bidder(s)**"), and (d) the amount and other material terms of the Alternate Bid(s). Each Qualified Bidder shall agree and be deemed to agree to be the Alternate Bidder if so designated. Notwithstanding anything in the Bidding Procedures to the contrary, any Qualified Bid submitted by a DIP Agent or the Prepetition Term Agent shall not be

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	required to serve as an Alternate Bid absent such DIP Agent's or Prepetition Term Agent's consent. **B. Execution of Definitive Documentation.** As soon as reasonably practicable after the completion of the Auction, the Successful Bidder(s) and the applicable Debtors shall complete and execute all agreements, instruments, and other documents necessary to consummate the applicable sale or other transaction(s) contemplated by the applicable Successful Bid(s). Promptly following the selection of the Successful Bid(s) and Alternate Bid(s), the Debtors shall file a notice of the Successful Bid(s) and Alternate Bid(s) with the Bankruptcy Court, together with a proposed Sale Order.
Provisions Regarding Sale Hearing and Closing with Successful Bidders and Alternative Bidders	**Part 7 of the Bidding Procedures sets forth procedures regarding closing with Successful Bidder(s) or Alternative Bidder(s).** The Sale Hearing will be held on August [30], 2023 at: [●].m. (prevailing Central time)[11] before the Honorable Judge David R. Jones, in the United States Bankruptcy Court for the Southern District of Texas. The Sale Hearing may be adjourned by the Debtors, in consultation with the Consultation Parties, by an announcement of the adjourned date at a hearing before the Bankruptcy Court or by filing a notice on the Bankruptcy Court's docket. At the Sale Hearing, the Debtors will seek the Bankruptcy Court's approval of the Successful Bid(s) and, at the Debtors' election, the Alternate Bid(s). The Debtors' presentation to the Bankruptcy Court of the Successful Bid(s) and Alternate Bid(s) will not constitute the Debtors' acceptance of such bid(s), which acceptance will only occur upon approval of such bid(s) by the Bankruptcy Court. Following the Bankruptcy Court's entry of the Sale Order, the Debtors and the Successful Bidder(s) shall proceed to consummate the transaction(s) contemplated by the Successful Bid(s). If the Debtors and the Successful Bidder(s) fail to consummate the proposed transaction(s), then the Debtors shall file a notice with the Court advising of such failure. Upon the filing of such notice with the Bankruptcy Court, the Alternate Bid(s) will be deemed to be the Successful Bid(s) and the Debtors will be authorized, but not directed, to effectuate the transaction(s) with the Alternate Bidder(s) subject to the terms of the Alternate Bid(s) of such Alternate Bidder(s) without further order of the Bankruptcy Court. If the failure to consummate the transaction(s) contemplated by the Successful Bid(s) is the result of a breach by the Successful Bidder(s) (the "**Breaching Bidder(s)**") of its (their) asset purchase agreement(s), the Debtors reserve the right to seek all available remedies from such Breaching Bidder(s), subject to the terms of the applicable asset purchase agreement.

ii. Key Dates and Deadlines

33. Consistent with the Debtors' need to consummate any sale of the Bid Assets as efficiently as practicable in accordance with the milestones set forth in the DIP Credit Agreements, the Debtors propose the following key dates and deadlines for the sale process, certain of which dates and deadlines may be subject to extension in accordance with the Bidding Procedures:

[11] This date remains subject to Court approval.

July 12, 2023 at 3:30 p.m. (prevailing Central Time)	Hearing to consider approval of the Bidding Procedures and for entry of the Bidding Procedures Order
July 21, 2023	Target date for the Debtors to file Potential Assumed Contracts Schedule
July 19, 2023 at 3:00 p.m. (prevailing Central Time)	Indication of Interest Deadline
August 11, 2023 at 4:00 p.m. (prevailing Central Time)	Cure Objection Deadline
August 21, 2023 at 3:00 p.m. (prevailing Central Time)	Bid Deadline
August 24, 2023 at 10:00 a.m. (prevailing Eastern Time)	Auction (if any) to be held at the New York offices of Davis Polk & Wardwell LLP
August 25, 2023	Target date for the Debtors to file with the Court the Notice of Auction Results
August 28, 2023 at 4:00 p.m. (prevailing Central Time)	Deadline to object to the Sale Transaction to the Successful Bidder; and the Assumption and Assignment Objection Deadline
August [30], 2023 at [•].m. (prevailing Central Time)[12]	Hearing to consider approval of the Sale Transaction(s) and for entry of the Sale Order(s)

F. Noticing Procedures

34. The Debtors propose the following "**Noticing Procedures**":

a. **Sale Notice and Publication**. As soon as reasonably practicable after entry of the Bidding Procedures Order, the Debtors shall cause the Sale Notice to be served (by email if available or otherwise by first class mail) upon the following: (i) the U.S. Trustee; (ii) Ropes & Gray LLP, as counsel to the Term DIP Secured Parties (as defined in the DIP Order); (iii) Skadden, Arps, Slate, Meagher & Flom LLP, as counsel to the ABL DIP Agent (as defined in the DIP Order); (iv) DLA Piper LLP (US), as counsel to the Committee; (v) Counterparties to Contracts and Leases; (vi) the Securities and Exchange Commission; (vii) the Internal Revenue Service; (viii) the United States Attorney's Office for the Southern District of Texas; (ix) the state attorneys general for states in which the Debtors conduct business; (x) all other parties asserting a security interest in the assets of the Debtors to the extent reasonably known to the Debtors; (xi) all potential buyers previously identified or solicited by the Debtors or their advisors and any additional parties

[12] This date remains subject to Bankruptcy Court approval.

who have previously expressed an interest to the Debtors or their advisors in potentially acquiring the Debtors' assets; (xii) all other known parties with any interest in the Bid Assets; and (xiii) any party that, as of the filing of this Motion, has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "**Sale Notice Parties**"); *provided* that the Debtors need not serve the Sale Notice on any party for whom the Debtors are unable to obtain, after reasonable diligence, an email or physical address as of the entry of the Bidding Procedures Order; *provided, further*, that the Debtors shall not be obligated to provide supplemental service of the Sale Notice with respect to any Sale Notice that is returned as undeliverable so long as the Debtors have confirmed that any such Sale Notice was sent to the applicable email or physical address on file in the Debtors' books and records and no other email or physical address could be obtained after reasonable diligence. The Debtors would also cause the Sale Notice to be published once in the national edition of *USA Today* or another publication with similar national circulation as soon as practicable following entry of the Bidding Procedures Order and would post the Sale Notice and the Bidding Procedures Order on the Debtors' case information website located at https://dm.epiq11.com/InstantBrands (the "**Case Information Website**"). This publication of the Sale Notice would provide notice of the sale to any other interested parties whose identities are unknown to the Debtors. The Sale Notice would include, among other things, the date, time, and place of the Auction and the Sale Hearing and the deadline for filing any objections relating to the Bidding Procedures or any Sale Transaction, once they are set by the Court.

b. **Notice of Determination of Qualified Bids**. The Debtors, in consultation with the Consultation Parties, would make a determination regarding which bids qualify as Qualified Bids. Prior to the Auction, the Debtors would (i) notify each Qualified Bidder that has timely and properly submitted a Qualified Bid that its bid is a Qualified Bid and (ii) provide all Qualified Bidders with (A) a copy of the Starting Bid, (B) an explanation of how the Debtors value the Starting Bid, and (C) a list identifying all of the Qualified Bidders and their respective Qualified Bids.

c. **Notice of Hearing if Auction Not Held**. If (i) no more than one Qualified Bid is timely and properly submitted by the Bid Deadline (whether a Stalking Horse Bid (as approved by the Court, whether upon a Stalking Horse Hearing or certificate of no objection, an "**Approved Stalking Horse Bid**") or otherwise) or (ii) multiple Partial Bids are timely and properly submitted by the Bid Deadline for non-overlapping lots of the Bid Assets, the Debtors may, in their discretion and in consultation with the Consultation Parties, elect to cancel the Auction and seek approval of the transactions contemplated in such Approved Stalking Horse Bid, Qualified Bid that is not an Approved Stalking Horse Bid, or Partial Bid(s), as applicable, at the Sale Hearing. If no Auction is to be conducted, the Debtors would file with the Court, serve on the Sale Notice Parties, and cause to be published on the Case Information Website a notice (i) indicating that the Auction for the Bid Assets has been canceled, (ii) indicating that the Approved Stalking Horse Bid, the Qualified Bid, or the Partial Bid(s) (as applicable) is or are the Successful Bid(s)

with respect to the Bid Assets, and (iii) setting forth the date and time of the Sale Hearing.

d. **Notice of Auction Results**. Promptly following the selection of the Successful Bid(s) and Alternate Bid(s), the Debtors shall file a notice of the Successful Bid(s) and any Alternate Bid(s) (the "**Notice of Auction Results**") with the Court and cause the Notice of Auction Results to be published on the Case Information Website.

35. The Noticing Procedures constitute adequate and reasonable notice of the key dates and deadlines for the sale process, including, among other things, the objection deadline, the Bid Deadline, and the times and locations of the Auction and Sale Hearing. Accordingly, the Debtors request that the Court find that the Noticing Procedures are adequate and appropriate under the circumstances and comply with the requirements of Bankruptcy Rule 2002 and the Complex Procedures.

G. Assumption and Assignment Procedures

36. In connection with the Sale Transaction, the Debtors anticipate that they would assume and assign to the Successful Bidder (or its designated assignee(s)) all or certain of the Assumed Contracts and Assumed Leases pursuant to section 365(b) of the Bankruptcy Code. Accordingly, the Debtors hereby also seek approval of the proposed Assumption and Assignment Procedures set forth herein, which are designed to, among other things, (a) outline the process by which the Debtors would serve notice to all Counterparties regarding the potential assumption and assignment, related Cure Costs, if any, and information regarding the Successful Bidder's adequate assurance of future performance and (b) establish objection and other relevant deadlines and the manner for resolving disputes relating to assumption and assignment of the Assumed Contracts and Assumed Leases. Specifically, the Assumption and Assignment Procedures are as follows:

a. **Potential Assumed Contracts Schedule**. As soon as reasonably practicable following entry of the Bidding Procedures Order, the Debtors shall file with the Court, and cause to be published on the Case Information Website, the Potential Assumption and Assignment Notice and a list of the Potential Assumed

Contracts (the "**Potential Assumed Contracts Schedule**") that specifies (i) each of the Contracts and Leases that potentially could be assumed and assigned in connection with the sale of the Bid Assets, including the name of each Counterparty, and (ii) the proposed Cure Cost with respect to each Potential Assumed Contract.

b. **Potential Assumption and Assignment Notice**. The Debtors shall, as soon as reasonably practicable after entry of the Bidding Procedures Order (but in any event, so as to provide sufficient notice such that any required responses from any Counterparties are due prior to the scheduled date of the Auction as specified in the Bidding Procedures), file, cause to be published on the Case Information Website, and serve on each relevant Counterparty the Potential Assumption and Assignment Notice, which shall (i) include the Potential Assumed Contracts Schedule, (ii) list the Debtors' good faith calculation of the Cure Costs with respect to the Potential Assumed Contracts identified on the Potential Assumed Contracts Schedule, (iii) expressly state that assumption or assignment of an Assumed Contract or Assumed Lease is not guaranteed and is subject to designation by the Successful Bidder and Court approval, (iv) prominently display the deadline to file an Assumption and Assignment Objection (as defined herein), and (v) prominently display the date, time, and location of the Sale Hearing.

c. **Proposed Assumption and Assignment Notice**. The Debtors shall, in conjunction with the filing of the Notice of Auction Results, file, cause to be published on the Case Information Website, and serve on each relevant Counterparty the Proposed Assumption and Assignment Notice, which shall (i) include a schedule of the Proposed Assumed Contracts (the "**Proposed Assumed Contracts Schedule**") as agreed between the Debtors and the Successful Bidder, (ii) expressly state that assumption or assignment of an Assumed Contract or Assumed Lease is not guaranteed and is subject to Court approval, (iii) prominently display the deadline to file an Assumption and Assignment Objection, and (iv) prominently display the date, time, and location of the Sale Hearing.

d. **Assumption and Assignment Objections**.

i. Objection Deadlines. Any Counterparty may object to the potential or proposed assumption or assignment of its Assumed Contract or Assumed Lease, the Debtors' proposed Cure Costs, if any, or the ability of a Successful Bidder to provide adequate assurance of future performance (an "**Assumption and Assignment Objection**"). All Assumption and Assignment Objections must (A) be in writing, (B) comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and Complex Procedures, (C) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Costs the Counterparty believes are required to cure any alleged defaults under the relevant Assumed Contract or Assumed Lease, (D)(1) for objections relating to proposed Cure Costs, be filed no later than **August 11, 2023 at 4:00 p.m. (prevailing Central**

Time) (the "**Cure Objection Deadline**") and (2) for all other objections, **August 28, 2023 at 4:00 p.m. (prevailing Central Time**) (the "**Assumption and Assignment Objection Deadline**"), and (E) be served on (1) proposed counsel to the Debtors, (y) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Brian M. Resnick, Steven Z. Szanzer, and Joanna McDonald and (z) Haynes & Boone, LLP, 1221 McKinney Street, Suite 4000, Houston, Texas 77010, Attn: Charles A. Beckham, Jr., Arsalan Muhammad, and David A. Trausch, (2) counsel to the Term DIP Secured Parties, Ropes & Gray LLP, 1211 Avenue of the Americas, New York, New York 10036, Attn: Ryan Preston Dahl, Matthew M. Roose, Daniel Gwen, Lindsay C. Barca, and Eric P. Schriesheim, (3) counsel to the ABL DIP Agent, Skadden, Arps, Slate, Meagher & Flom LLP, 155 N. Wacker Drive, Chicago, Illinois 60606, Attn: James J. Mazza, Jr. and Robert E. Fitzgerald, (4) counsel to the Committee, DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, New York 10020, Attn: Dennis O'Donnell and Oksana Lashko, and (5) the U.S. Trustee, 515 Rusk Street, Suite 3516, Houston, Texas 77002, Attn: Jayson B. Ruff and Vianey Garza (collectively, the "**Assumption and Assignment Objection Notice Parties**").

ii. Resolution of Assumption and Assignment Objections. If a Counterparty timely files an Assumption and Assignment Objection, such objection shall be heard at the Sale Hearing or such later date that the Debtors, in their discretion and in consultation with the Successful Bidder and the Consultation Parties, shall determine (subject to the Court's calendar). If such objection has not been resolved prior to the closing of the Sale Transaction (whether by an order of the Court or by agreement with the Counterparty), each Successful Bidder may elect, in its sole and absolute discretion, one of the following options: (A) treat such Counterparty's contract or lease as property excluded from the Bid Assets (an "**Excluded Contract**" or "**Excluded Lease**," respectively) or (B) temporarily treat the Proposed Assumed Contract as an Excluded Contract or Excluded Lease, as applicable (a "**Designated Agreement**"), proceed to the closing of the Sale Transaction with respect to all other Bid Assets, and determine whether to treat the Designated Agreement as an Assumed Contract or Assumed Lease, as applicable, or an Excluded Contract or Excluded Lease, as applicable, within ten business days after resolution of such objection (whether by the Court's order or by agreement of the Counterparty, the Debtors, and the applicable Successful Bidder).

iii. Failure To File Timely Assumption and Assignment Objection. If a Counterparty fails to timely and properly file with the Court and serve on the Assumption and Assignment Objection Notice Parties a timely Assumption and Assignment Objection, the Counterparty shall be forever barred from asserting any such objection with regard to the assumption or assignment of its Assumed Contract or Assumed Lease. Notwithstanding anything to the contrary in the Assumed Contract or Assumed Lease, or any

other document, the Cure Costs set forth in the Potential Assumed Contracts Schedule or the Supplemental Assumed Contracts Schedule (as defined herein) shall be controlling and would be the only amount necessary to cure any alleged outstanding defaults under the applicable Assumed Contract or Assumed Lease under section 365(b) of the Bankruptcy Code arising out of or related to any events occurring prior to the closing of the Sale Transaction or other applicable date upon which such assumption and assignment would become effective, whether known or unknown, due or to become due, accrued, absolute, contingent, or otherwise, and the Counterparty shall be forever barred from asserting any additional cure or other amounts with respect to such Assumed Contract or Assumed Lease against the Debtors, the Successful Bidder, or the property of any of them.

e. **Modification of Potential Assumed Contracts Schedule or Proposed Assumed Contracts Schedule**.

i. In addition to the rights of the Successful Bidder described above with respect to an Assumption and Assignment Objection at or prior to the closing of the Sale Transaction, each Successful Bidder may elect, in its sole and absolute discretion, to (A) exclude any contract or lease on the Potential Assumed Contracts Schedule as an Assumed Contract or Assumed Lease, as applicable (in which case it shall become an Excluded Contract or Excluded Lease, as applicable) or (B) include on the Proposed Assumed Contracts Schedule any contract or lease listed on the Potential Assumed Contracts Schedule, by providing to the Debtors written notice of its election to exclude or include such contract or lease, as applicable.

ii. If the Debtors or any Successful Bidder identify during the pendency of the Chapter 11 Cases (before or after the closing of the applicable Sale Transaction) any contract or lease that is not listed on the Proposed Assumed Contracts Schedule, and such contract or lease has not been rejected by the Debtors, such Successful Bidder may, in its sole and absolute discretion, elect by written notice to the Debtors to treat such contract or lease as an Assumed Contract or Assumed Lease, as applicable, and the Debtors shall seek to assume and assign such Assumed Contract or Assumed Lease in accordance with the Assumption and Assignment Procedures.

iii. Following the conclusion of the Auction, if any, and the selection of the Successful Bidder(s), the Debtors reserve the right, at any time before the closing of the Sale Transaction(s), to modify the previously-stated Cure Costs associated with any Proposed Assumed Contract, subject to notice requirements in the Assumption and Assignment Procedures.

iv. In the event that any contract or lease is added to the Potential Assumed Contracts Schedule or Proposed Assumed Contracts Schedule or previously-stated Cure Costs are modified, in accordance with the

procedures set forth in this Motion, the Debtors would promptly file, cause to be published on the Case Information Website, and serve a supplemental assumption and assignment notice, by email or ECF where available, or otherwise by first class mail, on the applicable Counterparty (each, a "**Supplemental Assumption and Assignment Notice**"). Each Supplemental Assumption and Assignment Notice shall (A) include a schedule of the modified Potential Assumed Contracts Schedule or Proposed Assumed Contracts Schedule (the "**Supplemental Assumed Contracts Schedule**"), (B) expressly state that assumption or assignment of an Assumed Contract or Assumed Lease is not guaranteed and is subject to Court approval, (C) prominently display the deadline to file a Supplemental Assumption and Assignment Objection (as defined below), and (D) prominently display the date, time, and location of the Sale Hearing.

v. Any Counterparty listed on a Supplemental Assumed Contracts Schedule whose contract or lease is proposed to be assumed and assigned may object to the proposed assumption or assignment of its Assumed Contract or Assumed Lease, the Debtors' proposed Cure Costs (to the extent modified from the previously-stated amount), or the ability of a Successful Bidder to provide adequate assurance of future performance (a "**Supplemental Assumption and Assignment Objection**"). All Supplemental Assumption and Assignment Objections must (A) be in writing, (B) comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and Complex Procedures, (C) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Costs the Counterparty believes are required to cure any alleged defaults under the relevant Assumed Contract or Assumed Lease, and (D) **no later than 14 days from the date of service of such Supplemental Assumption and Assignment Notice**, (1) be filed with the Court and (2) be served on the Assumption and Assignment Objection Notice Parties. Each Supplemental Assumption and Assignment Objection, if any, shall be resolved in the same manner as an Assumption and Assignment Objection.

f. **Reservation of Rights**. The inclusion of an Assumed Contract, an Assumed Lease, or, in each case, Cure Costs with respect thereto on a Potential Assumption and Assignment Notice, Proposed Assumption and Assignment Notice, Potential Assumed Contracts Schedule, Proposed Assumed Contracts Schedule, Supplemental Assumption and Assignment Notice, or Supplemental Assumed Contracts Schedule shall not constitute, nor be deemed, a determination or admission by the Debtors, the Successful Bidder(s), or any other party in interest that such contract or lease is an executory contract or unexpired lease within the meaning of the Bankruptcy Code. The Debtors reserve all of their rights, claims, and causes of action with respect to each Assumed Contract and Assumed Lease listed on a Potential Assumption and Assignment Notice, Proposed Assumption and Assignment Notice, Supplemental Assumption and Assignment Notice, Potential Assumed Contracts Schedule, Proposed Assumed Contracts Schedule, or Supplemental Assumed Contracts Schedule. The Debtors' inclusion of any

Assumed Contract or Assumed Lease on a Potential Assumption and Assignment Notice, Proposed Assumption and Assignment Notice, Supplemental Assumption and Assignment Notice, Potential Assumed Contracts Schedule, Proposed Assumed Contracts Schedule, and/or Supplemental Assumed Contracts Schedule shall not be a guarantee that such Assumed Contract or Assumed Lease ultimately would be assumed or assumed and assigned.

Basis for Relief

A. The Bidding Procedures are Fair and Appropriate and Should Be Approved

37. The Bidding Procedures are specifically designed to promote what courts have deemed to be the paramount goal of any proposed sale of property of a debtor's estate: maximizing the value of sale proceeds received by the estate. *See In re Johnson*, 433 B.R. 626, 638 (Bankr. S.D. Tex. 2010) (citing *Cheng v. K&S Diversified Invs. (In re Cheng)*, 308 B.R. 448, 455 (B.A.P. 9th Cir. 2004)) ("The debtor in possession performing the duties of the trustee is the representative of the estate and is saddled with the same fiduciary duty as a trustee to maximize the value of the estate available to pay creditors."); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 564–65 (8th Cir. 1997) (recognizing that the main goal of any proposed sale of property of a debtor's estate is to maximize value). Courts uniformly recognize that procedures established to enhance competitive bidding are consistent with the fundamental goal of maximizing value of a debtor's estate. *See In re ASARCO, L.L.C.*, 650 F.3d 593, 603 (5th Cir. 2011) (affirming the bankruptcy court's approval of bid procedures designed to maximize the value of the debtor's estate); *Official Comm. of Subordinated Bondholders v. Integrated Res. Inc. (In re Integrated Res. Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (observing that sale procedures "encourage bidding and . . . maximize the value of the debtor's assets").

38. The Bidding Procedures provide for an orderly, uniform, and appropriately competitive process through which interested parties may submit offers to purchase the Bid Assets or serve as an investor with respect to a Chapter 11 Plan Transaction. Given the time constraints,

the Debtors, with the assistance of their advisors, have structured the Bidding Procedures to promote active bidding by interested parties and to elicit the highest or otherwise best offer(s) reasonably available for the Bid Assets. Additionally, the Bidding Procedures would allow the Debtors to conduct the Auction in a fair and transparent manner that would encourage participation by financially capable bidders with demonstrated ability to consummate a timely Sale Transaction.

39. Courts in this district routinely approve procedures similar to the proposed Bidding Procedures in connection with chapter 11 asset sales. *See, e.g.*, *In re MLCJR LLC*, No. 23-90324 (CML) (Bankr. S.D. Tex. June 20, 2023) [Docket No. 471]; *In re Center for Autism and Related Disorders, LLC*, No. 23-90709 (DRJ) (Bankr. S.D. Tex. June 16, 2023) [Docket No. 134]; *In re Kalera, Inc.*, No. 23-90290 (DRJ) (Bankr. S.D. Tex. Apr. 27, 2023) [Docket No. 98]; *In re Nielsen & Bainbridge, LLC*, No. 23-90071 (DRJ) (Bankr. S.D. Tex. Mar. 1, 2023) [Docket No. 215]; *In re Cleveland Integrity Servs., Inc.*, No. 23-90052 (CML) (Bankr. S.D. Tex. Feb. 6, 2023) [Docket No. 69]; *In re Pipeline Health System, LLC*, No. 22-90291 (MI) (Bankr. S.D. Tex. Oct. 11, 2022) [Docket No. 149]; *In re Basic Energy Servs., Inc.*, Case No. 21-90002 (DRJ) (Bankr. S.D. Tex. Aug. 25, 2021) [Docket No. 179]; *In re Limetree Bay Servs., LLC*, Case No. 21-32351 (DRJ) (Bankr. S.D. Tex. Aug. 11, 2021) [Docket No. 392]; *In re Wash. Prime Grp. Inc.*, Case No. 21-31948 (MI) (Bankr. S.D. Tex. July 8, 2021) [Docket No. 289]; *In re Chesapeake Energy Corp.*, Case No. 20-33233 (DRJ) (Bankr. S.D. Tex. Oct. 6, 2020) [Docket No. 1305]; *In re McDermott Int'l, Inc.*, Case No. 20-30336 (DRJ) (Bankr. S.D. Tex. Feb. 24, 2020) [Docket No. 476]; *In re S. Foods Grps., LLC*, Case No. 19-36313 (DRJ) (Bankr. S.D. Tex. March 19, 2020) [Docket No. 1178]; *In re Alta Mesa Res., Inc.*, Case No. 19-35133 (MI) (Bankr. S.D. Tex. Oct. 11, 2019) [Docket No. 317]. Accordingly, the Bidding Procedures should be approved because, under the

circumstances, they are reasonable, appropriate, and in the best interests of the Debtors, their estates, and all parties in interest.

B. The Procedures for Designating a Stalking Horse Bidder and Offering Bid Protections Have Sound Business Purposes and Should Be Approved

40. As noted above, the Bidding Procedures contemplate (but do not require) the Debtors, in the exercise of their business judgment and in consultation with the Consultation Parties, to (a) agree with a Qualified Bidder that its Qualified Bid would constitute a Stalking Horse Bid and (b) offer the Bid Protections to such Stalking Horse Bidder.[13] The Debtors believe that their ability to offer Bid Protections to a prospective Stalking Horse Bidder is necessary, both to set a floor for the value of the Bid Assets and to attract potential buyers to bid for such assets, and would maximize the realizable value of the Bid Assets for the benefit of the Debtors' estates, their creditors, and all other parties in interest.

41. In the event that the Debtors, in consultation with the Consultation Parties, desire to designate a Qualified Bid as a Stalking Horse Bid and enter into a Stalking Horse APA that provides for Bid Protections subject to the limitations set forth herein, the Debtors would file the Stalking Horse Notice with the Court and serve such notice on the Stalking Horse Notice Parties, followed by a certificate of no objection should no party in interest file a Stalking Horse Objection by the Stalking Horse Objection Deadline. Once any such certificate of no objection is filed, the Debtors propose (a) that their designation of the Stalking Horse Bidder and agreement respecting Bid Protections shall be deemed approved and (b) that the Debtors may enter into the Stalking Horse APA, in each case without further notice or opportunity to be heard.

[13] In the event that there are multiple bids for non-overlapping lots of the Bid Assets, the Bidding Procedures allow the possibility of designating multiple bids as Stalking Horse Bids for such non-overlapping lots.

42. If a Stalking Horse Objection is timely and properly filed and served, to the extent the Debtors are unable to resolve it consensually, the Debtors may schedule a Stalking Horse Hearing on an expedited basis (on not less than three-days' notice). At the Stalking Horse Hearing, the Debtors would seek the Court's authorization to enter into the Stalking Horse APA, including the Bid Protections contained therein.

43. Approval of the Bid Protections is governed by standards for determining the appropriateness of bid protections in the bankruptcy context. The Fifth Circuit has held that bid protections should be approved in chapter 11 cases so long as (a) there was no "self-dealing or manipulation among the parties who negotiated" the bid protections, (b) the bid protections would "facilitate[]," rather than "hinder[]," the bidding process, and (c) the bid protections are "reasonable in comparison to the size of" the contemplated transaction. *ASARCO*, 650 F.3d at 603.

44. Here, the Bid Protections satisfy the *ASARCO* factors. As for the first factor, the Debtors would only offer the Bid Protections to the extent that they believe, in the exercise of their business judgment and consistent with their fiduciary duties (and in consultation with the Consultation Parties), that offering these protections would enhance the ultimate recovery to be received by all stakeholders. In addition, as set forth in the Bidding Procedures, no Bid Protections may be offered to an insider of the Debtors. Accordingly, there should be no basis to conclude that any offer of Bid Protections might be infected by manipulation or self-dealing.

45. Second, the Bid Protections would facilitate, and not hinder, the bidding process. The Bid Protections would enable the Debtors to secure an adequate floor for the Bid Assets and insist that competing bids be materially higher or better than the Approved Stalking Horse Bid. *See ASARCO*, 650 F.3d at 602 n.9 (noting that break-up fees "provide an incentive for an initial bidder to serve as a so-called 'stalking horse,' whose initial research, due diligence, and subsequent

bid may encourage later bidders" (quotation omitted)); *Official Comm. of Unsecured Creditors of Walker Cty. Hosp. Corp. v. Walker Cty. Hosp. Dist. (In re Walker Cty. Hosp. Corp.)*, 3 F.4th 229, 231 n.2 (5th Cir. 2021) (same). A prospective Stalking Horse Bidder would not likely agree to hold out its bid and act as a stalking horse without Court approval of the Bid Protections; thus, the Debtors could risk losing out on the opportunity to obtain the highest or otherwise best offer for the Bid Assets and would certainly lose out on the downside protection an Approved Stalking Horse Bid would provide.

46. Third, for the reasons set forth in the Bojmel Declaration, the Bid Protections are reasonable relative to the size, nature, and complexity of the contemplated Sale Transaction, and particularly in light of the efforts that would necessarily have been expended by a Stalking Horse Bidder. The Bid Protections would make up only a small percentage of any reasonable price for the Bid Assets that a Stalking Horse Bidder might offer—the Break-Up Fee, for instance, represents only three percent of the consideration offered by the Stalking Horse Bidder, and even then only of the cash portion of such consideration.

47. Courts in this district have approved protections similar to the Bid Protections proposed here as reasonable. *See, e.g.*, *In re Basic Energy Servs., Inc.*, Case No. 21-90002 (DRJ) (Bankr. S.D. Tex. Aug. 25, 2021) [Docket No. 179]; *In re Limetree Bay Servs., LLC*, Case No. 21-32351 (DRJ) (Bankr. S.D. Tex. Aug. 11, 2021) [Docket No. 392]; *In re Chesapeake Energy Corp.*, Case No. 20-33233 (DRJ) (Bankr. S. D. Tex. Oct. 6, 2020) [Docket No. 1305]; *In re McDermott Int'l, Inc.*, Case No. 20-30336 (DRJ) (Bankr. S.D. Tex. Feb. 24, 2020) [Docket No. 476]. Accordingly, the Debtors submit that the Bid Protections reflect a sound business purpose, are fair and appropriate under the circumstances, and should likewise be approved.

C. The Proposed Sale Transaction Satisfies the Requirements of Section 363 of the Bankruptcy Code

48. Ample authority exists for approval of the potential Sale Transaction contemplated by this Motion. Section 363(b)(1) of the Bankruptcy Code empowers the Court to allow a debtor to "use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). A debtor's decision to use, sell, or lease assets outside the ordinary course of business must be based upon the sound business judgment of the debtor. *See, e.g.*, *Int'l Creditors of Cont'l Air Lines, Inc. v. Cont'l Air Lines, Inc. (In re Cont'l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) ("[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business."); *In re Crutcher Res. Corp.*, 72 B.R. 628, 631 (Bankr. N.D. Tex. 1987) ("A Bankruptcy Judge has considerable discretion in approving a § 363(b) sale of property of the estate other than in the ordinary course of business, but the movant must articulate some business justification for the sale . . . ."); *In re Cowin*, No. 13-30984, 2014 WL 1168714, at *38 (Bankr. S.D. Tex. Mar. 21, 2014); *In re St. Marie Clinic PA*, No. 10-70802, 2013 WL 5221055, at *9 (Bankr. S.D. Tex. Sept. 17, 2013); *In re Particle Drilling Techs., Inc.*, No. 09-33744, 2009 WL 2382030, at *2 (Bankr. S.D. Tex. July 29, 2009); *In re San Jacinto Glass Indus., Inc.*, 93 B.R. 934, 944 (Bankr. S.D. Tex. 1988).

49. Courts emphasize that the business judgment rule is not an onerous standard—that it is instead "flexible and encourages discretion." *ASARCO*, 650 F.3d at 601. "Great judicial deference is given to the [debtor's] exercise of business judgment." *GBL Holding Co., Inc. v. Blackburn/Travis/Cole, Ltd. (In re State Park Bldg. Grp., Ltd.)*, 331 B.R. 251, 254 (N.D. Tex. 2005). A sound business justification for the sale of a debtor's assets outside the ordinary course of business exists where such sale is necessary to preserve the value of the estate for the benefit of

creditors and interest holders. *See, e.g., In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983); *Four B. Corp. v. Food Barn Stores, Inc.* (*In re Food Barn Stores, Inc.*), 107 F.3d 558, 566 n.16 (8th Cir. 1997) (recognizing the paramount goal of any proposed sale of property of estate is to maximize value). As long as a transaction "appears to enhance a debtor's estate, court approval of a debtor in possession's decision to [enter into the transaction] should only be withheld if the debtor's judgment is clearly erroneous, too speculative, or contrary to the Bankruptcy Code." *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985) (citation and internal quotation marks omitted).

50. Moreover, section 105(a) of the Bankruptcy Code confers a bankruptcy court with broad equitable powers to confer relief in alignment with bankruptcy policies. *See United States v. Sutton*, 786 F.2d 1305, 1308 (5th Cir. 1986) (holding that section 105(a) of the Bankruptcy Code authorizes bankruptcy courts to fashion equitable remedies "in a manner consistent with the provisions of the Bankruptcy Code"); *see also In re Young*, 416 F. App'x 392, 398 (5th Cir. 2011) (recognizing that "[s]ection 105(a) of Title 11 permits the bankruptcy court to exercise broad authority"); *In re Trevino*, 599 B.R. 526, 542–43 (Bankr. S.D. Tex. 2019) (noting that the bankruptcy court has "broad authority" under section 105(a) of the Bankruptcy Code); *In re Padilla*, 379 B.R. 643, 667 (Bankr. S.D. Tex. 2007) (citations omitted) ("Section 105(a) gives bankruptcy courts broad authority to take actions necessary and appropriate for administering and enforcing the Bankruptcy Code and . . . 'authorizes a bankruptcy court to fashion such orders as are necessary to further the purposes of the substantive provisions of the Bankruptcy Code.'").

i. The Debtors Have Demonstrated a Sound Business Justification for the Potential Sale Transaction

51. For the reasons set forth in the Bojmel Declaration, a strong business justification exists for the sale of the Bid Assets as described herein. Exploring an orderly but expeditious sale

of the Bid Assets or Chapter 11 Plan Transaction is critical to maximizing the value of the Debtors' estates and recoveries for the Debtors' economic stakeholders. To that end, the DIP Credit Agreements expressly require that the Debtors timely consummate any Sale Transaction or identify investors for a Chapter 11 Plan Transaction by no later than September 7, 2023 (or, in the case of a Chapter 11 Plan Transaction, such later date as is required to comply with the requirements of the Bankruptcy Code, Bankruptcy Rule, and Local Rules for confirmation of a chapter 11 plan). Additionally, the Debtors believe that any Sale Transaction or Chapter 11 Plan Transaction consummated in accordance with the Bidding Procedures would produce fair and reasonable purchase prices for the Bid Assets.

52. The Bidding Procedures were carefully designed to facilitate a flexible, robust, and competitive bidding process. The Bidding Procedures provide an appropriate framework for the Debtors to review, analyze, and compare all bids received to determine which bids are in the best interests of the Debtors' estates and their economic stakeholders. Any transaction governed by the Bidding Procedures undoubtedly would serve the important objectives of obtaining a fair and reasonable purchase price for the Bid Assets, along with the highest or otherwise best value for the Bid Assets or the most favorable Chapter 11 Plan Transaction, which would inure to the benefit of all parties in interest in the Chapter 11 Cases.

53. Finally, nothing in the Bidding Procedures requires the Debtors' board of directors to take any action, or to refrain from taking any action, with respect to the Bidding Procedures, to the extent that the Debtors' board of directors determines that taking such action, or refraining from taking such action, is required to comply with applicable law or its fiduciary duties under applicable law, thereby allowing the Debtors to pivot to an alternative transaction.

54. For the foregoing reasons, the Debtors submit that a strong business justification exists for approving the Sale Transactions and related relief requested herein.

ii. The Noticing Procedures Are Reasonable and Appropriate

55. "[A] sale of assets under § 363 requires notice and a hearing and is subject to court approval." *In re Moore*, 608 F.3d 253, 262 (5th Cir. 2010). The Noticing Procedures described above are reasonably calculated to provide all of the Debtors' known relevant creditors and all other parties in interest with adequate, timely notice of, among other things, the potential Sale Transaction, Bidding Procedures, Auction, and Sale Hearing.

D. The Successful Bidder Should Be Entitled to the Protections of Section 363(m) of the Bankruptcy Code

56. 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) of the Bankruptcy Code states the following:

> The reversal or modification on appeal of an authorization under [section 363(b) of the Bankruptcy Code] . . . 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). "The purpose of § 363(m)'s stay requirement is in furtherance of the policy of not only affording finality to the judgment of the bankruptcy court, but particularly to give finality to those orders and judgments upon which third parties rely." *In re TMT Procurement Corp.*, 764 F.3d 512, 521 (5th Cir. 2014) (citation and internal quotation marks omitted). "Section 363(m) patently protects, from later modifications on appeal, an authorized sale where the purchaser acted in good faith and the sale was not stayed pending appeal." *Matter of Gilchrist*, 891 F.2d 559, 560 (5th Cir. 1990).

57. Although the Bankruptcy Code does not define "good faith," the Fifth Circuit has defined the term in two ways in the context of section 363(m) of the Bankruptcy Code. First, it has "defined a 'good faith purchaser' as 'one who purchases the assets for value, in good faith, and without notice of adverse claims.'" *TMT Procurement Corp.*, 764 F.3d at 521 (citations omitted). Second, the Fifth Circuit has "noted that 'the misconduct that would destroy a purchaser's good faith status . . . involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.'" *Id.* (citations omitted).

58. The Debtors submit that the Successful Bidder would be a "good faith purchaser" within the meaning of section 363(m) of the Bankruptcy Code. The Debtors have engaged independent, sophisticated counsel and other professional advisors to represent their interests with respect to the sale process and, to the best of the Debtors' knowledge, information, and belief, no party has engaged in any conduct that would cause or permit a Sale Transaction to be set aside under section 363(m) of the Bankruptcy Code.

59. Further, as set forth above, the Bidding Procedures are designed to produce a fair and transparent competitive bidding process. Each Qualified Bidder participating in the Auction must confirm that it has not engaged in any collusion with respect to the bidding or the sale of any of the Bid Assets. *See* Bidding Procedures § 2(b). Any asset purchase agreement with a Successful Bidder executed by the Debtors would be negotiated at arm's length and in good faith. Accordingly, the Debtors seek a finding that any Successful Bidder under the Bidding Procedures is a good faith purchaser and is entitled to the full protections afforded by section 363(m) of the Bankruptcy Code.

60. Based on the foregoing, the Debtors submit that the Debtors' entrance into a Sale Transaction pursuant to the Bidding Procedures is a sound exercise of the Debtors' business judgment and should be approved as a good faith transaction.

E. The Bid Assets Should Be Sold Free and Clear of Liens, Claims, Interests, and Encumbrances Under Section 363(f) of the Bankruptcy Code

61. In the interest of attracting the best offers, the Bid Assets should be sold free and clear of any and all liens, claims, interests, and other encumbrances, in accordance with section 363(f) of the Bankruptcy Code, with any such liens, claims, interests, and encumbrances attaching to the proceeds of the applicable sale. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests, and encumbrances of an entity other than the estate if any one of the following conditions is satisfied:

a. applicable non-bankruptcy law permits sale of such property free and clear of such interest;

b. such entity consents;

c. such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;

d. such interest is in bona fide dispute; or

e. such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); *see also In re Patriot Place, Ltd.*, 486 B.R. 773, 814 (Bankr. W.D. Tex. 2013) ("Section 363(f) of the Bankruptcy Code sets forth five alternative conditions that must be satisfied by the Court to authorize a debtor . . . to sell its property . . . free and clear of interests of a third party.").

62. Section 363(f) of the Bankruptcy Code is supplemented by section 105(a) of the Bankruptcy Code, which provides that "[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. §

105(a); *see also Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) ("Authority to conduct such sales [free and clear of claims] is within the court's equitable powers when necessary to carry out the provisions of [the Bankruptcy Code].").

63. The Debtors submit that the sale of the Bid Assets free and clear of liens, claims, interests, and encumbrances would satisfy one or more of the requirements under section 363(f) of the Bankruptcy Code. For example, to the extent that a party objects to the Sale Transaction on the basis that it allegedly holds a prepetition lien or encumbrance on the Bid Assets, the Debtors believe that any such party could be compelled to accept a monetary satisfaction of such claims, under section 363(f)(5) of the Bankruptcy Code, or that such lien is in bona fide dispute, under section 363(f)(4) of the Bankruptcy Code.

64. Moreover, the Debtors have sent or will send the Sale Notice to any purported prepetition lienholders. If such lienholders do not object to the proposed Sale Transaction, then their consent should be presumed. Accordingly, the Debtors request that, unless a party asserting a prepetition lien, claim, interest, or encumbrance on any of the Bid Assets (other than those assumed or permitted, if any, in connection with a Sale Transaction) timely and properly objects to this Motion, such party shall be deemed to have consented to any Sale Transaction approved at the Sale Hearing. *See Hargrave v. Twp. of Pemberton*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to a sale motion, a creditor is deemed to consent to the relief requested therein).

65. The purpose of a sale order purporting to authorize the transfer of assets free and clear of all claims, liens, interests, and encumbrances would be defeated if claimants could thereafter use the transfer as a basis to assert claims against a purchaser arising from a seller's pre-sale conduct. Moreover, without such assurances, potential bidders may choose not to participate

in the Auction, to the detriment of the Debtors' economic stakeholders. Accordingly, the Debtors request that the Court authorize the sale of the Bid Assets free and clear of any liens, claims, interests, and encumbrances in accordance with section 363(f) of the Bankruptcy Code, subject to such liens, claims, interests, and encumbrances (including, without limitation, all DIP Liens, Adequate Protection Liens, Prepetition Liens, DIP Obligations, Adequate Protection Obligations, Prepetition Obligations, and DIP Superpriority Claims (as each is defined in the DIP Order)) attaching to the proceeds thereof in the same order of relative priority and with the same validity, force, and effect as prior to such sale.

F. The Assumption and Assignment of Executory Contracts and Unexpired Leases Should Be Authorized

66. Section 365(a) of the Bankruptcy Code provides that a debtor in possession, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). The decision to assume or reject an unexpired lease is a matter within the "business judgment" of the debtor. *Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp. (In re Sharon Steel Corp.)*, 872 F.2d 36, 40 (3d Cir. 1989). "As long as assumption of a lease appears to enhance a debtor's estate, court approval of a debtor-in-possession's decision to assume the lease should only be withheld if the debtor's judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code." *Richmond Leasing Co.*, 762 F.2d at 1309 (citation and internal quotation marks omitted).

67. Any assumption of the Proposed Assumed Contracts is an exercise of the Debtors' sound business judgment because the transfer of such Contracts and Leases is necessary to the Debtors' ability to obtain the best value for their Bid Assets. The assumption and assignment of Proposed Assumed Contracts is a critical element of the value of the Bid Assets. Given that the ability to consummate an agreed Sale Transaction is critical to the Debtors' efforts to maximize

value for their estates and stakeholders, the Debtors' assumption of Proposed Assumed Contracts is an exercise of sound business judgment and, therefore, should be approved.

68. The consummation of any Sale Transaction involving the assignment of a Proposed Assumed Contract would be contingent upon the Debtors' compliance with the applicable requirements of section 365 of the Bankruptcy Code. Section 365(b)(1) of the Bankruptcy Code requires that any outstanding defaults under the Contracts and Leases to be assumed be cured and that the Debtors provide adequate assurance that such defaults would be promptly cured. The Debtors' assumption and assignment of Proposed Assumed Contracts would be contingent upon payment of the Cure Costs and effective only upon the closing of an applicable Sale Transaction or any later applicable effective date. As set forth above, the Debtors propose to file with the Court and serve on each Counterparty a Potential Assumption and Assignment Notice, which would set forth the Debtors' good faith calculations of Cure Costs with respect to each Contract and Lease listed on the Potential Assumed Contracts Schedule. As a result, Counterparties would have a meaningful opportunity to raise any objections to the proposed assumption of their respective Contracts and Leases in advance of the applicable Sale Hearing.

69. Pursuant to section 365(f)(2) of the Bankruptcy Code, a debtor may assign an executory contract if "adequate assurance of future performance by the assignee of such contract or lease is provided." The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." *In re Tex. Health Enters., Inc.*, 246 B.R. 832, 834 (Bankr. E.D. Tex. 2000) (citation and internal quotation marks omitted). "Assurance of future performance is adequate if performance is likely (i.e. more probable than not) and the degree of assurance necessary to be deemed adequate falls considerably short of an absolute guaranty." *In re PRK Enters., Inc.*, 235 B.R. 597, 603 (Bankr.

E.D. Tex. 1999). "Some helpful factors include 'whether the debtor's financial data indicated its ability to generate an income stream sufficient to meet its obligations, the general economic outlook in the debtor's industry, and the presence of a guarantee.'" *In re Tex. Health Enters. Inc.*, 72 F. App'x 122, 126 (5th Cir. 2003) (citation omitted).

70. As set forth above and in the Bidding Procedures, for a bid to qualify as a Qualified Bid, a Potential Bidder must include with its bid information regarding its ability (and the ability of its designated assignee, if applicable) to perform under applicable Proposed Assumed Contracts. Each affected Counterparty would have an opportunity to object to the ability of the Successful Bidder to provide adequate assurance as provided in the Bidding Procedures Order. Further, the Debtors propose to file with the Court a Proposed Assumption and Assignment Notice, which would set forth a list of the Proposed Assumed Contracts, in advance of the Sale Hearing. To the extent necessary, the Debtors would present facts at the Sale Hearing to demonstrate the financial wherewithal, willingness, and ability of the Successful Bidder to perform under the Proposed Assumed Contracts.

71. In addition, to facilitate the assumption and assignment of Proposed Assumed Contracts, the Debtors further request that the Court find that all anti-assignment provisions contained therein, whether such provisions expressly prohibit or have the effect of restricting or limiting assignment of such Assumed Contract or Assumed Lease, are unenforceable and prohibited pursuant to section 365(f) of the Bankruptcy Code.[14]

[14] Section 365(f)(1) of the Bankruptcy Code 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) of the Bankruptcy Code further provides that, "[n]otwithstanding 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).

Emergency Consideration

72. Pursuant to Local Rule 9013-1(i), the Debtors respectfully request emergency consideration of this Motion. As set forth in this Motion and the Bojmel Declaration, the Debtors believe that continuing a sale process pursuant to the Bidding Procedures, and in accordance with the milestones under the DIP Credit Agreements, will maximize the value of the Bid Assets for the benefit of all stakeholders. Accordingly, shortening notice of this Motion is warranted.

Waiver of Bankruptcy Rules 6004(a), 6004(h), and 6006(d)

73. To implement successfully the relief sought herein, the Debtors request that the Court find that notice of the Motion is adequate under Bankruptcy Rule 6004(a) under the circumstances. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). The Debtors further request that the Court waive the stay imposed by Bankruptcy Rule 6006(d), which provides that an "order authorizing the trustee to assign an executory contract or unexpired lease under section 365(f) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6006(d).

74. The Debtors have already commenced the marketing and sale process to maximize value for their estates and stakeholders. Accordingly, the Debtors request that the Bidding Procedures Order, the Sale Order, and any order authorizing the assumption and assignment of a Proposed Assumed Contract in connection with a Sale Transaction be effective immediately upon entry and that the 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d) be waived.

Notice

75. Notice of this Motion will be provided to the following parties: (a) the U.S. Trustee; (b) DLA Piper LLP (US), as counsel to the Committee; (c) the Securities and Exchange Commission; (d) the Internal Revenue Service; (e) the United States Attorney's Office for the Southern District of Texas; (f) the state attorneys general for states in which the Debtors conduct business; (g) Ropes & Gray LLP, as counsel to the Ad Hoc Group of Term Loan Lenders and the Term DIP Secured Parties; (h) Skadden, Arps, Slate, Meagher & Flom LLP, as counsel to the ABL DIP Agent; (i) Kramer Levin Naftalis & Frankel LLP, as counsel to Cornell; and (j) any party identified in section E of the Complex Procedures (collectively, the "**Notice Parties**"). A copy of this Motion and any Order approving it will also be made available on the Debtors' Case Information Website. Based on the urgency of the circumstances surrounding this Motion and the nature of the relief requested herein, the Debtors respectfully submit that no other or further notice is required.

[Remainder of page intentionally left blank]

WHEREFORE, the Debtors respectfully request that the Court enter the Bidding Procedures Order and, after the Sale Hearing, the Sale Order, granting the relief requested herein and such other and further relief as the Court deems just and proper.

Dated: June 30, 2023
Houston, Texas

HAYNES AND BOONE, LLP

/s/ Charles A. Beckham, Jr.
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-and-

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Proposed Counsel to the Debtors and Debtors in Possession

Certificate of Accuracy

I certify that the facts and circumstances described in the above pleading giving rise to the emergency request for relief are true and correct to the best of my knowledge, information, and belief.

/s/ Charles A. Beckham, Jr.
Charles A. Beckham, Jr.

Certificate of Service

I certify that, on June 30, 2023, I caused a copy of the foregoing document to be served via the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Charles A. Beckham, Jr.
Charles A. Beckham, Jr.

Exhibit A

Bojmel Declaration

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
INSTANT BRANDS ACQUISITION HOLDINGS INC., *et al.*,	§	**Case No. 23-90716 (DRJ)**
Debtors.[1]	§	**(Jointly Administered)**

DECLARATION OF RONEN BOJMEL IN SUPPORT OF DEBTORS' EMERGENCY MOTION FOR ENTRY OF ORDERS (I)(A) APPROVING BIDDING PROCEDURES FOR SALE OF DEBTORS' ASSETS, (B) AUTHORIZING POTENTIAL SELECTION OF STALKING HORSE BIDDER(S), (C) APPROVING BID PROTECTIONS, (D) SCHEDULING AUCTION FOR, AND HEARING TO APPROVE, SALE OF DEBTORS' ASSETS, (E) APPROVING FORM AND MANNER OF NOTICES OF SALE, AUCTION, AND SALE HEARING, AND (F) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES, (II)(A) APPROVING SALE OF DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES AND (B) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (III) GRANTING RELATED RELIEF

I, Ronen Bojmel, declare as follows:

1. I am a Senior Managing Director of Guggenheim Securities, LLC ("**Guggenheim Securities**"), an investment banking firm with principal offices located at 330 Madison Avenue, New York, New York, 10017. Guggenheim Securities is the proposed investment banker for the debtors

[1] The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers or registration numbers in the applicable jurisdictions, are as follows: Instant Brands (Texas) Inc. (2526); Instant Brands Acquisition Holdings Inc. (9089); Instant Brands Acquisition Intermediate Holdings Inc. (3303); Instant Brands Holdings Inc. (3318); URS-1 (Charleroi) LLC (7347); Instant Brands LLC (0566); URS-2 (Corning) LLC (8085); Corelle Brands (Latin America) LLC (8862); EKCO Group, LLC (7167); EKCO Housewares, Inc. (0216); EKCO Manufacturing of Ohio, Inc. (7300); Corelle Brands (Canada) Inc. (5817); Instant Brands (Canada) Holding Inc. (4481); Instant Brands Inc. (8272); and Corelle Brands (GHC) LLC (9722). The address of the debtors' corporate headquarters is 3025 Highland Parkway, Suite 700, Downers Grove, IL 60515.

and debtors-in-possession (collectively, the "**Debtors**")[2] in the above-captioned chapter 11 cases (the "**Chapter 11 Cases**").[3]

2. I submit this declaration (this "**Declaration**") in support of the *Debtors' Emergency Motion for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Debtors' Assets, (B) Authorizing Potential Selection of Stalking Horse Bidder(s), (C) Approving Bid Protections, (D) Scheduling Auction for, and Hearing To Approve, Sale of Debtors' Assets, (E) Approving Form and Manner of Notices of Sale, Auction, and Sale Hearing, and (F) Approving Assumption and Assignment Procedures, (II)(A) Approving Sale of Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and (B) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases, and (III) Granting Related Relief* (the "**Motion**").[4]

3. Although Guggenheim Securities is expected to be compensated for its work as the Debtors' proposed investment banker in the Chapter 11 Cases, I am not compensated separately for this Declaration or testimony. Except as otherwise indicated herein, all of the facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, the information provided to me by Guggenheim Securities professionals involved in advising the Debtors in the Chapter 11 Cases, or information provided to me by the Debtors. If called upon to testify, I could and would testify to the facts set forth herein on that basis. I am over the age of 18 years and am authorized to submit this Declaration.

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[2] The Debtors and their direct and indirect non-Debtor subsidiaries are collectively referred to herein as "**Instant Brands**" or the "**Company**."

[3] The Debtors have filed an application to retain Guggenheim Securities as their investment banker, effective as of the commencement of the Chapter 11 Cases [Docket No. 166].

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

Qualifications

4. I have more than 25 years of experience, including restructuring-related investment banking experience, handling complex financial and other restructuring matters for a variety of companies (distressed or otherwise, both in and out of court), in a wide spectrum of industries. My areas of expertise include, among other things, (a) advising on financial restructuring execution and strategies, (b) analyzing business plans and related financial projections, (c) developing views on valuations based on practices widely used in the investment banking industry, (d) sizing, structuring, raising, and executing all aspects of financing transactions, including debtor-in-possession and exit financings, and (e) M&A and sale marketing processes.

5. I co-head Guggenheim Securities' investment banking restructuring practice and have been employed at Guggenheim Securities since October 2012. Before joining Guggenheim Securities, I was a managing director at Miller Buckfire & Co. for six years and, prior to joining Miller Buckfire & Co., I was a vice president in the financial restructuring group at Dresdner Kleinwort Wasserstein and its predecessor, Wasserstein Perella.

The Retention of Guggenheim Securities

6. Guggenheim Securities has been engaged as investment banker to the Debtors, and members of my team and I have been working closely with the Debtors, since January 2023. Since being engaged by the Debtors, Guggenheim Securities has rendered investment banking advisory services to the Debtors in connection with the Debtors' evaluation of financing and strategic alternatives in light of their financial position. Additionally, Guggenheim Securities has worked with the Debtors' management team and other professionals retained by the Debtors and has become familiar with the Debtors' capital structure, financial condition, liquidity needs, and business operations.

The Marketing and Sale Process

7. As noted in the Motion, after considering a wide range of potential strategic alternatives and negotiating with relevant stakeholders and counterparties, the Debtors have determined that a sale of all, substantially all, or a portion of the Debtors' assets is a potential path to maximizing and preserving value for the benefit of the Debtors' stakeholders.

8. Accordingly, upon the filing of the Chapter 11 Cases, the Debtors, with the assistance of Guggenheim Securities, commenced efforts to prepare for and conduct a marketing and sale process for the Bid Assets. Specifically, the Debtors, with the assistance of Guggenheim Securities, have prepared marketing materials, including a confidential information memorandum, populated a data room with financial and historical diligence materials, identified (and have begun reaching out to) potentially interested bidders, and formulated the proposed Bidding Procedures described in the Motion.

9. Following the approval of the proposed Bidding Procedures, the Debtors, with the assistance of Guggenheim Securities, expect to continue marketing the Bid Assets to potential buyers, including by (a) engaging potential parties that may have an interest in bidding for the Bid Assets or a portion thereof, (b) providing access to the data room (to those parties executing a confidentiality agreement with the Debtors), and/or (c) providing information packets to potential purchasers, as appropriate.

The Bidding Procedures and Selection of a Stalking Horse Bidder

10. As noted in the Motion, the Debtors seek approval of the Bidding Procedures to facilitate a value-maximizing sale of the Bid Assets in a timely and efficient manner. As more fully described in the Motion, the Bidding Procedures contain provisions relating to, among other things, (a) the Bid Assets available for sale, (b) the manner in which bids and bidders become

"qualified," (c) the provision of diligence by the Debtors to bidders, (d) the receipt and negotiation of bids received, (e) the conduct of any Auction, (f) the selection and approval of the Successful Bidder(s) and Alternate Bidder(s), and (g) the designation and approval of any Stalking Horse Bidder, Stalking Horse APA, and Bid Protections, if a Stalking Horse Bidder is designated in consultation with the Consultation Parties.

11. In addition, as noted in the Motion, the Bidding Procedures contain the following proposed dates and deadlines:

July 12, 2023 at 3:30 p.m. (prevailing Central Time)	Hearing to consider approval of the Bidding Procedures and for entry of the Bidding Procedures Order
July 21, 2023	Target date for the Debtors to file Potential Assumed Contracts Schedule
July 19, 2023 at 3:00 p.m. (prevailing Central Time)	Indication of Interest Deadline
August 11, 2023 at 4:00 p.m. (prevailing Central Time)	Cure Objection Deadline
August 21, 2023 at 3:00 p.m. (prevailing Central Time)	Bid Deadline
August 24, 2023 at 10:00 a.m. (prevailing Eastern Time)	Auction (if any) to be held at the New York offices of Davis Polk & Wardwell LLP
August 25, 2023	Target date for the Debtors to file with the Court the Notice of Auction Results
August 28, 2023 at 4:00 p.m. (prevailing Central Time)	Deadline to object to the Sale Transaction to the Successful Bidder; and the Assumption and Assignment Objection Deadline
August [30], 2023 at [●].m. (prevailing Central Time)[5]	Hearing to consider approval of the Sale Transaction(s) and for entry of the Sale Order(s)

[5] This date remains subject to Bankruptcy Court approval.

12. Additionally, as noted in the Motion, the proposed Bidding Procedures also contemplate, but do not require, the Debtors' selection (in consultation with the Consultation Parties) of a Stalking Horse Bidder and the granting of certain Bid Protections. I further understand that the Bid Protections (subject to the terms and conditions of the definitive agreement(s) reached between the Debtors and such Stalking Horse Bidder(s)) could include (a) the payment of a break-up fee in an amount not to exceed three percent of the cash portion of the purchase price set forth in the Stalking Horse Bid and (b) the reimbursement of the reasonable and documented fees and out-of-pocket expenses of the Stalking Horse Bidder in an amount up to $500,000.

13. Based on my experience, I believe that the proposed Bidding Procedures have been designed with the intent to maximize the value received for the Bid Assets by facilitating an open and competitive bidding process in which potential bidders are encouraged to participate and submit competing bids within the specified time frame (as required by the milestones set forth in the DIP Credit Agreements). Additionally, given the post-petition marketing process contemplated to be undertaken (as described above), including, without limitation, the number of parties that I understand the Debtors have contacted and expect to contact and the amount of diligence materials anticipated to be made available to such potential bidders, it is my view (based on my experience as a restructuring investment banker) that the proposed Bidding Procedures are reasonable under the circumstances of the Chapter 11 Cases.

14. With respect to the Bid Protections, in my experience, stalking horse bidders typically require bid protections similar to the type of Bid Protections set forth in the proposed Bidding Procedures (including both the Break-Up Fee and Expense Reimbursement) and that such terms are customary and usual under the circumstances.

15. Finally, the timeline proposed by the Debtors in the Bidding Procedures provides approximately ten weeks between the Petition Date and the Bid Deadline. Under the circumstances described herein and in the Motion, I believe that, based on my experience as a restructuring investment banker, this timeline provides the Debtors with a reasonable amount of time to conduct a marketing process for the Bid Assets and to solicit and potentially select the highest or otherwise best potential offer for the Bid Assets that is reasonably available under the circumstances. Additionally, at the Auction, as set forth in the proposed Bidding Procedures, the Debtors would have an opportunity to consider all potential competing offers and select (in consultation with the Consultation Parties) the offer for the Bid Assets that they deem to be the highest or otherwise best such offer.

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

Dated: June 30, 2023

/s/ Ronen Bojmel
Ronen Bojmel
Senior Managing Director
Guggenheim Securities, LLC

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
INSTANT BRANDS ACQUISITION HOLDINGS INC., *et al.*,	§	**Case No. 23-90716 (DRJ)**
Debtors.[1]	§	**(Jointly Administered)**

ORDER (I) APPROVING BIDDING PROCEDURES FOR SALE OF DEBTORS' ASSETS, (II) AUTHORIZING POTENTIAL SELECTION OF STALKING HORSE BIDDER(S), (III) APPROVING BID PROTECTIONS, (IV) SCHEDULING AUCTION FOR, AND HEARING TO APPROVE, SALE OF DEBTORS' ASSETS, (V) APPROVING FORM AND MANNER OF NOTICES OF SALE, AUCTION, AND SALE HEARING, (VI) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES, AND (VII) GRANTING RELATED RELIEF

Upon the emergency motion (the "**Motion**")[2] of Instant Brands Acquisition Holdings Inc. and certain of its affiliates (collectively, the "**Debtors**"), each of which is a debtor and debtor in possession in the Chapter 11 Cases, for entry of orders, pursuant to sections 105(a), 363, 365, 503, and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, and 9007, (a)(i) approving Bidding Procedures for the sale of the Debtors' assets, (ii) authorizing the potential selection of Stalking Horse Bidder(s), (iii) approving Bid Protections, (iv) scheduling an Auction for, and a hearing to approve, the sale of the Debtors' assets, (v) approving the Noticing

[1] The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers or registration numbers in the applicable jurisdictions, are as follows: Instant Brands (Texas) Inc. (2526); Instant Brands Acquisition Holdings Inc. (9089); Instant Brands Acquisition Intermediate Holdings Inc. (3303); Instant Brands Holdings Inc. (3318); URS-1 (Charleroi) LLC (7347); Instant Brands LLC (0566); URS-2 (Corning) LLC (8085); Corelle Brands (Latin America) LLC (8862); EKCO Group, LLC (7167); EKCO Housewares, Inc. (0216); EKCO Manufacturing of Ohio, Inc. (7300); Corelle Brands (Canada) Inc. (5817); Instant Brands (Canada) Holding Inc. (4481); Instant Brands Inc. (8272); and Corelle Brands (GHC) LLC (9722). The address of the debtors' corporate headquarters is 3025 Highland Parkway, Suite 700, Downers Grove, IL 60515.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or the Bidding Procedures, as applicable.

Procedures, and (vi) approving the Assumption and Assignment Procedures, (b)(i) approving the sale of the Debtors' assets free and clear of liens, claims, interests, and encumbrances and (ii) authorizing the assumption and assignment of certain Contracts and Leases, and (c) granting related relief, in each case, as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334 and the *Order of Reference to Bankruptcy Judges*, General Order 2012-6 (S.D. Tex. May 24, 2012) (Hinojosa, C.J.); and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157; and the Court having found that it may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of the Chapter 11 Cases and related proceedings is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties, such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Motion and the Declarations; and the Court having held a hearing to consider the relief requested in the Motion (the "**Hearing**"); and the Court having determined that the legal and factual bases set forth in the Motion and the Declarations and at the Hearing establish just cause for the relief granted herein; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors, their creditors, their estates, and all other parties in interest; and all objections and reservations of rights filed or asserted in respect of the Motion, if any, having been withdrawn, resolved, or overruled; and upon all of the proceedings had before the Court; and after due deliberation 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. To the extent that any of the following findings of fact constitute conclusions of law, and to the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. The Debtors' proposed notice of the Motion, the Bidding Procedures, the Bidding Procedures Hearing, and the proposed entry of the Bidding Procedures Order is (i) appropriate and reasonably calculated to provide all interested parties with timely and proper notice, (ii) in compliance with all applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Complex Procedures, and (iii) adequate and sufficient under the circumstances of the Chapter 11 Cases, and no other or further notice is required. A reasonable opportunity to object or be heard regarding the relief requested in the Motion (including, without limitation, with respect to the Bidding Procedures and Bid Protections) has been afforded to all interested persons and entities, including, but not limited to, the Notice Parties.

C. The Bidding Procedures in the form attached hereto as **Exhibit 1** are fair, reasonable, and appropriate, are designed to maximize recoveries from a sale of the Bid Assets and permit the Debtors to comply with their obligations under the DIP Credit Agreements and DIP Order (as each is defined in the Motion).

D. The Debtors have demonstrated a compelling and sound business justification for the Court to enter this Bidding Procedures Order and, thereby, (i) approve the Bidding Procedures, (ii) authorize, but not direct, the Debtors to select a Stalking Horse Bidder (if any) under the terms and conditions of the Bidding Procedures, (iii) authorize the Bid Protections under the terms and conditions set forth in the Bidding Procedures, (iv) set the dates of the Bid Deadline, Auction (if

needed), Sale Hearing, and other deadlines set forth in the Bidding Procedures, (v) approve the Noticing Procedures and the forms of notice, and (vi) approve the Assumption and Assignment Procedures and the forms of relevant notice. Such compelling and sound business justification, which was set forth in the Motion and the Bojmel Declaration and on the record at the Hearing, are incorporated herein by reference and, among other things, forms the basis for the findings of fact and conclusions of law set forth herein.

E. The Bid Protections, as approved by this Bidding Procedures Order, are fair and reasonable and provide a benefit to the Debtors' estates and stakeholders.

F. The payment of Bid Protections, if triggered in accordance with this Bidding Procedures Order and the Bidding Procedures, (i) would constitute actual and necessary costs of preserving the Debtors' estates, within the meaning of sections 503(b) and 507(a) of the Bankruptcy Code and (ii) are reasonably tailored to facilitate, rather than hinder, bidding for the Bid Assets by providing a baseline of value, increasing the likelihood of competitive bidding at the Auction, and encouraging the participation of other bidders in the sale process, thereby increasing the likelihood that the Debtors would receive the best possible price for the Bid Assets. The Bid Protections are, accordingly, (i) of substantial benefit to the Debtors' estates, their stakeholders, and all parties in interest, (ii) reasonable and appropriate, (iii) a material inducement for, and condition necessary to, the successful designation of a Stalking Horse Bidder, and (iv) reasonable in relation to the magnitude of effort that would be required of such Stalking Horse Bidder, the magnitude and complexity of the Sale Transaction, and the loss of opportunities such Stalking Horse Bidder would suffer as a result of the time spent pursuing a Sale Transaction. Without the Bid Protections, no Qualified Bidder would agree to become a Stalking Horse Bidder and remain obligated to consummate the Sale Transaction (including, without limitation, the

obligation to maintain its committed offer while such offer is subject to higher or better offers, as contemplated by the Bidding Procedures).

G. The process for filing the Stalking Horse Notice and granting any Bid Protections is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of (i) the identity of the Stalking Horse Bidder, (ii) the amount of the Stalking Horse Bid and what portion of the Stalking Horse Bid (if any) would be in the form of cash, (iii) identifies the Bid Assets (or lot thereof) to be purchased and the contracts and leases to be assumed, (iv) whether the Stalking Horse Bidder has any connection to the Debtors other than those that arise from the Stalking Horse Bid, (v) any proposed Bid Protections, (vi) the Stalking Horse APA, including all exhibits, schedules, and attachments thereto, and (vii) the Stalking Horse Objection Deadline.

H. The legal and factual bases set forth in the Motion establish just cause for the relief granted herein. Entry of this Bidding Procedures Order is in the best interests of the Debtors and their estates, creditors, interest holders, and all other parties in interest herein.

I. The form and manner of notice to be delivered pursuant to the Noticing Procedures and the Assumption and Assignment Procedures (including the Sale Notice attached hereto as **Exhibit 2**, the Potential Assumption and Assignment Notice attached hereto as **Exhibit 3**, and the Proposed Assumption and Assignment Notice attached hereto as **Exhibit 4**) are reasonably calculated to provide each Counterparty to the Potential Assumed Contracts and the Proposed Assumed Contracts with proper notice of (i) the potential assumption and assignment of such Potential Assumed Contracts and Proposed Assumed Contracts by the Successful Bidder(s) (including the Stalking Horse Bidder, if any) or any of their known proposed assignees (if different from the applicable Successful Bidder) and (ii) the requirement that each such Counterparty assert

any objection to the proposed Cure Costs by the Cure Objection Deadline or otherwise be barred from asserting claims arising from events occurring prior to the effective date of the assumption and assignment of such Proposed Assumed Contracts or any later applicable effective date following assumption and assignment of such Proposed Assumed Contracts.

ORDERED, ADJUDGED, AND DECREED THAT:

1. Any objections to or reservations of rights regarding the Motion or the relief requested therein that have not been adjourned, withdrawn, or resolved are overruled in all respects on the merits.

2. The Bidding Procedures, in substantially the form attached hereto as **Exhibit 1**, are approved and fully incorporated into this Bidding Procedures Order; the Debtors are authorized, but not directed, to act in accordance therewith. The failure to specifically include a reference to any particular provision of the Bidding Procedures in this Bidding Procedures Order shall not diminish or impair the effectiveness of such provision.

3. Nothing herein shall prejudice the rights of the Debtors to seek, by separate motion, in the exercise of their sound business judgment and fiduciary duties, the authority to sell assets of the Debtors' estates (that do not constitute all or substantially all of the Debtors' assets) pursuant to section 363 of the Bankruptcy Code.

4. The Debtors are authorized, but not obligated, in an exercise of their business judgment and in consultation with the Consultation Parties, to (a) agree with any Qualified Bidder(s) that such Qualified Bidder(s) shall be the Stalking Horse Bidder(s) and (b) enter into a definitive agreement with such Stalking Horse Bidder(s) in accordance with the terms and conditions set forth in the Bidding Procedures.

5. Bid Deadline. As further described in the Bidding Procedures, the Bid Deadline shall be at **3:00 p.m. (prevailing Central Time) on August 21, 2023**.

6. Auction. In the event that the Debtors receive, on or before the Bid Deadline, one or more Qualified Bids (whether or not the Debtors have designated a Stalking Horse Bid), an Auction shall be conducted at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017 at **10:00 a.m. (prevailing Eastern Time) on August 24, 2023** or such later time on such day or such other place as the Debtors (after consultation with the Consultation Parties) shall notify all Participating Parties. The Debtors are authorized to conduct the Auction in accordance with the Bidding Procedures.

7. If (a) no more than one Qualified Bid is submitted by the Bid Deadline (whether an Approved Stalking Horse Bid or otherwise) or (b) multiple Partial Bids are submitted by the Bid Deadline for non-overlapping lots of Bid Assets, the Debtors may, in their discretion and in consultation with the Consultation Parties, elect to cancel the Auction and seek approval of the transactions contemplated in such Approved Stalking Horse Bid, Qualified Bid that is not an Approved Stalking Horse Bid, or Partial Bid(s) at the Sale Hearing.

8. The form of Sale Notice attached hereto as **Exhibit 2** is hereby approved.

9. As soon as reasonably practicable after entry of this Bidding Procedures Order, the Debtors shall cause the Sale Notice to be served (by email if available or otherwise by first class mail) upon the following: (a) the U.S. Trustee; (b) Ropes & Gray LLP, as counsel to the Term DIP Secured Parties (as defined in the DIP Order); (c) Skadden, Arps, Slate, Meagher & Flom LLP, as counsel to the ABL DIP Agent (as defined in the DIP Order); (d) DLA Piper LLP (US), as counsel to the Committee; (e) Counterparties to Contracts and Leases; (f) the Securities and Exchange Commission; (g) the Internal Revenue Service; (h) the United States Attorney's Office

for the Southern District of Texas; (i) the state attorneys general for states in which the Debtors conduct business; (j) all other parties asserting a security interest in the assets of the Debtors to the extent reasonably known to the Debtors; (k) all potential buyers previously identified or solicited by the Debtors or their advisors and any additional parties who have previously expressed an interest to the Debtors or their advisors in potentially acquiring the Debtors' assets; (l) all other known parties with any interest in the Bid Assets; and (m) any party that, as of the filing of this Motion, has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "**Sale Notice Parties**"); *provided* that the Debtors need not serve the Sale Notice on any party for whom the Debtors are unable to obtain, after reasonable diligence, an email or physical address as of the entry of the Bidding Procedures Order; *provided*, *further*, that the Debtors shall not be obligated to provide supplemental service of the Sale Notice with respect to any Sale Notice that is returned as undeliverable so long as the Debtors have confirmed that any such Sale Notice was sent to the applicable email or physical address on file in the Debtors' books and records and no other email or physical address could be obtained after reasonable diligence. The Debtors will also cause the Sale Notice to be published once in the national edition of *USA Today* or another publication with similar national circulation as soon as practicable following entry of this Bidding Procedures Order.

10. Service of the Sale Notice on the Sale Notice Parties in the manner described in this Bidding Procedures Order constitutes good and sufficient notice of the Auction and the Sale Hearing. No other or further notice is required.

11. Promptly after the conclusion of the Auction (if any) and the selection of the Successful Bid(s) and Alternate Bid(s), the Debtors shall file with the Court and post on the Case Information Website a notice identifying such Successful Bid(s) and Alternate Bid(s).

12. Sale Objections. Objections to the relief sought through the Sale Order must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and Complex Procedures, (c) state, with specificity, the legal and factual bases thereof, (d) be filed with the Court no later than **4:00 p.m. (prevailing Central Time) on August 28, 2023** and (e) be served on (i) proposed counsel to the Debtors, (y) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Brian M. Resnick, Steven Z. Szanzer, and Joanna McDonald and (z) Haynes & Boone, LLP, 1221 McKinney Street, Suite 4000, Houston, Texas 77010, Attn: Charles A. Beckham, Jr., Arsalan Muhammad, and David A. Trausch, (ii) counsel to the Term DIP Secured Parties, Ropes & Gray LLP, 1211 Avenue of the Americas, New York, New York 10036, Attn: Ryan Preston Dahl, Matthew M. Roose, Daniel Gwen, Lindsay C. Barca, and Eric P. Schriesheim, (iii) counsel to the ABL DIP Agent, Skadden, Arps, Slate, Meagher & Flom LLP, 155 N. Wacker Drive, Chicago, Illinois 60606, Attn: James J. Mazza, Jr. and Robert E. Fitzgerald, (iv) counsel to the Committee, DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, New York 10020, Attn: Dennis O'Donnell and Oksana Lashko, and (v) the U.S. Trustee, 515 Rusk Street, Suite 3516, Houston, Texas 77002, Attn: Jayson B. Ruff and Vianey Garza (collectively, the "**Objection Notice Parties**").

13. Sale Hearing. The Sale Hearing shall be held in the United States Bankruptcy Court for the Southern District of Texas, Houston, Texas 77002, on **August [30], 2023 at [●].m. (prevailing Central Time)**[3] or such other date and time that the Court may later direct; *provided* that the Sale Hearing may be adjourned by the Debtors (in consultation with the Consultation Parties) by announcement of the adjournment in open court or on the Court's docket.

[3] This date remains subject to Court approval.

14. As soon as reasonably practicable after the completion of the Auction (if any), the Debtors shall file a final form of order approving the Sale Transaction(s) as agreed upon between the Debtors (in consultation with the Consultation Parties) and the Successful Bidder(s).

15. Bid Protections. In accordance with the Bidding Procedures, the Debtors may, in consultation with the Consultation Parties, designate a Qualified Bid as a Stalking Horse Bid and, in accordance therewith, offer to pay the Break-Up Fee and Expense Reimbursement to one or more Stalking Horse Bidders (if any), subject to the terms of the Bidding Procedures and this Bidding Procedures Order.

16. In the event that the Debtors designate a Stalking Horse Bidder and enter into a Stalking Horse APA, the Debtors may file a notice (the "**Stalking Horse Notice**") with the Court that (a) sets forth the identity of the Stalking Horse Bidder, (b) sets forth the amount of the Stalking Horse Bid and what portion of the Stalking Horse Bid (if any) would be in the form of cash, (c) identifies the Bid Assets (or lot thereof) to be purchased and the contracts and leases to be assumed, (d) states whether the Stalking Horse Bidder has any connection to the Debtors other than those that arise from the Stalking Horse Bid, (e) specifies any proposed Bid Protections, and (f) attaches the Stalking Horse APA, including all exhibits, schedules, and attachments thereto and serve such Stalking Horse Notice on the U.S. Trustee, counsel to each of the Consultation Parties, and those parties who have filed the appropriate notice pursuant to Bankruptcy Rule 2002 requesting notice of all pleadings filed in the Chapter 11 Cases (the "**Stalking Horse Notice Parties**"), with no further notice being required.

17. The Stalking Horse Notice shall also specify the deadline to file objections ("**Stalking Horse Objections**") to the designation of the Stalking Horse Bidder, the terms of the Stalking Horse Bid, or the Bid Protections set forth therein, which deadline (the "**Stalking Horse**

Objection Deadline") shall be no later than three business days after service of the Stalking Horse Notice on the Stalking Horse Notice Parties. Stalking Horse Objections must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and Complex Procedures, (c) state, with specificity, the legal and factual bases thereof, and (d) be filed with the Bankruptcy Court and served on the Debtors and the Stalking Horse Notice Parties by the Stalking Horse Objection Deadline.

18. If a timely Stalking Horse Objection is filed and served, to the extent not resolved consensually, the Debtors may schedule a hearing before the Court on an expedited basis (on not less than three-days' notice) seeking authorization to enter into the Stalking Horse APA (including any Bid Protections contained therein). If no Stalking Horse Objection is timely and properly filed and served, the Debtors shall file with the Bankruptcy Court a certificate of no objection with the Court and, upon such filing, (a) the Debtors' designation of the Stalking Horse Bidder and agreement respecting Bid Protections shall be deemed approved and (b) the Debtors may enter into the Stalking Horse APA, in each case without further notice or opportunity to be heard.

19. Assumption and Assignment Procedures. The assumption and assignment procedures set forth in the Motion (the "**Assumption and Assignment Procedures**") are hereby approved.

20. As soon as reasonably practicable following entry of this Bidding Procedures Order, the Debtors shall file with the Court, and cause to be published on the Case Information Website, the Potential Assumption and Assignment Notice and a list of the Potential Assumed Contracts (the "**Potential Assumed Contracts Schedule**") that specifies (a) each of the Contracts and Leases that potentially could be assumed and assigned in connection with the sale of the Bid

Assets, including the name of each Counterparty, and (b) the proposed Cure Cost with respect to each Potential Assumed Contract.

21. Potential Assumption and Assignment Notice. The Debtors shall, as soon as reasonably practicable after entry of this Bidding Procedures Order (but in any event, so as to provide sufficient notice such that any required responses from any Counterparties are due prior to the scheduled date of the Auction as specified in the Bidding Procedures), file, cause to be published on the Case Information Website, and serve on each relevant Counterparty the Potential Assumption and Assignment Notice, which shall (a) include the Potential Assumed Contracts Schedule, (b) list the Debtors' good faith calculation of the Cure Costs with respect to the Potential Assumed Contracts identified on the Potential Assumed Contracts Schedule, (c) expressly state that assumption or assignment of an Assumed Contract or Assumed Lease is not guaranteed and is subject to Court approval, (d) prominently display the deadline to file an Assumption and Assignment Objection (as defined herein), and (e) prominently display the date, time, and location of the Sale Hearing.

22. Proposed Assumption and Assignment Notice. The Debtors shall, in conjunction with the filing of the Notice of Auction Results, file, cause to be published on the Case Information Website, and serve on each relevant Counterparty the Proposed Assumption and Assignment Notice, which shall (a) include a schedule of the Proposed Assumed Contracts (the "**Proposed Assumed Contracts Schedule**") as agreed between the Debtors and the Successful Bidder, (b) expressly state that assumption or assignment of an Assumed Contract or Assumed Lease is not guaranteed and is subject to Court approval, (c) prominently display the deadline to file an Assumption and Assignment Objection, and (d) prominently display the date, time, and location of the Sale Hearing.

23. Objection Deadlines. Any Counterparty may object to the potential or proposed assumption or assignment of its Assumed Contract or Assumed Lease, the Debtors' proposed Cure Costs, if any, or the ability of a Successful Bidder to provide adequate assurance of future performance (an "**Assumption and Assignment Objection**"). All Assumption and Assignment Objections must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and Complex Procedures (c) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Costs the Counterparty believes are required to cure any alleged defaults under the relevant Assumed Contract or Assumed Lease, (d) (1) for objections relating to proposed Cure Costs, be filed with the Court no later than **August 11, 2023 at 4:00 p.m. (prevailing Central Time)** (the "**Cure Objection Deadline**") and (2) for all other objections, **August 28, 2023 at 4:00 p.m. (prevailing Central Time**) (the "**Assumption and Assignment Objection Deadline**"), and (e) be served on the Objection Notice Parties.

24. Resolution of Assumption and Assignment Objections. If a Counterparty files a timely Assumption and Assignment Objection, such objection shall be heard at the Sale Hearing or such later date that the Debtors determine, in their discretion and in consultation with the Successful Bidder and the Consultation Parties (subject to the Court's calendar). If such objection has not been resolved prior to the closing of the Sale Transaction (whether by an order of the Court or by agreement with the Counterparty), each Successful Bidder may elect, in its sole and absolute discretion, one of the following options: (a) treat such Counterparty's contract or lease as property excluded from the Bid Assets (an "**Excluded Contract**" or "**Excluded Lease**," respectively) or (b) temporarily treat the Proposed Assumed Contract as an Excluded Contract or Excluded Lease, as applicable (a "**Designated Agreement**"), proceed to the closing of the Sale Transaction with respect to all other Bid Assets, and determine whether to treat the Designated Agreement as an

Assumed Contract or Assumed Lease, as applicable, or an Excluded Contract or Excluded Lease, as applicable, within ten business days after resolution of such objection (whether by order of the Court or by agreement of the applicable Successful Bidder, the Counterparty, and the Debtors).

25. Failure To File Timely Assumption and Assignment Objection. If a Counterparty fails to timely and properly file with the Court and serve on the Objection Notice Parties a timely Assumption and Assignment Objection, the Counterparty shall be forever barred from asserting any such objection with regard to the assumption or assignment of its Assumed Contract or Assumed Lease. Notwithstanding anything to the contrary in the Assumed Contract or Assumed Lease, or any other document, the Cure Costs set forth in the Potential Assumed Contracts Schedule or the Supplemental Assumed Contracts Schedule (as defined below) shall be controlling and shall be the only amount necessary to cure any alleged outstanding defaults under the applicable Assumed Contract or Assumed Lease under section 365(b) of the Bankruptcy Code arising out of or related to any events occurring prior to the closing of the Sale Transaction or other applicable date upon which such assumption and assignment shall become effective, whether known or unknown, due or to become due, accrued, absolute, contingent, or otherwise, and the Counterparty shall be forever barred from asserting any additional cure or other amounts with respect to such Assumed Contract or Assumed Lease against the Debtors, the Successful Bidder, or the property of any of them.

26. Modification of Potential Assumed Contracts Schedule or Proposed Assumed Contracts Schedule. In addition to a Successful Bidder's rights described above with respect to an Assumption and Assignment Objection, at or prior to the closing of the Sale Transaction, each Successful Bidder may elect, in its sole and absolute discretion, to (a) exclude any contract or lease on the Potential Assumed Contracts Schedule as an Assumed Contract or Assumed Lease, as

applicable (in which case it shall become an Excluded Contract or Excluded Lease, as applicable), or (b) include on the Proposed Assumed Contracts Schedule any contract or lease listed on the Potential Assumed Contracts Schedule, by providing to the Debtors written notice of its election to exclude or include such contract or lease, as applicable.

27. If the Debtors or any Successful Bidder identifies during the pendency of the Chapter 11 Cases (before or after the closing of the applicable Sale Transaction) any contract or lease that is not listed on the Proposed Assumed Contracts Schedule, and such contract or lease has not been rejected by the Debtors, such Successful Bidder may, in its sole and absolute discretion, elect by written notice to the Debtors to treat such contract or lease as an Assumed Contract or Assumed Lease, as applicable, and the Debtors shall seek to assume and assign such Assumed Contract or Assumed Lease in accordance with the Assumption and Assignment Procedures.

28. Following the conclusion of the Auction, if any, and the selection of the Successful Bidder(s), the Debtors reserve the right, at any time before the closing of the Sale Transaction(s), to modify the previously-stated Cure Costs associated with any Proposed Assumed Contract, subject to notice requirements in the Assumption and Assignment Procedures.

29. In the event that any contract or lease is added to the Potential Assumed Contracts Schedule or Proposed Assumed Contracts Schedule or previously-stated Cure Costs are modified, in accordance with the Assumption and Assignment Procedures, the Debtors will promptly file, cause to be published on the Case Information Website, and serve a supplemental assumption and assignment notice, by email or ECF where available, or otherwise by first class mail, on the applicable Counterparty (each, a "**Supplemental Assumption and Assignment Notice**"). Each Supplemental Assumption and Assignment Notice shall (a) include a schedule of the modified

Potential Assumed Contracts Schedule or Proposed Assumed Contracts Schedule (the "**Supplemental Assumed Contracts Schedule**"), (b) expressly state that assumption or assignment of an Assumed Contract or Assumed Lease is not guaranteed and is subject to Court approval, (c) prominently display the deadline to file a Supplemental Assumption and Assignment Objection (as defined herein), and (d) prominently display the date, time, and location of the Sale Hearing.

30. Any Counterparty listed on a Supplemental Assumed Contracts Schedule whose contract or lease is proposed to be assumed and assigned may object to the proposed assumption or assignment of its Assumed Contract or Assumed Lease, the Debtors' proposed Cure Costs (to the extent modified from the previously-stated amount), or the ability of a Successful Bidder to provide adequate assurance of future performance (a "**Supplemental Assumption and Assignment Objection**"). All Supplemental Assumption and Assignment Objections must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and Complex Procedures, (c) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Costs the Counterparty believes are required to cure any alleged defaults under the relevant Assumed Contract or Assumed Lease, (d) no later than **14 days from the date of service of such Supplemental Assumption and Assignment Notice**, (i) be filed with the Court and (ii) be served on the Objection Notice Parties. Each Supplemental Assumption and Assignment Objection, if any, shall be resolved in the same manner as an Assumption and Assignment Objection.

31. Reservation of Rights. The inclusion of an Assumed Contract, an Assumed Lease, or, in each case, Cure Costs with respect thereto on a Potential Assumption and Assignment Notice, Proposed Assumption and Assignment Notice, Potential Assumed Contracts Schedule, Proposed

Assumed Contracts Schedule, Supplemental Assumption and Assignment Notice, or Supplemental Assumed Contracts Schedule shall not constitute, nor be deemed, a determination or admission by the Debtors, the Successful Bidder(s), or any other party in interest that such contract or lease is an executory contract or unexpired lease within the meaning of the Bankruptcy Code. The Debtors reserve all of their rights, claims, and causes of action with respect to each Assumed Contract and Assumed Lease listed on a Potential Assumption and Assignment Notice, Proposed Assumption and Assignment Notice, Supplemental Assumption and Assignment Notice, Potential Assumed Contracts Schedule, Proposed Assumed Contracts Schedule, or Supplemental Assumed Contracts Schedule. The Debtors' inclusion of any Assumed Contract or Assumed Lease on a Potential Assumption and Assignment Notice, Proposed Assumption and Assignment Notice, Supplemental Assumption and Assignment Notice, Potential Assumed Contracts Schedule, Proposed Assumed Contracts Schedule, and/or Supplemental Assumed Contracts Schedule shall not be a guarantee that such Assumed Contract or Assumed Lease ultimately will be assumed or assumed and assigned.

32. Notwithstanding anything to the contrary contained in this Bidding Procedures Order or otherwise, (a) any right of the DIP Agents to consent to the sale of any portion of DIP Collateral as set forth in the DIP Credit Agreements are hereby expressly reserved and not modified, waived, or impaired in any way by this Bidding Procedures Order and (b)(i) all cash proceeds generated from the sale of any DIP Collateral shall be applied in accordance with the terms and conditions of the DIP Order, the DIP Documents, and any other order of the Bankruptcy Court, as applicable and (ii) nothing in this Bidding Procedures Order shall amend, modify, or impair any provision of the DIP Order or the rights of the Debtors, the DIP Agents, or the DIP

Lender thereunder or under any of the DIP Documents, including with respect to allocation of the sale proceeds of any DIP Collateral.

33. The Debtors are authorized to take all such actions as are necessary or appropriate to implement the terms of this Bidding Procedures Order.

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

35. Any Bankruptcy Rule (including Bankruptcy Rules 6004(a), 6004(h), 6006(d), and 9014) or Local Rule that might otherwise delay the effectiveness of this Bidding Procedures Order is hereby waived, and the terms and conditions of this Bidding Procedures Order shall be effective and enforceable immediately upon its entry.

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

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

38. The Court shall retain exclusive jurisdiction to hear and determine all matters arising from or relating to the implementation, interpretation, or enforcement of this Bidding Procedures Order.

Dated: _____, 2023
Houston, Texas

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Proposed Bidding Procedures

BIDDING PROCEDURES

The bidding procedures set forth below (these "**Bidding Procedures**") detail the process by which Instant Brands Acquisition Holdings Inc. and certain of its affiliates (collectively, the "**Debtors**") are authorized by the United States Bankruptcy Court for the Southern District of Texas (the "**Bankruptcy Court**") to conduct a sale (such sale, the "**Sale Transaction**") of all, substantially all, or any combination of the Debtors' assets in one or more lots (collectively, the "**Bid Assets**").[1] A party may participate in the bidding process by submitting a bid for (a) all or substantially all of the Bid Assets and/or (b) one or more, or any combination of, Bid Assets as that party may desire. These Bidding Procedures also provide that the Debtors, in consultation with the Consultation Parties (as defined herein), may consider competing bids (each, a "**Chapter 11 Plan Bid**") in the form of a chapter 11 plan of reorganization (a "**Chapter 11 Plan Transaction**"), subject to the requirements set forth herein.

Any interested bidder should contact, as soon as practicable:

GUGGENHEIM SECURITIES, LLC[2]
330 Madison Avenue
New York, New York 10017
Attn: Jonathan Wober (jonathan.wober@guggenheimpartners.com; (tel.) + 1 (212) 823-6780)
Robert Ramirez (robert.ramirez@guggenheimpartners.com; (tel.) + 1 (212) 823-6688)
Drew Heimlich (drew.heimlich@guggenheimpartners.com; (tel.) + 1 (212) 699-2078)
Denys Levin (denys.levin@guggenheimpartners.com; (tel.) + 1 (212) 823-6792)
Andrew Herrera (andrew.p.herrera@guggenheimpartners.com; (tel.) + 1 (212) 801-8960)

These Bidding Procedures describe, among other things, (a) the Bid Assets offered for sale, (b) the manner in which bidders and bids become Qualified Bidders and Qualified Bids (each as defined below), respectively, both as to bids for the Bid Assets and Chapter 11 Plan Bids, (c) the conduct of the Auction (as defined below), if necessary, (d) the selection of the Successful Bidder(s) (as defined below), (e) the process for designating a Stalking Horse Bidder and offering

[1] These bidding procedures were approved by the Bankruptcy Court on [•], 2023 [Docket No. [•]] (the "**Bidding Procedures Order**"). Unless indicated otherwise, capitalized terms used but not defined herein shall have the meanings ascribed to such terms in (a) the *Debtors' Emergency Motion For Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Debtors' Assets, (B) Authorizing Potential Selection of Stalking Horse Bidder(s), (C) Approving Bid Protections, (D) Scheduling Auction for, and Hearing to Approve, Sale of Debtors' Assets, (E) Approving Form and Manner of Notices of Sale, Auction, and Sale Hearing, and (F) Approving Assumption and Assignment Procedures, (II)(A) Approving Sale of Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and (B) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases, and (III) Granting Related Relief* [Docket No. [•]] or (b) the *Interim Order (I) Authorizing the Debtors to (A) Obtain Senior Secured Superpriority Post-Petition Financing and (B) Use Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Providing Adequate Protection to Prepetition Secured Parties, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Docket No. 96] (together with any supplemental and/or final order(s) entered in connection therewith, the "**DIP Order**"), as applicable.

[2] Guggenheim Securities, LLC, in its capacity as the Debtors' proposed investment banker, is referred to herein as "**Guggenheim Securities**."

Bid Protections (if any, each as defined below), and (f) the approval by the Bankruptcy Court of the sale of the Bid Assets to the Successful Bidder(s).

Throughout the sale process, the Debtors, with the assistance of their advisors, will regularly and timely consult with the following parties (collectively, the "**Consultation Parties**"): (a) the Committee, (b) the ABL DIP Agent, and (c) the Term DIP Agent (acting at the direction of the requisite Term DIP Lenders) and the Prepetition Term Agent (acting at the direction of the requisite Prepetition Term Lenders) (the Term DIP Agent and the Prepetition Term Agent, together, the "**Term Agents**"), including in each case the legal and financial advisors thereto.[3] The Debtors will provide updates as reasonably appropriate to the Consultation Parties as to the status of the Sale Process.

The Debtors shall not consult with or provide copies of bids regarding any assets to any insider or affiliate of the Debtors pursuant to the terms of these Bidding Procedures if such party has a bid for the Bid Assets pending or has expressed any interest (written or verbal) in bidding for any of the Debtors' assets; *provided* that, if such insider or affiliate of the Debtors chooses not to submit any bid, and so informs the Debtors and the Consultation Parties in writing on or before the Bid Deadline, then such party may receive copies of all bids following expiration of the latest possible Bid Deadline (as defined below) (as such Bid Deadline may be extended hereunder).

1. PARTICIPATION REQUIREMENTS

(a) Interested Parties

Unless otherwise ordered by the Bankruptcy Court for cause shown, to participate in the bidding process described herein (the "**Bidding Process**"), each interested person or entity (each, an "**Interested Party**") must deliver the following items (unless previously delivered) to Guggenheim Securities:

i. an executed confidentiality agreement in form and substance satisfactory to the Debtors, in consultation with the Consultation Parties;

ii. a statement and other factual support demonstrating, to the Debtors' satisfaction, in consultation with the Consultation

[3] The ABL DIP Agent and the Term Agents shall be Consultation Parties unless and until the ABL DIP Agent and Term Agent, as applicable, has indicated to the Debtors and the other Consultation Parties (including their advisors) in writing (which may be by email) that it intends, on behalf of its respective requisite lenders, to submit a bid in the Bidding Process (as defined herein), at which point such ABL DIP Agent or Term Agent, as applicable, shall not be a Consultation Party with respect to (a) any review of competing bids (including Qualified Bids), (b) any determination regarding which bids constitute Qualified Bids, (c) the designation of any bid as a Stalking Horse Bid, or (d) the selection of a Successful Bidder or an Alternate Bidder (as defined below), unless and until such agent(s) indicates in writing that it no longer intends to submit a bid. In the event that any Prepetition Term Lender, Term DIP Lender, or ABL DIP Lender, or (in each case) any affiliate thereof, becomes a Potential Bidder (as defined below) (such bidder, a "**Bidding Lender**"), the ABL DIP Agent or Term Agents, as applicable, shall not provide any information that they receive in their role as Consultation Parties to such Bidding Lender.

Parties, that the Interested Party has a *bona fide* interest in purchasing some or all of the Bid Assets;

iii. a description of the nature and extent of any due diligence the Interested Party wishes to conduct and the date in advance of the Bid Deadline (as defined below) by which such due diligence will be completed; and

iv. sufficient information, as defined by the Debtors, in consultation with the Consultation Parties, to allow the Debtors, in consultation with the Consultation Parties, to determine that the Interested Party has the financial wherewithal and any required internal corporate, legal, or other authorizations to close a sale transaction pursuant to these Bidding Procedures, which may include, but is not limited to, current audited financial statements of the Interested Party (or such other form of financial disclosure acceptable to the Debtors in consultation with the Consultation Parties) or, if the Interested Party is an entity formed for the purpose of acquiring some or all of the Bid Assets, (A) current audited financial statements of the equity holder(s) (the "**Sponsor(s)**") of the Interested Party (or such other form of financial disclosure acceptable to the Debtors in consultation with the Consultation Parties) and (B) a written commitment acceptable to the Debtors, in consultation with the Consultation Parties, that the Sponsor(s) are responsible for the Interested Party's obligations in connection with the Bidding Process.

If the Debtors determine (in consultation with the Consultation Parties), after receipt of the items identified above, that an Interested Party has a *bona fide* interest in purchasing some or all of the Bid Assets, such Interested Party will be deemed a "**Potential Bidder**" and the Debtors will provide such Potential Bidder with access to the Debtors' confidential electronic data room concerning the Bid Assets (the "**Data Room**"). Each of the ABL DIP Agent and Term Agents shall automatically be deemed a Potential Bidder and shall not be required to submit any of the foregoing information.

(b) Due Diligence

Until the Bid Deadline, in addition to granting access to the Data Room, the Debtors will provide Potential Bidders with due diligence access and additional information as may be requested by a Potential Bidder, to the extent that the Debtors determine, in consultation with the Consultation Parties, that such requests are reasonable and appropriate under the circumstances. All due diligence requests shall be directed to Guggenheim Securities. The Debtors, with the assistance of Guggenheim Securities, will coordinate all reasonable requests for additional information and due diligence access from Potential Bidders.

For any Potential Bidder that is a competitor of the Debtors (or an affiliate thereof), the Debtors reserve the right to withhold any diligence materials that the Debtors determine are

commercially sensitive or otherwise not appropriate for disclosure to such Potential Bidder, or to require that the Potential Bidder enter into a "clean team" or similar arrangement acceptable to the Debtors in order to receive such diligence materials.

Unless otherwise determined by the Debtors, the availability of due diligence to a Potential Bidder will cease if (i) the Potential Bidder does not become a Qualified Bidder or (ii) the Bidding Process is terminated in accordance with its terms.

(c) Non-Binding Indications of Interest

Any Potential Bidder interested in purchasing the Bid Assets must submit a non-binding indication of interest (an "**Indication of Interest**") to Guggenheim Securities so as to be received no later than **3:00 p.m. (prevailing Central Time) on July 19, 2023** (the "**Indication of Interest Deadline**"). The Indication of Interest must (i) set forth a proposed purchase price for the proposed transaction, including by identifying separately any cash and non-cash components of the proposed transaction consideration, which non-cash components shall be limited only to assumption of liabilities of any of the Debtors, and (ii) identify any proposed conditions to closing the transaction. Promptly upon receiving the Indications of Interest, the Debtors shall provide the Indications of Interests to the Consultation Parties.

Each Potential Bidder will be deemed to consent to the Debtors' sharing its Indication of Interest and any subsequent bid to purchase the Bid Assets (together with any supporting materials submitted in connection therewith) with the Consultation Parties, subject to the terms and conditions hereof. Submitting an Indication of Interest does not (i) obligate the submitting party to submit a formal bid or participate in the sale process and (ii) exempt the submitting party from also having to submit a Qualified Bid by the Bid Deadline to participate in the Auction. Any Potential Bidder that fails to submit an Indication of Interest by the Indication of Interest Deadline may not be deemed a Qualified Bidder pursuant to section 2 below unless such condition is waived by the Debtors, in consultation with the Consultation Parties. For the avoidance of doubt, neither the ABL DIP Agent nor any Term Agent, on behalf of the DIP Secured Parties or the Prepetition Secured Parties (as applicable), need to submit an Indication of Interest to be deemed a Qualified Bidder.

2. QUALIFIED BIDS

Each offer, solicitation, or proposal by a Potential Bidder must satisfy each of the following conditions in order for such offer, solicitation, or proposal to be deemed a "**Qualified Bid**" and for such Potential Bidder to be deemed a "**Qualified Bidder**," unless any such conditions that are not satisfied are waived by the Debtors, in consultation with the Consultation Parties:

(a) Bid Deadline

A Potential Bidder who desires to be deemed a Qualified Bidder must deliver to Guggenheim Securities, with copies to Davis Polk & Wardwell LLP ("**Davis Polk**"), 450 Lexington Avenue, New York, New York 10017 (Attn: Brian M. Resnick, Steven Z. Szanzer, and Joanna McDonald), the Required Bid Documents (as defined below), so as to be received no later than **3:00 p.m. (prevailing Central Time) on August 21, 2023** (the "**Bid Deadline**"). The Debtors, in consultation with the Consultation Parties, and without the need for further Bankruptcy

Court approval, may extend the Bid Deadline by a reasonable period of time if the Debtors, in consultation with the Consultation Parties, believe that such extension would further the goal of attaining the highest or otherwise best offer for the Bid Assets. If the Debtors extend the Bid Deadline, the Debtors will promptly notify all Potential Bidders of such extension.

(b) Bid Requirements

All bids must include the following items (collectively, the "**Required Bid Documents**"):

- a letter stating that the bidder's offer is irrevocable until consummation of a transaction involving the Bid Assets (or lot thereof) identified in such offer;

- other than for any Chapter 11 Plan Bid, a duly authorized and executed purchase agreement based on the form purchase agreement provided by the Debtors (through their advisors), marked to show any revisions, including, among other things, the purchase price for the Bid Assets (or lot thereof, as applicable), together with all exhibits and schedules thereto (including, among other things, a proposed form of order approving the transaction(s) contemplated in such purchase agreement). For the avoidance of doubt, a "conceptual" or "issues list"-style markup of the form asset purchase agreement would not satisfy this requirement;

- each Chapter 11 Plan Bid must be accompanied by an executed investment agreement, signed by an authorized representative of such bidder, pursuant to which the bidder proposes to effectuate the Chapter 11 Plan Transaction, in the form of a non-taxable recapitalization transaction effectuated pursuant to a chapter 11 plan of reorganization, and must provide for a fully-committed investment of capital in exchange for substantially all of the equity of the reorganized Debtors;

- written evidence acceptable to the Debtors, in their discretion and in consultation with the Consultation Parties, demonstrating financial wherewithal, operational ability, and corporate authorization to consummate the proposed transaction;

- a written acknowledgment that the bidder (i) has had an opportunity to conduct any and all due diligence regarding the Bid Assets, the Sale Transaction, and/or a Chapter 11 Plan Transaction, (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and any other information in making the bid,

(iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, by the Debtors or any of their advisors (including Guggenheim Securities, AlixPartners, LLP, and Davis Polk) or other representatives regarding the bid, the Bid Assets (or lot thereof), the Sale Transaction, the Chapter 11 Plan Transaction, or the completeness or accuracy of any information provided in connection therewith or with the Auction, except as expressly stated in these Bidding Procedures, and (iv) the bidder did not engage in any collusive conduct and acted in good faith in submitting its bid; and

- written evidence of a firm commitment for financing to consummate the proposed transaction, or other evidence of ability to consummate the proposed transaction without financing, in either case which is satisfactory to the Debtors in their discretion, in consultation with the Consultation Parties.

A bid will be considered only if the bid:

- identifies the legal name of the purchaser (including any Sponsor(s), if the purchaser is an entity formed for the purpose of consummating the proposed transaction);

- other than for a Chapter 11 Plan Bid, identifies the Bid Assets (or lot thereof) to be purchased and the contracts and leases to be assumed;

- other than for a Chapter 11 Plan Bid, identifies the liabilities of the Debtors or the Bid Assets (or lot thereof) to be assumed;

- includes a statement of proposed terms for employees, including with respect to the Debtors' affected collective bargaining agreements and affected labor unions;

- sets forth the consideration, including the form thereof, for the Bid Assets (or lot thereof) to be purchased and the Contracts and Leases to be assumed (the "**Bid Consideration**"); *provided* that, if there is an Approved Stalking Horse Bid (as defined herein), the consideration must be at least equal to the following: (i) the consideration set forth in the Approved Stalking Horse Bid; *plus* (ii) the aggregate amount of any Approved Bid Protections (as

defined herein); *plus* (iii) two percent of the consideration set forth in the Approved Stalking Horse Bid (the "**Minimum Overbid**");

- allocates the Bid Consideration among the Bid Assets and Contracts and Leases to be assumed (per lot of Bid Assets);

- is not conditioned on (i) obtaining financing or (ii) the outcome of unperformed due diligence;

- includes a description of all governmental, licensing, regulatory, or other approvals or consents that are required to consummate the proposed transaction (including any antitrust approval related to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended), together with evidence satisfactory to the Debtors, in consultation with the Consultation Parties, of the ability to obtain such approvals or consents as soon as reasonably practicable, and in no event later than September 7, 2023, as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, the obtainment or effectiveness of any such approvals or consents;

- expressly states that the bidder agrees to serve as an Alternate Bidder (as defined herein) if such bidder's Qualified Bid is selected as the next highest or next best bid after the Successful Bid (as defined below) with respect to the applicable Bid Assets;

- is accompanied by a cash deposit by wire transfer to an escrow agent selected by the Debtors (the "**Deposit Agent**") in an amount equal to ten percent of the consideration set forth in connection with such bid (any such deposit, a "**Good Faith Deposit**");

- sets forth the representatives that are authorized to appear and act on behalf of the bidder in connection with the proposed transaction;

- indicates that the bidder will not seek any transaction or break-up fee, expense reimbursement, or similar type of payment (other than if such bid is selected to be a Stalking Horse Bid and subject to the provisions of Section 4 below) and that it waives any substantial contribution administrative expense claims under section 503(b) of the Bankruptcy Code;

- includes evidence of the bidder's ability to comply with section 365 of the Bankruptcy Code (to the extent applicable), including providing adequate assurance of such bidder's ability to perform in the future the contracts and leases proposed in its bid to be assumed by the Debtors and assigned to the bidder, in a form that will permit the Debtors to disseminate immediately such evidence to the non-Debtor counterparties to such contracts and leases;

- indicates whether or not the bidder will assume all cure costs associated with any Contracts and Leases it intends to assume; and

- is received on or before the Bid Deadline (as such deadline may be extended in accordance with these Bidding Procedures).

A bid received from a Potential Bidder will constitute a Qualified Bid only if it includes all of the Required Bid Documents and meets all of the above requirements (other than a credit bid described in Section 3 below), including, in the case of a Chapter 11 Plan Transaction, the structure, confirmability, and feasibility of any proposed chapter 11 plan (including the proposed time and costs estimated to be necessary to negotiate, document, and obtain confirmation of such proposed chapter 11 plan), as determined by the Debtors in consultation with the Consultation Parties. The Debtors, in consultation with the Consultation Parties, shall have the right to deem a bid a Qualified Bid even if such bid does not conform to one or more of the requirements above or does not include one or more Required Bid Documents. The Debtors will be authorized to approve joint bids in their reasonable discretion, in consultation with the Consultation Parties, on a case-by-case basis.

If the Debtors receive a bid prior to the Bid Deadline that is not a Qualified Bid, the Debtors may provide the bidder with the opportunity to remedy any deficiencies through and, in consultation with the Consultation Parties, after the Bid Deadline. If any bid is determined by the Debtors, in consultation with the Consultation Parties, not to be a Qualified Bid, and the applicable bidder fails to remedy such bid in accordance with these Bidding Procedures, the Debtors, to the extent applicable, shall promptly instruct the Deposit Agent to return such bidder's Good Faith Deposit.

Notwithstanding any other provision of these Bidding Procedures, the Debtors may, in their discretion and in consultation with the Consultation Parties, evaluate bids on any grounds, including, but not limited to, (i) the amount of the purchase price, including non-cash consideration, set forth in the bid, (ii) the value to be provided to the Debtors under the bid, including the net economic effect upon the Debtors' estates, (iii) any benefit to the Debtors' estates from any assumption of liabilities or waiver of liabilities, including the release or replacement of letters of credit, (iv) the transaction structure and execution risk, including conditions to and certainty of closing, termination provisions, availability of financing and financial wherewithal to meet all commitments, and required governmental or other approvals, (v) the anticipated timing to closing and whether such timing is consistent with the Debtors' adherence to the Approved Budget,

(vi) the impact on employees and employee claims against the Debtors, (vii) the presence of any governmental, licensing, regulatory, or other approvals or consents in a bid, and the anticipated timing or likelihood of obtaining such approvals or consents, (viii) the impact on trade and other unsecured, priority, and administrative claim creditors, (ix) whether the aggregate amount of Bid Consideration is sufficient to satisfy in full all DIP Obligations outstanding at the closing of the Sale Transaction(s), and (x) any other factors the Debtors may reasonably deem relevant consistent with their fiduciary duties. For the avoidance of doubt, the presence of any governmental, licensing, regulatory, or other approvals or consents in a bid, and the anticipated timing or likelihood of obtaining such approvals or consents, may be grounds for the Debtors in their discretion, in consultation with the Consultation Parties, to determine that such bid (i) is not a Qualified Bid or (ii) is not higher or otherwise better than any other Qualified Bid.

By submission of its bid, each Qualified Bidder shall be deemed to acknowledge and represent that it (i) has reviewed, understands, and accepts these Bidding Procedures, (ii) has consented to the jurisdiction of the Bankruptcy Court, and (iii) intends to consummate its Qualified Bid if it is selected as the Successful Bidder. Without the written consent of the Debtors, in consultation with the Consultation Parties, a Qualified Bidder may not amend, modify, or withdraw its Qualified Bid, except for proposed amendments to increase the amount or otherwise improve the terms of its Qualified Bid, during the period that such Qualified Bid is required to remain irrevocable.

3. CREDIT BID

Pursuant to section 363(k) of the Bankruptcy Code and subject to the terms and conditions set forth in the DIP Order, the DIP Documents, and the Prepetition Credit Documents, the DIP Secured Parties and the Prepetition Secured Parties, to the extent such parties have a valid and perfected lien on any assets of the Debtors' estates, shall have the right to credit bid up to the full amount of the applicable outstanding DIP Obligations and Prepetition Obligations, as the case may be, in any bulk or piecemeal sale of all, substantially all, or any portion of the Bid Assets constituting DIP Collateral or Prepetition Collateral, as applicable; *provided* that any such credit bid must be submitted on or before the Bid Deadline and include cash consideration sufficient to satisfy the Carve Out and any senior liens on the collateral that is subject to the credit bid, except to the extent otherwise agreed by the holders of such senior liens in their sole and absolute discretion. If the DIP Secured Parties or the Prepetition Secured Parties submit a credit bid in accordance with the foregoing, and such bid is received by the Bid Deadline, such bidder shall be deemed to be a Qualified Bidder and any such credit bid shall be deemed to be a Qualified Bid (without the need for any Good Faith Deposit).

4. STALKING HORSE BIDDER AND BID PROTECTIONS

The Debtors are authorized, but not obligated, to exercise their business judgment (in consultation with the Consultation Parties) to agree with any Qualified Bidder that (a) such Qualified Bidder's Qualified Bid shall serve as the minimum bid for the Bid Assets or any lot thereof (such Qualified Bidder, a "**Stalking Horse Bidder**" and, such Qualified Bid, a "**Stalking Horse Bid**") and (b) the Debtors will enter into the transaction(s) contemplated in such Stalking Horse Bid unless a higher or otherwise better Qualified Bid is submitted with respect to such Bid Assets or lot thereof, as determined by the Debtors (in consultation with the Consultation Parties)

in accordance with the Bidding Procedures. In order to incentivize prospective purchasers to agree to become a Stalking Horse Bidder, the Debtors are authorized, but not obligated, to exercise their business judgment (in consultation with the Consultation Parties) to offer the following bid protections to such Stalking Horse Bidder(s), payable if the Debtors consummate a sale pursuant to a Qualified Bid other than the Stalking Horse Bid (if the assets subject to such sale include those to which such Stalking Horse Bid relates): (y) payment of a break-up fee in an amount not to exceed three percent of the cash portion of the purchase price set forth in the Stalking Horse Bid (the "**Break-Up Fee**") and (z) reimbursement of the reasonable and documented fees and out-of-pocket expenses actually incurred by the Stalking Horse Bidder (the "**Expense Reimbursement**" and, together with the Break-Up Fee, the "**Bid Protections**") in an amount up to $500,000; *provided* that (i) the payment of any Bid Protections shall be subject to the terms and conditions of the definitive agreement(s) executed between the Debtors and such Stalking Horse Bidder(s), (ii) any Bid Protections will not be binding on the Debtors until the approval of such Bid Protections in accordance with these Bidding Procedures, and (iii) no Break-Up Fee shall be paid to an insider of the Debtors. For the avoidance of doubt, the Debtors will provide Expense Reimbursement only to the Stalking Horse Bidder(s) and such expenses must be reasonable, documented, and subject to review by the Debtors. To the extent payable, any Bid Protections would be paid out of the proceeds of the sale to which they relate.

In the event that the Debtors, in consultation with the Consultation Parties, desire to designate a Qualified Bid as a Stalking Horse Bid and enter into an asset purchase agreement (the "**Stalking Horse APA**") with a Stalking Horse Bidder that provides for Bid Protections (subject to the limits on those Bid Protections set forth herein), the Debtors may file a notice with the Bankruptcy Court (the "**Stalking Horse Notice**") that (a) sets forth the identity of the Stalking Horse Bidder, (b) sets forth the amount of the Stalking Horse Bid and what portion of the Stalking Horse Bid (if any) would be in the form of cash, (c) identifies the Bid Assets (or lot thereof) to be purchased and the contracts and leases to be assumed, (d) states whether the Stalking Horse Bidder has any connection to the Debtors other than those that arise from the Stalking Horse Bid, (e) specifies any proposed Bid Protections, and (f) attaches the Stalking Horse APA, including all exhibits, schedules, and attachments thereto and serve such Stalking Horse Notice on the U.S. Trustee, counsel to each of the Consultation Parties, and those parties who have filed the appropriate notice pursuant to Bankruptcy Rule 2002 requesting notice of all pleadings filed in the Chapter 11 Cases (collectively, the "**Stalking Horse Notice Parties**"), with no further notice being required.

The Stalking Horse Notice shall also specify the deadline to file objections ("**Stalking Horse Objections**") to the designation of the Stalking Horse Bidder, the terms of the Stalking Horse Bid, or the Bid Protections set forth therein, which deadline (the "**Stalking Horse Objection Deadline**") shall be no earlier than three business days after service of the Stalking Horse Notice on the Stalking Horse Notice Parties. Stalking Horse Objections must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and Complex Procedures, (c) state, with specificity, the legal and factual bases thereof, and (d) be filed with the Bankruptcy Court and served on the Debtors and the Stalking Horse Notice Parties by the Stalking Horse Objection Deadline.

If a timely Stalking Horse Objection is filed and served, to the extent not resolved consensually, the Debtors may schedule a hearing before the Bankruptcy Court to be held on an

expedited basis (on not less than three-days' notice) seeking authorization to enter into the Stalking Horse APA (including the Bid Protections contained therein) (a "**Stalking Horse Hearing**"). If no timely Stalking Horse Objection is filed and served, upon the expiration of the Stalking Horse Objection Deadline, the Debtors shall file with the Bankruptcy Court a certificate of no objection (a "**CNO**") and, upon such filing, (a) the Debtors' designation of the Stalking Horse Bidder and agreement respecting Bid Protections shall be deemed approved and (b) the Debtors may enter into the Stalking Horse APA, in each case without further notice or opportunity to be heard. Upon the approval by the Bankruptcy Court at a Stalking Horse Hearing for the Debtors to enter into the Stalking Horse APA (including the Bid Protections contained therein), or upon the Debtors' filing a CNO, the Stalking Horse Bidder shall be the "**Approved Stalking Horse Bidder**," its Stalking Horse Bid shall be the "**Approved Stalking Horse Bid**," and the Bid Protections contained therein (if any) shall be the "**Approved Bid Protections**."

5. AUCTION

In the event that the Debtors timely receive more than one Qualified Bid, the Debtors shall conduct an auction (the "**Auction**") for the applicable Bid Assets. The Auction shall be conducted in accordance with these Bidding Procedures and upon notice to all Qualified Bidders that have submitted Qualified Bids. The Auction shall be conducted at the offices of Davis Polk, 450 Lexington Avenue, New York, New York 10017 on **August 24, 2023 at 10:00 a.m. (prevailing Eastern Time)**, or such later time on such day or such other place as the Debtors (in consultation with the Consultation Parties) shall notify all Participating Parties (as defined below). If (a) no more than one Qualified Bid is submitted by the Bid Deadline (whether an Approved Stalking Horse Bid or otherwise) or (b) multiple Partial Bids (as defined below) are submitted by the Bid Deadline for non-overlapping lots of the Bid Assets, the Debtors may, in their discretion and in consultation with the Consultation Parties, elect to cancel the Auction and seek approval of the transactions contemplated in such Approved Stalking Horse Bid, Qualified Bid that is not an Approved Stalking Horse Bid, or Partial Bids, as applicable, at the Sale Hearing (as defined below).

If any of the Qualified Bids submitted by the Bid Deadline are structured as a purchase of less than all or substantially all of the Debtors' assets (each such bid, a "**Partial Bid**"), the Debtors (in consultation with the Consultation Parties) may conduct separate auctions at the Auction for each lot of assets (each, an "**Auction Lot**") subject to a Partial Bid. The Debtors may, in consultation with the Consultation Parties, combine multiple Partial Bids into an Auction Lot to compete against an Approved Stalking Horse Bid. The Debtors may designate each Auction Lot at any time prior to the Auction.

Only representatives or agents of the Debtors, the Consultation Parties, and the Qualified Bidders (including the Approved Stalking Horse Bidder, if any), and the legal and financial advisors to each of the foregoing (collectively, the "**Participating Parties**"), will be entitled to attend the Auction, and only Qualified Bidders will be entitled to make any Subsequent Bids (as defined herein) at the Auction.

Prior to the Auction, the Debtors will (a) notify each Qualified Bidder that has timely submitted a Qualified Bid that its bid is a Qualified Bid and (b) provide all Qualified Bidders with (i) copies of the Qualified Bid or combination of Qualified Bids that the Debtors believe, in

consultation with the Consultation Parties, is the highest or otherwise best offer (the "**Starting Bid**"), (ii) an explanation of how the Debtors value the Starting Bid, and (iii) a list identifying all of the Qualified Bidders. For the avoidance of doubt, the Starting Bid may be comprised of multiple Qualified Bids if the aggregate consideration of such Qualified Bids is higher and better than an Approved Stalking Horse Bid. The Debtors shall also provide copies of such Starting Bid (if applicable, marked against an Approved Stalking Horse Bid) to all of the Qualified Bidders (including the Approved Stalking Horse Bidder) and the Consultation Parties.

The Debtors, in consultation with the Consultation Parties, may employ and announce at the Auction additional procedural rules for conducting the Auction (*e.g.*, the amount of time allotted to submit Subsequent Bids); *provided* that such rules shall (a) not be inconsistent with the Bankruptcy Code, the Bidding Procedures Order, or any other order of the Bankruptcy Court entered in connection herewith and (b) be disclosed to all Qualified Bidders.

Bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding in the presence of all parties at the Auction, so long as during each round at least one subsequent bid (a "**Subsequent Bid**") is submitted by a Qualified Bidder that (a) improves upon such Qualified Bidder's immediately prior Qualified Bid and (b) the Debtors, in their discretion and in consultation with the Consultation Parties, determine that such Subsequent Bid is (i) with respect to the first round, a higher or otherwise better offer than the Starting Bid and (ii) with respect to subsequent rounds, a higher or otherwise better offer than the Leading Bid (as defined below), in each case taking into account other Qualified Bids for other Bid Assets; *provided* that, with respect to the first round, if there is an Approved Stalking Horse Bidder, any Qualified Bid must provide incremental consideration at least equal to the Minimum Overbid. In each subsequent round after the first round, the Debtors, in their discretion and in consultation with the Consultation Parties, may determine appropriate minimum bid increments or requirements for each round of bidding.

After the first round of bidding and between each subsequent round of bidding, as applicable, the Debtors, in their discretion and in consultation with the Consultation Parties, will determine and announce the bid or bids that they believe to be the highest or otherwise best offer or combination of offers (the "**Leading Bid**"). Additional consideration in excess of the amount set forth in the Starting Bid may include cash and/or non-cash consideration; *provided* that the value for such non-cash consideration shall be determined by the Debtors, in their discretion and in consultation with the Consultation Parties.

A round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge and written confirmation of the Leading Bid.

For the purpose of evaluating Subsequent Bids, the Debtors may require a Qualified Bidder submitting a Subsequent Bid to submit, as part of its Subsequent Bid, additional evidence (in the form of financial disclosure or credit-quality support information or enhancement acceptable to the Debtors in their discretion, in consultation with the Consultation Parties) demonstrating such Qualified Bidder's ability to close the proposed transaction.

The Debtors shall maintain a transcript of all bids made and announced at the Auction, including the Starting Bid(s), all Subsequent Bid(s), the Leading Bid(s), the Alternative Bid(s) (as defined below), and the Successful Bid(s).

If a Qualified Bidder increases its bid at the Auction and is the Successful Bidder or Alternate Bidder, such bidder must increase its Good Faith Deposit to an amount equal to ten percent of the proposed purchase price submitted at the Auction within two days after the Auction.

6. SELECTION OF SUCCESSFUL BID(S) AND ALTERNATE BID(S)

Prior to the conclusion of the Auction, the Debtors, in consultation with the Consultation Parties, shall (a) review and evaluate each bid made at the Auction on the basis of financial and contractual terms and other factors relevant to the sale process, including those factors affecting the speed and certainty of consummating the sale transaction and, in the case of a Chapter 11 Plan Transaction, the structure, confirmability, and feasibility of any proposed chapter 11 plan (including the proposed time and costs estimated to be necessary to negotiate, document, and obtain confirmation of such proposed chapter 11 plan), (b) determine and identify the highest or otherwise best offer or collection of offers (the "**Successful Bid(s)**"), (c) determine and identify the next highest or otherwise best offer or collection of offers (the "**Alternate Bid(s)**"), and (d) notify all Qualified Bidders participating in the Auction, prior to its adjournment, of (i) the identity of the party or parties that submitted the Successful Bid(s) (the "**Successful Bidder(s)**"), (ii) the amount and other material terms of the Successful Bid(s), (iii) the identity of the party or parties that submitted the Alternate Bid(s) (the "**Alternate Bidder(s)**"), and (iv) the amount and other material terms of the Alternate Bid(s). Each Qualified Bidder shall agree and be deemed to agree to be the Alternate Bidder if so designated. Notwithstanding anything in these Bidding Procedures to the contrary, any Qualified Bid submitted by a DIP Agent or the Prepetition Term Agent shall not be required to serve as an Alternate Bid absent such DIP Agent's or Prepetition Term Agent's consent. As soon as reasonably practicable after the completion of the Auction, the Successful Bidder(s) and the applicable Debtors shall complete and execute all agreements, instruments, and other documents necessary to consummate the applicable sale or other transaction(s) contemplated by the applicable Successful Bid(s). Promptly following the selection of the Successful Bid(s) and Alternate Bid(s), the Debtors shall file a notice of the Successful Bid(s) and Alternate Bid(s) with the Bankruptcy Court, together with a proposed order approving the transaction(s) contemplated therein (the "**Sale Order**").

7. THE SALE HEARING

The hearing to consider the proposed Sale Order (the "**Sale Hearing**") will be held on **August [30], 2023 at [•].m. (prevailing Central time)**[4] before the Honorable Judge David R. Jones, in the United States Bankruptcy Court for the Southern District of Texas, 515 Rusk Street, Houston, Texas 77002, or by such other virtual or electronic means as may be determined by the Bankruptcy Court. The Sale Hearing may be adjourned by the Debtors, in consultation with the Consultation Parties, by an announcement of the adjourned date at a hearing before the Bankruptcy Court or by filing a notice on the Bankruptcy Court's docket. At the Sale Hearing, the Debtors

[4] This date remains subject to Bankruptcy Court approval.

will seek the Bankruptcy Court's approval of the Successful Bid(s) and, at the Debtors' election, the Alternate Bid(s).

The Debtors' presentation to the Bankruptcy Court of the Successful Bid(s) and Alternate Bid(s) will not constitute the Debtors' acceptance of such bid(s), which acceptance will only occur upon approval of such bid(s) by the Bankruptcy Court. Following the Bankruptcy Court's entry of the Sale Order, the Debtors and the Successful Bidder(s) shall proceed to consummate the transaction(s) contemplated by the Successful Bid(s). If the Debtors and the Successful Bidder(s) fail to consummate the proposed transaction(s), then the Debtors shall file a notice with the Bankruptcy Court advising of such failure. Upon the filing of such notice with the Bankruptcy Court, the Alternate Bid(s) will be deemed to be the Successful Bid(s) and the Debtors will be authorized, but not directed, to effectuate the transaction(s) with the Alternate Bidder(s) subject to the terms of the Alternate Bid(s) of such Alternate Bidder(s) without further order of the Bankruptcy Court. If the failure to consummate the transaction(s) contemplated by the Successful Bid(s) is the result of a breach by the Successful Bidder(s) (the "**Breaching Bidder(s)**") of its (their) asset purchase agreement(s), the Debtors reserve the right to seek all available remedies from such Breaching Bidder(s), subject to the terms of the applicable asset purchase agreement.

8. RETURN OF GOOD FAITH DEPOSIT

The Good Faith Deposits of all Qualified Bidders will be held in escrow by the Deposit Agent and will not become property of the Debtors' bankruptcy estates unless released to the Debtors from escrow pursuant to the terms of the applicable escrow agreement or pursuant to further order of the Bankruptcy Court. The Deposit Agent will retain the Good Faith Deposits of the Successful Bidder(s) and the Alternate Bidder(s) until the consummation of the transaction(s) contemplated by the Successful Bid(s) or the Alternate Bid(s), as applicable, in accordance with Section 6 above, except as otherwise ordered by the Bankruptcy Court. The Good Faith Deposits (and all interest accrued thereon) of the other Qualified Bidders will be returned within four business days after the entry of the applicable Sale Order, or as soon as reasonably practicable thereafter. At the closing of the transaction contemplated by the Successful Bid(s), the Successful Bidder(s) will receive a credit in the amount of its Good Faith Deposit (plus all interest accrued thereon). All remaining Good Faith Deposits of the Alternate Bidders (and all interest accrued thereon) held by the Deposit Agent will be released by the Deposit Agent four business days after the consummation of the transaction(s) contemplated by the Successful Bid(s), or as soon as reasonably practicable thereafter; *provided* that the Deposit Agent will retain the Good Faith Deposit of a Breaching Bidder pending a ruling by the Bankruptcy Court as to the amount of damages owed, if any, by such Breaching Bidder to the Debtors.

9. AS IS, WHERE IS

The sale of the Bid Assets shall be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtors, their agents, or their estates, except, solely with respect to the Debtors and their estates, as provided in a purchase agreement, as approved by the Bankruptcy Court.

10. FREE AND CLEAR OF ANY AND ALL INTERESTS

Except as otherwise provided in a Successful Bidder(s)'s purchase agreement, all of the Debtors' right, title, and interest in and to the Bid Assets subject thereto shall be sold free and clear of any pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon (collectively, the "**Interests**") to the maximum extent permitted by section 363 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the sale of the Bid Assets with the same validity and priority as such Interests applied against the Bid Assets.

11. RESERVATION OF RIGHTS

Except as otherwise provided in these Bidding Procedures or the Bidding Procedures Order, the Debtors reserve the right in their discretion (in consultation with the Consultation Parties) to:

- determine which Interested Parties are Potential Bidders;
- determine which bidders are Qualified Bidders;
- determine which bids are Qualified Bids;
- determine which Qualified Bid is the Starting Bid;
- determine which Qualified Bid is the highest or otherwise best offer for the Bid Assets and which is the next highest or otherwise best offer;
- reject any bid that the Debtors deem to be (a) inadequate or insufficient, (b) not in conformity with the requirements of these Bidding Procedures or the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Bankruptcy Rules, or (c) contrary to the best interests of the Debtors and their estates;
- impose additional terms and conditions with respect to all Potential Bidders;
- designate a Stalking Horse Bidder;
- cancel the Auction;
- waive the terms and conditions set forth herein with respect to Potential Bidders;
- extend the deadlines set forth herein; and
- modify these Bidding Procedures and implement additional procedural rules that the Debtors determine, in their

discretion and in consultation with the Consultation Parties, will better promote the goals of the Bidding Process and discharge the Debtors' fiduciary duties.

Nothing in these Bidding Procedures shall require the Debtors' board of directors to take any action, or to refrain from taking any action, with respect to these Bidding Procedures, to the extent that the Debtors' board of directors determines, or based on the advice of counsel, that taking such action, or refraining from taking such action, as applicable, is required to comply with applicable law or its fiduciary duties under applicable law. Accordingly, at any time prior to the Bankruptcy Court's entry of a Sale Order, the Debtors may terminate the sale process and pursue an alternative transaction, including a plan of reorganization.

All Consultation Parties will be permitted to seek relief from the Bankruptcy Court on an expedited basis if they disagree with any actions or decision made by the Debtors as part of these Bidding Procedures. The rights of all Consultation Parties with respect to all issues are expressly reserved and not modified, waived, or impaired in any way by these Bidding Procedures.

12. DIP ORDERS

Notwithstanding anything to the contrary contained in these Bidding Procedures or otherwise, (a) any right of the DIP Agents to consent to the sale of any portion of DIP Collateral as set forth in the DIP Credit Agreements are hereby expressly reserved and not modified, waived, or impaired in any way by these Bidding Procedures, (b) all cash proceeds generated from the sale of any DIP Collateral shall be applied in accordance with the terms and conditions of the DIP Order, the DIP Documents, and any other order of the Bankruptcy Court, as applicable, and (c) nothing in these Bidding Procedures shall amend, modify, or impair any provision of the DIP Order or the rights of the Debtors, the DIP Agents, or the DIP Lenders thereunder or under any of the DIP Documents, including with respect to allocation of the sale proceeds of any DIP Collateral.

13. RELEVANT DATES

July 12, 2023 at 3:30 p.m. (prevailing Central Time)	Hearing to consider approval of the Bidding Procedures and for entry of the Bidding Procedures Order
July 21, 2023	Target date for the Debtors to file Potential Assumed Contracts Schedule
July 19, 2023 at 3:00 p.m. (prevailing Central Time)	Indication of Interest Deadline
August 11, 2023 at 4:00 p.m. (prevailing Central Time)	Cure Objection Deadline
August 21, 2023 at 3:00 p.m. (prevailing Central Time)	Bid Deadline

August 24, 2023 at 10:00 a.m. (prevailing Eastern Time)	Auction (if any) to be held at the New York offices of Davis Polk & Wardwell LLP
August 25, 2023	Target date for the Debtors to file with the Court the Notice of Auction Results
August 28, 2023 at 4:00 p.m. (prevailing Central Time)	Deadline to object to the Sale Transaction to the Successful Bidder; and the Assumption and Assignment Objection Deadline
August [30], 2023 at [●].m. (prevailing Central Time)[5]	Hearing to consider approval of the Sale Transaction(s) and for entry of the Sale Order(s)

[5] This date remains subject to Bankruptcy Court approval.

Exhibit 2

Form of Sale Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
INSTANT BRANDS ACQUISITION HOLDINGS INC., *et al.*,	§	**Case No. 23-90716 (DRJ)**
Debtors.[1]	§	**(Jointly Administered)**

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

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the "**Debtors**") each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of Texas (the "**Court**") on June 12, 2023.

PLEASE TAKE FURTHER NOTICE that, on June 30, 2023, the Debtors filed a motion (the "**Motion**") with the Court seeking entry of orders, among other things, approving (a) procedures for the solicitation of bids in connection with the Sale Transaction and the Auction (the "**Bidding Procedures**"),[2] (b) the form and manner of notice related to the Sale Transaction, and (c) procedures for the assumption and assignment of contracts and leases in connection with the Sale Transaction.

PLEASE TAKE FURTHER NOTICE that, on [•], 2023, the Court entered an order (the "**Bidding Procedures Order**") approving, among other things, the Bidding Procedures, which establish the key dates and times related to the Sale Transaction and the Auction. All parties interested in bidding should carefully read the Bidding Procedures Order and the Bidding Procedures in their entirety.[3]

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[1] The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers or registration numbers in the applicable jurisdictions, are as follows: Instant Brands (Texas) Inc. (2526); Instant Brands Acquisition Holdings Inc. (9089); Instant Brands Acquisition Intermediate Holdings Inc. (3303); Instant Brands Holdings Inc. (3318); URS-1 (Charleroi) LLC (7347); Instant Brands LLC (0566); URS-2 (Corning) LLC (8085); Corelle Brands (Latin America) LLC (8862); EKCO Group, LLC (7167); EKCO Housewares, Inc. (0216); EKCO Manufacturing of Ohio, Inc. (7300); Corelle Brands (Canada) Inc. (5817); Instant Brands (Canada) Holding Inc. (4481); Instant Brands Inc. (8272); and Corelle Brands (GHC) LLC (9722). The address of the debtors' corporate headquarters is 3025 Highland Parkway, Suite 700, Downers Grove, IL 60515.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or the Bidding Procedures, as applicable.

[3] To the extent of any inconsistencies between the Bidding Procedures and the summary descriptions of the Bidding Procedures in this notice, the terms of the Bidding Procedures shall control in all respects.

Contact Persons for Parties Interested in Submitting a Bid

The Bidding Procedures set forth the requirements for submitting a Qualified Bid, and any person interested in making an offer to purchase the Bid Assets (or any lot thereof) must comply strictly with the Bidding Procedures. Only Qualified Bids will be considered by the Debtors, in accordance with the Bidding Procedures.

Any interested bidder should contact, as soon as practicable:

GUGGENHEIM SECURITIES, LLC[4]
330 Madison Avenue
New York, New York 10017
Attn: Jonathan Wober (jonathan.wober@guggenheimpartners.com; (tel.) + 1 (212) 823-6780
Robert Ramirez (robert.ramirez@guggenheimpartners.com; (tel.) + 1 (212) 823-6688)
Drew Heimlich (drew.heimlich@guggenheimpartners.com; (tel.) + 1 (212) 699-2078)
Denys Levin (denys.levin@guggenheimpartners.com; (tel.) + 1 (212) 823-6792)
Andrew Herrera (andrew.p.herrera@guggenheimpartners.com; (tel.) + 1 (212) 801-8960)

Obtaining Additional Information

Copies of the Motion and the Bidding Procedures Order, as well as all related exhibits (including the Bidding Procedures) and all other documents filed with the Court, are available free of charge on the Debtors' case information website located at *https://dm.epiq11.com/InstantBrands* or can be requested by email at InstantBrandsInfo@epiqglobal.com.

Important Dates and Deadlines[5]

1. **Indication of Interest Deadline**. The deadline for Potential Bidders to submit non-binding indications of interest to Guggenheim Securities is **July 19, 2023 at 3:00 p.m. (prevailing Central Time)**.

2. **Bid Deadline.** The deadline to submit a Qualified Bid is **August 21, 2023 at 3:00 p.m. (prevailing Central Time).**

3. **Auction.** In the event that the Debtors timely receive more than one Qualified Bid for the Bid Assets, and subject to the satisfaction of any further conditions set forth in the Bidding Procedures, the Debtors intend to conduct an Auction for the Bid Assets. The Auction, if one is held, will commence on **August 24, 2023 at 10:00 a.m. (prevailing Eastern Time)**

[4] Guggenheim Securities, LLC, in its capacity as the Debtors' proposed investment banker, is referred to herein as "**Guggenheim Securities**."

[5] The following dates and deadlines may be extended by the Debtors or the Court pursuant to the terms of the Bidding Procedures and the Bidding Procedures Order.

at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017.

4. **Auction and Sale Objections Deadline**. The deadline to file an objection with the Court to the Sale Order, the conduct of the Auction, or the Sale Transaction (collectively, the "**Sale Objections**") is **August 28, 2023 at 4:00 p.m. (prevailing Central Time)** (the "**Sale Objection Deadline**").

5. **Sale Hearing**. A hearing (the "**Sale Hearing**") to consider the proposed Sale Transaction will be held before the Court on **August [30], 2023 at [•].m. (prevailing Central Time)**[6] or such other date as determined by the Court.

Filing Objections

Sale Objections, if any, must (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, (c) comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and Complex Procedures, (d) be filed with the Court no later than the Sale Objection Deadline, and (e) no later than the Sale Objection deadline, be served on (i) proposed counsel to the Debtors, (y) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Brian M. Resnick, Steven Z. Szanzer, and Joanna McDonald and (z) Haynes & Boone, LLP, 1221 McKinney Street, Suite 4000, Houston, Texas 77010, Attn: Charles A. Beckham, Jr., Arsalan Muhammad, and David A. Trausch, (ii) counsel to the Term DIP Secured Parties, Ropes & Gray LLP, 1211 Avenue of the Americas, New York, New York 10036, Attn: Ryan Preston Dahl, Matthew M. Roose, Daniel Gwen, Lindsay C. Barca, and Eric P. Schriesheim, (iii) counsel to the ABL DIP Agent, Skadden, Arps, Slate, Meagher & Flom LLP, 155 N. Wacker Drive, Chicago, Illinois 60606, Attn: James J. Mazza, Jr. and Robert E. Fitzgerald, (iv) counsel to the Committee, DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, New York 10020, Attn: Dennis O'Donnell and Oksana Lashko, and (v) the U.S. Trustee, 515 Rusk Street, Suite 3516, Houston, Texas 77002, Attn: Jayson B. Ruff and Vianey Garza.

CONSEQUENCES OF FAILING TO TIMELY ASSERT AN OBJECTION

Any party or entity who fails to timely make an objection to the Sale Transaction on or before the Sale Objection Deadline in accordance with the Bidding Procedures Order and this Notice shall be forever barred from asserting any objection to the Sale Transaction, including with respect to the transfer of the assets free and clear of all liens, claims, encumbrances, and other interests.

NO SUCCESSOR LIABILITY

Instant Brands is a company that designs, manufactures, and markets a global portfolio of innovative and iconic consumer lifestyle brands, including Instant®, Pyrex®, Corelle®, Corningware®, Snapware®, Chicago Cutlery®, and Visions®. With people-first and purpose-driven solutions in mind, Instant Brands is reimagining how people live, eat, connect, and play inside the home—and in the spaces where people gather. Headquartered in Downers Grove,

[6] This date remains subject to Court approval.

Illinois, Instant Brands sells its products worldwide, employs more than 2,000 people, and operates in several countries outside the United States, including Canada, Singapore, England, South Korea, Australia, Taiwan, and China. For more information on the Debtors' businesses or their products, refer to the Declaration of Adam Hollerbach as Chief Restructuring Officer of the Debtors in Support of Debtors' Chapter 11 Proceedings and First Day Pleadings [Docket No. 39]. The assets sold in the Sale Transaction will be free and clear of, among other things, any claim arising from any conduct of the Debtors prior to the closing of the Sale Transaction, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent, or otherwise, so long as such claim arises out of or relates to events occurring prior to the closing of the Sale Transaction. Accordingly, as a result of the Sale Transaction, the Successful Bidder will not be a successor to any of the Debtors by reason of any theory of law or equity, and the Successful Bidder will have no liability, except as expressly provided in a definitive agreement reached between the Debtors and the Successful Bidder, for any liens, claims, encumbrances, and other interests against or in any of the Debtors under any theory of law, including successor liability theories.

[*Remainder of page intentionally left blank*]

Dated: [●], 2023
Houston, Texas

HAYNES AND BOONE, LLP

/s/

Charles A. Beckham, Jr. (TX Bar No. 02016600)
Arsalan Muhammad (TX Bar No. 24074771)
David A. Trausch (TX Bar No. 24113513)
1221 McKinney Street, Suite 4000
Houston, Texas 77010
Tel.: (713) 547-2000
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arsalan.muhammad@haynesboone.com
david.trausch@haynesboone.com

-and-

DAVIS POLK & WARDWELL LLP

Brian M. Resnick (admitted *pro hac vice*)
Steven Z. Szanzer (admitted *pro hac vice*)
Joanna McDonald (admitted *pro hac vice*)
450 Lexington Avenue
New York, New York 10017
Tel.: (212) 450-4000
Email: brian.resnick@davispolk.com
steven.szanzer@davispolk.com
joanna.mcdonald@davispolk.com

Proposed Counsel to the Debtors and Debtors in Possession

Exhibit 3

Form of Potential Assumption and Assignment Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
INSTANT BRANDS ACQUISITION HOLDINGS INC., *et al.*,	§	**Case No. 23-90716 (DRJ)**
Debtors.[1]	§	**(Jointly Administered)**

NOTICE OF POTENTIAL ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS OR UNEXPIRED LEASES AND CURE AMOUNT

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the "**Debtors**") each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the Southern District of Texas (the "**Court**") on June 12, 2023.

PLEASE TAKE FURTHER NOTICE that, on June 30, 2023, the Debtors filed a motion (the "**Motion**")[2] with the Court seeking entry of orders, among other things, approving (a) procedures for the solicitation of bids in connection with the Sale Transaction and the Auction (the "**Bidding Procedures**"), (b) the form and manner of notice related to the Sale Transaction, and (c) procedures for the assumption and assignment of contracts and leases in connection with the Sale Transaction (the "**Assumption and Assignment Procedures**").

PLEASE TAKE FURTHER NOTICE that, on [●], 2023, the Court entered an order (the "**Bidding Procedures Order**") approving, among other things, the Bidding Procedures, which establish the key dates and times related to the Sale Transaction, the Auction, and the Assumption and Assignment Procedures.

PLEASE TAKE FURTHER NOTICE that, upon the closing of the Sale Transaction, the Debtors intend to assume and assign to the Successful Bidder(s) (whether or not a Stalking Horse

[1] The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers or registration numbers in the applicable jurisdictions, are as follows: Instant Brands (Texas) Inc. (2526); Instant Brands Acquisition Holdings Inc. (9089); Instant Brands Acquisition Intermediate Holdings Inc. (3303); Instant Brands Holdings Inc. (3318); URS-1 (Charleroi) LLC (7347); Instant Brands LLC (0566); URS-2 (Corning) LLC (8085); Corelle Brands (Latin America) LLC (8862); EKCO Group, LLC (7167); EKCO Housewares, Inc. (0216); EKCO Manufacturing of Ohio, Inc. (7300); Corelle Brands (Canada) Inc. (5817); Instant Brands (Canada) Holding Inc. (4481); Instant Brands Inc. (8272); and Corelle Brands (GHC) LLC (9722). The address of the debtors' corporate headquarters is 3025 Highland Parkway, Suite 700, Downers Grove, IL 60515.

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

Bidder) the Potential Assumed Contracts. A schedule listing the Potential Assumed Contracts (the "**Potential Assumed Contracts Schedule**") is attached hereto and may also be accessed free of charge on the Debtors' case information website located at *https://dm.epiq11.com/InstantBrands* or can be requested by email at InstantBrandsInfo@epiqglobal.com. In addition, the "**Cure Costs**," if any, necessary for the assumption and assignment of the Potential Assumed Contracts are set forth on the Potential Assumed Contracts Schedule. ***Each Cure Cost listed on the Potential Assumed Contracts Schedule represents all liabilities of any nature of the Debtors arising under an Assumed Contract or Assumed Lease prior to the closing of the Sale Transaction, or other applicable date upon which such assumption and assignment will become effective, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent, or otherwise, so long as such liabilities arise out of or relate to events occurring prior to the closing of the Sale Transaction or other applicable date upon which such assumption and assignment will become effective.***

YOU ARE RECEIVING THIS NOTICE BECAUSE YOU HAVE BEEN IDENTIFIED AS A COUNTERPARTY TO A POTENTIAL ASSUMED CONTRACT. Under the terms of the Assumption and Assignment Procedures, (a) at or prior to the closing of the Sale Transaction, a Successful Bidder may elect, in its sole and absolute discretion, (i) to exclude any contract or lease on the Potential Assumed Contracts Schedule as an Assumed Contract or Assumed Lease, as applicable (in which case it shall become an Excluded Contract or Excluded Lease, as applicable), or (ii) to include on the Proposed Assumed Contracts Schedule any contract or lease listed on the Potential Assumed Contracts Schedule, by providing to the Debtors written notice of its election to exclude or include such contract or lease, as applicable, (b) if the Debtors or any Successful Bidder identify during the pendency of the Chapter 11 Cases (before or after the closing of the Sale Transaction) any contract or lease that is not listed on the Proposed Assumed Contracts Schedule, and such contract or lease has not been rejected by the Debtors, the Successful Bidder may in its sole and absolute discretion elect by written notice to the Debtors to treat such contract or lease as an Assumed Contract or Assumed Lease, as applicable, and the Debtors shall seek to assume and assign such Assumed Contract or Assumed Lease in accordance with the Assumption and Assignment Procedures, and (c) following the Auction, the Debtors may, in accordance with the applicable purchase agreement, or as otherwise agreed by the Debtors and the Successful Bidder(s), at any time before the closing of the Sale Transaction, modify the previously stated Cure Costs associated with any Proposed Assumed Contract. The Assumption and Assignment Procedures further provide that any Counterparty whose previously-stated Cure Cost is modified will receive notice thereof and an opportunity to file a Supplemental Assumption and Assignment Objection. **The assumption and assignment of the Contracts and Leases on the Potential Assumed Contracts Schedule is not guaranteed and is subject to approval by the Court and the Debtors' or Successful Bidder's right to remove an Assumed Contract or Assumed Lease from the Potential Assumed Contracts Schedule and Proposed Assumed Contracts Schedule.**

Obtaining Additional Information

Copies of the Motion and the Bidding Procedures Order, as well as all related exhibits (including the Bidding Procedures) and all other documents filed with the Court, are available free of charge on the Debtors' case information website located at

https://dm.epiq11.com/InstantBrands or can be requested by email at InstantBrandsInfo@epiqglobal.com.

Filing Assumption and Assignment Objections

Pursuant to the Assumption and Assignment Procedures, objections to the potential assumption and assignment of an Assumed Contract or Assumed Lease (an "**Assumption and Assignment Objection**") with respect to the ability of a Successful Bidder to provide adequate assurance of future performance must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and Complex Procedures, (c) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Cost that the Counterparty believes are required to cure defaults under the relevant Assumed Contract or Assumed Lease, (d) by no later than **August 28, 2023 at 4:00 p.m. (prevailing Central Time**) (the "**Assumption and Assignment Objection Deadline**"), (i) be filed with the Court and (ii) be served on (1) [proposed] counsel to the Debtors, (y) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Brian M. Resnick, Steven Z. Szanzer, and Joanna McDonald and (z) Haynes & Boone, LLP, 1221 McKinney Street, Suite 4000, Houston, Texas 77010, Attn: Charles A. Beckham, Jr., Arsalan Muhammad, and David A. Trausch, (2) counsel to the Term DIP Secured Parties, Ropes & Gray LLP, 1211 Avenue of the Americas, New York, New York 10036, Attn: Ryan Preston Dahl, Matthew M. Roose, Daniel Gwen, Lindsay C. Barca, and Eric P. Schriesheim, (3) counsel to the ABL DIP Agent, Skadden, Arps, Slate, Meagher & Flom LLP, 155 N. Wacker Drive, Chicago, Illinois 60606, Attn: James J. Mazza, Jr. and Robert E. Fitzgerald, (4) counsel to the Committee, DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, New York 10020, Attn: Dennis O'Donnell and Oksana Lashko, and (5) the U.S. Trustee, 515 Rusk Street, Suite 3516, Houston, Texas 77002, Attn: Jayson B. Ruff and Vianey Garza (collectively, the "**Objection Notice Parties**").

Pursuant to the Assumption and Assignment Procedures, an Assumption and Assignment Objection relating to a proposed Cure Cost (a "**Cure Objection**") must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and Complex Procedures, (c) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Cost that the Counterparty believes are required to cure defaults under the relevant Assumed Contract or Assumed Lease, and (d) by no later than **August 11, 2023 at 4:00 p.m.** (the "**Cure Objection Deadline**"), (i) be filed with the Court and (ii) be served on the Objection Notice Parties.

Pursuant to the Assumption and Assignment Procedures, objections to the potential assumption and assignment of an Assumed Contract or Assumed Lease by a party whose contract or lease is listed on a Supplemental Assumed Contracts Schedule (a "**Supplemental Assumption and Assignment Objection**") with respect to the ability of a Successful Bidder to provide adequate assurance of future performance or relating to the Cure Costs (to the extent modified form the previously-stated amount) must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and Complex Procedures, (c) state, with specificity, the legal and factual bases thereof, and (d) by no later than **14 days from the date of service of such Supplemental Assumption and Assignment Notice,** (i) be filed with the Court and (ii) be served on the Objection Notice Parties.

Objections to the Sale Order, the conduct of the Auction, or the Sale Transaction (collectively, the "**Sale Objections**") must (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, (c) comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and Complex Procedures, and (d) by no later than **August 28, 2023 at 4:00 p.m. (prevailing Central Time)** (the "**Sale Objection Deadline**") be (i) filed with the Court and (ii) served on the Objection Notice Parties.

CONSEQUENCES OF FAILING TO TIMELY ASSERT AN OBJECTION

Any Counterparty to a contract or lease who fails to timely make an objection to the potential assumption and assignment of such contract or lease on or before the Assumption and Assignment Objection Deadline in accordance with the Assumption and Assignment Procedures, the Bidding Procedures Order, and this Notice (or in the case of a Supplemental Assumption and Assignment Objection, by 14 days from the date of service of such Supplemental Assumption and Assignment Notice) shall be deemed to have consented to the assumption and assignment of such contract or lease, including the Cure Costs (if any), set forth on a Potential Assumed Contracts Schedule or a Supplemental Assumed Contracts Schedule, and shall be forever barred from asserting any objection or claims against the Debtors, the Successful Bidder, or the property of any such parties relating to the assumption and assignment of such contract or lease, including asserting additional Cure Costs with respect to such contract or lease. Notwithstanding anything to the contrary in such contract or lease, or any other document, the Cure Costs set forth on a Potential Assumed Contracts Schedule or a Supplemental Assumed Contracts Schedule shall be controlling and will be the only amount necessary to cure outstanding defaults under the applicable Assumed Contract or Assumed Lease under section 365(b) of the Bankruptcy Code arising out of or related to any events occurring prior to the closing of the Sale Transaction or other applicable date upon which such assumption and assignment will become effective, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent, or otherwise, so long as such liabilities arise out of or relate to events occurring prior to the closing of the Sale Transaction or other applicable date upon which such assumption and assignment will become effective.

Other Important Dates and Deadlines[3]

In addition to the dates and deadlines described above with respect to filing Assumption and Assignment Objections, Cure Objections, and Supplemental Assumption and Assignment Objections, note the following important dates and deadlines:

1. **Auction.** In the event that the Debtors timely receive more than one Qualified Bid for Bid Assets, and subject to the satisfaction of any further conditions set forth in the Bidding Procedures, the Debtors intend to conduct an Auction for the Bid Assets. The Auction, if one is held, will commence on **August 24, 2023 at 10:00 a.m. (prevailing Eastern Time)** at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017.

[3] The following dates and deadlines may be extended by the Debtors or the Court pursuant to the terms of the Bidding Procedures and the Bidding Procedures Order.

2. **Sale Hearing**. A hearing (the "**Sale Hearing**") to consider the proposed Sale Transaction will be held before the Court on **August [30], 2023 at [•].m. (prevailing Central Time)**[4] or such other date as determined by the Court.

[*Remainder of page intentionally left blank*]

[4] This date remains subject to Court approval.

Dated: [•], 2023
Houston, Texas

HAYNES AND BOONE, LLP

/s/

Charles A. Beckham, Jr. (TX Bar No. 02016600)
Arsalan Muhammad (TX Bar No. 24074771)
David A. Trausch (TX Bar No. 24113513)
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-and-

DAVIS POLK & WARDWELL LLP

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[*Proposed*] *Counsel to the Debtors and Debtors in Possession*

Exhibit 4

Form of Proposed Assumption and Assignment Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
INSTANT BRANDS ACQUISITION HOLDINGS INC., *et al.*,	§	**Case No. 23-90716 (DRJ)**
Debtors.[1]	§	**(Jointly Administered)**

NOTICE OF PROPOSED ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS OR UNEXPIRED LEASES AND CURE AMOUNT

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the "**Debtors**") each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the Southern District of Texas (the "**Court**") on June 12, 2023.

PLEASE TAKE FURTHER NOTICE that, on June 30, 2023, the Debtors filed a motion (the "**Motion**")[2] with the Court seeking entry of orders, among other things, approving (a) procedures for the solicitation of bids in connection with the Sale Transaction and the Auction (the "**Bidding Procedures**"), (b) the form and manner of notice related to the Sale Transaction, and (c) procedures for the assumption and assignment of contracts and leases in connection with the Sale Transaction (the "**Assumption and Assignment Procedures**").

PLEASE TAKE FURTHER NOTICE that, on [●], 2023, the Court entered an order (the "**Bidding Procedures Order**") approving, among other things, the Bidding Procedures, which establish the key dates and times related to the Sale Transaction, the Auction, and the Assumption and Assignment Procedures.

[1] The debtors and debtors in possession in these chapter 11 cases, along with the last four digits of their respective employer identification numbers or registration numbers in the applicable jurisdictions, are as follows: Instant Brands (Texas) Inc. (2526); Instant Brands Acquisition Holdings Inc. (9089); Instant Brands Acquisition Intermediate Holdings Inc. (3303); Instant Brands Holdings Inc. (3318); URS-1 (Charleroi) LLC (7347); Instant Brands LLC (0566); URS-2 (Corning) LLC (8085); Corelle Brands (Latin America) LLC (8862); EKCO Group, LLC (7167); EKCO Housewares, Inc. (0216); EKCO Manufacturing of Ohio, Inc. (7300); Corelle Brands (Canada) Inc. (5817); Instant Brands (Canada) Holding Inc. (4481); Instant Brands Inc. (8272); and Corelle Brands (GHC) LLC (9722). The address of the debtors' corporate headquarters is 3025 Highland Parkway, Suite 700, Downers Grove, IL 60515.

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

PLEASE TAKE FURTHER NOTICE that, on **August 24, 2023 at 10:00 a.m. (prevailing Eastern Time),** the Debtors held an Auction at the offices of Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017.

PLEASE TAKE FURTHER NOTICE that, upon the closing of the Sale Transaction, the Debtors intend to assume and assign to the Successful Bidder(s) (whether or not a Stalking Horse Bidder) the Proposed Assumed Contracts. A schedule listing the Proposed Assumed Contracts (the "**Proposed Assumed Contracts Schedule**") is attached hereto and may also be accessed free of charge on the Debtors' case information website located at *https://dm.epiq11.com/InstantBrands* or can be requested by e-mail at InstantBrandsInfo@epiqglobal.com. In addition, the "**Cure Costs**," if any, necessary for the assumption and assignment of the Proposed Assumed Contracts are set forth on the Proposed Assumed Contracts Schedule. ***Each Cure Cost listed on the Proposed Assumed Contracts Schedule represents all liabilities of any nature of the Debtors arising under an Assumed Contract or Assumed Lease prior to the closing of the Sale Transaction, or other applicable date upon which such assumption and assignment will become effective, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent, or otherwise, so long as such liabilities arise out of or relate to events occurring prior to the closing of the Sale Transaction or other applicable date upon which such assumption and assignment will become effective.***

YOU ARE RECEIVING THIS NOTICE BECAUSE YOU HAVE BEEN IDENTIFIED AS A COUNTERPARTY TO A PROPOSED ASSUMED CONTRACT. Under the terms of the Assumption and Assignment Procedures, (a) at or prior to the closing of the Sale Transaction, the Successful Bidder(s) may elect, in its sole and absolute discretion, (i) to exclude any contract or lease on the Proposed Assumed Contracts Schedule as an Assumed Contract or Assumed Lease, as applicable (in which case it shall become an Excluded Contract or Excluded Lease, as applicable), or (ii) to include on the Proposed Assumed Contracts Schedule any contract or lease listed on the Potential Assumed Contracts Schedule by providing to the Debtors written notice of its election to exclude or include such contract or lease, as applicable, (b) if the Debtors or any Successful Bidder identify during the pendency of the Chapter 11 Cases (before or after the closing of the Sale Transaction) any contract or lease that is not listed on the Proposed Assumed Contracts Schedule, and such contract or lease has not been rejected by the Debtors, the Successful Bidder may in its sole and absolute discretion elect by written notice to the Debtors to treat such contract or lease as an Assumed Contract or Assumed Lease, as applicable, and the Debtors shall seek to assume and assign such Assumed Contract or Assumed Lease in accordance with the Assumption and Assignment Procedures, and (c) following the Auction, the Debtors may, in accordance with the applicable purchase agreement, or as otherwise agreed by the Debtors and the Successful Bidder(s), at any time before the closing of the Sale Transaction, modify the previously-stated Cure Costs associated with any Proposed Assumed Contract. The Assumption and Assignment Procedures further provide that any Counterparty whose previously-stated Cure Cost is modified will receive notice thereof and an opportunity to file a Supplemental Assumption and Assignment Objection. **The assumption and assignment of the Contracts and Leases on the Proposed Assumed Contracts Schedule is not guaranteed and is subject to approval by the Court and the Debtors' or Successful Bidder's right to remove an Assumed Contract or Assumed Lease from the Proposed Assumed Contracts Schedule.**

Obtaining Additional Information

Copies of the Motion and the Bidding Procedures Order, as well as all related exhibits (including the Bidding Procedures) and all other documents filed with the Court, are available free of charge on the Debtors' case information website located at *https://dm.epiq11.com/InstantBrands* or can be requested by e-mail at InstantBrandsInfo@epiqglobal.com.

Filing Assumption and Assignment Objections

Pursuant to the Assumption and Assignment Procedures, objections to the proposed assumption and assignment of an Assumed Contract or Assumed Lease (an "**Assumption and Assignment Objection**") with respect to the ability of the Successful Bidder to provide adequate assurance of future performance must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and Complex Procedures, (c) state, with specificity, the legal and factual bases thereof, including, if applicable, the Cure Costs that the Counterparty believes are required to cure defaults under the relevant Assumed Contract or Assumed Lease, (d) by no later than **August 28, 2023 at 4:00 p.m. (prevailing Central Time**) (the "**Assumption and Assignment Objection Deadline**"), (i) be filed with the Court and (ii) be served on (1) [proposed] counsel to the Debtors, (y) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, New York 10017, Attn: Brian M. Resnick, Steven Z. Szanzer, and Joanna McDonald and (y) Haynes & Boone, LLP, 1221 McKinney Street, Suite 4000, Houston, Texas 77010, Attn: Charles A. Beckham, Jr., Arsalan Muhammad, and David A. Trausch, (2) counsel to the Term DIP Secured Parties, Ropes & Gray LLP, 1211 Avenue of the Americas, New York, New York 10036, Attn: Ryan Preston Dahl, Matthew M. Roose, Daniel Gwen, Lindsay C. Barca, and Eric P. Schriesheim, (3) counsel to the ABL DIP Agent, Skadden, Arps, Slate, Meagher & Flom LLP, 155 N. Wacker Drive, Chicago, Illinois 60606, Attn: James J. Mazza, Jr. and Robert E. Fitzgerald, (4) counsel to the Committee, DLA Piper LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, New York 10020, Attn: Dennis O'Donnell and Oksana Lashko, and (5) the U.S. Trustee, 515 Rusk Street, Suite 3516, Houston, Texas 77002, Attn: Jayson B. Ruff and Vianey Garza (collectively, the "**Objection Notice Parties**").

Sale Objections (as defined below), if any, must (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, (c) comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and Complex Procedures, and (d) by **August 28, 2023 at 4:00 p.m. (prevailing Central Time)** (the "**Sale Objection Deadline**") (i) be filed with the Court and (ii) be served on the Objection Notice Parties.

CONSEQUENCES OF FAILING TO TIMELY ASSERT AN OBJECTION

Any Counterparty to an Assumed Contract or Assumed Lease who fails to timely make an objection to the proposed assumption and assignment of such contract or lease on or before the Assumption and Assignment Objection Deadline in accordance with the Assumption and Assignment Procedures, the Bidding Procedures Order, and this Notice shall be deemed to have consented with respect to the ability of a Successful Bidder to provide adequate assurance of future performance (and the Debtors' proposed Cure Costs, to the extent modified from the

previously-stated amount) and shall be forever barred from asserting any objection or claims against the Debtors, the Successful Bidder, or the property of any such parties relating to the assumption and assignment of such contract or lease (including asserting additional Cure Costs with respect to such contract or lease). Notwithstanding anything to the contrary in such contract or lease, or any other document, the Cure Costs set forth on a Potential Assumed Contracts Schedule, a Proposed Assumed Contracts Schedule, or a Supplemental Assumed Contracts Schedule (as applicable) shall be controlling and will be the only amount necessary to cure outstanding defaults under the applicable Assumed Contract or Assumed Lease under section 365(b) of the Bankruptcy Code arising out of or related to any events occurring prior to the closing of the Sale Transaction or other applicable date upon which such assumption and assignment will become effective, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent, or otherwise, so long as such liabilities arise out of or relate to events occurring prior to the closing of the Sale Transaction or other applicable date upon which such assumption and assignment will become effective.

Other Important Dates and Deadlines[3]

In addition to the dates and deadlines described above with respect to filing Assumption and Assignment Objections, note the following important dates and deadlines:

1. **Auction and Sale Objections Deadline**. The deadline to file an objection with the Court to the Sale Order, the conduct of the Auction, or the Sale Transaction (including objections relating to the Proposed Assumed Contacts Schedule) (collectively, the "**Sale Objections**") is the **Sale Objection Deadline**.

2. **Sale Hearing**. A hearing (the "**Sale Hearing**") to consider the proposed Sale Transaction will be held before the Court on **August [30], 2023 at [●].m. (prevailing Central Time)**[4] or such other date as determined by the Court.

[*Remainder of page intentionally left blank*]

[3] The following dates and deadlines may be extended by the Debtors or the Court pursuant to the terms of the Bidding Procedures and the Bidding Procedures Order.

[4] This date remains subject to Court approval.

Dated: [●], 2023
Houston, Texas

HAYNES AND BOONE, LLP

/s/

Charles A. Beckham, Jr. (TX Bar No. 02016600)
Arsalan Muhammad (TX Bar No. 24074771)
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-and-

DAVIS POLK & WARDWELL LLP

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