IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
America's Gardening Resource, Inc., *et al.*,	Case No. 25-11180 (BLS)
Debtors.[1]	(Joint Administration Requested)

MOTION OF THE DEBTORS AND DEBTORS-IN-POSSESSION FOR ENTRY OF (I) AN ORDER (A) AUTHORIZING AND APPROVING BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (B) APPROVING THE DEBTORS' ENTRY INTO STALKING HORSE AGREEMENT AND RELATED BIDDING PROTECTIONS, (C) SCHEDULING THE AUCTION AND SALE HEARING, (D) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (E) GRANTING RELATED RELIEF; AND (II) AN ORDER (A) APPROVING THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES; AND (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

The above-captioned debtors and debtors-in-possession (collectively, the "Debtors" and, each, a "Debtor"), pursuant to sections 105(a), 363, and 365 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006, 6007, 9007, 9008, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), hereby move (the "Motion") the Court for the following relief:

(i) Entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Bidding Procedures Order"):

(a) authorizing and approving sale and bidding procedures (the "Bidding Procedures") attached as **Exhibit 1** to the Bidding Procedures Order, pursuant to which the Debtors will solicit and select the highest or otherwise

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: America's Gardening Resource, Inc. (9604); Gardener's Home LLC (0498); Serac Corporation (9800); IGH, Inc. (9336); Innovative Gardening Solutions, Inc. (3325). The location of the Debtors' corporate headquarters and the Debtors' service address in these chapter 11 cases is 128 Intervale Road, Burlington, Vermont 05401.

best offer for the sale (the "Sale" or "Sale Transaction") of all or substantially all of the Debtors' Assets (as defined below);

(b) authorizing and approving procedures for the assumption and assignment of executory contracts and unexpired leases in connection with the Sale, including notice of proposed cure amounts;

(c) scheduling an auction (the "Auction"), if necessary, and a hearing to approve the Sale (the "Sale Hearing");

(d) approving the form and manner of (1) notice of the Auction and Sale Hearing (the "Sale Notice") attached as **Exhibit 2** to the Bidding Procedures Order, (2) notice of the Assumption Procedures (the "Assumption Notice") attached as **Exhibit 3** to the Bidding Procedures Order, and (3) notice of Successful Bidder and Back-Up Bidder (the "Notice of Successful Bidder") attached as **Exhibit 4** to the Bidding Procedures Order;

(e) authorizing the Debtors' entry into, and performance under, the Stalking Horse Agreement (defined below), attached hereto as **Exhibit B**, subject to higher and better bids, and authorizing certain bid protections for the Stalking Horse Bidder (defined below);

(f) establishing dates and deadlines in connection with the Sale, including the Bid Deadline (as defined in the Bidding Procedures), and the Auction,

(g) granting related relief; and

(ii) Entry of an order, (the "Sale Order"), following the Sale Hearing, (i) approving the Sale to the Successful Bidder free and clear of all liens, claims, interests and encumbrances (collectively, the "Interests"); (ii) authorizing the assumption and assignment of certain executory contracts and unexpired leases; and (iii) granting related relief.

In support of the Motion, the Debtors rely upon and hereby incorporate by reference the Declaration of David M. Baker in Support of Chapter 11 Petitions and First Day Pleadings (the "First Day Declaration"). In further support of this Motion, the Debtor respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the

District of Delaware dated as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final judgment or order absent consent of the parties.

2. Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are sections 105(a), 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007, 9008, and 9014 and Local Rule 6004-1.

BACKGROUND

4. On the date hereof (the "Petition Date"), each Debtor commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (collectively, the "Chapter 11 Cases"). The Debtors have requested that the Chapter 11 Cases be jointly administered. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in the First Day Declaration.

5. The Debtors continue to manage and operate their businesses as debtors in possession pursuant to section 1107 and 1108 of the Bankruptcy Code.

6. To date, no creditors' committee has been appointed in the Chapter 11 Cases by the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"). No trustee or examiner has been appointed in the Chapter 11 Cases.

I. The Debtors' Businesses and Events Leading to Chapter 11.

7. The lead Debtor and parent of the other Debtors, America's Gardening Resource, Inc. ("AGR"), is incorporated in the State of Delaware and is owned under an Employee Stock

Ownership Plan ("ESOP"). The Debtors are a multi-channel marketer of gardening products and equipment, as well as live goods for gardeners throughout the United States. The Debtors also manufacture their own products, which are sold as part of their retail line. The Debtors operate their business from their headquarters in Burlington, Vermont, as well as several garden, warehouse, and retail facilities located across Vermont, New Hampshire, and Massachusetts.

8. The Debtors' business is highly cyclical because the Debtors primarily offer garden supply products. The Debtors enjoy the "garden season" between March and June of each year, and the "holiday season" between November and December. Between these two "hot" seasons, the Debtors historically funded their businesses with a line of credit through the Bank of America, as further described below.

9. During and immediately following the COVID-19 Pandemic (the "Pandemic"), the Debtors experienced significant sales and growth. As a result, the Debtors sales throughout the course of 2020, 2021, and 2022 were higher than anticipated. As a result of these increased sales, particularly in fiscal years 2021 and 2022, the stock price valuation skyrocketed.

10. As an ESOP, this valuation inured to the benefit of the Debtors' employees—the shareholders. At the same time, several employees with significant tenure retired from their employ with the Debtors, thereby requiring the Debtors to fund the ESOP plan, stock appreciation plan, and warrant plan in order to pay the retirees. As ESOP, the company also incurs higher than typical annual reporting, compliance, valuation, and audit costs. The retirement payments, though set to be paid over five (5) years, caused significant liquidity issues for the Debtors at the time and for its future projections to pay out the retirement obligations in coming years.

11. After the Pandemic, the Debtors' sales returned to normal. On the heels of this, the Company also invested in numerous one-time systems and process improvements, including an

Enterprise Resource System ("ERP"), which cost approximately $500,000 to implement, but was expected to ultimately bring cost savings through business wide efficiencies. These additions did not go smoothly because the new systems and processes, and the implementation of the ERP resulted in customer fulfillment issues, which collectively depressed revenue by $5 to $10 million.

12. The trailing result of these issues is an overleveraged balance sheet. In the third quarter of 2023, AGR fell out of compliance with Bank of America ("BofA"), which holds the Debtors' credit line (the "LOC Loan"),[2] due to underperformance against its demand plan for the 2023 season and higher-than-planned operating expenses, compounded by the Debtors' transition to new process improvements, as previously mentioned. One such process update, the Debtors' new Warehouse Management System ("WMS") presented challenges for the Debtors' fulfillment team, resulting in significant delays during peak season. Over 60% of customer orders in May 2024 were delayed by 15–30 days, negatively impacting marketing effectiveness and customer retention metrics.

13. The Debtors made changes to their training and leadership teams in July 2024 to address the ongoing issues. At that time, AGR was operating under a forbearance agreement with BofA on account of the Debtors' financial shortfalls under the LOC Loan. Despite these changes, due to continued market softness and seasonal underperformance, the company was unable to exit the LOC Loan in the second quarter of 2024 as required. This led to a third forbearance agreement, which expires on June 29, 2025.

14. Upon reviewing the Debtors' long-term financials, BofA elected to terminate the use of the LOC Loan. Their review highlighted that cash generated during the Pandemic surge—when AGR's ESOP-fueled share price tripled—was primarily paid out as equity to shareholders.

[2] The Debtors' prepetition secured debt obligations are more thoroughly described in the First Day Declaration.

Since then, business performance has declined to pre-Pandemic levels—or lower—resulting in diminished cash reserves and increased financial strain.

15. In response to these and other ongoing operational and financial challenges, the Company undertook a series of strategic actions aimed at stabilizing the businesses and positioning the Company for long-term sustainability. These efforts focused on both cost containment and revenue improvement, including:

a. Expense Reduction: Implementation of targeted cost-cutting measures, including significant reductions in staffing, to right-size operations and align expenses with current revenue levels.

b. Marketing Enhancement: A new external marketing firm was engaged to improve customer acquisition, retention, and overall brand performance.

c. Logistics Optimization: Shipping contracts were renegotiated to reduce costs and improve delivery efficiency.

d. SKU rationalization: Targeting the Company's assortment of drivers of demand and cutting unprofitable assortment

e. Capital Strategy: Recognizing the business was undercapitalized, leadership initiated a process to explore opportunities for bringing in new capital to strengthen the financial foundation and support future growth.

16. Despite these measures, it became clear to the Debtors' management, that—in order to right-size the company and ensure that its creditors and other stakeholders were able to maximize value—was to engage in a sale process, whether in in or outside of chapter 11.

II. Prepetition Marketing and Sale Process.

17. In an effort to maximize value to creditors, the Company engaged Tower Partners, LLC ("Tower Partners") as its investment banker on December 17, 2024 in order to market for sale all of the Debtors' assets. Tower Partners conducted a robust prepetition marketing process. Tower Partners' efforts included contacting, through their proprietary database and industry connections, 1,115 financial and strategic potential purchasers. Specifically, Tower Partners

contacted 180 potential strategic purchasers and 879 potential financial purchasers, as well as 56 lenders. As a result, 51 separate non-disclosure agreements were executed, resulting in 8 indications of interest being signed. Three (3) letters of intent were submitted, and one (1) asset purchase agreement was received.

III. The Stalking Horse Agreement and Bid Protections.

18. The Debtors consulted with their professionals on the bid, and after extensive arms'-length negotiations, entered into an asset purchase agreement (the "Stalking Horse Agreement") with Gardens Alive, Inc. as the buyer (the "Stalking Horse Bidder"), with the ultimate goal of conducting a sale under section 363(b) of the Bankruptcy Code. The Stalking Horse Agreement contemplates the sale to the Stalking Horse Bidder of substantially all of the Debtors' assets, free and clear of liens, for a Purchas Price (as defined in the Stalking Horse Agreement) of $9,000,000.00. The Stalking Horse Agreement is attached hereto as **Exhibit A** and is subject to higher and better bids that may be submitted at or in advance of any Auction, pursuant to the Bidding Procedures.

19. During negotiations, the Debtors determined in their business judgment, and in consultation with their professionals, that the net proceeds of the Sale would be maximized by offering certain bid protections for entities willing to serve as a Stalking Horse Bidder. To that end, the Debtors' professionals were able to secure the Stalking Horse Agreement by agreeing to offer a break-up fee of $360,000.00, which represents 4% of the Purchase Price proposed in the Stalking Horse Agreement (the "Break-Up Fee" or the "Bid Protections"). The Stalking Horse Agreement does not contemplate any expense reimbursement for the Stalking Horse Bidder.

20. A summary of the terms of the Stalking Horse Agreement is set forth in the following table:[3]

Provision	Summary Description
Sellers	Debtors
Stalking Horse Bidder	Gardens Alive, Inc.
Purchase Price	$9,000,000 subject to certain working capital adjustments
Purchased Assets	All right, title and interest of Debtors in, to or under all of the properties and assets of Debtors (other than the Excluded Assets) of every kind and description, wherever located, real, personal or mixed, tangible or intangible, owned, leased, licensed, used or held for use in or relating to the Business, including all associated Goodwill, including, but not limited to the assets listed on Schedules 2.1(a)-(q) (herein collectively called the "Acquired Assets").
Excluded Assets	All cash and cash equivalents, including checks, commercial paper, treasury bills, certificates of deposit and other bank deposits other than Unclaimed Property, all bank accounts, Damaged Inventory, all non-assigned insurance policies, causes of action, tax refunds and rebates, the Purchase Price and equity interest as more fully described in 2.2.
Assumption of Contracts; Cure Amounts	All liabilities arising on or after the Closing Date with respect to the Acquired Assets; Assigned Agreements as described in 2.3.

21. The table below highlights any applicable terms of the Stalking Horse Agreement that must be identified pursuant to Local Rule 60041(b).

Rule	Disclosure/Location
Sale to Insider *Local Bankr. R. 6004-1(b)(iv)(A)*	N/A

[3] The summary is provided for the convenience of the Court and parties in interest. To the extent there is any conflict between this summary and the Stalking Horse Agreement, the latter governs in all respects. Capitalized terms used but not otherwise defined in this summary shall have the meanings ascribed to them in the Stalking Horse Agreement.

Agreements with Management *Local Bankr. R. 6004-1(b)(iv)(B)*	Buyer shall offer employment to a significant number of Debtors' employees who remain employed by Debtors immediately prior to the Closing (the "Business Employees"), and all such offers of employment shall be on substantially similar terms and at substantially the same annual rate of pay at which such employees were employed as of the Effective Date (*provided*, *however*, that all offers of employment will be for employment "at-will" and not for a specific term). **Section 8.4(a)**
Releases *Local Bankr. R. 6004-1(b)(iv)(C)*	N/A
Private Sale/No Competitive Bidding *Local Bankr. R. 6004- 1(b)(iv)(D)*	N/A
Closing and Other Deadlines *Local Bankr. R. 6004-1(b)(iv)(E)*	Deadlines: Entry of Bidding Procedures Order on or before July 15, 2025; Auction on or before July 23, 2025; Sale Hearing on or before August 5, 2025; and Closing on or before August 22, 2025. **Section 7.6(e)**
Good Faith Deposit *Local Bankr. R. 6004- 1(b)(iv)(F)*	$450,000 **P. 4**
Interim Arrangements with Stalking Horse Bidder *Local Bankr. R. 6004-1(b)(iv)(G)*	N/A
Use of Proceeds *Local Bankr. R. 6004- 1(b)(iv)(H)*	N/A
Tax Exemption *Local Bankr. R. 6004-1(b)(iv)(I)*	N/A
Record Retention *Local Bankr. R. 6004-1(b)(iv)(J)*	All minute books, stock ledgers, corporate seals and stock certificates of Debtors, *provided*, *however*, that Debtors shall provide copies to Buyer of any such documents that are reasonably necessary for Buyer to operate the Business. **Section 2.2(h)**

Sale of Avoidance Actions *Local Bankr. R. 6004-1(b)(iv)(K)*	N/A
Successor Liability *Local Bankr. R. 6004-1(b)(iv)(L)*	Sale is free and clear. **Section 2.6 and *passim***
Sale Free and Clear of Unexpired Leases *Local Bankr. R. 6004- 1(b)(iv)(M)*	Only leases listed on Schedule 2.1(d) will be included in sale. **Section 2.1(d), Schedule 2.1(d)**
Credit Bid *Local Bankr. R. 6004-1(b)(iv)(N)*	Permitted.
Relief from Bankruptcy Rule 6004(h) *Local Bankr. R. 6004- 1(b)(iv)(O)*	Bidding Procedures Order and Sale Order shall have been entered by the Bankruptcy Court and shall have become Final Orders, and shall not be subject to any stay, modification, reversal or vacation, and the Sale Order shall remain in full force and effect as of the Closing. **Section 10.6**

IV. <u>The Proposed Timeline and Bidding Procedures</u>.[4]

22. The Bidding Procedures, among other things seek to set forth a timeline for the Sale Process that is reasonable and appropriate for the Assets and is consistent with the milestones set forth in the proposed Interim Cash Collateral Order,[5] and establish the basic rules for submitting bids for the purchase of the Debtors' Assets. The proposed Bidding Procedures comply with the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules and, therefore, should be approved.

[4] Contemporaneously herewith, the Debtors filed a motion to shorten the notice period for consideration of this Motion, solely with respect to the Bidding Procedures and related relief.

[5] The Debtors' Motion for Use of Cash Collateral was filed contemporaneously with this Motion and the Debtors' voluntary chapter 11 petitions.

23. Consistent with the Debtors' need to consummate a Sale as efficiently as possible, the Debtors propose the following key dates and deadlines for the Sale Process:[6]

EVENT	PROPOSED DATE
Bidding Procedures Objection Deadline	July 7, 2025, at 4:00 p.m. (ET)
Bidding Procedures Hearing	July 10, 2025, 10:00 a.m. (ET) (subject to the Court's availability)
Deadline to File and Serve Assumption Notice	July 10, 2025
Deadline to File and Serve Auction and Sale Notice	July 11, 2025
Deadline to Publish Auction and Sale Notice	Seven (7) days after entry of the Bidding Procedures Order
Bid Deadline	July 15, 2025, at 5:00 p.m. (ET)
Deadline to Designate Qualified Bids and File Auction Notice	July 16, 2025, at 5:00 p.m. (ET)
Auction	July 18, 2025, at 10:00 a.m. (ET)
Deadline to File Notice of Successful Bidder and Back-Up Bidder	July 19, 2025, or as soon as reasonably practicable after the Auction concludes
Contract Objection Deadline	July 25, 2025, at 4:00 p.m. (ET)
Deadline to Object to Sale	July 25, 2025, at 4:00 p.m. (ET)
Adequate Assurance Objection Deadline	July 25, 2025, at 4:00 p.m. (ET)
Sale Hearing	August 1, 2025, at 10:00 a.m. (ET) (subject to the Court's availability)

24. The Bidding Procedures also seek to provide a formal framework for the Sale and have been structured to elicit value-maximizing bids for the Assets by facilitating an open and competitive Sale while taking into account the pressing need for the Debtors to sell the Assets as quickly as possible and the substantial prepetition marketing efforts and results.

[6] The Debtors, consistent with their fiduciary duties, in the exercise of their business judgment reserve the right to modify these dates to achieve a value-maximizing Sale.

25. The Bidding Procedures describe, among other things, the procedures for interested parties to access due diligence, the process for submitting written, irrevocable offers ("Bids"), the manner in which bidders and Bids become "qualified," the negotiations of Bids received, the conduct of any Auction, the selection and approval of any Successful Bidder(s) and Back-up Bidder(s) (both defined below), and the deadlines with respect to the foregoing. The Bidding Procedures will allow the Debtors to conduct the Sale Process in a fair, orderly, and transparent manner that will maximize value for all stakeholders.

26. As described in more detail in the Bidding Procedures, Qualified Bidders may submit Qualified Bids for the Purchased Assets through July 15, 2025, or such other date as is determined by the Debtors in accordance with the Bidding Procedures Order (the "Bid Deadline"). If at least one Topping Bid (as defined in the Bidding Procedures) is received before the Bid Deadline, the Debtors will conduct an Auction for the Sale of the Debtors' Assets, as set forth below. If an Auction is conducted, the Debtors, (i) may designate the highest or otherwise best Bid(s) and the Successful Bidder, and (ii) may further designate the second highest or otherwise best Bid(s) and a Back-Up Bidder to consummate the Sale in the event that a Sale to the Successful Bidder(s) does not close. If an asset purchase agreement is executed with a Successful Bidder or Back-Up Bidder, the Debtors will file notice thereof in accordance with the Bidding Procedures Order and will submit any such purchase agreements to the Court in advance of the Sale Hearing.

27. To effectuate the Sale Process, the Debtors hereby request that the Court authorize the scheduling of the Auction, as set forth in the Bidding Procedures Order, for July 18, 2025, at 10:00 am (ET), at the Delaware offices of Cole Schotz. In the event that no Qualified Bids are submitted before the Bid Deadline (both defined in the Bidding Procedures), the Debtor will cancel the Auction and seek to consummate the proposed Sale with the Stalking Horse Bidder; *provided*,

however, that any changes to the dates and deadlines set forth herein shall comply with any milestones contained in any order for the use of cash collateral entered by the Court in these cases.

28. The Debtors further ask the Court to schedule a hearing for August 1, 2025 to consider and approve the Sale and to resolve any objections to the assumption and assignment of the Assigned Contracts (the "Sale Hearing").

29. While all interested bidders should read the Bidding Procedures in their entirety, the following sets forth a summary of the key provisions of the Bidding Procedures, including those provisions required to be highlighted under Local Rule 6004-1.[7]

MATERIAL TERMS OF THE BIDDING PROCEDURES	
Provisions Governing Qualification of Bidders and Qualified Bids Local Rule 6004-1(c)(i)(A)-(B)	**A. Bid Deadline** – The Bid Deadline to submit a binding and irrevocable offer to acquire the Assets is **July 15, 2025, at 5:00 p.m. prevailing Eastern Time** (**Bidding Procedures, Section III.a.**). **B. Access to Diligence Materials –** To participate in the bidding process and receive due diligence information, including full access to the Debtors' electronic data room (the "Data Room") and additional non-public information regarding the Debtors (the "Diligence Materials"), parties interested in receiving due diligence information to participate in the bidding process (each, an "Interested Party") must deliver or have previously delivered to the Debtors, if determined to be necessary by the Debtors in their sole discretion, the Preliminary Bid Documents (as defined herein) to the following parties (the "Recipient Parties"): (i) proposed counsel to the Debtors, Cole Schotz, P.C. Attn. Gary H. Leibowitz (gleibowitz@coleschotz.com) 1201 Wills Street, Suite 320, Baltimore, MD 21231 and Patrick J. Reilley (preilley@coleschotz.com), 500 Delaware Avenue, Suite 600, Wilmington, DE; and (ii) advisors to the Debtors: Tower Partners, LLC, Attn: Erv Terwilliger, 5950 Symphony Woods Rd., Suite 302, Columbia, MD 21044. The "Preliminary Bid Documents" that must be submitted to the Recipient Parties include: (a) an executed confidentiality agreement using the Debtors'

[7] This summary is qualified in its entirety by the Bidding Procedures. All capitalized terms that are used in this summary but not otherwise defined herein shall have the meaning ascribed such term in the Bidding Procedures.

	form, as may be amended, on terms acceptable to the Debtors, to the extent not already executed (a "Confidentiality Agreement") and (b) a statement and/or other factual support demonstrating to the Debtors' satisfaction in the exercise of their reasonable business judgment that the Interested Party has a *bona fide* interest in purchasing all or any portion of the Assets. Any Interested Party who, in the Debtors' determination, qualifies for access to the Diligence Materials shall be deemed a "Potential Bidder." The Debtors will provide any Potential Bidder such due diligence access or additional information as the Debtors deem appropriate, which may include, without limitation, the right to withhold, restrict, or to delay providing any Diligence Materials to a Potential Bidder that the Debtors, in their reasonable discretion, determine are, among other things, business-sensitive, may risk unduly placing the Debtors at a competitive disadvantage, or are otherwise inappropriate for disclosure to such Potential Bidder at such time. The Potential Bidder shall return or destroy any non-public information the Debtors or their advisors provided to the Potential Bidder in accordance with the terms of the confidentiality agreement executed by the Debtors and the Potential Bidder. **(Bidding Procedures, Section I.b.)** **C. Form of Purchase and Sale Agreement and Sale Approval Order -** A Potential Bidder must submit (a) an asset purchase agreement (a "Purchase and Sale Agreement"), similar in form and substance to the Stalking Horse Agreement, accompanied by a comparison of the Purchase and Sale Agreement to the Stalking Horse Agreement and (b) a proposed Sale Approval Order, similar in form and substance, as modified, to the Sale Order to be furnished by the Debtors in the Data Room and filed with the Court under notice before the Bidding Procedures Hearing (the "Form Sale Approval Order"). **(Bidding Procedures, Section II.b.)** **D. Qualified Bids -** To be eligible to participate in the Auction and to be eligible for consideration as a Qualified Bidder, a Potential Bidder must deliver a Bid, so as to be received by the Recipient Parties on or before the Bid Deadline, that meets the following requirements (collectively, the "Bid Conditions"): • **Purpose and Identity of Assets to be Purchased.** Each Bidder must state that the Bid includes an offer by the Bidder to effectuate a Sale Transaction and identify with specificity which Assets are included in the Bid. • **Good Faith Deposit.** Each Bid must be accompanied by a cash deposit (the "Good Faith Deposit") in the form of a wire transfer, certified or cashier's check, in an amount equal to or exceeding the Stalking Horse Deposit ($450,000.00), payable to the order of

	counsel pursuant to instructions to be provided by the Debtors, which will be held in a non-interest-bearing escrow or trust account. • **Purchase Price.** Each Bid must clearly set forth the purchase price (the "Purchase Price") and which liabilities, if any, of the Debtors the Bidder is agreeing to assume (the "Assumed Liabilities"). The Purchase Price must equal or exceed the sum of (i) the Stalking Horse Purchase Price ($9,000,000.00), (ii) the Break-Up Fee ($360,000.00), and (iii) $250,000.00 (the "Minimum Overbid"); for the avoidance of doubt the forgoing results in a minimum acceptable topping bid of $9,610,000.00 (a "Topping Bid"). • **Binding and Irrevocable.** Each Bid must include a signed writing stating that it is binding and irrevocable until the selection of the Successful Bidder, provided that if such Bidder is selected as the Successful Bidder or the Back-Up Bidder, its offer shall remain irrevocable until the closing of the Sale with the Successful Bidder or, as applicable, the Back-Up Bidder (the "Closing"). • **Contemplated Transaction Documents.** Each Bid must include an executed Purchase and Sale Agreement marked against the Stalking Horse Agreement, pursuant to which the Qualified Bidder proposes to effectuate the contemplated Sale Transaction including: (i) a comparison copy of the Purchase and Sale Agreement marked to show all changes requested by the Qualified Bidder against the Stalking Horse Agreement; (ii) specification of the proposed Purchase Price allocated, if applicable; and (iii) any changes to any exhibits or schedules to the Purchase and Sale Agreement (collectively, the "Contemplated Transaction Documents"). The terms and conditions of the Contemplated Transaction Documents must be, in the aggregate, not materially more burdensome to the Debtors than the provisions contained in the Stalking Horse Agreement. A Bid must identify with particularity each and every condition to Closing and all executory contracts and unexpired leases the Bidder expects the Debtors to assume and assign to the Bidder (the "Assigned Contracts") pursuant to the Contemplated Transaction Documents. All Bids must provide that all Cure Amounts (as defined herein) will be paid by such Bidder. **The Contemplated Transaction Documents must include a commitment to close by no later than August 6, 2025.** • **Contingencies.** A Bid must be a firm offer and may not contain any contingencies to the validity, effectiveness, or binding nature of the offer, including, without limitation, contingencies for financing, due diligence, or inspection; *provided, however,* that a Bid may provide for the same contingencies contained in the Stalking Horse Agreement. • **No Collusion.** Each Bid must include a representation that the Bidder has not engaged in any collusion with respect to its Bid submission (though Potential Bidders are permitted to make joint

	bids) and that the Bidder will not engage in any collusion with respect to any Bids, the Auction, or the Sale Process. • **Authorization to Bid and Identity of Bidder**. Each Bid must include evidence of authorization and approval from such Potential Bidder's board of directors (or comparable governing body, or a statement as to why such approval is unnecessary) with respect to the submission, execution, delivery, and closing of the Contemplated Transaction Documents. A Bid must also fully disclose the identity of the entity that is submitting the Bid, including the identity of the ultimate beneficial owners of the Bidder and the identity of any person or entity providing debt or equity financing for the Bid. • **Financing Sources**. Each Bid must include written evidence that demonstrates the Potential Bidder has the necessary financial ability to close the contemplated Sale Transaction and provide adequate assurance of future performance under all Assigned Contracts. Such information may include, *inter alia*, the following: 1. the Potential Bidder's current financial statements (audited, if they exist); 2. contact names, telephone numbers, and e-mail addresses for verification of financing sources; 3. evidence of the Potential Bidder's internal resources and proof of any debt or equity funding commitments that are needed to close the contemplated Sale Transaction (including confirmation that the funding of such commitments is not subject to any contingency); 4. proof by the Potential Bidder of its financial capacity to close its proposed Sale Transaction, which may include written representations of the Potential Bidder's financial wherewithal or financial statements of, or verified financial commitments obtained by, the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of acquiring all or any portion of the Assets, the party that will bear liability for a breach), the adequacy of which will be assessed by the Debtors in their sole discretion (including in consultation with their advisors); and 5. any other form of financial disclosure of credit-quality support information acceptable to the Debtors demonstrating that such Potential Bidder has the ability to close the contemplated Sale Transaction. • **Adequate Assurance of Future Performance**. Each Bid must demonstrate, in the Debtors' reasonable business judgment, that the potential Bidder can provide adequate assurance of future

	performance to the applicable counterparty under all Assigned Contracts as required by section 365 of the Bankruptcy Code. • **No Fees Payable to Qualified Bidder.** Other than any Stalking Horse Bidder, a Bidder may not request any break-up fee, termination fee, expense reimbursement, or any similar type of payment. Moreover, by submitting a Bid, a Bidder shall be deemed to waive the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code relating in any way to the submission of its Bid, compliance with the Bid Procedures, or participation in the Sale Process. • **Payment of the Break-Up Fee and Expense Reimbursement.** A Bid must allow for the payment of the Break-Up Fee to the Stalking Horse Bidder from the first proceeds of the cash portion of the Purchase Price of such Bid upon Closing. • **Non-Reliance.** A Bid must include an acknowledgement and representation of the Potential Bidder that it has had an opportunity to conduct any and all due diligence regarding the Assets (as applicable to its Bid) and Assumed Liabilities prior to making its Bid, that it has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid, and that it did not rely upon any written or oral statements, representations, warranties, or guaranties, express, implied, statutory or otherwise, regarding the Assets, the financial performance of the Assets or, as applicable, the physical condition of the Assets, the Assumed Liabilities, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Contemplated Transaction Documents. • **As Is, Where Is.** A Bid must include an acknowledgement and representation of the Potential Bidder that it understands that any Sale Transaction 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 the estates except to the extent set forth in the Purchase and Sale Agreement of the Successful Bidder. **(Bidding Procedures, Section III.b.(i)-(xiv))**

Provisions Providing Bid Protections to "Stalking Horse" or Initial Bidder Local Rule 6004- 1(c)(i)(C)	The Debtors have entered into a Stalking Horse Agreement, as more thoroughly explained in the Motion and attached thereto as Exhibit B. The Stalking Horse Agreement, as authorized by the Court's Bidding Procedures Order, provides for a break-up fee of $360,000 payable to the Stalking Horse Bidder within three (3) Business Days after the entry of a Sale Order to another purchaser (the "Break-Up Fee"). The Break-Up Fee is the only bid protection provided to the Stalking Horse Bidder and is in lieu of any expense reimbursement. Pursuant to the Stalking Horse Agreement and the Court's Bidding Procedures Order, the Stalking Horse Bidder has provided a deposit of $450,000.00 (the "Stalking Horse Deposit"), which is being held by the Debtor's Escrow Agent. The Stalking Horse Agreement is subject to higher and better bids that maybe submitted pursuant to these Bidding Procedures. **(Bidding Procedures, Section II.a.)**
Provisions Governing the Auction Local Rule 6004- 1(c)(ii)	Pursuant to the Bidding Procedures Order, the Debtors will only commence with the Auction if at least one Topping Bid is received before the Bid Deadline. If no Topping Bids are received, the Stalking Horse Bidder will be deemed the Bidder and the Debtor will cancel the Auction. If at least one Topping Bid is received before the Bid Deadline, then after the receipt and review of all Qualified Bids, the Debtors shall make a determination, in consultation with their advisors, in their business judgment, as to which Topping Bid is the highest and best, and that Bid will be deemed the "Baseline Bid" for purposes of the Auction. The determination of which Qualified Bid constitutes the Baseline Bid and which Qualified Bid constitute the Successful Bid (as defined herein) shall take into account any factors the Debtors reasonably deem relevant to the value of the Qualified Bid to their estates, including, inter alia: (a) the amount and nature of the consideration; (b) the certainty of closing; (c) the net economic effect of any changes to the value to be received by the Debtors' creditors from the proposed Sale Transaction; (d) the allocation of the Purchase Price between or among Assets; (e) tax consequences of such Qualified Bid; and (f) any other quantitative or qualitative criteria available to assess such Bid (collectively, the "Bid Assessment Criteria"). No later than Noon (prevailing Eastern Time) two (2) days preceding the Auction, the Debtors shall file a notice on the Court's docket (an "Auction Notice") providing notice of the location of the Auction. Unless otherwise designated by the Debtors, the Auction shall commence at ***10:00 a.m. (Eastern Time) on July 18, 2025***, at a location to be designated in the Auction Notice. In the Debtors' discretion, the Auction may be held by telephonic or video conference. The Auction shall be conducted according to the following procedures: • **Participation in the Auction.** Only the Stalking Horse Bidder, Qualified Bidders that have submitted Qualified Bids, and the Debtors prepetition lenders, subject to the credit biding requirements herein, are eligible to participate at the Auction. Only the authorized representatives and professional advisors of each of the forgoing, as

	well authorized representatives of the United States Trustee for the District of Delaware and other parties in interest, shall be permitted to attend the Auction. Except as otherwise set forth herein, the Debtors may conduct the Auction in the manner they determine will result in the highest or best offer for the Assets in accordance with the Bidding Procedures. • **The Debtors Shall Conduct the Auction.** The Debtors and their professionals shall direct and preside over the Auction. At the start of the Auction, the Debtors shall describe the terms of any Baseline Bid. All Bids made thereafter shall be Overbids (as defined herein) and shall be made and received on an open basis, and all material terms of each Bid shall be fully disclosed to all other Qualified Bidders. The Debtors reserve the right to conduct the Auction in a manner designed to maximize value based upon the nature and extent of the Qualified Bids received in accordance with the Bidding Procedures, the Bidding Procedures Order, the Bankruptcy Code, and any other order of the Court entered in connection herewith and disclosed to each Qualified Bidder. The Debtors shall maintain a transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Successful Bid. Pursuant to Local Rule 6004-1, each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the Sale Process, the Bid Procedures, the Auction, or the proposed Sale Transaction. • **Terms of Overbids.** An "<u>Overbid</u>" is any bid made at the Auction by a Qualified Bidder subsequent to the Debtors' announcement of the applicable Baseline Bid that satisfies the following conditions: (i) <u>Minimum Increment.</u> During the Auction, bidding shall begin with the Baseline Bid. The initial Overbid after the Baseline Bid (the "<u>Initial Overbid</u>") shall be made in an increment announced on the record prior to the start of the Auction, but in no event to be less than $100,000.00 (the "<u>Minimum Increment</u>") plus, solely in the event the Baseline Bid is the Stalking Horse Bid, the Break-Up Fee. Any Overbids subsequent to the Initial Overbid shall be made in increments of at least the applicable Minimum Increment; *provided, however*, that the Stalking Horse Bidder may credit bid the Break-Up Fee, and the Debtors will net-out any Overbids by the Staking Horse Bidder or other Over Bidders as appropriate to determine the highest and best Bid. After setting the Minimum Increment, such amount may be adjusted by the Debtors in response to bidding activity. Any Overbid made by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless the Debtors accept a higher Qualified Bid as an Overbid. (ii) <u>Consideration of Overbids.</u> The Debtors reserve the right to make one or more adjournments in the Auction to, among other things: facilitate discussions between the Debtors and individual Qualified Bidders; allow individual Qualified

	Bidders to consider how they wish to proceed; and give Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in the exercise of their business judgment, may require, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed Sale Transaction at the prevailing Overbid amount. (iii) Evidence of Ability to Close Sale Transactions. To the extent not previously provided on or before the Bid Deadline, a Qualified Bidder submitting an Overbid must submit, as part of its Overbid, evidence reasonably acceptable to the Debtors demonstrating such Qualified Bidder's ability to close the Sale Transaction proposed by such Overbid. • **Additional Procedures.** The Debtors may (a) determine which Qualified Bid or Qualified Bids, if any, is the highest or best offer, (b) reject at any time before entry of an order of the Court approving a Sale Transaction pursuant to a Qualified Bid, any Bid that is (i) inadequate or insufficient; (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the Bidding Procedures Order; or (iii) contrary to the best interests of the Debtors, their estates, and their creditors, (c) modify the Bidding Procedures in response to the bidding activity at the Auction. • **Consent to Jurisdiction as Condition to Bidding.** All Qualified Bidders at the Auction shall be deemed to have consented to the core jurisdiction of the Court and to have waived any right to a jury trial in connection with any disputes relating to the Sale process, the Auction, the Bidding Procedures, and the construction and enforcement of each Qualified Bidder's Contemplated Transaction Documents, as applicable. • **Closing the Auction.** The Auction shall continue until there is only one Qualified Bid for all of the Assets that the Debtors determine is the highest or otherwise best Qualified Bid (such Qualified Bid, the "Successful Bid," and such Qualified Bidder, the "Successful Bidder"), and that further bidding is unlikely to result in a higher or otherwise better Qualified Bid, at which point, the Auction will be closed. The Auction shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction. In selecting the Successful Bid, the Debtors may consider all factors relevant to the sale of the Assets, including the Bid Assessment Criteria. As soon as reasonably practicable after the closing of the Auction, the Debtors shall identify the Successful Bidder and the Successful Bid, and the Back-Up Bidder and Back-Up Bid, which highest or best offer will provide the greatest amount of net value to the Debtors, and advise the Qualified Bidders of such determination. The Qualified Bidder with the second highest or otherwise best Bid at the Auction, as determined by

	the Debtors, shall be required to serve as the back-up bidder (the "Back-Up Bidder"). The identity of the Back-Up Bidder and the amount and material terms of the final Bid of the Back-Up Bidder (the "Back-Up Bid") shall be announced by the Debtors at the conclusion of the Auction at the same time the Debtors announce the Successful Bid. Any Back-Up Bidder shall keep its Back-Up Bid open and irrevocable until the Closing of the Sale Transaction with the Successful Bidder, unless otherwise agreed by the Debtors. The Good Faith Deposit of the Back-Up Bidder shall be returned by the Debtors within three (3) days after Closing. The Debtors shall not consider any Bids or Overbids submitted after the closing of the Auction and any and all such Bids and Overbids shall be deemed untimely. As stated above, the Successful Bid of the Successful Bidder and the Back-Up Bid of the Back-Up Bidder, respectively, must be irrevocable until Closing. For the avoidance of doubt, nothing in the Bidding Procedures, including, without limitation, the auction procedures, prevents the Debtors from exercising their respective fiduciary duties under applicable law (as reasonably determined in good faith by the Debtors in consultation with their outside legal counsel). **(Bidding Procedures, Section IV.)**

FORM AND MANNER OF NOTICE

30. As soon as reasonably practicable after entry of the Bidding Procedures Order, the Debtors will serve the Sale Notice, the Bidding Procedures Order, and the Bidding Procedures upon the following parties or their respective counsel, if known (collectively, the "Notice Parties"): (i) the U.S. Trustee; (ii) counsel to the Debtors' prepetition lenders, counsel to BofA, (a) Chapman and Cutler, LLP, Attn. Daniel F. Flores (dflores@chapman.com) and J. Alex Kress (akress@chapman.com) 1270 Avenue of the Americas, 30th Floor, New York, NY 10020 and (b) Morris James, LLP, Attn. Carl Kunz (ckunz@morrisjames.com), 500 Delaware Avenue, Suite 1500, Wilmington, DE 19801-1494 and counsel to Northfield Savings Bank, Dinse, Attn: Afi Ahmadi (aahmadi@dinse.com), 209 Battery Street, Burlington, VT 05401; (iii) counsel to the ESOP Trust; (iv) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis; (v) counsel to the Stalking Horse Bidder; (vi) the United States Attorney's

Office for the District of Delaware; (vii) the Internal Revenue Service; (viii) the attorneys general for the states in which the Debtors operate; (ix) any parties known or reasonably believed to have expressed an interest in the Debtors' assets; (x) all entities known or reasonably believed to have asserted a lien, encumbrance, claim, or other interest in any of the Debtors' assets; and (x) any party that has requested notice pursuant to Bankruptcy Rule 2002.

31. Additionally, as soon as practicable after entry of the Bidding Procedures Order, the Debtors shall publish a notice, substantially in the form of the Sale Notice, on one occasion, in the national edition of *USA Today* (or another national publication). This publication notice will provide notice of the sale to any other interested parties whose identities are unknown to the Debtors.

32. The Debtors submit that the Sale Notice is reasonably calculated to provide all interested parties with timely and proper notice of the proposed sale, including: (a) the date, time, and place of the Auction (if one is held); (b) the Bidding Procedures and the dates and deadlines related thereto; (c) the dates and deadlines related to the Sale Hearing; and (d) instructions for promptly obtaining a copy of the any Stalking Horse Agreement. Accordingly, the Debtors request that the form and manner of the Sale Notice be approved and that the Court determine that no other or further notice of the Auction or Sale Hearing is required.

ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

33. To facilitate the Sale, the Debtors seek authority to assume and assign Contracts and Leases (the "Assigned Contracts") designated by the Successful Bidder. The Debtors seek authority to assume and assign the Assigned Contracts to the Successful Bidder in accordance with the assumption and assignment procedures set forth below (the "Assumption Procedures"), to govern the assumption and assignment of all of the Debtors' executory contracts and unexpired

leases to be assumed and assigned in connection with the Sale, subject to the payment of any amounts necessary to cure any defaults arising under any Assigned Contract (the "Cure Payments"). The Assumption Procedures are as follows:[8]

a. **Contract Assumption Notice.** On or prior to **July 10, 2025**, the Debtors shall file with the Court and serve a notice of contract assumption (the "Assumption Notice"), in substantially the form attached hereto as **Exhibit 3**, via overnight delivery on all counterparties to all potential Assigned Contracts (each, a "Counterparty" and, collectively, the "Counterparties"). The Assumption Notice shall include, without limitation, a list of Assigned Contracts (the "Assigned Contract List") that may be assumed and assigned in connection with the Sale and the Cure Payment, if any, that the Debtors believe is required to be paid to the applicable Counterparty under Bankruptcy Code sections 365(b)(1)(A) and (B) for each of the Assigned Contracts. If no Cure Payment is listed on the Assigned Contracts List for a particular Assigned Contract, the Debtors' asserted Cure Payment for such Assigned Contract shall be deemed to be $0.00. The Assigned Contracts List shall identify each of the potential Assigned Contracts by the name or appropriate description and date of such potential Assigned Contract (if available), the Counterparties and the address of such Counterparties for notice purposes. Service of an Assumption Notice does not constitute an admission that such contract is an executory contract or unexpired lease or that such stated Cure Payment constitutes a claim against the Debtors or a right against the Successful Bidder (all rights with respect thereto being expressly reserved). Further, the inclusion of a contract or lease on the Assumption Notice is not a guarantee that such contract will ultimately be assumed and assigned.

b. **Contract Objections**. Objections, if any, to the proposed assumption and assignment of a contract or lease, including objections to Cure Payments (each, as defined above, a "Contract Objection"), must (i) be in writing, (ii) comply with the applicable provisions of the Bankruptcy Rules, and the Local Rules, (iii) state with specificity the nature of the objection and, if the objection pertains to the proposed Cure Payment, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof, and (iv) be filed with the Court and served by the Objection Notice Parties before the Sale Objection Deadline, except as otherwise set forth below with respect to Subsequently Designated Assigned Contracts. If such Contract Objection has not been resolved prior to the closing of the Sale (whether by an order of the Court

[8] This summary is qualified in its entirety by the Bidding Procedures Order. All capitalized terms that are used in this summary but not otherwise defined herein shall have the meaning ascribed such term in the Bidding Procedures Order. To the extent there are any conflicts or inconsistencies between this summary and the Bidding Procedures Order, the terms of the Bidding Procedures Order shall govern in all respects.

or by agreement with the Counterparty), the Successful Bidder may (a) treat such Counterparty's contract or lease as part of assets excluded from the Sale Transaction or (b) temporarily treat the Counterparty's contract or lease as part of assets excluded from the Sale Transaction (a "Designated Agreement"), proceed to the closing of the Sale with respect to all other Assets, and determine whether to treat the Designated Agreement as an Assigned Contract, or part of assets excluded from the Sale Transaction within ten (10) 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).

c. **Changes to Assigned Contract List and Cure Payments.** At the election of the Successful Bidder, up until two (2) business days prior to the closing of any Sale, the Debtors may file and serve supplements or amendments to the Assigned Contracts List (each, a "Supplemental Assumption Notice") to (i) add previously omitted Assigned Contracts to the Assigned Contracts List as contracts that may be assumed and assigned to a Successful Bidder in accordance with the definitive agreement for the Sale by filing a supplement to the Assigned Contracts List or (ii) modify the Cure Payment for any Assigned Contract (together, "Subsequently Designated Assigned Contracts"). Contract Objections with respect to Subsequently Designated Assigned Contracts shall be filed no later than ten (10) days from service of a Supplemental Assumption Notice identifying the Subsequently Designated Assigned Contracts and served on the Objection Notice Parties (the "Subsequently Designated Assigned Contracts Deadline"). Such objections must (a) be in writing, (b) comply with the applicable provisions of the Bankruptcy Rules, and the Local Rules, (c) state, with specificity, the legal and factual bases thereof, and (d) be filed with the Court and served by the Objection Notice Parties. Any party or entity who fails to timely and properly make an objection with respect to the Subsequently Designated Assigned Contracts on or before the Subsequently Designated Assigned Contracts Deadline shall be forever barred from asserting any objection with respect to the Subsequently Designated Assigned Contracts.

d. **Removal of Contracts from Assigned Contract List.** Up until two (2) business days prior to Closing, the Debtors are authorized, but not directed, if the Purchaser so requests, to remove an Assigned Contract from the Assigned Contract List that a successful bidder proposes be assumed and assigned in connection with the Sale.

e. **Assigned Contracts.** At the Sale Hearing, the Debtors will seek Court approval of the assumption and assignment to the Successful Bidder of the Assigned Contracts, subject to the dispute resolution procedures set forth in paragraph 11.b in the Bidding Procedures Order; *provided that,* in the event the Successful Bidder is not the Stalking Horse Bidder, objections to adequate assurance of future performance of the Assigned Contracts by such Successful Bidder shall be heard at a subsequent hearing, as set forth in paragraph 11.b in the Bidding Procedures Order. The inclusion of an Assigned Contract on an Assumption Notice will not (a) obligate the Debtors to assume any Assigned Contract listed thereon nor the Successful Bidder to take assignment of such Assigned Contract or (b) constitute any admission or agreement of the Debtors that such Assigned Contract is an executory contract.

f. **Back-Up Bidder Adequate Assurance Objections.** In the event that a Successful Bidder does not consummate the Sale and a Back-Up Bidder (other than the Stalking Horse Bidder) has been previously identified, the Debtors shall file with the Court and post on the case website, https://cases.stretto.com/AGR, a Notice of Intent to Proceed with Back-Up Bid, together with a copy of the Back-Up Bidder's proposed purchase agreement and financial and other information regarding adequate assurance of future performance of the Assigned Contracts by the Back-Up Bidder (including the name of the Back-Up Bidder and description of its business), and serve the Notice of Intent to Proceed with Back-Up Bid on the Counterparties by overnight delivery, and the Counterparties shall have seven (7) days to file and serve on the Objection Notice Parties a Contract Objection solely on the basis of adequate assurance of future performance by the Back-Up Bidder. If any objections are filed, the Debtors shall schedule a hearing, which may be expedited, upon reasonable notice under the circumstances (which shall be no less than ten (10) days after the Notice of Intent to Proceed with Back-Up Bid is filed), with respect to such Contract Objections.

g. **Contract Assumption at Closing.** No Assigned Contract shall be deemed assumed and assigned pursuant to section 365 of the Bankruptcy Code until the later of (i) the date the Court has entered an order authorizing the assumption and assignment of such Assigned Contracts or (ii) the date the Sale has closed.

34. Any party failing to timely and properly file an objection to the Cure Payment or the proposed assumption and assignment of an Assigned Contract listed on the Contract Assumption Notice is deemed to have consented to (a) such Cure Payment, (b) the assumption and assignment of such Assigned Contract, (c) the related relief requested in the Motion, and (d) the Sale. Such party shall be forever barred and estopped from objecting to the Cure Payments, the assumption and assignment of the Assigned Contract, adequate assurance of future performance, the relief requested in the Motion, whether applicable law excuses such counterparty from accepting performance by, or rendering performance to, the Successful Bidder for purposes of

section 365(c)(1) of the Bankruptcy Code, and from asserting any additional cure or other amounts against the Debtors and the Successful Bidder, as applicable, with respect to such party's Assigned Contract.

35. To provide the Counterparties with information concerning the Successful Bidder and any Back-Up Bidder who may take assignment of their contracts or leases and enable them to object to such assignment on adequate assurance grounds (to the extent the Successful Bidder/Back-Up Bidder is not a Stalking Horse Bidder), on **July 19, 2025**, or as soon as reasonably practicable after the Auction concludes, the Debtors shall file with the Court and serve on all Counterparties by email (where available) or overnight delivery the Notice of Successful Bidder substantially in the form attached as **Exhibit 4** to the Bidding Procedures Order.

BASIS FOR RELIEF REQUESTED

I. Approval of the Sale is Warranted Under Bankruptcy Code Section 363(b), and the Bidding Procedures, Including Entry into the Stalking Horse Agreement, are Appropriate and in the Best Interests of the Debtors' Estates and Creditors.

36. Section 363 of the Bankruptcy Code provides that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate . . . ." 11 U.S.C. § 363(b)(1). A debtor must demonstrate a sound business justification for the sale or use of assets outside the ordinary course of business. *See, e.g.*, *Myers v. Martin (In re Martin)*, 91 F.3d 389, 395 (3d Cir. 1996); *Dai Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 175 76 (D. Del. 1991).

37. Once a court determines that a valid business justification exists for a sale outside of the ordinary course of business, courts must determine whether: (a) adequate and reasonable notice of the sale was given to interested parties, (b) the sale will produce a fair and reasonable price for the property, and (c) the parties have acted in good faith. *In re Elpida Memory, Inc.*, No.

12-10947 (CSS), 2012 WL 6090194, at *5 (Bankr. D. Del. Nov. 20, 2012); *In re Exaeris Inc.*, 380 B.R. 741, 744 (Bankr. D. Del. 2008). As described below, the proposed Sale meets each of these requirements.

38. Here, a strong business justification exists for the Sale. As described above and in the First Day Declaration, the Debtors have determined, in consultation with their advisors and following a review of their financial alternatives and strategies, that a sale process is the most effective way to maximize value for all stakeholders given the impending expiration of the Forbearance Agreement and the lack of access to credit. As a result, an expeditious sale of the Assets is a reasonable exercise of the Debtors' business judgment and is in the best interests of all of the Debtors' stakeholders.

II. <u>Bidding Procedures are Fair and Designed to Maximize Value.</u>

39. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See, e.g., In re Dura Auto. Sys., Inc.*, Case No. 06-11202 (KJC), 2007 WL 7728109, at *90 (Bankr. D. Del. Aug. 16, 2007); *see also In re Mushroom Transp. Co., Inc.*, 382 F.3d 325, 339 (3d Cir. 2004) (debtor-in-possession "had a fiduciary duty to protect and maximize the estate's assets"); *Official Comm. of Unsecured Creditors of Cybergenics Corp., v. Chinery*, 330 F.3d 548, 573 (3d Cir. 2003) (same); *Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 564–65 (8th Cir. 1997) (in bankruptcy sales, "a primary objective of the Code is to enhance the value of the estate at hand").

40. To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and are appropriate in the context of bankruptcy sales. *See, e.g., See Dura Auto. Sys.*, 2007 WL 7728109, at *90 (citing *In re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998) ("The purpose

of procedural bidding orders is to facilitate an open and fair public sale designed to maximize value for the estate.”)).

41. Here, the proposed Bidding Procedures, including entry into the Stalking Horse Agreement, will allow and encourage interested parties to submit competing bids at the Auction, thereby maximizing the value that the Debtors will receive for the Assets. By inviting all potential purchasers to participate in the Auction, the Debtors will be able to determine the highest and best price possible for the Assets. The Bidding Procedures will increase the likelihood that the Debtors will receive the greatest consideration possible for the Assets and will facilitate a competitive and fair bidding process.

42. The proposed Bidding Procedures will allow the Debtors to conduct the Auction in a controlled, fair, and open fashion that will encourage participation by financially capable bidders who demonstrate the ability to close a transaction. The Bidding Procedures (a) will encourage, rather than hinder, bidding for the Assets; (b) are consistent with other procedures previously approved by courts in this district; and (c) are appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings.

43. In sum, the Debtors believe that the proposed Bidding Procedures, including entry into the Stalking Horse Agreement, create an appropriate framework for expeditiously establishing that the Debtors are receiving the best or otherwise highest offer for the Assets. Accordingly, the proposed Bidding Procedures and the Stalking Horse Agreement are reasonable, appropriate, and within the Debtors’ sound business judgment under the circumstances.

III. The Bid Protections Have a Sound Business Purpose and Should be Approved.

44. The Debtors are also seeking authority to enter into, and perform under, the Stalking Horse Agreement, including the Bid Protections, subject to higher and better bids received at any Auction. The use of a stalking horse in a public auction process for sales is a customary practice

in chapter 11 cases because the use of a stalking horse bid is, in many circumstances, the best way to maximize value in an auction process by "establish[ing] a framework for competitive bidding and facilitat[ing] a realization of that value." *See Official Comm. Unsecured Creditors v. Interforum Holding LLC,* No. 11-CV-219, 2011 WL 2671254, at*1 n. 1 (E.D. Wis. July 7, 2011). As a result, stalking horse bidders virtually always require break-up fees and, in many cases, other forms of bidding protections as an inducement for "setting the floor at auction, exposing its bid to competing bidders, and providing other bidders with access to the due diligence necessary to enter into an asset purchase agreement." *Id.* (citation omitted). Thus, the use of bidding protections has become an established practice in chapter 11 cases.

45. The United States Court of Appeals for the Third Circuit has established standards for determining the propriety of bidding incentives in the bankruptcy context. *See O'Brien Envt'l. Energy, Inc.*, 181 F.3d 527, 533-38 (3d Cir. 1999); *see also In re Reliant Energy Channelview LP*, 594 F.3d 200, 205 (3d Cir. 2010) (noting that *O'Brien* "set forth the controlling legal principles" applicable to bidding incentives). The Court has held that even though bidding incentives, including break-up fees, are measured against a business judgment standard in nonbankruptcy transactions, the administrative expense provisions of section 503(b) of the Bankruptcy Code govern in the bankruptcy context. *See O'Brien Envt'l. Energy,* 181 F.3d at 535. Accordingly, bidding incentives must provide some post-petition benefit to the debtor's estate in order to be approved. *See In re Energy Future Holdings Corp.*, 904 F.3d 298, 314 (3d Cir. 2018); *O'Brien Envt'l. Energy*, 181 F.3d at 533. With respect to break-up fees, the standard is generally satisfied if the bid protections promote a more competitive process, for example. *O'Brien Envt'l. Energy,* 181 F.3d at 537.

46. The Debtors believe that the Bid Protections are appropriate and reasonable under the circumstances. Here, the Bid Protections consist only of a 4% Break-Up Fee, which is well-within the customary range approved in similar cases. In negotiating the Stalking Horse Agreement at arms'-length with the Stalking Horse Bidder, the Break-Up Fee was necessary to induce the Stalking Horse Bidder to enter the agreement. As such, the Bid Protections will create a baseline from which other potential bidders can submit higher or better offers, and will encourage more competitive bidding, which will likely increase the purchase price of the Assets. The Bid Protections will therefore enable the Debtors to maximize the value of their estates for the benefit of all economic stakeholders in these Chapter 11 Cases.

47. Courts in this District have routinely authorized a debtor to offer Bid Protections to attract and retain a Stalking Horse Bidder to purchase a debtor's assets under section 363 of the Bankruptcy Code. *See, e.g., In re Gritstone Bio, Inc.*, Case No. 24-12305 (KBO) (Bankr. D. Del. Nov. 14, 2024) [Docket No. 181] (pre-approving break-up fee and expense reimbursement equal to 5% of purchase price); *In re iSun Inc., et al.*, Case No. 24-11144 (TMH) (Bankr. D. Del. July 10, 2024) [Docket No. 183] (approving break-up fee and expense reimbursement equal to 7.5% of purchase price); *In re Express Inc., et al.*, Case No. 24-10831 (KBO) (Bankr. D. Del. June 6, 2024) (approving break-up fee and expense reimbursement equal to 6% of purchase price) [Docket No. 427]; *In re Plastiq, Inc., et al.*, Case No. 23-10671 (BLS) (Bankr. D. Del. June 21, 2023) [Docket No. 127] (approving break-up fee and expense reimbursement equal to 7% of purchase price); *Am. Virtual Cloud Techs., Inc., et al.*, Case No. 23-10020 (MFW) (Bankr. D. Del. Feb. 24, 2023) [Docket No. 150] (approving break-up fee and expense reimbursement equal to 7% of purchase price).

IV. The Assets Should be Sold Free and Clear of Claims, Liens, and Encumbrances Under Section 363(f) and Successor Liability Claims.

48. The Debtors also submit that the Sale of the Assets should be free and clear of any and all Interests under section 363(f) of the Bankruptcy Code (other than assumed liabilities and permitted encumbrances as provided in the Stalking Horse Agreement or purchase agreement for the Successful Bid or Backup Bid, as applicable). Section 363(f) of the Bankruptcy Code permits a debtor to sell property free and clear of third-party liens, claims, and interests only if:

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

11 U.S.C. § 363(f). Since section 363(f) of the Bankruptcy Code is written in the disjunctive; any of the five conditions provides authority to sell free and clear of Interests. *See In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002); *In re Collins*, 180 B.R. 447, 450 (Bankr. E.D. Va. 1995); *In re Dundee Equity Corp.*, 1992 WL 53743, at *4 (Bankr. S.D.N.Y. Mar. 6, 1992). The Debtors believe that they will be able to demonstrate at the Sale Hearing that they have satisfied one or more of these conditions.

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

49. Pursuant to section 363(m) of the Bankruptcy Code, a good faith purchaser is one who purchases assets for value, in good faith, and without notice of adverse claims. *See In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 147 (3d. Cir. 1986); *see also In re Mark Bell Furniture Warehouse, Inc.*, 992 F.2d 7, 9 (1st Cir. 1993); *In re Temtechco, Inc.*, 1998 WL 887256, at *5 (Bankr. D. Del. Dec. 18, 1998); *In re Congoleum Corp.*, 2007 WL 1428477, at *2 (Bankr. D.N.J.

May 11, 2007). The Debtors have no relationship with the Stalking Horse Bidder or its ownership as they are a competitor in the industry.

50. These Chapter 11 Cases and the proposed Bidding Procedures are aimed at further marketing the Assets in an exhaustive, yet efficient fashion. The Debtors diligently formulated the Bidding Procedures to ensure an open, fair process. Of note, the Bidding Procedures provide for the continuation of a sale process that the Debtors pursued prepetition and they permit Bids for the Assets. Pursuant to the Bidding Procedures, the Debtors will consider all Qualified Bids to ensure an arms' length, good faith Sale Process.

51. At the Sale Hearing the Debtors will make a record that any Successful Bidder is a "good faith" purchaser. Accordingly, the Debtors request that the Sale Order include a provision that the Successful Bidder for the Assets is a "good faith" purchaser within the meaning of section 363(m) of the Bankruptcy Code. The Debtors maintain that providing the Successful Bidder with such protection will ensure that the maximum price will be received by the Debtors for the Assets.

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

52. 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). Courts employ the business judgment standard in determining whether to approve a debtor's decision to assume or reject an executory contract or unexpired lease. *See, e.g., In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992) (assumption or rejection of lease "will be a matter of business judgment by the bankruptcy court"); *In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (finding that a debtor's decision to assume or reject executory contract is governed by business judgment standard and may only be overturned if decision is product of bad faith, whim, or caprice). The "business judgment" test in this context

only requires that a debtor demonstrate that assumption or rejection of an executory contract or unexpired lease benefits the estate. *See Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 40 (3d Cir. 1989).

53. The Court should approve the decision to assume and assign the executory contracts and unexpired leases in connection with the Sale as a sound exercise of the Debtors' business judgment, consistent with the well-settled standard in this district governing same. The potential Assigned Contracts include those executory contracts and unexpired leases that are necessary to run the Debtors' business. It is unlikely that any purchaser would want to acquire the Debtors' assets on a going-concern basis unless a significant number of the Assigned Contracts needed to conduct the business and manage the day-to-day operations were included in the transaction. As such, making the potential Assigned Contracts available for assignment is essential to inducing the best offer for the Assets.

54. Accordingly, the Debtors submit that the assumption and assignment of the Assigned Contracts by way of the Assumption Procedures should be approved as an exercise of their business judgment.

55. Upon finding that a debtor has exercised its business judgment in determining that assuming an executory contract or unexpired lease is in the best interest of its estate, courts must then evaluate whether the assumption meets the requirements of section 365(b) of the Bankruptcy Code that a debtor (a) cure, or provide adequate assurance of prompt cure of, prepetition defaults in the executory contract, (b) compensate parties for pecuniary losses arising therefrom, and (c) provide adequate assurance of future performance thereunder. 11 U.S.C. § 365. This section "attempts to strike a balance between two sometimes competing interests, the right of the contracting nondebtor

to get the performance it bargained for and the right of the debtor's creditors to get the benefit of the debtor's bargain." *Matter of Luce Indus., Inc.*, 8 B.R. 100, 107 (Bankr. S.D.N.Y. 1980).

56. The Debtors submit that the statutory requirements of section 365(b)(1)(A) of the Bankruptcy Code will be promptly satisfied. The proposed Assumption Procedures set forth in the Bidding Procedures Order provide a clear process by which the Debtors will provide notice of the potential assumption and assignment of executory contracts and unexpired leases and the procedures for resolving any objections thereto. The Assumption Procedures afford counterparties a meaningful opportunity to challenge the Debtors' proposed cure amounts and assumption and assignment of any executory contract or unexpired lease. Thus, the Bidding Procedures and Assumption Procedures ensure that all defaults will be cured in connection with the assignment of the Assigned Contracts, as required by section 365(b)(1)(A).

57. Similarly, the Debtors submit that counterparties will receive adequate assurance of future performance under the Assigned Contracts, as required by section 365(b)(1)(C) of the Bankruptcy Code. "The phrase 'adequate assurance of future performance' adopted from section 2-609(1) of the Uniform Commercial Code, is to be given a practical, pragmatic construction based upon the facts and circumstances of each case." *Matter of U.L. Radio Corp.*, 19 B.R. 537, 542 (Bankr. S.D.N.Y. 1982). Although no single solution will satisfy every case, the required assurance will fall short of an absolute guarantee of performance. Among other things, adequate assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. *Luce Indus.*, 8 B.R. at 107; *see also In re Great Atl. & Pac. Tea Co., Inc.*, 472 B.R. 666, 674 (S.D.N.Y. 2012) ("A debtor need not provide 'an absolute guarantee of performance.'").

58. The Debtors believe that they will demonstrate that the requirements for assumption and assignment of certain Assigned Contracts to the Stalking Horse Bidder (or other Successful Bidder) will be satisfied. As required by the Bidding Procedures, the Debtors will evaluate the financial wherewithal of potential bidders before designating such party a Qualified Bidder (*e.g.*, financial credibility, willingness, and ability of the interested party to perform under the Assigned Contracts). Further, all Counterparties will be provided with notice of the proposed assumption and assignment and will have adequate time and opportunity to object to the assumption or proposed cure amount or otherwise be heard with respect thereto.

VII. The Form and Manner of the Sale Notice, and Notice of Successful Bidder Should Be Approved.

59. Pursuant to Bankruptcy Rule 2002(a), the Debtors are required to provide creditors with 21 days' notice of a proposed sale of the Debtors' assets. As soon as reasonably practicable following entry of the Bidding Procedures Order, the Debtors will cause the Sale Notice, the Bidding Procedures Order, and the Bidding Procedures to be served upon the Notice Parties, which the Debtors expect to occur in advance of the 21 days' notice period required by Bankruptcy Rule 2002(a).

60. The Sale Notice, which includes information concerning the "free and clear" nature of the Sale, the Bidding Procedures, the Stalking Horse Bid, and other material information, constitutes good and adequate notice of the Auction and the proceedings with respect thereto in compliance with, and satisfaction of, the applicable requirements of Bankruptcy Rule 2002 and Local Rule 6004-1. Accordingly, no further notice is necessary and the Debtors request that this Court approve the form and manner of the Sale Notice.

61. In addition, to provide the Counterparties with information concerning the Successful Bidder and any Back-Up Bidder who may take assignment of their contracts or leases

and enable them to object to such assignment on adequate assurance grounds (to the extent the Successful Bidder/Back-Up Bidder is not the Stalking Horse Bidder), on **July 19, 2025**, or as soon as reasonably practicable following the Auction, the Debtors shall file with the Court and serve on all Counterparties the Notice of Successful Bidder. The Debtors submit that such service of the Notice of Successful Bidder is sufficient to timely and properly notice that the Debtors will proceed with assumption and assignment of the Assigned Contracts in connection with the Sale. Accordingly, the Debtors request that this Court approve the form and manner of notice of the Notice of Successful Bidder.

VIII. The Stay of the Sale Order Should be Waived.

62. Pursuant to Bankruptcy Rules 6004(h) and 6006(d), an order authorizing the sale of property or the assignment of an unexpired lease is stayed for fourteen (14) days after the entry of an order unless the Court orders otherwise.

63. If the sale of the Assets cannot be consummated immediately following the Auction and the Sale Hearing, it is uncertain whether the Debtors can generate sufficient cash flow to operate. Accordingly, the Debtors request that the automatic fourteen (14) day stay under Bankruptcy Rules 6004(h) and 6006(d) be waived.

NOTICE

64. Notice of this Motion will be given to: (i) the U.S. Trustee; (ii) counsel to the Debtors' prepetition lenders; (iii) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis; (iv) counsel for the Stalking Horse Bidder; (v) the United States Attorney's Office for the District of Delaware; (vi) the Internal Revenue Service; (vii) the attorneys general for the states in which the Debtors operate; (viii) any parties known or reasonably believed to have expressed an interest in the Debtors' assets; (ix) all entities known or reasonably believed

to have asserted a lien, encumbrance, claim, or other interest in any of the Debtors' assets; and (x) any party that has requested notice pursuant to Bankruptcy Rule 2002.

65. A copy of this Motion is available on (i) the Court's website: www.deb.uscourts.gov, and (ii) the website maintained by the Debtors' claims and noticing agent, https://cases.stretto.com/AGR.

NO PRIOR REQUEST

66. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested by this Motion and such further relief as may be just and proper under the circumstances.

[Remainder of page intentionally left blank]

Dated: June 20, 2025
Wilmington, Delaware

COLE SCHOTZ P.C.

<u>/s/ Patrick J. Reilley</u>

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Proposed Counsel for Debtors and Debtors-in-Possession

<u>EXHIBIT A</u>
(Bidding Procedures Order)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: America's Gardening Resource, Inc., *et al.* Debtors.[1]	Chapter 11 Case No. 25-11180 BLS) (Jointly Administered) **Re: Docket No. ___**

ORDER (A) AUTHORIZING AND APPROVING BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (B) APPROVING THE DEBTORS' ENTRY INTO STALKING HORSE AGREEMENT AND RELATED BIDDING PROTECTIONS, (C) SCHEDULING THE AUCTION AND SALE HEARING, (D) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (E) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] filed by the above-captioned debtors and debtors in possession (the "Debtors") for entry of an order (this "Order") pursuant to sections 105(a), 363 and 365 of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 6004, 6006, 6007, 9007, 9008, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), (i) authorizing and approving sale and bidding procedures (the "Bidding Procedures") attached hereto as **Exhibit 1**, pursuant to which the Debtors will solicit and select the highest or otherwise best offer for the sale (the "Sale" or "Sale Transaction") of all or substantially all of the Debtors' Assets; (ii) approving the Debtors' entry into the Stalking Horse Agreement and authorizing the bid protections (the "Bid Protections"); (iii) authorizing and approving procedures for the assumption and assignment of

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: America's Gardening Resource, Inc. (9604); Gardener's Home LLC (0498); Serac Corporation (9800); IGH, Inc. (9336); Innovative Gardening Solutions, Inc. (3325). The location of the Debtors' corporate headquarters and the Debtors' service address in these chapter 11 cases is 128 Intervale Road, Burlington, Vermont 05401.

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

executory contracts and unexpired leases in connection with the Sale, including notice of proposed cure amounts; (iv) scheduling an auction (the "Auction"), if necessary, and a hearing to approve the Sale (the "Sale Hearing"); (v) approving the form and manner of (1) notice of the Auction and Sale Hearing (the "Sale Notice") attached hereto as **Exhibit 2**, (2) notice of the Assumption Procedures (the "Assumption Notice") attached hereto as **Exhibit 3**, and (3) notice of Successful Bidder and Back-Up Bidder (the "Notice of Successful Bidder") attached hereto **Exhibit 4**; (vi) establishing dates and deadlines in connection with the Sale, including the Bid Deadline (as defined in the Bidding Procedures), and the date of the Auction; and (vii) granting related relief, all as further described in the Motion; and upon consideration of the First Day Declaration, and the record of these chapter 11 cases; and this Court having found that (a) this Court has jurisdiction over the Debtors, their estates, property of their estates and to consider the Motion and the relief requested therein under 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012, (b) this Court may enter a final order consistent with Article III of the United States Constitution, (c) this is a core proceeding under 28 U.S.C. § 157(b), (d) venue of this proceeding and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409, and (e) the Debtors' notice of the Motion and opportunity for a hearing were adequate and appropriate under the circumstances and no other or further notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court (the "Hearing"); and having determined that the legal and factual bases set forth in the Motion and the First Day Declaration, establish just cause for the relief granted in this Order; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The Debtors have articulated good and sufficient reasons for, and the best interests of their estates and stakeholders will be served by, the Court scheduling or fixing dates pursuant to this this Order for, among other things, the (i) Bid Deadline; (ii) Sale Objection Deadline; (iii) Auction; and (iv) Sale Hearing, each as defined below.

B. The Bidding Procedures are fair, reasonable, and appropriate, and represent the best available method for maximizing value for the benefit of the Debtors' estates.

C. The Bidding Procedures were negotiated at arms' length, in good faith, and without collusion. The Bidding Procedures balance the Debtors' interests in consummating a Sale expeditiously while maximizing the purchase price for the Assets for the benefit of the Debtors' estates, their creditors, and other parties in interest.

D. Entry into the Stalking Horse Agreement is appropriate under the circumstances and in the best interests of the Debtors' creditors and estates. The Stalking Horse Agreement was negotiated in good faith and at arms'-length.

E. The Bid Protections were necessary to induce the Stalking Horse Bidder to enter into the Stalking Horse Agreement and to encourage active bidding throughout the sale process, thereby providing the best opportunity for the Debtors to maximize the value of their assets and return to stakeholders.

F. The Sale Notice, Assumption Notice, and Notice of Successful Bidder are reasonably calculated to provide the Sale Notice Parties, the Counterparties, and other interested parties with proper notice of the (i) Bidding Procedures; (ii) Auction; (iii) Sale Hearing; and (iv) Sale.

G. The Assumption Procedures are fair, reasonable, and appropriate and represent the best available method for maximizing value for the benefit of the Debtors' estates.

H. The Assumption Notice is reasonably calculated to provide the Counterparties and other interested parties with proper notice of the Assumption Notice Procedures (including the Contract Objection Deadline and Subsequently Designated Assigned Contracts Deadline).

I. The Motion, the Bidding Procedures, and the Assumption Procedures comply with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules.

J. Due, sufficient, and adequate notice of the relief granted herein has been given to all parties in interest.

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

1. The Motion is granted to the extent set forth in this Order.

2. All objections to the relief requested in the Motion that have not been withdrawn, waived, or settled prior to or at the Hearing are overruled.

3. The Bidding Procedures, which are attached hereto as **Exhibit 1** and incorporated herein by reference, are hereby approved in all respects.

4. The Debtors are authorized to enter into the Stalking Horse Agreement, and to perform thereunder, subject to receipt of higher and better offers for the purchase of the Debtors' Assets consistent with the Bidding Procedures and the terms of this Order.

5. The Bid Protections set forth in the Stalking Horse Agreement, consisting of a Break-Up Fee of $360,000.00, equal to 4% of the Purchase Price of the Stalking Horse Agreement, are approved consistent with the Bidding Procedures and the terms of this Order.

6. The Bidding Procedures and the terms of this Order shall govern all Bids and Bidders, including any Qualified Bids submitted before the Bid Deadline and Bids submitted during any Auction that is conducted.

7. The deadline for all Potential Bidders to submit a Qualified Bid is **July 15, 2025, at 5:00 p.m. (prevailing Eastern Time)** (the "Bid Deadline"), as set forth in the Bidding Procedures.

8. On or before **July 11, 2025**, the Debtors shall file a notice on the Court's docket (an "Auction Notice") providing notice of the location of the Auction.

9. As set forth in the Bidding Procedures, if a Topping Bid is received by the Bid Deadline, the Debtors will hold the Auction beginning on **July 18, 2025, at 10:00 a.m.** (prevailing Eastern Time) in accordance with the Bidding Procedures at the location designated by the Debtors in the Auction Notice.

10. The Assumption Notice substantially in the form attached to this Order as **Exhibit 3** is approved in all respects. No other or further notice of the Assumption Procedures, or relevant objection or other deadlines is required.

11. The following Assumption Procedures are hereby approved:

a. **Contract Assumption Notice**. On or prior to July 10, 2025, the Debtors shall file with the Court and serve a notice of contract assumption (the "Assumption Notice"), in substantially the form attached hereto as Exhibit 3, via overnight delivery on all counterparties to all potential Assigned Contracts (each, a "Counterparty" and, collectively, the "Counterparties"). The Assumption Notice shall include, without limitation, a list of Assigned Contracts (the "Assigned Contract List") that may be assumed and assigned in connection with the Sale and the Cure Payment, if any, that the Debtors believe is required to be paid to the applicable Counterparty under Bankruptcy Code sections 365(b)(1)(A) and (B) for each of the Assigned Contracts. If no Cure Payment is listed on the Assigned Contracts List for a particular Assigned Contract, the Debtors' asserted Cure Payment for such Assigned Contract shall be deemed to be $0.00. The Assigned Contracts List shall identify each of the potential Assigned Contracts by the name or appropriate description and date of such potential Assigned Contract (if available), the Counterparties and the address of such Counterparties for notice purposes. Service of an Assumption Notice does not constitute an admission that such contract is an executory contract or unexpired lease or that such stated Cure Payment constitutes a claim against the Debtors or a right against the Successful Bidder (all rights with respect thereto being expressly reserved). Further, the inclusion of a contract or lease on the Assumption Notice is not a guarantee that such contract will ultimately be assumed and assigned.

b. **Contract Objections**. Objections, if any, to the Assumption Notice or any proposed assumption and assignment of a contract or lease, including objections to Cure Payments (each, as defined above, a "Contract Objection"), must (i) be in writing, (ii) comply with the applicable provisions of the Bankruptcy Rules, and the Local Rules, (iii) state with specificity the nature of the objection and, if the objection pertains to the proposed Cure Payment, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof, and (iv) be filed with the Court and served by the Objection Notice Parties before the Sale Objection Deadline, except as otherwise set forth below with respect to Subsequently Designated Assigned Contracts. If a Contract Objection is timely filed by the Contract Objection Deadline and cannot be resolved, to the extent such Contract Objection relates to a Assigned Contract under the Sale Transaction contemplated by these Bid Procedures, a hearing will be held (i) at the Sale Hearing or (ii) on such other date subsequent to the Sale Hearing but before the Closing Date, as the Debtors determine, in their discretion and in consultation with the Successful Bidder and the Consultation Parties (subject to the Court's calendar) (the "Contract Hearing") before the Bankruptcy Court to consider the objection. If such Contract Objection has not been resolved prior to the closing of the Sale (whether by an order of the Court or by agreement with the Counterparty), the Successful Bidder may (a) treat such Counterparty's contract or lease as part of assets excluded from the Sale Transaction or (b) temporarily treat the Counterparty's contract or lease as part of assets excluded from the Sale Transaction (a "Designated Agreement"), proceed to the closing of the Sale with respect to all other Assets, and determine whether to treat the Designated Agreement as an Assigned Contract, or part of assets excluded from the Sale Transaction within ten (10) 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).

c. **Changes to Assigned Contract List and Cure Payments**. At the election of the Successful Bidder, up until two (2) business days prior to the closing of any Sale, the Debtors may file and serve supplements or amendments to the Assigned Contracts List (each, a "**Supplemental Assumption Notice")** to (i) add previously omitted Assigned Contracts to the Assigned Contracts List as contracts that may be assumed and assigned to a Successful Bidder in accordance with the definitive agreement for the Sale by filing a supplement to the Assigned Contracts List or (ii) modify the Cure Payment for any Assigned Contract (together, "**Subsequently Designated Assigned Contracts**"). Contract Objections with respect to Subsequently Designated Assigned Contracts shall be filed no later than ten (10) days from service of a Supplemental Assumption Notice identifying the Subsequently Designated Assigned Contracts and served on the Objection Notice Parties (the "**Subsequently Designated Assigned Contracts Deadline**"). Such objections must (a) be in writing, (b) comply with the applicable provisions of the Bankruptcy Rules, and the Local Rules, (c) state, with specificity, the legal and factual bases thereof, and (d) be filed with the Court and served so as to be actually received by the Objection Notice Parties. Any party or entity who fails to timely and properly make an objection with respect to the Subsequently Designated Assigned Contracts on or before the Subsequently Designated Assigned Contracts Deadline shall be forever barred from asserting any objection with respect to the Subsequently Designated Assigned Contracts.

d. **Removal of Contracts from Assigned Contract List**. Up until two (2) business days prior to Closing, the Debtors are authorized, but not directed, if the Purchaser so requests, to remove an Assigned Contract from the Assigned Contract List that a successful bidder proposes be assumed and assigned in connection with the Sale.

e. **Assigned Contracts**. At the Sale Hearing, the Debtors will seek Court approval of the assumption and assignment to the Successful Bidder of the Assigned Contracts, subject to the dispute resolution procedures set forth in paragraph (b) hereof; provided that, in the event the Successful Bidder is not the Stalking Horse Bidder, objections to adequate assurance of future performance of the Assigned Contracts by such Successful Bidder shall be heard at a subsequent hearing, as set forth in paragraph (b) hereof. The inclusion of an Assigned Contract on an Assumption Notice will not (a) obligate the Debtors to assume any Assigned Contract listed thereon nor the Successful Bidder to take assignment of such Assigned Contract or (b) constitute any admission or agreement of the Debtors that such Assigned Contract is an executory contract.

f. **Back-Up Bidder Adequate Assurance Objections**. In the event that a Successful Bidder does not consummate the Sale and a Back-Up Bidder (other than the Stalking Horse Bidder) has been previously identified, the Debtors shall file with the Court and post on the case website, https://cases.stretto.com/AGR, a Notice of Intent to Proceed with Back-Up Bid, together with a copy of the BackUp Bidder's proposed purchase agreement and financial and other information regarding adequate assurance of future performance of the Assigned Contracts by the Back-Up Bidder (including the name of the Back-Up Bidder and description of its business), and serve the Notice of Intent to Proceed with Back-Up Bid on the Counterparties by overnight delivery, and the Counterparties shall have seven (7) days to file and serve on the Objection Notice Parties a Contract Objection solely on the basis of adequate assurance of future performance by the Back-Up Bidder. If any objections are filed, the Debtors shall schedule a hearing, which may be expedited, upon reasonable notice under the circumstances (which shall be no less than ten (10) days after the Notice of Intent to Proceed with Back-Up Bid is filed), with respect to such Contract Objections.

g. **Contract Assumption at Closing**. No Assigned Contract shall be deemed assumed and assigned pursuant to section 365 of the Bankruptcy Code until the later of (i) the date the Court has entered an order authorizing the assumption and assignment of such Assigned Contracts or (ii) the date the Sale has closed.

12. Any party failing to timely and properly file an objection to the Cure Payment or the proposed assumption and assignment of an Assigned Contract listed on the Contract Assumption Notice is deemed to have consented to (a) such Cure Payment, (b) the assumption and assignment of such Assigned Contract, (c) the related relief requested in the Motion, and (d) the Sale. Such party shall be forever barred and estopped from objecting to the Cure Payments, the assumption and assignment of the Assigned Contract, adequate assurance of future performance, the relief requested in the Motion, whether applicable law excuses such Counterparty from accepting performance by, or rendering performance to, the Successful Bidder for purposes of section 365(c)(1) of the Bankruptcy Code, and from asserting any additional cure or other amounts against the Debtors and the Successful Bidder, as applicable, with respect to such party's Assigned Contract.

13. On July 19, 2025, or as soon as practicable after the Auction, the Debtors shall file with the Court and post on the case website, https://cases.stretto.com/AGR, the notice, substantially in the form attached hereto as **Exhibit 4** (the "Notice of Successful Bidder"),

identifying any Successful Bidder and Back-Up Bidder, together with a copy of the Successful Bidder's proposed purchase agreement and financial and other information regarding adequate assurance of future performance of the Assigned Contracts, and serve the Notice of Successful Bidder on the Counterparties by email (where available) or overnight delivery, and the Counterparties shall file any Contract Objections solely on the basis of adequate assurance of future performance by the Successful Bidder other than the Stalking Horse Bidder (each, an "Adequate Assurance Objection") not later than **July 25, 2025 at 4:00 p.m. (prevailing Eastern Time)**.

14. Any secured party shall be entitled to credit bid some or all of its claims pursuant to section 363(k) of the Bankruptcy Code, subject to inclusion of a cash amount in its bid that is sufficient to satisfy any Bid Protections or other obligations that the Debtors deem appropriate.

15. Following the conclusion of the Auction, the Sale Hearing may be adjourned or rescheduled without notice by an announcement of the adjourned date at the Sale Hearing or by filing a notice on the Court's docket. At the Sale Hearing, the Debtors shall present the Successful Bid to the Court for approval.

16. The Sale Notice substantially in the form attached to this Order as **Exhibit 2** is approved in all respects. Other than with respect to the Notice of Successful Bidder, no other or further notice of the Bidding Procedures, the Sale Hearing, relevant objection or other deadlines, or the Sale is required.

17. To be considered, any objection to the Sale must: (a) comply with the Bankruptcy Rules and the Local Rules; (b) be made in writing and filed with the Court; and (c) be filed on or before **July 25, 2025, at 4:00 p.m. (prevailing Eastern Time)** (the "Sale Objection Deadline").

18. The failure of any objecting person or entity to timely file an objection prior to the Sale Objection Deadline shall be a bar to the assertion at the Sale Hearing or thereafter of any objection to the relief requested by the Debtors, or the consummation and performance of the Sale of the Assets to the Successful Bidder, including the transfer of the Assets free and clear of all Interests (with the same to attach to the cash proceeds of the Sale to the same extent and with the same order of priority, validity, force, and effect which they previously had against the Assets, subject to the rights and defenses of the Debtors and the Debtors' estate with respect thereto), and the Debtors' assumption and assignment or transfer of the Assigned Contracts to the Successful Bidder.

19. No Qualified Bidder or any other person or entity, other than the Stalking Horse Bidder, if any, shall be entitled to any expense reimbursement, break-up fee, termination, or other similar fee or payment in connection with the Sale.

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

21. The Debtors are authorized and empowered to execute and deliver such documents, and to take and perform all actions necessary to implement and effectuate the relief granted in this Order.

22. All persons and entities that participate in the Sale Process and/or the Auction shall be deemed to have knowingly and voluntarily submitted to the exclusive jurisdiction of this Court with respect to all matters related to the Bidding Procedures, the Sale Process, and the Auction.

23. To the extent of any inconsistences between the Bidding Procedures and this Order, this Order shall govern.

24. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the Bidding Procedures.

EXHIBIT 1 TO BIDDING PROCEDURES ORDER

(Bidding Procedures)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: America's Gardening Resource, Inc., *et al.* Debtors.[1]	Chapter 11 Case No. 25-11180 (BLS) (Jointly Administered)

BIDDING PROCEDURES IN CONNECTION
WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS

On June 20, 2025, the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

On June 20, 2025, the Debtors also filed the Motion of the Debtors and Debtors-in-Possession for Entry of (i) an Order (a) Authorizing and Approving Bidding Procedures in Connection with the Sale of Substantially All of the Debtors' Assets, (b) Approving the Debtors' Entry into Stalking Horse Agreement and Related Bidding Protections (c) Scheduling the Auction and Sale Hearing, (d) Approving the Form and Manner of Notice thereof, and (e) Grating Related Relief; and (ii) an Order Approving the Sale of Substantially All of the Debtors' Assets Free and Clear of All Encumbrances; and (b) Approving the Assumption and Assignment of Executory Contracts and Unexpired Lease [D.I. [●] (the "Motion")[2]

On [●], 2025, the Bankruptcy Court entered an order [D.I. [●]] (the "Bidding Procedures Order") approving these bidding procedures (the "Bidding Procedures"). The Bidding Procedures set forth the process by which the Debtors will solicit and evaluate higher or otherwise better Bids (as defined below) for the acquisition of the Debtors' Assets (as defined below). The Debtors seek to consummate a transaction (a "Sale Transaction") for the sale of substantially all of the Debtors' assets under section 363 and, as applicable, section 365, of the Bankruptcy Code to the extent certain criteria are satisfied as set forth in greater detail below. Any Sale Transaction will be subject to the approval of the Court.

A hearing for the approval of any Sale Transaction is currently scheduled for [●], 2025, at __:__ _.m. (prevailing Eastern Time) (the "Sale Hearing").

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[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: America's Gardening Resource, Inc. (9604); Gardener's Home LLC (0498); Serac Corporation (9800); IGH, Inc. (9336); Innovative Gardening Solutions, Inc. (3325). The location of the Debtors' corporate headquarters and the Debtors' service address in these chapter 11 cases is 128 Intervale Road, Burlington, Vermont 05401.

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

COPIES OF THE BIDDING PROCEDURES ORDER, OR ANY OTHER DOCUMENTS IN THE DEBTORS' CHAPTER 11 CASES ARE AVAILABLE AT HTTPS://CASES.STRETTO.COM/AGR

OVERVIEW

The Debtors are offering for sale the Assets, and Qualified Bidders (as defined below) may submit bids for the Assets. Except as otherwise provided in a purchase agreement to be executed by a Successful Bidder (as defined below), the sale of the Assets will be free and clear of all liens, claims and encumbrances to the maximum extent permitted by section 363 of the Bankruptcy Code.

The Sale of the Assets shall be subject to a competitive bidding process, as set forth herein, and approval by the Bankruptcy Court under sections 105(a), 363, and 365 of the Bankruptcy Code, rules 2002, 6004, 6006, 9007, 9008, and 9014 of the Federal Rules of Bankruptcy Procedure, and rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware.

The Debtors have entered into a Stalking Horse Agreement, as more fully explained in the Motion, for the sale of substantially all of the Debtors' Assets (as defined therein), free and clear of liens, clams, and encumbrances, to Gardens Alive, Inc. (the "Stalking Horse Bidder"), which bid is subject to higher and better offers that may be submitted in accordance with these Bidding Procedures.

KEY DATES

These Bidding Procedures set forth the terms by which prospective bidders, if any, may qualify for and participate in an Auction, thereby competing to make the highest or otherwise best offer for the Assets. Subject to the Debtors' rights set forth herein, the following table sets forth key dates and deadlines with respect to the Sale process.

Event	Proposed Date
Bidding Procedures Objection Deadline	July 7, 2025, at 4:00 p.m. (ET)
Bidding Procedures Hearing	July 10, 2025, 10:00 a.m. (ET) (subject to the Court's availability)
Deadline to File and Serve Assumption Notice	July 10, 2025
Deadline to File and Serve Auction and Sale Notice	July 11, 2025
Deadline to Publish Auction and Sale Notice	Seven (7) days after entry of the Bidding Procedures Order
Bid Deadline	July 15, 2025, at 5:00 p.m. (ET)

Event	Proposed Date
Deadline to Designate Qualified Bids and File Auction Notice	July 16, 2025, at 5:00 p.m. (ET)
Auction	July 18, 2025, at 10:00 a.m. (ET)
Deadline to File Notice of Successful Bidder and Back-Up Bidder	July 19, 2025, or as soon as reasonably practicable after the Auction concludes
Contract Objection Deadline	July 25, 2025, at 4:00 p.m. (ET)
Deadline to Object to Sale	July 25, 2025, at 4:00 p.m. (ET)
Adequate Assurance Objection Deadline	July 25, 2025, at 4:00 p.m. (ET)
Sale Hearing	August 1, 2025, at 10:00 a.m. (ET) (subject to the Court's availability)

BID PROCEDURES

I. General Sale Transaction Information.

a. Assets for Sale

The Debtors are soliciting interest for the consummation of a Sale Transaction with respect to the Assets. All of the Debtors' rights, title, and interest in and to the Assets shall be sold free and clear of any Interests (as defined in the Motion) on an "as is, where is" and "with all faults" basis and without representations, warranties or guarantees, express, implied or statutory, written or oral, of any kind, nature or description, by the Debtors, their affiliates or their respective representatives, except as otherwise provided in the applicable Purchase and Sale Agreement, as defined herein, to the maximum extent permitted by sections 363 and 365 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the Sale Transaction with the same validity and priority as such Interests applied against the respective Assets purchased pursuant to the Bidding Procedures.

The Debtors, in their discretion, in consultation with their advisors, will have the right to determine the highest or otherwise best value from the potential offers received. Additionally, the Debtors may accept Bids (as defined below) for any portion or subset of the Assets and pursue a Sale Transaction for the Assets on a piecemeal basis.

Further information on the Assets being offered for sale pursuant to these Bidding Procedures is available upon request from the Debtors' professional advisers on the terms and conditions set forth below.

b. Access to Diligence Materials

To participate in the bidding process and receive due diligence information, including full access to the Debtors' electronic data room (the "Data Room") and additional non-public information regarding the Debtors (the "Diligence Materials"), parties interested in receiving due diligence information to participate in the bidding process (each, an "Interested Party") must deliver or have previously delivered to the Debtors, if determined to be necessary by the Debtors in their sole discretion, the Preliminary Bid Documents (as defined herein) to the following parties (the "Recipient Parties"):

(i) proposed counsel to the Debtors, Cole Schotz, P.C. Attn. Gary H. Leibowitz (gleibowitz@coleschotz.com) 1201 Wills Street, Suite 320, Baltimore, MD 21231 and Patrick J. Reilley (preilley@coleschotz.com), 500 Delaware Avenue, Suite 600, Wilmington, DE; and

(ii) advisors to the Debtors: Tower Partners, LLC, Attn: Erv Terwilliger, 5950 Symphony Woods Rd., Suite 302, Columbia, MD 21044.

The "Preliminary Bid Documents" that must be submitted to the Recipient Parties include: (a) an executed confidentiality agreement using the Debtors' form, as may be amended, on terms acceptable to the Debtors, to the extent not already executed (a "Confidentiality Agreement") and (b) a statement and/or other factual support demonstrating to the Debtors' satisfaction in the exercise of their reasonable business judgment that the Interested Party has a *bona fide* interest in purchasing all or any portion of the Assets. Any Interested Party who, in the Debtors' determination, qualifies for access to the Diligence Materials shall be deemed a "Potential Bidder."

The Debtors will provide any Potential Bidder such due diligence access or additional information as the Debtors deem appropriate, which may include, without limitation, the right to withhold, restrict, or to delay providing any Diligence Materials to a Potential Bidder that the Debtors, in their reasonable discretion, determine are, among other things, business-sensitive, may risk unduly placing the Debtors at a competitive disadvantage, or are otherwise inappropriate for disclosure to such Potential Bidder at such time. The Potential Bidder shall return or destroy any non-public information the Debtors or their advisors provided to the Potential Bidder in accordance with the terms of the confidentiality agreement executed by the Debtors and the Potential Bidder.

c. Due Diligence from Potential Bidders

Each Interested Party, Potential Bidder, and Qualified Bidder (as defined herein) (each, a "Bidder" and, collectively, the "Bidders") shall comply with all requests for additional information and due diligence access by the Debtors or their advisors regarding such Bidder and its contemplated Sale Transaction. Failure by a Potential Bidder to comply with requests for additional information and due diligence access will be a basis for the Debtors to determine that the Potential Bidder is not a Qualified Bidder. Failure by a Qualified Bidder to comply with such requests for additional information and due diligence access will be a basis for the Debtors to determine that a bid made by a Qualified Bidder is not a Qualified Bid.

II. Auction Qualification Process

a. Stalking Horse Bidder

The Debtors have entered into a Stalking Horse Agreement, as more thoroughly explained in the Motion and attached thereto as Exhibit B. The Stalking Horse Agreement, as authorized by the Court's Bidding Procedures Order, provides for a break-up fee of $360,000 payable to the Stalking Horse Bidder within three (3) Business Days after the entry of a Sale Order to another purchaser (the "Break-Up Fee"). The Break-Up Fee is the only bid protection provided to the Stalking Horse Bidder and is in lieu of any expense reimbursement. Pursuant to the Stalking Horse Agreement and the Court's Bidding Procedures Order, the Stalking Horse Bidder has provided a deposit of $450,000.00 (the "Stalking Horse Deposit"), which is being held by the Debtor's Escrow Agent.

The Stalking Horse Agreement is subject to higher and better bids that maybe submitted pursuant to these Bidding Procedures.

b. Form of Purchase and Sale Agreement and Sale Approval Order

A Potential Bidder must submit (a) a proposed asset purchase agreement (a "Purchase and Sale Agreement"), similar in form and substance to the Stalking Horse Agreement, accompanied by a comparison of the Purchase and Sale Agreement to the Stalking Horse Agreement and (b) a proposed Sale Approval Order, similar in form and substance, as modified, to the Sale Order to be furnished by the Debtors in the Data Room and filed with the Court under notice before the Bidding Procedures Hearing (the "Form Sale Approval Order").

c. Designation as Qualified Bidder

A "Qualified Bidder" is a Potential Bidder that satisfies the Bid Conditions defined and as described below and otherwise satisfies the requirements of the Bidding Procedures Order and the Bidding Procedures set forth herein, and that the Debtors determine is reasonably likely to submit a *bona fide* offer for the Assets and to be able to consummate a Sale Transaction if selected as a Successful Bidder (as defined herein).

The Debtors shall determine and notify any Potential Bidder as to whether such Potential Bidder is a Qualified Bidder no later than July 16, 2025, at 5:00 p.m. (prevailing Eastern Time).

d. Right to Credit Bid

At the Auction, if any, a Qualified Bidder who has a valid and perfected lien on any Assets (a "Secured Party") shall be permitted to submit a credit bid for all or a portion of the assets subject to such lien, up to the amount of such Secured Party's claims (a "Credit Bid"), to the extent permitted under section 363(k) of the Bankruptcy Code; *provided, however*, that any Secured Party that intends to participate in the Auction with a Bid that includes a Credit Bid shall, as a condition to such participation, (i) notify the Debtors at least five (5) calendar days prior to the Bid Deadline that it intends to submit a Credit Bid, (ii) provide all documentation requested by the Debtors to establish the lien, claims, and encumbered assets that will be the subject of the Secured Party's potential Credit Bid, (iii) include in its Credit Bid an amount of cash consideration sufficient for the Debtors to pay from the cash proceeds of such transaction any Bid Protections or other obligations that the Debtors deem appropriate.

To the extent that any Secured Party submits a Credit Bid for all or any portion of the Assets, the Debtors shall establish reasonable procedures to prevent such Secured Party or its representatives from thereafter being privy to confidential information concerning the bids of other Bidders for such Assets for so long as such Secured Party remains a Bidder.

III. Bidding Procedures

The Debtors and their advisors shall: (i) determine whether a Potential Bidder is a Qualified Bidder; (ii) coordinate the efforts of Bidders in conducting their due diligence investigations, as permitted by the provisions hereof; (iii) receive offers from Qualified Bidders; and (iv) negotiate any offers made to purchase all or any portion of the Assets. The Debtors shall have the right to adopt such other rules for the bidding process that are not inconsistent with the Bidding Procedures Order or these Bidding Procedures that will better promote the goals of such process.

a. Bid Deadline

The Bid Deadline is July 15, 2025, at 5:00 p.m. (prevailing Eastern Time). On or before the Bid Deadline, a Qualified Bidder that desires to make a proposal, solicitation, or offer for a Sale Transaction (each, a "Bid") shall deliver written and electronic copies of its Bid to the Recipient Parties.

Except as otherwise determined in the Debtors' sole discretion, in consultation with their professionals, a Bid received after the Bid Deadline shall not constitute a Qualified Bid.

b. Qualified Bids

To be eligible to participate in the Auction and to be eligible for consideration as a Qualified Bidder, a Potential Bidder must deliver a Bid, so as to be received by the Recipient Parties on or before the Bid Deadline, that meets the following requirements (collectively, the "Bid Conditions"):

(i) Purpose and Identity of Assets to be Purchased. Each Bidder must state that the Bid includes an offer by the Bidder to effectuate a Sale Transaction and identify with specificity which Assets are included in the Bid.

(ii) Good Faith Deposit. Each Bid must be accompanied by a cash deposit (the "Good Faith Deposit") in the form of a wire transfer, certified or cashier's check, in an amount equal to or exceeding the Stalking Horse Deposit ($450,000.00), payable to the order of counsel pursuant to instructions to be provided by the Debtors, which will be held in a non-interest-bearing escrow or trust account.

(iii) Purchase Price. Each Bid must clearly set forth the purchase price (the "Purchase Price") and which liabilities, if any, of the Debtors the Bidder is agreeing to assume (the "Assumed Liabilities"). The Purchase Price must equal or exceed the sum of (i) the Stalking Horse Purchase Price ($9,000,000.00), (ii) the Break-Up Fee ($360,000.00), and (iii) $250,000.00 (the "Minimum Overbid"); for the avoidance of doubt the forgoing results in a minimum acceptable topping bid of $9,610,000.00 (a "Topping Bid").

(iv) Binding and Irrevocable. Each Bid must include a signed writing stating that it is binding and irrevocable until the selection of the Successful Bidder, provided that if such Bidder is selected as the Successful Bidder or the Back-Up Bidder, its offer shall remain irrevocable until the closing of the Sale with the Successful Bidder or, as applicable, the Back-Up Bidder (the "Closing").

(v) Contemplated Transaction Documents. Each Bid must include an executed Purchase and Sale Agreement marked against the Stalking Horse Agreement, pursuant to which the Qualified Bidder proposes to effectuate the contemplated Sale Transaction including: (i) a redlined copy of the Purchase and Sale Agreement marked to show all changes requested by the Qualified Bidder against the Stalking Horse Agreement; (ii) specification of the proposed Purchase Price allocated, if applicable; and (iii) any changes to any exhibits or schedules to the Purchase and Sale Agreement (collectively, the "Contemplated Transaction Documents"). The terms and conditions of the Contemplated Transaction Documents must be, in the aggregate, not materially more burdensome to the Debtors than the provisions contained in the Stalking Horse Agreement. A Bid must identify with particularity each and every condition to Closing and all executory contracts and unexpired leases the Bidder expects the Debtors to assume and assign to the Bidder (the "Assigned Contracts") pursuant to the Contemplated Transaction Documents. All Bids must provide that all Cure Amounts (as defined herein) will be paid by such Bidder. **The Contemplated Transaction Documents must include a commitment to close by no later than August 6, 2025.**

(vi) Contingencies. A Bid must be a firm offer and may not contain any contingencies to the validity, effectiveness, or binding nature of the offer, including, without limitation, contingencies for financing, due diligence, or inspection; *provided*, *however*, that a Bid may provide for the same contingencies contained in the Stalking Horse Agreement.

(vii) No Collusion. Each Bid must include a representation that the Bidder has not engaged in any collusion with respect to its Bid submission (though Potential Bidders are permitted to make joint bids) and that the Bidder will not engage in any collusion with respect to any Bids, the Auction, or the Sale Process.

(viii) Authorization to Bid and Identity of Bidder. Each Bid must include evidence of authorization and approval from such Potential Bidder's board of directors (or comparable governing body, or a statement as to why such approval is unnecessary) with respect to the submission, execution, delivery, and closing of the Contemplated Transaction Documents. A Bid must also fully disclose the identity of the entity that is submitting the Bid, including the identity of the ultimate beneficial owners of the Bidder and the identity of any person or entity providing debt or equity financing for the Bid.

(ix) Financing Sources. Each Bid must include written evidence that demonstrates the Potential Bidder has the necessary financial ability to close the contemplated Sale Transaction and provide adequate assurance of future performance under all Assigned Contracts. Such information may include, *inter alia*, the following:

1. the Potential Bidder's current financial statements (audited, if they exist);

2. contact names, telephone numbers, and e-mail addresses for verification of financing sources;

3. evidence of the Potential Bidder's internal resources and proof of any debt or equity funding commitments that are needed to close the contemplated Sale Transaction (including confirmation that the funding of such commitments is not subject to any contingency);

4. proof by the Potential Bidder of its financial capacity to close its proposed Sale Transaction, which may include written representations of the Potential Bidder's financial wherewithal or financial statements of, or verified financial commitments obtained by, the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of acquiring all or any portion of the Assets, the party that will bear liability for a breach), the adequacy of which will be assessed by the Debtors (including in consultation with their advisors); and

5. any other form of financial disclosure of credit-quality support information acceptable to the Debtors demonstrating that such Potential Bidder has the ability to close the contemplated Sale Transaction.

(x) Adequate Assurance of Future Performance. Each Bid must demonstrate, in the Debtors' reasonable business judgment, that the potential Bidder can provide adequate assurance of future performance to the applicable counterparty under all Assigned Contracts as required by section 365 of the Bankruptcy Code.

(xi) No Fees Payable to Qualified Bidder. Other than any Stalking Horse Bidder, a Bidder may not request any break-up fee, termination fee, expense reimbursement, or any similar type of payment. Moreover, by submitting a Bid, a Bidder shall be deemed to waive the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code relating in any way to the submission of its Bid, compliance with the Bid Procedures, or participation in the Sale Process.

(xii) Payment of the Break-Up Fee and Expense Reimbursement. A Bid must allow for the payment of the Break-Up Fee to the Stalking Horse Bidder from the first proceeds of the cash portion of the Purchase Price of such Bid upon Closing.

(xiii) Non-Reliance. A Bid must include an acknowledgement and representation of the Potential Bidder that it has had an opportunity to conduct any and all due diligence regarding the Assets (as applicable to its Bid) and Assumed Liabilities prior to making its Bid, that it has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid, and that it did not rely upon any written or oral statements, representations, warranties, or guaranties, express, implied, statutory or otherwise, regarding the Assets, the financial performance of the Assets or, as applicable, the physical condition of the Assets, the Assumed Liabilities, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Contemplated Transaction Documents.

(xiv) As Is, Where Is. A Bid must include an acknowledgement and representation of the Potential Bidder that it understands that any Sale Transaction 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 the estates except to the extent set forth in the Purchase and Sale Agreement of the Successful Bidder.

A bid received from a Potential Bidder shall constitute a "Qualified Bid" if the Debtors believe that such Bid would be consummated if selected as the Successful Bid. The Debtors shall have the right to reject any and all Bids that it believes do not comply with the Bid Procedures. In the event that any Potential Bidder is determined by the Debtors not to be a Qualified Bidder, the Potential Bidder shall be refunded its Good Faith Deposit.

IV. Auction

Pursuant to the Bidding Procedures Order, the Debtors will only commence with the Auction if at least one Topping Bid is received before the Bid Deadline. If no Topping Bids are received, the Stalking Horse Bidder will be deemed the Bidder and the Debtor will cancel the Auction.

If at least one Topping Bid is received before the Bid Deadline, then after the receipt and review of all Qualified Bids, the Debtors shall make a determination, in their business judgment, as to which Topping Bid is the highest and best, and that Bid will be deemed the "Baseline Bid" for purposes of the Auction. The determination of which Qualified Bid constitutes the Baseline Bid and which Qualified Bid constitute the Successful Bid (as defined herein) shall take into account any factors the Debtors reasonably deem relevant to the value of the Qualified Bid to their estates, including, inter alia: (a) the amount and nature of the consideration; (b) the certainty of closing; (c) the net economic effect of any changes to the value to be received by the Debtors' creditors from the proposed Sale Transaction; (d) the allocation of the Purchase Price between or among Assets; (e) tax consequences of such Qualified Bid; and (f) any other quantitative or qualitative criteria available to assess such Bid (collectively, the "Bid Assessment Criteria").

No later than Noon (prevailing Eastern Time) two (2) days preceding the Auction, the Debtors shall file a notice on the Court's docket (an "Auction Notice") providing notice of the location of the Auction.

Unless otherwise designated by the Debtors, the Auction shall commence at ***10:00 a.m. (Eastern Time) on July 18, 2025***, at a location to be designated in the Auction Notice. In the Debtors' discretion, the Auction may be held by telephonic or video conference.

The Auction shall be conducted according to the following procedures:

a. Participation in the Auction

Only the Stalking Horse Bidder, Qualified Bidders that have submitted Qualified Bids, and the Debtors prepetition lenders, subject to the credit biding requirements herein, are eligible to participate at the Auction. Only the authorized representatives and professional advisors of each of the forgoing, as well authorized representatives of the United States Trustee for the District of Delaware and other parties in interest, shall be permitted to attend the Auction. Except as otherwise set forth herein, the Debtors may conduct the Auction in the manner they determine will result in the highest or best offer for the Assets in accordance with the Bidding Procedures.

b. The Debtors Shall Conduct the Auction

The Debtors and their professionals shall direct and preside over the Auction. At the start of the Auction, the Debtors shall describe the terms of any Baseline Bid. All Bids made thereafter shall be Overbids (as defined herein) and shall be made and received on an open basis, and all material terms of each Bid shall be fully disclosed to all other Qualified Bidders. The Debtors reserve the right to conduct the Auction in a manner designed to maximize value based upon the nature and extent of the Qualified Bids received in accordance with the Bidding Procedures, the Bidding Procedures Order, the Bankruptcy Code, and any other order of the Court entered in connection herewith and disclosed to each Qualified Bidder. The Debtors shall maintain a transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Successful Bid. Pursuant to Local Rule 6004-1, each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the Sale Process, the Bid Procedures, the Auction, or the proposed Sale Transaction.

c. Terms of Overbids

An "Overbid" is any bid made at the Auction by a Qualified Bidder subsequent to the Debtors' announcement of the applicable Baseline Bid that satisfies the following conditions:

(i) Minimum Increment

During the Auction, bidding shall begin with the Baseline Bid. The initial Overbid after the Baseline Bid (the "Initial Overbid") shall be made in an increment announced on the record prior to the start of the Auction, but in no event to be less than $100,000.00 (the "Minimum Increment") plus, solely in the event the Baseline Bid is the Stalking Horse Bid, the Break-Up Fee. Any Overbids subsequent to the Initial Overbid shall be made in increments of at least the applicable Minimum Increment; *provided, however*, that the Stalking Horse Bidder may credit bid the Break-Up Fee, and the Debtors will net-out any Overbids by the Staking Horse Bidder or other Over Bidders as appropriate to determine the highest and best Bid. After setting the Minimum Increment, such amount may be adjusted in response to bidding activity. Any Overbid made by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless the Debtors accept a higher Qualified Bid as an Overbid.

(ii) Consideration of Overbids

The Debtors reserve the right to make one or more adjournments in the Auction to, among other things: facilitate discussions between the Debtors and individual Qualified Bidders; allow individual Qualified Bidders to consider how they wish to proceed; and give Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in the exercise of their business judgment, may require, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed Sale Transaction at the prevailing Overbid amount.

(iii) Evidence of Ability to Close Sale Transactions

To the extent not previously provided on or before the Bid Deadline, a Qualified Bidder submitting an Overbid must submit, as part of its Overbid, evidence reasonably acceptable to the Debtors demonstrating such Qualified Bidder's ability to close the Sale Transaction proposed by such Overbid.

d. Additional Procedures

The Debtors may (a) determine which Qualified Bid or Qualified Bids, if any, is the highest or best offer, (b) reject at any time before entry of an order of the Court approving a Sale Transaction pursuant to a Qualified Bid, any Bid that is (i) inadequate or insufficient; (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the Bidding Procedures Order; or (iii) contrary to the best interests of the Debtors, their estates, and their creditors, (c) modify the Bidding Procedures in response to the bidding activity at the Auction.

e. Closing the Auction

The Auction shall continue until there is only one Qualified Bid for all of the Assets that the Debtors determine is the highest or otherwise best Qualified Bid (such Qualified Bid, the "Successful Bid," and such Qualified Bidder, the "Successful Bidder"), and that further bidding is unlikely to result in a higher or otherwise better Qualified Bid, at which point, the Auction will be closed. The Auction shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction. In selecting the Successful Bid, the Debtors may consider all factors relevant to the sale of the Assets, including the Bid Assessment Criteria.

As soon as reasonably practicable after the closing of the Auction, the Debtors shall identify the Successful Bidder and the Successful Bid, and the Back-Up Bidder and Back-Up Bid, which highest or best offer will provide the greatest amount of net value to the Debtors, and advise the Qualified Bidders of such determination. The Qualified Bidder with the second highest or otherwise best Bid at the Auction, as determined by the Debtors, shall be required to serve as the back-up bidder (the "Back-Up Bidder"). The identity of the Back-Up Bidder and the amount and material terms of the final Bid of the Back-Up Bidder (the "Back-Up Bid") shall be announced by the Debtors at the conclusion of the Auction at the same time the Debtors announce the Successful Bid. Any Back-Up Bidder shall keep its Back-Up Bid open and irrevocable until the Closing of the Sale Transaction with the Successful Bidder, unless otherwise agreed by the Debtors. The Good Faith Deposit of the Back-Up Bidder shall be returned by the Debtors within three (3) days after Closing.

The Debtors shall not consider any Bids or Overbids submitted after the closing of the Auction and any and all such Bids and Overbids shall be deemed untimely. As stated above, the Successful Bid of the Successful Bidder and the Back-Up Bid of the Back-Up Bidder, respectively, must be irrevocable until Closing. For the avoidance of doubt, nothing in the Bidding Procedures, including, without limitation, the auction procedures, prevents the Debtors from exercising their respective fiduciary duties under applicable law (as reasonably determined in good faith by the Debtors in consultation with their outside legal counsel).

V. Notice of Acceptance of Successful Bid

Upon determination of the Successful Bid, the Debtors will file a notice attached to the Bidding Procedures Order as **Exhibit 4** (the "Notice of Successful Bidder") of the Debtors' intent to effectuate a Sale Transaction for the Assets with the Successful Bidder upon the approval of the

Successful Bid by the Court at the Sale Hearing.[3] The Debtors' presentation of a particular Successful Bid to the Court for approval does not constitute the Debtors' acceptance of such Successful Bid. The Debtors will be deemed to have accepted a Successful Bid only when such Successful Bid has been approved by the Court at the Sale Hearing.

VI. Free and Clear of Any and All Interests

Except as otherwise provided in the Purchase and Sale Agreement of the Successful Bidder and subject to the approval of the Court, all of the Debtors' rights, title, and interest in and to the Assets subject thereto shall be sold free and clear of any Interests to the maximum extent permitted by section 363 of the Bankruptcy Code, with such Interests to attach to the proceeds of the sale of the applicable Assets with the same validity and priority as such Interests were held against the applicable Assets prior to the Sale Transaction.

VII. Sale Hearing

The Sale Hearing will occur on __________, 2025, at __:__ _.m. (prevailing Eastern Time) before the Hon. __________, United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Courtroom 7, Wilmington, Delaware 19801. Any objections to the Sale Transaction requested at the Sale Hearing must be filed and served so as to be received by the Notice Parties or before __________, 2025, at __:__ _.m. (prevailing Eastern Time).

At the Sale Hearing, the Debtors will seek entry of the Sale Approval Order authorizing and approving a Sale Transaction to the Successful Bidder. The Sale Hearing may be adjourned or rescheduled without notice or with limited and shortened notice to parties other than the Consultation Parties, including by (i) an announcement of such adjournment at the Sale Hearing or at the Auction or (ii) the filing of a notice of adjournment with the Court prior to the commencement of the Sale Hearing.

If any Successful Bidder fails to consummate an approved Sale Transaction in accordance with its applicable Purchase and Sale Agreement or such Purchase and Sale Agreement is terminated, the Debtors shall be authorized, but not required, to deem the applicable Back-Up Bid, as disclosed at the Sale Hearing, as the Successful Bid, and the Debtors, after consultation with the Consultation Parties, shall be authorized, but not required, to consummate the sale with the Back-Up Bidder submitting the next highest Bid for any Assets without further order of the Court.

VIII. Return of Good Faith Deposit

The Good Faith Deposit of any Successful Bidder (or any Back-Up Bidder that becomes a Successful Bidder) shall be applied to the Purchase Price of such Sale Transaction at Closing.

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[3] With respect to any Sale Transaction, a filed Notice of Successful Bidder shall include, as exhibits, (a) a copy of the Purchase and Sale Agreement; (b) a copy of the proposed Sale Approval Order; and (c) identification of the Assigned Contracts with respect to such Sale Transaction; provided, however, that a Successful Bidder shall have the right to add or remove Assigned Contracts until the closing of such Sale Transaction and any definitive identification of Assigned Contracts with respect to a Sale Transaction will be made in connection with a notice of closing of such Sale Transaction

Counsel to the Debtors will hold the Good Faith Deposits of the Successful Bidder and the Back-Up Bidder in a segregated account until the Closing of the Sale Transaction with the Successful Bidder. Good Faith Deposits of all other Qualified Bidders shall be held in a segregated account, and thereafter returned to the respective Bidders following the conclusion of the Auction. If a Successful Bidder (including any Back-Up Bidder that has become the Successful Bidder) fails to consummate an approved Sale Transaction because of a breach or failure to perform on the part of such Successful Bidder, the Debtors shall be entitled to retain such Successful Bidder's Good Faith Deposit as part of the Debtors' damages resulting from such Successful Bidder's breach or failure to perform, without prejudice to the Debtors' rights to seek additional damages from the Court as appropriate. The retention of the Good Faith Deposit is not, and is not intended to be, liquidated damages.

IX. Procedures Related to the Assumption and Assignment of Contracts and Leases

As part of a Sale Transaction, the Debtors may assume and assign certain of their executory contracts and unexpired leases (the "Potential Assumed/Assigned Contracts") to one or more Successful Bidders (*i.e.*, the Assigned Contracts). The procedures governing the Debtors' identification of the Potential Assumed/Assigned Contracts and the non-Debtor counterparties' (the "Counterparties") rights and obligations with respect to objecting to such identification, including to the assumability, assignability, or transferability of such Potential Assumed/Assigned Contracts and/or to the amounts the Debtors believe necessary to cure all monetary defaults under such Potential Assumed/Assigned Contracts pursuant to section 365 of the Bankruptcy Code, are governed by the Bidding Procedures Order. **All Counterparties should refer to the Bidding Procedures Order, which provides for the following relevant dates and deadlines:**

Date	Event
July 10, 2025	Deadline to File Contract Assumption Notice
July 25, 2025, at 4:00 p.m. (ET)	Contract Objection Deadline
July 25, 2025, at 4:00 p.m. (ET)	Adequate Assurance Objection Deadline

If a Contract Objection is timely filed by the Contract Objection Deadline and cannot be resolved, to the extent such Contract Objection relates to a Assigned Contract under the Sale Transaction contemplated by these Bid Procedures, a hearing will be held (i) at the Sale Hearing or (ii) on such other date subsequent to the Sale Hearing but before the Closing Date, as the Debtors determine, in their discretion and in consultation with the Successful Bidder (subject to the Court's calendar) (the "Contract Hearing") before the Bankruptcy Court to consider the objection. If such Contract Objection has not been resolved before two (2) days prior the Closing of the Sale (whether by an order of the Court or by agreement with the Counterparty), the Successful Bidder may (a) treat such Counterparty's contract or lease as part of assets excluded from the Sale Transaction or (b) temporarily treat the Counterparty's contract or lease as part of assets excluded from the Sale Transaction (a "Designated Agreement"), proceed to the closing of the Sale with respect to all other Assets, and determine whether to treat the Designated Agreement as an Assigned Contract, or part of assets excluded from the Sale Transaction within ten (10) 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).

For the avoidance of doubt, if no Contract Objections are filed or received with respect to any Potential Assumed/Assigned Contracts identified on the Assumption Notice, then the Cure Amounts set forth in the Assumption Notice for such Potential Assumed/Assigned Contract will be binding upon the Counterparty to such Potential Assumed/Assigned Contract for all purposes and will constitute a final determination of the Cure Amounts required to be paid by the Debtors in connection with the assumption and assignment of such Potential Assumed/Assigned Contract.

On July 19, 2025, or as soon as practicable after the Auction, the Debtors shall file with the Court and post on the case website, https://cases.stretto.com/AGR, the Notice of Successful Bidder, substantially in the form attached to the Motion as **Exhibit 4**, identifying any Successful Bidder and Back-Up Bidder, together with a copy of the Successful Bidder's proposed purchase agreement and financial and other information regarding adequate assurance of future performance of the Assigned Contracts, and serve the Notice of Successful Bidder on the Counterparties by overnight delivery, and the Counterparties shall file any Contract Objections solely on the basis of adequate assurance of future performance by the Successful Bidder other than the Stalking Horse Bidder (each, an "Adequate Assurance Objection") not later than ***July 25, 2025, at 4:00 p.m. (ET)***.

X. Modifications

The Bidding Procedures may be modified by the Debtors in any manner that is not inconsistent with or otherwise in contravention of the other terms of these Bidding Procedures or the Bidding Procedures Order, including, without limitation, (a) imposing additional terms and conditions with respect to any or all bidders, (b) extending the deadlines set forth herein or the date for the Auction and/or Sale Hearing (which may occur in open court); or (c) amending the Bidding Procedures as they may determine to be in the best interests of the Debtors' estates; *provided that* all such modifications are disclosed to all Potential Bidders (if applicable) or Qualified Bidders (if applicable) on the record prior to or during the Auction; *provided further* that any actions taken by the Debtors under this Section X shall not be deemed to be waivers of any terms, conditions, defaults or events of default set forth in the Cash Collateral Order [D.I. [●]] or the Stalking Horse Agreement, by any of the Debtors' prepetition lenders or the Stalking Horse Bidder. The Bankruptcy Court has exclusive jurisdiction with respect to any dispute that may arise with respect to these Bidding Procedures.

XI. Notice Parties

As used herein, the "Notice Parties" are:

(i) proposed counsel to the Debtors, Cole Schotz, P.C. Attn. Gary H. Leibowitz (gleibowitz@coleschotz.com) 1201 Wills Street, Suite 320, Baltimore, MD 21231 and Patrick J. Reilley (preilley@coleschotz.com), 500 Delaware Avenue, Suite 600, Wilmington, DE; and

(ii) advisors to the Debtors: Tower Partners, LLC, Attn: Erv Terwilliger, 5950 Symphony Woods Rd., Suite 302, Columbia, MD 21044.

c. counsel to the prepetition secured creditors;

d. counsel to the Committee (if any);

e. ESOP Trust;

f. counsel to the Stalking Horse Bidder; and

g. the Office of The United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Benjamin Hackman.

EXHIBIT 2 TO BIDDING PROCEDURES ORDER
(Sale Notice)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: America's Gardening Resource, Inc., *et al.* Debtors.[1]	Chapter 11 Case No. 25-11180 (BLS) (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 District of Delaware (the "Court") on June 20, 2025 (the "Petition Date").

PLEASE TAKE FURTHER NOTICE on [●], 2025, the Debtors filed a motion (the "Motion")[2] with the Court seeking entry of orders, among other things, (a) authorizing and approving the Debtors' sale and bidding procedures (the "Bidding Procedures") in connection with the sale (the "Sale" or "Sale Transaction") of all or substantially all of the Debtors' Assets and the proposed auction (the "Auction"), (b) authorizing and approving procedures for the assumption and assignment of executory contracts and unexpired leases in connection with the Sale, including notice of proposed cure amounts (the "Assumption Procedures"), (c) authorizing the Debtors' entry into, and performance under, the Stalking Horse Agreement, subject to higher and better bids, and authorizing certain bid protections (the "Bid Protections") for the Stalking Horse Bidder, (d) approving the form and manner of notices related to the Sale and Assumption Procedures, and (e) establishing dates and deadlines in connection with the Sale.

PLEASE TAKE FURTHER NOTICE that, on [●], 2025, the Court entered an order [Docket No. [●]] (the "Bidding Procedures Order") granting certain of the relief sought in the Motion, including, among other things, approving the (a) Debtors' entry into, and performance under, the Stalking Horse Agreement, subject to higher and better bids, and authorizing the Bid Protections for the Stalking Horse Bidder, (b) Bidding Procedures, which establish the key dates and times related to the Sale and the Auction, and (c) Assumption Procedures. All interested bidders should carefully read the Bidding Procedures Order and the Bidding Procedures in their entirety.[3]

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1 The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: America's Gardening Resource, Inc. (9604); Gardener's Home LLC (0498); Serac Corporation (9800); IGH, Inc. (9336); Innovative Gardening Solutions, Inc. (3325). The location of the Debtors' corporate headquarters and the Debtors' service address in these chapter 11 cases is 128 Intervale Road, Burlington, Vermont 05401.

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

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 PERSON(S) FOR PARTIES INTERESTED IN SUBMITTING A BID

The Bidding Procedures set forth the requirements for becoming a Qualified Bidder and submitting a Qualified Bid. Any party interested in making an offer to purchase the Assets 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 possible:

(i) proposed counsel to the Debtors, Cole Schotz, P.C. Attn. Gary H. Leibowitz (gleibowitz@coleschotz.com) 1201 Wills Street, Suite 320, Baltimore, MD 21231 and Patrick J. Reilley (preilley@coleschotz.com), 500 Delaware Avenue, Suite 600, Wilmington, DE 19801; and

(ii) advisors to the Debtors: Tower Partners, LLC, Attn: Erv Terwilliger, 5950 Symphony Woods Rd., Suite 302, Columbia, MD 21044.

OBTAINING ADDITIONAL INFORMATION

Copies of the Motion, the Bidding Procedures, and the Bidding Procedures Order, as well as all related exhibits and other documents filed with the Court, are available free of charge on the Debtors' case information website, located at https://cases.stretto.com/AGR.

IMPORTANT DATES AND DEADLINES[4]

1. **Bid Deadline**. The deadline to submit a Qualified Bid is [●]**, 2025, at 5:00 p.m. (prevailing Eastern Time)**.

2. **Auction**. If one or more Qualified Bids is received by the Bid Deadline, the Debtors will conduct the Auction with respect to the Debtors' Assets. The Auction will commence on [●]**, 2025, at 10:00 a.m. (prevailing Eastern Time)**, at the Delaware office of Cole Schotz, located at 500 Delaware Avenue, Suite 600, Wilmington, DE 19801, or such later time or other place as the Debtors will timely notify all Qualified Bidders. Only the Debtors, Qualified Bidders, the Consultation Parties, and/or other parties as the Debtors may determine to include in their discretion, in each case, along with their representatives and advisors, shall be entitled to attend the Auction, and only Qualified Bidders will be entitled to make overbids at the Auction. **All interested or potentially affected parties should carefully review the Bidding Procedures and the Bidding Procedures Order**.

3. **Objection Deadlines**. The deadline to file an objection to the potential assumption or assumption and assignment of the Assigned Contracts and Cure Amounts related thereto (a "Contract Objection") (except as otherwise set forth in the Assumption Procedures) is [●]**, 2025,**

[4] 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 4:00 p.m. (prevailing Eastern Time) (the "Contract Objections Deadline"). The deadline to file an objection to the Sale, including the sale of any Assets free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code (a "Sale Objection") is [●]**, 2025, at 4:00 p.m. (prevailing Eastern Time)** (the "Sale Objection Deadline"). The deadline to file any Contract Objections solely on the basis of adequate assurance of future performance by a Successful Bidder and/or Back-Up Bidder (an "Adequate Assurance Objection") is [●]**, 2025, at 4:00 p.m. prevailing Eastern Time** (the "Adequate Assurance Objections Deadline").

4. **Sale Hearing**. A hearing (the "Sale Hearing") to consider approval of the proposed Sale **free and clear of all liens, claims, interests and encumbrances** will be held on [●]**, 2025 at 10:00 a.m. (prevailing Eastern Time)** before the Honorable [●], Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware, at District of Delaware, at 824 Market Street North, 3rd Floor, Court Room 7, Wilmington, Delaware 19801, or at such other place (which may be by video conference) and time as the Debtors shall notify all Qualified Bidders and all other parties entitled to attend the Auction. The Debtors have the right to adjourn or cancel the Auction at or prior to the Auction.

FILING OBJECTIONS

Sale Objections, Contract Objections, and Adequate Assurance Objections, if any, must (a) be in writing; (b) state, with specificity, the legal and factual bases thereof; (c) be filed with the Court by no later than the applicable deadlines stated above, as applicable; and (d) served on: (i) proposed counsel for the Debtors, Cole Schotz P.C., 500 Delaware Avenue, Suite 600, Wilmington, Delaware 19801 (Attn: Patrick J. Reilley (PReilley@coleschotz.com) and Jack Dougherty (JDougherty@coleschotz.com) and 1201 Wills Street, Suite 320, Baltimore, MD 21231 (Attn: Gary Leibowitz (GLeibowitz@coleschotz.com), H.C. Jones III (HJones@coleschotz.com), and J. Michael Pardoe (mpardoe@coleschotz.com)); (ii) counsel to the Debtors' prepetition lenders, Bank of America (Chapman & Cutler LLC, 1270 Avenue of the Americas, 30th Floor, New York, NY (10020-1708), Attn: Dan Flores, Esq. (dflores@chapman.com) and Alex Kress (akress@chapman.com)) and Northfield Savings Bank (Dinse P.C., 209 Battery St., Burlington VT 05402, Attn: Afi Ahmadi (aahmadi@dinse.com) and Molly Langan (mollylangan@dinse.com); (iii) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, (Attn: Hannah McCollum); and (iv) counsel to any Committee appointed in these cases.

CONSEQUENCES OF FAILING TO TIMELY AND PROPERLY ASSERT AN OBJECTION

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

Any party who fails to make a timely and proper Contract Objection on or before the Sale and Contract Objections Deadline in accordance with the Bidding Procedures Order and

this Notice shall be forever barred from asserting any Contract Objection, including with respect to the transfer of the assets free and clear of all liens, claims, encumbrances and other interests.

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

NO SUCCESSOR LIABILITY

The Sale 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, 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. Accordingly, as a result of the Sale, 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 the Successful Bidder's purchase and sale agreement, for any liens, claims, encumbrances and other interests against or in any of the Debtors under any theory of law, including successor liability theories.

Dated: [●], 2025
Wilmington, Delaware

COLE SCHOTZ P.C.

____
Patrick J. Reilley (No. 4451)
Jack M. Dougherty (No. 6784)
500 Delaware Avenue, Suite 600
Wilmington, Delaware 19801
Telephone: (302) 652-3131
Facsimile: (302) 574-2103
Email: preilley@coleschotz.com
jdougherty@coleschotz.com

-and-

Gary H. Leibowitz (*pro hac vice* admission pending)
H.C. Jones III (*pro hac vice* admission pending)
J. Michael Pardoe (*pro hac vice* admission pending)
1201 Wills Street, Suite 320
Baltimore, Maryland 21231
Telephone: (410) 230-0660
Facsimile: (410) 230-0667
Email: gleibowitz@coleschotz.com
hjones@coleschotz.com
mpardoe@coleschotz.com

Proposed Counsel to Debtors and Debtors in Possession

EXHIBIT 3 TO BIDDING PROCEDURES ORDER
(Assumption Notice)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: America's Gardening Resource, Inc., *et al.*, Debtors.[1]	Chapter 11 Case No. 25-11180 (BLS) (Jointly Administered)

NOTICE OF POTENTIAL ASSUMPTION OF EXECUTORY CONTRACTS OR UNEXPIRED LEASES AND CURE AMOUNTS

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 District of Delaware (the "Court") on June 20, 2025 (the "Petition Date").

PLEASE TAKE FURTHER NOTICE on [●], 2025, the Debtors filed a motion (the "Motion")[2] with the Court seeking entry of orders, among other things, (a) authorizing and approving the Debtors' sale and bidding procedures (the "Bidding Procedures") in connection with the sale (the "Sale" or "Sale Transaction") of all or substantially all of the Debtors' Assets and the proposed auction (the "Auction"), (b) authorizing and approving procedures for the assumption and assignment of executory contracts and unexpired leases in connection with the Sale, including notice of proposed cure amounts (the "Assumption Procedures"), (c) authorizing the Debtors' entry into, and performance under, the Stalking Horse Agreement, subject to higher and better bids, and authorizing certain bid protections (the "Bid Protections") for the Stalking Horse Bidder, (d) approving the form and manner of notices related to the Sale and Assumption Procedures, and (e) establishing dates and deadlines in connection with the Sale.

PLEASE TAKE FURTHER NOTICE that, on [●], 2025, the Court entered an order [Docket No. [●]] (the "Bidding Procedures Order") granting certain of the relief sought in the Motion, including, among other things, approving the (a) Debtors' entry into, and performance under, the Stalking Horse Agreement, subject to higher and better bids, and authorizing the Bid Protections for the Stalking Horse Bidder, (b) Bidding Procedures, which establish the key dates and times related to the Sale and the Auction, and (c) Assumption Procedures. All interested

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: America's Gardening Resource, Inc. (9604); Gardener's Home LLC (0498); Serac Corporation (9800); IGH, Inc. (9336); Innovative Gardening Solutions, Inc. (3325). The location of the Debtors' corporate headquarters and the Debtors' service address in these chapter 11 cases is 128 Intervale Road, Burlington, Vermont 05401.

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

bidders should carefully read the Bidding Procedures Order and the Bidding Procedures in their entirety.[3]

PLEASE TAKE FURTHER NOTICE that the Bidding Procedures Order, among other things, established procedures for (a) the assumption of certain executory contracts and unexpired leases that the Debtors believe they might seek to assume and assign to the Stalking Horse Bidder or another Successful Bidder in connection with a Sale (collectively, the "Assigned Contracts") and (b) the determination of related Cure Payments (as defined below). The Debtors are parties to numerous Assigned Contracts and, in accordance with the Bidding Procedures Order, hereby file this notice identifying (x) the Assigned Contracts, which may be assumed and assigned to the Stalking Horse Bidder or another Successful Bidder in connection with a Sale, if one occurs and (y) the proposed amounts, if any, the Debtors believe are owed to the counterparty to the Assigned Contract to cure any defaults or arrears existing under the Assigned Contract (the "Cure Payments"), both as set forth on **Exhibit 1** attached hereto. Other than the Cure Payments listed on Exhibit 1, the Debtors are not aware of any amounts due and owing under the Assigned Contracts listed therein.

YOU ARE RECEIVING THIS NOTICE BECAUSE YOU HAVE BEEN IDENTIFIED AS A COUNTERPARTY TO A CONTRACT OR LEASE THAT MAY BE ASSUMED AND ASSIGNED AS PART OF THE SALE. ***The presence of an Assigned Contract listed on Exhibit 1 attached hereto does not constitute an admission that such Assigned Contract is an executory contract or unexpired lease or that such Assigned Contract will be assumed and assigned as part of the Sale. The Debtors reserve all of their rights, claims and causes of action with respect to the Assigned Contracts listed on Exhibit 1 attached hereto. The assumption and assignment of the contracts and leases on the Assigned Contracts List is not guaranteed and is subject to approval by the Court and the Debtors' or Successful Bidder's right to remove from the Assigned Contracts List.***

Pursuant to the Assumption Procedures, objections to the proposed assumption and assignment of an Assigned Contract (a "Contract Objection"), including any objection relating to the Cure Payment, must (a) be in writing; (b) comply with the Bankruptcy Rules and Bankruptcy Local Rules; (c) state with specificity the grounds for such objection, including, without limitation, the fully liquidated cure amount and the legal and factual bases for any unliquidated cure amount that the Counterparty believes is required to be paid under Bankruptcy Code sections 365(b)(1)(A) and (B) for the applicable Assigned Contract, along with the specific nature and dates of any alleged defaults, the pecuniary losses, if any, resulting therefrom, and the conditions giving rise thereto; (d) be served: (i) proposed counsel for the Debtors, Cole Schotz P.C., 500 Delaware Avenue, Suite 600, Wilmington, Delaware 19801 (Attn: Patrick J. Reilley (PReilley@coleschotz.com) and Jack Dougherty (JDougherty@coleschotz.com) and 1201 Wills Street, Suite 320, Baltimore, MD 21231 (Attn: Gary Leibowitz (GLeibowitz@coleschotz.com), H.C. Jones III (HJones@coleschotz.com), and J. Michael Pardoe (mpardoe@coleschotz.com)); (ii) counsel to the Debtors' prepetition lenders, Bank of America (Chapman & Cutler LLC, 1270 Avenue of the Americas, 30th Floor, New York, NY (10020-1708), Attn: Dan Flores, Esq.

[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.

(dflores@chapman.com) and Alex Kress (akress@chapman.com)) and Northfield Savings Bank (Dinse P.C., 209 Battery St., Burlington VT 05402, Attn: Afi Ahmadi (aahmadi@dinse.com) and Molly Langan (mollylangan@dinse.com); (iii) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, (Attn: Hannah McCollum); and (iv) counsel to any Committee appointed in these cases (the parties identified in (i) through (iv), collectively, the "Objection Notice Parties"); and (e) be filed with the Clerk of the Court and served by no later than [●]**, at 4:00 p.m. (prevailing Eastern Time)**.

If a counterparty to an assigned contract files a Contract Objection in a manner that is consistent with the requirements set forth above, and the parties are unable to consensually resolve the dispute prior to the Sale Hearing, the amount to be paid or reserved with respect to such objection will be determined at the Sale Hearing, such later hearing date that the Debtors determine in their discretion, or such other date determined by the Court and in consultation with the Successful Bidder and the Consultation Parties (subject to the Court's calendar). All other objections to the proposed assumption or proposed assumption and assignment of the Debtors' right, title, and interest in, to, and under the Assigned Contracts will be heard at the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that although the Debtors have made a good-faith effort to identify all Assigned Contracts that might be assumed and assigned in connection with a Sale, the Debtors or the Successful Bidder may identify certain other executory contracts that should be assumed and assigned in connection with a Sale. Accordingly, the Debtors have reserved the right up until two (2) business days prior to the closing of any Sale, to (i) add any previously omitted Assigned Contracts to the Assigned Contracts List as contracts that may be assumed and assigned to a Successful Bidder in accordance with the definitive documentation for the Sale, (ii) modify the previously stated Cure Payment associated with any Assigned Contract; and/or (iii) remove any Assigned Contract from the Assigned Contracts List that a Successful Bidder proposes to be assumed and assigned in connection with the Sale.

OBTAINING ADDITIONAL INFORMATION

Copies of the Motion, the Bidding Procedures, and the Bidding Procedures Order, as well as all related exhibits and all other documents filed with the Court, are available free of charge on the Debtors' case information website, located at https://cases.stretto.com/AGR.

CONSEQUENCES OF FAILING TO TIMELY AND PROPERLY ASSERT AN OBJECTION

UNLESS YOU FILE AN OBJECTION TO THE CURE AMOUNT AND/OR THE ASSUMPTION OR ASSIGNMENT OF YOUR CONTRACT OR LEASE IN ACCORDANCE WITH THE INSTRUCTIONS AND DEADLINES SET FORTH HEREIN, YOU SHALL BE (A) BARRED FROM OBJECTING TO THE CURE AMOUNT SET FORTH ON EXHIBIT 1, (B) ESTOPPED FROM ASSERTING OR CLAIMING ANY CURE AMOUNT AGAINST THE DEBTOR, THE STALKING HORSE BIDDER, OR SUCH OTHER SUCCESSFUL BIDDER THAT IS GREATER THAN THE CURE AMOUNT SET FORTH ON EXHIBIT 1, AND (C)

DEEMED TO HAVE CONSENTED TO THE ASSUMPTION AND/OR ASSIGNMENT OF YOUR CONTRACT OR LEASE.

Dated: June [●], 2025
Wilmington, Delaware

COLE SCHOTZ P.C.

____
Patrick J. Reilley (No. 4451)
Jack M. Dougherty (No. 6784)
500 Delaware Avenue, Suite 600
Wilmington, Delaware 19801
Telephone: (302) 652-3131
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Email: preilley@coleschotz.com
jdougherty@coleschotz.com

-and-

Gary H. Leibowitz (*pro hac vice* admission pending)
H.C. Jones III (*pro hac vice* admission pending)
J. Michael Pardoe (*pro hac vice* admission pending)
1201 Wills Street, Suite 320
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hjones@coleschotz.com
mpardoe@coleschotz.com

Proposed Counsel to Debtors and Debtors in Possession

EXHIBIT 4 TO BIDDING PROCEDURES ORDER
(Notice of Successful Bidder)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
America's Gardening Resource, Inc., *et al.*	Case No. 25-11180 (BLS)
Debtors.[1]	(Jointly Administered)

NOTICE OF SUCCESSFUL BIDDER AND BACK-UP BIDDER
WITH RESPECT TO THE AUCTION OF THE DEBTORS' ASSETS

PLEASE TAKE FURTHER NOTICE that, on [●], 2025, the Court entered an order [Docket No. [●]] (the "Bidding Procedures Order") granting certain of the relief sought in the Motion, including, among other things, approving the (a) Debtors' entry into, and performance under, the Stalking Horse Agreement, subject to higher and better bids, and authorizing the Bid Protections for the Stalking Horse Bidder, (b) Bidding Procedures, which establish the key dates and times related to the Sale and the Auction, and (c) Assumption Procedures. All interested bidders should carefully read the Bidding Procedures Order and the Bidding Procedures in their entirety.[2]

PLEASE TAKE FURTHER NOTICE that on [●]**, 2025**, pursuant to the Bidding Procedures Order, the Debtors conducted the Auction with respect to the Assets.

PLEASE TAKE FURTHER NOTICE that, at the conclusion of the Auction, the Debtors selected the following Successful Bidder and Back-Up Bidder with respect to the Assets:

Asset(s)	**Successful Bidder**	**Back-Up Bidder**

PLEASE TAKE FURTHER NOTICE that the Sale Hearing to consider approval of (i) the Sale, (ii) transfer of the Assets to the Successful Bidder, **free and clear of all liens, claims, interests, and encumbrances**, in accordance with section 363(f) of the Bankruptcy Code, and (iii) approval of the releases contemplated by the asset purchase agreement, will be held before the Honorable Brendan L. Shannon, Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware, at District of Delaware, at 824 n. Market Street North, 6th Floor, Courtroom

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: America's Gardening Resource, Inc. (9604); Gardener's Home LLC (0498); Serac Corporation (9800); IGH, Inc. (9336); Innovative Gardening Solutions, Inc. (3325). The location of the Debtors' corporate headquarters and the Debtors' service address in these chapter 11 cases is 128 Intervale Road, Burlington, Vermont 05401.

[2] 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.

No. 1, Wilmington, Delaware 19801, or pursuant to the Court's hearing procedures on [●]**, 2025 at 10:00 a.m. (prevailing Eastern Time)**. The Sale Hearing may be adjourned from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court or by notice filed on the docket in these Chapter 11 Cases.

PLEASE TAKE FURTHER NOTICE that any objections (a) to the manner in which the Auction was conducted, (b) to the identity of the Successful Bidder or the Back-Up Bidder, and/or (c) the ability of the Successful Bidder or Back-Up Bidder to provide adequate assurance of future performance to counterparties to executory contracts and unexpired leases contemplated to be assumed and assigned must be filed with the Court and served on the Objection Notice Parties (defined below) so as to be received no later than [●]**, 2025, at 4:00 p.m. prevailing Eastern Time**.

PLEASE TAKE FURTHER NOTICE that the "<u>Objection Notice Parties</u>" are: (i) proposed counsel for the Debtors, Cole Schotz P.C., 500 Delaware Avenue, Suite 600, Wilmington, Delaware 19801 (Attn: Patrick J. Reilley (PReilley@coleschotz.com) and Jack Dougherty (JDougherty@coleschotz.com) and 1201 Wills Street, Suite 320, Baltimore, MD 21231 (Attn: Gary Leibowitz (GLeibowitz@coleschotz.com), H.C. Jones III (HJones@coleschotz.com), and J. Michael Pardoe (mpardoe@coleschotz.com)); (ii) counsel to the Debtors' prepetition lenders, Bank of America (Chapman & Cutler LLC, 1270 Avenue of the Americas, 30th Floor, New York, NY (10020-1708), Attn: Dan Flores, Esq. (dflores@chapman.com) and Alex Kress (akress@chapman.com)) and Northfield Savings Bank (Dinse P.C., 209 Battery St., Burlington VT 05402, Attn: Afi Ahmadi (aahmadi@dinse.com) and Molly Langan (mollylangan@dinse.com); (iii) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, (Attn: Hannah McCollum); and (iv) counsel to any Committee appointed in these cases.

PLEASE TAKE FURTHER NOTICE that, at the Sale Hearing, the Debtors will seek Court approval of the Successful Bid, and the assumption and assignment of the Assigned Contracts (as defined in the Bidding Procedures Order) to the Successful Bidder. Unless the Court orders otherwise, the Sale Hearing shall be an evidentiary hearing on matters relating to the sale of the Debtors' assets and there will be no further bidding at the Sale Hearing. In the event that the Successful Bidder cannot or refuses to consummate the Sale because of the breach or failure on the part of the Successful Bidder, the Back-Up Bidder will be deemed the new Successful Bidder and the Debtors shall be authorized, but not required, upon approval of the Back-Up Bid following notice and a hearing, to close with the Back-Up Bidder on the Back-Up Bid upon further order of the Court.

PLEASE TAKE FURTHER NOTICE that this Notice is subject to the terms and conditions of the Bidding Procedures Order, with such Bidding Procedures Order controlling in the event of any conflict, and the Debtors encourage parties in interest to review the Bidding Procedures Order in its entirety. Parties with questions regarding this Notice should contact the Debtors' counsel at the contact information provided herein.

PLEASE TAKE FURTHER NOTICE that parties interested in receiving more information regarding the contemplated sale and/or copies of any related documents may visit the websites maintained by Stretto, the Debtors' claims and noticing agent, https://cases.stretto.com/AGR.

Dated: [●], 2025
Wilmington, Delaware

COLE SCHOTZ P.C.

Patrick J. Reilley (No. 4451)
Jack M. Dougherty (No. 6784)
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Wilmington, Delaware 19801
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-and-

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hjones@coleschotz.com
mpardoe@coleschotz.com

Proposed Counsel to Debtors and Debtors in Possession

EXHIBIT B
(Stalking Horse Agreement)

ASSET PURCHASE AGREEMENT

DATED AS OF JUNE 20, 2025

BY AND BETWEEN

AMERICA'S GARDENING RESOURCE, INC., D/B/A GARDENER'S SUPPLY, GARDENER'S HOME LLC, SERAC CORPORATION, IGH, INC. AND INNOVATIVE GARDENING SOLUTIONS, INC.,
SELLER,

GARDENS ALIVE, INC.

BUYER

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT ("Agreement") is made as of June 20, 2025 (the "Effective Date") by and among **AMERICA'S GARDENING RESOURCE, INC., D/B/A GARDENER'S SUPPLY**, a Delaware corporation ("AGR"), **GARDENER'S HOME LLC,** a Vermont limited liability company ("GH")**, SERAC CORPORATION,** a Vermont limited liability company ("SC"), **IGH, INC.**, a Vermont corporation ("IGH"), and **INNOVATIVE GARDENING SOLUTIONS, INC.**, a Vermont corporation ("IGS" and, together with AGR, GH, SC, and IGH collectively, the "Seller"), and **GARDENS ALIVE, INC**., a Delaware corporation ("Buyer"). Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in Article 1.

RECITALS

WHEREAS, the Seller has been engaged in the business of providing environmentally friendly gardening supplies, live plants, trees, shrubs and related products and information under the name Gardener's Supply and other trademarks in direct to consumer channels via the internet, the mail and catalogs, and in retail stores located in (i) Burlington, Vermont (owned by Seller and leased back), (ii) Shelburn, Vermont (leased), (iii) Williston, Vermont (leased), (iv) Lebanon, New Hampshire (leased), (v) Greenland, New Hampshire (leased), and (vi) Hadley, Massachusetts (leased) **(**the "Business"); and

WHEREAS, Buyer desires to purchase from Seller the Acquired Assets, as defined below, free and clear of all Claims, Liabilities and Encumbrances (other than Permitted Encumbrances with respect to Owned Real Property, as defined below), including claims of successor liability, upon the terms and conditions of this Agreement; and

WHEREAS, Seller has determined that the sale of the Acquired Assets to Buyer pursuant to this Agreement is in the best interests of the Seller and its creditors, and therefor desires to sell to Buyer all of the Acquired Assets pursuant to this Agreement, and

WHEREAS, the Parties intend to effectuate the transactions contemplated by this Agreement through a sale of the Acquired Assets pursuant to Sections 363 and 365 of the Bankruptcy Code; and

WHEREAS, the execution, delivery and performance of this Agreement by Seller and Buyer and the consummation of the transactions contemplated by this Agreement and the other Transaction Documents (the "Transactions") is subject to the entry of the Sale Order by the Bankruptcy Court, under, inter alia, Sections 105, 363 and 365 of the Bankruptcy Code, in a form and substance which is satisfactory to Buyer in its discretion.

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the representations, warranties and covenants herein contained, and intending to be legally bound, the Parties agree as follows.

ARTICLE 1
DEFINITIONS

1.1 Definitions.

For purposes of this Agreement, the following terms have the meanings specified or referenced below.

"Accounts Receivable" means and includes all of Seller's presently existing and hereafter arising or acquired accounts, accounts receivable, and all present and future rights of Seller to payment for goods sold or leased or for services rendered at any time through the Closing Date, whether or not they have been earned by performance, and all rights in any merchandise or goods which any of the same may represent, and all rights, title, security and guaranties with respect to each of the foregoing, including, without limitation, any right of stoppage in transit.

"Acquired Assets" has the meaning set forth in Section 2.1.

"Action" means any and all civil, criminal or administrative actions, lawsuits, arbitrations, investigations, proceedings, hearings, charges, complaints, citations, demands, assessments, audits, judgments and Claims (including employment-related Claims or audits by any taxing authority), regardless of whether a proceeding or lawsuit has been initiated, relating to or asserted by a Person.

"Affiliate" has the meaning set forth in Rule 12b-2 of the regulations promulgated under the Securities Exchange Act of 1934, as amended.

"Agreement" has the meaning set forth in the introductory paragraph.

"Allocation Schedule(s)" has the meaning set forth in Section 3.5.

"Assigned Agreements" means the Contracts listed or described in Schedule 2.1(a) (Assigned Agreements) hereto.

"Assignment of Copyrights" has the meaning set forth in Section 4.4(c).

"Assignment of Domain Names" has the meaning set forth in Section 4.4(c).

"Assignment of Patents" has the meaning set forth in Section 4.4(c).

"Assignment of Trademarks" has the meaning set forth in Section 4.4(c).

"Assumed Contract Liability" has the meaning set forth in Section 2.3(b).

"Assumed Liabilities" has the meaning set forth in Section 2.3.

"Assumption Agreement" has the meaning set forth in Section 2.3.

"Auction" has the meaning set forth in Section 7.6(e).

"Avoidance Actions" means any and all Claims for relief of Seller or others entitled to bring said Claims under Chapter 5 of the Bankruptcy Code.

"Bankruptcy Case" means the voluntary case commenced by Seller under Chapter 11 of the Bankruptcy Code in the Bankruptcy Court, case number [____________], for the purpose, in part, of consummating the Transactions.

"Bankruptcy Code" means Title 11 of the United States Code, Sections 101 et. seq.

"Bankruptcy Court" means the United States Bankruptcy Court for the District of Delaware sitting in Wilmington, Delaware.

"Benefit Plan" has the meaning set forth in Section 8.4(c).

"Bidding Procedures Hearing" has the meaning set forth in Section 7.6(e).

"Bidding Procedures Order" means an Order of the Bankruptcy Court in the form attached hereto as **Exhibit A**.

"Bill of Sale and Assignment" means the Bill of Sale and Assignment substantially in the form attached hereto as **Exhibit B**.

"Broker" means Tower Partners, LLC.

"Break-Up Fee" has the meaning set forth in Section 7.6(e).

"Business" has the meaning set forth in the recitals.

"Business Day" means any day of the year on which national banking institutions in Wilmington, Delaware are open to the public for conducting business and are not required or authorized to close.

"Business Employees" has the meaning set forth in Section 8.4(a).

"Buyer" has the meaning set forth in the introductory paragraph.

"Buyer Plan" has the meaning set forth in Section 8.4(c).

"Buyer Material Adverse Effect" means any fact, condition, change, violation, inaccuracy, circumstance, effect or event ("Effect"), individually or in the aggregate, that has, or is reasonably likely to have, a material adverse effect on Buyer, taken as a whole; *provided*, *however*, that "Buyer Material Adverse Effect" shall not include the following, nor shall any of the following be taken into account in determining whether there has been a Buyer Material Adverse Effect: (a) general business or economic conditions (*other than tariffs which shall be considered*); (b) changes in GAAP; (c) acts or omissions of Buyer carried out (or omitted to be carried out) in accordance with this Agreement; (d) any Effect caused by events, changes or developments relating to the Transactions or the announcement thereof; (e) compliance with the terms of, or the taking of any action required or contemplated by, this Agreement or any ancillary agreement, or the failure to take any action prohibited by this Agreement or any ancillary agreement; or (f) any actions taken, or failure to take action, in each case, to which Seller has in writing expressly approved, consented to or requested.

"Buyer Termination Notice" has the meaning set forth in Section 11.1(b)(i).

"Claims" means (i) a right to payment, whether or not reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmated, disputed, undisputed, legal, equitable, secured or unsecured, or (ii) a right to an equitable remedy for breach of performance if such breach gives right to payment, whether or not such right to an equitable remedy is reduced to a judgment fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured; including Claims for successor liability and Claims of present or past employees including, but not limited to Claims arising under the WARN ACT.

"Closing" has the meaning set forth in Section 4.1.

"Closing Date" means the date and time as of which the Closing occurs as set forth in Section 4.1.

"Closing Date Accounts Receivable" means Account Receivable as of the Closing Date, less an allowance for doubtful accounts, as determined in accordance with the procedures set forth in Section 3.3 of this Agreement.

"Closing Date Inventory" means the amount of (i) Inventory of Seller as of the Inventory Valuation Date which was purchased by Seller within twelve (12) months of the Inventory Valuation Date and valued at the lower of cost or market, wherever located, plus (ii) Excess Retail Inventory valued at eighty percent (80%) of the lower of cost or market. Such Closing Date Inventory shall be determined in accordance with the procedures set forth in Section 3.3 of this Agreement.

"Closing Date Prepaid Expenses" means the prepaid expenses of Seller as of the close of business on the second Business Day immediately preceding the Closing Date as set forth in the books and records of Seller and which are included in the Acquired Assets. Such Closing Date Prepaid Expenses shall be determined in accordance with the procedures set forth in Section 3.3 of this Agreement.

"Confidentiality Agreement" means the nondisclosure agreement, dated as of March 4, 2025, by and between Gardens Alive, Inc., and Seller.

"Consent" means any consent, waiver, approval, order or authorization of, or registration, declaration or filing with or notice to, any Governmental Authority or other Person.

"Contract" means any agreement, contract, obligation, understanding, or undertaking (whether written or oral) that is legally binding, including, but not limited to, Deeds, Intellectual Property, Leases and licenses.

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

"Cure Costs" has the meaning set forth in Section 2.5.

"Damaged Inventory" means Inventory which is (i) damaged to the extent that it is not saleable by Seller at standard market prices, or (ii) designated as discontinued or obsolete in the books and records of Seller.

"Deeds" means the general warranty deeds or substantively comparable form of deeds transferring title to the Owned Real Property to be delivered pursuant to Section 4.4(b).

"Deposit" means FOUR HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS ($450,000.00).

"Domain Names" means any alphanumeric designation registered with or assigned by a domain name registrar, registry or domain name registration authority as part of an electronic address on the Internet. A Domain Name may or may not also be a Trademark.

"Drop Dead Date" is August 22, 2025.

"Effective Date" means the date as of which this Agreement was executed as set forth in the first sentence of this Agreement.

"Encumbrance" means any charge, lien, Claim, mortgage, lease, hypothecation, deed of trust, pledge, security interest, option, right of use, first offer or first refusal, easement, servitude, restrictive covenant, encroachment, encumbrance, or other similar restriction of any kind.

"Equipment" means all furniture, equipment, computers, machinery, apparatus, appliances, implements, spare parts, supplies and all other tangible personal property of every kind and description owned by Seller.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Escrow Agent" means Wilmington Trust, or such other entity who shall be a Person that is not an Affiliate of Buyer or Seller, to be designated by Seller and Buyer prior to execution and delivery of the Escrow Agreement.

"Escrow Agreement" has the meaning set forth in Section 3.2.

"Escrow Fee" has the meaning set forth in Section 3.2.

"Excess Retail Inventory" means all Inventory located at any of the retail locations, whether such retail locations are leased to or owned by Seller, which was purchased by Seller more than twelve (12) months but less than thirty-six (36) months prior to the Inventory Valuation Date.

"Excluded Assets" has the meaning set forth in Section 2.2.

"Excluded Bank Accounts" has the meaning set forth in Section 2.2(b).

"Excluded Liabilities" has the meaning set forth in Section 2.4.

"Final Order" means a Sale Order entered by the Bankruptcy Court in the Bankruptcy Case that is not the subject of a pending motion for reconsideration, and that has not been stayed or appealed, and the time for which any person or entity to seek reconsideration, a stay, or appeal has expired by operation of all applicable statutes and rules of procedure, but in no case any earlier than fifteen (15) days after the entry by the Bankruptcy Court of a Sale Order on the docket of the Bankruptcy Case, *provided, however*, that the Buyer shall have the right, in its sole and absolute discretion, to expressly waive in writing any or all of the foregoing requirements of a Final Order.

"GAAP" means United States generally accepted accounting principles as consistently and historically applied by Seller.

"Goodwill" means any and all goodwill of Seller attributable to any of the Acquired Assets or the Business.

"Governmental Authority" means any United States federal, state or local, Canadian federal, provincial or local, or any foreign government, governmental authority, regulatory or administrative authority or any court, tribunal or judicial body having jurisdiction, or any quasi-governmental or private body exercising any regulatory, governmental or quasi-governmental authority, or any securities exchange, futures exchange, contract market, any other exchange or corporation or similar Self-Regulatory Organization applicable to a Party.

"Governmental Authorization" means any approval, consent, license, permit, waiver, or other authorization issued, granted or otherwise made available by or under the authority of any Governmental Authority.

"Independent Accountants" means Dopkins & Company, LLP.

"Intellectual Property" means all intellectual property rights of any kind owned, used or licensed (as licensor or licensee) by Seller, including all Software, Copyrights, Patents, Trademarks, Trade Secrets, Domain Names, all rights to privacy and proprietary rights to personal information, and all rights and remedies related thereto (including the right to sue for and recover damages, profits and any other remedy in connection therewith) for past, present or future infringement, misappropriation or other violation relating to any of the foregoing and all associated Goodwill.

"Inventory" means the tangible personal property of Seller held for sale at retail by Seller to customers.

"Inventory Valuation Date" means the close of business on the fourth Business Day immediately preceding the Closing Date.

"IRC" means the Internal Revenue Code of 1986, as amended, and regulations issued by the IRS pursuant to the Internal Revenue Code.

"IRS" means the Internal Revenue Service of the United States.

"Leased Real Property" means all real property which is the subject of a Lease.

"Leases" refer collectively to the leases and other occupancy agreements pursuant to which Seller occupies real property used in connection with the operation of the Business.

"Legal Requirement" means any federal, state, provincial, local, municipal, foreign, international, multinational, or other administrative Order, constitution, law, ordinance, principle of common law, regulation, statute or treaty.

"Liability" means all liabilities and obligations (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due).

"Non-Assured Contracts" has the meaning set forth in Section 7.6(d).

"Normal Business Hours" means 7:00 a.m. to 7:00 p.m. Monday through Friday and 9:00 a.m. to 6:00 p.m. on Saturdays.

"Order" means any award, writ, injunction, judgment, order, ruling, directive, stipulation, determination or decree entered, issued, made, or rendered by or with any Governmental Authority.

"Owned Real Property" refers collectively to the real property owned by Seller.

"Party" or "Parties" means, individually or collectively, Buyer and Seller.

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

"Payment Account" has the meaning set forth in Section 4.2.

"Permits" means all franchises, grants, authorizations, licenses, permits, easements, variances, exceptions, consents, certificates, approvals, clearances and orders of any Governmental Authority which are necessary for Seller to own, lease and operate its properties and assets or to carry on the Business in substantially the manner in which it is now being conducted.

"Permitted Encumbrances" means (i) statutory liens for current property Taxes and assessments (A) not yet due and payable or (B) being contested in good faith by appropriate proceedings for which adequate reserves have been made in accordance with GAAP, including liens for *ad valorem* Taxes and statutory liens not yet due and payable arising other than by reason of any default by Seller, (ii) easements, covenants, conditions, restrictions and other similar matters of record on real property, leasehold estates or personalty that do not in any material respect detract from the value thereof and do not individually or in the aggregate in any material respect interfere with the present use of the property subject thereto, (iii) Encumbrances that constitute or secure Assumed Liabilities (including Encumbrances arising under the Assigned Agreements), (iv) Encumbrances, title exceptions or other imperfections of title caused by or resulting from the acts of Buyer or any of its Affiliates, employees, officers, directors, agents, contractors, invitees or licensees, (v) landlords', carriers', warehousemen's, mechanics', suppliers', materialmen's, repairmen's liens or other like Encumbrances arising in the ordinary course of business with respect to amounts not yet overdue or amounts being contested in good faith by appropriate Proceedings that do not individually or in the aggregate in any material respect interfere with the present use of the property subject thereto, (vi) local, county, state and federal laws, ordinances or governmental regulations now or hereafter in effect relating to the Real Property that do not individually or in the aggregate in any material respect interfere with the present use of the property subject thereto and (vii) the Encumbrances listed in Schedule 1.1 (Permitted Encumbrances) and approved by Buyer, which approval shall not be unreasonably withheld.

"Person" means any individual, corporation (including any non-profit corporation), partnership, limited liability company, joint venture, estate, trust, association, organization, labor union or other entity or Governmental Authority.

"Petition Date" means the date on which Seller commenced the Bankruptcy Case.

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

"Purchase Price" has the meaning set forth in Section 3.1.

"Purchased Inventory" means (i) all Inventory purchased by Seller within twelve (12) months prior to the Inventory Valuation Date, (ii) all Excess Retail Inventory and (iii) all Inventory located at any of the retail locations, whether such retail locations are leased to or owned by Seller which was purchased by Seller more than thirty-six (36) months prior to the Closing Date.

"Qualifying Bid" has the meaning set forth in Section 7.6(e).

"Real Property" means the Owned Real Property and the Leased Real Property.

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

"Requested Party" has the meaning set forth in Section 8.5(b).

"Retail Store Leases" means the leases of the retail stores operated by Seller in (i) Burlington, Vermont, (ii) Williston, Vermont, (iii) Lebanon, New Hampshire, (iv) Greenland, New Hampshire and (v) Hadley, Massachusetts**.**

"Sale Hearing" means the hearing before the Bankruptcy Court, to be held for the purpose of obtaining the Sale Order.

"Sale Order" means an order of the Bankruptcy Court pursuant to Sections 105, 363(b), 363(f), 363(m) and 365(b) of the Bankruptcy Code authorizing and approving, inter alia, this Agreement, the Transactions and, in particular, the sale of the Acquired Assets to the Buyer on the terms and conditions set forth herein (as modified by the Court and satisfactory to Buyer in its discretion), free and clear of all Claims, Encumbrances (other than Permitted Encumbrances) and Liabilities, including successor liability, such that Buyer will not incur any liability as a successor to the Business or the Acquired Assets, the assumption and assignment of the Assigned Agreements to Buyer, and finding that the Transactions were undertaken by the Seller and the Buyer at arm's length, without collusion, and in "good faith" such that the Buyer is entitled to the protections of Section 363(m) of the Bankruptcy Code and releasing all Actions that Seller, or Seller's shareholders hold against Buyer or its Affiliates, including causes of action that arise in favor of Seller, or Seller's employees or otherwise, that accrue prior to the Closing, substantially in the form attached hereto as **Exhibit C** or otherwise in a form acceptable to Buyer.

"Self-Regulatory Organization" means any securities exchange, futures exchange, contract market, any other exchange or corporation or similar self-regulatory body or organization applicable to a Party.

"Seller Material Adverse Effect" means any Effect, individually or in the aggregate, that has, or is reasonably likely to have, a material adverse effect on the Acquired Assets or the Business (excluding the Excluded Assets and the Excluded Liabilities), taken as a whole; *provided*, *however*, that "Seller Material Adverse Effect" shall not include the following, nor shall any of the following be taken into account in determining whether there has been a Seller Material Adverse Effect: (a) general business or economic conditions (*other than tariffs which shall be considered*); (b) changes in GAAP; (c) acts or omissions of Seller carried out (or omitted to be carried out) in accordance with this Agreement; (d) any Effect caused by events, changes or developments relating to the Transactions or the announcement thereof; (e) any condition arising by reason of commencement of the Bankruptcy Case or Seller operating as a debtor in possession thereunder if in accordance with applicable law and consistent with performance of Seller's obligations under this Agreement; (f) compliance with the terms of, or the taking of any action required or contemplated by, this Agreement or any ancillary agreement, or the failure to take any action prohibited by this Agreement or any ancillary agreement; or (g) any actions taken, or failure to take action, in each case, to which the Buyer has in writing expressly approved, consented to or requested.

"Seller" has the meaning set forth in the introductory paragraph.

"Seller's Disclosure Schedule" means the Seller's Disclosure Schedule attached hereto as **Exhibit D**.

"Seller's Knowledge" means the actual knowledge of Rebecca Gray.

"Seller's Termination Notice" has the meaning set forth in Section 11.1(c)(i).

"Software" means all computer software programs (whether in source code, object code or other form) and software systems owned, licensed, or used by Seller, including all databases, compilations, tool sets, compilers, "proprietary" languages, related documentation, technical manuals and materials, and any license to use or other rights related to the foregoing.

"Standstill Period" means the period of time starting on the Effective Date of this Agreement and continuing until such time as the Bankruptcy Court designates the Buyer or some other buyer as the "stalking horse bidder", or this Agreement is terminated pursuant to Section 11.1, whichever is sooner.

"Subsidiaries" means any entity with respect to which a specified Person (or a Subsidiary thereof) has the power, through the ownership of securities or otherwise, to elect a majority of the directors, or similar managing body.

"Tax" or "Taxes" (and with correlative meaning, "Taxable" and "Taxing") means (i) any federal, state, provincial, local, foreign or other income, alternative, minimum, add-on minimum, accumulated earnings, personal holding company, franchise, capital stock, net worth, capital, profits, intangibles, windfall profits, gross receipts, value added, sales, use, goods and services, excise, customs duties, transfer, conveyance, mortgage, registration, stamp, documentary, recording, premium, severance, environmental (including taxes under Section 59A of the IRC), natural resources, real property, personal property, ad valorem, intangibles, rent, occupancy, license, occupational, employment, unemployment insurance, social security, disability, workers' compensation, payroll, health care, withholding, estimated or other similar taxes, duty, levy or other governmental charge or assessment or deficiencies thereof (including all interest and penalties thereon and additions thereto whether disputed or not) and (ii) any transferee liability in respect of any items described in clause (i) above.

"Tax Return" means any return, declaration, report, claim for refund, information return, or other document (including any related or supporting estimates, elections, schedules, statements, or information) filed or required to be filed in connection with the determination, assessment, or collection of any Tax or the administration of any laws, regulations, or administrative requirements relating to any Tax.

"Third Party Consents" means the consents, approvals and waivers set forth in Section 7.3 of the Seller's Disclosure Schedule.

"Trademarks" means United States, state and foreign trademarks, service marks, logos, slogans, trade dress and trade names (including all assumed or fictitious names under which the Business is conducted), and any other indicia of source of goods and services, designs and logotypes related to the above, in any and all forms, whether registered or unregistered, and registrations and pending applications to register the foregoing (including intent to use applications), and all Goodwill related to or symbolized by the foregoing.

"Trade Secrets" means confidential information and trade secrets.

"Transaction Documents" means this Agreement, the Bill of Sale and Assignment, the Assumption Agreement, and any other agreements, instruments, or documents entered into pursuant to this Agreement.

"Transferred Employees" has the meaning set forth in Section 8.4(a).

"Transferred Employee Liability" means all Liabilities of Seller as of the Closing Date with respect to (i) accrued payroll (including accrued payroll Taxes), and (ii) holiday pay, accrued paid time off (PTO), accrued sick leave and accrued vacation up to an aggregate of three (3) weeks per each of Seller's officers and employees who become Transferred Employees.

"Transfer Taxes" has the meaning set forth in Section 8.1(b).

"Unclaimed Property" means any unclaimed cash, cash equivalents and deposits held by Persons other than Seller, and which are not reflected on the books and records of Seller on the Closing Date and which would escheat to a Governmental Authority if not claimed within applicable time periods.

"Warehouse Lease" means that certain lease agreement by and between Miller Realty Group and AGR executed on December 9, 2011 and commencing on September 1, 2012, for the warehouse space located at 947 Route 7 South, Milton, Vermont, as the same may be modified or amended from time to time.

"Warehouse Premises" means that premises leased to Seller pursuant to the Warehouse Lease..

"Working Capital Adjustment" means, as determined in accordance with the procedures set forth in Section 3.3:

(i) a positive amount equal to the sum of the amount of Closing Date Inventory; plus the amount of Closing Date Prepaid Expenses; plus the amount of Closing Date Accounts Receivable; less Purchased Inventory which was sold after the Inventory Valuation Date and prior to the Closing Date; less the Working Capital Target Amount, or

(ii) a negative amount equal to the sum of Working Capital Target Amount plus Purchased Inventory which was sold after the Inventory Valuation Date and prior to the Closing Date; less the amount of Closing Date Inventory; less the amount of Closing Date Prepaid Expenses; less Closing Date Accounts Receivable.

"Working Capital Target Amount" equals NINE MILLION THREE HUNDRED THOUSAND and 00/100 DOLLARS ($9,300,000.00).

1.2 Other Definitions and Interpretive Matters.

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

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

Dollars. Any reference in this Agreement to $ shall mean U.S. dollars.

Exhibits/Schedules. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement. If any Schedule or Exhibit is incomplete on the Effective Date, Buyer and Seller shall use their respective best efforts to complete such incomplete Schedule or Exhibit prior to July 1, 2025 or one

(1) day prior to the Auction, whichever is later, it being understood that the content of all Schedules and Exhibits shall be approved by Seller and Buyer, and provided further, that the list of Assigned Agreements may be amended until the Closing Date, upon mutual agreement of Seller and Buyer.

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

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

Herein. The words such as "herein," "hereof" and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

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

(b) No Strict Construction. The Parties participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as jointly drafted by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

ARTICLE 2
PURCHASE AND SALE; CLOSING

2.1 Purchase and Sale.

Upon the terms and subject to the conditions of this Agreement, at Closing, Seller shall sell, transfer, assign, convey and deliver, or cause to be sold, transferred, assigned, conveyed and delivered, to Buyer, and Buyer shall purchase and acquire, free and clear of all Claims, Liabilities and Encumbrances (other than Permitted Encumbrances), including Claims of successor liability, to the extent provided under the Bankruptcy Code, all right, title and interest of Seller in, to or under all of the properties and assets of Seller (other than the Excluded Assets) of every kind and description, wherever located, real, personal or mixed, tangible or intangible, owned, leased, licensed, used or held for use in or relating to the Business, including all associated Goodwill, including, but not limited to the following (herein collectively called the "Acquired Assets"):

(a) the Assigned Agreements Contracts listed on Schedule 2.1(a);

(b) the Owned Real Property listed on Schedule 2.1(b) of the Seller's Disclosure Schedule;

(c) the Leased Real Property listed on Schedule 2.1(c) of the Seller's Disclosure Schedule;

(d) the Leases listed on Schedule 2.1(d) of the Seller's Disclosure Schedule;

(e) the Permits listed on Schedule 2.1(e) of the Seller's Disclosure Schedule;

(f) the Copyrights listed on Schedule 2.1(f) of the Seller's Disclosure Schedule;

(g) the Domain Names listed on Schedule 2.1(g) of the Seller's Disclosure Schedule;

(h) the Patents listed on Schedule 2.1(h) of the Seller's Disclosure Schedule;

(i) the Trademarks listed on Schedule 2.1(i) of the Seller's Disclosure Schedule;

(j) the Trade Secrets listed on Schedule 2.1(j) of the Seller's Disclosure Schedule;

(k) the Software listed on Schedule 2.1(k) of the Seller's Disclosure Schedule;

(l) all Purchased Inventory;

(m) the Equipment listed on Schedule 2.1(m) of the Seller's Disclosure Schedule;

(n) Accounts Receivable listed on Schedule 2.1(n) of Seller's Disclosure Schedule

(o) any and all rights to enforce all confidentiality or non-disclosure agreements in favor of Seller;

(p) the Business as a going concern;

(q) copies of any records that Seller requests with respect to any of the Excluded Assets described in Section 2.2(c), (h) and (i).

2.2 Excluded Assets.

Notwithstanding anything in Section 2.1 to the contrary, nothing herein shall be deemed to sell, transfer, assign or convey (or require Seller to do any of the foregoing as to) the following assets to Buyer, and Seller shall retain all of its respective rights, title and interests in, to and under, and Buyer shall have no rights with respect to, any of the following (collectively, the "Excluded Assets"):

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

(b) all bank accounts of Seller set forth on Section 2.2(b) of the Seller's Disclosure Schedule (collectively, the "Excluded Bank Accounts");

(c) subject to Section 8.8, all insurance policies that are not Assigned Agreements or rights to proceeds thereof, including any tail insurance policies that are not Assigned Agreements that provide coverage to Seller or its respective Affiliates or Representatives after the Closing, or which relate to or cover Liabilities that are not among the Assumed Liabilities (as defined below);

(d) all rights, Claims or causes of action of Seller or others entitled to bring such Claims against third parties arising out of events occurring prior to the Closing Date, and including any rights under or pursuant to any and all warranties, representations and guarantees made by suppliers, manufacturers and contractors relating to products sold, or services provided, to Seller and all rights, Claims and causes of action of Seller or others entitled to bring such Claims against former officers, directors, employees, members, principals, agents, and Representatives of Seller, but excluding (i)

Avoidance Actions other than Avoidance Actions against non-insiders under Bankruptcy Code Section 547(b), and (ii) such rights, Claims and causes of action arising out of the Acquired Assets or Assigned Agreements;

(e) all Tax refunds and rebates, credits and similar items relating to or arising out of the operation of the Business and to any period, or portion of any period, on or prior to the Closing Date, but excluding refunds and rebates, credits and similar items relating to or arising out of the Acquired Assets and Assumed Liabilities;

(f) the Purchase Price delivered (or required to be delivered) to Seller pursuant to this Agreement, subject to the adjustments set forth in Section 3.3 hereof;

(g) any shares of capital stock or other equity interests of Seller or any of the Seller's Subsidiaries or any securities convertible into, exchangeable or exercisable for shares of capital stock or other equity interests of Seller or any of the Seller's Subsidiaries;

(h) all minute books, stock ledgers, corporate seals and stock certificates of Seller or any of the Seller's Subsidiaries, *provided, however*, that Seller shall provide copies to Buyer of any such documents that are reasonably necessary for Buyer to operate the Business;

(i) any Contract that is not an Assigned Agreement, and all rights under any such Contract that is not an Assigned Agreement, *provided, however,* that at any time that is at least one (1) Business Day prior to the Closing, Buyer, in its discretion, by written notice to Seller, may include or exclude as an Assigned Agreement any Contract or Contracts, and, in such circumstances, any included Contract or Contracts shall not constitute Excluded Assets (and shall constitute Acquired Assets), and Buyer shall acquire rights and assume any Liabilities with respect thereto pursuant to Section 2.3 and Section 2.5 hereof, *provided further*, that if Seller has moved for the assumption of any such excluded Contracts at the request of the Buyer and an order relating to the assumption has been granted by the Bankruptcy Court, Buyer shall have the obligations under Section 2.3 and Section 2.5 hereof as if such Contracts were Assigned Agreements and be liable for all Cure Costs that may be due. Upon Buyer's reasonable request, Seller shall provide additional information as to the Liabilities under the Contracts sufficient for Buyer to make an informed assessment whether to accept an assignment and assumption of such Contracts;

(j) any rights, Claims or causes of action of Seller under this Agreement or any other Transaction Document;

(k) any property or asset of any kind (whether tangible, intangible or otherwise) held or used by Seller pursuant to any Contract which is not among the Assigned Agreements transferred to Buyer and which property or asset would not otherwise qualify as an Acquired Asset;

(l) all Inventory of Seller which is not located at any retail location and which was purchased by Seller more than twelve (12) months prior to the Closing Date (i.e., all Inventory other than Purchased Inventory);

(m) all personnel records of Seller's employees, provided that Seller shall provide copies to Buyer of any such documents that are reasonably necessary for Buyer to operate the Business;

(n) all rights in connection with cash assets of Benefit Plans, provided that, Seller shall provide copies to Buyer of any such documents that are reasonably necessary for Buyer to operate the Business; and

(o) any asset identified by Buyer and listed on Schedule 2.2(o).

2.3 Assumed Liabilities.

Upon the terms and subject to the conditions of this Agreement, at Closing, Buyer shall execute and deliver to Seller the Assumption Agreement attached hereto as **Exhibit E** (the "Assumption Agreement") pursuant to which Buyer shall assume and agree to discharge, when due (in accordance with their respective terms and subject to the respective conditions thereof), the following Liabilities (collectively the "Assumed Liabilities") and no others:

(a) Acquired Assets. All Liabilities arising on or after the Closing Date with respect to the Acquired Assets.

(b) Assigned Agreements. All Liabilities of Seller under the Assigned Agreements on or after the Closing Date (collectively, the "Assumed Contract Liability").

(c) Other Liabilities. Cure Costs, if any.

(d) Transferred Employees. All Transferred Employee Liability.

2.4 Excluded Liabilities.

Notwithstanding any provision in this Agreement to the contrary, Buyer shall not assume and shall not be obligated to assume or be obliged to pay, perform or otherwise discharge any Liability of Seller or its Affiliates, and Seller shall be responsible for the payment, satisfaction or discharge in any manner of all Liabilities of Seller, other than the Assumed Liabilities (collectively the "Excluded Liabilities").

2.5 Assignments; Cure Costs; Warehouse Lease – Post Closing Access Period.

(a) Seller shall assign to Buyer, and Buyer shall assume all Assigned Agreements as of the Closing Date pursuant to Section 365 of the Bankruptcy Code and the Sale Order. In connection with such assumption and assignment, Buyer shall cure all monetary defaults under such Assigned Agreements to the extent required by Section 365(b) of the Bankruptcy Code (such amounts, the "Cure Costs").

(b) Seller and Buyer acknowledge and agree that if Buyer determines in its discretion that Buyer will not assume the Warehouse Lease, Buyer will nevertheless require access to the Warehouse Premises for a limited period of time beginning on the Closing Date and ending on the sooner of one hundred twenty (120) days after the Petition Date, or fifteen (15) days after written notice from Buyer to Seller (the "Post Closing Access Period") for the purpose of removing Purchased Inventory and other Acquired Assets, if any, located in the Warehouse Premises. Therefore, Seller agrees that Seller will not reject the Warehouse Lease until the end of the Post Closing Access Period, and that during the Post Closing Access Period and upon reasonable advance written notice to Seller, Seller shall provide Buyer and Buyer's agents unrestricted access to the Warehouse Premises during Normal Business Hours so that Buyermay remove Purchased Inventory and other Acquired Assets, and to conduct such other incidental activities related thereto as are necessary or appropriate. .In exchange for these rights, during the Post Closing Access Period Buyer shall be responsible for and promptly pay any and all of Seller's direct costs under the Warehouse Lease. For purposes of this Section, Seller's direct costs under the Warehouse Lease means rent, additional rent and all other amounts payable by Seller in its capacity as tenant under the Warehouse Lease in accordance with the terms of such Warehouse Lease.

2.6 Further Assurances.

At the Closing, and at all times thereafter as may be necessary, Seller shall for no additional consideration execute and deliver to Buyer such other instruments of transfer as shall be reasonably necessary or appropriate to vest in Buyer good and indefeasible title, to the extent transferable or assignable, to the Acquired Assets free and clear of all Claims, Liens and Encumbrances (other than Permitted Encumbrances) to the extent provided in the Sale Order and to comply with the purposes and intent of this Agreement and such other instruments as shall be reasonably necessary or appropriate to evidence the assignment by Seller and assumption by Buyer of the Assigned Agreements, and each of the parties hereto shall use its reasonable efforts to take, or cause to be taken, all appropriate action, do or cause to be done all things necessary, proper or advisable under applicable Law, and execute and deliver such documents and other papers, as may be required to consummate the Transactions. For the avoidance of doubt, nothing herein shall be deemed to obligate Buyer or Seller to execute any documents or papers which would require such party to make or incur any monetary obligation not imposed on such party pursuant to the other provisions of this Agreement or otherwise expand in any material respect such party's obligations beyond those imposed upon it/them pursuant to the other provisions hereof.

ARTICLE 3
PURCHASE PRICE

3.1 Purchase Price.

The purchase price (the "Purchase Price") for the purchase, sale, assignment and conveyance of Seller's right, title and interest in, to and under the Acquired Assets shall be an amount equal to NINE MILLION and 00/100 DOLLARS ($9,000,000.00), increased or decreased, by an amount equal to the Working Capital Adjustment, if any.

3.2 Deposit.

Within two (2) Business Days' after execution and delivery of the Escrow Agreement by the later of Escrow Agent, Buyer, and Seller, Buyer shall pay the Deposit to Escrow Agent. Subject to the terms and conditions of a written escrow agreement in the form attached hereto as **Exhibit J** and made a part hereof (the "Escrow Agreement"), Escrow Agent shall hold the Deposit in a segregated, interest bearing account with interest to accrue thereon for the benefit of Buyer, or for the benefit of Seller in the event of the termination of this Agreement by Seller pursuant to Section 11.1(c)(i). Seller will be entitled to retain the Deposit and interest accrued thereon upon Closing or in the event of the termination of this Agreement by Seller pursuant to Section 11.1(c)(i). Subject to the preceding sentence, Buyer shall be entitled to a return of the Deposit and interest accrued thereon to the extent provided in Section 11.2(c). The fee for services of the Escrow Agent (the "Escrow Fee") shall be advanced by Buyer and Buyer shall be entitled to credit the Escrow Fee against the payment of the Purchase Price in the event of a Closing.

3.3 Working Capital Adjustment.

(a) Beginning not less than twenty-one (21) days prior to the Closing Date, and daily thereafter until the Closing Date, Seller shall provide Buyer with:

(i) a schedule listing (1) Inventory as set forth in the balance sheet of Seller in total, with date of purchase, and as classified as discontinued, end of life, end of season and like categories historically reported in the books and records of Seller, (2) Inventory located at each retail location, by location, including date of purchase, (3) Damaged Inventory, all valued at the lower of cost or market as set forth in the books and records of Seller maintained in accordance with GAAP, and

(ii) a schedule of prepaid expenses of Seller.

(A) For purposes of this Agreement, the term "lower of cost or market" shall mean the lower of (1) the historical cost of such Inventory (2) the fair market value of such Inventory as determined by the historical sale price of such Inventory on the books and records of Seller during the twelve (12) months ending on the Inventory Valuation Date. Seller shall provide Buyer with such supporting information as Buyer may reasonably require to substantiate Seller's amounts, and such amount shall be subject to review and verification by Buyer and the Independent Accountants during the due diligence process. Seller and Buyer shall work in good faith to resolve such disputes in the determination of such amounts.

(B) Seller and Buyer acknowledge that Seller has difficulty in providing supporting information to Buyer to substantiate Inventory amounts. Seller covenants and agrees to use Seller's best efforts to provide all information reasonably necessary for Buyer and the Independent Accountants to verify Inventory, and to verify all information necessary to determine the component amounts necessary to determine the Working Capital Adjustment.

(b) Not less than three (3) Business Days prior to the Closing Date, based on the information provided by Seller under Section 3.3(a) and verified by Buyer and the Independent Accountants, Buyer shall prepare and send Seller a schedule showing estimated Working Capital Adjustment, including the estimated Closing Date Inventory, the amount of Purchased Inventory which was sold after the Inventory Valuation Date and prior to the Closing Date, and the estimated Closing Date Prepaid Expenses. Unless Seller objects to such estimates by notifying Buyer within two (2) Business Days of receipt of Buyer's estimate, such amounts shall be deemed to be final and the parties shall proceed to Closing.

(c) If Seller timely disputes such estimate of the Working Capital Adjustment, Seller and Buyer shall negotiate in good faith to resolve such dispute and then proceed to Closing after such dispute is resolved. If Seller and Buyer are unable to resolve the dispute within three (3) Business Days following the commencement of such negotiations, either party may submit the matter to the Bankruptcy Court by filing a motion requesting the Bankruptcy Court to determine the appropriate Working Capital Adjustment.

(d) In connection with such proceedings, each of Buyer and Seller shall submit to the Bankruptcy Court its proposed Working Capital Adjustment together with such supporting documentation and information as it deems appropriate. The Bankruptcy Court shall then determine which of the two proposed Working Capital Adjustments most accurately reflects the correct amount in accordance with the terms of this Agreement, and the Court shall adopt that proposal in its entirety. The decision of the Bankruptcy Court shall be final, binding, and non-appealable, and subject to the provisions of Articles 9 and 10, the parties shall proceed to Close within three (3) Business Days thereafter, or such other time as the Bankruptcy Court may order.

3.4 Allocation of Purchase Price.

The Purchase Price shall be allocated among the Acquired Assets as set forth on the allocation schedule prepared by Buyer (the "Allocation Schedule"). Buyer and Seller will each file IRS Form 8594, and all Tax Returns, in accordance with the Allocation Schedule. Buyer, on the one hand, and Seller, on the other hand, each agrees to provide the other promptly with any other information required to complete Form 8594.

ARTICLE 4
CLOSING

4.1 Closing Date.

The consummation of the Transactions, including the sale of the Acquired Assets and the assumption of the Assumed Liabilities contemplated hereby (the "Closing") shall take place via the exchange of the Transaction Documents by a combination of e-mail or other electronic submission, overnight express or regular mail or such other means as the Parties may agree, on the second Business Day following the date on which the conditions set forth in Article 9 and Article 10 have been satisfied or waived (other than those conditions which by their nature are to be satisfied at the Closing, but subject to the satisfaction of such conditions (or the waiver thereof by the Party entitled to waive such conditions)), or such other date as the Parties mutually agree. The date and time at which the Closing actually occurs is hereinafter referred to as the "Closing Date." The Closing shall be effective as of 12:01 a.m. on the date immediately following the Closing Date.

4.2 Payment of Purchase Price.

Subject to satisfaction or waiver (if permissible) of all the conditions set forth in Article 9 and Article 10, at the Closing, Buyer the Purchase Price, plus or minus the Working Capital Adjustment shall be paid as follows:

(a) First by credit of the Deposit, plus interest, if any, which amount shall be paid by Escrow Agent to Seller by wire transfer of immediately available funds to the account designated by Seller not less than one (1) Business day prior to the Closing Date by the Seller (the "Payment Account");

(b) Second, by credit for the amount of Cure Cost paid by Buyer;

(c) Third, by credit for the amount of the Escrow Fee; and

(d) Fourth, the Buyer shall pay the balance of the Purchase Price by wire transfer of immediately available funds to the Payment Account.

4.3 Buyer's Additional Deliveries.

At or prior to the Closing, Buyer shall deliver to Seller:

(a) a certificate of an authorized officer of Buyer, dated the Closing Date, in form and substance reasonably satisfactory to Seller, as to (i) a copy of the resolutions of the board of directors of Buyer authorizing and approving Buyer's execution and delivery of this Agreement and the other Transaction Documents to which it is a party and the performance by Buyer of its obligations hereunder and thereunder; and (ii) incumbency and signatures of the directors or officers of Buyer executing the Transaction Documents;

(b) the Assumption Agreement and each other Transaction Document to which Buyer is a party, duly executed by Buyer;

(c) the certificates required to be delivered pursuant to Sections 10.1 and 10.2; and

(d) such other assignments, endorsements and other good and sufficient instruments of conveyance, assumption and transfer, in form reasonably satisfactory to Seller, as Seller may reasonably request in order to consummate the Transactions.

4.4 Seller's Deliveries.

At or prior to the Closing, Seller shall deliver to Buyer:

(a) a certificate of an authorized officer of each Seller, dated the Closing Date, in form and substance reasonably satisfactory to Buyer, as to (i) a copy of the resolutions of the board of directors or managers of such Seller authorizing and approving such Seller's execution and delivery of this Agreement and the other Transaction Documents to which it is a party and the performance by such Seller of its obligations hereunder and thereunder; and (ii) incumbency and signatures of the officer of such Seller executing the Transaction Documents;

(b) the Bill of Sale and Assignment, the Assumption Agreement, Deeds and each other Transaction Document to which Seller is a party, duly executed by Seller;

(c) instruments of assignment of the Patents (the "Assignment of Patents"), Trademarks (the "Assignment of Trademarks"), Copyrights (the "Assignment of Copyrights") and Domain Names (the "Assignment of Domain Names") that are owned by Seller, transferable and assignable by Seller, and included in the Acquired Assets, if any, duly executed by Seller, in form for recordation with the appropriate Governmental Authorities, substantially in the form of **Exhibits F, G, H, and I**, respectively, and any other assignments or instruments with respect to any Intellectual Property included in the Acquired Assets for which an assignment or instrument is required to assign, transfer and convey any and all interest of Seller in such assets to Buyer, to the extent the same are transferable and assignable;

(d) a certified copy of the Final Order;

(e) the certificates required to be delivered pursuant to Sections 9.1 and 9.2;

(f) a certificate executed by each Seller, in the form prescribed under Treasury Regulation Section 1.1445-2(b), that such Seller is not a foreign person within the meaning of Section 1445(f)(3) of the IRC; and

(g) such other bills of sale, assignments, Deeds, endorsements, and other good and sufficient instruments of conveyance, assumption and transfer, in form reasonably satisfactory to Buyer, as Buyer may reasonably request in order to consummate the Transactions.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the corresponding sections or subsections of the Seller's Disclosure Schedule or in any update thereto pursuant to Section 7.5 (whether or not the representations and warranties in Article 5 expressly refer to such schedule), each Seller, jointly and severally, hereby represents and warrants to Buyer as of the Effective Date and as of the Closing Date (except for representations and warranties that are made as of a specific date, which are made only as of such date) as follows:

5.1 Organization and Good Standing.

Each Seller has the full power and authority to own its property and carry on the nature of the Business. Each Seller is a duly organized, validly existing and, except as a result of the commencement or continuance of the Bankruptcy Case, in good standing corporation, or limited liability company, as the case may be, under the laws of its respective state of organization. Each Seller is duly qualified or licensed to do business and is in good standing in each jurisdiction where the character of its Business or the nature of its properties makes such qualification or licensing necessary, except where the failure to so qualify or be licensed or in good standing would not have a Seller Material Adverse Effect.

5.2 Authority; Validity; Consents.

Each Seller has, subject to requisite Bankruptcy Court approval, the requisite corporate power and authority necessary to enter into and perform its obligations under this Agreement and the other Transaction Documents to which it is a party and to consummate the Transactions. Subject to requisite Bankruptcy Court approval, the execution, delivery and performance by each Seller of this Agreement and the other Transaction Documents to which it is a party and the consummation of the Transactions have been duly and validly authorized by all requisite corporate or limited liability company actions in respect thereof. Subject to requisite Bankruptcy Court approval, this Agreement and the other Transaction Documents to which each Seller is a party constitute the legal, valid and binding obligations of each Seller enforceable against it in accordance with their respective terms, except as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity. Subject to requisite Bankruptcy Court approval, except as set forth in Section 5.2 of the Seller's Disclosure Schedule, Seller is not required to give any notice to, make any filing with or obtain any consent, approval or authorization from any Person (including any Governmental Authority) in connection with the execution and delivery of this Agreement and the other Transaction Documents or the consummation or performance of the Transactions.

5.3 No Conflict.

When the consents and other actions described in Section 5.2 of the Seller's Disclosure Schedule have been obtained and taken, the execution and delivery of this Agreement and the other Transaction Documents and the consummation of the Transactions will not result in the breach of any of the terms and provisions of, or constitute a default under, or conflict with, or cause any acceleration of any obligation of Seller under (a) any agreement, indenture, or other instrument to which any Seller is bound, (b) the articles of incorporation, bylaws or operating agreement, as the case may be, of each Seller, (c) any Order, or (d) any Permit or Legal Requirement; in the case of the preceding clauses (a), (c) and (d), except for such breaches, defaults, conflicts or accelerations that would not have a Seller Material Adverse Effect.

5.4 Brokers or Finders.

Except for the agreement, if any, between Seller and Broker, neither Seller, nor any Person acting on its behalf has paid or become obligated to pay any fee, commission or similar payment to any broker, finder, investment banker, agent or intermediary in connection with this Agreement, the other Transaction Documents or the Transactions for which Seller is or will become liable or which may encumber any of Seller's assets or property, and Seller shall indemnify and hold harmless Buyer from any Claims with respect to any such fees, commissions or similar payments

5.5 Ownership of Acquired Assets.

Seller owns all of the Acquired Assets. At the Closing, Seller shall, by operation of Bankruptcy Code, deliver to Buyer good and marketable title to the Acquired Assets, free and clear of all Claims, Encumbrances (other than Permitted Encumbrances) and Liabilities. Seller shall retain the risk of loss with respect to the Acquired Assets until the Closing Date.

5.6 WARN Act.

Seller has complied with all applicable provisions of the WARN Act, including, but not limited to, timely sending all notices required under the WARN Act.

5.5 Other. [RESERVED PENDING DUE DILIGENCE]

ARTICLE 6
REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller as of the Effective Date and as of the Closing Date (except for representations and warranties that are made as of a specific date, which are made only as of such date) as follows:

6.1 Organization and Good Standing.

Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Buyer has the full power and authority to own its property, carry on its business as now being conducted and as proposed to be conducted following the Closing, purchase the Acquired Assets and to carry out the Transactions.

6.2 Authority; Validity.

Buyer has the requisite power and authority necessary to enter into and perform its obligations under this Agreement and the other Transaction Documents to which it is a party and to consummate the Transactions. The execution, delivery and performance by Buyer of this Agreement and the other Transaction Documents to which Buyer is party and the consummation of the Transactions have been duly and validly authorized by all necessary corporate actions in respect thereof. This Agreement and the other Transaction Documents to which Buyer is a party constitute the legal, valid and binding obligation of Buyer, enforceable against it in accordance with their respective terms, except as such enforceability is limited by bankruptcy, insolvency, reorganization, moratorium or similar laws now or hereafter in effect relating to creditors' rights generally or general principles of equity.

6.3 No Conflict.

The execution and delivery of this Agreement and the other Transaction Documents and the consummation of the Transactions will not result in the breach of any of the terms and provisions of, or constitute a default under, or conflict with, or cause any acceleration of any obligation of Buyer under (a) any agreement, indenture, or other instrument to which it is bound, (b) the limited liability company agreement of Buyer, (c) any Order, or (d) any Permit or Legal Requirement; in the case of the preceding clauses (a), (c) and (d), except for such breaches, defaults, conflicts or accelerations that do not, and are not reasonably likely to, individually or in the aggregate, materially and adversely affect the ability of Buyer to carry out its obligations under this Agreement and the other Transaction Documents to which it is a party, and to consummate the Transactions.

6.4 Brokers or Finders.

Neither Buyer nor any Person acting on its behalf has paid or become obligated to pay any fee, commission or similar payment to any broker, finder, investment banker, agent or intermediary in connection with this Agreement, the other Transaction Documents or the Transactions for which Buyer is or will become liable or which may encumber any of Buyer's assets or property, and Buyer shall indemnify and hold harmless Seller from any Claims with respect to any such fees, commissions or similar payments.

6.5 Acquired Assets "AS IS"; Buyer's Acknowledgment Regarding Same.

Buyer agrees, warrants, and represents that, except as set forth in this Agreement, (a) Buyer is purchasing the Acquired Assets on an "AS IS" and "WITH ALL FAULTS" basis based solely on Buyer's own investigation of the Acquired Assets and (b) none of the Seller nor any broker, agent, officer, employee, servant, attorney, or Representative of Seller has made any warranties, representations or guarantees, express, implied or statutory, written or oral, respecting the Acquired Assets or the Assumed Liabilities, any part of the Acquired Assets or the Assumed Liabilities, relating to the financial performance of the Acquired Assets or the Business, or the physical condition of the Acquired Assets. Buyer further acknowledges that the consideration for the Acquired Assets specified in this Agreement has been agreed upon by Seller and Buyer after good-faith arms-length negotiation in light of Buyer's agreement to purchase the Acquired Assets "AS IS" and "WITH ALL FAULTS." Buyer confirms that Seller has made available to Buyer the opportunity to ask questions of the officers and management of Seller and to acquire additional information about the Business, the Acquired Assets and the Assumed Liabilities. Buyer agrees, warrants, and represents that, except as set forth in this Agreement, Buyer has relied, and shall rely, solely upon Buyer's own investigation of all such matters, and that Buyer assumes all risks with respect thereto. EXCEPT AS SET FORTH IN THIS AGREEMENT, SELLER DOES NOT MAKE ANY EXPRESS WARRANTY, ANY WARRANTY OF MERCHANTABILITY, ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED OR STATUTORY WARRANTY WHATSOEVER WITH RESPECT TO THE ACQUIRED ASSETS INCLUDING ANY REAL OR PERSONAL PROPERTY OR ANY FIXTURES OR THE ACQUIRED ASSETS, THE ASSUMED LIABILITIES OR THE BUSINESS.

6.6 Availability of Funds.

There are no conditions precedent or other contingencies related to the funding of the full amount of the Purchase Price, other than there not having occurred a Buyer Material Adverse Effect or a Seller Material Adverse Effect. Buyer will have at and after the Closing, funds sufficient to pay the Purchase Price and any other amounts required to be paid in connection with the consummation of the Transactions, and to pay all related fees and expenses.

6.7 No Other Representations or Warranties of Seller.

Except for the representations and warranties contained in Article 5, Buyer acknowledges that Seller, nor any other Person on behalf of Seller, makes any other express or implied representation or warranty with respect to Seller or the Business (including representations and warranties as to the condition of the Acquired Assets). Except as set forth in Section 12.16 hereof, Seller, nor any other Person, will have or be subject to any liability or indemnification obligation to Buyer or any other Person resulting from the distribution to Buyer, or use by Buyer of, any such information, including any information, documents, projections, forecasts or other material made available to Buyer in certain "data rooms," confidential information memoranda or management presentations in expectation of the Transactions.

ARTICLE 7
ACTION PRIOR TO THE CLOSING DATE

7.1 Investigation of the Business By Buyer.

(a) From and after the Effective Date until the Closing, upon reasonable advance written notice, and subject to the confidentiality obligations to which Seller may be bound, upon reasonable notice, Seller shall afford Buyer's authorized Representatives reasonable access during Normal Business Hours to the offices, properties, key employees, outside accountants, agreements and other documentation and financial records (including computer files, retrieval programs and similar documentation) with respect to the Business, the Acquired Assets and the Assumed Liabilities to the extent Buyer reasonably deems necessary, and shall permit Buyer and its authorized Representatives to make copies of such materials at Buyer's sole expense. From and after the Effective Date until the Closing, and subject to the confidentiality obligations to which Seller may be bound, Seller shall furnish to Buyer or its authorized Representatives such additional information concerning the Acquired Assets, the Business and the Assumed Liabilities as shall be reasonably requested by Buyer or its authorized Representatives by reasonable advance notice, including all such information as shall be reasonably necessary to enable Buyer or its authorized Representatives to (i) verify the accuracy of Seller's representations and warranties contained in this Agreement, (ii) verify that Seller has complied with the covenants contained in this Agreement, (iii) determine whether the conditions set forth in Article 9 have been satisfied, and (iv) determine the Working Capital Adjustment. From and after the Effective Date until the Closing, Seller shall use its commercially reasonable efforts to cause its outside accountants and outside counsel to cooperate with Buyer in such investigation. It is acknowledged and understood that no investigation by Buyer or other information received by Buyer shall operate as a waiver or otherwise affect any representation, warranty or other agreement given or made by Seller in this Agreement. Notwithstanding anything to the contrary herein, no such investigation or examination shall be permitted, and no such documents or information shall be required to be provided or made available, to the extent that it would require Seller to disclose documents or information subject to attorney-client privilege. For the avoidance of doubt, nothing in this Section 7.1 is intended to create a due diligence contingency in favor of Buyer.

(b) From and after the Effective Date until the Closing, as reasonably requested by Buyer from time to time, Seller shall use commercially reasonable efforts to cooperate with Buyer in connection with arranging such meetings or telephone conferences with material suppliers and customers of the Business as may be necessary and appropriate for Buyer to conduct a comprehensive review of Seller's relations with its customers and suppliers.

(c) Buyer reserves the right to add to subtract from, supplement and amend Schedule 1.1 (Assigned Agreements) from the Effective Date until two (2) Business Days after the Sale Order becomes a Final Order.

7.2 Operations Prior to the Closing Date.

Between the Effective Date and the Closing, Seller shall maintain the Acquired Assets and operate and carry on the Business only in the ordinary course consistent with past practice since the commencement of the Bankruptcy Case and taking into account Seller's status as a debtor in possession, except as otherwise expressly provided in this Agreement or in any orders of the Bankruptcy Court. Between the Effective Date and the Closing, consistent with and subject to the foregoing and to the extent permitted or required by the Bankruptcy Case, Seller shall continue operating the Business as a going concern, and maintain the business organization of the Business intact and preserve the goodwill of the manufacturers, suppliers, contractors, licensors, employees, customers, distributors and others having business relations with the Business. In connection therewith, between the Effective Date and the Closing, Seller shall not, other than in the ordinary course of business, (i) offer employment for any period on or after the Closing Date to any employee or agent of the Business regarding whom Buyer makes offers of employment in accordance with the terms set forth herein or (ii) otherwise attempt to persuade any such employee or agent to terminate his or her relationship with the Business.

7.3 Third Party Consents.

Subject to Section 2.5, from and after the Effective Date until the Closing, Seller, on the one hand, and Buyer, on the other hand, will cooperate with the other to secure, before the Closing Date, all Third Party Consents to the extent such consents are not provided for, or the need for which are obviated or satisfied, by the Sale Order, *provided* that, subject to Section 2.5, neither Seller nor Buyer shall have any obligation to offer or pay any consideration in order to obtain any such consents, approvals or waivers (in the case of Seller, unless Buyer requests that Seller makes such a payment or provides such other consideration and Buyer agrees to pay Seller or provide such other consideration in advance for such payment and any associated costs); *provided*, *however*, that neither Buyer nor Seller shall be required to waive any of the conditions to Closing set forth in Article 9 or Article 10, respectively.

7.4 Governmental Approvals.

(a) From and after the Effective Date until the Closing Date, Seller and Buyer shall act diligently, and shall cooperate with each other, to do or cause to be done, all things necessary, proper or advisable consistent with applicable Legal Requirements to cause the conditions precedent to the Closing to be satisfied and to cause the Closing to occur, including to secure any consents and approvals of any Governmental Authority required to be obtained by them under non-United States antitrust or competition laws, in order to assign or transfer any Permits to Buyer, to permit the consummation of the Transactions, or to otherwise satisfy the conditions set forth in Article 9 and in Article 10, in each case as necessary to the extent such consents are not provided for or satisfied by the Sale Order; *provided, however*, that neither Seller, on the one hand, nor Buyer, on the other hand, shall make any agreement or understanding affecting the Acquired Assets or the Business (excluding the Excluded Assets or Excluded Liabilities) as a condition for obtaining any such consents or approvals except with the prior written consent of the other (which consent shall not be unreasonably withheld or delayed. Seller, on the one hand, and Buyer, on the other hand, shall act diligently and reasonably to cooperate with the other, to the extent commercially reasonable, to obtain the consents and approvals contemplated by this Section 7.4(a); *provided, however*, neither Seller nor Buyer shall be required to waive any of the conditions to Closing set forth in Article 10 or Article 9, respectively.

(b) Seller and Buyer (i) shall promptly inform each other in writing of any communication from any Governmental Authority concerning this Agreement, the Transactions, and any filing, notification or request for approval and (ii) shall permit the other Party to review in advance any proposed written communication or information submitted to any such Governmental Authority in response thereto. In addition, none of Parties shall agree to participate in any meeting with any Governmental Authority in respect of any filings, investigation or other inquiry with respect to this Agreement or the Transactions hereby, unless such Party consults with the other Parties in advance and, to the extent permitted by any such Governmental Authority, gives the other Parties the opportunity to attend and participate thereat, in each case to the maximum extent practicable. Subject to any restrictions under applicable laws, rules or regulations, each Party shall furnish the other with copies of all correspondence, filings and communications (and memoranda setting forth the substance thereof) between it and its Affiliates and their respective Representatives on the one hand, and the Governmental Authority or members of its staff on the other hand, with respect to this Agreement, the Transactions (excluding documents and communications which are subject to preexisting confidentiality agreements or to the attorney-client privilege or work product doctrine) or any such filing, notification or request for approval. Each Party shall also furnish the other Party with such necessary information and assistance as such other party and its Affiliates may reasonably request in connection with their preparation of necessary filings, registration or submissions of information to the Governmental Authority in connection with this Agreement, the Transactions and any such filing, notification or request for approval. Seller and Buyer shall prosecute all required requests for approval with all necessary diligence and otherwise use their respective best efforts to obtain the grant thereof by an Order as soon as possible. Notwithstanding the forgoing and without waiving it, this paragraph does not apply to the Sellers' communication with any Governmental Authority with respect to the Bankruptcy Case, such as the Bankruptcy Court and the Office of the United States Trustee.

7.5 Notice of Developments.

From and after the Effective Date until the Closing, Seller shall promptly notify Buyer, upon Seller obtaining Seller's Knowledge, of (a) any change or development which would cause any of the representations and warranties in Article 5 above not to be true and correct in all material respects, or (b) any material failure of Seller to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it under this Agreement.

7.6 Bankruptcy Court Approval.

(a) Seller and Buyer acknowledge that this Agreement and the sale of the Acquired Assets and the assumption and assignment of the Assigned Agreements are subject to Bankruptcy Court approval and the entry of the Sale Order that becomes a Final Order. Seller and Buyer acknowledge that to obtain approval of this Agreement and the Sale Order, Seller must demonstrate that it has taken reasonable steps to obtain the highest and best price possible for the Acquired Assets, including (i) giving notice of the Transactions to creditors and other interested parties, (ii) subjecting the Transactions to a process whereby interested parties may submit alternative offers to the Seller for the Acquired Assets (or portions thereof) that must constitute higher and/or better offers to be qualified to be a competing bidder in compliance with a Bidding Procedures Order to be entered by the Bankruptcy Court in a form reasonably acceptable to Buyer, and (iii) complying with any and all applicable provisions of the Bankruptcy Code and orders of the Bankruptcy Court relating to the sale of the Acquired Assets.

(b) In the event an appeal is taken or a stay pending appeal is requested, from either the Bidding Procedures Order or the Sale Order, Seller shall immediately notify Buyer of such appeal or stay request and shall provide to Buyer promptly a copy of the related notice of appeal or order of stay. Seller shall also provide Buyer with written notice of any motion or application filed in connection with any appeal from either of such orders. From and after the Effective Date until the Closing, so long as Buyer is not in breach of this Agreement and has not terminated this Agreement, Seller shall take all reasonable steps and actions to defend the Bidding Procedures Order or the Sale Order, as the case may be, and to have the same sustained so that both the Bidding Procedures Order or the Sale Order each become a Final Order.

(c) From and after the Effective Date until the Closing, so long as Buyer is not in breach of this Agreement, Seller shall not take any action that results in, or fail to take any action that results in the reversal, voiding, modification or staying of the Bidding Procedures Order or the Sale Order.

(d) Buyer acknowledges that it may be required to provide adequate assurance of future performance of the Assigned Agreements and Leases to the extent required by Section 365(b) of the Bankruptcy Code and, notwithstanding anything to the contrary herein, that Seller shall not be obligated to assume and assign any Assigned Agreement or Lease with respect to which Buyer fails to satisfy the Bankruptcy Court as to adequate assurance of future performance (collectively, if any, the "Non-Assured Contracts").

(e) In connection with the sale of the Acquired Assets, the Seller shall run a marketing and sale process as shall be directed by the Bankruptcy Court following a preliminary hearing on the Sale Motion (the "Bidding Procedures Hearing") and by the Bidding Procedures Order. No later than July 15, 2025 the Seller shall obtain the entry of a Bidding Procedures Order shall be in the form attached hereto as **Exhibit A** or otherwise in form and substance reasonably satisfactory to the Seller, and the Buyer, and in any event it shall: (i) schedule an auction to be held at an address designated by Seller, which auction shall be held no later than July 23, 2025, or at such other date and time as the Seller, and the Buyer may otherwise agree (the "Auction"); (ii) schedule the sale hearing no later than August 5, 2025; (iii) require, as a precondition to participation in the Auction, the submission of a competing bid for all of the Acquired Assets no later than 5:00 p.m. Eastern Standard Time at least three (3) Business Days prior to the Auction (a "Qualifying Bid"); (iv) require any Qualifying Bid to be accompanied by (w) an earnest money deposit by wire transfer, certified or cashier's check, in the amount of the Deposit, to be held by Seller's counsel in a non-interest bearing escrow or trust account, (x) an executed confidentiality agreement, (y) an executed asset purchase agreement substantially in the form of this Agreement, along with a red-line marked against this Agreement, and (z) written evidence of the party's ability to consummate the transaction and payment of the purchase price in cash at the Closing; (v) be a firm offer and not contain any contingencies to the validity, effectiveness or binding nature of the offer, including, without limitation, contingencies for financings, due diligence or inspection; notwithstanding the foregoing in this subparagraph (v), a bid may contain any contingencies contained herein; (vi) require that any Qualifying Bid must include a cash deposit equal or greater than the Deposit and be higher and better than the offer of the Buyer hereunder with a Purchase Price that is at least $250,000 greater than the sum of (A) the Purchase Price stated in this Agreement plus (B) the Break-Up Fee; (vii) require that any subsequent bid at the Auction be at least $100,000 greater than the preceding bid (it being understood that if a higher Qualifying Bid described in clause (vi) above is made, Buyer shall have the right to apply the Break-Up Fee as a credit against the Purchase Price specified in any subsequent higher Qualifying Bid made by the Buyer); (viii) provide that the Buyer shall be entitled to a break-up fee in the amount of $360,000.00 (the "Break-Up Fee") payable to Buyer within three (3) Business Days after the entry of a Sale Order to another purchaser to reimburse Buyer, which Break-Up Fee is intended to, among other things, reimburse Buyer for its expenses incurred in performing its due diligence related to the purchase of the Acquired Assets, the negotiation and preparation of this Agreement, the agreement to serve as the "Stalking Horse Bidder", and the agreement to keep Buyer's bid open for a limited period of time to act as a backup bidder in the event that the Bankruptcy Court fails to approve a sale to the Buyer as provided herein and instead approves a sale of the Acquired Assets to a Person that has submitted a Qualifying Bid or subsequent higher bid at the Auction and such sale fails to close; (ix) provide that the Break-Up Fee shall be entitled to administrative priority under Section 503(b) of the Bankruptcy Code; (x) sets a bar date for cure amounts for any Contracts or Leases to be assumed hereunder, which bar date shall be no later than the Closing Date; and (xi) reserve the Buyer's right to object to any bid being deemed a Qualifying Bid.

(f) In exchange for the foregoing protections, Buyer agrees that if the Bankruptcy Court enters an order authorizing the sale of the Acquired Assets to a person or entity other than Buyer, and such other person or entity fails or otherwise refuses to purchase the Acquired Assets by the Closing Date of such higher and better offer, Buyer will purchase the Acquired Assets in accordance with the terms of this Agreement within fourteen (14) days following written certification thereof from Seller to Buyer, but in no case shall Buyer be required to purchase the Acquired Assets after the Drop Dead Date.

7.7 Bankruptcy Filings.

From and after the Effective Date until the Closing Date, Seller shall deliver to Buyer copies of all pleadings, motions, notices, statements, schedules, applications, reports and other papers that are filed in the Bankruptcy Cases at the time of their filing, but with respect to any such papers that Seller may file that relates, in whole or in part, to this Agreement, or Buyer, its constituent members or its or their agents or Representatives, Seller shall use its reasonable efforts to provide such prior notice as may be reasonable under the circumstances before the filing of such papers.

7.8 Non-Solicitation and No Shop Period.

Seller agrees that during the Standstill Period, Seller will not, and will cause its affiliates and their respective agents and Representatives not to, directly or indirectly, (i) solicit, initiate, entertain, respond to or encourage inquiries or proposals, accept any offers or proposals to, or enter into an agreement or negotiate with any other person or entity other than Buyer or to otherwise respond to inquiries regarding the Acquired Assets for the purpose of such person or entity becoming a "stalking horse bidder" for the Acquired Assets in lieu of Buyer, or (ii) recommend any Person other than Buyer as a "stalking horse bidder." Notwithstanding anything to the contrary in this Agreement, the terms of this Agreement may be publicly disclosed to seek its approval pursuant to Section 7.6, and Seller and its respective agents and Representatives shall be free to provide due diligence information and to solicit, entertain and encourage inquiries and negotiations with other persons and entities interested in becoming Qualified Bidders at the Auction.

ARTICLE 8
ADDITIONAL AGREEMENTS

8.1 Taxes.

(a) Except as specifically set forth herein (including Section 8.1(b)), Seller shall be liable for and shall pay, and pursuant to Section 8.1(c) shall reimburse Buyer for, all Taxes (whether assessed or unassessed) applicable to the Business and the Acquired Assets, in each case attributable to periods (or portions thereof) ending on or prior to the Closing Date. Without limiting the obligations of Buyer contained elsewhere in this Agreement (including Section 8.1(b)), Buyer shall be liable for and shall pay, and pursuant to Section 8.1(c) shall reimburse the Seller for, all Taxes (whether assessed or unassessed) applicable to the Business, the Acquired Assets and the Assumed Liabilities, in each case attributable to periods (or portions thereof) beginning after the Closing Date. For purposes of this paragraph (a), any period beginning before and ending after the Closing Date shall be treated as two partial periods, one ending on the Closing Date and the other beginning on the day after the Closing Date except that Taxes (such as property Taxes) imposed on a periodic basis shall be allocated on a daily basis.

(b) Without limiting the other terms set forth in this Agreement, any sales Tax, use Tax, real property transfer or gains Tax, documentary stamp Tax or similar Tax attributable to the sale or transfer of the Acquired Assets and not exempted under the Sale Order or by Section 1146(c) of the Bankruptcy Code ("Transfer Taxes") shall be borne by Seller. Seller and Buyer shall use reasonable efforts and cooperate in good faith to exempt the sale and transfer of the Purchased Assets from any such Transfer Taxes. Buyer shall prepare and file all necessary Tax Returns or other documents with respect to all such Transfer Taxes; *provided, however*, that in the event any such Tax Return requires execution by Seller, Buyer shall prepare and deliver to Seller a copy of such Tax Return at least ten (10) days before the due date thereof, and Seller shall promptly execute such Tax Return and deliver it to Buyer, which shall cause it to be filed.

(c) Seller or Buyer, as the case may be, shall promptly provide reimbursement for any Tax paid by one Party all or a portion of which is the responsibility of the other Party in accordance with the terms of this Section 8.1. Within a reasonable time prior to the payment of any such Tax, the Party paying such Tax shall give notice to the other of the Tax payable and each Party's respective liability therefor, although failure to do so will not relieve the other Party from its liability hereunder.

8.2 Collection of Receivables.

If, after the Closing Date, Seller shall receive payment from any account debtor with respect to any Assigned Agreement, Seller shall promptly thereafter deliver such funds and assets to Buyer and take all steps necessary to vest title to such funds and/or assets in Buyer. Seller shall provide Buyer with a written report on the status of such collections, if any, within ten (10) days after Buyer's written request, which request may not be sent more frequently than one time every ninety (90) days.

8.3 Withdrawal of Gardener's Supply DBA.

Within ten (10) days after the Closing Date, Seller shall take such corporate and other actions necessary to withdraw, cancel or otherwise terminate all "doing business as" filings under the name Gardener's Supply and any variation thereof from all jurisdictions, and shall promptly thereafter provide Buyer with written evidence of such name change.

8.4 Employee Matters.

(a) Transferred Employees. Subject to applicable Law, nothing herein shall be construed to restrict Buyer's ability after the Closing to terminate or modify the employment of any Transferred Employee. This Section 8.4 is not intended to, and shall not be construed to, confer upon any Person other than the parties to this Agreement any rights or remedies Prior to the Closing. Buyer shall offer employment to a significant number of Sellers' employees who remain employed by Sellers immediately prior to the Closing (the "Business Employees"), and all such offers of employment shall be on substantially similar terms and at substantially the same annual rate of pay at which such employees were employed as of the Effective Date (*provided, however*, that all offers of employment will be for employment "at-will" and not for a specific term). Each Business Employee who accept Buyer's offer of employment and commence working for Buyer on the Closing Date shall hereafter be referred to as "Transferred Employees." So long as offers of employment have been mailed or delivered to all Eligible Employees by Buyer prior to Closing, then Buyer shall be deemed to have satisfied its obligation to offer employment to the Eligible Employees prior to Closing.

(b) Obligations of Seller. Except as set forth on Schedule 8.4(b), Seller, as it relates to employees of Seller, shall be responsible for, where applicable and required: (i) payment of severance to employees of Seller eligible for the same; (ii) accrued and unpaid vacation for employees of Seller; (iii) COBRA liability under Section 4980(B) of the IRC with respect to any of the employees of Seller; (iv) all liabilities and obligations for any workers compensation Claims made for which the date of the relevant accident (alleged to have occurred) actually occurred before the Closing Date for employees of Seller; (v) all liabilities arising under the WARN Act regarding state or municipal plant closing law, if any, based on or arising from acts, events, or omissions related to the Transactions; (vi) all retirement or deferred compensation contributions related to employees of Seller through the date of termination; and (vii) all payroll taxes related to employees of Seller through the date of termination by Seller.

(c) Credit Under Buyer Plans. Buyer will cause any employee benefit plans of Buyer (or any Affiliate thereof sponsoring or maintaining such plans) which the Transferred Employees are entitled to participate in from and after the Closing Date (the "Buyer Plans") to take into account for purposes of eligibility and vesting thereunder, service by the Transferred Employees with Seller prior to the Closing as if such service were with Buyer, to the same extent such service was credited under a comparable employee benefit plan of Seller ("Benefit Plan") prior to the Closing (except to the extent it would result in the duplication of benefits). In addition, with respect to each Buyer Plan that is a "welfare benefit plan" (as defined in Section 3(1) of ERISA), Buyer shall, or shall cause an Affiliate of Buyer sponsoring or maintaining such Buyer Plan, to (i) cause there to be waived any pre-existing condition, exclusions, actively at work requirements, unsuitability requirements or other eligibility limitations and (ii) give effect, in determining any deductible, co-insurance and maximum out-of-pocket limitations, to Claims incurred and amounts paid by, and amounts reimbursed to, the Transferred Employees and their dependents under a comparable Benefit Plan of Seller prior to the Closing.

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

(e) No Obligation. Other than as expressly set forth in this Agreement, nothing contained in this Agreement shall be construed to require the employment of (or prevent the termination of employment of) any individual, require minimum benefit or compensation levels or prevent any change in the employee benefits provided to any individual Transferred Employee. No provision of this Agreement shall create any third-party beneficiary rights in any employee or former employee of Seller or any other Person (including any beneficiary or dependent thereof) of any nature or kind whatsoever, including, without limitation, in respect of continued employment (or resumed employment) for any specified period.

8.5 Post-Closing Cooperation and Access to Books and Records.

For a period ending on the earlier of (i) the closing of the Bankruptcy Case, or (ii) one (1) year after the Closing Date:

(a) Buyer shall not dispose of or destroy any of the business records and files of the Business held by Buyer or any of its Subsidiaries and relating to the period preceding the Closing Date. If Buyer wishes to dispose of or destroy such records and files after that time, Buyer shall first give thirty (30) days' prior written notice to Seller or any successor or designated bankruptcy estates representative, and Seller or any successor or designated bankruptcy estates representative shall have the right, at their option and expense, upon prior written notice to the notifying party within such 30-day period, to take possession of the records and files within fifteen (15) days after the date of such notice.

(b) Each Party (the "Requested Party") shall allow any other Party (including, for clarity, any trust established under a chapter 11 plan of Seller or any other successor of Seller) and any of their directors, officers, employees, counsel, Representatives, accountants and auditors, at such other Party's sole cost and expense, reasonable access during Normal Business Hours, and upon reasonable advance notice, to all employees (including the assistance of such employees as described below) and files of the Requested Party and any books and records and other materials included in the Acquired Assets relating to periods prior to the Closing Date in connection with (A) the wind-down of the operations of Seller, whether or not relating to or arising out of this Agreement or the Transactions, including the preparation of tax returns, amended tax returns or claim for refund (and any materials necessary for the preparation of any of the foregoing), financial statements for periods ending on or prior to the Closing Date, the management and handling of any audit, investigation, litigation or other proceeding in, whether such audit, investigation, litigation or other proceeding is a matter with respect to which indemnification may be sought hereunder), and complying with the rules and regulations of the IRS, the Securities and Exchange Commission or any other Governmental Authority or otherwise relating to Seller's other businesses or operations or such causes of action; (B) the prosecution, investigation or resolution of any pending or potential causes of action; (C) the resolution or reconciliation of Claims filed against Seller's bankruptcy estates; or (D) otherwise in connection with carrying out the functions of any such trusts or successors; *provided*, *however*, that Seller, on the one hand, and Buyer, on the other hand, will be required to sign a non-disclosure agreement, if reasonably requested by Buyer or Seller or any successor or designated bankruptcy estates representative, respectively, prior to Buyer or Seller or any successor or designated bankruptcy estates representative's provision of information to Seller or any successor or designated bankruptcy estates representative or Buyer, respectively, that constitutes a Trade Secret, or is otherwise confidential or proprietary in nature.

8.6 Tax Returns.

Buyer hereby covenants that it will reasonably cooperate and assist Seller in the preparation and filing of all necessary Tax Returns of Seller for the calendar year 2025 that are required to be filed following the Closing Date; *provided*, *however* that any costs and expenses with respect to the preparation and filing of any such Seller Tax Returns shall be borne by Seller; *provided*, *further*, *however*, that, except as expressly set forth in this Agreement, Buyer shall have no liability with respect to Taxes payable in connection with such Seller Tax Returns, and Buyer shall have no liability with respect to such Seller Tax Returns other than in connection with the willful or intentional misconduct of Buyer.

8.7 Insurance Contracts.

Notwithstanding anything to the contrary contained herein, with respect to Contracts for casualty insurance coverage that are not Assigned Agreements, including property, fire, flood and other similar coverages that may be in effect with respect to the Acquired Assets, on or prior to Closing, Buyer may choose to notify Seller that it wishes such coverages extended beyond Closing for a period of up to thirty (30) days, in which case Seller shall use good faith efforts to continue such coverages in place for such time period, if such continuance is permissible under the terms of such coverages, with Buyer responsible for all premium costs related thereto.

8.8 Good Faith Efforts to Close by Drop Dead Date; Disclosure.

Subject to the terms and conditions of this Agreement, Seller and Buyer agree that they will use their good faith efforts to close the Transactions, or a sale to a Person who submits a Qualifying Bid in the Auction, by the Drop Dead Date. Promptly following approval of this Agreement by the Bankruptcy Court, Seller will disclose to Buyer the identities of Persons who submitted offers to acquire the Acquired Assets as part of the process that resulted in Seller executing this Agreement; *provided, however*, no such disclosure will be made if Seller determines that such disclosure violates the terms of any confidentiality or non-disclosure agreement in effect.

ARTICLE 9
CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER TO CLOSE

The obligations of Buyer to consummate the Transactions shall be subject to the satisfaction, at or prior to the Closing, of each of the following conditions, any one or more of which may be waived (but only in writing) by Buyer:

9.1 Accuracy of Representations.

All of the representations and warranties made by Seller in this Agreement shall be true and correct in all material respects (other than those representations and warranties that are qualified by materiality or Seller Material Adverse Effect, which shall be true and correct in all respects as so qualified therein) as of the Effective Date and as of the Closing Date as though made at and as of the Closing Date (except to the extent such representations and warranties expressly speak as of an earlier date, which shall be true and correct as of such date); *provided, however*, that in the event of a breach of a representation or warranty, other than a representation or warranty qualified by a Seller Material Adverse Effect, the condition set forth in this Section 9.1 shall be deemed satisfied unless the effect of all such breaches of representations and warranties taken together result in a Seller Material Adverse Effect. Buyer shall have received a certificate signed by a duly authorized representative of Seller to such effect.

9.2 Seller's Performance.

Seller shall have performed and complied in all material respects with all agreements and covenants required by this Agreement to be performed by Seller on or prior to the Closing Date, and Buyer shall have received a certificate signed by a duly authorized representative of Seller to such effect.

9.3 No Order.

No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Order or Legal Requirement which is in effect and has the effect of making illegal or otherwise restraining or prohibiting the consummation of the Transactions.

9.4 Governmental Authorizations.

All Governmental Authorizations imposed by, any Governmental Authority which are necessary to consummate the Transactions shall have been filed, been obtained or occurred and such authorizations, consents, orders or approvals shall not have expired or been withdrawn.

9.5 Seller's Deliveries.

Each of the deliveries required to be made to Buyer pursuant to Section 4.4 shall have been so delivered.

9.6 Bidding Procedures Order and Sale Order.

(a) The Bankruptcy Court shall have entered the Sale Order on or before August 5, 2025, the Sale Order shall have become a Final Order on or before August 19, 2025, and the Closing shall have taken place on or before August 22, 2025, failing which Buyer shall be entitled to terminate this Agreement and receive an immediate refund of the Deposit.

(b) The Bankruptcy Court shall have entered the Bidding Procedures Order on or before July 23,2025.

9.7 No Dismissal or Conversion.

The Bankruptcy Case shall not have been stayed or dismissed, converted to a case under Chapter 7 of the Bankruptcy Code, and there shall have been no filing or other proceeding for bankruptcy under Title 11 of the United States Code or other similar State law, whether voluntary or involuntary, involving the Seller which has not been stayed or dismissed.

9.8 Real Property.

(a) The landlord of each Retail Store Lease shall have consented to the assumption of such Retail Store Lease by Buyer, or Buyer shall have entered into a new lease for each Retail Store on terms and conditions which are acceptable to Buyer.

(b) Buyer shall receive from a nationally recognized title insurance company licensed to do in the State where the Owned Real Property is located for a commitment to issue an owner's title policy insuring good and marketable fee title to the Owned Real Property free and clear of all Claims, Liens and Encumbrances (other than Permitted Encumbrances), in an amount determined by Buyer and at standard rate

9.9 No Material Adverse Effect.

There has been no Buyer Material Adverse Effect or Seller Material Adverse Effect.

ARTICLE 10
CONDITIONS PRECEDENT TO THE OBLIGATION OF SELLER TO CLOSE

The obligations of Seller to consummate the Transactions shall be subject to the satisfaction, at or prior to the Closing, of each of the following conditions, any one or more of which may be waived (but only in writing) by Seller:

10.1 Accuracy of Representations.

All of the representations and warranties made by Buyer in this Agreement shall be true and correct in all material respects (other than those representations and warranties that are qualified by materiality, which shall be true and correct in all respects as so qualified therein) as of the Effective Date and as of the Closing Date as though made at and as of the Closing Date (except to the extent such representations and warranties expressly speak as of an earlier date, which shall be true and correct as of such date). Seller shall have received a certificate signed by a duly authorized representative of Buyer to such effect.

10.2 Buyer's Performance.

Buyer shall have performed and complied in all material respects with all agreements and covenants required by this Agreement to be performed by Buyer on or prior to the Closing Date, and Seller shall have received a certificate signed by a duly authorized representative of Buyer to such effect.

10.3 No Order.

No Governmental Authority shall have enacted, issued, promulgated, enforced or entered any Order or Legal Requirement which is in effect and has the effect of making illegal or otherwise restraining or prohibiting the consummation of the Transactions.

10.4 Governmental Authorizations.

All Governmental Authorizations imposed by, any Governmental Authority which are necessary to consummate the Transactions shall have been filed, been obtained or occurred and such authorizations, consents, orders or approvals shall not have expired or been withdrawn.

10.5 Buyer's Deliveries.

Each of the deliveries required to be made to Seller pursuant to Section 4.3 shall have been so delivered.

10.6 Bidding Procedures Order and Sale Order.

The Bidding Procedures Order and Sale Order shall have been entered by the Bankruptcy Court and shall have become Final Orders, and shall not be subject to any stay, modification, reversal or vacation, and the Sale Order shall remain in full force and effect as of the Closing.

10.7 Purchase Price.

The Purchase Price shall have paid the Closing Date in accordance with Section 4.2.

ARTICLE 11
TERMINATION

11.1 Termination Events.

Anything contained in this Agreement to the contrary notwithstanding, this Agreement may be terminated at any time prior to the Closing Date:

(a) by either Seller or Buyer:

(i) if a closing condition under Articles 9 or 10 hereof becomes impossible to satisfy on or before the Closing Date (or such earlier date on which the condition is required to be satisfied) in favor of the Party attempting to terminate the Agreement (unless such failure is caused by such terminating Party);

(ii) if the Closing shall not have occurred by the Drop Dead Date; *provided, however*, that the right to terminate this Agreement under this Section 11.1(a)(ii) shall not be available to any party whose failure to fulfill any obligation under this Agreement shall have been the cause of, or shall have resulted in, the failure of the Sale Order to have been entered on or prior to such date;

(iii) if a Governmental Authority issues a ruling or Order prohibiting the Transactions; or

(iv) by mutual written consent of Seller and Buyer.

(b) by Buyer:

(i) in the event of any material breach by Seller of any of Seller's agreements, covenants, representations or warranties contained herein or in the Bidding Procedures Order or the Sale Order, and the failure of Seller to cure such breach within two (2) Business Days after receipt of the Buyer Termination Notice specified in this subsection; *provided, however*, that Buyer (i) is not itself in material breach of its representations, warranties, covenants or agreements contained herein or in the Bidding Procedures Order or the Sale Order, (ii) notifies Seller in writing (the "Buyer Termination Notice") of its intention to exercise its rights under this Agreement as a result of the breach, and (iii) specifies in such Buyer Termination Notice the representation, warranty, covenant or agreement contained herein or in the Bidding Procedures Order or the Sale Order of which Seller is allegedly in material breach;

(ii) if the Bankruptcy Case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code and neither such dismissal nor conversion expressly contemplates the Transactions, or a trustee is appointed for Seller and such trustee rejects the Transactions;

(iii) if the Sale Order, in a form acceptable to Buyer, has not been entered on or before the Drop Dead Date, on written notice from Buyer to Seller sent any time after the Drop Dead Date; or

(iv) if the Sale Order does not become a Final Order on or before August 19, 2025, on written notice from Buyer to Seller sent any time after August 19, 2025.

(c) by Seller:

(i) in the event of any material breach by Buyer of any of Buyer's agreements, covenants, representations or warranties contained herein or in the Bidding Procedures Order or the Sale Order, and the failure of the Buyer to cure such breach within two (2) Business Days after receipt of the Seller Termination Notice specified in this subsection; *provided, however*, that (i) Seller is not itself in material breach of its representations, warranties, covenants or agreements contained herein or in the Bidding Procedures Order or the Sale Order, (ii) Seller notifies Buyer in writing (the "Seller's Termination Notice"), and (iii) Seller specifies in such Seller's Termination Notice the representation, warranty, covenant or agreement contained herein or in the Bidding Procedures Order or the Sale Order of which Buyer is allegedly in material breach; or

(ii) if the Bankruptcy Court declines to (A) approve the Agreement for any reason, including that the Seller accepts a different qualified offer for the Acquired Assets from a party that is not the Buyer in accordance with the provisions of the Bidding Procedures Order, or (B) issue the Sale Order, in a form acceptable to Buyer.

11.2 Effect of Termination.

(a) In the event of termination of this Agreement by either party, except as otherwise provided in this Section 11.2, all rights and obligations of the parties under this Agreement shall terminate without any liability of any Party to any other Party. The provisions of Section 6.4, this Section 11.2, Sections 12.1, 12.2, 12.3, 12.15 and 12.16 and, to the extent applicable, the other provisions of Article 12, shall expressly survive the expiration or termination of this Agreement.

(b) Notwithstanding Section 11.2(a), in the event of a termination pursuant to Section 11.1(c)(i) only, Seller shall be entitled to retain the Deposit as liquidated damages as its sole and exclusive remedy against Buyer in all respects for any claim against Buyer arising under this Agreement or otherwise.

(c) In the event of a termination pursuant to this Article 11 (other than pursuant to Section 11.1(c)(i)), Seller shall promptly return to Buyer the Deposit (together with interest accrued thereon).

(d) In the event of a termination pursuant to Section 11.1(c)(ii) by the Seller due to Seller's acceptance of an alternative offer for the Acquired Assets from a party other than the Buyer in accordance with the Bidding Procedures Order, the Buyer shall be entitled to payment of the Break-Up Fee as provided in Section 7.7(e) as Buyer's sole remedy.

ARTICLE 12
GENERAL PROVISIONS

12.1 Non-Survival of Representations and Warranties; Survival of Contracts.

All representations and warranties herein shall terminate on the Closing Date. The covenants of the Parties herein shall survive the Closing Date according to their terms.

12.2 Confidential Nature of Obligations.

The following paragraph is subject to any disclosure requirements under the Bankruptcy Code or imposed by the Bankruptcy Court or as Seller may reasonably deem necessary or appropriate in order to facilitate the Transactions:

Buyer and Seller each agrees that it will treat in confidence all documents, materials and other information which it shall have obtained regarding the other party during the course of the negotiations leading to the consummation of the Transactions (whether obtained before or after the Effective Date), the investigation provided for herein and the preparation of this Agreement and other related documents, and, in the event the Transactions shall not be consummated, at the request of the disclosing party, will return to the other party all copies of nonpublic documents and materials which have been furnished in connection therewith. Such non-public documents, materials and information shall not be communicated to any third Person (other than to Buyer's and Seller's counsel, accountants or financial advisors, in each case subject to the recipient's agreement to keep the same confidential). No other party shall use any confidential information in any manner whatsoever except solely for the purpose of evaluating the proposed purchase and sale of the Acquired Assets; *provided, however*, that after the Closing, any confidential information included in the Acquired Assets or the Assumed Liabilities shall be deemed the confidential information of Buyer, and Seller shall maintain the confidentiality thereof in accordance with this Section 12.2. The obligation of each party to treat such documents, materials and other information in confidence shall not apply to any information which (i) is or becomes available to such party from a source other than the disclosing party, (ii) is or becomes available to the public other than as a result of disclosure by such party or its agents or (iii) is required to be disclosed under applicable law or judicial process (including under the Bankruptcy Code or as required by the Bankruptcy Court), but only to the extent it must be disclosed. Notwithstanding clause (iii) of the preceding sentence, in the event that any party is required to disclose any confidential information by applicable law, judicial process or rule of any national securities exchange, it is agreed that the party subject to such requirement will provide the other party with prompt notice of such requirement and such party may seek an appropriate protective order if it so desires.

12.3 Public Announcements.

The initial press release relating to this Agreement shall be a joint press release, the text of which shall be agreed to by the Buyer and Seller. Unless otherwise required by applicable Legal Requirement or by obligations of the Parties or their Affiliates pursuant to any listing agreement with or rules of any securities exchange or as otherwise permitted or contemplated by this Agreement, the Parties hereto shall consult with each other before issuing any other press release or otherwise making any public statement with respect to this Agreement, the Transactions or the activities and operations of the other Party and shall not issue any such release or make any such statement without the prior written consent of the other Party (such consent not to be unreasonably withheld, conditioned or delayed).

12.4 Notices.

All notices, consents, waivers and other communications under this Agreement must be in writing and shall be deemed to have been duly given when: (a) delivered by hand (with written confirmation of receipt), (b) sent by facsimile or e-mail (with written confirmation of receipt), or (c) when received by the addressee, if sent by a delivery service (prepaid, receipt requested) or (d) when received by the addressee, if sent by registered or certified mail (postage prepaid, return receipt requested), in each case to the appropriate addresses, representative (if applicable) and facsimile numbers or e-mail addresses set forth below (or to such other addresses, representative and facsimile numbers as a Party may designate by notice to the other Parties given in accordance with this Section 12.4):

(i) If to Any Seller, then to:

AMERICA'S GARDENING RESOURCE, INC.,
128 Intervale Road
Burlington, VT 05401
Attention: Rebecca Gray, Chief Executive Officer
Telephone: ________________________
E-Mail: rebeccag@gardeners.com

with a copy (which shall not constitute notice) to:

Gary H. Leibowitz, Esquire
Cole Schotz P.C.
1201 Wills Street, Suite 320
Baltimore, MD 21231
Telephone: (410) 528-2971
E-Mail: gleibowitz@coleschotz.com

(ii) If to Buyer, then to:

GARDENS ALIVE, INC.
230 Mary Avenue
Greendale, Indiana 47025
Attn: K. Niles Kinerk, Chairman
Telephone: (513) 255-6601
E-Mail: nkinerk@gardensalive.com

and

Attention: Eric Hamant, Vice-Chairman
Telephone: (937) 694-2422
E-Mail: ehamant@gardensalive.com

with a copy (which shall not constitute notice) to:

Kavinoky Cook LLP
726 Exchange Street, Suite 800
Buffalo, New York 14210
Attn: David A. LoTempio, Esq.
Telephone: (716) 332-4530
Cell: (71) 868-3542
E-mail: dlotempio@kavinokycook.com

and

Casner Edwards
303 Congress Street
Boston, Massachusetts 02210
Attention: Michael J. Fencer, Esq
And John T. Morrier, Esq.
Telephone: (617) 426-5900
E-Mail: fencer@casneredwards.com
morrier@casneredwards.com

12.5 Waiver.

Neither the failure nor any delay by any Party in exercising any right, power, or privilege under this Agreement or the documents referred to in this Agreement shall operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power, or privilege shall preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (a) no waiver that may be given by a Party shall be applicable except in the specific instance for which it is given; and (b) no notice to or demand on one Party shall be deemed to be a waiver of any right of the Party giving such notice or demand to take further action without notice or demand.

12.6 Entire Agreement; Amendment.

This Agreement (including the disclosure schedules and the exhibits hereto) and the other Transaction Documents supersede all prior agreements (other than the Confidentiality Agreement, which shall remain in full force and effect) between the Parties with respect to its subject matter and constitute a complete and exclusive statement of the terms of the agreements between the Parties with respect to their subject matter (other than the Confidentiality Agreement, which shall remain in full force and effect; *provided, however*, that notwithstanding anything to the contrary herein, if and when the Closing occurs, the obligations under the Confidentiality Agreement of Buyer and their respective attorneys and accountants shall terminate). This Agreement may not be amended except by a written agreement executed by Buyer and Seller.

12.7 Assignment.

This Agreement, and the rights, interests and obligations hereunder, shall not be assigned by any Party hereto by operation of law or otherwise without the express written consent of the other Parties (which consent may be granted or withheld in the sole discretion of such other Party); *provided, however,* that Buyer shall be permitted, upon prior notice to Seller, to assign all or part of its rights or obligations hereunder to an Affiliate, but no such assignment shall relieve Buyer of its obligations under this Agreement.

12.8 Severability.

If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any Legal Requirement or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the Transactions is not affected in any manner adverse to any Party in any material respect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the Transactions be consummated as originally contemplated to the greatest extent possible.

12.9 Section Headings, Construction.

The headings of Sections in this Agreement are provided for convenience only and shall not affect its construction or interpretation. All references to "Article," "Section" or "Sections" refer to the corresponding Article, Section or Sections of this Agreement. All words used in this Agreement shall be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word "including" does not limit the preceding words or terms. The Exhibits attached hereto and the Schedules attached hereto (including the Seller's Disclosure Schedule) are hereby incorporated herein and made a part hereof as if fully set forth herein.

12.10 Governing Law; Consent to Jurisdiction and Venue; Jury Trial Waiver.

(a) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Vermont, without giving effect to the choice of law principles thereof, and, to the extent applicable, the Bankruptcy Code.

(b) The Parties agree that the Bankruptcy Court shall be the exclusive forum for enforcement of this Agreement or the Transactions and (only for the limited purpose of such enforcement) submit to the jurisdiction thereof; *provided* that if the Bankruptcy Court determines that it does not have subject matter jurisdiction over any action or proceeding arising out of or relating to this Agreement, then each party: (i) agrees that all such actions or proceedings shall be heard and determined in a Vermont federal court sitting in Burlington, Vermont; (ii) irrevocably submits to the jurisdiction of such court in any such action or proceeding; (iii) consents that any such action or proceeding may be brought in such courts and waives any objection that such party may now or hereafter have to the venue or jurisdiction or that such action or proceeding was brought in an inconvenient court; and (iv) agrees that service of process in any such action or proceeding may be effected by providing a copy thereof by any of the methods of delivery permitted by Section 12.4 to such Party at its address as provided in Section 12.4 (provided that nothing herein shall affect the right to effect service of process in any other manner permitted by law).

(c) EACH OF THE PARTIES HERETO HEREBY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE TRANSACTIONS. EACH OF THE PARTIES HERETO HEREBY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE TRANSACTIONS, AS APPLICABLE,

BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 12.10(c).

12.11 Counterparts.

This Agreement may be executed in multiple counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including .pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, e.g., www.docusign.com or Adobe sign) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

12.12 Time of Essence.

Time is of the essence in this Agreement.

12.13 No Third Party Beneficiaries.

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

12.14 Sellers' Disclosure Schedule. The Seller's Disclosure Schedule is qualified in its entirety by reference to the specific provisions of this Agreement and is not intended to constitute, and shall not be construed as constituting, representations or warranties of Seller, except as and to the extent provided in this Agreement. The specification of any dollar amount in the representations and warranties contained in this Agreement or the inclusion of any specific item in the Seller's Disclosure Schedule is not intended to imply that such amounts, or higher or lower amounts, or the items so included, or other items, are or are not required to be disclosed or are within or outside of the ordinary course of business, and none of the Parties shall use the fact of the setting forth of such amounts or the fact of the inclusion of any such item in the Seller's Disclosure Schedule in any dispute or controversy with any party as to whether any obligation, item or matter not included in a section of the Seller's Disclosure Schedule is or is not required to be disclosed (including whether such amounts or items are required to be disclosed as material) or in the ordinary course of business for the purposes of this Agreement. If and to the extent any information required to be furnished in any section of the Seller's Disclosure Schedule is contained in this Agreement or in any section of the Seller's Disclosure Schedule, such information shall be deemed to be included in all sections of the Seller's Disclosure Schedule to the extent the relevance of such disclosure to such other section or sections is reasonably apparent on its face. Such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature. In no event shall any disclosure of such additional matters be deemed or interpreted to broaden or otherwise amend any of the covenants or representations or warranties in this Agreement. The information contained in the Seller's Disclosure Schedule is disclosed solely for purposes of this Agreement, and no information contained therein shall be deemed to be an admission by any party thereto to any third party of any matter whatsoever, including of any violation of law or breach of any agreement. Headings have been inserted in the sections of the Seller's Disclosure Schedule for the convenience of reference only and shall to no extent have the effect of amending or changing the express description of the sections as set forth in this Agreement.

12.15 Expenses.

Except as otherwise specified in this Agreement, all costs and expenses, including fees and disbursements of counsel, financial advisors, accountants and other advisors, incurred in connection with this Agreement and the Transactions shall be paid by the Party incurring such costs and expenses, subject to Bankruptcy Court approval, whether or not the Closing shall have occurred. As between Buyer and Seller, Seller shall bear all of the costs of administration of the Bankruptcy Case.

12.16 Non-Recourse.

No past, present or future director, officer, manager, employee, incorporator, member, partner, stockholder, agent, attorney or Representative of the respective parties to this Agreement, in such capacity (any such Person in such capacity, a "No Recourse Party"), shall have any liability or obligation with respect to this Agreement or the Transactions, or with respect to any claim or cause of action that may arise out of this Agreement or the Transactions, or the negotiation, execution or performance of this Agreement or the Transactions; in each case except for any claim or cause of action against a No Recourse Party (x) arising out of or in connection with the fraud, bad faith or willful misconduct of such No Recourse Party, including in connection with this Agreement or any other Transaction Document, or (y) otherwise expressly permitted to be brought against a No Recourse Party pursuant to any other Transaction Document, as applicable. For the avoidance of doubt, nothing in this Section 12.16 is intended to or shall be deemed to in any way limit or affect any rights of Seller or Buyer with respect to any Claims against any person arising out of actions or conduct of such person arising prior to or outside the context of this Agreement.

[SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered by their duly authorized representatives, all as of the Effective Date.

BUYER:

GARDENS ALIVE, INC.

DocuSigned by:

By: ______________________
A09F87A3C2884CB...
K. Niles Kinerk, Chairman

SELLER:

AMERICA'S GARDENING RESOURCE, INC.

DocuSigned by:
rebecca gray
By: ______________________
6DC1A9A8A84F40A...
Name: Rebecca Gray
Title: Chief Executive Officer

GARDENER'S HOME LLC

DocuSigned by:
rebecca gray
By: ______________________
6DC1A9A8A84F40A...
Name: Rebecca Gray
Title: Chief Executive Officer

SERAC CORPORATION

DocuSigned by:
rebecca gray
By: ______________________
6DC1A9A8A84F40A...
Name: Rebecca Gray
Title: Chief Executive Officer

IGH, INC.

DocuSigned by:
rebecca gray
By: ______________________
6DC1A9A8A84F40A...
Name: Rebecca Gray
Title: Chief Executive Officer

INNOVATIVE GARDENING SOLUTIONS, INC.

DocuSigned by:
By: rebecca gray
6DC1A9A8A84F40A...
Name: Rebecca Gray
Title: Chief Executive Officer

650010.1

LIST OF EXHIBITS

EXHIBIT	DESCRIPTION
A	Bidding Procedures Order
B	Bill of Sale and Assignment
C	Sale Order
D	Seller's Disclosure Schedule
E	Assumption Agreement
F	Assignment of Patents
G	Assignment of Trademarks
H	Assignment of Copyrights
I	Assignment of Domain Names
J	Escrow Agreement

LIST OF SCHEDULES

EXHIBIT A

BIDDING PROCEDURES ORDER

EXHIBIT B

BILL OF SALE AND ASSIGNMENT

EXHIBIT C

SALE ORDER

EXHIBIT D

SELLER'S DISCLOSURE SCHEDULE

EXHIBIT E

ASSUMPTION AGREEMENT

EXHIBIT F

ASSIGNMENT OF PATENTS

EXHIBIT G

ASSIGNMENT OF TRADEMARKS

EXHIBIT H

ASSIGNMENT OF COPYRIGHTS

EXHIBIT I

ASSIGNMENT OF DOMAIN NAMES

EXHIBIT J

ESCROW AGREEMENT