

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

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In re:	)	Chapter 11
	)	
BCBG MAX AZRIA GLOBAL HOLDINGS, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 17-10466 (SCC)
	)	
Debtors.	)	(Jointly Administered)

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**ORDER (I) APPROVING THE  
BIDDING PROCEDURES, (II) SCHEDULING THE BID  
DEADLINES AND THE AUCTION, (III) APPROVING THE FORM AND  
MANNER OF NOTICE THEREOF, AND (IV) GRANTING RELATED RELIEF**

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Upon the motion (the "Motion") of the above captioned debtors and debtors in possession (the "Debtors") for the entry of an order (this "Order"): (a) authorizing and approving the bidding procedures attached hereto as **Exhibit 1** (the "Bidding Procedures"),<sup>2</sup> (b) establishing certain dates and deadlines including, the Indication of Interest Deadline, the Bid Deadline, and the date of Auction, if any, (c) approving the manner of notice of the Auction, if any, and (d) granting related relief; it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors, and other parties in interest; the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012; and that this Court may enter a final order consistent with Article III of the United States Constitution; venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409;

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: BCBG Max Azria Global Holdings, LLC (6857); BCBG Max Azria Group, LLC (5942); BCBG Max Azria Intermediate Holdings, LLC (3673); Max Rave, LLC (9200); and MLA Multibrand Holdings, LLC (3854). The location of the Debtors' service address is: 2761 Fruitland Avenue, Vernon, California 90058.

<sup>2</sup> Capitalized terms used but not defined herein have the meanings given to them in the Bidding Procedures.

notice of the Motion having been adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing therefor:

**THE COURT HEREBY FINDS THAT:**

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. Venue is proper in this district and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

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

D. The bases for the relief requested in the Motion are: (i) sections 105, 363, 365, 503, and 507 of the Bankruptcy Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"); and (ii) Rules 2002(a)(2), 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

E. The Debtors have articulated good and sufficient reasons for this Court to: (i) approve the Bidding Procedures; and (ii) schedule the Auction and approve the manner of notice of the Auction.

F. The Expense Reimbursement, Work Fee, and Breakup Fee are reasonable and appropriate under the circumstances and on the terms set forth in the Bidding Procedures, including in light of the size and nature of a Transaction and comparable transactions, the commitments that will be made, and the efforts that have been and will be expended by the Acceptable Bidders, notwithstanding that a proposed Transaction may be subject to better and higher offers, and may be necessary to induce the Acceptable Bidders to pursue a Transaction, as determined by the Debtors in an exercise of their business judgment.

G. The Bidding Procedures were negotiated by the parties at arms' length and in good faith by the Debtors and the Acceptable Bidders.

H. Nothing contained herein shall prejudice or impair any right to credit bid of the DIP Lenders or any Prepetition Secured Parties (as such terms are defined in the *Interim Order (I) Authorizing Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief*).

**IT IS HEREBY ORDERED THAT:**

1. The Motion is granted as provided herein.
2. All objections to the relief requested in the Motion that have not been withdrawn, waived, or settled as announced to the Court at the hearing on the Motion or by stipulation filed with the Court, are overruled.

**I. Important Dates and Deadlines.**

3. **Indication of Interest Deadline.** April 7, 2017, at 5:00 p.m. (prevailing Eastern Time), is the deadline by which any party interested in a transaction shall submit a non-binding indication of interest. Submitting an indication of interest by the Indication of Interest Deadline

does not obligate a party to submit a formal bid or to participate in the sale process and does not exempt any party from also having to submit a Qualified Bid by the Bid Deadline to participate in the Auction. The submission of an indication of interest by the Indication of Interest Deadline is not a prerequisite for Potential Bidders to submit a Qualified Bid or to be entitled to a management presentation.

4. **Bid Deadline.** May 19, 2017, at 5:00 p.m. (prevailing Eastern Time), is the deadline by which bids for the Assets (as well as the deposit and all other documentation required under the Bidding Procedures for Qualified Bidders) must be submitted in accordance with the terms of the Bidding Procedures.

5. **Auction.** May 24, 2017, at 9:00 a.m. (prevailing Eastern Time), is the date and time the Auction, if any, which will be held at the offices of Kirkland & Ellis LLP, located at 601 Lexington Avenue, New York, New York 10022. The Debtors shall send written notice of the date, time, and place of the Auction to the Qualified Bidders no later than two business days before such Auction, and will post notice of the date, time, and place of the Auction no later than two business days before such Auction on the website of the Debtors' notice and claims agent, Donlin, Recano & Company, Inc., at <https://www.donlinrecano.com/bcbg>.

## **II. Auction, Bidding Procedures, and Related Relief.**

6. The Bidding Procedures, attached hereto as **Exhibit 1**, are incorporated herein and are hereby approved in their entirety, and the Bidding Procedures shall govern the submission, receipt, and analysis of all Bids relating to any Transaction. Any party desiring to submit a Bid shall comply with the Bidding Procedures and this Order. The Debtors are authorized to take any and all actions necessary to implement the Bidding Procedures.

7. If the Debtors do not receive a Qualified Bid by the Bid Deadline from a party other than the Tranche B Lenders, the Auction shall be cancelled. If the Debtors receive one or

more Qualified Bids from a party other than the Tranche B Lenders, the Debtors will conduct the Auction in accordance with the Bidding Procedures.

8. At the Auction, each Qualified Bidder will be entitled, but will not be obligated, to submit overbids and will be entitled in any such overbids to credit bid all or a portion of the value of the secured portion of its claims within the meaning of section 363(k) of the Bankruptcy Code, subject to the limits on credit bidding set forth in the Bidding Procedures.

9. At the Auction, the Debtors may, after consultation with the Consultation Parties and the Committee: (a) select, in their business judgment, pursuant to the Bidding Procedures, the highest or otherwise best Bid and the Winning Bidder or Backup Bidder; and (b) reject any Bid (regardless of whether such Bid is a Qualified Bid) that, in the Debtors' business judgment, is (i) inadequate, insufficient, or not the highest or best Bid, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, or the Bidding Procedures, or (iii) contrary to, or otherwise not in the best interests of the Debtors' estates, affected stakeholders, or other parties in interest.

10. No person or entity, other than an Acceptable Bidder entitled to Expense Reimbursement or a Work Fee or a Stalking Horse Bidder entitled to a Breakup Fee, in each case as determined by the Debtors in their business judgment after consultation with the Consultation Parties and the Committee, shall be entitled to any expense reimbursement, break-up fees, "topping," termination, or other similar fee or payment, and by submitting a bid, such person or entity is deemed to have waived their right to request or to file with this court any request for expense reimbursement or any fee of any nature, whether by virtue of Bankruptcy Code section 503(b) or otherwise.

11. The Expense Reimbursements and Work Fees are approved on the terms set forth in the Bidding Procedures and the Debtors are authorized, but not directed, to incur and pay the Expense Reimbursement and Work Fees if, after consulting with the Consultation Parties and the Committee, the Debtors determine that paying the Expense Reimbursement or Work Fee is in the best interest of the Debtors' estates and stakeholders. To the extent such a determination is made to pay an Expense Reimbursement or Work Fee, it or they may be paid without further action or order by the Court; *provided, that*, for the avoidance of doubt, the aggregate amount of the Expense Reimbursements and Work Fees paid by the Debtors shall not exceed \$1,000,000.

12. The Breakup Fee is approved on the terms set forth in the Bidding Procedures and the Debtors are authorized, but not directed, to incur and pay the Breakup Fee in an exercise of their business judgment without further action or order by the Court; *provided, that*, for the avoidance of doubt, the amount of the Breakup Fee shall not exceed three percent (3%) of any proposed Stalking Horse Bidder Purchase Price.

### **III. Miscellaneous.**

13. The failure to include or reference a particular provision of the Bidding Procedures specifically in this Order shall not diminish or impair the effectiveness or enforceability of such a provision.

14. For the avoidance of doubt, (a) any assumption and assignment of any executory contract or unexpired lease in connection with any Transaction shall be consummated pursuant to a separate motion filed by the Debtors, the Plan, or separate procedures governing the assumption and assignment of executory contracts and unexpired leases approved by this Court, and (b) any such assumption and assignment must comply with applicable bankruptcy law, including with respect to any requirement regarding adequate assurance of future performance.

15. In the event of any inconsistencies between this Order and the Motion and/or the Bidding Procedures, this Order shall govern in all respects.

16. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

17. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

18. This Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

New York, New York  
Dated: March 28, 2017

/S/ Shelley C. Chapman  
THE HONORABLE SHELLEY C. CHAPMAN  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT 1**

**Bidding Procedures**



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Christopher J. Marcus, P.C.  
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*Proposed Counsel to the Debtors and Debtors in Possession*

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

In re:	)	
	)	Chapter 11
BCBG MAX AZRIA GLOBAL HOLDINGS, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 17-10466 (SCC)
	)	
Debtors.	)	(Jointly Administered)
	)	

**BIDDING PROCEDURES FOR THE TRANSFER OF THE DEBTORS’  
ASSETS OR REORGANIZED GLOBAL HOLDINGS INTERESTS**

On February 28, 2017 (the “Petition Date”), BCBG Max Azria Global Holdings, LLC and certain of its subsidiaries (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of New York (the “Court”). Also on the Petition Date, the Debtors filed the *Debtors’ Motion for Entry of an Order (I) Approving the Bidding Procedures, (II) Scheduling the Bid Deadlines and the Auction, (III) Approving the Form and Manner of Notice Thereof, and (IV) Granting Related Relief* [Docket No. 33] (the “Bidding Procedures Motion”), seeking approval of, among other things, the procedures to determine the highest or otherwise best offer for the purchase of some or all of the Debtors’ assets (the “Assets”) or new common equity interests (the “Reorganized Global Holdings Interests”) in reorganized BCBG Max Azria Global Holdings, LLC to be issued under the Debtors’ proposed chapter 11 plan (any such purchase, a “Transaction”).

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: BCBG Max Azria Global Holdings, LLC (6857); BCBG Max Azria Group, LLC (5942); BCBG Max Azria Intermediate Holdings, LLC (3673); Max Rave, LLC (9200); and MLA Multibrand Holdings, LLC (3854). The location of the Debtors’ service address is: 2761 Fruitland Avenue, Vernon, California 90058.

On [●], 2017, the Court entered an order [Docket No. ●] (the “Bidding Procedures Order”) approving the Bidding Procedures Motion (and the procedures contemplated herein, the “Bidding Procedures”). These Bidding Procedures set forth the process by which the Debtors are authorized to conduct an auction (the “Auction”) to determine the Winning Bidder (as defined below).

On the Petition Date, the Debtors filed a chapter 11 plan of reorganization (as modified, amended, or supplemented from time to time, the “Plan”). The Plan contemplates either (a) a Transaction with the Winning Bidder, if the Winning Bidder is an entity other than the Term Loan Lenders (as defined in the Plan) or (b) a debt-for-equity conversion of some or all of the Debtors’ existing obligations to the Term Loan Lenders (on terms to be negotiated among the Debtors and Term Loan Lenders).

## **Marketing Process**

### **I. Contact Parties.**

The Debtors, in consultation with Jefferies, LLC (“Jefferies”), the Debtors’ investment banker, have developed a list of parties whom they believe may be interested in, and whom the Debtors reasonably believe would have the financial resources to consummate, a Transaction. The list of parties includes both strategic investors and financial investors (collectively, the “Contact Parties”). The Debtors and Jefferies will contact (to the extent not already contacted) the Contact Parties to explore their interest in pursuing a Transaction. The Contact Parties may include parties whom the Debtors or their advisors previously contacted regarding a transaction, regardless of whether such parties expressed any interest at such time in pursuing a transaction. The Debtors will continue to discuss and may supplement the list of Contact Parties throughout the marketing process, as appropriate.

The Debtors may distribute (to the extent not already distributed) to each Contact Party and any other interested party or potential bidder an “Information Package” consisting of: (i) a copy of the Bidding Procedures, the Bidding Procedures Order, and the Bidding Procedures Motion; (ii) a form confidentiality agreement (a “Confidentiality Agreement”); and (iii) such other materials as appropriate under the circumstances. The Information Package shall be in form and substance reasonably satisfactory to the Consultation Parties (as defined below).

### **II. Participation Requirements.**

To receive due diligence information, including full access to the Debtors’ electronic data room and to additional non-public information regarding the Debtors, a party interested in consummating a Transaction (a “Potential Bidder”) must deliver to each of: (i) counsel to the Debtors, Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn: Benjamin M. Rhode (benjamin.rhode@kirkland.com) and John R. Luze (john.luze@kirkland.com); and (ii) Jefferies, 520 Madison Avenue, New York, New York 10022, Attn.: Jeffrey Finger (jfinger@jefferies.com) and Steven Tricarico (stricarico@jefferies.com) (the “Debtors’ Advisors”), the following documents (collectively, the “Preliminary Bid Documents”):

- a. an executed Confidentiality Agreement on terms reasonably acceptable to the

Debtors, to the extent not already executed; and

- b. proof by the Potential Bidder of its financial capacity to close a proposed transaction, which may include 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 the Assets, the party that will bear liability for a breach), the adequacy of which will be assessed by the Debtors (with the assistance of their advisors) in consultation with the Consultation Parties and the Committee.

Promptly after a Potential Bidder delivers Preliminary Bid Documents, the Debtors will determine and notify the Potential Bidder whether such Potential Bidder has submitted acceptable Preliminary Bid Documents so that the Potential Bidder may proceed to conduct due diligence and ultimately submit a Bid (as defined below) and participate in the Auction, as applicable, and will provide copies of any such notices to the Notice Parties and to counsel to the official committee of unsecured creditors (the "Committee"). Only those Potential Bidders that have submitted acceptable Preliminary Bid Documents, as determined by the Debtors in consultation with the Consultation Parties and the Committee (each, an "Acceptable Bidder"), may submit Bids.

Beginning on or as soon as is reasonably practicable after the Debtors determine that a Potential Bidder is an Acceptable Bidder, the Debtors will provide such Acceptable Bidder with access to an electronic data room and reasonable due diligence information, as requested by such Acceptable Bidder, as soon as reasonably practicable after such request, and the Debtors shall post substantially all written due diligence provided to any Acceptable Bidder to the Debtors' electronic data room. All due diligence requests must be directed to Jefferies. To the extent reasonably practicable, Jefferies will also facilitate meetings between any interested Acceptable Bidder and the Debtors' management team, which meetings will proceed in a manner determined by the Debtors, in their reasonable discretion. The due diligence period will end on the Bid Deadline (as defined below), and, subsequent to the Bid Deadline, the Debtors will have no obligation to furnish any due diligence information.

Jefferies will provide access, in the electronic data room, to a form chapter 11 plan support agreement ("Form Plan Support Agreement") and form chapter 11 plan ("Form Plan").

The Debtors and their advisors will coordinate all reasonable requests from Acceptable Bidders for additional information and due diligence access; *provided that* the Debtors may, in consultation with the Consultation Parties and the Committee, decline to provide such information to Acceptable Bidders who, at such time and in the Debtors' business judgment, have not established, or who have raised doubt, that such Acceptable Bidder intends in good faith to, or has the capacity to, consummate a Transaction.

For any Acceptable Bidder who is a competitor of the Debtors or is affiliated with any competitor of the Debtors, the Debtors, in consultation with the Consultation Parties and the Committee, reserve the right to withhold, or to delay providing, any diligence materials that the Debtors and the Tranche B Lenders determine are business-sensitive or otherwise inappropriate for disclosure to such Bidder at such time.

Each Acceptable Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors regarding such Acceptable Bidder and its contemplated transaction.

### **III. Non-Binding Indications of Interest.**

Any party interested in a Transaction (regardless of whether such party has been determined to be an Acceptable Bidder) shall submit a non-binding indication of interest (an “Indication of Interest”) on or before April 7, 2017, at 5:00 p.m. (prevailing Eastern Time) (as may be extended without notice or hearing by the Debtors, with the consent of the Tranche B Lenders, and after consultation with the Existing Tranche A Lenders (as defined in the Plan) and the Committee, the “Indication of Interest Deadline”). The indication of interest should (i) identify whether the party is interested in acquiring some or all of the Assets (and which Assets with reasonable specificity) or the Reorganized Global Holdings Interests, (ii) set forth a proposed purchase price for the proposed Transaction, including by identifying separately any cash and non-cash components of the proposed Transaction consideration, including, for example, certain liabilities to be assumed, and (iii) identify any proposed conditions to closing the Transaction.

Indications of Interest should be submitted to the Debtors’ Advisors by the Indication of Interest Deadline. The Debtors Advisors shall deliver any Indication of Interest received to the Notice Parties and the Committee within 24 hours after receipt of such Indication of Interest.

THE SUBMISSION OF AN INDICATION OF INTEREST BY THE INDICATION OF INTEREST DEADLINE DOES NOT OBLIGATE ANY PARTY TO SUBMIT A FORMAL BID OR TO PARTICIPATE IN THE SALE PROCESS AND DOES NOT EXEMPT YOU FROM ALSO HAVING TO SUBMIT A QUALIFIED BID BY THE BID DEADLINE TO PARTICIPATE IN THE AUCTION (EACH AS DEFINED BELOW). FOR THE AVOIDANCE OF DOUBT, THE SUBMISSION OF AN INDICATION OF INTEREST BY THE INDICATION OF INTEREST DEADLINE IS NOT A PREREQUISITE FOR POTENTIAL BIDDERS TO SUBMIT A QUALIFIED BID.

### **Auction Process**

#### **I. Bid Deadline.**

An Acceptable Bidder that desires to make a proposal, solicitation, or offer (each, a “Bid”) shall transmit such proposal, solicitation, or offer via email (in .pdf or similar format) so as to be **actually received** on or before **May 19, 2017, at 5:00 p.m.** (prevailing Eastern Time) (the “Bid Deadline”) to:

- a. Jefferies LLC, 520 Madison Avenue, New York, New York 10022, Attn.: Jeffrey Finger (jfinger@jefferies.com) and Steven Tricarico (stricarico@jefferies.com);
- b. Kirkland & Ellis LLP, 300 North LaSalle Street, Chicago, Illinois 60654, Attn.: Benjamin M. Rhode (benjamin.rhode@kirkland.com) and John R. Luze (john.luze@kirkland.com);

- c. counsel to the DIP Term Loan Agent and Tranche B Lenders, Weil, Gotshal & Manges, LLP, 767 Fifth Avenue, New York, NY 10153, Attn: Matt Barr (matt.barr@weil.com) and Adam Lavine (adam.lavine@weil.com);
- d. counsel to the Existing Tranche A Lenders, Curtis, Mallet-Prevost, Colt & Mosle, LLP, 101 Park Avenue, New York, NY 10178, Attn: Steven J. Reisman (sreisman@curtis.com) and Cindi M. Giglio (cgiglio@curtis.com);
- e. counsel to the ABL DIP Agent and ABL Lenders, Morgan, Lewis & Bockius LLP, One Federal Street, Boston, MA 02110, Attn: Marc R. Leduc (marc.leduc@morganlewis.com) and Matthew F. Furlong (matthew.furlong@morganlewis.com); and
- f. counsel to the Committee, Pachulski Stang Ziehl & Jones, LLP, 780 Third Avenue, 34<sup>th</sup> Floor, New York, NY 10027, Attn: Bradford J. Sandler (bsandler@pszjlaw.com) and Robert J. Feinstein (rfeinstein@pszjlaw.com).

## II. Bid Requirements.

Each Bid by an Acceptable Bidder (a “Bidder”) must be submitted in writing and satisfy the following requirements (collectively, the “Bid Requirements”):

- a. Purpose. Each Acceptable Bidder must state that the Bid includes an offer by the Acceptable Bidder to purchase (i) some or all of the Assets, and which Assets with reasonable specificity, or (ii) the Reorganized Global Holdings Interests.
- b. Purchase Price: Each Bid must clearly set forth the terms of any proposed Transaction, including and identifying separately any cash and non-cash components of the proposed Transaction consideration, including, for example, certain liabilities to be assumed by the Acceptable Bidder as part of the Plan (the “Purchase Price”).
- c. Deposit: Each Bid must be accompanied by a cash deposit in the amount equal to 10% of the aggregate value of the cash and non-cash consideration of the Bid to be held in an interest-bearing escrow account to be identified and established by the Debtors (the “Deposit”).
- d. Marked Agreement: Each Bid must include, at a minimum, a marked version of the Form Plan Support Agreement and Form Plan, in each case, together with the exhibits and schedules related thereto and any related transaction documents or other material documents integral to such Bid, pursuant to which the Acceptable Bidder proposes to effectuate the Transaction (collectively, the “Transaction Documents”). Any modifications to the transaction contemplated by the Form Plan Support Agreement and Form Plan must be in form and substance acceptable to the Debtors.
- e. Committed Financing: To the extent that a Bid is not accompanied by evidence of the Acceptable Bidder’s capacity to consummate the Transaction set forth in its

Bid with cash on hand, each Bid must include committed financing documented to the Debtors' satisfaction, after consultation with the Consultation Parties and the Committee, that demonstrates that the Acceptable Bidder has received sufficient debt and/or equity funding commitments to satisfy the Acceptable Bidder's Purchase Price and other obligations under its Bid. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions acceptable to the Debtors. For the avoidance of doubt, funding commitments for any Acceptable Bidder's Purchase Price may be provided by one or more of the Term Loan Lenders.

- f. Contingencies; No Financing or Diligence Outs: A Bid shall not be conditioned on the obtaining or the sufficiency of financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy at the closing of specified representations and warranties or the satisfaction at the closing of specified conditions.
- g. Identity: Each Bid must fully disclose the identity of each entity that will be bidding or otherwise participating in connection with such Bid (including each equity holder or other financial backer of the Acceptable Bidder if such Acceptable Bidder is an entity formed for the purpose of consummating the proposed transaction contemplated by such Bid), and the complete terms of any such participation. Under no circumstances shall any undisclosed principals, equity holders, or financial backers be associated with any Bid. Each Bid must also include contact information for the specific person(s) and counsel whom Jefferies and Kirkland & Ellis LLP should contact regarding such Bid.
- h. Authorization: Each Bid must contain evidence that the Acceptable Bidder has obtained authorization or approval from its board of directors (or a comparable governing body acceptable to the Debtors) with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.
- i. As-Is, Where-Is: Each Bid must include a written acknowledgement and representation that the Acceptable Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid; (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Assets or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Bidder's Transaction Documents; and (iv) the Bidder did not engage in any collusive conduct and acted in good faith in submitting its Bid.

By submitting its Bid, each Bidder is agreeing, and shall be deemed to have agreed, to abide by and honor the terms of the Bidding Procedures and to refrain from submitting a Bid or seeking to reopen the Auction after conclusion of the Auction. **The submission of a Bid shall**

**constitute a binding and irrevocable offer to acquire the Assets or Reorganized Global Holdings Interests reflected in such Bid.**

### **III. Designation of Qualified Bidders.**

A Bid will be considered a “*Qualified Bid*,” and each Acceptable Bidder that submits a Qualified Bid will be considered a “*Qualified Bidder*,” if the Debtors, together with the Tranche B Lenders, the ABL Agent, and the DIP Agent, and after consultation with the other Consultation Parties and the Committee, determine that such Bid:

- a. satisfies the Bid Requirements set forth above;
- b. is reasonably likely (based on availability of financing, antitrust, or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Winning Bid (as defined below), within a time frame acceptable to the Debtors, the Tranche B Lenders, the ABL Agent, and the DIP Agent, after consultation with the Existing Tranche A Lenders; and
- c. when aggregated with other Bids (or portions thereof) of non-overlapping Assets, provides for:
  - (i) either (a) payment in full in cash of all allowed DIP Claims (as defined in the Plan) outstanding on the Effective Date or (b) such other treatment that is acceptable to the Debtors and the DIP Agent (as defined in the Plan); *plus*
  - (ii) either (a) payment in full in cash of all allowed ABL Claims (as defined in the Plan) outstanding on the Effective Date or (b) such other treatment that is acceptable to the Debtors, the Tranche B Lenders, and the ABL Agent; *plus*
  - (iii) payment in full in cash of all administrative, priority, and secured claims (other than the ABL Claims) arising in the Debtors’ chapter 11 cases through the Effective Date that are senior in priority to the Term Loan Claims (as defined in the Plan); *plus*
  - (iv) payment in full in cash of the claims of the Existing Tranche A Lenders and the New Tranche A Lenders (as defined in the Plan); *plus*
  - (v) such treatment of the claims of the Tranche B Lenders that is acceptable to the Debtors and the Tranche B Lenders; *plus*
  - (vi) payment, as applicable, to holders of Critical Trade Claims (as defined in the Plan) of cash in an amount equal to the Critical Trade Claims Recovery Pool (as defined in the Plan), which amount may be determined by the Bidder and must be acceptable to the Debtors and the Tranche B Lenders, after consultation with the Committee; *plus*

- (vii) payment to holders of General Unsecured Claims (as defined in the Plan) of cash in an amount equal to the General Unsecured Claims Recovery Pool (as defined in the Plan), which amount may be determined by the Bidder and must be acceptable to the Debtors and the Tranche B Lenders, after consultation with the Committee.

Within two business days after the Bid Deadline, the Debtors will notify each Qualified Bidder whether such party is a Qualified Bidder and shall provide the Notice Parties and counsel to the Committee a copy of each Qualified Bid.

If any Bid is determined by the Debtors not to be a Qualified Bid, the Debtors will refund such Acceptable Bidder's Deposit, and all accumulated interest thereon, on the date that is three business days after the Bid Deadline, or as soon as is reasonably practicable thereafter.

Between the date that the Debtors notify an Acceptable Bidder that it is a Qualified Bidder and the Auction, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the prior written consent of the Debtors, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase their Purchase Price, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bidding Procedures; *provided that* any Qualified Bid may be improved at the Auction as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bidding Procedures.

Notwithstanding anything herein to the contrary, the Debtors reserve the right to work with (a) Potential Bidders and Approved Bidders to aggregate two or more Indications of Interest or Bids into a single consolidated Bid prior to the Bid Deadline or (b) Qualified Bidders to aggregate two or more Qualified Bid into a single Qualifying Bid prior to the conclusion of the Auction. The Debtors reserve the right to cooperate with any Bidder in advance of the Auction to cure any deficiencies in a Bid that is not initially deemed to be a Qualified Bid. The Debtors may accept a single Qualified Bid or multiple Bids for non-overlapping material portions of the Assets such that, if taken together in the aggregate, would otherwise meet the standards for a single Qualified Bid (in which event those multiple bidders shall be treated as a single Qualified Bidder for purposes of the Auction).

#### **IV. Right to Credit Bid.**

Any Qualified Bidder who has a valid and perfected lien on any Assets of the Debtors' estates (a "Secured Creditor") shall have the right to credit bid all or a portion of the value of such Secured Creditor's claims within the meaning of section 363(k) of the Bankruptcy Code; *provided that* a Secured Creditor shall have the right to credit bid its claim only with respect to the collateral by which such Secured Creditor is secured.

Notwithstanding anything to the contrary contained herein and absent a further Order of the Court, each of (A) the DIP ABL Agent, (B) the DIP Term Loan Agent, (C) the ABL Agent, and (D) the Term Loan Agent shall have the right to credit bid all or any portion of the aggregate amount of its applicable outstanding secured obligations pursuant to section 363(k) of the



Bankruptcy Code, and any such credit bid will be considered a Qualified Bid to the extent such bid is received by the Bid Deadline and complies with section 363(k) of the Bankruptcy Code; *provided* that a credit bid shall not constitute a Qualified Bid if the bid does not (a) include a cash component sufficient to pay in full, in cash, all claims for which there are valid, perfected and unavoidable liens on any assets included in such Bid that are senior in priority to those of the party seeking to credit bid (unless such senior lien holder consents to alternative treatment) or (b) comply with the terms of the Intercreditor Agreement (as defined in the Form Plan), the Bidding Procedures Order, and the DIP Order (as defined in the Form Plan).

## **V. The Auction.**

If the Debtors receive one or more Qualified Bids from a party other than the Tranche B Lenders, the Debtors will conduct the Auction to determine the Winning Bidder with respect to some or all of the Assets or the Reorganized Global Holdings Interests.

No later than May 23, 2017, at 12:00 noon (prevailing Eastern Time), the Debtors, after consultation with the Consultation Parties and the Committee, will notify all Qualified Bidders of the highest or otherwise best Qualified Bid, as determined in the Debtors' business judgment (the "Baseline Bid"), and provide copies of the documents supporting the Baseline Bid to all Qualified Bidders, the Committee, and the Notice Parties. The determination of which Qualified Bid constitutes the Baseline Bid and which Qualified Bid constitutes the Winning Bid shall take into account any factors the Debtors, the Consultation Parties, and the Committee reasonably deem relevant to the value of the Qualified Bid to the Debtors' estates, including, among other things: (a) the number, type, and nature of any changes to the Form Plan Support Agreement and Form Plan requested by the Qualified Bidder, including the type and amount of Assets sought to be purchased in the Bid; (b) the amount and nature of the total consideration; (c) the likelihood of the Bidder's ability to close a transaction and the timing thereof; (d) the net economic effect of any changes to the value to be received by the Debtors' estates from the transaction contemplated by the Baseline Bid; and (e) the tax consequences of such Qualified Bid (collectively, the "Bid Assessment Criteria").

Unless otherwise indicated as provided by the Bidding Procedures Order, the Auction shall take place at 9:00 a.m. (prevailing Eastern Time) on May 24, 2017, at the offices of Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, or such later date and time as selected by the Debtors, with the consent of the Tranche B Lenders and DIP Agent, and after consultation with the Committee. The Auction shall be conducted in a timely fashion according to the following procedures:

### **a. 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 the Baseline Bid. All incremental 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 Overbid shall be fully disclosed to all other Qualified Bidders. The Debtors shall maintain a written transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Winning Bid.

Only Qualified Bidders, the Term Loan Lenders, the ABL Lenders, the ABL Agent, the DIP Agent, and the Committee (and its members), and each of their respective legal and financial advisors, shall be entitled to attend the Auction, and the Qualified Bidders shall appear at the Auction in person and may speak or bid themselves or through duly authorized representatives. Only Qualified Bidders shall be entitled to bid at the Auction.

b. Terms of Overbids

“Overbid” means any bid made at the Auction by a Qualified Bidder subsequent to the Debtors’ announcement of the Baseline Bid. Each Overbid must comply with the following conditions:

- (i) Minimum Overbid Increment. Any Overbid following the Baseline Bid or following any subsequent Prevailing Highest Bid (as defined below) shall be in increments of value (including revised treatment under the Plan) equal to \$500,000, as determined by the Debtors in an exercise of their business judgment, after consultation with the Consultation Parties and the Committee.
- (ii) Conclusion of Each Overbid Round. Upon the solicitation of each round of Overbids, the Debtors may announce a deadline (as the Debtors may, in their business judgment, after consultation with the Consultation Parties and the Committee, extend from time to time, the “Overbid Round Deadline”) by which time any Overbids must be submitted to the Debtors.
- (iii) Overbid Alterations. An Overbid may contain alterations, modifications, additions, or deletions of any terms of the Bid no less favorable to the Debtors’ estates than any prior Qualified Bid or Overbid, as determined in the Debtors’ business judgment, after consultation with the Consultation Parties and the Committee, but shall otherwise comply with the terms of these Bidding Procedures.
- (iv) Announcing Highest Bid. Subsequent to each Overbid Round Deadline, the Debtors shall announce whether the Debtors have identified, after consultation with the Consultation Parties and the Committee, an Overbid as being higher or otherwise better than the Baseline Bid, in the initial Overbid round, or, in subsequent rounds, the Overbid previously designated by the Debtors as the prevailing highest or otherwise best Bid (the “Prevailing Highest Bid”). The Debtors shall describe to all Qualified Bidders the material terms of any new Overbid designated by the Debtors as the Prevailing Highest Bid as well as the value attributable by the Debtors (after consultation with the Consultation Parties and the Committee) to such Prevailing Highest Bid based on, among other things, the Bid Assessment Criteria.

c. Consideration of Overbids

The Debtors reserve the right, in their business judgment to adjourn the Auction one or

more times, after consultation with the Consultation Parties and the Committee, to, among other things (i) facilitate discussions between the Debtors and Qualified Bidders, (ii) allow Qualified Bidders to consider how they wish to proceed, and (iii) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in 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 transaction at the prevailing Overbid amount.

d. Closing the Auction

The Auction shall continue until there is only one Qualified Bid that the Debtors determine, in their business judgment, after consultation with the Consultation Parties and the Committee, to be the highest or otherwise best Qualified Bid for the Assets. Such Qualified Bid shall be declared the “Winning Bid,” and such Qualified Bidder, the “Winning Bidder,” and 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 to the then Prevailing Highest Bid. Such acceptance by the Debtors of the Winning Bid is conditioned upon approval by the Court of the Winning Bid. For the avoidance of doubt, nothing in these Bidding Procedures shall prevent the Debtors from exercising their respective fiduciary duties under applicable law. As soon as reasonably practicable after closing the Auction, the Debtors shall finalize definitive documentation to implement the terms of the Winning Bid, including, as applicable, the Plan, the Plan Supplement (as defined in the Plan), and the Confirmation Order (as defined in the Plan) and, as applicable, cause such definitive documentation to be filed with the Court.

e. No Collusion; Good-Faith *Bona Fide* Offer

Each Qualified Bidder participating at the Auction will be required to confirm on the record at the Auction that (i) it has not engaged in any collusion with respect to the bidding, and (ii) its Qualified Bid is a good-faith *bona fide* offer and it intends to consummate the proposed transaction if selected as the Winning Bidder.

**VI. Expense Reimbursement, Work Fee, and Breakup Fee.**

Upon entry of the Bidding Procedures Order, the Debtors shall be authorized, but not obligated, in an exercise of their business judgment after consultation with the Consultation Parties and the Committee, to agree to reimburse the reasonable and documented out-of-pocket fees and expenses of one or more Acceptable Bidders (each, an “Expense Reimbursement”), and/or agree to pay one or more Acceptable Bidders a “work fee” or other similar cash fee (each, a “Work Fee”) if the Debtors reasonably determine in their business judgment that any such Expense Reimbursement or Work Fee will encourage one or more parties to submit a Qualified Bid or result in a competitive bidding and Auction process. The aggregate amount of all Expense Reimbursements and Work Fees shall not exceed \$1,000,000. Pursuant to the Bidding Procedures Order, the Debtors shall be authorized to indefeasibly pay any such amounts to such Acceptable Bidders pursuant to section 363(b)(1) of the Bankruptcy Code and any such amounts paid by the Debtors to such Acceptable Bidders will not be subject to disgorgement irrespective of whether the Acceptable Bidders receiving such reimbursements or payments are ultimately the

Winning Bidder as long as such Acceptable Bidder acted in good faith.

Upon entry of the Bidding Procedures Order, the Debtors shall be further authorized, but not obligated, in an exercise of their business judgment, to (a) select no more than one Acceptable Bidder, other than the Tranche B Lenders, to act as a stalking horse bidder (a “Stalking Horse Bidder”) in connection with the Auction and (b) in connection with any staking horse agreement with a Stalking Horse Bidder, provide for a breakup fee (the “Breakup Fee”) in an amount not to exceed three percent (3%) of the proposed Purchase Price. The amount of any Expense Reimbursement or Work Fee paid to any Stalking Horse Bidder pursuant to these Bidding Procedures shall be deducted from the Breakup Fee, if payable.

## **VII. Backup Bidder.**

- a. Notwithstanding anything in these Bidding Procedures to the contrary, if an Auction is conducted, the Qualified Bidder with the next-highest or otherwise second-best Qualified Bid at the Auction for the Assets or Reorganized Global Holdings Interests, as determined by the Debtors in the exercise of their business judgment after consultation with the Consultation Parties and the Committee, shall be required to serve as a backup bidder (the “Backup Bidder”) until such time that the Transaction is consummated through confirmation of the Plan, and each Qualified Bidder shall agree and be deemed to agree to be the Backup Bidder if so designated by the Debtors.
- b. The identity of the Backup Bidder and the amount and material terms of the Qualified Bid of the Backup Bidder shall be announced by the Debtors, after consultation with the Consultation Parties and the Committee, at the conclusion of the Auction at the same time the Debtors announce the identity of the Winning Bidder. The Backup Bidder shall be required to keep its Qualified Bid (or if the Backup Bidder submits one or more Overbids at the Auction, its final Overbid) open and irrevocable until such time that the Transaction is consummated through confirmation of the Plan. The Backup Bidder’s Deposit shall be held in escrow pending confirmation of the Plan.
- c. If the Winning Bidder fails to consummate the approved transactions contemplated by its Winning Bid, the Debtors (with the consent of the Tranche B Lenders, the ABL Agent, and the DIP Agent and after consultation with the Existing Tranche A Lenders and the Committee) may select the Backup Bidder as the Winning Bidder, and such Backup Bidder shall be deemed a Winning Bidder for all purposes. The Debtors will be authorized, but not required, to consummate all transactions contemplated by the Bid of such Backup Bidder without further order of the Court or notice to any party. In such case, the defaulting Winning Bidder’s Deposit shall be forfeited to the Debtors’ estates, and the Debtors, on behalf of itself and its estates, specifically reserve the right to seek all available remedies against the defaulting Winning Bidder, including, but not limited to, with respect to specific performance.

### **VIII. Notice and Consultation Parties.**

Information that must be provided to the “*Notice Parties*” under these Bidding Procedures must be provided to the following parties: (a) counsel to the DIP Term Loan Agent and Tranche B Lenders, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Matt Barr, Esq. and Adam Lavine, Esq.); (b) the counsel to the ABL DIP Agent and ABL Lenders, Morgan, Lewis & Bockius LLP, One Federal Street, Boston, MA 02110, Attn: Marc R. Leduc (marc.leduc@morganlewis.com) and Matthew F. Furlong (matthew.furlong@morganlewis.com); (c) counsel to the Existing Tranche A Lenders, Curtis, Mallet-Prevost, Colt & Mosle, LLP, 101 Park Avenue, New York, NY 10178 (Attn: Steven J. Reisman, Esq. (sreisman@curtis.com) and Cindi M. Giglio, Esq. (cgiglio@curtis.com)); and (d) counsel to the Committee, Pachulski Stang Ziehl & Jones, LLP, 780 Third Avenue, 34<sup>th</sup> Floor, New York, NY 10027 (Attn: Robert J. Feinstein (rfeinstein@pszjlaw.com) and Bradford J. Sandler (bsandler@pszjlaw.com)).

The term “*Consultation Parties*” as used in these Global Bidding Procedures shall mean: (a) Guggenheim Corporate Funding, LLC, as agent under that certain Debtor-in-Possession Term Loan Credit and Guaranty Agreement, and as agent under that certain Fifth Amended and Restated Credit and Guaranty Agreement; (b) the Tranche B Lenders; (c) the ABL Agent; (d) the DIP Agent; (e) the Existing Tranche A Lenders; and (f) the New Tranche A Lenders. To the extent that any Consultation Party submits a Bid, it shall no longer be a Consultation Party unless and until it (i) withdraws such Bid, (ii) does not thereafter become a Qualified Bidder, or (iii) becomes a Qualified Bidder but elects to not participate in, to cease bidding at, or to withdraw from the Auction.

### **IX. “As Is, Where Is”.**

Consummation of any Transaction will be on an “as is, where is” basis and without representations or warranties of any kind, nature, or description by the Debtors or their estates, except as specifically accepted or agreed to by the Debtors. Except as specifically accepted or agreed to by the Debtors, all of the Debtors’ right, title, and interest in and to the respective Assets or Reorganized Global Holdings Interests will be transferred to the Winning Bidder free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests in accordance with sections 363(f) and 1123(a)(5)(D) of the Bankruptcy Code.

By submitting a Bid, each Acceptable Bidder will be deemed to acknowledge and represent that it (a) has had an opportunity to conduct adequate due diligence regarding the Assets prior to making its Bid, (b) has relied solely on its own independent review, investigation, and inspection of any document including, without limitation, executory contracts and unexpired leases, in making its Bid, and (c) did not rely on or receive from any party any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, with respect to the Assets or the completeness of any information provided in connection with the Transaction or the Auction.

**X. Reservation of Rights.**

The Debtors reserve their rights to modify these Bidding Procedures in their business judgment, after consultation with the Consultation Parties and the Committee, and with the consent of the Tranche B Lenders, the ABL Agent, and the DIP Agent, in any manner that will best promote the goals of these Bidding Procedures, or impose, at or prior to the Auction, additional customary terms and conditions on a Transaction, including, without limitation: (a) extending the deadlines set forth in these Bidding Procedures; (b) adjourning the Auction at the Auction; (c) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction; (d) canceling the Auction; and (e) rejecting any or all Bids or Qualified Bids. Nothing in these Bidding Procedures shall abrogate the fiduciary duties of the Debtors.

**XI. Consent to Jurisdiction.**

All Qualified Bidders at the Auction shall be deemed to have consented to the jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction, the construction and enforcement of these Bidding Procedures

**XII. Confirmation Hearing.**

A hearing to consider confirmation of a plan (the "Confirmation Hearing") pursuant to which the Debtors and the Winning Bidder intend to consummate the Transaction contemplated by the Winning Bid will be held on or prior to July 10, 2017 and otherwise in accordance with any scheduling order entered by the Court regarding confirmation of such plan.

**The Confirmation Hearing may be continued to a later date by the Debtors by sending notice prior to, or making an announcement at, the Confirmation Hearing. No further notice of any such continuance will be required to be provided to any party.**

**XIII. Return of Deposit.**

The Deposit of the Winning Bidder shall be applied to the purchase price of such transaction at closing. The Deposits for each Qualified Bidder shall be held in one or more interest-bearing escrow accounts on terms acceptable to the Debtors and shall be returned (other than with respect to the Winning Bidder and the Backup Bidder) on the date that is three business days after the Auction, or as soon as is reasonably practicable thereafter. Upon the return of the Deposits, the applicable Qualified Bidders shall receive any and all interest that will have accrued thereon.

If a Winning Bidder fails to consummate a proposed transaction because of a breach by such Winning Bidder, the Debtors will not have any obligation to return the Deposit deposited by such Winning Bidder (or such Backup Bidder, to the extent applicable), which may be retained by the Debtors as liquidated damages, in addition to any and all rights, remedies, or causes of action that may be available to the Debtors and their estates, and the Debtors shall be free to consummate the proposed transaction with the applicable Backup Bidder without the need for an additional hearing or order of the Court.

**XIV. No Modification of Bidding Procedures.**

These Bidding Procedures may not be modified except in accordance with Section X of these Bidding Procedures.

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Dated: \_\_\_\_\_, 2017

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