

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GNC HOLDINGS, INC., GENERAL NUTRITION CENTRES COMPANY, GNC PARENT LLC, GNC CORPORATION, GENERAL NUTRITION CENTERS, INC., GENERAL NUTRITION CORPORATION, GENERAL NUTRITION INVESTMENT COMPANY, LUCKY OLDSCO CORPORATION, GNC FUNDING INC., GNC INTERNATIONAL HOLDINGS INC., GNC CHINA HOLDSCO, LLC, GNC HEADQUARTERS LLC, GUSTINE SIXTH AVENUE ASSOCIATES, LTD., GNC CANADA HOLDINGS, INC., GNC GOVERNMENT SERVICES, LLC, GNC PUERTO RICO HOLDINGS, INC. and GNC PUERTO RICO, LLC

APPLICATION OF GNC HOLDINGS, INC., UNDER SECTION 46 OF *THE COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Applicant

**AFFIDAVIT OF ANDREA DAS-WIECZOREK  
(affirmed July 23, 2020)**

I, Andrea Das-Wieczorek, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a summer law student at Torys LLP, Canadian counsel to GNC Holdings, Inc. (the "**Foreign Representative**"), in its capacity as foreign representative of itself as well as General Nutrition Centres Company ("**GNC Canada**"), GNC Parent LLC, GNC Corporation, General Nutrition Centers, Inc., General Nutrition Corporation, General Nutrition Investment Company, Lucky Oldco Corporation, GNC Funding Inc., GNC International Holdings Inc., GNC

China Holdco, LLC, GNC Headquarters LLC, Gustine Sixth Avenue Associates, Ltd., GNC Canada Holdings, Inc., GNC Government Services, LLC, GNC Puerto Rico Holdings, Inc. and GNC Puerto Rico, LLC (collectively, the “**Debtors**”), and, as such, have knowledge of the matters contained in this Affidavit.

2. I swear this affidavit in support of the motion of the Applicant for certain relief for itself and the Debtors pursuant to section IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”).

3. On July 22, 2020, the U.S. Bankruptcy Court for the District of Delaware held a hearing and granted an Order approving (i) the bidding procedures in connection with the sale of all, or substantially all, of the debtors’ assets, (ii) the procedures for the assumption and assignment of executory contracts and unexpired leases, (iii) the form and manner of notice of the sale hearing, assumption procedures, and auction results, (iv) dates for an auction and sale hearing, and (v) granting related relief (the “**Bidding Procedures Order**”). A copy of the entered order is attached as Exhibit “A”.

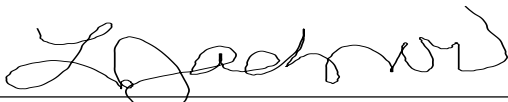
**AFFIRMED BEFORE ME** *by video conference*

From the City of Toronto, in the Province of Ontario,

To the City of Toronto in the Province of Ontario

On July 23, 2020.

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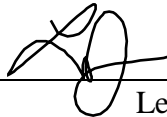
Commissioner for Taking Affidavits  
(or as may be)

Leora Jackson



Andrea Das-Wieczorek

THIS IS **EXHIBIT “A”** REFERRED TO IN THE  
AFFIDAVIT OF ANDREA DAS-WIECZOREK,  
AFFIRMED BEFORE ME *BY VIDEO*  
*CONFERENCE*, THIS 23<sup>TH</sup> DAY OF JULY, 2020.



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Leora Jackson

Commissioner for Taking Affidavits



attached hereto as **Exhibit 3**; and (3) the post-auction notice (“*Post-Auction Notice*”), attached hereto as **Exhibit 4**, (d) establishing dates and deadlines in connection with the Sale and the approval thereof, including the Bid Deadline, the date of the Auction, if any, and the Sale Hearing, and (e) granting related relief, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the “*Hearing*”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

**THE COURT HEREBY FINDS THAT:**

A. Statutory Predicates. The predicates for the relief granted herein are sections 105, 363, 365, 503, and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 9014.

B. Notice of Motion. The Debtors’ notice of the Motion, the Hearing, and the proposed entry of this Order was sufficient under the circumstances of this case and complied with all applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, and the applicable

Local Rules. Accordingly, no other or further notice of the Motion or the entry of this Order is necessary or required.

C. Bidding Procedures. The Debtors have articulated good and sufficient reasons for authorizing and approving the Bidding Procedures, which were developed in good faith, are fair, reasonable, and appropriate under the circumstances, and are designed to maximize the recovery on, and realizable value of, the Debtors' assets (including, for the avoidance of doubt, any causes of action belonging to the Debtors, rights under leases or other contracts, and intellectual property rights or other intangible assets) (the "*Assets*"), as determined by the Debtors in an exercise of their business judgment.

D. Sale Notice. The notice provided by the Debtors regarding the Sale (the "*Sale Notice*") is reasonably calculated to provide all interested parties with timely and proper notice of the proposed Sale, including: (i) the date, time, and place of the Auction (if one is held); (ii) the Bidding Procedures and certain dates and deadlines related thereto; (iii) the objection deadline for the Sale and the date, time, and place of the Sale Hearing; (iv) reasonably specific identification of the assets for sale; (v) representations describing the Sale as being free and clear of liens, claims, interests, and other encumbrances, with all such liens, claims, interests, and other encumbrances attaching with the same validity and priority to the sale proceeds subject to customary exceptions for permitted liens; and (vi) notice of the proposed assumption and assignment of the Assigned Contracts to the Successful Bidder and the rights, procedures, and deadlines for objecting thereto, and no other or further notice of the Sale shall be required.

E. Assumption Procedures. The Contract Assumption Notice (as defined herein) is reasonably calculated to provide counterparties to the Assigned Contracts with proper notice of

the intended assumption and assignment of their executory contracts, any Cure Payments (as defined herein), and the Assumption Procedures (as defined herein).

F. Other Findings. 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 preceding findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the preceding conclusions of law constitute findings of fact, they are adopted as such.

**IT IS HEREBY ORDERED 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.

**I. Important Dates and Deadlines.**

3. Sale Objection Deadline. August 21, 2020, at 4:00 p.m., prevailing Eastern Time (the "*Sale Objection Deadline*") is the deadline by which objections to the entry of an order by the Court approving the Sale must (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, and (c) be filed with the Court and served so as to be actually received by: (i) co-counsel to the Debtors, (A) Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611, Attn: Richard A. Levy (richard.levy@lw.com) and Caroline A. Reckler (caroline.reckler@lw.com), and (B) Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, DE 19801, Attn: Michael Nestor (mnestor@ycst.com) and Kara Hammond Coyle (kcoyle@ycst.com); (ii) counsel to the administrative agent under the DIP Term Facility, Dorsey & Whitney LLP, 51 West 52<sup>nd</sup> Street, New York, New York 10019, Attn: Erin E. Trigg and Samuel S. Kohn (email: trigg.erin@dorsey.com and kohn.samuel@dorsey.com); (iii) counsel to the Ad Hoc FILO Term Lender Group (A) Paul, Weiss, Rifkind, Wharton & Garrison LLP,

1285 Avenue of the Americas, New York, New York 10019, Attn: Andrew N. Rosenberg, Jacob Adlerstein, and Douglas R. Keeton (email: arosenberg@paulweiss.com, jadlerstein@paulweiss.com, and dkeeton@paulweiss.com); and (B) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Richard S. Cobb (cobb@lrclaw.com); (iv) counsel to the Ad Hoc Group of Crossover Lenders (A) Milbank LLP, 2029 Century Park East, Los Angeles, California 90067, Attn: Mark Shinderman, Brett Goldblatt, and Daniel B. Denny (email: mshinderman@milbank.com; bgoldblatt@milbank.com; and ddenny@milbank.com); and (B) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Robert J. Dehney (rdehney@mnat.com); (v) counsel to the Ad Hoc FILO Term Lender Group (A) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Andrew N. Rosenberg, Jacob Adlerstein, and Douglas R. Keeton (email: arosenberg@paulweiss.com, jadlerstein@paulweiss.com, and dkeeton@paulweiss.com); and (B) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Richard S. Cobb (cobb@lrclaw.com); (vi) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jane Leamy (email: jane.m.leafy@usdoj.gov); and (vii) counsel to the Committee, Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, NY 10020 Attn: Jeffrey Cohen and Lindsay H. Sklar (emails: jcohen@lowenstein.com and lsklar@lowenstein.com) and One Lowenstein Drive, Roseland, NJ 070686, Attn: Michael S. Etkin, Michael Savetsky, Nicole Fulfree and Colleen M. Maker (email: metkin@lowenstein.com, msavetsky@lowenstein.com, nfulfree@lowenstein.com, and cmaker@lowenstein.com) (the parties identified in (i) through (vii), collectively, the “**Objection Notice Parties**”). Any party or entity who fails to timely make



an objection to the Sale on or before the Sale Objection Deadline shall be forever barred from asserting any objection to the Sale, including with respect to the transfer of the assets free and clear of all liens, claims, encumbrances, and other interests.

4. **Bid Deadline.** September 4, 2020, at 4:00 p.m., prevailing Eastern Time, is the deadline by which all Qualified Bids must be **actually received** by the parties specified in the Bidding Procedures.

5. **Auction.** September 8, 2020, at 10:00 a.m., prevailing Eastern Time, is the date and time the Auction, if one is needed, will be held in accordance with the Bidding Procedures at the offices of counsel to the Debtors: Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611 telephonically, or by video via Zoom. 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, claims, and solicitation agent, Prime Clerk LLC, at <https://cases.primeclerk.com/gnc>.

6. **Reply Deadline.** All replies to any Sale Objection, except for those filed after the Sale Objection Deadline, must be filed by 5:00 p.m. (prevailing Eastern Time) on September 9, 2020 (the "***Reply Deadline***").

7. **Auction Objection Deadline.** September 9, 2020, at 4:00 p.m. (the "***Auction Objection Deadline***"), prevailing Eastern Time, is the deadline by which objections to the conduct of the Auction and the choice of Successful Bidder and/or Back-Up Bidder must be filed with the Court and served on the Objection Notice Parties.

8. **Sale Hearing.** September 14, 2020, at 1:00 p.m., prevailing Eastern Time, is the date and time for the hearing for the Court to consider the Successful Bid, pursuant to which the

Debtors and the Successful Bidder will consummate the Sale; *provided, however*, that the Sale Hearing may be continued by the Debtors in accordance with the Bidding Procedures, from time to time, without further notice to creditors or parties in interest.

9. **Adequate Assurance Hearing.** 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 must be filed with the Court and served on the Objection Notice Parties no later than September 15, 2020 at 8:00 p.m., prevailing Eastern Time (“*Adequate Assurance Objection Deadline*”), and the Court will hear such adequate assurance objections on September 18, 2020 at 2:00 p.m., prevailing Eastern Time (“*Adequate Assurance Hearing*”), *provided, however*, that the Adequate Assurance Hearing may be continued by the Debtors from time to time, without further notice to creditors or parties in interest.

10. **Modification of Dates.** Notwithstanding anything in this Order to the contrary, if the Debtors have not filed a Stalking Horse Selection Notice (as defined below) within one business day after August 3, 2020, the Sale Objection Deadline will be extended to August 28, the Bid Deadline will be extended to September 11, 2020, the Auction date will be extended to September 15, 2020, the Reply Deadline and Auction Objection Deadline will be extended to September 16, 2020, the Sale Hearing will be extended to September 17, 2020 at 1:00 p.m., prevailing Eastern Time, the Adequate Assurance Objection Deadline will be extended to September 22, 2020, and the Adequate Assurance Hearing will be extended to September 29, at 1:00 p.m., prevailing Eastern Time. The dates and deadlines set forth in this Order are subject to further modification by the Debtors in accordance with the Bidding Procedures.

## **II. Stalking Horse and Bid Protections.**

11. On or prior to August 3, 2020, subject to receiving the requisite approvals from the Required Sale Consenting Parties (as such term is defined in the Restructuring Support

Agreement),<sup>3</sup> the Debtors are authorized, but not directed, to select one or more Bidders to act as Stalking Horse Bidder(s), and are authorized, but not directed, to enter into a Stalking Horse Agreement (which shall be binding, non-contingent, and accompanied by a Good Faith Deposit (as defined in the Bidding Procedures)) with each such Stalking Horse Bidder.

12. No later than one business day after the selection of a Stalking Horse Bidder (if such selection is made), the Debtors shall file with the Court and post on the case website at <https://cases.primeclerk.com/GNC> a notice that contains information about the Stalking Horse Bidder and the Stalking Horse Bid, including any Bid Protections (the “***Stalking Horse Selection Notice***”), together with the proposed Stalking Horse Agreement, and serve the Stalking Horse Selection Notice on the Objection Notice Parties.

13. Parties in interest may file objections to the designation of the Stalking Horse Bidder or any of the terms of the Stalking Horse Agreement, including to any of the proposed Bid Protections, within seven days after service of the Stalking Horse Selection Notice (the “***Stalking Horse Objection Deadline***”). Regardless whether an objection to the designation of the Stalking Horse Bidder, the Stalking Horse Bid, and/or the proposed Bid Protections is received by the Stalking Horse Objection Deadline, the Debtors will present evidentiary support and seek approval of the Stalking Horse Bidder, Stalking Horse Bid, and Bid Protections at a hearing of this Court at least ten days following the filing of the Stalking Horse Selection Notice.

14. The Debtors shall file with the Court and serve via email on the Objection Notice Parties and Counterparties (as defined below) and their counsel (if known) financial and other information demonstrating adequate assurance of future performance of the Assigned Contracts

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<sup>3</sup> A copy of the Restructuring Support Agreement is attached as Exhibit B to the *Declaration of Tricia Toliver, Chief Financial Officer of GNC Holdings, Inc. in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 21].

by any Stalking Horse Bidder (including the name of the Stalking Horse Bidder and a description of its business) on or prior to August 10, 2020. Any objections to adequate assurance of future performance by any Stalking Horse Bidder must be filed and served on the Objection Notice Parties by the Sale Objection Deadline.

**III. Auction, Bidding Procedures, Sale Notice, and Related Relief.**

15. The Bidding Procedures, substantially in the form 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 proposed Sale. 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 reasonable actions necessary to implement the Bidding Procedures.

16. For the avoidance of doubt and notwithstanding anything to the contrary contained in this Order, this Order does not approve the sale of the Assets or authorize the consummation of the Sale, such approval and authorization (if any) to be considered only at the Sale Hearing and all rights of all parties in interest to object to such approval and authorization are reserved.

17. Subject to the terms of the Bidding Procedures, in the event of a competing Qualified Bid, the Stalking Horse Bidder (if any) will be entitled, but not obligated, to submit overbids and will be entitled in any such overbids to credit bid all of its claims for Bid Protections pursuant to section 363(k) of the Bankruptcy Code.

18. Except as provided in any Stalking Horse Agreement agreed to by the Debtors (subject to receiving the requisite approvals from the Required Sale Consenting Parties) and approved by a separate order of this Court, no person or entity shall be entitled to any expense reimbursement, break-up fee, “topping,” termination, or other similar fee or payment in connection with any Sale, 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 section 503(b) of the Bankruptcy Code or otherwise.

19. Any deposit provided by a Qualified Bidder shall be held in a segregated account by the Debtors or their agent in accordance with the Bidding Procedures, and shall not become property of the Debtors' bankruptcy estates unless and until released to the Debtors pursuant to the terms of the purchase agreement with such Qualified Bidder or order of this Court.

20. The Sale Notice, substantially in the form attached hereto as **Exhibit 2**, is hereby approved. As soon as reasonably practicable following the entry of this Order, the Debtors will cause the Bidding Procedures, Sale Notice, and Assumption Notice to be served upon the following parties, and their respective counsel, if known (collectively, the "***Notice Parties***"): (a) the Committee; (b) the Ad Hoc Group of Crossover Lenders; (c) Ad Hoc FILO Term Lender Group; (d) the agent for the Debtors' DIP Term Facility; (e) the agent for the Debtors' DIP ABL FILO Facility; (f) the U.S. Trustee for the District of Delaware; (g) the United States Attorney's Office for the District of Delaware; (h) the Internal Revenue Service; (i) the attorneys general for the states in which the Debtors operate; (j) any parties known or reasonably believed to have expressed an interest in the Debtors' assets; (k) all entities known or reasonably believed to have asserted a lien, encumbrance, claim, or other interest in any of the Debtors' assets; (l) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (m) all known creditors of the Debtors. In addition, as soon as practicable, after entry of this Order, the Debtors will publish the Sale Notice, with any modification necessary for ease of publication, once in *The Wall Street Journal* (national edition), *La Presse* and *The Globe and Mail* to provide notice to any other potential interested parties.

#### IV. The Assumption and Assignment Procedures.

21. The procedures set forth below regarding the assumption and assignment of the executory contracts proposed to be assumed by the Debtors pursuant to section 365(b) of the Bankruptcy Code and assigned to the Successful Bidder pursuant to section 365(f) of the Bankruptcy Code in connection with the Sale (the “*Assumption Procedures*”) are hereby approved to the extent set forth herein.

22. These Assumption Procedures shall 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 (each, an “*Assigned Contract*,” and, collectively, the “*Assigned Contracts*”), subject to the payment of any payments necessary to cure any defaults arising under any Assigned Contract (the “*Cure Payments*”):

- a. **Contract Assumption Notice.** On or prior to July 31, 2020 (the “*Assumption Notice Deadline*”), 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; *provided, however*, if an Assigned Contract is not listed on the Assigned Contracts List attached to an Assumption Notice, supplemental Assumption Notice or revised Assumption Notice at all, it may not be assumed and assigned via the Motion. If a Counterparty objects to the Cure Payment, the Counterparty must file with the Court and serve on the Objection Notice Parties a written objection (a “*Contract Objection*”) on or before the Sale Objection Deadline. 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. Cure Payments.** The payment of the applicable Cure Payments specified in the Assumption Notice by the Successful Bidder or the Debtors, as applicable, after the expiration of the applicable objection period and the failure of any applicable Counterparty to object to the proposed Cure Payment or to the assumption or assignment of its unexpired lease or executory contract, shall (i) effect a cure of all defaults existing thereunder as of the filing of the Assumption Notice, and (ii) compensate for any actual pecuniary loss to such counterparty resulting from such default.
- c. Contract Objections (Other Than Adequate Assurance Objections).** Objections, if any, to the proposed assumption and assignment of a contract or lease (other than an objection based on the ability of a Successful Bidder or Back-Up Bidder other than the Stalking Horse Bidder to provide adequate assurance of future performance) or the Cure Payment proposed with respect thereto, 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 upon, so as to be actually received by, the Objection Notice Parties, before the Sale Objection Deadline, except as otherwise set forth below with respect to Assigned Contracts added to the Assigned Contracts List (or for which the proposed Cure Payment is modified) after the Assumption Notice Deadline.
- d. Changes to Assigned Contract List and Cure Payments.** Any time after the Assumption Notice Deadline and before the date one (1) business day prior to the Sale Hearing, the Debtors are authorized but not directed, 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, (ii) remove an Assigned Contract from the Assigned Contract List that a successful bidder proposes be assumed and assigned to it in connection with the Sale, or (iii) modify the previously stated Cure Payment associated with any Assigned Contract.
- e. Revised Assumption Notices and Objections Thereto.** If, after the Assumption Notice Deadline additional executory contracts or unexpired leases of the Debtors are determined to be Assigned Contracts in connection with the Sale, as soon as practicable thereafter and in no event less than one (1) business day before the date of the Sale Hearing, the Debtors shall file with the Court and serve, by overnight delivery, on the applicable Counterparties a supplemental or revised Assumption Notice, and such Counterparties shall file any Contract Objections not later than (a) the Sale

Objection Deadline in the event that such Assumption Notice was filed and served at least ten (10) days prior to the Sale Objection Deadline, (b) two (2) days prior to the Sale Hearing in the event that such Assumption Notice was filed and served at least seven (7) days prior to the commencement of the Sale Hearing, and (c) seven (7) days from the date such supplemental or revised Assumption Notice was filed and served in accordance with the above, in the event that such supplemental or revised Assumption Notice was filed and served less than seven (7) days prior to the commencement of the Sale Hearing. In the event that such supplemental or revised Assumption Notice was filed and served less than seven (7) days prior to the commencement of the Sale Hearing, assumption of any Assigned Contract added to such supplemental or revised Assumption Notice will not be adjudicated at the Sale Hearing and will be set for a subsequent hearing.

- f. **Post-Auction Notice/Adequate Assurance Objections.** As soon as practicable after the Auction and in no event later than 12 hours after the Auction, the Debtors shall file with the Court and post on the case website, <https://cases.primeclerk.com/gnc>, the notice, substantially in the form attached hereto as **Exhibit 4** (the “*Post-Auction Notice*”), identifying any Successful Bidder and Back-Up Bidder(s), together with a copy of the Successful Bidder’s proposed purchase agreement and financial and other information regarding adequate assurance of future performance of Assigned Contracts by the Successful Bidder (including the name of the Successful Bidder and description of its business), and serve the Post-Auction Notice 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 any Stalking Horse Bidder (each, an “*Adequate Assurance Objection*”) not later than the Adequate Assurance Objection Deadline.
- g. **Selected Assigned Contracts.** At the Sale Hearing, the Debtors will seek Court approval of the assumption and assignment to the Successful Bidder of only those Assigned Contracts that have been selected by the Successful Bidder to be assumed and assigned (collectively, the “*Selected Assigned Contracts*”); *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 will be heard at a subsequent hearing, as set forth in paragraph 9 above. 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.
- h. **Dispute Resolution.** To the extent that the parties are unable to consensually resolve any Contract Objection prior to the commencement of the Sale Hearing, including, without limitation, any dispute with respect to



the cure amount required to be paid to the applicable Counterparty under Bankruptcy Code sections 365(b)(1)(A) and (B) (any such dispute, a “**Cure Dispute**”), such Contract Objection will be adjudicated at the Sale Hearing or at such other date and time as may be fixed by the Court; *provided, however,* that if the Contract Objection relates solely to a Cure Dispute, the Selected Assigned Contract may be assumed by the Debtors and assigned to the Successful Bidder, *provided* that the cure amount the Counterparty asserts is required to be paid under Bankruptcy Code section 365(b)(1)(A) and (B) (or such lower amount as agreed to by the Counterparty) is deposited in a segregated account by the Debtors pending the Court’s adjudication of the Cure Dispute or the parties’ consensual resolution of the Cure Dispute. Any counterparty to an Assigned Contract for which the Cure Payment is disputed as of or following the closing shall be entitled to request a prompt hearing in connection with such disputed Cure Payment, including fixing the liability, amount and timing of payment thereof.

- i. **Back-Up Bidder Adequate Assurance Objections.** In the event that a Successful Bidder does not consummate the Sale and a Back-Up Bidder has been previously identified, the Debtors shall file with the Court and post on the case website, <https://cases.primeclerk.com/gnc>, 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.
- j. **Contract Assumption.** 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.

23. Any party failing to timely 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.

**V. Assumption Notice and Post-Auction Notice.**

24. The Assumption Notice attached hereto as **Exhibit 3** and the Post-Auction Notice attached hereto as **Exhibit 4** are hereby approved.

**VI. Back-Up Bidder.**

25. Following entry of the Sale Order, if the Successful Bidder fails to consummate the Successful Bid, the Debtors may, in consultation with the Consultation Parties, designate the Back-Up Bid to be the new Successful Bid and the Back-Up Bidder to be the new Successful Bidder, and, subject to resolution of any adequate assurance objections filed pursuant to paragraph 22(i) above, the Debtors will be authorized, but not required, to consummate the transaction with the Back-Up Bidder without further order of this Court, so long as such Back-Up Bid shall have been approved in connection with the Court's approval of the Successful Bid, or subject to Court approval if not. In such case of a breach or failure to perform on the part of the Successful Bidder and in such other circumstances as may be specified in the definitive documentation governing the Successful Bid, the defaulting Successful Bidder's deposit shall be forfeited to the Debtors. The Debtors' right to seek all available damages, including specific performance, from any defaulting Successful Bidder (including any Back-Up Bidder designated as a Successful Bidder) in accordance with the terms of the Bidding Procedures are reserved.

**VII. Miscellaneous.**

26. 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.

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

28. Any substantial contribution claims by any Bidder are deemed waived, to the extent based solely on such Bidder's submission of a Bid in accordance with the Bidding Procedures.

29. This Order shall be binding on and inure to the benefit of the Debtors, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the estates of the Debtors.

30. This Order shall constitute the findings of fact and conclusions of law.

31. To the extent this Order is inconsistent with any prior order or pleading with respect to the Motion in these cases, the terms of this Order shall govern.

32. To the extent any of the deadlines set forth in this Order do not comply with the Local Rules, such Local Rules are waived and the terms of this Order shall govern.

33. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

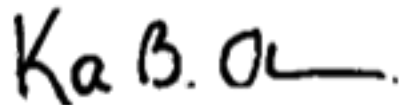
34. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

35. The Debtors shall serve this Order in accordance with all applicable rules and shall file a certificate of service evidencing compliance with this requirement.

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

37. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

**Dated: July 22nd, 2020**  
**Wilmington, Delaware**

Handwritten signature of Karen B. Owens in black ink.

**KAREN B. OWENS**  
**UNITED STATES BANKRUPTCY JUDGE**

**Exhibit 1**

**Bidding Procedures**



Copies of the Bidding Procedures Order, the Plan, or any other documents in the Debtors' chapter 11 cases are available upon request to **Prime Clerk LLC**, by calling (844) 974-2132 (Domestic) or (347) 505-7137 (International), or by visiting <https://cases.primeclerk.com/GNC>.

**A. Potential Bidder.**

For purposes of the Bidding Procedures, a "Potential Bidder" shall refer to any person or entity interested in submitting a Bid.

**B. Due Diligence.**

(i) **Access to Due Diligence.**

Any Potential Bidder that (i) executes a confidentiality agreement on customary terms that are reasonably acceptable to the Debtors (a "Confidentiality Agreement"),<sup>3</sup> (ii) provides sufficient evidence, as reasonably determined by the Debtors in consultation with the Consultation Parties,<sup>4</sup> that the Potential Bidder intends to obtain due diligence and participate in the sale process for a bona fide purpose consistent with these Bidding Procedures and (iii) provides evidence of such Potential Bidder's financial capability to acquire the Assets, the adequacy of which will be assessed by the Debtors (with the assistance of their advisors) (any such Potential Bidder being referred to as an "Acceptable Bidder") will be eligible to receive due diligence materials and access to certain non-public information regarding the Assets. The Debtors will provide each Acceptable Bidder with such information as is reasonably contemplated to enable such Acceptable Bidder to make a Bid for Assets. The Debtors will also provide to each Acceptable Bidder reasonable due diligence information as requested by such Acceptable Bidder in writing, as soon as reasonably practicable after such request. The Debtors will post substantially all written due diligence provided to any Acceptable Bidder to the Debtors' electronic data room (the "Data Room"). The Debtors may restrict or limit access of an Acceptable Bidder to the Data Room if the Debtors determine, based on their reasonable business judgment and in consultation with the Consultation

<sup>3</sup> Potential Bidders may obtain a copy of a Confidentiality Agreement by contacting the Debtors' advisors listed below.

<sup>4</sup> Each "Consultation Party," and collectively, the "Consultation Parties" means: (i) counsel and financial advisors to the ad hoc group of holders of Tranche B-2 Obligations and FILO Term Loan Obligations represented by Milbank LLP (the "Crossover Ad Hoc Group"), (ii) counsel and financial advisors to the ad hoc group of holders of FILO Term Loan Obligations represented by Paul, Weiss, Rifkind, Wharton & Garrison LLP (the "FILO Ad Hoc Group"); (iii) counsel and financial advisors to the official committee of unsecured creditors appointed in these Chapter 11 Cases (the "UCC") and (iv) counsel and financial advisors to the ad hoc group of holders of 1.5% Convertible Senior Notes Due 2020 issued by debtor GNC Holdings, Inc. comprised of Cowell & Lee Asia Credit Opportunities Fund, Luxor Capital Group, LP, Citadel LLC, and CIC Market Solutions; *provided*, that notwithstanding anything to the contrary in the foregoing, no person or entity that constitutes a Potential Bidder, Acceptable Bidder, Qualified Bidder, Stalking Horse Bidder, Successful Bidder or Back-Up Bidder (as determined by the Debtors, in their reasonable discretion) shall be deemed a Consultation Party for so long as such person constitutes a Potential Bidder, Acceptable Bidder, Qualified Bidder, Stalking Horse Bidder, Successful Bidder or Back-Up Bidder.

Parties, that certain information in the Data Room is sensitive, proprietary, or otherwise not appropriate for disclosure to such Acceptable Bidder.

The initial due diligence period will end on the Bid Deadline (as defined herein). Following the Bid Deadline, the Debtors may, in their reasonable discretion and in consultation with the Consultation Parties, furnish additional non-public information to a Qualified Bidder or Qualified Bidders that submitted a Qualified Bid (each as defined herein), but shall have no obligation to do so.

Each Potential Bidder shall comply with all reasonable requests for additional information and due diligence access requested by the Debtors or their advisors, regarding qualification as an Acceptable Bidder or Qualified Bidder, the terms of the Potential Bidder's Bid, or the ability of the Potential Bidder to acquire the Assets. Failure by a Potential Bidder to comply with such reasonable requests for additional information and due diligence access may be a basis for the Debtors, in consultation with the Consultation Parties, to determine that such bidder is no longer a Potential Bidder or that any bid made by such Potential Bidder is not a Qualified Bid.

In connection with the provision of due diligence information to Acceptable Bidders, the Debtors will not furnish any confidential information relating to the Debtors, the Debtors' Assets or liabilities, or the Sale to any person except an Acceptable Bidder or such Acceptable Bidder's duly-authorized representatives, in each case, to the extent provided in the applicable Confidentiality Agreement.

The Debtors and their financial advisors will coordinate all reasonable requests for additional information and due diligence access from Acceptable Bidders; *provided* that the Debtors may decline to provide such information to Acceptable Bidders who, in the Debtors' reasonable business judgment, in consultation with the Consultation Parties, have not established that such Acceptable Bidders intend in good faith to, or have the capacity to, consummate their Bid. If the Debtors deny access or information to an Acceptable Bidder, the Debtors shall promptly inform the Consultation Parties. No conditions relating to the completion of due diligence will be permitted to exist after the Bid Deadline.

The Debtors also reserve the right, in consultation with the Consultation Parties, to withhold any diligence materials from an Acceptable Bidder who the Debtors reasonably determine in consultation with the Consultation Parties is a competitor of the Debtors or is affiliated with any competitor of the Debtors. Neither the Debtors nor their representatives will be obligated to furnish information of any kind whatsoever to any person that is not determined to be an Acceptable Bidder. The Debtors will make any diligence information available to any Stalking Horse Bidder if such diligence has been made available to any other Acceptable Bidder. Each Acceptable Bidder will be deemed to acknowledge and represent that it: (a) either directly or through its advisors has had an opportunity to conduct any and all due diligence regarding the Debtors' Assets and liabilities prior to making any Qualified Bid; (b) has relied solely upon its own or its advisors' independent review, investigation, and/or inspection of any documents and/or the Assets and liabilities in making any Qualified Bid; and (c) 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 Debtors' Assets or liabilities, or the completeness of any information provided in connection therewith, except as expressly stated in



these Bidding Procedures or the Acceptable Bidder's proposed purchase agreement (including, in the case of any Stalking Horse Bidder, its Stalking Horse Agreement). Neither the Debtors nor any of their employees, officers, directors, affiliates, subsidiaries, representatives, agents, advisors, or professionals are responsible for, and will bear no liability with respect to, any information obtained by Acceptable Bidders in connection with the Sale.

**The Debtors have designated Evercore Group L.L.C., 55 E. 52nd Street, New York, NY 10055, Attn: William Jurist (William.Jurist@Evercore.com), Alexandra Vergeau (Alexandra.Vergeau@Evercore.com), and Ed Lee (Ed.Lee@Evercore.com), to coordinate all reasonable requests for additional information and due diligence access.**

(ii) **No Communications Among Acceptable Bidders.**

There must be no communications regarding the Debtors' sale process between and amongst Acceptable Bidders (including, for the avoidance of doubt, any Stalking Horse Bidder), unless the Debtors, in consultation with the Consultation Parties, have previously authorized such communication in writing. The Debtors reserve the right, in their reasonable business judgment, in consultation with the Consultation Parties, to disqualify any Acceptable Bidders that have communications between and amongst themselves.

**C. Stalking Horse Bidder and Bid Protections**

Up until August 3, 2020, subject to receiving the requisite approvals from the Required Sale Consenting Parties (as such term is defined in the Restructuring Support Agreement),<sup>5</sup> the Debtors shall be authorized, but not obligated, in the exercise of their business judgment and in consultation with the Consultation Parties, to: (i) select one or more Bidders to act as stalking horse bidders in connection with the Sale (each, a "Stalking Horse Bidder," and the bid of a Stalking Horse Bidder a "Stalking Horse Bid") and enter into purchase agreements with respect to a Sale with such Stalking Horse Bidder(s) (each, a "Stalking Horse Agreement") (which shall be binding, non-contingent, and accompanied by a Good Faith Deposit (as defined below)), (ii) provide a breakup fee (the "Breakup Fee"), (iii) agree to reimburse reasonable and documented out-of-pocket fees and expenses (the "Expense Reimbursement"), and/or (iv) agree to provide minimum overbid protections, all as reasonably acceptable to the Debtors, after consultation with the Consultation Parties, and as otherwise approved by the Court (together with the Breakup Fee and Expense Reimbursement, the "Bid Protections"). Subject to the below paragraph, no later than one business day after the selection of a Stalking Horse Bidder, the Debtors shall file a notice with the Court of such selection and a copy of an executed and binding Stalking Horse Agreement.

The Debtors will provide notice of each such Stalking Horse Bidder, Bid Protections (including the amount and calculation thereof) and how to obtain copies of the Stalking Horse Agreement (the "Stalking Horse Selection Notice"). Parties in interest may file objections to the designation of the Stalking Horse Bidder or any of the terms of the Stalking Horse Agreement,

<sup>5</sup> A copy of the Restructuring Support Agreement is attached as Exhibit B to the *Declaration of Tricia Toliver, Chief Financial Officer of GNC Holdings, Inc. in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 21].

including to any of the proposed Bid Protections, within seven days after service of the Stalking Horse Selection Notice (the “Stalking Horse Objection Deadline”). Regardless whether an objection to the designation of the Stalking Horse Bidder, the Stalking Horse Bid, and/or the proposed Bid Protections is received by the Stalking Horse Objection Deadline, the Debtors will present evidentiary support and seek approval of the Stalking Horse Bidder, Stalking Horse Bid and Bid Protections at a hearing of this Court at least ten days following the filing of the Stalking Horse Selection Notice.

The Debtors will file with the Court and serve on the counterparties to Assigned Contracts financial and other information demonstrating adequate assurance of future performance of the Assigned Contracts by any Stalking Horse Bidder (including the name of the Stalking Horse Bidder and a description of its business) on or prior to August 10, 2020.

Notwithstanding anything in these Bidding Procedures to the contrary, in the event that the Debtors do not file a Stalking Horse Selection Notice one business day after August 3, 2020, the Bid Deadline (defined below) will be extended to September 11, 2020, the Auction date will be extended to September 15, 2020 and the Sale Hearing will be extended to September 17, 2020 at 1:00 p.m., prevailing Eastern Time.

#### **D. Bid Requirements.**

To be eligible to participate in the Auction, a Potential Bidder other than a Stalking Horse Bidder (who the Debtors designate as a Stalking Horse Bidder) must deliver to the Debtors and their advisors, a written, irrevocable offer that must be determined by the Debtors, in their reasonable business judgment and in consultation with the Consultation Parties, to satisfy each of the following conditions (collectively, the “Bid Requirements”):

- (i) **Purpose**. Each Potential Bidder must state that the Bid includes an offer by the Potential Bidder to purchase some or all of the Assets, and identify the Assets with reasonable specificity and the particular liabilities, if any, the Potential Bidder seeks to assume.
- (ii) **Purchase Price**. Each Bid must clearly set forth the purchase price to be paid for the Assets (the “Purchase Price”) and must (a) indicate the source of cash consideration, including funding commitments, and confirm that such consideration is not subject to any contingencies, and (b) identify separately the cash and non-cash components of the Purchase Price, which non-cash components shall be limited only to credit-bids and assumed liabilities. The Bid should include a detailed sources and uses schedule. The Purchase Price must include (i) an aggregate amount of cash sufficient to pay all DIP Facility Claims outstanding at the closing (or, if the holder of any such DIP Facility Claims so consents, such payment may be effected, in lieu of cash, by way of credit bid pursuant to section 363(k) of the Bankruptcy Code), (ii) (x) additional cash sufficient to pay in full all of the Allowed Tranche B-2 Term Loan Claims, or (y) to the extent the Required Lenders (as defined in the Tranche B-2 Term Loan Agreement) have agreed in their sole discretion on behalf of all Tranche B-2 Term Lenders, some other form of consideration (including, without limitation, any or a combination of cash and debt

and/or equity securities, as determined by such Required Lenders in their sole discretion), (iii) the assumption or payment in cash of all Allowed Administrative Claims, all Allowed Tax Priority Claims, all Allowed Other Priority Claims, and all Allowed Other Secured Claims, (iv) the payment of all cure amounts and all other amounts required to effect the assumption and assignment of all applicable executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code, and (v) the assumption of certain liabilities (other than any assumed liabilities referenced in clause (i) above) (collectively, the “Minimum Purchase Price”).<sup>6</sup> The Debtors’ advisors will provide the dollar amount of these claims upon request.

- (iii) **Minimum Bid.** The value of each Bid for all or substantially all of the Debtors’ Assets, as determined by the Debtors in their business judgment (in consultation with the Consultation Parties), must exceed (a) the Minimum Purchase Price, plus (b) the amount of the Bid Protections payable to any Stalking Horse Bidder, if applicable, plus (c) the minimum Bid increment of \$5 million (or such other amount as the Debtors may determine in consultation with the Consultation Parties, which amount may be less than \$5 million, including with respect to a Bid for less than all Assets). Each Bid seeking to acquire an individual asset or combination of assets that are less than all of the Debtors’ Assets must have a value that in the Debtors’ reasonable business judgment, in consultation with the Consultation Parties, either independently or in conjunction with one or more other Bids, exceeds the value that would be realized for such individual asset or combination of assets pursuant to a Bid for substantially all of the Debtors’ Assets. The Debtors and their advisors, in consultation with the Consultation Parties, will determine, in their reasonable business judgment, the value of any assumed liabilities in any Bid.
- (iv) **Bid Deposit.** Each Bid must be accompanied by a cash deposit (made by wire transfer or certified or cashier’s check) equal to 7.5% of the aggregate value of the cash and non-cash consideration of the Bid (the “Good Faith Deposit”), which will be held in a segregated account established by the Debtors in consultation with the Consultation Parties. To the extent a Qualified Bid is modified before, during, or after the Auction in any manner that increases the purchase price contemplated by such Qualified Bid, the Debtors reserve the right, in consultation with the Consultation Parties, to require that such Qualified Bidder increase its Good Faith Deposit so that it equals ten percent of the increased Purchase Price.
- (v) **Committed Financing.** If a Bid is not accompanied by evidence of the Potential Bidder’s capacity to consummate the Sale transaction set forth in its Bid with cash on hand, each Bid must include committed financing documented to the Debtors’ satisfaction, in consultation with the Consultation Parties, that demonstrates that the Potential Bidder has received sufficient debt and/or equity funding commitments to satisfy the Potential Bidder’s Purchase Price and other obligations (including any assumed liabilities) under its Bid. Such funding commitments or other financing must not be subject to any internal approvals, syndication

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<sup>6</sup> Capitalized terms used but not defined in this sentence have the meanings ascribed in the Plan.

requirements, diligence, or credit committee approvals, and shall have covenants, conditions and term and termination provisions acceptable to the Debtors, in consultation with the Consultation Parties.

- (vi) **Pro Forma Capital Structure.** Each Bid must include a description of the Bidder's pro forma capital structure.
- (vii) **Good Faith Offer.** Each Bid must constitute a good faith, bona fide offer to purchase the Assets set forth in such Bid.
- (viii) **Marked Agreement.** The Debtors have drafted a form of purchase and sale Agreement (the "PSA") for parties interested in acquiring the Assets. The Debtors intend to provide copies of the form of PSA (or a Stalking Horse Agreement, if one exists) to all parties who express interest in submitting a Bid and will also make such form of PSA (or Stalking Horse Agreement) available in the electronic data room established by the Debtors in connection with their sale process. Each Bid must be accompanied by clean and duly executed transaction documents including, at a minimum, a draft purchase agreement, including the exhibits and schedules related thereto, and any related material documents integral to such Bid pursuant to which the Potential Bidder proposes to effectuate the Sale, along with redlines of such agreements marked to reflect any amendments and modifications from the PSA (or the Stalking Horse Agreement, if one exists), which amendments and modifications may not be inconsistent with these Bidding Procedures. Each such draft purchase agreement must provide for (i) payment in cash at closing of the Expense Reimbursement and the Breakup Fee payable to any Stalking Horse Bidder, and (ii) a representation that the Potential Bidder will: (a) with respect to a sale of the U.S. Assets, make all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), if applicable, and submit and pay the fees associated with all necessary filings under the HSR Act as soon as reasonably practicable; provided, however, that the timing and likelihood of receiving HSR Act approval will be a consideration in determining the highest or otherwise best Bid; or (b) with respect to a sale of the Canadian Assets, make all necessary filings under the (x) Competition Act (R.S.C., 1985, c. C-34, as amended (the "Competition Act"); and (y) Investment Canada Act, (R.S.C., 1985, c. 28 (1st Supp.)) (the "ICA"), if applicable, and submit and pay the fees associated with all necessary filings under the Competition Act as soon as reasonably practicable; provided, however, that the timing and likelihood of receiving Competition Act and ICA approval will be a consideration in determining the highest or otherwise best Bid. The documents contemplated by this Section C(viii) shall herein be referred to as the "Qualified Bid Documents".
- (ix) **Contracts and Leases; Employees.** Each Bid must identify an initial schedule, of each executory contract and unexpired lease to be assumed and assigned to the Potential Bidder in connection with the Sale. Each Bid must identify with specificity (i) the party responsible for satisfying cure amounts and other amounts that have accrued under assumed and assigned contracts and leases after the Petition Date and prior to Closing, including amounts that have accrued but not yet become

due prior to the Closing, (ii) the Debtors' store leases to be assumed and assigned to the Potential Bidder; and (iii) which of the Debtors' employees or groups thereof will be offered employment with the Potential Bidder to the extent it is the Successful Bidder and Closing occurs. Each Bid must expressly assume the Debtors' Compensation and Benefits Programs (as defined in the Plan).

- (x) **No Contingencies**. A Bid must contain a clear statement that it is not conditioned on any contingency, including, among others, on obtaining any of the following (a) financing, (b) shareholder, board of directors, or other approvals (including regulatory approvals), and/or (c) the outcome or completion of a due diligence review by the Potential Bidder.
- (xi) **Binding and Irrevocable**. A Potential Bidder's Bid must be irrevocable unless and until the Debtors accept a higher Bid and such Potential Bidder is not selected as the Back-Up Bidder (as defined herein). In the event a Bid is chosen as the Back-Up Bid (as defined below), it must remain irrevocable until the Debtors and the Successful Bidder consummate the Sale.
- (xii) **Joint Bids**. The Debtors will be authorized to approve joint Bids in their reasonable discretion, in consultation with the Consultation Parties, on a case-by-case basis.
- (xiii) **Adequate Assurance Information**. Each Bid must be accompanied by sufficient and adequate financial and other information (the "Adequate Assurance Information") to demonstrate, to the reasonable satisfaction of the Debtors, in consultation with the Consultation Parties, that such Potential Bidder (a) has the financial wherewithal and ability to consummate the acquisition of the Assets covered by the Bid (the "Closing"), and (b) can provide adequate assurance of future performance in satisfaction of the requirements under section 365(f)(2)(B) of the Bankruptcy Code, and the Potential Bidder's willingness to perform, under any contracts that are proposed to be assumed and assigned to such party. Such information, solely with respect to real estate leases, should include: (i) the exact name of the entity that will be designated as the proposed assignee of the leases; (ii) audited or, if not available, non-audited financial statements and any supplemental schedules for the calendar years ended 2018 and 2019 for the proposed assignee and any proposed guarantor; (iii) any documents regarding the proposed assignee's and any guarantor's experience in operating retail stores; (iv) the number of retail stores the proposed assignee and any guarantor operates and the trade names used; and (v) any additional evidence of the assignee's financial wherewithal, including available cash and any debt or equity commitments or other forms of liquidity post-closing. Such evidence may also include audited and unaudited financial statements, tax returns, bank account statements, a description of the proposed business to be conducted at the premises and/or any other documentation that the Debtors further request. The Bid must also identify a contact person that parties may contact to obtain additional Adequate Assurance Information.

- (xiv) **Identity**. Each Bid must fully disclose the identity of each entity that will be participating in connection with such Bid (including any equity owners or sponsors, if the purchaser is an entity formed for the purpose of consummating the acquisition of the Assets), and the complete terms of any such participation, along with sufficient evidence that the Potential Bidder is legally empowered, by power of attorney or otherwise, to complete the transactions on the terms contemplated by the parties. A Bid must also fully disclose any connections or agreements with the Debtors, any known, potential, prospective bidder, or Qualified Bidder (as defined herein), or any officer, director, or equity security holder of the Debtors.
- (xv) **Authorization**. Each Bid must contain evidence that the Potential Bidder has obtained authorization or approval from its board of directors and, if required, its shareholders (or a comparable governing body reasonably acceptable to the Debtors) with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.
- (xvi) **No Fees**. (a) Each Potential Bidder presenting a Bid or Bids will bear its own costs and expenses (including legal fees) in connection with the proposed transaction; (b) by submitting its Bid, each Potential Bidder agrees to waive its right to request or receive fees or reimbursement of expenses on any basis, including under section 503(b) of the Bankruptcy Code; and (c) each Bid must expressly state that the Bid does not entitle the Potential Bidder to any break-up fee, termination fee, expense reimbursement, or similar type of payment or reimbursement; *provided* that, subject to Bankruptcy Court approval, the Debtors are authorized in their discretion to provide the Bid Protections to one or more Stalking Horse Bidders in accordance with these Bidding Procedures, in consultation with the Consultation Parties.
- (xvii) **Adherence to Bidding Procedures**. By submitting its Bid, each Potential Bidder is agreeing to (a) abide by and honor the terms of these Bidding Procedures and agrees not to submit a Bid or seek to reopen the Auction after conclusion of the Auction and (b) serve as Back-Up Bidder, if its Bid is selected as the next highest or next best bid after the Successful Bid with respect to the applicable assets.
- (xviii) **Regulatory Approvals and Covenants**. A Bid must set forth each regulatory and third-party approval required for the Potential Bidder to consummate the applicable Sale, if any, and the time period within which the Potential Bidder expects to receive such governmental, licensing, regulatory, or third-party approvals (and in the case that receipt of any such approval is expected to take more than thirty days following execution and delivery of the asset purchase agreement, those actions the Potential Bidder will take to ensure receipt of such approvals as promptly as possible).
- (xix) **As-Is, Where-Is**. Each Bid must include a written acknowledgement and representation that the Potential Bidder (a) has had an opportunity to conduct any and all due diligence regarding the Debtors' Assets and liabilities prior to making

its Bid, (b) has relied solely upon its own or its advisors' independent review, investigation, and/or inspection of any documents and/or the Assets and liabilities in making its Bid, and (c) 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, liabilities, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Potential Bidder's proposed purchase agreement for the Assets.

- (xx) **Time Frame for Closing**. A Bid by a Potential Bidder must be reasonably likely (based on antitrust or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid (as defined herein), within a time frame reasonably acceptable to the Debtors in consultation with the Consultation Parties.
- (xxi) **Consent to Jurisdiction**. The Potential Bidder must submit to the jurisdiction of the Bankruptcy Court and waive any right to a jury trial in connection with any disputes relating to the Debtors' qualification of Bids, the Auction, the construction and enforcement of these Bidding Procedures, the Plan, the Sale documents, and the Closing, as applicable.

Bids fulfilling all of the preceding requirements, as determined by the Debtors and their advisors, in their reasonable business judgment and in consultation with the Consultation Parties, will be deemed to be "Qualified Bids," and those parties submitting Qualified Bids will be deemed to be "Qualified Bidders." For the avoidance of doubt, and notwithstanding anything herein, any Stalking Horse Bidder (who complies with the Bid Requirements) will be deemed to be Qualified Bidder and any Stalking Horse Agreements will be deemed Qualified Bids, which qualify such Stalking Horse Bidder to participate in the Auction (if any). If a Stalking Horse Bid is chosen as the Successful Bid, the rights and obligations of the Stalking Horse Bidder shall be as set forth in the Stalking Horse Agreement (as the same may be modified in connection with the Auction). If a Stalking Horse Bid is selected as the Back-Up Bid, it must remain irrevocable only for so long as is required under the Stalking Horse Agreement.

All information disclosed by any Potential Bidder in connection with all of the preceding requirements will be made available by the Debtors to the Consultation Parties promptly upon the Debtors' receipt thereof but in any event no later than the earlier of one business day or two calendar days following the Debtors' receipt of such information; *provided* that the Debtors shall provide any Stalking Horse Bidder with the number of Qualified Bids received and the amount of each respective Qualified Bid; *provided, further*, that any confidential financing and/or equity commitment documents received from a Potential Bidder shall only be shared with the Consultation Parties on a professional-eyes'-only basis. The Debtors reserve the right, in consultation with the Consultation Parties, to work with any Potential Bidder in advance of the Auction to cure any deficiencies in a Bid that is not initially deemed to be a Qualified Bid.

In addition, the Debtors, with the consent of the Consultation Parties, reserve the right to waive any of the Qualified Bid requirements set forth above and deem a Bid to be a Qualified Bid

notwithstanding any non-compliance with such requirements. Within three business days after the Bid Deadline, the Debtors and their advisors, in consultation with the Consultation Parties, will determine which Potential Bidders are Qualified Bidders and will notify the Potential Bidders whether Bids submitted constitute, alone or together with other Bids, Qualified Bids so as to enable such Qualified Bidders to bid at the Auction. Any Bid that is not deemed a Qualified Bid will not be considered by the Debtors.

**Subject to paragraph C above, Qualified Bids must be received by each of the Debtors' advisors so as to be actually received no later than September 4, 2020, at 4:00 p.m., prevailing Eastern Time (the "Bid Deadline").**

#### **E. Evaluation of Qualified Bids.**

Prior to the Auction, the Debtors and their advisors will evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtors' reasonable business judgment, in consultation with the Consultation Parties, the highest or otherwise best Bid (the "Starting Bid"). In determining the Starting Bid, the Debtors will take into account, among other things, (i) the amount and nature of consideration offered in each Qualified Bid, (ii) the impact on customers, vendors, and employees, (iii) the certainty of a Qualified Bid leading to a confirmed plan, and (iv) the execution risk attendant to any submitted Bids, (v) the number, type, and nature of any changes to the PSA (or Stalking Horse Agreement, if one exists), if any, requested by the Qualified Bidder, including the type and amount of Assets sought and obligations to be assumed in the Qualified Bid; (vi) the net economic effect of any changes to the value to be received by the Debtors' estates from the transaction contemplated by the Qualified Bid, (vii) the tax consequences of such Qualified Bid, (viii) the impact on employees, including the number of employees proposed to be transferred and the Employee Obligations; (ix) the assumption of liabilities, including obligations under contracts and leases, and (x) the cure amounts to be paid (collectively, the "Evaluation Criteria"). Not later than two business days prior to the date of the Auction, the Debtors will (1) notify the Consultation Parties as to which Qualified Bid is the Starting Bid and (2) distribute copies of the Starting Bid to each Qualified Bidder who has submitted a Qualified Bid and the Consultation Parties.

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

#### **F. Only One Qualified Bid.**

If only one Qualified Bid is received by the Bid Deadline and such Bid is acceptable to the Debtors after consultation with the Consultation Parties, then the Auction will not occur, the sole Bidder will be deemed the Successful Bidder, and the Debtors will pursue entry of an order by the Bankruptcy Court approving and authorizing the Sale to the sole Bidder at the Sale Hearing (as defined herein).

#### **G. Credit Bidding and Credit Bid Backup Bid.**

At the Auction, 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 such



Secured Creditor's allowed claims pursuant to 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 securing such claim; *provided, further* that a credit bid shall not constitute a Qualified Bid if the bid does not 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) and to pay in full, in cash, any Bid Protections of any Stalking Horse Bidder; *provided, further*, that any Secured Creditor, other than the prepetition Term Loan agent, DIP Term Agent, prepetition ABL FILO agent, or the DIP ABL FILO Agent, 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, and (ii) provide all documentation requested by the Debtors to establish the lien, claims, and encumbered assets that will be the subject of the Secured Creditor's potential credit bid. For the avoidance of doubt, a Secured Creditor shall be required to provide cash consideration in respect of any Assets to be acquired but that do not constitute collateral securing such Secured Creditor's claim(s).

With respect to a Bid for its own leases, a non-Debtor lease counterparty may credit bid only an amount equal to the cure amount for such lease that is mutually acceptable to the Debtors (in consultation with the Consultation Parties) and such lease counterparty or such other amount as may be determined by the Court. The lease counterparty shall receive a dollar-for-dollar credit in the amount of its credit bid when such lease counterparty bids for its own lease.

## **H. Auction.**

If more than one Qualified Bid is received by the Bid Deadline, the Debtors will conduct the Auction with respect to the Debtors' Assets. For the avoidance of doubt, the Debtors may also conduct more than one Auction with respect to non-overlapping material portions of the Debtors' Assets. Subject to paragraph C above, the Auction will commence on **September 8, 2020, at 10:00 a.m., prevailing Eastern Time**, at the offices of Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611, telephonically, or by video via Zoom, or such later time or other place as the Debtors will timely notify all other Qualified Bidders, in consultation with the Consultation Parties.

The Auction will be conducted in accordance with the following procedures (the "Auction Procedures"):

- (i) the Auction will be conducted openly;
- (ii) only the Qualified Bidders, including any Stalking Horse Bidder, will be entitled to bid at the Auction;
- (iii) the Qualified Bidders, including any Stalking Horse Bidder, must appear in person, telephonically, or by video via Zoom, or through duly-authorized representatives at the Auction;
- (iv) only the duly-authorized representatives of each of the Qualified Bidders (including any Stalking Horse Bidder) and the Consultation Parties will be permitted to attend

the Auction; *provided* that, in addition, any party in interest that requests permission from the Debtors to attend the Auction shall also be permitted to attend ;

- (v) bidding at the Auction will begin at the Starting Bid;
- (vi) subsequent Bids at the Auction, including any Bids by any Stalking Horse Bidder, must be made in minimum increments of \$5 million (or such other amount as the Debtors may determine in consultation with the Consultation Parties, which amount may be higher or lower than \$5 million) of additional value, if applicable;
- (vii) each Qualified Bidder will be informed of the terms of the previous Bids and the Debtors shall, during the course of the Auction, promptly inform each Qualified Bidder of which subsequent Bids reflect, in the Debtors' reasonable business judgment, and in consultation with the Consultation Parties, the highest or otherwise best bid(s) for the applicable Assets;
- (viii) the Auction will be transcribed to ensure an accurate recording of the bidding at the Auction;
- (ix) each Qualified Bidder will be required to confirm on the record of the Auction that it has not engaged in any collusion with respect to the bidding or the Sale;
- (x) the Auction will 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 or otherwise best Bid, subject to the Debtors' right to require, in consultation with the Consultation Parties, last and final Bids to be submitted on a "blind" basis;
- (xi) the Debtors reserve the right, in their reasonable business judgment and in consultation with the Consultation Parties, to adjourn the Auction one or more times to, among other things, (a) facilitate discussions between the Debtors and Qualified Bidders, (b) allow Qualified Bidders to consider how they wish to proceed, and (c) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment and in consultation with the Consultation Parties, may require to establish 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 amount; and
- (xii) the Auction will be governed by such other Auction Procedures as may be announced by the Debtors and their advisors, after consultation with the Consultation Parties, from time to time on the record at the Auction; *provided* that such other Auction Procedures are (a) not inconsistent with the Bidding Procedures Order, the Bankruptcy Code, or any other order of the Bankruptcy Court, (b) disclosed orally or in writing to all Qualified Bidders and other attendees at the Auction and recorded on the record, and (c) determined by the Debtors, in good faith and in consultation with the Consultation Parties, to further the goal of attaining the highest or otherwise best offer for the Assets.

To remain eligible to participate in the Auction for a particular Asset, in each round of bidding, (i) each Qualified Bidder must submit a Bid in such round of bidding that is a higher or otherwise better offer than the immediately preceding highest or otherwise best Bid submitted by a Qualified Bidder in such round of bidding, and (ii) to the extent a Qualified Bidder fails to submit a Bid in such round of bidding that is a higher or otherwise better offer than the immediately preceding highest or otherwise best Bid submitted by a Qualified Bidder in such round of bidding, as determined by the Debtors, in their reasonable business judgment and in consultation with the Consultation Parties, such Qualified Bidder shall be disqualified from continuing to participate in the Auction for such Asset.

For the avoidance of doubt, nothing in the Auction Procedures will prevent 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).

#### **I. Acceptance of the Successful Bid or Successful Bids.**

Upon the conclusion of the Auction (if such Auction is conducted), the Debtors, in the exercise of their reasonable business judgment and in consultation with the Consultation Parties, will identify the highest or otherwise best Qualified Bid or Qualified Bids for the Assets (each, a “Successful Bid,” and each person or entity submitting a Successful Bid, a “Successful Bidder”), which will be determined by considering, among other things, (a) the type and amount of Assets sought to be purchased in the Bid or Bids and whether such Assets should or can be severed from other Assets (whether subject to competing Bids or otherwise), (b) the total expected consideration to be received by the Debtors, taking into account any Stalking Horse Bidder’s rights to any Bid Protections, (c) the Qualified Bidder or Qualified Bidders’ ability to close a transaction and the timing thereof (including any anticipated delays to Closing and the cost to the Debtors of such delays), and other matters affecting the execution risk associated with a particular Bid or Bids, (d) the expected net benefit to the estates, taking into account any Stalking Horse Bidder’s rights to any Bid Protections, (e) the impact on customers, vendors, and employees, (f) the certainty of the Debtors being able to confirm a plan (whether the Plan or some other plan), and (g) any other criteria, including the Evaluation Criteria, as may be considered by the Debtors in their reasonable business judgment (including the consideration of any considerations raised by the Consultation Parties that the Debtors determine, in their reasonable business judgment, are pertinent to the decision of the highest or otherwise best Bid). The Successful Bidder or Successful Bidders and the Debtors shall, as soon as commercially reasonably practicable after the conclusion of the Auction, complete and sign all agreements, contracts, instruments, or other documents evidencing and containing the terms upon which such Successful Bid or Successful Bids were made.

The Debtors shall file a notice in substantially the form annexed to the Bidding Procedures Order as Exhibit 4 (the “Post-Auction Notice”) identifying the Successful Bidder(s), together with financial and other information demonstrating adequate assurance of future performance of Assigned Contracts (including the name of the Successful Bidder and a description of its business) and the proposed asset purchase agreement(s) with the Successful Bidder(s), no later than 12 hours after the conclusion of the Auction. Such Post-Auction Notice shall also identify the Back-Up Bidder(s) and contain either (i) a summary of the material terms of the Back-Up Bid(s) or (ii) proposed asset purchase agreement(s) with the Back-Up Bidder(s).

The Debtors will present the results of the Auction to the Bankruptcy Court at the Sale Hearing, at which certain findings will be sought from the Bankruptcy Court regarding the Auction, including, among other things, that (a) the Auction was conducted, and the Successful Bidder or Successful Bidders were selected, in accordance with these Bidding Procedures, (b) the Auction was fair in substance and procedure, and (c) consummation of the Successful Bid or Successful Bids will provide the highest or otherwise best value for the Debtors' Assets and is in the best interests of the Debtors' estates.

If an Auction is held, the Debtors will be deemed to have accepted a Qualified Bid only when (a) such Qualified Bid is declared a Successful Bid at the Auction, and (b) definitive documentation has been executed in respect thereof. Such acceptance is conditioned upon approval by the Bankruptcy Court of the Successful Bid or Successful Bids and entry of an order approving such Successful Bid or Successful Bids (the "Sale Order"), which Sale Order may be (but is not required to be) the order confirming the Plan or another chapter 11 plan.

**J. Sale Hearing.**

Subject to paragraph C above, a hearing before the Bankruptcy Court to consider approval of the Successful Bid or Successful Bids (the "Sale Hearing"), pursuant to which the Debtors and the Successful Bidder or Successful Bidders will consummate the Sale, will be held on **September 14, 2020, at 1:00 p.m.**, prevailing Eastern Time, before the Bankruptcy Court. The Sale Hearing may also be the hearing to consider confirmation of the Plan or another chapter 11 plan.

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

At the Sale Hearing, the Debtors will present the Successful Bid or Successful Bids to the Bankruptcy Court for approval.

**K. Designation of Back-Up Bidder or Back-Up Bidders.**

If for any reason the Successful Bidder or Successful Bidders fail to consummate the sale contemplated by the Qualified Bid or Qualified Bids within the time permitted after the entry of the Confirmation Order approving the Sale to the Successful Bidder or Successful Bidders, then the Qualified Bidder or Qualified Bidders with the next-highest or otherwise second-best Bid or Bids for the applicable Assets (each, a "Back-Up Bidder"), as determined by the Debtors after consultation with their advisors and the Consultation Parties, at the conclusion of the Auction and announced at that time to all the Qualified Bidders participating therein, will automatically be deemed to have submitted the highest or otherwise best Bid or Bids (each, a "Back-Up Bid"), and the Debtors will be authorized, but not required, to consummate the transaction pursuant to the Back-Up Bid or Back-Up Bids as soon as commercially reasonably practicable pursuant to the expedited procedures set forth in the Bidding Procedures Order.

Upon designation of the Back-Up Bidder or Back-Up Bidders at the Auction, the Back-Up Bid or Back-Up Bids must remain open until the Closing of the Successful Bid or Successful Bids, as applicable.

**L. Return of Good Faith Deposit to Qualified Bidders that Submit Qualified Bids.**

The Good Faith Deposit of the Successful Bidder or Successful Bidders will, upon consummation of the Successful Bid or Successful Bids, become property of the Debtors' estates and be credited to the portion of the Purchase Price. If the Successful Bidder or Successful Bidders (or Back-Up Bidder or Back-Up Bidders, if applicable) fails to consummate the Successful Bid or Successful Bids (or Back-Up Bid or Back-Up Bids, if applicable), then the Good Faith Deposit of such Successful Bidder or Successful Bidders (or Back-Up Bidder or Back-Up Bidders, if applicable) will be irrevocably forfeited to the Debtors and may be retained by the Debtors as damages, in addition to any and all rights, remedies, or causes of action that may be available to the Debtors, in each case, subject to the terms and conditions of the purchase agreement(s) with the Successful Bidder(s) or Back-Up Bidder(s), as applicable.

The Good Faith Deposit of any unsuccessful Qualified Bidders (except for the Back-Up Bidder or Back-Up Bidders) will be returned within the earlier of five business days after the conclusion of the Auction or upon the permanent withdrawal of the proposed Sale of the Debtors' Assets. The Good Faith Deposit of the Back-Up Bidder or Back-Up Bidders, if any, will be returned to such Back-Up Bidder or Back-Up Bidders no later than five business days after the Closing with the Successful Bidder or Successful Bidders for the Assets bid upon by such Back-Up Bidder or Back-Up Bidders.

Except as set forth in the first paragraph of this Section K, all deposits shall be held in a segregated account maintained by the Debtors and at no time shall be deemed property of the Debtors' estates absent further order of the Bankruptcy Court.

**M. Reservation of Rights.**

The Debtors reserve their rights, in consultation with the Consultation Parties, to modify these Bidding Procedures in good faith, including by setting procedures for an Auction, to further the goal of attaining the highest or otherwise best offer for the Assets, or impose, at or prior to the Auction, additional customary terms and conditions on the Sale of the Assets. The Debtors shall provide notice of any such modification to any Qualified Bidder, including any Stalking Horse Bidder.

All parties expressly reserve all of their rights (and do not waive any such rights) to seek Bankruptcy Court relief with regard to the Auction, the Bidding Procedures, the Sale, and any related items (including, if necessary, to seek an extension of the Bid Deadline). All Consultation Parties will be permitted to seek relief from the Bankruptcy Court on an expedited basis if they disagree with any actions or decision made by the Debtors as part of these Bidding Procedures or during the Auction. The rights of all Consultation Parties with respect to the outcome of the Auction are reserved.

For the avoidance of doubt and notwithstanding anything herein to the contrary, nothing in these Bidding Procedures shall, or shall be construed to, in any way amend, impair, prejudice,

alter, or otherwise modify the terms of the RSA or the Debtors' debtor-in-possession financing facilities, or the rights of any party thereunder.

**N. Consent to Jurisdiction.**

All Qualified Bidders at the Auction will be deemed to have consented to the jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Sale, the Auction, the construction and enforcement of these Bidding Procedures, and/or the Indication of Interest Documents, as applicable, and consented to the entry of a final order or judgment in any way related to these Bidding Procedures, the bid process, the Auction, the Sale Hearing, or the construction and enforcement of any agreement or any other document relating to a Sale if it is determined that the Bankruptcy Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.

Any parties raising a dispute relating to these Bidding Procedures must request that such dispute be heard by the Bankruptcy Court on an expedited basis.

**O. Fiduciary Out.**

Nothing in these Bidding Procedures will require any director, manager or officer of any Debtor to take any action, or to refrain from taking any action, with respect to these Bidding Procedures, that would violate his or her fiduciary duties to any Debtor.

**P. Sale Is As Is/Where Is.**

The Assets sold pursuant to these Bidding Procedures will be conveyed at the Closing in their then present condition, "as is, with all faults, and without any warranty whatsoever, express or implied," except as otherwise expressly provided in the purchase agreement with the Successful Bidder.

\* \* \* \* \*

**Exhibit 2**

**Sale Notice**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

	)	
In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (KBO)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket No. 227

**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 July 23, 2020 (the “**Petition Date**”).

**PLEASE TAKE FURTHER NOTICE** that, on July 1, 2020, the Debtors filed a motion (the “**Motion**”)² with the Court seeking entry of orders, among other things, (a) approving the Debtors’ bidding procedures (the “**Bidding Procedures**”) in connection with the proposed auction (the “**Auction**”) for the sale (the “**Sale**”) of substantially all of the Debtors’ assets (the “**Assets**”), (b) 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) approving the form and manner of notices related to the Sale and Assumption Procedures, and (d) establishing dates and deadlines in connection with the Sale.

**PLEASE TAKE FURTHER NOTICE** that, on \_\_\_\_\_, 2020, the Court entered an order (the “**Bidding Procedures Order**”) granting certain of the relief sought in the Motion, including, among other things, approving the (a) Bidding Procedures, which establish the key dates and times related to the Sale and the Auction and (b) Assumption Procedures. All interested

<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222.

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



bidders should carefully read the Bidding Procedures Order and the Bidding Procedures in their entirety.<sup>3</sup>

### **CONTACT PERSON FOR PARTIES INTERESTED IN SUBMITTING A BID**

The Bidding Procedures set forth the requirements for becoming a Qualified Bidder and submitting a Qualified Bid, and 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:**

**Evercore Group L.L.C., 55 E. 52nd Street New York, NY 10055 Attn: William Jurist (William.Jurist@Evercore.com), Alexandra Vergeau (Alexandra.Vergeau@Evercore.com), and Ed Lee (Ed.Lee@Evercore.com).**

### **OBTAINING ADDITIONAL INFORMATION**

Copies of the Bidding Procedures 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.primeclerk.com/gnc> or by calling (877) 422-5170 (Domestic) or (917) 947-2680 (International).

### **IMPORTANT DATES AND DEADLINES<sup>4</sup>**

1. **Bid Deadline.** Subject to extension as set forth in paragraph 10 of the Bidding Procedures Order, the deadline to submit a Qualified Bid is **September 4, 2020 at 4:00 p.m. (prevailing Eastern Time)**.
2. **Auction.** If more than one Qualified Bid is received by the Bid Deadline, the Debtors will conduct the Auction with respect to the Debtors' Assets. Subject to extension as set forth in paragraph 10 of the Bidding Procedures Order, the Auction will commence on **September 8, 2020, at 10:00 a.m., prevailing Eastern Time**, at the offices of Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611, telephonically, or by video via Zoom, or such later time or other place as the Debtors will timely notify all Qualified Bidders, in consultation with the Consultation Parties. Only the Debtors, the Consultation Parties, and Qualified Bidders will be permitted to attend the Auction; *provided* that, in addition, any party in interest that requests permission from the Debtors to attend the Auction shall also be permitted to attend. Only Qualified Bidders will be entitled to make overbids at the Auction. **All interested or potentially affected**

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<sup>3</sup> 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.

<sup>4</sup> 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.

parties should carefully read the **Bidding Procedures and the Bidding Procedures Order**.

3. **Auction Objection and Sale Objection Deadlines.** Subject to extension as set forth in paragraph 10 of the Bidding Procedures Order, the deadline to file an objection to (i) the Sale and/or (ii) the potential assumption or assumption and assignment of the Assigned Contracts and cure amounts related thereto (except as otherwise set forth in the Assumption Procedures) is **August 21, 2020 at 4:00 pm. (prevailing Eastern Time)** (the “***Sale Objection Deadline***”). If the Auction is held, subject to extension as set forth in paragraph 10 of the Bidding Procedures Order, the deadline to file an objection to the conduct of the Auction, and the choice of Successful Bidder and/or Back-Up Bidder is **September 9, 2020 at 4:00 pm. (prevailing Eastern Time)** (the “***Auction Objection Deadline***”).
4. **Sale Hearing.** Subject to extension as set forth in paragraph 10 of the Bidding Procedures Order, 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 **September 14, 2020 at 1:00 p.m. (prevailing Eastern Time)** before the Honorable Karen B. Owens, Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware, at District of Delaware, at 824 Market Street North, 6th Floor, Wilmington, Delaware 19801, or at such other place (which may be by video conference) and time as the Debtors shall notify all Qualified Bidders, the Consultation Parties, 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.
5. **Adequate Assurance Objection.** Subject to extension as set forth in paragraph 10 of the Bidding Procedures Order, 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 must be filed with the Court and served on the Objection Notice Parties no later than **September 15, 2020 at 8:00 p.m., (prevailing Eastern Time)** (“***Adequate Assurance Objection Deadline***”).
6. **Adequate Assurance Hearing.** Subject to extension as set forth in paragraph 10 of the Bidding Procedures Order, 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 will be heard by the Court on **September 18, 2020 at 2:00 p.m. (prevailing Eastern Time)** (the “***Adequate Assurance Hearing***”) before the Honorable Karen B. Owens, Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware, at District of Delaware, at 824 Market Street North, 6th Floor, Wilmington, Delaware 19801, or at such other place (which may be by video conference) and time as the Debtors shall notify all Qualified Bidders, the Consultation Parties, and all other parties entitled to attend the Auction.

### **FILING OBJECTIONS**

Sale Objections, Auction 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 Sale Objection Deadline, Auction Objection Deadline, or Adequate**

**Assurance Objection Deadline**, as applicable, and (d) be served on (i) co-counsel to the Debtors, (A) Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611, Attn: Richard A. Levy (richard.levy@lw.com) and Caroline A. Reckler (caroline.reckler@lw.com), and (B) Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, DE 19801, Attn: Michael Nestor (mnestor@ycst.com) and Kara Hammond Coyle (kcoyle@ycst.com); (ii) counsel to the administrative agent under the DIP Term Facility, Dorsey & Whitney LLP, 51 West 52<sup>nd</sup> Street, New York, New York 10019, Attn: Erin E. Trigg and Samuel S. Kohn (email: trigg.erin@dorsey.com and kohn.samuel@dorsey.com); (iii) counsel to the Ad Hoc FILO Term Lender Group (A) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Andrew N. Rosenberg, Jacob Adlerstein, and Douglas R. Keeton (email: arosenberg@paulweiss.com, jadlerstein@paulweiss.com, and dkeeton@paulweiss.com); and (B) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Richard S. Cobb (cobb@lrclaw.com); (iv) counsel to the Ad Hoc Group of Crossover Lenders (A) Milbank LLP, 2029 Century Park East, Los Angeles, California 90067, Attn: Mark Shinderman, Brett Goldblatt, and Daniel B. Denny (email: mshinderman@milbank.com; bgoldblatt@milbank.com; and ddenny@milbank.com); and (B) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Robert J. Dehney (rdehney@mnat.com); (v) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jane Leamy (email: jane.m.leafy@usdoj.gov); and (vi) counsel to the Committee, Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, NY 10020 Attn: Jeffrey Cohen and Lindsay H. Sklar (emails: jcohen@lowenstein.com and lsklar@lowenstein.com) and One Lowenstein Drive, Roseland, NJ 070686, Attn: Michael S. Etkin, Michael Savetsky, Nicole Fulfree and Colleen M. Maker (email: metkin@lowenstein.com, msavetsky@lowenstein.com, nfulfree@lowenstein.com, and cmaker@lowenstein.com).

### **CONSEQUENCES OF FAILING TO TIMELY ASSERT AN OBJECTION**

*Any party who fails to make a timely Sale Objection on or before the Sale Objection 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 Auction Objection on or before the Auction Objection Deadline in accordance with the Bidding Procedures Order and this Notice shall be forever barred from asserting any Auction 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 Adequate Assurance Objection on or before the Adequate Assurance Objection 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 asset purchase 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.*

**Exhibit 3**

**Assumption Notice**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re:	)	Chapter 11
	)	
GNC HOLDINGS, INC., <i>et al.</i> ,	)	Case No. 20-11662 (KBO)
	)	
Debtors. <sup>1</sup>	)	(Jointly Administered)
	)	
	)	Re: Docket No. 227

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**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 July 23, 2020 (the “*Petition Date*”).

PLEASE TAKE FURTHER NOTICE that, on the July 1, 2020, the Debtors filed a motion (the “*Motion*”)² with the Court seeking entry of orders, among other things, (a) approving the Debtors’ bidding procedures (the “*Bidding Procedures*”) in connection with the proposed auction (the “*Auction*”) for the sale (the “*Sale*”) of substantially all of the Debtors’ assets (the “*Assets*”), (b) 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) approving the form and manner of notices related to the Sale and the Assumption Procedures, and (d) establishing dates and deadlines in connection with the Sale.

PLEASE TAKE FURTHER NOTICE that, on \_\_\_\_\_, 2020, the Court entered an order (the “*Bidding Procedures Order*”) granting certain of the relief sought in the Motion, including, among other things, approving the (a) Bidding Procedures, which establish the key dates and times related to the Sale and the Auction and (b) Assumption Procedures.

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<sup>1</sup> The debtors in these Chapter 11 Cases, along with the last four digits of each debtor’s United States federal tax identification number, if applicable, or other applicable identification number, are: GNC Holdings, Inc. (6244); GNC Parent LLC (7572); GNC Corporation (5170); General Nutrition Centers, Inc. (5168); General Nutrition Corporation (4574); General Nutrition Investment Company (3878); Lucky Oldco Corporation (7141); GNC Funding, Inc. (7837); GNC International Holdings, Inc. (9873); GNC China Holdco, LLC (0004); GNC Headquarters LLC (7550); Gustine Sixth Avenue Associates, Ltd. (0731); GNC Canada Holdings, Inc. (3879); General Nutrition Centres Company (0939); GNC Government Services, LLC (2295); GNC Puerto Rico Holdings, Inc. (4559); and GNC Puerto Rico, LLC (7234). The debtors’ mailing address is 300 Sixth Avenue, Pittsburgh, Pennsylvania 15222

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

**PLEASE TAKE FURTHER NOTICE** that, subject to extension as set forth in paragraph 10 of the Bidding Procedures Order, 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 **September 14, 2020 at 1:00 p.m. (prevailing Eastern Time)** before the Honorable Karen B. Owens, Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware, at District of Delaware, at 824 Market Street North, 6th Floor, Wilmington, Delaware 19801, or at such other place (which may be by video conference) and time as the Debtors shall notify all Qualified Bidders, the Consultation Parties, 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.

**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 Successful Bidder in connection with a Sale (collectively, the “*Assigned Contracts*”) and (b) the determination of related Cure Costs (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 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 Costs*”), both as set forth on **Exhibit 1** attached hereto. Other than the Cure Costs 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.*

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 Cost or adequate assurance of future performance by any Stalking Horse Bidder, 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 on (i) co-counsel to the Debtors, (A) Latham & Watkins LLP, 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611, Attn: Richard A. Levy (richard.levy@lw.com) and Caroline A. Reckler (caroline.reckler@lw.com), and (B) Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, DE 19801, Attn: Michael Nestor (mnestor@ycst.com) and Kara Hammond Coyle (kcoyle@ycst.com); (ii) counsel to the administrative agent under the DIP Term Facility, Dorsey & Whitney LLP, 51 West 52<sup>nd</sup> Street, New York, New York 10019, Attn: Erin E. Trigg and Samuel S. Kohn (email: [trigg.erin@dorsey.com](mailto:trigg.erin@dorsey.com) and [kohn.samuel@dorsey.com](mailto:kohn.samuel@dorsey.com)); (iii)

counsel to the Ad Hoc FILO Term Lender Group (A) Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, New York 10019, Attn: Andrew N. Rosenberg, Jacob Adlerstein, and Douglas R. Keeton (email: arosenberg@paulweiss.com, jadlerstein@paulweiss.com, and dkeeton@paulweiss.com); and (B) Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19801, Attn: Richard S. Cobb (cobb@lrclaw.com); (iv) counsel to the Ad Hoc Group of Crossover Lenders (A) Milbank LLP, 2029 Century Park East, Los Angeles, California 90067, Attn: Mark Shinderman, Brett Goldblatt, and Daniel B. Denny (email: mshinderman@milbank.com; bgoldblatt@milbank.com; and ddenny@milbank.com); and (B) Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, P.O. Box 1347, Wilmington, Delaware 19899-1347, Attn: Robert J. Dehney (rdehney@mnat.com); (v) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Jane Leamy (email: jane.m.leafy@usdoj.gov); and (vi) counsel to the Committee, Lowenstein Sandler LLP, 1251 Avenue of the Americas, New York, NY 10020 Attn: Jeffrey Cohen and Lindsay H. Sklar (emails: jcohen@lowenstein.com and lsklar@lowenstein.com) and One Lowenstein Drive, Roseland, NJ 070686, Attn: Michael S. Etkin, Michael Savetsky, Nicole Fulfree and Colleen M. Maker (email: metkin@lowenstein.com, msavetsky@lowenstein.com, nfulfree@lowenstein.com, and cmaker@lowenstein.com) (collectively, the “**Objection Notice Parties**”), and (e) be filed with the Clerk of the Court and served by no later than **August 21 2020, at 4:00 p.m. (prevailing Eastern Time)**, subject to extension as set forth in paragraph 10 of the Bidding Procedures Order.

Any objections solely to the ability of a Successful Bidder other than the Stalking Horse Bidder to provide adequate assurance of future performance (each, an “**Adequate Assurance Objection**”) must be filed with the Court and served on the Objection Notice Parties no later than **September 15, 2020 at 8:00 p.m. (prevailing Eastern Time)**, subject to extension as set forth in paragraph 10 of the Bidding Procedures Order.

Subject to extension as set forth in paragraph 10 of the Bidding Procedures Order, 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 will be heard by the Court on **September 18, 2020 at 2:00 p.m. (prevailing Eastern Time)** (the “**Adequate Assurance Hearing**”) before the Honorable Karen B. Owens, Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware, at District of Delaware, at 824 Market Street North, 6th Floor, Wilmington, Delaware 19801, or at such other place (which may be by video conference) and time as the Debtors shall notify all Qualified Bidders, the Consultation Parties, and all other parties entitled to attend the Auction.

**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. 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 OR, WITH RESPECT TO ADEQUATE ASSURANCE OBJECTIONS, THE ADEQUATE ASSURANCE 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, at any time until the date one (1) business day prior to the Sale Hearing, to (i) supplement the list of Assigned Contracts on this Assumption Notice with previously omitted Assigned Contracts in accordance with the definitive agreement for a Sale, (ii) remove an Assigned Contract from the list of contracts ultimately selected as a Assigned Contract that may be assumed and assigned in connection with a Sale, and/or (iii) modify the previously stated Cure Costs associated with any Assigned Contract.

**PLEASE TAKE FURTHER NOTICE** that in the event that the Debtors supplement the list of Assigned Contracts or modify the previously stated Cure Costs for a particular Assigned Contract, the Debtors will promptly file and serve, and in no event less than one (1) business day before the date of the Sale Hearing, a revised Assumption Notice on each counterparty affected. Such counterparties shall file any Contract Objections with respect to the revised Assumption Notice not later than (i) the Contract Objection Deadline in the event that the revised Assumption Notice was filed and served at least ten (10) days prior to the Contract Objection Deadline, (ii) two (2) days prior to the Sale Hearing in the event that the revised Assumption Notice was filed and served at least seven (7) day prior to the commencement of the Sale Hearing, and (iii) seven (7) days after the date of filing and service of the revised Assumption Notice in the event that the revised Assumption Notice was filed and served less than seven (7) days prior to the commencement of the Sale Hearing. In the event that such supplemental or revised Assumption Notice was filed and served less than seven (7) days prior to the commencement of the Sale Hearing, assumption of any Assigned Contract added to such supplemental or revised Assumption Notice will not be adjudicated at the Sale Hearing and will be set for a subsequent hearing.

**OBTAINING ADDITIONAL INFORMATION**

Copies of the Bidding Procedures 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.primeclerk.com/gnc> or by calling (877) 422-5170 (Domestic) or (917) 947-2680 (International).

**CONSEQUENCES OF FAILING TO TIMELY 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 DEBTORS OR THE 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.***

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED      Court File No. CV-20-00642970-00CL

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF GNC HOLDINGS, INC. et al.

APPLICATION OF GNC HOLDINGS, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
COMMERCIAL LIST**

Proceeding commenced at TORONTO

**AFFIDAVIT OF ANDREA DAS-WIECZOREK  
(affirmed July 23, 2020)**

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