

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Chapter 11
)	
GOPICNIC BRANDS, INC.,)	Hon. Jacqueline P. Cox
)	
Debtor.)	Case No. 14-43382

NOTICE OF MOTION

PLEASE TAKE NOTICE that on **December 18, 2014 at 10:00 a.m.** or as soon thereafter as counsel may be heard, I shall appear before the **Honorable Jacqueline P. Cox**, Bankruptcy Judge, in Courtroom No. 680, U.S. Courthouse, 219 South Dearborn Street, Chicago, Illinois, or in her absence, before such other Judge who may be sitting in her place and stead and hearing bankruptcy motions, and shall then and there present the **GOPICNIC BRANDS, INC.'S MOTION FOR ENTRY OF ORDERS (A) APPROVING BIDDING PROCEDURES AND AUCTION NOTICE IN CONNECTION WITH SALE OF SUBSTANTIALLY ALL OF ITS ASSETS; (B) APPROVING SUCH SALE; AND (C) GRANTING RELATED RELIEF**, a copy of which is attached and herewith served upon you, and at which time and place you may appear if you so desire.

Date: December 12, 2014

GoPicnic Brands, Inc.

By: /s/ Brian L. Shaw
One of its proposed counsel

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**GOPICNIC BRANDS, INC.’S MOTION FOR ENTRY OF ORDERS
(A) APPROVING BIDDING PROCEDURES AND AUCTION NOTICE IN
CONNECTION WITH SALE OF SUBSTANTIALLY ALL OF ITS ASSETS;
(B) APPROVING SUCH SALE; AND (C) GRANTING RELATED RELIEF**

Pursuant to 11 U.S.C. §§ 105(a), 363 and 365 and Fed. R. Bankr. P. 2002, 6004, 6006, 9006, 9007, and 9014, GoPicnic Brands, Inc., the above-captioned debtor and debtor in possession (“Debtor” or “GoPicnic”) hereby requests that this Court enter orders authorizing (i) bidding procedures in connection with a potential sale of substantially all of its assets at auction; (ii) the sale of substantially all of the Debtor’s assets free and clear of liens, claims and interests; (iii) the assumption and assignment of related executory contracts and unexpired leases; and (iv) limited notice with respect thereto (the “Motion”). In support of the Motion, the Debtor respectfully represents as follows:

Introduction

A. The Chapter 11 Filing

1. On December 3, 2014 (the “Petition Date”), the Debtor filed a voluntary petition in this Court under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532, as amended (the “Bankruptcy Code”), thereby commencing the above-captioned case (“Case”). The Debtor continues to manage and operate its businesses as debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

2. The United States Trustee has not yet appointed a creditors' committee in the Case. No trustee or examiner has been appointed.

3. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

B. The Debtor's Business and Capital Structure

4. GoPicnic was organized under the laws of the state of Delaware in 2011. Chicago-based GoPicnic is a pioneer and leader in delicious, nutritionally balanced and portable ready-to-eat breakfast, lunch and snacks. GoPicnic brands are available for a wide range of diet restrictions, including gluten free, vegetarian, vegan and kosher, and all GoPicnic meals contain no artificial colors or flavors, trans fat, high fructose corn syrup or MSG. GoPicnic brands are available at more than 15,000 retail locations nationwide.

5. GoPicnic's predecessor, GoPicnic, Inc. ("GPCL") was founded in 2006 by Julia Stamberger ("Stamberger"). In 2011, Stamberger caused GoPicnic to be incorporated in order to separately take ownership of what is now the GoPicnic assets and business operations. Subsequently, GoPicnic implemented a new capital structure funded by more than \$3.5 million in private investment dollars (the "Capitalization Transaction"). To date, Stamberger continues to control and operate the business of GPCL. Upon information and belief, GPCL is not a debtor under the Bankruptcy Code.

6. In August 2014, GoPicnic entered into a \$5 million senior secured revolving loan facility ("Pre-Petition Facility") with Wells Fargo Bank, National Association ("Wells Fargo"), which is secured by valid, perfected, continuing first-priority liens on, and security interests in, all, or substantially all, of GoPicnic's assets. As of the Petition Date, the outstanding balance of the Pre-Petition Facility is not less than \$1,947,931.33 (and together with all interest (including default

rate interest), fees (including attorneys' fees), costs, expenses, and other charges accruing from and after the Petition Date, collectively, the "Prepetition Debt"), and GoPicnic has little or no availability under its borrowing base formula.

7. Previously, in December 2013, GoPicnic secured mezzanine debt ("Mezzanine Debt") from several parties including equity holders Partnership Capital Group Investors III, L.P. ("PCGI") and Clif White Road Investments, LLC ("CWRI"; and together with Wells Fargo and PCGI, collectively, the "Lenders") in the aggregate principal amount of \$2 million. As of the Petition Date, the outstanding balance of the Mezzanine Debt is approximately \$2.3 million. The Mezzanine Debt is secured by liens on all of GoPicnic's assets that are junior and subordinate in all respects to the liens and security interests of Wells Fargo pursuant to an August 2014 subordination agreement among Wells Fargo, PCGI, and CWRI.

C. Events Leading up to the Bankruptcy

8. Despite its strong brand recognition, GoPicnic finds itself seeking relief under chapter 11 of the Bankruptcy Code for two primary, and not entirely unrelated, reasons.

9. First, GoPicnic has under-performed and failed to meet operational projections despite the existence of what GoPicnic believes are a solid business model and quality product. As a result, and despite the insertion of over \$5 million in equity over the past three years, GoPicnic has fallen short of its 2014 projections, has experienced little to no growth in 2014, and finds itself in need of additional liquidity.

10. Second, GoPicnic is currently in the midst of a shareholder dispute between Stamberger and certain affiliated entities and PCGI and CWRI, which arose after the GoPicnic board of directors removed Stamberger from her position as an officer and director of GoPicnic in April 2014. Though PCGI and CWRI had engaged in discussions in an attempt to resolve Stamberger's demands, the monetary and time costs attendant to addressing this dispute only

served to exacerbate GoPicnic's current financial distress and further decreased GoPicnic's ability to obtain more liquidity outside of the bankruptcy process.

11. As a result of these issues, GoPicnic's board of directors and management determined that it must take immediate action to preserve GoPicnic's operations and value as a going concern. Accordingly, in September 2014, GoPicnic commenced a marketing and sale process to sell its business and assets as a going concern (the "Transaction").

D. Marketing and Sale Efforts by GoPicnic

12. GoPicnic has already begun marketing its assets, undergoing a process that includes:

- a. Analyzing its business, operations, properties, financial condition, competition, forecast, prospects and management;
- b. Preparing solicitation materials with respect to the Transaction and GoPicnic (the "Offering Materials");
- c. Identifying and contacting selected qualified buyers ("Buyers") for the Transaction and furnishing them with copies of Offering Materials;
- d. Arranging for potential Buyers to conduct due diligence investigations;
- e. Reviewing proposed purchase prices and form of consideration for the Transaction; and
- f. Developing, evaluating, structuring and negotiating the terms and conditions of a potential Transaction.

Proposed Sale of GoPicnic's Assets

A. Overview of Proposed Sale Process

13. After considering its options, including approaching possible sources of capital, GoPicnic has determined, in the exercise of its business judgment, that the best mechanism for maximizing asset value for the benefit of its estate and creditors is through an expeditious sale ("Sale") of substantially all of its assets ("Assets") as a going concern; provided, that the Assets

will in all events exclude, without limitation, any and all (a) avoidance actions under Chapter 5 of the Bankruptcy Code and (b) claims and causes of action of any kind or nature whatsoever of Debtor against Wells Fargo and its affiliates. Consequently, GoPicnic requests authority to sell its Assets free and clear of liens, claims and other interests, pursuant to a form asset purchase agreement (the “Asset Purchase Agreement”) attached hereto as Exhibit A. GoPicnic intends to offer the Assets for sale at the Auction (as defined herein), subject to the bidding procedures described below.

14. Through this Motion, GoPicnic requests the entry of an order, substantially in the form of the preliminary order attached hereto as Exhibit B, approving the bidding procedures attached hereto as Exhibit C (the “Bidding Procedures”), and allowing associated preliminary relief in accordance with this Motion. Additionally, GoPicnic requests that this Court schedule a hearing (the “Sale Hearing”) to approve a sale of the Assets pursuant to this Motion and the Bidding Procedures. GoPicnic requests that the Court enter an order or orders at the Sale Hearing in substantially the same form attached hereto as Exhibit D (the “Sale Order”): (a) authorizing GoPicnic to sell its Assets free and clear of all liens, claims and interests on the terms and conditions set forth in the Asset Purchase Agreement or variations thereof otherwise in accordance herewith; and (b) authorizing GoPicnic to (i) assume any applicable executory contracts and unexpired leases (the “Executory Contracts and Unexpired Leases”), (ii) assign the Executory Contracts and Unexpired Leases to the successful bidder(s) at auction, and (iii) pay the amounts, if any, necessary to cure existing defaults or arrearages under the Executory Contracts and Unexpired Leases, all as subject to the assumption and assignment procedures detailed below.

15. As described in more detail below, the proposed sale process contemplates the consummation of one or more Sales of GoPicnic’s Assets within a relatively short time frame. In

particular, due to projected liquidity constraints, GoPicnic has determined, in the exercise of its business judgment, that the value of its estate will be maximized if the Sale is authorized by this Court by the end of January 2015.

B. Summary of Proposed Bidding Procedures

16. In order to facilitate the sale process, GoPicnic has designed the Bidding Procedures for use in connection with the Auction, a summary of which are provided below. As described in more detail in the Bidding Procedures, GoPicnic intends to offer substantially all of its Assets as a single operating unit. However, GoPicnic also reserves the right in the Bidding Procedures to offer its Assets in such other combinations as GoPicnic determines, in the exercise of its business judgment, will result in the highest or otherwise best collective value for its Assets.

17. Potential Bidders. Each person wishing to participate in the Sale Process (a “Potential Bidder”) must deliver a satisfactory confidentiality agreement to GoPicnic prior to gaining any access to any proprietary information for due diligence purposes.

18. Due Diligence. Potential Bidders shall be authorized to perform due diligence with respect to the acquisition of the Acquired Assets at their sole cost and expense to be completed on or before the close of business two (2) calendar days before the Auction (“Bid Deadline”).

19. Qualified Offers. For purposes of the Bidding Process, a “Qualified Bid” shall mean a bona fide, binding, and duly executed written offer(s) to purchase the Acquired Assets in bulk or in specified lots received on or before the Bid Deadline, which, among other things: (i) is in form and substance substantially similar to the Asset Purchase Agreement; (ii) is irrevocable until the conclusion of the Sale Hearing, subject only to the provisions concerning the Backup Bid described below; (iii) is accompanied by a cashiers’ check or wire transfer to be held as an earnest money deposit in an amount not less than five percent (5%) of the total amount of such bid; (iv) is accompanied by such evidence reasonably acceptable to GoPicnic demonstrating such bidder’s

ability to close the proposed transaction and as otherwise described in the Bidding Procedures; (v) is actually delivered to GoPicnic and Wells Fargo; (vi) does not contain any financing contingency, and is not subject to any further due diligence review, board approval, or the receipt of any third-party consents; (vii) clearly states that all consideration to be paid at closing shall be cash; and (viii) provides for an effective closing date on or before February [___], 2015. All Qualified Bids must disclose the material terms and conditions of any contemplated employment or consulting agreement with any former or current insider of the Debtor.

20. Determination of Qualified Bid. Upon receipt of any and all such competing bid(s), GoPicnic, in consultation with Wells Fargo, will determine whether such competing bid(s) is a Qualified Bid. GoPicnic will promptly so notify the party submitting a Qualified Bid (each, a “Qualified Bidder”) that it is a Qualified Bidder. Notwithstanding anything herein to the contrary, (a) all bids submitted prior to the Bid Deadline as set forth above are subject to the approval of this Court after taking into account the best interests of GoPicnic’s estate and (b) Wells Fargo is and will be a Qualified Bidder for all purposes and may credit bid all or any portion of the Prepetition Debt under Bankruptcy Code Section 363(k) as a Qualified Bid, including, without limitation, at any Auction.

21. Auction and Sale Hearing. GoPicnic shall conduct the Auction of the Acquired Assets on January __, 2015, at _____ a.m. Only Qualified Bidders shall be entitled to make a bid at the Auction. Upon the conclusion of the Auction, GoPicnic, in consultation with Wells Fargo, shall identify the Successful Bid and the “Backup Bid”, if any, as defined below. At the Sale Hearing, GoPicnic shall present to the Court the Successful Bid, and if applicable, the Backup Bid, and request the entry of the Sale Order approving such bid(s) subject to the terms thereof in a form reasonably satisfactory to the Successful Bidder and GoPicnic.

22. Backup Bid. GoPicnic may, but shall not be obligated to, request that the Court determine at the Sale Hearing the next highest and best bid for the Acquired Assets other than the Successful Bid (“Backup Bid”). In the event the party making the Successful Bid refuses or is otherwise unable to close, then, in such event, GoPicnic, in its sole and absolute discretion after consultation with Wells Fargo, may accept the Backup Bid, in which case, the party submitting the Backup Bid (“Backup Bidder”) shall be required to consummate the transactions contemplated in the Backup Bid at the purchase price so offered without further act, deed or order of Court.

23. Assets Sold As Is, Where is. The Acquired Assets shall be sold on an “AS IS, WHERE IS” basis and without representations or warranties of any kind, nature, or description by GoPicnic, its agents or estate except to the extent expressly set forth in the Successful Bid, and if applicable, the Backup Bid. Except as otherwise provided in such agreement(s), all of GoPicnic’s right, title and interest in and to the Acquired Assets shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and there against (collectively, the “Interests”) in accordance with Section 363 of the Bankruptcy Code, with all such valid Interests to attach to the net proceeds of the sale of the Acquired Assets with the same extent, validity, priority, force and effect as such Interests applied against the Acquired Assets.

24. Application or Return of Earnest Money Deposits. All Deposits will be held if practicable in segregated, interest bearing trust accounts and shall be returned to the Qualified Bidders within two (2) business days from the entry of the Sale Order except for the Deposit of the Successful Bidder, which shall be applied to the purchase price, and the Deposit received under the Backup Bid which shall continue to be held pending the closing of the Successful Bid. Thereafter, the Deposit submitted with the Backup Bid shall be returned to such bidder within two

(2) business days of the closing on the Successful Bid, and the Deposit received in connection therewith shall be applied to the purchase price thereunder at the Closing, subject to the provisions described above if GoPicnic fails to give the requisite notice to the Backup Bidder of the acceptance of its offer.

25. Buyer's Inspection Rights. Each Qualified Bidder shall be deemed to acknowledge and represent in its Qualified Bid that it has had an opportunity to inspect and examine the Acquired Assets and to conduct any and all due diligence regarding the Acquired Assets prior to making its offer to the extent it has deemed necessary and appropriate, that is has relied solely upon its own independent review, investigation and/or inspection of any documents and/or Acquired Assets in making its bid, and that it 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 Acquired Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in its Qualified Offer.

26. Disclosure of Employment of Insiders. If the Successful Bidder or the Backup Bidder has reached, or contemplates reaching, an employment, consulting or other agreement with any former or current insider of GoPicnic, the material terms and conditions of any and all such employment, consulting and/or other agreements shall be disclosed to the Court prior to the entry of the Sale Order.

27. Sale Hearing. GoPicnic requests that the Sale Hearing take place on January __, 2015, with the closing of the Successful Bid to occur no later than two (2) business days after the entry of the Sale Order.

C. Applicable Legal Authority for Proposed Sale

(i) Sale Outside The Ordinary Course Of Business

28. Section 363 of the Bankruptcy Code provides that the debtor, “after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” See 11 U.S.C. § 363(b). To approve the use, sale or lease of property outside the ordinary course of business, this court need only determine that the debtor’s decision is supported by “some articulated business justification.” See, e.g., *Fulton State Bank v. Schipper*, 933 F.2d 513, 515 (7th Cir. 1991); *Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); see also *Stephens Ind., Inc. v. McClung*, 789 F.2d 386, 389-90 (6th Cir. 1986); *In re Abbott Dairies of Pa., Inc.*, 788 F.2d 143, 145-47 (3d Cir. 1986); *In re Telesphere Communications, Inc.*, 179 B.R. 544, 552 (Bankr. N.D. Ill. 1999); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991).

29. Once the debtor articulates a valid business justification, “[t]he business judgment rule ‘is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action was in the best interests of the company.’” *In re S.N.A. Nut Company*, 186 B.R. 98 (Bankr. N.D. Ill. 1995); *In re Integrated Resources, Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992); *In re Johns-Manville Corp.*, 60 B.R. 612, 615-16 (Bankr. S.D.N.Y. 1986) (“a presumption of reasonableness attaches to a Debtor’s management decisions.”).

30. Indeed, when applying the “business judgment” rule, courts show great deference to the debtor’s decision-making. See *Summit Land Co. v. Allen (In re Summit Land Co.)*, 13 B.R. 310, 315 (Bankr. D. Utah 1981). Accordingly, this Court should grant the relief requested in this Motion if GoPicnic demonstrates a sound business justification therefor. See *Schipper*, 933 F.2d at 515; *In re Lionel Corp.*, 722 F.2d at 1071; *In re Delaware Hudson Ry. Co.*, 124 B.R. 169 at 179.

31. As explained above, GoPicnic has a sound business justification for selling substantially all its Assets at this time. GoPicnic simply lacks the financial resources and access to capital necessary to fund its operations for a prolonged period. GoPicnic has a small window of opportunity to maximize the value of its Assets through a going concern sale. For this reason, GoPicnic has determined, in the exercise of its business judgment, that the most viable option for maximizing the value of its estate is through one or more Sales of its Assets in the manner and in the timeframe set forth in the Bidding Procedures. Its request for approval to sell the Assets in accordance with the Bidding Procedures should be allowed accordingly.

(ii) Sales Outside The Ordinary Course Of Business

32. Under § 363(f) of the Bankruptcy Code, a debtor in possession may sell property free and clear of any lien, claim, or interest in such property if, among other things:

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

11 U.S.C. § 363(f).

33. Because section 363(f) is drafted in the disjunctive, GoPicnic's satisfaction of any one of its five requirements will be sufficient to permit the sale of the Assets free and clear of Interests. GoPicnic believes that the primary entities holding liens on the Assets are the Lenders. GoPicnic is reasonably confident that it will obtain any necessary consent on or before the Sale Hearing and will thereby satisfy the requirements of § 363(f)(2).

34. Moreover, all holders of Interests, including the Lenders, can be compelled to accept a money satisfaction of such Interests in legal or equitable proceedings in accordance with § 363(f)(5). Such legal or equitable proceedings include proceedings to confirm a plan of reorganization, under which the holder of a lien may be compelled to accept payment in satisfaction of its lien pursuant to 11 U.S.C. § 1129(b)(2)(A).

35. Indeed, § 1129(b)(2)(A) specifically allows a debtor in possession to sell property subject to a lien, free and clear of such lien, if such lien attaches to the net proceeds of the sale, subject to any claims and defenses the debtor may possess with respect thereto. GoPicnic proposes that any Interests in the Assets attach to the net proceeds of the Sale(s) in this case with the same extent, validity, priority, force and effect as such Interests applied against the Assets.

Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases

A. Proposed Assumption and Assignment Procedure

36. As part of this Motion, GoPicnic seeks authority to assume and assign certain agreements and leases to the Successful Bidder or the Backup Bidder to the extent necessary. Because of the need to close any such transaction as quickly as possible in order to maximize value of the Assets, GoPicnic proposes the following procedures for assuming and assigning agreements and leases included in the Successful Bid and the Backup Bid.

37. On or before December 31, 2015, GoPicnic shall send a notice (the “Assignment Notice”) by U.S. Mail delivery to each non-debtor counterparty to all executory contracts and unexpired leases of GoPicnic (“Executory Contracts and Unexpired Leases”). The Assignment Notice shall (i) identify each such agreement; and (ii) state the cure amounts, if any, that GoPicnic believes are necessary to satisfy in order to assume such agreement pursuant to 11 U.S.C. § 365 (the “Cure Amount”). At the Sale Hearing, the Debtor shall request the entry of an order

requesting authority to assume and assign the Executory Contracts and Unexpired Leases subject to the actual closing of an applicable Sale transaction. All non-debtor parties that are served with an Assignment Notice shall be entitled to appear at the Sale Hearing and object to the proposed assumption and assignment of their Executory Contracts and Unexpired Leases.

B. Applicable Legal Authority for Proposed Assumption and Assignment

38. As a debtor in possession, GoPicnic has the right, subject to court approval, to assume any executory contracts or unexpired leases. *See* 11 U.S.C. § 365(a). The assumption of an unexpired lease by a debtor in possession is subject to review under the business judgment standard. If such business judgment has been reasonably exercised, a court should approve the assumption. *See, e.g., NLRB v. Bildisco and Bildisco*, 465 U.S. 513, 523 (1984); *Sharon Steel Corp. v. National Fuel Gas Distribution*, 872 F.2d 36, 39-40 (3d Cir. 1989); *In re RLR Celestial Homes, Inc.*, 109 B.R. 36, 46 (Bankr. S.D.N.Y. 1989).

39. Section 365(b)(1) of the Bankruptcy Code sets forth the requirements for assumption. This subsection provides as follows:

(b) (1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee-

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or

lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

40. The requirement of “adequate assurance of future performance” also applies when assumption is coupled with an intended assignment. Section 365(f)(2) of the Bankruptcy Code provides that:

[t]he trustee may assign an executory contract or unexpired lease of the debtor only if --

(A) the trustee assumes such contract or lease in accordance with the provisions of this section; and

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2).

41. The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given a “practical, pragmatic construction.” *See, e.g., EBG Midtown South Corp. v. McLaren/Hart Env. Engineering Corp. (In re Sanshoe Worldwide Corp.)*, 139 B.R. 585, 593 (S.D.N.Y. 1992); *In re Prime Motor Inns Inc.*, 166 B.R. 993, 997 (Bankr. S.D. Fla. 1994) (“[a]lthough no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance”); *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988).

42. Among other things, adequate assurance may be provided by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. *See, e.g., In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective assignee of lease from debtor has financial

resources and has expressed willingness to devote sufficient funding to business in order to give it strong likelihood of succeeding).

43. In the exercise of its business judgment, GoPicnic intends to assume and assign the Executory Contracts and Unexpired Leases at Closing subject to the determination by the applicable Successful Bidder or the Backup Bidder that it desires to take an assignment of such contracts and unexpired leases. To the extent that any defaults exist under any Executory Contract or Unexpired Lease that is to be assumed and assigned, GoPicnic will cure any such default as a condition to such assumption and assignment. Moreover, GoPicnic will adduce facts at the Sale Hearing demonstrating the financial wherewithal of the applicable Successful Bidder or the Backup Bidder, their experience in the industry, and their willingness and ability to perform under the Executory Contracts and Unexpired Leases to be assumed and assigned.

44. The Sale Hearing therefore will provide the Court and other interested parties ample opportunity to evaluate and, if necessary, challenge the ability of the Successful Bidder or the Backup Bidder to provide adequate assurance of future performance under the Executory Contracts and Unexpired Leases. The Court therefore should have a sufficient basis to authorize GoPicnic to assume and assign those Executory Contracts and Unexpired Leases.

Notice

45. Notice of this Motion has been given by U.S. Mail or CM/ECF to (i) the Office of the United States Trustee, (ii) the Debtor's 20 largest unsecured creditors, and (iii) all parties requesting electronic notice. The Debtor proposes to provide the Sale Notice to all creditors, the Office of the United States Trustee, all entities reasonably known by the Debtor to have an Interest in the Assets to be sold, all counterparties to Executory Contracts and Unexpired Leases, and all parties requesting notice in this Case.

46. The Debtor respectfully requests that this Court find the foregoing notice to be reasonable and sufficient under the circumstances and that it waive any further notice for cause shown. Moreover, in light of the urgency underlying this Motion and the corresponding need for the Debtor to consummate the Sale, as set forth above, the Debtor further requests that this Court exercise its authority under Fed. R. Bankr. P. 2002(a)(2) and 9007 to shorten applicable notice periods to accommodate the Sale timeframe specified herein.

Conclusion

WHEREFORE, the Debtor respectfully requests that the court enter orders substantially in the forms annexed hereto: (i) approving the Bidding Procedures, (ii) authorizing the Debtor's sale of the Assets free and clear of liens, claims and other Interests; (iii) authorizing the Debtor's assumption and assignment of the Executory Contracts and Unexpired Leases; (iv) limiting and shortening notice as requested herein; and (v) granting such other and further relief as is just and proper.

Respectfully submitted,

GOPICNIC BRANDS, INC.

Dated: December 12, 2014

By /s/ Brian L. Shaw
One of its proposed attorneys

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Proposed Counsel for Debtor

EXHIBIT A

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (“Agreement”) is made and entered into as of December ___, 2014 (the “Execution Date”), by and among, a _____ limited liability company / corporation (“Purchaser”), and GoPicnic Brands, Inc., a Delaware corporation (“Seller”).

WHEREAS, Purchaser desires to purchase, and Seller desires to sell, convey, assign, transfer and deliver to Purchaser, certain assets relating to the business conducted by Seller (the “Business”).

NOW, THEREFORE, in consideration of the mutual covenants, agreements and warranties herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I. DEFINITIONS AND RULES OF CONSTRUCTION

Section 1.01 Definitions. Unless otherwise defined herein, terms used herein shall have the meanings set forth below:

“Accounts Receivable” means any trade accounts receivable and other rights to payment owed to Seller as of the Closing.

“Acquired Assets” means all of the direct and indirect right, title and interest of Seller in and to the following assets, but does not include the Excluded Assets:

- (a) all of Seller’s rights under the Assumed Contracts, to the extent assignable under applicable Law;
- (b) all of Seller’s Intellectual Property, to the extent assignable and transferrable under applicable Law;
- (c) all Equipment;
- (d) all Accounts Receivable;
- (e) all prepaid expenses incurred or paid by Seller prior to the Closing other than any prepaid expenses related to Seller’s insurance policies and prepaid Taxes;
- (f) all Inventory as of the Closing;
- (g) all books and records, including customer and supplier lists and related customer and supplier information;
- (h) all rights, recoveries, refunds, counterclaims, rights to offset, choses in actions, rights under all warranties, representations and guarantees made by suppliers of products, materials or equipment or components thereof, other rights and claims (whether known or unknown, matured or unmatured, contingent or accrued)

against third parties resulting from, arising out of or otherwise with respect to any of the Acquired Assets or Assumed Obligations; and

- (i) all other intangible rights and properties, including goodwill of Seller as a going concern and all e-mail, website and Internet domain names used by Seller, as well as the right to use facsimile and telephone numbers of the Seller.

“Administrative Professional Fees” means the fees and expenses incurred by the professionals retained by Seller and any Official Committee of Unsecured Creditors in the Chapter 11 Case, other than the GPB Broker, and expressly including [Shaw Fishman Glantz & Towbin, LLC, Morris Anderson and _____].

“Affiliate” of any particular Person means any other Person controlling, controlled by or under common control with such particular Person, where “control” means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether through the ownership of voting securities or otherwise.

“Agreement” means this Asset Purchase Agreement, including all the Exhibits and the Schedules hereto, as the same may be amended from time to time in accordance with its terms.

“Allocation” shall have the meaning set forth in Section 10.01(b) hereof.

“Assignment and Assumption Agreement” shall have the meaning set forth in Section 3.02(a) hereof.

“Assumed Contracts” means collectively those Contracts of Seller set forth on Schedule 2.02, as further described in Section 2.02 hereof.

“Assumed Obligations” means (a) the obligations arising under the Assumed Contracts, (including without limitation the Cure Payments) and those designated by Purchaser to Seller on or prior to the Auction; (b) all account payables arising from the operations of the Seller since the Petition Date, including without limitation payroll and related tax obligations, that have been incurred but remain unpaid as of the Closing Date; (c) all claims arising under Section 503(b)(9) of the Bankruptcy Court and approved by order of the Bankruptcy Court; and (d) the priority wage claims for all employees of Seller in the amounts set forth on Schedule E filed by the Seller in the Chapter 11 Case.

“Auction” means the auction conducted by Seller pursuant to the Bidding Procedures Order and Section 6.05 hereof.

“Bankruptcy Code” means title 11 of the United States Code, as amended from time to time.

“Bankruptcy Court” means the United States Bankruptcy Court for the Northern District of Illinois.

“Bidding Increment” shall have the meaning set forth in Section 6.05(d) hereof.

“Bidding Procedures” means the procedures outlined in the Bidding Procedures Order.

“Bidding Procedures Order” means an order entered by the Bankruptcy Court in a form consistent with the terms of this Agreement.

“Bill of Sale” shall have the meaning set forth in Section 3.02 hereof.

“Breakup Fee” shall have the meaning set forth in Section 9.02 hereof.

“Business” shall have the meaning set forth in the Preamble.

“Business Day” means a day other than Saturday, Sunday or other day that banks located in Chicago, Illinois are authorized or required by Law to close.

“Chapter 11 Case” means Case No. 14-43382 now pending before the Bankruptcy Court under Chapter 11 of the Bankruptcy Code.

“Claim” has the meaning contained in Bankruptcy Code §101(5), including, without limitation, all rights, claims, causes of action, defenses, debts, demands, damages, offset rights, setoff rights, recoupment rights, obligations, and liabilities of any kind or nature under contract, at Law or in equity, known or unknown, contingent or matured, liquidated or unliquidated, and all rights and remedies with respect thereto.

“Closing” shall have the meaning set forth in Section 3.01 hereof.

“Closing Date” shall have the meaning set forth in Section 3.01 hereof.

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

“Contract” means any agreement, contract, commitment or other binding arrangement or understanding, whether written or oral.

“Cure Payments” means any cure payment pursuant to and arising under section 365 of the Bankruptcy Code due by Seller, and required by the Bankruptcy Court to be made in order to cure any default with respect to any Acquired Assets or Assumed Obligations.

“Deposit” shall have the meaning set forth in Section 2.04 hereof.

“Dollars” or “\$” means dollars of the United States of America.

“Equipment” means machinery, fixtures, furniture, supplies, accessories, materials, equipment, parts, automobiles, trucks, vehicles, office equipment, computers, servers, telephones, and all other items of tangible personal property that are owned, leased or otherwise used by Seller or otherwise used in the Business.

“Escrow Agent” shall have the meaning set forth in Section 2.04 hereof.

“Execution Date” shall have the meaning set forth in the Preamble hereto.

“Excluded Assets” shall mean all cash and cash equivalents owned by the Seller in any form and in any account, avoidance actions of the Seller or its bankruptcy estate under §§ 547,

548, and 550 of the Bankruptcy Code, and any claims or causes of action in law or equity against secured creditors, equity holders, and directors and officers.

“Exhibits” means the exhibits hereto.

“Final Order” means an Order which has not been stayed or vacated and as to which the time to file an appeal, a motion for rehearing or reconsideration or a petition for writ of certiorari has expired and no such appeal, motion or petition is pending.

“GPB Broker” means the Seller’s Bankruptcy Court-approved investment banker.

“GPB Client Trust Fund Account” means a client trust fund account maintained for Seller by Shaw Fishman Glantz & Towbin, LLC.

“Governmental Authority” means any United States federal, state or local or any foreign government, governmental regulatory or administrative authority, agency or commission or any court, tribunal or judicial or arbitral body.

“Intellectual Property” means all (i) patents, patent applications, registrations, patent disclosures and all related continuations, continuations-in-part, divisions, reissues, and reexaminations, utility models, certificates of invention and design patents, and all improvements thereon and extensions thereof, (ii) trademarks, service marks, trade dress, logos, slogans, corporate names, trade names, domain names, and other designations of source, origin, sponsorship, endorsement or certification, together with the goodwill associated with any of the foregoing, and all applications and registrations therefore, (iii) copyrights and registrations and applications therefore, together with all translations, adaptations, derivations and combinations therefore, works of authorship, publications, website content, and moral rights (iv) confidential and proprietary information, including, without limitation, trade secrets, concepts, ideas, recipes, research and development, financial, marketing and business data, pricing and cost information, business and marketing plans, algorithms, know-how, formulae, inventions (whether or not patentable), processes, techniques, technical data, designs, drawings, specifications, databases, and customer and supplier lists and information, (v) computer programs, software, including any and all software implementations of algorithms, hardware, models and methodologies, whether in source code or object code, operating systems, design documents, website code, operating systems and specifications, flow-charts, user manuals and training materials relating thereto and any translations thereof, (vi) other proprietary or contract rights or rights of publicity relating to any of the foregoing (including remedies against infringements thereof and rights of protection of interest therein under the laws of all jurisdictions), and (vii) copies and tangible embodiments of any and all of the foregoing.

“Inventory” means all finished goods inventory, goods-in-transit, raw materials and work-in-process and packaging materials.

“IP Assignments” shall have the meaning set forth in Section 3.02(d).

“Knowledge of Seller” shall mean the actual knowledge of Bret Lorenc.

“Law” means any law, statute, regulation, ruling, or Order of, administered or enforced by or on behalf of, any Governmental Authority.

“Liability” means any liability or obligation (whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, and due or to become due and regardless of when asserted), including, without limitation, any liability for Taxes.

“Lien” or “Liens” means any charge, claim, lien, option, encumbrance, mortgage, pledge, security interest, conditional sale agreement or other title retention agreement, finance lease, security agreement, right of first refusal, option, restriction, tenancy, license, covenant, right of way, easement or other encumbrance (including the filing of, or agreement to give, any financing statement under the Uniform Commercial Code or Law of any jurisdiction) on property.

“Material Adverse Effect” means any change or event that has had or would reasonably be likely to have a material adverse effect on the assets, liabilities, operations or condition (financial or otherwise) of Seller or the Business, taken as a whole, other than a change or event resulting from the filing of the Chapter 11 Case, the Seller’s operations as a debtor-in-possession in the Chapter 11 Case through and including the Execution Date, and/or the Bankruptcy Court orders entered in the Chapter 11 Case.

“Order” means any decree, order, injunction, rule, judgment, consent of or by any Governmental Authority.

“Permits” means all certificates of occupancy or other certificates, permits, authorizations, filings, approvals and licenses possessed by Seller, or through which Seller has rights, that are used, useable or useful in the operation of the Business or the use or enjoyment or benefit of the Acquired Assets.

“Person” means any corporation, partnership, joint venture, limited liability company, organization, entity, authority or natural person.

“Petition Date” means December 3, 2014.

“Purchaser” shall have the meaning set forth in the Preamble.

“Purchaser Default Termination” shall have the meaning set forth in Section 9.01(b) hereof.

“Qualified Bids” shall have the meaning set forth in Section 6.05(d) hereof.

“Rule” or “Rules” means the Federal Rules of Bankruptcy Procedure.

“Sale Hearing” means a hearing by the Bankruptcy Court to consider the approval and entry of the Sale Order.

“Sale Order” means an order entered by the Bankruptcy Court in form and substance satisfactory to Purchaser in the exercise of its sole discretion, authorizing Seller to sell the Acquired Assets to Purchaser pursuant to this Agreement and sections 105, 363 and 365 of the Bankruptcy Code, free and clear of all Liens, claims and interests other than the Assumed Obligations.

“Schedules” means the schedules attached hereto.

“Seller” shall have the meaning set forth in the Preamble hereto.

“Tax” and, with correlative meaning, “Taxes” mean with respect to any Person all federal, state, local, county, foreign and other taxes, charges, fees, duties, customs, levies and other assessments, including, without limitation, any income, alternative or add-on minimum tax, estimated gross income, gross receipts, sales, use, *ad valorem*, value added, transfer, capital stock franchise, profits, license, registration, recording, documentary, intangibles, conveyancing, gains, withholding, payroll, employment, social security (or similar), unemployment, disability, excise, severance, stamp, occupation, premium, property (real and personal), abandoned property, escheat, environmental or windfall profit tax, together with any interest, penalty, addition to tax or additional amount imposed by any Governmental Authority responsible for the imposition of any such tax (domestic or foreign).

“Tax Return” means any report, return, declaration, claim for refund or other information or statement supplied or required to be supplied by Seller relating to Taxes, including any schedules or attachments thereto and any amendments thereof.

“Transaction Documents” means this Agreement, the Assignment and Assumption Agreement, the Bill of Sale, the Deed and all other agreements, instruments, certificates and other documents to be entered into or delivered by any party in connection with the transactions contemplated to be consummated pursuant to this Agreement.

Section 1.02 Rules of Construction. Unless the context otherwise clearly indicates, in this Agreement, (a) the singular includes the plural, (b) “includes” and “including” are not limiting, (c) “may not” is prohibitive and not permissive; and (d) “or” is not exclusive.

ARTICLE II.

PURCHASE AND SALE; ASSUMPTION OF CERTAIN LIABILITIES

Section 2.01 Purchase and Sale of Acquired Assets. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Seller shall sell, convey, assign, transfer and deliver to Purchaser, and Purchaser shall purchase, acquire and take assignment and delivery of, for the consideration specified in Section 2.03, all of the Acquired Assets, free and clear of all Liens.

Section 2.02 Assignment and Assumption of Assumed Obligations. Subject to the terms and conditions set forth in this Agreement, at the Closing, Purchaser shall assume from Seller, and thereafter be solely responsible for the payment, performance or discharge, of only the Assumed Obligations. The Assumed Contracts are designated on Schedule 2.02. Purchaser will not assume or have any responsibility with respect to any other Liability not included within the definition of Assumed Obligations, including any Liabilities related to (a) Taxes, (b) claims of any vendor of Seller incurred prior to the Petition Date (unless such claim is subject to Section 2.05 herein), (c) any Liability related to Seller’s employee benefit plans, other than the obligations incurred by Seller after the Petition Date and that remain unpaid as of the Closing Date, or (d) any brokerage fees or commissions with respect to the GPB Broker.

Section 2.03 Purchase Price. The aggregate purchase price for the Acquired Assets (the “Purchase Price”) shall be (i) \$_____ (payable at the Closing, less the Deposit), and (ii) the assumption of the Assumed Obligations and the costs and expenses related thereto. Payments made pursuant to this Section 2.03 shall be allocated among the Acquired Assets in accordance with Section 10.01(b).

Section 2.04 Deposit. Upon the Execution Date, Purchaser shall deposit into escrow with the GPB Broker (the “Escrow Agent”) an amount equal to \$_____ (such amount, together with any interest accrued thereon prior to the Closing Date, the “Deposit”) by wire transfer. The Deposit shall become payable to Seller upon the earlier of (a) the Closing, or (b) a Purchaser Default Termination. The Deposit shall become payable to Purchaser upon the termination of this Agreement other than pursuant to a Purchaser Default Termination. If the Deposit becomes payable to Seller by reason of a Purchaser Default Termination, the Escrow Agent shall, within five Business Days after receiving notice of such Purchaser Default Termination from Seller (which notice Seller shall simultaneously deliver to Purchaser), disburse the deposit to an account designated by Seller; provided, however, that no funds shall be disbursed if Purchaser delivers a written objection to Purchaser Default Termination. If the Deposit becomes payable to Purchaser, the Escrow Agent shall, within five Business Days after receiving notice thereof from Purchaser (which notice Purchaser shall simultaneously deliver to Seller), disburse the deposit to an account designated by Purchaser; provided, however, that no funds shall be disbursed if Seller delivers a written objection to Purchaser Default Termination.

Section 2.05 Obligations in Respect of Assumed Contracts. To the extent that any Assumed Contract is subject to a cure amount pursuant to section 365 of the Bankruptcy Code or otherwise, Purchaser shall directly pay or otherwise provide for the amount of any applicable Cure Payment at Closing or at such other time required by Order of the Bankruptcy Court.

Section 2.06 Post-Closing Use and Assignment of Contracts. With respect to any Contract that is not an Assumed Contract as of the Closing Date, and provided that such Contract is still in effect and has not been rejected by Seller pursuant to section 365 of the Bankruptcy Code, Seller shall be authorized to reject any such contract without further notice to Purchaser. In the event Purchaser provides notice to Seller that it does not intend to assume any contract prior to the Closing Date, Seller shall be authorized to reject such contract upon receipt to of such notice.

ARTICLE III. CLOSING

Section 3.01 Closing. Upon the terms and subject to the satisfaction of the conditions contained in this Agreement, the closing of the transaction contemplated by this Agreement (the “Closing”) will take place at the offices of Seller’s counsel (or such other location as agreed to by the parties in writing), prevailing local time, no later than the fifth Business Day after the Auction, subject to the Bankruptcy Court’s availability for the Sale Hearing, and provided that the conditions set forth in ARTICLE 7 and ARTICLE 8 have been satisfied or waived; or on such other date or place as both Purchaser and Seller may determine (the “Closing Date”).

Section 3.02 Deliveries by Seller. At the Closing, Seller shall deliver or cause to be delivered to Purchaser:

- (a) a bill of sale with respect to the Acquired Assets, substantially in the form attached hereto as Exhibit A (the “Bill of Sale”), duly executed by Seller;

- (b) one or more assignments and assumptions of the Assumed Obligations, substantially in the form attached hereto as Exhibit B (collectively, the “Assignment and Assumption Agreement”), duly executed by Seller;
- (c) For such Intellectual Property that is assignable and transferrable under applicable Law, assignments, in form and substance satisfactory to Purchaser (the “IP Assignments”), duly executed by Seller;
- (d) the Sale Order in form and substance satisfactory to Purchaser evidencing a sale of the Acquired Assets free of all Liens with respect to the Acquired Assets;
- (e) a copy of the Bidding Procedures Order;
- (f) all necessary consents and approvals from Affiliates of Seller to the transactions contemplated hereby, if any;
- (g) all other agreements, records and other documents required by this Agreement; and
- (h) all such other instruments of conveyance and related affidavits as shall, in the reasonable opinion of Purchaser, be necessary to vest in Purchaser good, valid and marketable title to the Acquired Assets.

Section 3.03 Deliveries by Purchaser. At the Closing, Purchaser shall deliver or cause to be delivered to Seller (a) the Purchase Price, less the Deposit, (b) the Assignment and Assumption Agreement, duly executed by Purchaser, and (c) all other agreements, records and other documents required by this Agreement.

ARTICLE IV.

REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants to Purchaser as of the Execution Date and as of the Closing Date as follows:

Section 4.01 Organization and Standing. Seller is duly incorporated, validly existing and in good standing under the Laws of the State of Delaware. Seller has all Permits necessary to own, operate and carry on the Business as now conducted by it, except such Permits the failure of which to have would not be reasonably expected to have a Material Adverse Effect.

Section 4.02 Authorization and Power. Subject to any necessary authorization from the Bankruptcy Court, Seller has all requisite power and authority to lease its real properties, to carry on the Business as now being conducted and to execute and deliver the Transaction Documents to which it is a party and to perform its obligations thereunder. This Agreement has been duly executed and delivered by Seller, all other Transaction Documents will be duly executed and delivered by Seller at or prior to the Closing, and, subject to any necessary authorization from the Bankruptcy Court, all Transaction Documents to which Seller is a party constitute, or will constitute, as the case may be, the valid and binding agreements of Seller, enforceable against Seller in accordance with their terms.

Section 4.03 Title to Assets. Seller has good, valid, marketable and undivided title to, or a valid leasehold interest in, the Acquired Assets. Subject to Bankruptcy Court approval, Seller has the power and the right to sell, convey, assign and transfer, and Seller will sell, convey, assign, transfer and deliver to Purchaser, and Purchaser will be vested with good, valid, marketable and undivided title to, the Acquired Assets, free and clear of all Claims and Liens to the fullest extent allowed under section 363(f) of the Bankruptcy Code. Schedule 4.03(a) attached hereto lists all the Equipment.

Section 4.04 Contracts.

- (a) Schedule 4.04(a) attached hereto sets forth a list of all material Contracts to which Seller is a party or which otherwise relate to the Business or bind the Acquired Assets. Seller has delivered true, complete and correct copies of each Contract required to be listed on Schedule 4.04(a).
- (b) Except for defaults that can be cured through the Cure Payments or defaults arising solely as a consequence of the commencement of the Chapter 11 Case, neither Seller nor, to the Knowledge of Seller, any other party thereto is in default or breach in any material respect under the terms of any Assumed Contract.

Section 4.05 Intellectual Property. Schedule 4.05 attached hereto sets forth all registered and unregistered Intellectual Property (including registration applications) that Seller owns or otherwise has the right to use in the operation of the Business as presently conducted (the “Business Intellectual Property Rights”)

Section 4.06 Real Property. The only leasehold interests in real property held by Seller are listed on Schedule 4.06 attached hereto (the “Real Property Leases”). A true, complete and correct copy of the Real Property Leases have been delivered or made available to Purchaser. Except for the Real Property Leases, Seller does not occupy or have any interest in any other real property.

Section 4.07 Affiliate Transactions. Except as set forth in Schedule 4.07 attached hereto, (a) there are no Contracts, understandings or transactions, between Seller on the one hand and any of its Affiliates on the other hand that relate to the Business or the Acquired Assets and (b) there are no services provided to the Business by Seller’s Affiliates that will be necessary in order to continue operation of the Business after the Closing as it is presently conducted.

Section 4.08 Brokers. Except to the extent authorized by the Bankruptcy Court, Seller has not, directly or indirectly, retained or engaged any Person to act as a broker or finder, or in any similar capacity in connection with the transactions contemplated by this Agreement.

Section 4.09 No Other Representations or Warranties; Schedules. Except for the representations and warranties contained in this **Article IV**, none of Seller or any other Person makes any other express or implied representation or warranty with respect to Seller, the Business, the Acquired Assets, the Assumed Contracts, the Assumed Obligations or the transactions contemplated by this Agreement, and Seller disclaims any other representations or warranties, whether made by Seller or any Affiliate of Seller or any of their respective officers, directors, employees, agents or representatives. Except for the representations and warranties contained in this **Article IV** (as modified by the Schedules hereto), Seller (i) expressly disclaims

and negates any representation or warranty, expressed or implied, at common law, by statute, or otherwise, relating to the condition of the Acquired Assets (including any implied or expressed warranty of merchantability or fitness or suitability for a particular purpose, or value, or of conformity to models or samples of materials) and (ii) disclaims all liability and responsibility for any representation, warranty, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to Purchaser or its Affiliates or representatives (including any opinion, information, projection, or advice that may have been or may be provided to Purchaser by any director, officer, employee, agent, consultant, or representative of Seller or any of its Affiliates). Seller makes no representations or warranties to Purchaser regarding the probable success or profitability ownership, use or operation of the Business or the Acquired Assets.

ARTICLE V.

REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Seller as of the Execution Date and as of the Closing Date as follows:

Section 5.01 Organization, Standing and Power. Purchaser is a _____ company duly organized, validly existing and in good standing under the Laws of the State of _____.

Section 5.02 Authorization. Purchaser has all requisite power and authority to own, lease and operate its properties, and to execute and deliver the Transaction Documents to which it is a party and to perform its obligations hereunder and thereunder. All Transaction Documents to which Purchaser is a party have been duly executed and delivered by Purchaser, except such Transaction Documents that are required by the terms hereof to be executed and delivered by Purchaser after the date hereof, in which case such Transaction Documents will be duly executed and delivered by Purchaser at or prior to the Closing, and all Transaction Documents to which Purchaser is a party constitute, or will constitute, as the case may be, the valid and binding agreements of Purchaser, enforceable against Purchaser in accordance with their terms, subject to bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and similar Laws of general applicability relating to or affecting creditors' rights and to general equitable principles.

Section 5.03 No Conflict or Violation. Except to the extent any of the foregoing is not enforceable due to operation of applicable bankruptcy Law or the Sale Order, the execution, delivery and performance of the Transaction Documents and the consummation of the transactions contemplated thereby by Purchaser do not and shall not violate any Law or any provision of the charter or organizational documents of Purchaser.

Section 5.04 Availability of Funds. At the Closing, Purchaser will have cash available which is sufficient to enable it to consummate the transactions contemplated by this Agreement.

Section 5.05 Brokers. Purchaser has not, directly or indirectly, retained or engaged any Person to act as a broker or finder, or in any similar capacity in connection with the transactions contemplated by this Agreement.

Section 5.06 Condition of the Business. Purchaser is an informed and sophisticated participant in the transactions contemplated herein. Purchaser is deemed to have (a) undertaken

such investigation, (b) been provided with full and complete access to, (c) evaluated such documents, information, facilities and assets of Seller and (d) had such access to the management of Seller, in each case, as it deemed necessary in connection with the negotiation, execution, delivery and performance of this Agreement (collectively the “**Due Diligence**”). Notwithstanding anything contained in this Agreement to the contrary, Purchaser acknowledges and agrees that Seller is not making any representations or warranties whatsoever, express or implied, beyond those expressly given by Seller in **Article IV** hereof (as modified by the Schedules hereto), and Purchaser acknowledges and agrees that, except for the representations and warranties contained therein, the Purchased Assets and the Business are being transferred on an “AS IS”, “WHERE IS” basis with all faults.

ARTICLE VI.

COVENANTS OF PURCHASER AND SELLER; OTHER AGREEMENTS

Section 6.01 Consents and Approvals. Seller shall use commercially reasonable efforts (a) to obtain all necessary consents and approvals to consummate the purchase and sale to the Successful Bidder of the Acquired Assets and the assignment of the Assumed Obligations thereto, together with any other necessary consents and approvals to consummate the transactions contemplated hereby, including, without limitation, obtaining the Sale Order, (b) to make all filings, applications, statements and reports to all authorities that are required to be made prior to the Closing Date by or on behalf of Seller or any of their Affiliates pursuant to any applicable Law in connection with this Agreement and the transactions contemplated hereby and (c) to obtain all required consents and approvals (if any) necessary to assign and transfer Seller’s Permits included in the Acquired Assets to Purchaser at Closing, to the extent such permits as assignable and transferrable pursuant to applicable Law. Each of the parties shall give any other notices to, make any other filings with, and use reasonable best efforts to obtain, any other authorizations, consents and approvals of any other Governmental Authority in connection with the matters contemplated by this Agreement.

Section 6.02 Access; Completion of Due Diligence. Seller shall, prior to the Auction (and continue thereafter only in the event Purchaser is the Successful Bidder), (a) provide Purchaser and its representatives and agents, upon reasonable written notice and at reasonable times, access to the facilities, offices, personnel, professionals, customers and suppliers of Seller and to all books, records and lists of Seller relating to the Acquired Assets, including, without limitation, (i) all records relating to customers, suppliers or personnel of Seller (including, without limitation, customer and mailing lists) and (ii) all books, ledgers, files, reports, plans, drawings and operating records of Seller; (b) furnish Purchaser with such financial and operating data and other information with respect to the Business and the Acquired Assets as Purchaser shall reasonably request; (c) permit Purchaser to make such reasonable inspections and copies thereof as Purchaser may require; and (d) facilitate discussions between Purchaser and Seller’s customers, suppliers and other parties with whom Seller conducts business. **Notwithstanding such access or any provision to the contrary in this Agreement, upon execution of this Agreement, Purchaser shall have completed its Due Diligence such that additional Due Diligence that Purchaser deems necessary thereafter shall not qualify as a condition precedent required for Closing as set forth in Article VII hereof, nor shall the failure to obtain such Due Diligence be considered a default by the Seller as set forth in Article IX hereof.**

Section 6.03 Further Assurances.

- (a) Seller will use commercially reasonable efforts (i) to hold the Auction no later than January 26, 2015; and (ii) to obtain the entry of the Sale Order on the Bankruptcy Court's docket as soon as practicable, but no later than five (5) Business Days after the conclusion of the Auction, subject to the availability of the Bankruptcy Court.
- (b) With respect to each Assumed Contract, to the extent required by the Bankruptcy Court, Purchaser shall provide adequate assurance of the future performance of such Assumed Contract by Purchaser. Purchaser shall take such actions as may be reasonably requested by Seller to assist Seller in obtaining the Bankruptcy Court's entry of the Sale Order and any other order of the Bankruptcy Court reasonably necessary to consummate the transactions contemplated by this Agreement.
- (c) From time to time after the Closing and without further consideration, Seller, (i) upon the reasonable request of Purchaser, shall execute and deliver such documents and instruments of conveyance and transfer as Purchaser may reasonably request in order to consummate more effectively the purchase and sale of the Acquired Assets as contemplated hereby and to vest in Purchaser title to the Acquired Assets transferred hereunder, or to otherwise more fully consummate the transactions contemplated by this Agreement, and (ii) subject to the Sale Order, Purchaser, upon the reasonable request of Seller, shall execute and deliver such documents and instruments of contract or lease assumption as Seller may reasonably request in order to confirm Purchaser's Liability for the Assumed Obligations or otherwise to more fully consummate the transactions contemplated by this Agreement.

Section 6.04 Bankruptcy Actions.

- (a) Subject to its obligations as a debtor-in-possession and the orders entered in the Chapter 11 Case, Seller shall promptly make any filings, take all actions and use all commercially reasonable efforts to obtain any and all relief from the Bankruptcy Court that is necessary or appropriate to consummate the transactions contemplated by this Agreement.
- (b) Seller shall conduct an auction process in accordance with the Bidding Procedures and the Bidding Procedures Order.
- (c) Seller shall promptly notify Purchaser if any party appeals, requests a stay of, or seeks reconsideration of the Bidding Procedures Order or Sale Order and provide Purchaser a copy of any related notices, applications or motions within one (1) Business Day after receipt by Seller.

Section 6.05 Auction Procedures. Notwithstanding anything to the contrary in this Agreement, the following terms and conditions shall govern:

- (a) Seller shall commence the Auction on a date that is mutually agreeable to Purchaser and Seller (or, in the absence of such agreement, on a date selected by Seller after consultation with Purchaser), but in no event shall the Auction occur later than January 26, 2015.

- (b) The sale of the Acquired Assets at the Auction shall be subject to higher or better bids, as determined by Seller in its sole discretion. Purchaser shall have the right, in its sole discretion, to raise the price for the Acquired Assets (or to otherwise improve its offer contained in this Agreement) at any time until the conclusion of the Auction. Each such improvement by Purchaser in its bid at the Auction shall constitute an irrevocable and binding amendment to this Agreement.
- (c) The “Bidding Increment” for the initial overbid shall be \$_____ and all subsequent Bidding Increments shall be \$_____.
- (d) Only an entity (“Qualified Bidder”) that has submitted to Seller a qualified bid in accordance with the terms of the Bidding Procedures (a “Qualified Bid”) may participate in the Auction. Upon its execution of an Agreement and its payment of the Deposit, and evidence of ability to close the proposed transaction, satisfactory to the Seller and its advisors, Purchaser shall be deemed to have submitted a Qualified Bid and to be a Qualified Bidder. A bid from any entity other than Purchaser must satisfy the following requirement in order to be a Qualified Bid: (i) it must be delivered to Seller and Purchaser at least two (2) Business Days prior to the date of the Auction (“Bid Deadline”), (ii) it must exceed the Purchase Price by the Bidding Increment, (iii) it must be accompanied by (a) an amount of cash equal to the Deposit and (b) information that will demonstrate to the satisfaction of Seller, in the exercise of its reasonable discretion, that such Qualified Bidder submitting the bid has the financial resources required to pay for the Acquired Assets with cash at the Closing, and (iv) it must be accompanied by a signed, irrevocable asset purchase agreement in substantially the form and substance of this Agreement marked to show all differences between the Qualified Bid and this Agreement and shall not be subject to any diligence or financing contingencies or any other conditions precedent to such Person’s obligation to purchase the Acquired Assets other than as may be included in this Agreement.
- (e) If a Qualified Bidder is designated as the highest or best bidder (the “Successful Bidder”) at the Auction, its cash deposit shall be credited against the purchase price of the Acquired Assets at closing. Upon conclusion of the Auction the Seller shall also designate the Qualified Bidder with the next highest or best bid other than the Successful Bidder (the “Backup Bidder”). Except with respect to the deposits of the Successful Bidder and the Backup Bidder, Seller shall return all deposits within two Business Days following the Auction. The Backup Bidder’s deposit shall be returned within two (2) Business Days of Closing. If the Successful Bidder fails to close within 15 days of the order approving the sale, the Backup Bidder shall become the Successful Bidder.
- (f) If one or more Qualified Bids are submitted by the Bid Deadline, Seller shall promptly transmit a copy of such Qualified Bid to Purchaser as set forth in subsection (d) hereof. If a Qualified Bidder submits one or more bids at the Auction, Purchaser may submit one or more competing bids.
- (g) The Auction shall conclude when Seller designates a Successful Bidder. No bids shall be accepted after the conclusion of the Auction.

- (h) As soon as practicable following conclusion of the Auction and consistent with the Bidding Procedure Order, Seller shall present the Successful Bid and the Backup Bid for approval at the Sale Hearing.
- (i) The Successful Bid shall not be deemed to have been accepted by Seller unless and until it has been confirmed by the Bankruptcy Court.
- (j) Seller and Purchaser shall cooperate in resolving or contesting any objections (including testimony or argument in Bankruptcy Court) to this Agreement, the Bidding Procedures Order or the Sale Order, and Purchaser and Seller shall bear their own costs relating thereto.

Section 6.06 Other Bids. Purchaser acknowledges that pursuant to the Bidding Procedures Order, Seller and the GPB Broker will solicit bids from other prospective purchasers for the sale of the Acquired Assets, on terms and conditions substantially the same in all respects to this Agreement and in accordance with the procedures set forth in the Bidding Procedures Order.

Section 6.07 Disclosure Schedules and Supplements. Seller shall notify Purchaser in writing of, and shall supplement the Schedules to this Agreement with respect to, any matter that (a) arises after the Execution Date and that, if existing or occurring at or prior to the Execution Date, would have been required to be set forth or described in the Schedules to this Agreement or (b) makes it necessary to correct any information in the Schedules to this Agreement or in any representation and warranty of Seller that has been rendered inaccurate thereby. Each such notification and supplementation, to the extent known, shall be made no later than two (2) Business Days after discovery thereof.

Section 6.08 Conduct of Business Prior to Closing. Except as expressly contemplated by or consistent with this Agreement, the Bankruptcy Code, other applicable Law, the Bidding Procedures Order or any ruling or Order of the Bankruptcy Court, or except with Purchaser's prior written consent:

- (a) Seller shall not directly or indirectly sell or otherwise transfer, or offer, agree or commit (in writing or otherwise) to sell or otherwise transfer, any of the Acquired Assets, other than as required in the ordinary course of business;
- (b) Seller shall not enter into any transaction or take any other action that could be reasonably expected to cause or constitute a material breach of any representation or warranty made by Seller in this Agreement;
- (c) Seller shall notify Purchaser promptly in writing of any Material Adverse Effect;
- (d) Seller shall comply in all material respects with all Laws applicable to them or having jurisdiction over the Business or any Acquired Asset;
- (e) Seller shall not enter into any Contract material to Seller (taken as a whole) to which Seller is a party or by which it is bound and that are used in or related to the Business or the Acquired Assets or assume, amend, modify or terminate any Contract to which Seller is a party or by which it is bound and that are used in or related to the Business or the Acquired Assets (including any Assumed Contract);

- (f) Seller shall use commercially reasonable efforts to (1) conduct the Business in substantially the same manner as conducted since the filing of the Chapter 11 Case and only in the course of its affairs as a debtor-in-possession, (2) preserve the existing business organization and management of the Business, (3) keep available the services of the current officers and employees of the Business, to the extent reasonably feasible, (4) maintain the existing relations with customers, distributors, suppliers, creditors, business partners, employees and others having business dealings with the Business, to the extent reasonably feasible, and (5) refrain from changing in any material respect any of their product prices or pricing policies (e.g., discount policies) for any of their products except as shall be necessary to meet competition or customer requirements; and
- (g) Seller shall not take, or agree, commit or offer (in writing or otherwise) to take, any actions in violation of the foregoing.

Section 6.09 Casualty. If, between the Execution Date and the Closing, any of the Acquired Assets shall be destroyed or damaged in whole or in part by fire, earthquake, flood, other casualty or any other cause ("Casualty"), then Purchaser shall have the option to: (a) acquire such Acquired Assets on an "as is" basis and take an assignment from Seller of all insurance proceeds payable to Seller in respect of the Casualty, or (b) in the event that the Casualty would have a Material Adverse Effect, terminate this Agreement and the transactions contemplated hereby.

Section 6.10 Refunds and Remittances. If Seller or any of its Affiliates, on the one hand, or Purchaser or any of its Affiliates, on the other hand, after the Closing Date receives any funds properly belonging to the other party in accordance with the terms of this Agreement, the receiving party will promptly so advise such other party and will promptly deliver such funds to an account or accounts designated in writing by such other party.

ARTICLE VII.

CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

The obligations of Purchaser under this Agreement are subject to satisfaction, or waiver at the option of Purchaser, of the following conditions precedent on or before the Closing Date.

Section 7.01 Representations and Warranties; Covenants.

- (a) Each of the representations and warranties of Seller contained herein that are qualified by materiality must be true and correct in all respects on and as of the Auction and the Closing Date; and each of such representations and warranties not qualified by materiality must be true and correct in all material respects on and as of the Execution Date and on and as of the Closing Date, (except, in each case, for representations and warranties made as of a specified date, which must be true and correct in all respects (or all material respects, as applicable), as of that date).
- (b) Seller shall have performed and complied in all material respects with the obligations and covenants required by this Agreement to be performed or complied with by Seller on or prior to the Closing Date.

Section 7.02 Assumed Contracts. Seller shall have delivered to Purchaser fully executed copies of each of the Assumed Contracts at least two (2) Business Days prior to the Auction.

Section 7.03 Bankruptcy Court Approval. The Sale Order, in form and substance reasonably satisfactory to Purchaser, shall have been entered by the Bankruptcy Court and shall not have been stayed.

Section 7.04 No Proceedings. No action or proceeding, at law or in equity, shall have been commenced by any Person to enjoin, restrict or prohibit the Closing, which has not, by the Closing Date, been dismissed, quashed or permanently stayed without any further right of appeal or right to such leave to appeal.

Section 7.05 No Material Adverse Effect. There shall not have occurred any Material Adverse Effect, nor shall any event or events have occurred that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect.

Section 7.06 Closing Deliveries. Seller shall have delivered to Purchaser all of the closing deliveries set forth in Section 3.02.

Section 7.07 Loss of Assets. The Business shall not have had any loss, theft, damage or destruction of any material portion of the tangible Purchased Assets since the Execution Date, except to the extent such loss, damage or destruction is the result of ordinary wear and tear through the ordinary course of the Business.

ARTICLE VIII.

CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER

The obligations of Seller under this Agreement are subject to satisfaction, or waiver at the option of Seller, of the following conditions precedent on or before the Closing Date.

Section 8.01 Representations and Warranties; Covenants.

- (a) The representations and warranties of Purchaser contained herein that are qualified by materiality must be true and correct in all respects on and as of the Execution Date and on and as of the Closing Date, and each of such representations and warranties not qualified by materiality must be true and correct in all material respects on and as of the Execution Date and on and as of the Closing Date (except, in each case, for representations and warranties made as of a specified date, which must be true and correct in all respects (or all material respects, as applicable), as of that date).
- (b) Purchaser shall have performed and complied in all material respects with the obligations and covenants required by this Agreement to be performed or complied with by Purchaser on or prior to the Closing Date.

Section 8.02 Bankruptcy Court Approval. The Sale Order in form and substance reasonably satisfactory to Seller shall have been entered by the Bankruptcy Court and shall not have been stayed.

Section 8.03 No Proceedings. No action or proceeding, at law or in equity, shall have been commenced by any Person to enjoin, restrict or prohibit the Closing, which has not, by the Closing Date, been dismissed, quashed or permanently stayed without any further right of appeal or right to such lease to appeal.

Section 8.04 Closing Deliveries. Purchaser shall have delivered to Seller the other closing deliveries set forth in Section 3.03.

ARTICLE IX.

TERMINATION; TERMINATION PAYMENT

Section 9.01 Termination. This Agreement may be terminated prior to the Closing as follows:

- (a) by mutual written agreement of Purchaser and Seller;
- (b) by either Purchaser or Seller (provided that the terminating party is not then in material breach of any representation, warranty, covenant or other agreement contained herein), if there shall have been a material breach or misrepresentation of any of the representations or warranties or a material breach of any of the covenants set forth in this Agreement on the part of the other party, which breach would give rise to the failure of the condition set forth in Section 7.01 or Section 8.01, as applicable, and such breach is not cured within ten (10) calendar days following written notice to the party committing such breach or which breach, by its nature, cannot be cured prior to the Closing (with respect to Seller's right to terminate, a "Purchaser Default Termination");
- (c) by Purchaser, if the Auction shall not have commenced by January 26, 2015;
- (d) by Purchaser, if the Sale Order shall not have been entered on the date that is five (5) Business Days following the conclusion of the Auction, subject to the availability of the Bankruptcy Court;
- (e) by Purchaser or Seller if the Bankruptcy Court enters an order approving any proposal (other than by Purchaser or its Affiliates) relating to any merger, consolidation, business combination, transfer, sale or other disposition of 10% or more of the Acquired Assets pursuant to one or more transactions (including, without limitation, by way of a foreclosure or plan of reorganization or liquidation);
- (f) by Purchaser, if (i) prior to the Closing, the Chapter 11 Case shall have been converted to a case under chapter 7 of the Bankruptcy Code or dismissed, or (ii) a bankruptcy trustee is appointed to the Chapter 11 Case; and
- (g) by Purchaser (provided that Purchaser is not then in material breach of any representation, warranty, covenant or other agreement contained herein) if it shall have reasonably determined that one or more conditions set forth in ARTICLE 7 has not been fulfilled or satisfied prior to the date specified in such condition (if such condition specifies a date other than the Closing Date by which such condition must be satisfied).

Section 9.02 Breakup Fee. Only in the event that the Seller closes a sale of substantially all of its assets to a Qualified Bidder other than the Purchaser, (i) Seller shall, after such closing, pay (in cash) to Purchaser an amount equal to \$_____ as a breakup fee (“Breakup Fee”) and (ii) the Escrow Agent shall disburse the Deposit to Purchaser in accordance with Section 2.04. Seller’s obligation to pay the Breakup Fee pursuant to this Section 9.02 shall constitute an administrative expense (which shall be a super-priority administrative expense claim senior to all other administrative expense claims) of Seller under section 364(c) of the Bankruptcy Code.

Section 9.03 Effect of Termination or Breach. If the transactions contemplated hereby are not consummated: (a) this Agreement shall become null and void and of no further force and effect, except (i) for this Section 9.03, (ii) for the provisions of Sections 2.04, 9.02, 11.01, 11.07, and 11.08 hereof, and (iii) that the termination of this Agreement for any cause shall not relieve any party hereto from any Liability which at the time of termination had already accrued to any other party hereto or which thereafter may accrue in respect of any act or omission of such party prior to such termination; and (b) the return of the Deposit, as well as the payment of the Breakup Fee, if required under Section 9.02, shall be the sole and exclusive remedy (as liquidated damages) of Purchaser.

ARTICLE X.

POST-CLOSING TAX MATTERS

Section 10.01 Tax Matters.

- (a) Any sales, use, purchase, transfer, franchise, deed, fixed asset, stamp, documentary stamp, use or other Taxes and recording charges which may be payable by reason of the sale of the Acquired Assets or the assumption of the Assumed Obligations under this Agreement or the transactions contemplated herein shall be borne and timely paid by Purchaser, and such payment by Purchaser shall not affect the Purchase Price or cause the Purchaser Price to be reduced.
- (b) Purchaser shall, within the later of (i) 120 days after the Closing Date or (ii) 30 days prior to the date by which Seller’s federal income Tax Returns must be filed, prepare and deliver to Seller a schedule allocating the Purchase Price among the Acquired Assets (such schedule, the “Allocation”). Purchaser and Seller shall report and file all Tax Returns consistent with the Allocation, and shall take no position contrary thereto or inconsistent therewith (including, without limitation, in any audits or examinations by any Governmental Authority or any other proceeding). Purchaser and Seller shall cooperate in the filing of any forms (including Form 8594 under section 1060 of the Code) with respect to such Allocation, including any amendments to such forms required pursuant to this Agreement with respect to any adjustment to the Purchase Price. Notwithstanding any other provision of this Agreement, the terms and provisions of this Section 10.01(b) shall survive the Closing without limitation; provided, however, that the Allocation shall not affect or control the determination of the value of the Acquired Assets for any purpose of the Chapter 11 Case, including without limitation the determination of the value of Acquired Assets for purposes of section 363 and section 506 of the Bankruptcy Code.

ARTICLE XI. MISCELLANEOUS

Section 11.01 Expenses. Except as may be covered by the Breakup Fee and as expressly provided in this Agreement, each party hereto shall bear its own costs and expenses, including attorneys' fees, with respect to the transactions contemplated hereby.

Section 11.02 Amendment. This Agreement may not be amended, modified or supplemented except by a written instrument signed by Seller and Purchaser.

Section 11.03 Notices. Any notice, request, instruction or other document to be given hereunder by a party hereto shall be in writing and shall be deemed to have been given, (a) when received if given in person, (b) on the date of transmission if sent by facsimile or e-mail, (c) upon delivery, if delivered by a nationally known commercial courier service providing next day delivery service, or (d) upon delivery, or refusal of delivery, if deposited in the U.S. mail, certified or registered mail, return receipt requested, postage prepaid. Unless another address is specified in writing, any notice, request, instruction or other documents given to the parties to this Agreement shall be sent to the addresses indicated below:

To Purchaser: _____

with a copy to: _____

To Seller: GoPicnic Brands, Inc.

Attn:
Tel:
E-mail:

with a copy to: Shaw Fishman Glantz & Towbin, LLC
321 N. Clark St., Suite 800
Chicago, Illinois 60654
Attn: Brian L. Shaw, Esq.
Tel: 312-541-0151
Fax: 312-983-3888
E-mail: bshaw@shawfishman.com

with copy to:

Section 11.04 Waivers. The failure of a party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same. No waiver by a party of any condition or of any breach of any term, covenant, representation or warranty contained in this Agreement shall be effective unless in writing by Seller or Purchaser, as applicable, and no waiver in any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach of other instances or a waiver of any other condition or breach of any other term, covenant, representation or warranty.

Section 11.05 Counterparts and Execution. This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original, all of which together shall constitute one and the same instrument. Any counterpart may be executed by facsimile signature or “.pdf” format signature and such signature shall be deemed an original.

Section 11.06 Headings. The headings preceding the text of the Articles and Sections of this Agreement and the Schedules are for convenience only and shall not be deemed part of this Agreement.

Section 11.07 SUBMISSION TO JURISDICTION. THE PARTIES HEREBY AGREE THAT ANY AND ALL CLAIMS, ACTIONS, CAUSES OF ACTION, SUITS, AND PROCEEDINGS RELATING TO THIS AGREEMENT OR THE OTHER AGREEMENTS CONTEMPLATED HEREIN SHALL BE FILED AND MAINTAINED ONLY IN THE BANKRUPTCY COURT, AND THE PARTIES HEREBY CONSENT TO THE JURISDICTION OF SUCH COURT.

Section 11.08 Governing Law; Jurisdiction. This Agreement shall be construed, performed and enforced in accordance with, and governed by, the Laws of the State of Illinois (without giving effect to the principles of conflicts of Laws thereof), except to the extent that the Laws of such State are superseded by the Bankruptcy Code or other applicable federal Law. For so long as Seller is subject to the jurisdiction of the Bankruptcy Court, the parties irrevocably elect, as the sole judicial forum for the adjudication of any matters arising under or in connection with the Agreement, and consent to the exclusive jurisdiction of, the Bankruptcy Court.

Section 11.09 Binding Nature; Assignment. Upon the approval of this Agreement by the Bankruptcy Court, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without prior written consent of the other parties (which shall not be unreasonably withheld or delayed), except: (a) the rights and interests of Seller hereunder may be assigned to a trustee appointed under Chapter 7 of the Bankruptcy Code; (b) this Agreement may be assigned to any entity appointed as a successor to Seller pursuant to a confirmed Chapter 11 plan; (c) Purchaser may transfer and assign this Agreement and the rights, interest and obligations hereunder to one

or more of its Affiliates; and (d) as otherwise provided in this Agreement. Seller hereby agrees that the terms of this Agreement shall be binding upon any subsequent trustee appointed under Chapter 7 of the Bankruptcy Code.

Section 11.10 No Third Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto and nothing contained herein, express or implied, is intended to confer on any Person other than the parties hereto or their successors and permitted assigns, any rights, remedies, obligations, claims, or causes of action under or by reason of this Agreement.

Section 11.11 Construction. The language used in this Agreement will be deemed to be the language chosen by the parties to this Agreement to express their mutual intent, and no rule of strict construction shall be applied against any party. Any reference to any federal, state, local or foreign Law shall be deemed also to refer to all rules and Laws promulgated thereunder, unless the context requires otherwise.

Section 11.12 Entire Understanding. This Agreement, the Exhibits and the Schedules set forth the entire agreement and understanding of the parties hereto in respect to the transactions contemplated hereby and the Agreement, the Exhibits and the Schedules supersede all prior agreements, arrangements and understandings relating to the subject matter hereof and are not intended to confer upon any other Person any rights or remedies hereunder.

Section 11.13 Closing Actions. All deliveries, payments and other transactions and documents relating to the Closing shall be interdependent, and none shall be effective unless and until all are effective (except to the extent that the party entitled to the benefit thereof has waived satisfaction or performance thereof as a condition precedent to the Closing).

Section 11.14 Conflict Between Transaction Documents. The parties hereto agree and acknowledge that to the extent any terms and provisions of this Agreement are in any way inconsistent with or in conflict with any term, condition or provision of any other Transaction Document referred to herein, this Agreement shall govern and control.

[REMAINDER OF PAGE LEFT INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered on the date first above written.

PURCHASER:

_____, a _____
limited liability company /corporation

By: _____
Name: _____
Its: _____

SELLER:

GOPICNIC BRANDS, INC., a Delaware
corporation

By _____
Name: _____
Title: _____

Schedules:

Schedule 2.02 -- Assumed Contracts
Schedule 4.03 – Equipment
Schedule 4.04(a) – Contracts
Schedule 4.05 – Intellectual Property
Schedule 4.06 – Real Property Leases
Schedule 4.07 – Affiliate Contracts

Exhibits:

Exhibit A – Form of Bill of Sale
Exhibit B – Form of Assignment and Assumption Agreement

Exhibit B

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Chapter 11
)	
GOPICNIC BRANDS, INC.,)	Hon. Jacqueline P. Cox
)	
Debtor.)	Case No. 14-43382

ORDER: (A) APPROVING THE SALE PROCESS AND BIDDING PROCEDURES WITH RESPECT TO THE SALE OF SUBSTANTIALLY ALL OF THE ASSETS OF THE ESTATE; (B) SCHEDULING A PUBLIC AUCTION AND AUTHORIZING THE SALE OF THE ASSETS OF THE DEBTOR FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS; AND (C) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Upon the motion (the “**Sale Motion**”) of GoPicnic Brands, Inc., the debtor and debtor-in-possession (the “**Debtor**”) in the above-captioned chapter 11 case (the “**Chapter 11 Case**”), for the entry of orders approving: (i) bidding procedures in connection with a potential sale of substantially all of its assets at auction; (ii) the sale of substantially all of the Debtor’s assets free and clear of liens, claims and interests; (iii) the assumption and assignment of related executory contracts and unexpired leases; and (iv) limited notice with respect thereto (the “**Sale Motion**”); it appearing that the relief requested in the Sale Motion is in the best interest of the Debtor’s estate and its creditors; this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; the Sale Motion and the opportunity to object being a core proceeding pursuant to 28 U.S.C. § 157; adequate notice of the Sale Motion having been given to all parties entitled thereto; and it appearing that no other notice need be given or is required under the circumstances; and after due deliberation and sufficient cause appearing therefor;

THE COURT HEREBY FINDS AND DETERMINES THAT¹:

A. The Debtor has articulated good and sufficient reasons for approval of the Bidding Procedures, and the Bidding Procedures are reasonable and appropriate to maximize the return on the Acquired Assets.²

NOW, THEREFORE, IT IS HEREBY ORDERED, EFFECTIVE IMMEDIATELY:

1. The Sale Motion is hereby granted in part and to the limited extent provided herein.
2. The Bidding Procedures set forth on Exhibit B attached and made a part hereof, including all deadlines, set forth therein (the “**Approved Bidding Procedures**”), are approved in all respects.
3. All persons or entities who submit a Qualified Bid for any of the Acquired Assets shall be deemed to have read and understood the terms and conditions of the Approved Bidding Procedures and shall comply with and be bound by such Approved Bidding Procedures.
4. All objections to the Bidding Procedures that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby denied and overruled.
5. The notice of hearing and auction dates for the sale (the “**Asset Sale**”) of the Acquired Assets and related deadlines, attached hereto as Exhibit C (the “**Sale Notice**”) is hereby approved and shall be served by the Debtor as provided further herein.
6. An auction (the “**Auction**”) for the Acquired Assets shall take place on January _____ at _____ (Central) at the offices of Shaw Fishman Glantz & Towbin LLC, 321 N. Clark St.,

¹ Findings of fact shall be constructed as conclusions of law, and conclusions of law shall be construed as findings of fact when appropriate.

² All capitalized terms not otherwise defined herein shall have the same meaning ascribed to such terms in the Sale Motion.

Ste. 800, Chicago, IL 60654, or such later time or other places as the Debtor shall notify all Qualified Bidders.

7. The Court shall conduct a hearing to consider the approval of the Asset Sale and the additional relief requested in the Sale Motion (the “**Sale Hearing**”), on January __, 2015, at ____ at the United States Bankruptcy Court, Northern District of Illinois, Eastern Division, in Courtroom 644 in the Dirksen Federal Building, 219 S. Dearborn Street, Chicago, Illinois, or such later time or other place as the Debtor shall notify all Qualified Bidders.

8. The initial deadline for the submission of the Qualified Bids (the “**Bid Deadline**”) shall be on or before 5:00 p.m. prevailing Central Standard Time on January __, 2015.

9. All written objections to the sale of the Acquired Assets must be filed on or before 5:00 p.m. prevailing Central Standard Time on January __, 2015 (the “**Sale Objection Deadline**”), with the Clerk of the United States Bankruptcy Court, Northern District of Illinois, Eastern Division, Dirksen Federal Building 219 S. Dearborn Street, Room 713, Chicago, Illinois, with a copy served on or before the Sale Objection Deadline upon counsel for the Debtor, Brian L. Shaw, Shaw Fishman Glantz & Towbin LLC, 321 N. Clark St., Ste. 800, Chicago IL 60654.

10. At the Auction, the Debtor shall be entitled and is hereby authorized, subject to further order of this Court, to offer to sell the Sale Assets free and clear of all liens, claims, encumbrances and interests consistent with the terms and conditions set forth in the Sale Motion and the Approved Bidding Procedures, with all such liens, claims, encumbrances, and interests to attach to the proceeds of the Sale Assets with the same extent, validity, priority, force and effect as applied against the Sale Assets.

11. On or before December __, 2014 the Debtor will serve a notice substantially in the form attached hereto as Exhibit D (the “**Assumption Notice**”) and serve same on each non-debtor

counter-party to all executory contracts and unexpired leases which the Debtor may elect to assume and assign in conjunction with the Asset Sale. The Assumption Notice shall state the Cure Amounts that the Debtor believes are necessary to assume such contracts and leases pursuant to section 365 of the Bankruptcy Code and shall notify the non-debtor party that such party's contract or lease may be assumed and assigned to a purchaser of the Sale Assets to be identified at the conclusion of the Auction (the **"Proposed Assumption/Assignment"**).

12. The Assumption Notice shall set the same date as the Sale Objection Deadline as the deadline by which all non-debtor parties shall file written objections to the Cure Amount or the Proposed Assumption/Assignment. The Court shall conduct a hearing at the time of the Sale Hearing to resolve any and all disputes with respect to the Cure Amount and to consider the Proposed Assumption/Assignment.

13. Pursuant to Bankruptcy Rules 2002(a) and 6004, the Debtor be and is hereby ordered and directed to serve a copy of the Sale Notice and the Approved Bidding Procedures to: (i) the Lenders and their counsel, (ii) counsel to the United States Trustee; (iii) all entities reasonably known by the Debtor to have an Interest in the Assets to be sold; (iv) the creditors identified on the Debtor's list of creditors holding the twenty largest unsecured claims; (v) all parties to Executory Contracts and Unexpired Leases, provided, however, that notice to such entities should be permitted in accordance with the specific procedures outlined herein and service shall be deemed sufficient if to their counsel or their designees where an entry of appearance has been made; and (vi) all parties that have requested notice in this Case, by regular mail no later than the ____ day preceding the Sale Hearing, and such manner of notice is hereby found to be adequate and sufficient notice of the relief sought in the Sale Motion, including the sale of the Sale Assets and the assumption and assignment of Executory Contracts and Unexpired Leases.

14. Any Notice Recipient may obtain a copy of the APA, the Sale Motion and any Exhibits attached thereto upon request directed to counsel for the Debtor, Brian L. Shaw, Shaw Fishman Glantz & Towbin LLC, 321 N. Clark St., Ste. 800, Chicago, Illinois 60654 (312-980-3864) (bshaw@shawfishman.com).

Dated:

ENTER:

UNITED STATES BANKRUPTCY JUDGE

This order prepared by:
David R. Doyle
Shaw Fishman Glantz & Towbin LLC
321 N. Clark St., Ste. 800
Chicago, IL 60654
Tel.: 312-980-3864

EXHIBIT C TO ORDER

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Chapter 11
)	
GOPICNIC BRANDS, INC.,)	Hon. Jacqueline P. Cox
)	
Debtor.)	Case No. 14-43382

**NOTICE OF SALE OF SUBSTANTIALLY ALL OF THE ASSETS
OF GOPICNIC BRANDS, INC.**

TO: THE OFFICE OF THE UNITED STATES TRUSTEE, THE CREDITORS OF THIS ESTATE, AND OTHER PARTIES IN INTEREST:

PLEASE TAKE NOTICE AS FOLLOWS:

1. **Chapter 11 Filing** - On December 3, 2014, GoPicnic Brands, Inc. (“**Debtor**”) filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code, commencing the case captioned above (the “**Chapter 11 Case**”). Since then, the Debtor has remained in possession of its assets and has continued to operate its business as a debtor in possession in accordance with 11 U.S.C. §§ 1107 and 1108. The Debtor has all of the rights and powers of a trustee in bankruptcy pursuant to 11 U.S.C. § 1107(a).

2. **Sale Motion** - On December 12, 2014, the Debtor filed a motion for the entry of orders authorizing (i) bidding procedures in connection with a potential sale of substantially all of its assets at auction; (ii) the sale of substantially all of the Debtor’s assets free and clear of liens, claims and interests; (iii) the assumption and assignment of related executory contracts and unexpired leases; and (iv) limited notice with respect thereto (the “**Sale Motion**”).

3. **Entry of Sales Procedure Order** - On December 18, 2014, the Bankruptcy Court entered that certain Order (“**Bidding Procedures Order**”) granting the Sale Motion in part and thereby establishing a sale process and Auction to be conducted in accordance with the bidding procedures attached hereto as Exhibit A.

4. **Auction** - Under the Bidding Procedures Order, the Debtor is authorized to conduct a public auction (the “**Auction**”) of substantially all of the assets of the estate (the “**Acquired Assets**”) on January ____, 2014 at ____m. (Central) at the offices of Shaw Fishman Glantz & Towbin LLC, 321 N. Clark St., Ste. 800, Chicago, IL 60654, or at such later time or other place as the Debtor shall advise all Qualified Bidders. The Acquired Assets shall be sold free and clear of any and all liens, claims, encumbrances and interests, with any and all validly determined liens, claims, interests or encumbrances to attach to the proceeds of the sale (the “**Asset Sale**”).

7. **Sale Hearing** - The Court will conduct a hearing to consider the approval of the Asset Sale on January _____.m. at the United States Bankruptcy Court, Northern District of Illinois, Eastern Division, in Courtroom 680 in the Dirksen Federal Building, 219 S. Dearborn Street, Chicago, Illinois (the “**Sale Hearing**”). The Sale Hearing may be adjourned, continued or rescheduled without further notice by an announcement of the adjourned date at the Sale Hearing. At the Sale Hearing, the Debtor will request approval of the sale of the Acquired Assets to the Bidder submitting the Successful Bid pursuant to the entry of a final and non-appealable order approving the sale of the Acquired Assets (the “**Sale Order**”), and approval of the Back-Up Bidder.

8. **Objections** - Any objection to the sale of the Acquired Assets must be filed in writing on or before 5:00 p.m. prevailing Central Standard Time on January __, 2014 (the “**Sale Objection Deadline**”), with the Clerk of the United States Bankruptcy Court, Northern District of Illinois, Eastern Division, Dirksen Federal Building 219 S. Dearborn Street, Room 713, Chicago, Illinois, with a copy served on or before the Sale Objection Deadline upon counsel for the Debtor, Brian L. Shaw, Shaw Fishman Glantz & Towbin LLC, 321 N. Clark St., Ste. 800, Chicago IL 60654. (the “**Sale Objection Deadline**”).

9. **Copies** - Copies of the Sale Motion and the APA will be made available upon request directed to counsel for the Debtor at the address noted below.

Respectfully submitted,

Dated: December __, 2014

GOPICNIC BRANDS, INC.

By ____/s/_____
One of its proposed attorneys

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Proposed Counsel for Debtor

EXHIBIT C

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

In re:)	Chapter 11
)	
GOPICNIC BRANDS, INC.,)	Hon. Jacqueline P. Cox
)	
Debtor.)	Case No. 14-43382

GOPICNIC BRANDS, INC. – Bidding and Sale Procedures

These Bidding Procedures describe the process by which the above-captioned debtor and debtor-in-possession (the “**Debtor**”) is authorized to conduct a sale by an open-cry auction (the “**Auction**”) of substantially all of its assets. These Bidding Procedures were approved by order dated _____ (the “**Bidding Procedures Order**”) of the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division (the “**Court**”) pursuant to that certain GoPicnic Brands, Inc.’s Motion for Entry of Orders (A) Approving Bidding Procedures and Auction Notice in Connection with Sale of Substantially All of Its Assets; (B) Approving Such Sale; and (C) Granting Related Relief (the “**Sale Motion**”)¹. Copies of the Sale Motion will be made available upon request.

(1) Assets to be Sold

The Debtor proposes these Bidding Procedures under which prospective bidders, if any, may qualify for and participate in the Auction, thereby competing to make the highest and best offer(s) for substantially all of the Debtor’s assets, but in all events expressly excluding (a) avoidance actions under Chapter 5 of the Bankruptcy Code and (b) any and all claims and causes of action of any kind or nature whatsoever of Debtor against Wells Fargo and its affiliates (collectively, the “**Acquired Assets**”). The sale of the Acquired Assets shall be on an “AS IS, WHERE IS” and “WITH ALL FAULTS” basis and without any representations or warranties, express, implied or statutory, written or oral of any kind, nature or description whatsoever.

(2) Bidding Procedures Notice

As soon as practicable after the date on which the Court enters the Bidding Procedures Order, the Debtor will serve by first-class mail the Bidding Procedures on i) the Lenders and their counsel; (ii) counsel to the United States Trustee; (iii) all entities reasonably known by the Debtor to have an Interest in the Assets to be sold; (iv) the creditors identified on the Debtor’s list of creditors holding the twenty largest unsecured claims; (v) all parties to Executory Contracts and

¹ Capitalized terms not defined herein shall have the same meaning ascribed in the Sale Motion

Unexpired Leases; and (vi) all other entities that have filed requests for notice pursuant to Bankruptcy Rule 2002.

(3) Confidentiality Agreement and Selection of Bidders

Potential bidders (the “**Bidders**”) for the Acquired Assets shall be required to complete and execute a confidentiality agreement. When making a bid for the Acquired Assets (a “**Bid**”), all such bidders must abide by the various Bidding Procedures outlined herein. Only those Bidders submitting Bids in material compliance (in the Debtor’s sole discretion) with the Bidding Procedures (each a “**Qualified Bid**”) will be eligible for consideration at the Auction (each a “**Qualified Bidder**”). The Debtor shall require Bidders to present satisfactory financial qualifications before such Bidder may be deemed to have submitted a Qualified Bid.

(4) Due Diligence

Upon execution of a confidentiality agreement, and submission of their financial qualifications, the Debtor will provide Bidders with reasonable access to the Debtor’s books, records, and all executives, a perimeter tour of its facility, and other information reasonably requested for the purpose of conducting due diligence prior to the Auction. By participation in the Auction, all Bidders are deemed to acknowledge that they have had sufficient and reasonable access to the Debtor’s books, records, and executives for the purposes of conducting due diligence and having the opportunity to conduct such due diligence at the time of submission of its Qualified Bid.

Only a Qualified Bidder shall be allowed to conduct a production tour of the Debtor’s facilities. A production tour of the facilities for Qualified Bidders will be conducted on a date to be announced after the deadline for bid submissions set forth in paragraph 5(a) below, and at such other dates and times to be determined by the Debtor.

Each Qualified Bidder shall provide to the Debtor, within two (2) business days after the Debtor’s request therefor, any information reasonably required by the Debtor in connection with its evaluation of such Qualified Bid.

(5) Submission of Bids

To become a Qualified Bidder with a Qualified Bid eligible to participate in the Auction, a Bidder submitting a Bid must, among other things, comply with all of the following provisions of this section:

- (a) Any Bidder desiring to qualify for participation in the Auction must deliver its Bid in writing to: (i) GoPicnic Brands, Inc., c/o Brian L. Shaw, Shaw Fishman Glantz & Towbin LLC, 321 N. Clark St., Ste. 800, Chicago, IL 60657; (ii) Wells Fargo Bank, National Association, c/o Zachary J. Garrett, Goldberg Kohn Ltd., 55 East Monroe St., Ste. 3300, Chicago, IL 60603; and (iii) _____; such that the Bid is actually received by each of the foregoing persons not later than 5:00 p.m. prevailing Central Standard Time,

on or before January __, 2015. Bids received after this deadline may be rejected in the sole discretion of the Debtor after consultation with Wells Fargo.

(b) A Qualified Bid must include: (i) an executed Asset Purchase Agreement (“**APA**”) substantially similar to the APA appended to the Sale Motion; and (ii) a redlined version of the APA marked to show changes thereto.

(c) A Qualified Bid must include an earnest money deposit equal to at least five percent (5%) of the total amount of such bid in immediately available U.S. funds (a “**Deposit**”). Prior to the Bid Deadline, the Deposit is to be delivered to the Debtor and shall be maintained in an interest-bearing account unless impracticable, and shall be subject to the jurisdiction of the Court. Such Deposit shall be forfeited by a Bidder who submits the Successful Bid, but fails to close in breach of the applicable APA.

(d) Each Qualified Bid must (i) represent that the Bidder is prepared to immediately initiate all actions necessary to obtain all other applicable regulatory approvals, if any, for the Bid; and (ii) provide its best estimate of the time within which such approvals will be obtained.

(e) Each Qualified Bid must (unless otherwise determined by the Debtor after consultation with Wells Fargo) (i) remain irrevocable through the “Sale Hearing,” as hereinafter defined; (ii) clearly state that all consideration to be paid at closing shall be cash; (iii) not contain any financing contingency, or be subject to any further due diligence review, board approval, or the receipt of any non-governmental consents; (iv) give sufficient indicia that the Bidder or its representative is legally empowered, by power of attorney or otherwise, and financially capable, to both bid on behalf of the Bidder and also to complete and sign, on behalf of the Bidder, a binding and enforceable APA, including as such agreement may be amended at the Auction; (v) identify each and every executory contract or unexpired lease, the assumption and assignment of which is a condition to closing, and provide evidence of the Bidder’s ability to comply with section 365 of the Bankruptcy Code; (vi) be for all of the Acquired Assets or detail the specific Acquired Assets to which the Bid applies; (vii) not request or entitle the Bidder to any termination or break-up fee, expense reimbursement or similar type of payment or deduction; and (viii) provide for an effective closing date on or before February __, 2015.

(f) Each Qualified Bid must disclose (i) the identity of the Bidder and each entity participating in connection with such Bid, and the complete terms of such participation, and (ii) any other agreements, term sheets or other written or oral understandings between the Bidder and its affiliates, on one hand, and any insider (as defined in 11 U.S.C. § 101(31)) of the Debtor, on the other hand.

(g) Each Qualified Bid must provide either bank statements or letters demonstrating available liquid assets or available financing to support its Bid, and/or any other financial disclosures and information that may be required by the Debtor.

(h) Any party seeking to make a Qualified Bid through a credit bid, in whole or in part, pursuant to rights provided under Section 363(k) of the Bankruptcy Code, must clearly indicate the amount of such bid which will constitute its credit bid and submit support for such amount by providing a copy of a Proof of Claim actually filed in the above-captioned chapter 11 case of the Debtor (the "**Chapter 11 Case**").

(i) Notwithstanding anything herein to the contrary, and without regard to any of the requirements or conditions set forth herein relating to the qualification of Qualified Bidders or Qualified Bids, Wells Fargo is and will be a Qualified Bidder for all purposes and may credit bid all or any portion of the Prepetition Debt under Bankruptcy Code Section 363(k), which credit bid will in all events constitute a Qualified Bid hereunder.

(6) Auction and Selection of a Successful Bid and a Backup Bid

The Auction will be held on January __, 2015, at _____ (Central) at the offices of Shaw Fishman Glantz & Towbin LLC, 321 N. Clark St., Ste. 800, Chicago, IL 60654, or at such later time or other place as the Debtor shall advise all Qualified Bidders. The Auction shall be conducted in the presence of a certified court reporter, who shall transcribe the proceedings for purposes of creating and preserving a record of the Auction.

The Debtor will not consider bids other than Qualified Bids as described herein. The only persons who will be permitted to bid at the Auction are Wells Fargo and other Qualified Bidder(s). The Qualified Bidder(s) must appear in person at the Auction or through a duly-authorized representative. If multiple Qualified Bids are received, each Qualified Bidder shall have the right to continue to improve its Qualified Bid at the Auction. Prior to the Auction, the Debtor shall evaluate each Qualified Bid that it has received and shall, in consultation with Wells Fargo, select the bid that it determines in good faith to be the highest and best offer(s) and, as of the commencement of the Auction, this will constitute a "Superior Proposal" for the Acquired Assets. The Debtor shall notify each party submitting a Qualified Bid of the Qualified Bid considered by the Debtor to be the Superior Proposal not less than 24 hours prior to the commencement of the Auction, and notify Wells Fargo and each of the other Qualified Bidders of the terms and conditions of such Superior Proposal.

Any Qualified Bidder may be required to confirm that it has not engaged in any collusion with respect to the Bidding Procedures or the Sale.

The identity of each Qualified Bidder at the Auction and the material terms of its Qualified Bid will be fully disclosed to all other Qualified Bidders at the Auction.

Bidding will commence with the announcement of the highest Qualified Bidder and will proceed with subsequent overbids in an amount to be determined by the Debtor in consultation with Wells Fargo. By participating at the Auction each Qualified Bidder agrees that each bid made shall serve as a "Backup Bid" (as defined below) at the price of such bid.

The Qualified Bid determined by the Debtor in its sole discretion after consultation with Wells Fargo to be the highest and best offer for the Acquired Assets at the Auction (the

“Successful Bid”) may be submitted by the Debtor for approval by the Court. The Debtor will also determine in its sole discretion after consultation with Wells Fargo the bidder of the next highest and best Qualified Bid (the **“Backup Bid”**) for such Acquired Assets.

In determining the Successful Bid, the Debtor will consult with Wells Fargo and consider all relevant factors, and it may reject at any time before entry of an order of the Bankruptcy Court approving a Qualified Bid, any bid that, in the Debtor’s sole discretion after consultation with Wells Fargo, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of sale, or (iii) contrary to the best interests of the Debtor, its estate, and its creditors. In addition, the Debtor shall have the right in the exercise of its fiduciary duties, to adopt such other rules relating to these Bidding Procedures and to conduct the Auction that, in its business judgment, will better promote the goals of the bidding process, the Bankruptcy Code and the Bidding Procedures Order.

At or before the Sale Hearing, the Debtor may, with the consent of Wells Fargo, which consent shall not be unreasonably withheld, waive or impose such other terms and conditions of sale as it may determine to be in the best interests of the Debtor’s estate, its creditors and other parties in interest. Such consent shall not be necessary if such waiver or such other terms and conditions do not impact Wells Fargo.

(7) Sale Hearing

Any Qualified Bid that is accepted by the Debtor, after consultation with Wells Fargo, at the Auction as the Successful Bid or the Backup Bid will be subject to approval by the Court. Please be advised that the hearing to approve the Successful Bid (the **“Sale Hearing”**) will be held before the Honorable Jacqueline P. Cox, United States Bankruptcy Judge, in the United States Bankruptcy Court, Northern District of Illinois, Eastern Division, in Courtroom 680 in the Dirksen Federal Building, 219 S. Dearborn Street, Chicago, Illinois on January 2015 at _____ .m.

(8) Return of Deposits

Except as otherwise set forth herein, as soon as practicable after the conclusion of the Sale Hearing, the Debtor shall return to each unsuccessful Qualified Bidder its Deposit, together with any interest paid thereon to the extent that such Deposit was held in a separate interest bearing account. The Deposit of the Qualified Bidder who submits the Backup Bid shall be held until the later of the Closing of the Successful Bid or the date on which the Backup Bid may become the Successful Bid, and upon such event the Deposit shall be applied at Closing.

(9) Failure to Close the Purchase of the Acquired Assets

If any Bidder making the Successful Bid fails to close the purchase of any of the Acquired Assets when the Debtor has not breached the APA, such party’s Deposit, together with any interest accrued thereon, shall be forfeited to and retained irrevocably by the Debtor. In such circumstances, the Backup Bidder shall be obligated to hold open its best Qualified Bid for fifteen (15) calendar days after entry of the Sale Order, and be subject to the Bidding Procedures as if such bidder were originally determined to have submitted the Successful Bid.

(10) Closing

Following approval by the Court of the Successful Bid, the Debtor shall use its commercially reasonable efforts to consummate the Court-approved transaction within two (2) business days after the Auction or as otherwise set forth in the applicable APA, but in all events not later than February [___], 2015.

Each Deposit shall be applied by the Debtor against the purchase price to be paid by the Qualified Bidder that submitted the Successful Bid at the closing of the transaction approved by the Court.

(11) Miscellaneous

Nothing contained in the foregoing or in the Bidding Procedures Order shall create any rights in any other person or bidder (including, without limitation, rights as third party beneficiaries or otherwise) other than the rights in favor of the Debtor and Wells Fargo and any rights expressly granted to the Successful Bidder under the Bidding Procedures Order.

The terms and conditions of these Bidding Procedures are subject in all respects to the terms and conditions of any order entered by the Court from time to time in the Chapter 11 Case relating to the Debtor's use of cash collateral.

These Bidding Procedures may not be modified except with the prior written consent of Wells Fargo or upon further order of the Court.

Except as provided in the Bidding Procedures Order and Bidding Procedures, the Court shall retain jurisdiction to hear and determine all matters arising from or relating to the implementation of the Bidding Procedures Order.