

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM500498

|  |                                     |                            |  |
|--|-------------------------------------|----------------------------|--|
| <b>SUBMISSION TYPE:</b>  | NEW ASSIGNMENT                      |                            |  |
| <b>NATURE OF CONVEYANCE:</b>   | RELEASE OF SECURITY INTEREST        |                            |  |
| <b>CONVEYING PARTY DATA</b>  |                                     |                            |  |
| <b>Name</b>  | <b>Formerly</b>                     | <b>Execution Date</b>      | <b>Entity Type</b>                                 |
| Wells Fargo, National Corporation as successor to General Electric Capital Corporation |                                     | 10/23/2018                 | National Banking Association: SOUTH DAKOTA         |
| KPS Special Situations Fund III (A), L.P.  |                                     | 10/23/2018                 | Exempted Limited Partnership (Elp): CAYMAN ISLANDS |
| <b>RECEIVING PARTY DATA</b>  |                                     |                            |  |
| <b>Name:</b>   | Heritage Home Group LLC             |                            |  |
| <b>Street Address:</b>   | 1925 Eastchester Drive              |                            |  |
| <b>City:</b>   | High Point                          |                            |  |
| <b>State/Country:</b>  | NORTH CAROLINA                      |                            |  |
| <b>Postal Code:</b>  | 27265                               |                            |  |
| <b>Entity Type:</b>  | Limited Liability Company: DELAWARE |                            |  |
| <b>Name:</b>   | HHG Global Designs LLC              |                            |  |
| <b>Street Address:</b>   | 1925 Eastchester Drive              |                            |  |
| <b>City:</b>   | High Point                          |                            |  |
| <b>State/Country:</b>  | NORTH CAROLINA                      |                            |  |
| <b>Postal Code:</b>  | 27265                               |                            |  |
| <b>Entity Type:</b>  | Limited Liability Company: DELAWARE |                            |  |
| <b>PROPERTY NUMBERS Total: 36</b>  |                                     |                            |  |
| <b>Property Type</b>   | <b>Number</b>                       | <b>Word Mark</b>           |  |
| <b>Serial Number:</b>  | 76295839                            | CHANGEABLES                |  |
| <b>Serial Number:</b>  | 75484928                            | COLOR CAFE                 |  |
| <b>Serial Number:</b>  | 86038000                            | MARKETPLACE BY THOMASVILLE |  |
| <b>Serial Number:</b>  | 76269103                            | RENOVATIONS                |  |
| <b>Serial Number:</b>  | 85226342                            | SPECIAL ADDITIONS          |  |
| <b>Serial Number:</b>  | 77871950                            | STYLE@WORK BY THOMASVILLE  |  |
| <b>Serial Number:</b>  | 85129949                            | THOMASVILLE                |  |
| <b>Serial Number:</b>  | 78718083                            | THOMASVILLE                |  |
| <b>Serial Number:</b>  | 85129991                            | THOMASVILLE                |  |
| <b>Serial Number:</b>  | 78718085                            | THOMASVILLE                |  |
| <b>TRADEMARK</b>   |                                     |                            |  |

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| Property Type        | Number   | Word Mark                          |
|----------------------|----------|------------------------------------|
| Serial Number:       | 73216776 | THOMASVILLE                        |
| Serial Number:       | 85241661 | THOMASVILLE                        |
| Serial Number:       | 76071441 | THOMASVILLE CABINETRY              |
| Serial Number:       | 78718079 | THOMASVILLE FLOORING               |
| Serial Number:       | 78718087 | THOMASVILLE LIGHTING               |
| Serial Number:       | 85129968 | THOMASVILLE                        |
| Serial Number:       | 85389687 | VIA THOMASVILLE                    |
| Serial Number:       | 85204679 | VIA THOMASVILLE                    |
| Serial Number:       | 75437181 | WORKSTYLES                         |
| Serial Number:       | 72350264 | CIRCA                              |
| Serial Number:       | 72350262 | FOLIO                              |
| Serial Number:       | 78312322 | HENREDON                           |
| Serial Number:       | 77861573 | HENREDON                           |
| Serial Number:       | 73012845 | DREXEL                             |
| Serial Number:       | 72386135 | DREXEL                             |
| Serial Number:       | 85396821 | DREXEL HERITAGE                    |
| Registration Number: | 2777319  | ATTIC HEIRLOOMS                    |
| Registration Number: | 1319405  | BROYHILL                           |
| Registration Number: | 1446458  | BROYHILL                           |
| Registration Number: | 0658809  | BROYHILL                           |
| Registration Number: | 4422791  | BROYHILL                           |
| Registration Number: | 4240270  | BROYHILL                           |
| Registration Number: | 2509955  | BROYHILL LEATHER                   |
| Registration Number: | 1761401  |                                    |
| Registration Number: | 4422790  |                                    |
| Serial Number:       | 73646308 | THE GOOD NIGHT SLEEPER BY BROYHILL |

**CORRESPONDENCE DATA**

**Fax Number:** 2124796275

*Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.*

**Phone:** 212.479.6436

**Email:** mnair@cooley.com

**Correspondent Name:** Mihaela Nair/Senior Trademark Paralegal

**Address Line 1:** 1114 Avenue of the Americas

**Address Line 2:** Cooley LLP

**Address Line 4:** New York, NEW YORK 10036

**ATTORNEY DOCKET NUMBER:** 335116.201

**NAME OF SUBMITTER:** Mihaela Nair

|   |                |
|---|----------------|
| <b>SIGNATURE:</b>   | /Mihaela Nair/ |
| <b>DATE SIGNED:</b>   | 12/03/2018     |
| <b>Total Attachments: 38</b>  |                |
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IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11
  
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HERITAGE HOME GROUP LLC, et al., : Case No. 18-11736 (KG)
  
:
  
Debtors.<sup>1</sup> : Jointly Administered
  
:
  
:
  
-----X RE: Docket Nos. 217 & 322

**ORDER (I) APPROVING THE ASSET PURCHASE AGREEMENT BETWEEN THE DEBTORS AND THE PURCHASER, (II) APPROVING THE SALE OF THE ACQUIRED ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, AND ENCUMBRANCES, (III) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (IV) GRANTING RELATED RELIEF**

Upon consideration of the *Motion for Orders: (I) (A) Approving Bidding Procedures for the Sale Of Debtors' Intellectual Property and Other Assets Related to the Broyhill, Thomasville, Drexel, Drexel Heritage, and Henredon Brands; (B) Approving the Form and Manner of Notices Related Thereto; (C) Approving a Form of Asset Purchase Agreement, Including Bid Protections; (D) Scheduling Dates to Conduct Auction and Hearing to Consider Final Approval of Sale, Including Treatment of Executory Contracts and Unexpired Leases; (II) (A) Approving the Sale of the Acquired Assets and (B) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief [D.I. 217] (the "Sale Motion")* filed by the above-captioned debtors and debtors in possession (collectively, the "**Debtors**"), which requests an order (this "**Sale Order**") that, among other things: (a) authorizes and approves that certain Asset Purchase Agreement (including all related exhibits

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each debtor's tax identification number, as applicable, are: Heritage Home Group LLC (9506); HH Global II B.V. (0165); HH Group Holdings US, Inc. (7206); HHG Real Property LLC (3221); and HHG Global Designs LLC (1150). The Debtors' corporate headquarters is located at 1925 Eastchester Drive, High Point, North Carolina 27265.



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and schedules, the “**Agreement**”)<sup>2</sup> (a complete copy of the Agreement was attached as Exhibit 1 to Exhibit A of the Sale Motion filed at D.I. 217 subject to the amendment attached hereto as **Exhibit A**) among the Debtors and HHG IPCo., LLC (“**Purchaser**”), which provides for, effective as of the Closing of the Sale on the Closing Date, Debtors’ sale, assignment, transfer, conveyance and delivery of the Debtors’ intellectual property assets related to the Debtors’ business of designing, manufacturing, sourcing, licensing, and selling home furnishings under the Broyhill, Thomasville, Drexel, Drexel Heritage, and Henredon brands (collectively, the “**Assets**”) to Purchaser free and clear of all Interests (defined below) except the Permitted Encumbrances (the “**Sale**”); and (b) authorizes and approves the assumption and assignment of certain unexpired leases and executory contracts referenced in the Agreement (the “**Assigned Contracts**”), or in one or more subsequent filings authorized by an order of this Court; it appearing that the relief requested in the Sale Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; adequate notice of the Sale Motion and opportunity for objection having been given; adequate notice with respect to the assumption and assignment of the Assigned Contracts having been given; this Court having reviewed and considered the Sale Motion and any objections thereto; this Court having heard statements of counsel and the evidence presented in support of the relief requested by the Debtors in the Sale Motion at a hearing before this Court (the “**Sale Hearing**”); upon the full record of the Chapter 11 Cases; it appearing that no other notice need be given; it further appearing that the legal and factual bases set forth in the Sale Motion and the record made at the Sale Hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause therefor:

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<sup>2</sup> Except as otherwise defined herein, or where reference is made to a definition in the Sale Motion, all capitalized terms shall have the meanings ascribed to them in the Agreement.

THIS COURT FINDS AND DETERMINES THAT:

**Jurisdiction, Final Order, and Statutory Predicates**

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

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, date February 29, 2012.

C. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b) (2). The Debtors have confirmed their consent, pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**"), to the entry of a final order by this Court in connection with the Sale Motion, to the extent that it is later determined that this Court, absent the consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

D. Venue is proper in this District pursuant to 28 U.S.C. § 1408.

E. The bases for the relief requested in the Sale Motion are sections 105(a), 363, 365, 503(b), and 507(a)(2) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "**Bankruptcy Code**"), Bankruptcy Rules 2002, 6004, and 6006(a), and Local Rules 2002-1, 6004-1, and 9013-1(m).

F. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Sale Order, and waives any stay and expressly directs entry of judgment as set forth herein.

**Retention of Jurisdiction**

G. It is necessary and appropriate for this Court to retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Sale Order and the Agreement, including its related documents, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith to which the Debtors are a party or which has been assigned by the Debtors to Purchaser, and to adjudicate, if necessary, any and all disputes involving the Debtors concerning or relating in any way to, or affecting, the Sale or the transactions contemplated in the Agreement, and related documents.

**Corporate Authority; Consents and Approvals**

H. The Debtors have, to the extent necessary or applicable, (a) the full corporate power and authority to execute and deliver the Agreement and all other documents contemplated thereby, (b) all corporate authority necessary to consummate the transactions contemplated by the Agreement, and (c) taken all corporate action necessary to authorize and approve the Agreement and the consummation of the transactions contemplated thereby. The Sale has been duly and validly authorized by all necessary corporate action. No consents or approvals, other than those expressly provided for in the Agreement, are required for the Debtors to consummate the Sale, the Agreement, or the transactions contemplated thereby.

**Notice of Sale, Auction, and Assumption and Assignment**

I. Actual written notice of the Sale Motion, the Sale, the Auction, the Sale Hearing, and the transactions contemplated thereby, and a reasonable opportunity to object or be heard with respect to the Sale Motion and the relief requested therein, has been afforded to all known interested entities and parties, including, without limitation, the following entities and parties: (a) the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”); (b) the Official Committee of Unsecured Creditors; (c) PNC Bank, National Association, in its capacity as Prepetition Agent and DIP Agent; (d) KPS Special Situations Fund III (A) L.P., in its capacity as Pre-Petition Term Agent; (e) the Securities & Exchange Commission; (f) the Office of the United States Attorney General for the District of Delaware; (g) the Internal Revenue Service; (h) the U.S. Department of Justice; (i) the offices of the attorneys general for the states in which the Debtors operate; (j) the Stalking Horse Bidder; (k) all parties known or reasonably believed to have asserted an Interest (as defined herein) in the Assets; (l) the counterparties to the Assigned Contracts (the “**Contract Counterparties**”); (m) the Debtors’ insurance carriers; (n) all parties entitled to notice pursuant to Local Bankruptcy Rule 2002-1(b); (o) all entities known to have expressed an interest in a transaction with respect to some or all of the Debtors’ assets during the past six (6) months; and (p) all federal, state, and local regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief requested by the Sale Motion. Accordingly, no further notice of the Sale Motion is necessary or required.

J. In addition, the Debtors have caused the Sale Notice [D.I. 327] substantially in the form attached as Exhibit 3 to Exhibit 1 of the Sale Motion to be published in the national edition of *The New York Times*, see Docket No. 345, as authorized in the *Order (I) (A) Approving Bidding Procedures for the Sale of Debtors’ Intellectual Property and Other Assets Related to*



*the Broyhill, Thomasville, Drexel, Drexel Heritage, and Henredon Brands; (B) Approving the Form and Manner of Notices Related Thereto; (C) Approving a Form of Asset Purchase Agreement, Including Bid Protections; (D) Scheduling Dates to Conduct Auction and Hearing to Consider Final Approval of Sale, Including Treatment Of Executory Contracts and Unexpired Leases [D.I. 322] (the “Bidding Procedures Order”).*

K. In accordance with the provisions of the Bidding Procedures Order, the Debtors have served notice upon the Contract Counterparties: (a) that the Debtors seek to assume and assign to Purchaser the Assigned Contracts on the Closing Date (as defined in the Agreement); and (b) of the relevant Cure Claims (as defined below). Service of such notice was good, sufficient, and appropriate under the circumstances, and no further notice need be given in respect of establishing a Cure Claim for the Contracts. Each of the Contract Counterparties has had an opportunity to object to the Cure Claims set forth in the notice and to the assumption and assignment to Purchaser of the applicable Assigned Contracts.

L. The notice of the Auction and the Sale Hearing provided all interested parties with timely and proper notice of the Sale, the Auction, and the Sale Hearing.

M. The Debtors have articulated good and sufficient reasons for this Court to grant the relief requested in the Sale Motion regarding the sales process, including, without limitation: (i) determination of final Cure Claims; and (ii) approval and authorization to serve notice of the Auction and Sale Hearing.

N. As evidenced by the affidavits of service and affidavits of publication previously filed with this Court, proper, timely, adequate, and sufficient notice of the Sale Motion, the Sale, the Auction, the Sale Hearing, and the transactions contemplated thereby, including, without limitation, the assumption and assignment of the Assigned Contracts to Purchaser, has been

provided in accordance with the Bidding Procedures Order; Bankruptcy Code sections 105(a), 363, and 365; and Bankruptcy Rules 2002, 6004, 6006, 9007, 9008, and 9014. The notices described herein were good, sufficient, and appropriate under the circumstances, and no other or further notice of the Sale Motion, the Sale, the Auction, the Sale Hearing, or the assumption and assignment of the Assigned Contracts to Purchaser is or shall be required.

O. The disclosures made by the Debtors concerning the Sale Motion, the Agreement, the Auction, the Sale Hearing, the Sale, and the assumption and assignment of the Assigned Contracts to Purchaser were good, complete, and adequate.

P. A reasonable opportunity to object and be heard with respect to the Sale and the Sale Motion, and the relief requested therein (including, without limitation, the assumption and assignment of the Assigned Contracts to Purchaser and any Cure Claims relating thereto), has been afforded to all interested persons and entities, including the Notice Parties.

#### **Auction**

Q. The Auction was conducted at 10:00 a.m. on October 18, 2018, at the offices of Young Conaway Stargatt & Taylor, LLP, 1000 N. King Street, Wilmington, Delaware in accordance with the Bidding Procedures Order, at which the Purchaser submitted the highest bid for the Assets. The Auction process set forth in the Bidding Procedures Order afforded a full, fair, and reasonable opportunity for any entity to make a higher or otherwise better offer to purchase the Assets. The Auction was duly noticed and a reasonable opportunity has been given to any interested party to make a higher and better offer for the Assets. The Debtors determined in the exercise of their good-faith business judgment that Purchaser submitted the highest and best bid for the Assets and, accordingly, Purchaser was determined to be the Successful Bidder for the Assets.

**Good Faith of Purchaser**

R. As demonstrated by the representations of counsel and other evidence proffered or adduced at the Sale Hearing, the Debtors and their advisors marketed the Assets to secure the highest and best offer. The terms and conditions set forth in the Agreement are fair, adequate, and reasonable, including the amount of the Purchase Price, which is found to constitute reasonably equivalent and fair value.

S. Purchaser is not an “insider” of the Debtors, as that term is defined in Bankruptcy Code section 101(31). No officer, director, manager, or other insider of the Debtors hold any interest in or is otherwise related to Purchaser.

T. The Debtors and Purchaser extensively negotiated the terms and conditions of the Agreement in good faith and at arm’s length. Purchaser is purchasing the Assets and has entered into the Agreement in good faith and is a good-faith buyer within the meaning of Bankruptcy Code section 363(m), and is therefore entitled to the full protection of that provision, and otherwise has proceeded in good faith in all respects in connection with this proceeding in that, *inter alia*: (i) Purchaser recognized that the Debtors were free to deal with any other party interested in purchasing the Assets; (ii) Purchaser agreed to subject its bid to competitive bidding at the Auction; (iii) all payments to be made by Purchaser and other agreements or arrangements entered into by Purchaser in connection with the Sale have been disclosed; (iv) Purchaser has not violated Bankruptcy Code section 363(n) by any action or inaction; (v) no common identity of directors or controlling stockholders exists between Purchaser and the Debtors; and (vi) the negotiation and execution of the Agreement was at arm’s length and in good faith.

U. Neither the Debtors nor Purchaser have engaged in any conduct that would cause or permit the Agreement to be avoided under Bankruptcy Code section 363(n). The Debtors and

Purchaser were represented by their own respective counsel and other advisors during such arm's length negotiations in connection with the Agreement and the Sale.

V. No party has objected to the Sale, the Agreement, or the Auction on the grounds of fraud or collusion.

W. Accordingly, Purchaser is purchasing the Assets in good faith and is a good-faith buyer within the meaning of Bankruptcy Code section 363(m). Purchaser is therefore entitled to all of the protections afforded under Bankruptcy Code section 363(m).

**Highest and Best Offer**

X. The Debtors conducted a sale process in accordance with, and have otherwise complied in all respects with, the Bidding Procedures Order. The sale process set forth in the Bidding Procedures Order afforded a full, fair, and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase the Assets. The Auction was duly noticed in a non-collusive, fair, and good-faith manner, and a reasonable opportunity has been given to any interested party to make a higher and better offer for the Assets.

Y. The Agreement constitutes the highest and best offer for the Assets, and will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. The Debtors' determination that the Agreement constitutes the highest and best offer for the Assets constitutes a valid and sound exercise of the Debtors' business judgment.

Z. The Agreement represents a fair and reasonable offer to purchase the Assets under the circumstances of the Chapter 11 Cases. No other entity or group of entities has offered to purchase the Assets for greater overall value to the Debtors' estates than Purchaser.

AA. Approval of the Sale Motion and the Agreement and the consummation of the transactions contemplated thereby are in the best interests of the Debtors' chapter 11 estates, their creditors, and other parties in interest.

BB. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the Sale prior to, and outside of, a plan of reorganization.

**No Fraudulent Transfer or Merger**

CC. The consideration provided by Purchaser pursuant to the Agreement (a) is fair and reasonable, (b) is the highest or best offer for the Assets, and (c) constitutes reasonably equivalent value (as those terms are defined in each of the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, and Bankruptcy Code section 548).

DD. Purchaser is not a mere continuation of the Debtors or their estates, and there is no continuity of enterprise between Purchaser and the Debtors. Purchaser is not holding itself out to the public as a continuation of the Debtors. Purchaser is not a successor to the Debtors or their estates, and the Sale does not amount to a consolidation, merger, or *de facto* merger of Purchaser and the Debtors.

**Validity of Transfer**

EE. The Agreement was not entered into for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any of its states, territories, or possessions, or the District of Columbia. Neither the Debtors nor Purchaser are entering into the transactions contemplated by the Agreement fraudulently or for the purposes of statutory and common law fraudulent conveyance and fraudulent transfer claims.

FF. The Debtors are the sole and lawful owner of the Assets. Subject to Bankruptcy Code section 363(f) (addressed below), the transfer of the Assets to Purchaser will be, as of the Closing Date, a legal, valid, and effective transfer of the Assets, which transfer vests or will vest Purchaser with all right, title, and interest of the Debtors to the Assets free and clear of any interest in such property of any entity other than the Debtors' estates (collectively, "**Interests**"), including, without limitation: (a) all liens and encumbrances relating to, accruing, or arising at any time prior to the Closing Date (collectively, the "**Liens**"); and (b) all debts arising under, relating to, or in connection with any act of the Debtors or any claims (as defined in Bankruptcy Code section 101(5)), liabilities, obligations, demands, guarantees, options in favor of third parties, rights, contractual commitments, restrictions, interests, and matters of any kind and nature, whether arising prior to or subsequent to the commencement of the Chapter 11 Cases, and whether imposed by agreement, understanding, law, equity, or otherwise (collectively, the "**Claims**").

GG. For the avoidance of doubt, the terms "Liens" and "Claims," as used in this Sale Order, include, without limitation, rights with respect to any Liens and Claims:

- (1) that purport to give any party a right of setoff or recoupment against, or a right or option to affect any forfeiture, modification, profit-sharing interest, right of first refusal, purchase or repurchase option, or termination of, any of the Debtors' or Purchaser's interest in the Assets, or any similar rights; or
- (2) in respect of taxes, restrictions, rights of first refusal, charges of interest of any kind and nature, if any, and including, without limitation, any restriction of use, voting, transfer, receipt of income, or other exercise of

any of the attributes of ownership relating to, accruing, or arising at any time prior to the Closing Date, with the exception of Permitted Encumbrances and Assumed Liabilities (as those terms are defined in the Agreement) that are expressly assumed by Purchaser pursuant to the Agreement.

HH. For the further avoidance of doubt, Purchaser is expressly assuming responsibility for, and the Assets will be transferred subject to, the Cure Claims and any obligations arising at or after the Closing Date under the Assigned Contracts, as set forth in the Agreement.

**Section 363(f) Is Satisfied**

II. The conditions of Bankruptcy Code section 363(f) have been satisfied in full; therefore, the Debtors may sell the Assets free and clear of any Interests in the property other than any Permitted Encumbrances and Assumed Liabilities.

JJ. Purchaser would not have entered into the Agreement, and would not consummate the transactions contemplated thereby, if the Sale of the Assets to Purchaser and the assumption of any Assumed Liabilities by Purchaser were not free and clear of all Interests, other than Permitted Encumbrances and the Assumed Liabilities, or if Purchaser would, or in the future could, be liable for any of such Interests (other than the Permitted Encumbrances and the Assumed Liabilities). Unless otherwise expressly included in the Permitted Encumbrances or the Assumed Liabilities, Purchaser shall not be responsible for any Interests against the Debtors, their estates, or any of the Assets, including in respect of the following: (a) any labor or employment agreement; (b) all mortgages, deeds of trust, and other security interests; (c) intercompany loans and receivables among the Debtors and any of their affiliates (as defined in Bankruptcy Code section 101(2)); (d) any other environmental, employee, workers'

compensation, occupational disease, or unemployment- or temporary disability-related claim, including, without limitation, claims that might otherwise arise under or pursuant to: (i) the Employee Retirement Income Security Act of 1974, as amended; (ii) the Fair Labor Standards Act; (iii) Title VII of the Civil Rights Act of 1964; (iv) the Federal Rehabilitation Act of 1973; (v) the National Labor Relations Act; (vi) the Worker Adjustment and Retraining Notification Act of 1988; (vii) the Age Discrimination and Employee Act of 1967 and the Age Discrimination in Employment Act, as amended; (viii) the Americans with Disabilities Act of 1990; (ix) the Consolidated Omnibus Budget Reconciliation Act of 1985; (x) state discrimination laws; (xi) the unemployment compensation laws or any other similar state laws; or (xii) any other state or federal benefits or claims relating to any employment with the Debtors or their predecessor, if any; (xiii) Claims or Liens arising under any Environmental Law (as defined in the Agreement) with respect to the Debtors' business, Excluded Liabilities (as defined in the Agreement), the Assets, the Excluded Assets (as defined in the Agreement), or any assets owned or operated by the Debtors or any corporate predecessor of the Debtors, at any time prior to the Closing Date; (xiv) any bulk sales or similar law; (xv) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; and (xvi) any statutory or common-law bases for successor liability.

KK. The Debtors may sell the Assets free and clear of all Interests in such property of any entity other than the Debtors' estates, including, without limitation, any Liens and Claims against the Debtors, their estates, or any of the Assets (other than the Permitted Encumbrances and Assumed Liabilities) because, in each case, one or more of the standards set forth in Bankruptcy Code section 363(f) (1)-(5) has been satisfied. Those holders of Interests in the Assets, including, without limitation, holders of Liens and Claims against the Debtors, their



estates, or any of the Assets, who did not object, or who withdrew their objections, to the Sale or the Sale Motion are deemed to have consented pursuant to Bankruptcy Code section 363(f)(2). All other holders of Interests (except to the extent that such Interests are Permitted Encumbrances or Assumed Liabilities) are adequately protected by having their Interests, if any, in each instance against the Debtors, their estates, or any of the Assets, attached to the net proceeds of the Sale received by the Debtors ultimately attributable to the Assets in which such party alleges an Interest, in the same order of priority, with the same validity, force, and effect that such Interests had prior to the Sale, subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

**Assumption and Assignment of the Assigned Contracts**

LL. The assumption and assignment of the Assigned Contracts pursuant to the terms of this Sale Order and the Agreement is integral to the Sale and is in the best interest of the Debtors and their estates, their creditors, and all of the parties in interest, and represents the reasonable exercise of sound and prudent business judgment by the Debtors.

MM. Unless otherwise agreed and stated on the record at the Sale Hearing, the respective amounts set forth in the *Notice of Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Proposed Sale of Debtors' Intellectual Property and Other Assets Related to the Broyhill, Thomasville, Drexel, Drexel Heritage, and Henredon Brands* (the "**Cure Notice**") [D.I. 346] reflect the sole amounts necessary under Bankruptcy Code section 365(b) to cure all Cure Claims, and no other amounts are or shall be due in connection with the assumption by the Debtors and the assignment to Purchaser of the Assigned Contracts.

NN. As of the Closing Date, subject only to the payment of the Cure Claims, as determined in accordance with the procedures identified in the Bidding Procedures Order and the Agreement, each of the Assigned Contracts will be in full force and effect and enforceable by Purchaser against any Contract Counterparty thereto in accordance with its terms.

OO. The Debtors have, to the extent necessary, satisfied the requirements of Bankruptcy Code sections 365(b)(1), including payment of Cure Claims or adequate assurance of prompt payment thereof, and 365(f) in connection with the Sale, the assumption and assignment of the Assigned Contracts, and shall upon assignment thereto on the Closing Date, be relieved from any liability for any breach thereof.

PP. Purchaser has demonstrated that it has the financial wherewithal to fully perform and satisfy the obligations under the Assigned Contracts as required by Bankruptcy Code sections 365(b)(1)(C) and 365(f)(2)(B). Pursuant to Bankruptcy Code section 365(f)(2)(B), Purchaser has provided adequate assurance of future performance of the obligations under the Assigned Contracts.

QQ. Purchaser's promise to pay the Cure Claims and to perform the obligations under the Assigned Contracts after the Closing Date shall constitute adequate assurance of future performance within the meaning of Bankruptcy Code sections 365(b)(1)(C) and 365(f)(2)(B).

RR. Except as otherwise expressly provided in this Sale Order with respect to any objections filed to the Cure Notice that are adjourned (collectively, the "**Adjourned Objectors**"), all objections to (i) the assumption and assignment of any of the Assigned Contracts to Purchaser, and (ii) the Cure Claims are hereby overruled or withdrawn as set forth herein. Except with respect to the Adjourned Objectors, to the extent that any Contract Counterparty failed to timely object to its Cure Claim or to the assumption and assignment of its

Assigned Contracts to Purchaser as set forth in the Cure Notice, such Contract Counterparty is deemed to have consented to such Cure Claim and the assignment of its Assigned Contract(s) to Purchaser.

**Sound Business Purpose for the Sale**

SS. Good and sufficient reasons for approval of the Agreement and the Sale have been articulated. The relief requested in the Sale Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest.

TT. The Debtors have demonstrated both (a) good, sufficient, and sound business purposes and justifications for approving the Agreement, and (b) compelling circumstances for the sale outside the ordinary course of business, pursuant to Bankruptcy Code section 363(b) before, and outside of, a plan of reorganization, in that, among other things, the immediate consummation of the Sale to Purchaser is necessary and appropriate to maximize the value of the Debtors' estates, and the Sale will provide the means for the Debtors to maximize distributions to creditors.

**Compelling Circumstances for an Immediate Sale**

UU. To maximize the value of the Assets it is essential that the Sale of the Assets occur within the time constraints set forth in the Agreement. Time is of the essence in consummating the Sale.

VV. Given all of the circumstances of the Chapter 11 Cases and the adequacy and fair value of the Purchase Price under the Agreement, the proposed Sale of the Assets to Purchaser constitutes a reasonable and sound exercise of the Debtors' business judgment and should be approved.

WW. The consummation of the Sale and the assumption and assignment of the Assigned Contracts is legal, valid, and properly authorized under all applicable provisions of the

Bankruptcy Code, including, without limitation Bankruptcy Code sections 105(a), 363(b), 363(f), 363(m), and 365, and all of the applicable requirements of such sections have been complied with in respect of the transaction.

XX. The Sale does not constitute a *sub rosa* or *de facto* chapter 11 plan for which approval has not been sought without the protections that a disclosure statement would afford, as it does not and does not propose to: (i) impair or restructure existing debt of, or equity interests in, the Debtors; (ii) impair or circumvent voting rights with respect to any future plan proposed by the Debtors; (iii) circumvent chapter 11 plan safeguards, such as those set forth in Bankruptcy Code sections 1125 and 1129; or (iv) classify claims or equity interests, compromise controversies, or extend debt maturities. Accordingly, the Sale neither impermissibly restructures the rights of the Debtors' creditors, nor impermissibly dictates a liquidating chapter 11 plan for the Debtors.

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

**General Provisions.**

1. **Relief Granted.** The relief requested in the Sale Motion and the transactions contemplated thereby and by the Agreement are approved as set forth herein for the reasons set forth in this Sale Order and on the record of the Sale Hearing, which is incorporated herein as if fully set forth in this Sale Order.

2. **Objections Overruled.** Except as otherwise expressly provided in this Sale Order, including with respect to any Adjourned Objectors, all objections to the Sale Motion and the relief requested therein that have not been withdrawn, waived, or settled by announcement to this Court during the Sale Hearing or by stipulation filed with this Court, including, without limitation, any and all reservations of rights included in such objections or otherwise, are hereby

denied and overruled on the merits, with prejudice. Those parties who did not object, or withdrew their objections, to the Sale Motion are deemed to have consented pursuant to Bankruptcy Code section 363(f)(2). Any objections to assumption and assignment, including, but not limited to Cure Claims and adequate assurance, by the Adjourned Objectors are hereby adjourned to a date to be determined in advance of Closing on the Sale. The Debtors shall provide notice of any such adjourned hearing date on all Adjourned Objectors.

3. **Prior Findings and Conclusions Incorporated.** This Court's findings of fact and conclusions of law set forth in the Bidding Procedures Order are incorporated herein by reference.

4. **Sale Order and Agreement Binding on All Parties.** This Sale Order and the Agreement shall be binding in all respects upon all creditors (whether known or unknown) of and holders of equity interests in the Debtors (whether known or unknown), agents, trustees and collateral trustees, holders of Interests in, against, or on the Assets, or any portion thereof, all Contract Counterparties and any other non-Debtor parties to any contracts with the Debtors (whether or not assigned), all successors and assigns of the Debtors, including, without limitation, any and all present or future affiliates of the foregoing, and any subsequent trustees appointed in the Chapter 11 Cases or upon a conversion of the Chapter 11 Cases to one or more cases under Chapter 7 of the Bankruptcy Code and shall not be subject to rejection or unwinding.

5. **Subsequent Plan Provisions.** Nothing contained in any chapter 11 plan confirmed in the Debtors' Chapter 11 Cases, the confirmation order confirming any such chapter 11 plan, any order approving the wind down or dismissal of the Chapter 11 Cases, or any order entered upon the conversion of the Chapter 11 Cases to one or more cases under Chapter 7 of the Bankruptcy Code or otherwise shall conflict with or derogate from the provisions of the

Agreement or this Sale Order. In the event there is a conflict between the terms of any subsequent Chapter 11 plan or any order to be entered in these cases (including any order entered after conversion of these cases to cases under Chapter 7 of the Bankruptcy Code), the terms of this Order shall control.

**Approval of the Agreement**

6. **Agreement Approved.** The Agreement and all other ancillary documents, and all of the terms and conditions thereof, are hereby approved.

7. **Authorization to Consummate Transactions.** Pursuant to Bankruptcy Code sections 363(b) and (f), the Debtors are authorized, empowered, and directed to use their reasonable best efforts to take any and all actions necessary or appropriate to (a) consummate the Sale pursuant to and in accordance with the terms and conditions of the Agreement, (b) close the Sale as contemplated in the Agreement and this Sale Order, and (c) execute and deliver, perform under, consummate, implement, and fully close the Agreement, including the assumption and assignment to Purchaser of the Assigned Contracts, in accordance with the procedures set forth in the Agreement, together with additional instruments and documents that may be reasonably necessary or desirable to implement the Agreement and the Sale.

**Payment of Proceeds and Transfer of the Assets**

8. **Payment of Proceeds.** At Closing, all proceeds from the sale of the Acquired Assets, net of fees, costs and expenses approved by DIP Agent (the “**Net Proceeds**”), shall be paid in cash by wire transfer to DIP Agent to be applied to the Obligations in accordance with the terms of the DIP Order and the DIP Financing Documents (as defined in the DIP Order). The Net Proceeds shall be paid to DIP Agent without any setoff or deduction of any kind other than as set forth in the Agreement.

9. **Transfer of the Assets Authorized.** Pursuant to Bankruptcy Code sections 105(a), 363(b), and 363(f), the Debtors are authorized and directed to use best efforts to transfer the Assets to Purchaser on or as soon as reasonably practicable after the Closing Date, and such transfer shall constitute a legal, valid, binding, and effective transfer of such Assets and shall vest Purchaser with title to the Assets.

10. **Surrender of Assets by Third Parties.** All persons and entities that are in possession of some or all of the Assets are directed to surrender possession of such Assets to Purchaser, its assignee, or its designee at the time of Closing. On the Closing Date, each of the Debtors' creditors are authorized and directed to execute such documents and take such other actions as may be reasonably necessary to release their Interests in the Assets, if any, as such Interests may have been recorded or may otherwise exist. All persons are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtors to sell and transfer the Assets to Purchaser in accordance with the terms of the Agreement and this Sale Order. To the extent provided by Section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any permit or license relating to the operation of the Assets sold, transferred and conveyed to the Purchaser on account of the filing or pendency of these Chapter 11 cases or the consummation of the transactions contemplated by this Sale Order.

11. **Transfer Free and Clear of Interests.** Upon the Debtors' receipt of the Purchase Price, and other than Permitted Encumbrances and Assumed Liabilities specifically set forth in the Agreement, the transfer of the Assets to Purchaser shall be free and clear of all Interests of any kind or nature whatsoever, including, without limitation, (a) successor or successor-in-interest liability, (b) Claims in respect of the Excluded Liabilities, and (c) any and all Contracts

not assumed and assigned to Purchaser pursuant to the terms of the Agreement, with all such Interests to attach to the net proceeds received by the Debtors, if any, subject to and after payment to PNC in accordance with paragraph 8 herein, ultimately attributable to the Assets against, or in, which such Interests are asserted, subject to the terms thereof, with the same validity, force, and effect, and in the same order of priority, which such Interests now have against the Assets, subject to any rights, claims, and defenses that the Debtors or their estates, as applicable, may possess with respect thereto.

12. **Legal, Valid, and Marketable Transfer with Permanent Injunction.** The transfer of the Assets to Purchaser pursuant to the Agreement constitutes a legal, valid, and effective transfer of good and marketable title of the Assets, and vests, or will vest, Purchaser with all right, title, and interest to the Assets, free and clear of all Interests except as otherwise expressly stated as obligations of Purchaser under the Agreement; provided, however, that DIP Agent shall retain its Liens on the Debtors' interest in proceeds from the Sale of the Assets that are escrowed at Closing (the "**Escrowed Funds**") until such time as the Escrowed Funds owed to Seller, if any, shall be paid to DIP Agent in cash by wire transfer. All Persons holding interests or claims of any kind or nature whatsoever against the Debtors or the Assets, the operation of the Assets prior to the Closing Date, the Auction or the Sale are hereby and forever barred, estopped, and permanently enjoined from asserting against Purchaser, its successors or assigns, its property, or the Assets, any claim, interest or liability existing, accrued, or arising prior to the Closing.

13. **Recording Offices and Releases of Interests.** On the Closing Date, this Sale Order shall be construed and shall constitute for any and all purposes a full and complete assignment, conveyance, and transfer of the Assets or a bill of sale transferring good and



marketable title of the Assets to Purchaser. Notwithstanding the foregoing, and for the avoidance of doubt, the obligations of the Debtors to PNC or KPS are not discharged by anything in this Sale Order. This Sale Order is and shall be effective as a determination that, on the Closing Date, all Interests of any kind or nature whatsoever existing as to the Assets prior to the Closing date, other than Permitted Encumbrances and Assumed Liabilities, or as otherwise provided in this Sale Order, shall have been unconditionally released, discharged, and terminated, and that the conveyances described herein have been affected. This Sale Order is and shall be binding upon and govern the acts of all persons, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease; and each of the foregoing persons is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement. Each and every federal, state, and local governmental agency or department is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Agreement. A certified copy of this Sale Order may be: (a) filed with the appropriate clerk; (b) recorded with the recorder; and/or (c) filed or recorded with any other governmental agency to act to cancel any Interests against the Assets, other than the Permitted Encumbrances.

14. **Cancellation of Third-Party Interests.** Except as provided below concerning the Interests or Claims in the Assets held by PNC, as Prepetition Agent and DIP Agent, if any person

or entity which has filed statements or other documents or agreements evidencing Interests on or in all or any portion of the Assets (other than with respect to Permitted Encumbrances or Assumed Liabilities) has not delivered to the Debtors prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary for the purpose of documenting the release of all Interests which such person or entity has or may assert with respect to all or a portion of the Assets (the “**Release Documents**”), the Debtors and Purchaser are authorized to execute and file such statements, instruments, releases and other documents on behalf of such person or entity with respect to the Assets; provided that, neither the Debtors nor the Purchaser is authorized to file any Release Documents with respect to the Interests or Claims held by PNC, as Prepetition Agent and DIP Agent, in the Assets without first providing drafts of such Release Documents to PNC for its review and approval, which approval shall be in PNC’s reasonable discretion; provided further that, notwithstanding the foregoing, the provisions of this Sale Order authorizing the transfer of the Assets free and clear of all Interests (except only for Permitted Encumbrances and Assumed Liabilities) shall be self-executing, and it shall not be, or be deemed, necessary for any person or entity to execute or file releases, termination statements, assignments, consents, or other instruments in order for the provisions of this Sale Order to be implemented.

15. **Taxes.** The Purchaser has no tax liability as a result of this Sale Order, except as provided for in the Agreement.

**Assumption and Assignment of Contracts**

16. **Authorization to Assume and Assign.** Upon the Closing, the Debtors are authorized and directed, in accordance with Bankruptcy Code sections 105(a), 363, and 365, to assume and assign each of the Assigned Contracts to Purchaser free and clear of all Interests as

of the Closing Date in accordance with the Agreement. The payment of the applicable Cure Claims (if any) by Purchaser on the Closing Date or promptly thereafter shall (a) effect a cure or adequate assurance of cure of all defaults existing thereunder as of the date on which the Debtors filed their voluntary petitions for relief under chapter 11 of the Bankruptcy Code (the “**Petition Date**”), and (b) compensate for any actual pecuniary loss to such Contract Counterparty resulting from such default. Purchaser shall then have assumed the Assigned Contracts and, pursuant to Bankruptcy Code section 365(f), the assignment by the Debtors of such Assigned Contracts shall not be a default thereunder. After the payment of the relevant Cure Claims, neither the Debtors, nor Purchaser, shall have any further liabilities to the Contract Counterparties, other than Purchaser's obligations under the Assigned Contracts that accrue and become due and payable on or after the Closing Date.

17. **Assignment Requirements Satisfied.** The Assigned Contracts shall be transferred to, and remain in full force and effect for the benefit of, Purchaser, in accordance with their respective terms, notwithstanding (a) any provision in any such Assigned Contract (including provisions of the type described in Bankruptcy Code sections 365(b)(2), (e)(1) and (f)(1)) which prohibits, restricts or conditions such assignment or transfer, or (b) any default by the Debtors prior to Closing under any such Assigned Contract or any disputes between the Debtors and a Contract Counterparty with respect to any such Assigned Contract arising prior to Closing. In particular, any provisions in any Assigned Contract that restrict, prohibit or condition the assignment of such Assigned Contract or allow the Contract Counterparty to such Assigned Contract to terminate, recapture, impose any penalty, condition on renewal or extension or modify any term or condition upon the assignment of such Assigned Contract, constitute unenforceable anti-assignment provisions that are void and of no force and effect. All other

requirements and conditions under Bankruptcy Code sections 363 and 365 for the assumption by the Debtors and assignment to Purchaser of the Assigned Contracts have been satisfied. Upon the Closing, in accordance with Bankruptcy Code sections 363 and 365, Purchaser shall be fully and irrevocably vested with all right, title, and interest of the Debtors under the Assigned Contracts, subject to the obligation to pay Cure Claims to the extent not paid on the Closing Date.

18. **Consent to Assign.** The Contract Counterparties to each Assigned Contract shall be and hereby are deemed to have consented to such assumption and assignment under Bankruptcy Code section 365(c)(1)(B) or this Court has determined that no such consent is required, and Purchaser shall enjoy all of the rights and benefits under each such Assigned Contract as of the Closing Date without the necessity of obtaining the Contract Counterparty's written consent to the assumption and assignment thereof.

19. **Section 365(k).** Upon the Closing and (a) the payment of the applicable Cure Claim, or (b) in the event of any dispute over the appropriate Cure Claim, the Debtors' reserve and escrow of the amount necessary to satisfy the Cure Claim asserted by the Contract Counterparty pending resolution of the dispute by the Bankruptcy Court, Purchaser shall be deemed to be substituted for the Debtors as a party to the applicable Assigned Contracts and the Debtors and their estates shall be relieved, pursuant to Bankruptcy Code section 365(k), from any further liability under the Assigned Contracts.

20. **No Default.** Subject to the terms hereof with respect to the Cure Claims, all defaults or other obligations of the Debtors under the Assigned Contracts arising or accruing prior to the Closing Date have been cured or shall promptly be cured by the Debtors in accordance with the terms hereof such that Purchaser shall have no liability or obligation with respect to any default or obligation arising or accruing under any Assigned Contract prior to the

Closing Date, except to the extent expressly provided in the Agreement, except for Purchaser's payment of the Cure Claims. Each party to an Assigned Contract is forever barred, estopped, and permanently enjoined from asserting against Purchaser or its property or affiliates, or successors and assigns, any breach or default under any Assigned Contract, any claim of lack of consent relating to the assignment thereof, or any counterclaim, defense, setoff, right of recoupment, or any other matter arising prior to the Closing Date for such Assigned Contract or with regard to the assumption and assignment therefore pursuant to the Agreement or this Sale Order. Upon the payment of the applicable Cure Claim, if any, the Assigned Contracts will remain in full force and effect, and no default shall exist under the Assigned Contracts nor shall there exist any event or condition which, with the passage of time or giving of notice, or both, would constitute such a default.

21. **Adequate Assurance Provided.** The requirements of Bankruptcy Code sections 365(b)(1) and 365(f)(2) are hereby deemed satisfied with respect to the Assigned Contracts based on Purchaser's evidence of its financial condition and wherewithal and without any further action by Purchaser, including but not limited to any other or further deposit. Pursuant to Bankruptcy Code section 365(f), Purchaser has provided adequate assurance of future performance of the obligations under the Assigned Contracts.

22. **No Fees.** There shall be no rent accelerations, assignment fees, increases or any other fees charged to Purchaser or the Debtors as a result of the assumption and assignment of the Assigned Contracts.

23. **Injunction.** Pursuant to Bankruptcy Code sections 105(a), 363, and 365, other than the right to payment of the Cure Claims, if any, all Contract Counterparties are forever barred and permanently enjoined from raising or asserting against the Debtors or Purchaser any

assignment fee, default, breach or claim, or pecuniary loss arising under or related to the Assigned Contracts existing as of the Petition Date or any assignment fee or condition to assignment arising by reason of the Closing.

24. **Contract Objections.** Except for any Adjourned Objectors, each Contract Counterparty is deemed to have consented to such Cure Claim. [Except for the Adjourned Objectors,] each Contract Counterparty is deemed to have consented to the assumption and assignment, and Purchaser shall be deemed to have demonstrated adequate assurance of future performance with respect to, such Assigned Contracts pursuant to Bankruptcy Code sections 365(b)(1)(C) and 365(f)(2)(B). With respect to any Adjourned Objectors, such objection shall be resolved in accordance with the procedures set forth in the Bidding Procedures Order or as otherwise set forth in this Sale Order. The provisions of this Sale Order shall be effective and binding upon the Contract Counterparties to the extent set forth in, and in accordance with, such procedures. Nothing in this Sale Order, the Sale Motion, or in any notice or any other document is, or shall be, deemed an admission by the Debtors that any Assigned Contract is an executory contract or unexpired lease, or must be assumed and assigned pursuant to the Agreement in order to consummate the Sale.

25. **No Further Debtor Liability.** Except as provided in the Agreement or in this Sale Order, after the Closing, the Debtors and their estates shall have no further liabilities or obligations with respect to any Assumed Liabilities, and all holders of such Claims are forever barred and estopped from asserting such Claims against the Debtors, their successors or assigns, their property, or the Debtors' estates.

26. **No Waiver of Rights.** The failure of the Debtors or Purchaser to enforce, at any time, one or more terms or conditions of any Assigned Contracts shall not be a waiver of any

such terms or conditions, or of the Debtors' or Purchaser's rights to enforce every term and condition of the Assigned Contracts.

**Prohibition of Actions against Purchaser**

27. **No Successor Liability.** Except for the Permitted Encumbrances and Assumed Liabilities set forth in the Agreement, or as otherwise expressly provided for in this Sale Order or the Agreement, Purchaser shall not have any liability or other obligation of the Debtors arising under or related to any of the Assets. Without limiting the generality of the foregoing, and except as otherwise expressly provided herein or in the Agreement, Purchaser shall not be liable for any Claims against the Debtors or any of their predecessors or affiliates, and Purchaser shall have no successor or vicarious liabilities of any kind or character, including, without limitation, under any theory of antitrust, environmental, successor, or transfer liability, labor law, de facto merger, mere continuation, or substantial continuity, whether known or unknown as of the Closing Date, now existing, or hereafter arising, whether fixed or contingent, whether asserted or unasserted, whether legal or equitable, with or liquidated or unliquidated, including, without limitation, liabilities on account of warranties, intercompany loans, receivables among the Debtors and their affiliates, environmental liabilities, and any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of any of the Assets prior to the Closing.

28. **Actions Against Purchaser Enjoined.** Except with respect to Permitted Encumbrances and Assumed Liabilities set forth in the Agreement, or as otherwise permitted by the Agreement or this Sale Order, all persons and entities, including, without limitation, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade creditors, litigation claimants, and other creditors, holding Interests of any kind or nature whatsoever against, or in, all or any portion of the Assets, arising under, out of, in connection

with, or in any way relating to, the Debtors, the Assets, the operation of the Debtors' business prior to the Closing Date, or the transfer of the Assets to Purchaser, are hereby forever barred, estopped, and permanently enjoined from asserting against Purchaser, or any of its affiliates, successors, or assigns, or their property or the Assets, such persons' or entities' Interests in and to the Assets, including, without limitation, the following actions against Purchaser or its affiliates, or their successors, assets, or properties: (a) commencing or continuing in any manner any action or other proceeding; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or other order; (c) creating, perfecting, or enforcing any Lien or other Claim; (d) asserting any set off, right of subrogation, or recoupment of any kind; (e) commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Sale Order or any other order of this Court, or the agreements or actions contemplated or taken in respect thereof; or (f) revoking, terminating, or failing or refusing to transfer or renew any license, permit, or authorization to operate any of the Assets or conduct any of the business operated with the Assets.

**Other Provisions**

29. **Effective Immediately.** For cause shown, pursuant to Bankruptcy Rules 6004(h), 6006(d), and 7062(g), this Sale Order shall not be stayed and shall be effective immediately upon entry, and the Debtors and Purchaser are authorized to close the Sale immediately upon entry of this Sale Order. The Debtors and Purchaser may consummate the Agreement at any time after entry of this Sale Order by waiving any and all closing conditions set forth in the Agreement that have not been satisfied and by proceeding to close the Sale without any notice to this Court, any pre-petition or post-petition creditor of the Debtors and/or any other party in interest.

30. **Access to Books and Records.** Following the Closing of the Sale, the Debtors and any successor to the Debtors' estates (including, for the avoidance of doubt, any plan trustee)



shall have, and Purchaser shall provide, reasonable access to their books and records, to the extent they are included in the Assets transferred to Purchaser as part of the Sale.

31. **Bulk Sales Law.** No bulk sales law or any similar law of any state or other jurisdiction applies in any way to the Sale.

32. **Agreement Approved in Entirety.** The failure specifically to include any particular provision of the Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Agreement be authorized and approved in its entirety.

33. **Modifications to Agreement.** The Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto and in accordance with the terms thereof, in a writing signed by such parties, without further order of this Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates.

34. **Standing.** The transactions authorized herein shall be of full force and effect, regardless of any Debtors' lack of good standing in any jurisdiction in which such Debtor is formed or authorized to transact business.

35. **Authorization to Effect Order.** The Debtors are authorized to take all actions necessary to effect the relief granted pursuant to this Sale Order in accordance with the Sale Motion.

36. **Automatic Stay.** The automatic stay pursuant to Bankruptcy Code section 362 is hereby modified, lifted, and annulled with respect to the Debtors and Purchaser to the extent necessary, without further order of this Court, to (a) allow Purchaser to deliver any notice

provided for in the Agreement, and (b) allow Purchaser to take any and all actions permitted under the Agreement in accordance with the terms and conditions thereof.

37. **No Other Bids.** No further bids or offers for the Assets shall be considered or accepted by the Debtors after the date hereof unless the Sale to Purchaser is not consummated or otherwise does not occur in accordance with the Agreement or its related documents.

38. **Order to Govern.** To the extent that this Sale Order is inconsistent with any prior order entered or pleading filed in the Chapter 11 Cases, the terms of this Sale Order shall govern. To the extent there are any inconsistencies between the terms of this Sale Order and the Agreement (including all ancillary documents executed in connection therewith), the terms of this Sale Order shall govern.

39. **Objections of Stork Craft (Asia) SRL.** Notwithstanding anything to the contrary herein, the *Objection of Stork Craft (Asia) SRL to the Sale of IP Assets to HHG IPCo., LLC, Including the Proposed Order Approving the Sale* [Docket No. 370] and the *Objection of Stork Craft (Asia) SRL to the Assumption and Assignment of Trademark License Agreement to HHG IPCo.* [Docket No. 372] (the “**Stork Craft Objections**”) will be adjourned to and determined pursuant to a supplemental order or ruling from this Court, or, as otherwise mutually agreed upon by the parties. All of the Debtors’ and Stork Craft (Asia) SRL’s respective rights, claims, and defenses, and all of Stork Craft (Asia) SRL’s objections relating to the Sale or the assumption and assignment of the License (as defined in the Stork Craft Objections) are hereby reserved pending further order of the Court or agreement of the parties.

40. **.SAP License Agreement.** No provision of this Sale Order or the Agreement shall authorize the Debtors to: (i) assume, assume and assign, or transfer the Software End-User License Agreement, effective August 13, 1998, between Heritage Home Group LLC and SAP

America, Inc. (“SAP,” and such agreement, the “SAP License Agreement”); (ii) sell, transfer, or assign any software or proprietary information owned, licensed, or provided by SAP or its licensors (the “Software”) to the Purchaser; (iii) provide to the Purchaser any rights or access to, or use of, the Software; or (iv) use the Software or any Software-related services provided by SAP for the benefit of the Purchaser or any other third party, other than as expressly permitted in the SAP License Agreement. Any computers, equipment, hardware, or other property of the Debtors (collectively, “Computer Equipment”) on which the Software is loaded or embedded may be sold, transferred, or disposed of by the Debtors only if the Debtors permanently delete all Software from Computer Equipment prior to its sale, transfer, or disposal.

Dated: October 23, 2018  
Wilmington, Delaware

  
\_\_\_\_\_  
THE HONORABLE KEVIN GROSS  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT A**

01:23684963.4

**TRADEMARK**  
**REEL: 006493 FRAME: 0243**

## FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT

This FIRST AMENDMENT TO ASSET PURCHASE AGREEMENT, dated as of October 18, 2018 (this "Amendment"), is entered into by and among Heritage Home Group LLC ("HHG"), HHG Global Designs LLC ("HHG Global"), and together with HHG, the "Sellers"), and HHG IPCo, LLC ("Buyer") and together with Sellers, the "Parties"). Capitalized terms used herein and not otherwise defined shall have the meaning ascribed thereto in the APA (as defined below).

### RECITALS

A. The Parties have entered into that certain Asset Purchase Agreement, dated as of August 30, 2018 (the "APA").

B. Section 11.12 of the APA requires an agreement signed in writing by each of the Parties to amend the APA.

C. The undersigned, have agreed to amend the Disclosure Schedules and certain provisions of the APA in accordance with Section 11.12 of the APA pursuant to the terms set forth herein.

### AGREEMENT

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

1. Amendments to the APA.

(a) The definition of "Base Amount" is hereby amended and restated in its entirety as set forth below:

**"Base Amount"** means thirty-eight million, five hundred thousand dollars (\$38,500,000) minus the Break-Up Fee and the Expense Reimbursement.

(b) The definition of "Closing Cash Consideration" is hereby amended and restated in its entirety as set forth below:

**"Closing Cash Consideration"** means (i) the Base Amount minus, (ii) the Excluded Asset Adjustment Amount, if any, minus, (iii) the Estimated Prepaid Royalty Amount, if any.

(c) Section 2.02 of the APA is hereby amended by adding a new subsection (e) as set forth below:

(e) Buyer shall have the right, exercisable in Buyer's sole discretion at any time prior to Closing, to designate any Business Contract as an Assigned Contract. If Buyer exercises Buyer's right to designate a Business Contract as an Assigned Contract, the Purchase Price shall not be increased as a result of such designation; provided, however, that Buyer shall be responsible for the Cure Claims associated with any additional Assigned Contract as set forth in Section 2.05(d).

2. Changes to the Disclosure Schedules.

(a) Section 2.01(d) (Assigned Contracts) of the Disclosure Schedules is hereby amended by deleting the following Contracts:

| <u>Title of Contract</u>  | <u>Date of Contract</u> |
|---|-------------------------|
| Import Distribution Agreement, dated April 18, 2016, as amended, between Heritage Home Group LLC and J. Front Design and Construction Company Ltd.                    | 4/18/16                 |
| Master Distributor Agreement, dated April 23, 2017, as amended, by and between Heritage Home Group, LLC and Shanghai Red Star Macalline International Trade Co., Ltd. | 4/23/17                 |

3. Acknowledgement Regarding Broyhill IP. Notwithstanding the provisions of Section 2.02(b) of the APA and any notice provided by Sellers to Buyer with respect to an election to treat the Broyhill IP as an Excluded Asset, Sellers and Buyer agree that (a) the Broyhill IP shall be included in the Acquired Assets; and (b) Sellers shall not have any rights to designate the Broyhill IP as an Excluded Asset.

4. Incorporation of Amendment. Except as specifically modified herein, the terms of the APA shall remain in full force and effect. The execution, delivery, and effectiveness of this Amendment shall not constitute a waiver or amendment of any provision of the APA, except as expressly set forth herein.

5. No Third Party Beneficiaries. This Amendment and the rights and benefits hereunder shall inure to the benefit of each of the parties hereto and their respective successors and assigns. No other Person shall have or be entitled to assert rights or benefits under this Amendment.

6. Entirety. This Amendment and the APA embody the entire agreement among the parties hereto and supersede all prior agreements and understandings, oral or written, if any, relating to the subject matter hereof. This Amendment and the APA represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties.

7. Counterparts; Electronic Delivery. This Amendment may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, and it shall not be necessary in making proof of this Amendment to produce or account

for more than one such counterpart. Delivery of an executed counterpart of this Amendment by facsimile or other electronic means shall be effective as an original.

8. Governing Law. This Amendment and the rights and obligations of the parties hereunder shall be governed by and interpreted in accordance with the laws of the State of Delaware.

9. Further Assurances. Each of the parties hereto agrees to execute and deliver, or to cause to be executed and delivered, all such instruments as may reasonably be requested to effectuate the intent and purposes, and to carry out the terms, of this Amendment.

10. Miscellaneous.

(a) Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

(b) Wherever possible, each provision of this Amendment shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Amendment shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Amendment.


(c) Except as otherwise provided in this Amendment, if any provision contained in this Amendment is in conflict with, or inconsistent with, any provision in the APA, the provision contained in this Amendment shall govern and control.

*[Signature Pages Follow]*


IN WITNESS WHEREOF, each of the parties hereto has caused a counterpart of this First Amendment to Asset Purchase Agreement to be duly executed and delivered as of the date first above written.

SELLERS:

HERITAGE HOME GROUP LLC

By:   
Name: Robert Albergotti  
Title: Chief Restructuring Officer

HHG GLOBAL DESIGNS LLC

By:   
Name: Robert Albergotti  
Title: Chief Restructuring Officer

*Signature Page to First Amendment to Asset Purchase Agreement*



BUYER:

HHG IPCO, LLC

By: 

Name:

Title:

*Signature Page to First Amendment to Asset Purchase Agreement*