

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re)	Chapter 11
)	
HERITAGE HOME GROUP LLC, <i>et al.</i> ,)	Case No. 18-11736 (KG)
)	(Jointly Administered)
Debtors.)	
_____)	Re: D.I. No. 219

MEMORANDUM OPINION

The Court is moving quickly at Debtors’ request to issue a ruling on a retention issue. The evidentiary hearing and argument took place yesterday, September 26, 2018. The discussion therefore may not be in the warranted detail for the sake of expediency.

1. The Debtors, Heritage Home Group, LLC, *et al.*, have moved (the “Motion”) for an Order authorizing them to engage SB360 Capital Partners, LLC (referred to as the “Consultant” or “SB360”) to assist them in the sale of Debtors’ “Non-Luxury Group” assets. The Non-Luxury Group consists of the Broyhill, Thomasville, Drexel, Drexel Heritage and Henredon businesses.

2. In an effort to maximize value, Debtors determined to sell the inventory, furniture, fixtures and equipment (“FF&E”) and raw materials of the Non-Luxury Group. The Debtors and their advisors negotiated with and entertained bids from entities, one of which was the Consultant; second, a joint venture composed of Great American Group and Tiger Capital Group, LLC; and third, a joint venture of Hilco Merchant Resources, LLC and Gordon Brothers Retail Partners, L.L.C. Debtors exercised their business

judgment and determined that among the three bidding groups, the Consultant was the most appropriate choice.¹

3. Debtors and others in support take the position that retaining the Consultant can be accomplished pursuant to Sections 105(a) and 363(b).² Section 105(a) allows the Court to issue an order that is necessary to advance the provisions of the Bankruptcy Code. Section 363(b) permits the use, sale or lease of estate property outside of the ordinary course of business, authorized when a debtor demonstrates a sound business justification. The Office of the United States Trustee (the “U.S. Trustee”) opposes the retention, arguing that the retention must be pursuant to Section 327(a).

4. The Consultant has been tasked with the following responsibilities under the store closing and asset disposition agreement, dated as of August 31, 2018, between Debtors and the Consultant (the “Disposition Agreement”):

- (a) Recommend appropriate discounting to effectively sell all of Debtors’ goods located at or to be delivered to the Stores and Distribution Centers in accordance with a “store closing,” “everything must go,” “sale on everything,” or other mutually agreed upon themed sale, and recommend appropriate point-of-purchase, point-of-sale, and other internal and external advertising in connection therewith. SB360 shall also be permitted to use wholesale channels to sell inventory, provided that, before SB360 can sell any inventory to any affiliated third-parties, SB360 must obtain the consent of Merchant (the Debtors).

¹ HHG IPCo, LLC, affiliated with the Consultant and Authentic Brand Group (“ABG”), has entered into an asset purchase agreement for the Non-Luxury Group intellectual property assets.

² References to “Section” are to sections of the Bankruptcy Code, 11 U.S.C. § § 101, *et seq.*

- (b) Provide qualified supervision to oversee the conduct of the Sale, which supervisors, once identified to Merchant, shall not be removed from the Sale event unless Merchant otherwise agrees or requests removal.
- (c) Maintain focused and constant communication with Store and Distribution Center-level employees and managers to keep them abreast of strategy and timing and to properly effect Store and Distribution Center level communication by Debtors' employees to customers and others about the Sale.
- (d) Establish and monitor accounting functions for the Sale, including evaluation of sales of Debtors' goods located at the Stores and Distribution Centers by category, sales reporting and expense monitoring, all of which shall be shared with the Debtors' advisors monitoring the Sale.
- (e) Recommend loss prevention strategies.
- (f) Coordinate with the Debtors so that the operation of the Stores and Distribution Centers are being properly maintained including ongoing customer service and housekeeping activities.
- (g) Recommend appropriate staffing levels for the Stores and Distribution Centers and appropriate bonus and/or incentive programs (to be funded by the Debtors) for Store and Distribution Center employees.
- (h) Assist the Debtors to commence the Sale as a "store closing," "sale on everything," "everything must go," or such other themed sale approved by the Debtors and the Bankruptcy Court, provided that, the Sale shall not use the "going out of business" sale handle;
- (i) Assist the Debtors in the scheduling and allocation of inventory delivery to the Stores or customers from the Distribution Centers and to and between the Distribution Centers with the goal of minimizing operating expenses for the Sale; and
- (j) Operate the Sale in a manner to preserve and protect the value of Debtors' intellectual property.

5. In return, Debtors agreed to pay SB360 commissions from the sales of assets and a separate commission for selling FF&E. Debtors are responsible for all expenses from the sales except that the Consultant is responsible for expenses that exceed budgeted amounts.

6. The Debtors maintain control over personnel, merchandise, FF&E and are responsible alone for computing, collecting, holding, reporting and paying sales taxes. Disposition Agreement §§ 5A, 5C. SB360 has no discretion over business decisions and is limited to making recommendations to Debtors. Disposition Agreement § 7.

7. The U.S. Trustee argues that Section 327(a) applies to the present facts. Section 327(a) provides in relevant part that a debtor in possession,

with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

The U.S. Trustee strongly urges the Court to find that SB360 is a "professional like an auctioneer" and has not complied with Section 327(a) by submitting a Section 327(a) application, filing a declaration of disinterestedness pursuant to Federal Rule of Bankruptcy Procedure 2014, being disinterested, disclosing its fees and having its fees approved by the Court.³

³ While not deciding an issue which is not before it, the Court observes that it is questionable that SB360 is disinterested and therefore cannot competently seek Section 327(a) retention. The stalking horse for the Non-Luxury assets is an affiliate of SB360 and SB360 has agreed to share the economics of the consulting agreement with an affiliate of ABG.

8. The U.S. Trustee's points in support of the application of Section 327(a) are:
 - a. The term "auctioneer" is defined to include someone "authorized to sell goods or lands of other persons at public auction for a commission or fee," citing Black's Law Dictionary (10th ed. 2014).
 - b. Section 327 is designed to ensure adherence to fiduciary duties and to eliminate conflicts of interest.
 - c. Entities in other cases performing similar services were retained as liquidators and utilized Sections 327 and 328.
 - d. Case law supports the Section 327(a) retention. *See, e.g., In re Borders Group, Inc.*, 453 B.R. 477, 485 (Bankr. S.D.N.Y. 2011) (Section 327(a) applications are necessary even for *de minimis* asset sales). *See also, In re First Merchants Acceptance Corp.*, 1997 WL 873551 (D. Del. Dec. 15, 1997) (Agent was a professional and therefore subject to Section 327(a), but did not qualify because it was an agent for lender bank, and setting out factors).

8. The Court first rejects the U.S. Trustee's argument that SB360 is an auctioneer. The Court could not find a decision defining "auctioneer," nor is it defined in the Bankruptcy Code. Looking to Black's Law Dictionary (10th ed. 2014), "auctioneer" is defined as follows:

A person in charge of selling at an auction, with the responsibility of calling for bids, announcing how much money has already been offered for something, and gaveling down the hammer price; a person legally authorized to sell goods or land of other persons at public auction for a commission or fee.

SB360 clearly does not satisfy the first definition and the second definition is not applicable because there will not be a public auction. The Court therefore concludes that SB360 is not an "auctioneer".

9. It is clear from the Disposition Agreement and the testimony at the hearing of SB360's Executive Managing Director and General Counsel, Mr. Robert Raskin, that

SB360 was not an auctioneer or other professional, but an advisor. Mr. Raskin's entire testimony supported the advisor rather than professional person description.

10. The U.S. Trustee leans heavily on *Borders Group* and *First Merchants*. Both decisions are instructive.

11. In *Borders Group*, Judge Glenn of the Bankruptcy Court in the Southern District of New York ruled on a retention issue involving sales of assets at *de minimis* prices. Judge Glenn ruled that the "limited value of the *De Minimis* Assets does not excuse compliance with sections 327(a) and 328(a) Applications to retain brokers, auctioneers and liquidators to conduct *de minimis* asset sales are commonplace; it need not be an expensive or time-consuming process." Judge Glenn thus favored Section 327(a) retentions, but did not state his reasoning.

12. The court in *First Merchants* also required a Section 327(a) retention. The Delaware District Court ruled that a Section 327(a) retention of Ugly Duckling rather than a motion under Section 363 was necessary. The District Court discussed "two camps" on the issue. The first adopted a qualitative approach, under which a "professional" is an employee that is given discretion or autonomy in some part of the administration of the debtors' estate. 1997 WL 873551 at *2. The second approach is a quantitative analysis in which a "professional" involves "those occupations which play a central role in the administration of the debtor proceeding, and not those occupations which are involved in the day-to-day mechanics of the debtor's business." *Id.* The District Court listed factors to be considered. *Id.* at *3. What is clear in *First Merchants* is that a "professional" is limited to those occupations which control, purchase or sell assets that are important to

reorganization, is negotiating the terms of a plan of reorganization, has discretion to exercise his or her own personal judgment, and whether he or she contributes “some degree of special knowledge or skill.” *Id.* at *3. It is clear that SB360 is not at the center of Debtors’ reorganization and although it does have special knowledge⁴, the terms of the Disposition Agreement nullify the control of SB360.

13. The Court looks to two recent decisions for guidance. The first is *In re Nine West Holdings, Inc.*, 2018 WL 3238695 (Bankr. S.D.N.Y. July 2, 2018). There, Judge Shelley Chapman ruled that Alvarez and Marsal (“A&M”) and Ralph Schipani (“Schipani”), an A&M employee who was serving as Nine West’s CEO, did not require a Section 327(a) retention. A&M and Schipani had been serving Nine West for four years. Nine West filed for bankruptcy protection and Judge Chapman stated the issue as follows: “should the Debtors be permitted to retain A&M under Section 363(b) . . . as requested by the Application, or must the retention of A&M be considered solely under Section 327(a) of the Code, as the U.S. Trustee asserts? The U.S. Trustee argued that A&M and Schipani were professional persons. The court rejected the U.S. Trustee’s argument. The Court cited *Comm. of Asbestos-Related Litigants v. Johns-Manville Corp.*, 60 B.R. 612, 619 (Bankr. S.D.N.Y. 1986) for the proposition that a “professional” for purposes of Section 327(a) is intimately involved in the reorganization process. Surely, SB360 is not so involved.

14. The Court also looks to *In re hhgregg, Inc.*, Case No. 17-01302-RLM-1 (Bankr. S.D. Ind. May 8, 2017), in which the court rejected any requirement of a 327(a) retention.

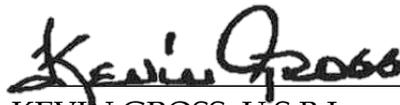
⁴ Many entities and people involved in bankruptcy cases have special knowledge but do not require Section 327(a) retention.

The court held an evidentiary hearing and found, *inter alia*, that the consultant (1) carried out debtor's judgment, (2) did not play a central role in the reorganization, (3) did not have broad discretion and (4) had no control over sales prices.

15. Here, the Disposition Agreement requires SB360 to "recommend appropriate discounting," "provide qualified supervision," "maintain focused and constant communication," "establish and monitor accounting functions," "recommend loss prevention strategies," "coordinate with the Debtors," "recommend appropriate staffing," and "assist the Debtors." SB360's responsibilities are clearly advisory and do not constitute an intimate role in the Debtors' plans.

16. The Bankruptcy Code provides clearly that bankruptcy courts must require that attorneys, accountants, appraisers and other professionals be retained formally pursuant to Section 327(a). The retention of the Consultant does not require such treatment. For the foregoing reasons, the U.S. Trustee's objection is overruled and SB360's retention pursuant to Sections 105(a) and 363(b) will be granted and the Court will enter the Order which Debtors submitted with the Motion which incorporates the retention.

Dated: September 27, 2018



KEVIN GROSS, U.S.B.J.

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11
: :
HERITAGE HOME GROUP LLC, *et al.*, : Case No. 18-11736 (KG)
: :
Debtors.¹ : Jointly Administered
: :
RE: Docket No. 219
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ORDER (A) AUTHORIZING THE DEBTORS TO ENTER INTO THE DISPOSITION AGREEMENT; (B) AUTHORIZING AND APPROVING THE CONDUCT OF STORE CLOSING OR SIMILAR THEMED SALES FREE AND CLEAR OF ALL LIENS, CLAIMS AND ENCUMBRANCES; (C) APPROVING DISPUTE RESOLUTION PROCEDURES; (D) AUTHORIZING CUSTOMARY BONUSES TO CERTAIN EMPLOYEES; AND (E) GRANTING RELATED RELIEF

Upon the *Debtors' Motion for Entry of an Order (a) Authorizing the Debtors to Enter Into the Disposition Agreement; (b) Authorizing and Approving the Conduct of Store Closing or Similar Themed Sales Free and Clear of All Liens, Claims, and Encumbrances; (c) Approving Dispute Resolution Procedures; (d) Authorizing Customary Bonuses to Certain Employees; and (e) Granting Related Relief* (the "Motion")² filed by the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"); and upon consideration the Albergetti Declaration; and this Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334(b), and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and this Court having found that venue of these cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409;

¹ 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.

² All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion.

and this Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that due and sufficient notice of the Motion has been given under the particular circumstances and that no other or further notice of the Motion need be given; and this Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found and determined that the relief sought in the Motion is in the best interest of the Debtors, their estates, their creditors and all other parties in interest; and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS FOUND, CONCLUDED, AND DETERMINED that:³

A. The Debtors have advanced sound business reasons for entering into the Disposition Agreement as set forth in the Motion and at the hearing, if any, and entry into the Disposition Agreement is a reasonable exercise of the Debtors' business judgment and is in the best interest of the Debtors and their estates.

B. The Disposition Agreement was negotiated, proposed, and entered into without collusion, in good faith, and from arm's length bargaining positions.

C. The Sale Guidelines, as described in the Motion and attached as Exhibit 2 hereto, are reasonable and will maximize the returns on the Sale Assets for the benefit of the Debtors' estates and creditors.

D. The Inventory Sales, in accordance with the Sale Guidelines and with the assistance of the Consultant, will provide an efficient means for the Debtors to liquidate and dispose of the Sale Assets as quickly and effectively as possible, and are in the best interest of

³ The findings and conclusions set forth herein constitute this Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent 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.

the Debtors' estates.

E. The Resolution Procedures are fair and reasonable, and comply with applicable law.

F. The Debtors have represented that, pursuant to the Motion, they are not seeking to either sell or lease personally identifiable information during the course of the Inventory Sales at the Sale Locations; *provided, however*, that the Consultant will be authorized to distribute emails and promotional materials to the Debtors' customers consistent with the Debtors' existing policies on the use of consumer information.

G. The Debtors and the Consultant may sell the Sale Assets free and clear of all liens, claims, and encumbrances as provided for herein because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of any such liens, claims, and encumbrances who did not object, or who withdrew their objections, to the entry of this Order are deemed to have consented thereto pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of any such liens, claims, and encumbrances who did object fall within one or more of the other subsections of section 363(f) and are adequately protected by having such liens, claims, and encumbrances attaching to the proceeds of the sale of the applicable Sale Assets with the same validity and priority and to the same extent and amount that any such liens, claims, and encumbrances had with respect to such Sale Assets.

H. The Debtors have demonstrated good, sufficient, and sound business purposes and justifications for the relief approved herein.

I. The entry of this Order is in the best interest of the Debtors and their estates, creditors, and all other parties in interest herein.

IT IS HEREBY ORDERED THAT:

1. The Motion is **GRANTED** as set forth herein.

2. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order. The failure to specifically include any particular provision of the Disposition Agreement in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of this Court that the Disposition Agreement and all of its provisions, payments, and transactions, be and hereby are authorized and approved as and to the extent provided for in this Order.

3. To the extent that there is any conflict between this Order, the Sale Guidelines, and the Disposition Agreement, the terms of this Order shall control over all other documents, and the Sale Guidelines (as modified by any Side Letter Agreement (as that term is defined in Paragraph 25 of this Order) entered into by and between the Consultant and the Landlord of a Sale Location) shall control over the Disposition Agreement.

A. Entry Into the Disposition Agreement by the Debtors

4. The Debtors are authorized to enter into the Disposition Agreement, a copy of which is attached to this Order as Exhibit 1. The Debtors are authorized to act and perform in accordance with the terms of the Disposition Agreement, including, making payments required by the Disposition Agreement to the Consultant without the need for any application of the Consultant or a further order of this Court, subject to the Objection Rights (as defined below).

5. Within thirty (30) days of the conclusion of all Inventory Sales, the Debtors shall file a summary report of such Inventory Sales that will include (i) the Sale Locations closed, (ii) gross revenue from Inventory sold, (iii) gross revenue from Raw Materials sold, (iv) gross revenue from FF&E sold, and also provide the U.S. Trustee, the Committee, and counsel to the DIP Agent with (y) the calculation of and compensation paid to the Consultant and (z) expenses

reimbursed to the Consultant; *provided, further*, that only the U.S. Trustee, the Committee, and counsel to the DIP Agent may, within twenty (20) days after such report is filed and information is provided, object to the compensation paid or expenses reimbursed to the Consultant only as to and on the following grounds: (i) that the calculation of the compensation paid to the Consultant pursuant to the compensation structure contemplated by the Disposition Agreement as of the date of this Order was not performed correctly; (ii) the calculation and reasonableness of any compensation paid to the Consultant pursuant to a compensation structure other than as reflected in the Disposition Agreement as of the date of this Order; and (iii) the reasonableness of any expenses reimbursed by the Debtors to the Consultant that were in excess of the expense budget(s) filed with the court ((i) through (iii), collectively, the “Objection Rights”). Notwithstanding this or any other provision of this Order, nothing shall prevent or be construed to prevent the Consultant (individually, as part of a joint venture, or otherwise) or any of its affiliates from (x) acquiring Sale Assets that may not be sold during the Inventory Sales, subject to reaching an agreement with the Debtors with respect to such guarantee or other acquisition and providing notice as would be reasonable under the circumstances of such agreement to the U.S. Trustee, counsel to the Committee, and counsel to the DIP Agent and not receiving an objection therefrom; or (y)(1) bidding on the Debtors’ assets not subject to the Disposition Agreement pursuant to an agency agreement or otherwise and (2) the Consultant is hereby authorized to bid on and guarantee or otherwise acquire such assets notwithstanding anything to the contrary in the Bankruptcy Code or other applicable law, *provided* that such guarantee transaction or acquisition is approved by separate order of this Court.

B. Authority to Engage in the Inventory Sales at the Sale Locations

6. The Debtors are authorized, pursuant to section 105(a) and section 363(b)(1) of the Bankruptcy Code, to conduct the Inventory Sales at the Sale Locations in accordance with

this Order, the Sale Guidelines, the Disposition Agreement, and any Side Letter Agreement. Subject to the restrictions set forth in this Order and the Sale Guidelines, the Debtors and the Consultant are authorized to take any and all actions as may be necessary or desirable to implement the Disposition Agreement and the Inventory Sales; and each of the transactions contemplated by the Disposition Agreement, and any actions taken by the Debtors and the Consultant necessary or desirable to implement the Disposition Agreement and/or the Inventory Sales prior to the date of this Order are approved and ratified.

7. The Sale Guidelines are approved.

8. The Debtors are authorized to discontinue operations at the Sale Locations in accordance with this Order and the Sale Guidelines.

9. All entities that are presently in possession of some or all of the Sale Assets in which the Debtors hold an interest that are or may be subject to the Disposition Agreement or this Order hereby are directed to surrender possession of such Sale Assets to the Debtors or the Consultant.

10. Except as provided herein, neither the Debtors nor the Consultant nor any of their officers, employees, or agents shall be required to obtain the approval of any third party, including (without limitation) any governmental unit (as defined in section 101(27) of the Bankruptcy Code) or any Landlord, to conduct the Inventory Sales and any related activities in accordance with the Sale Guidelines.

11. Subject to any Side Letter Agreement, no Landlord, licensor, property owner, and/or property manager shall prohibit, restrict, or otherwise interfere with any Inventory Sale at any Sale Location.

C. Conducting the Inventory Sales at the Sale Locations

12. All newspapers and other advertising media in which the Inventory Sales may be

advertised and all Landlords of the Sale Locations are directed to accept this Order as binding authority so as to authorize the Debtors and the Consultant to conduct the Inventory Sales and the sale of the Sale Assets pursuant to the Disposition Agreement and the Sale Guidelines, including, without limitation, to conduct and advertise the sale of the Sale Assets in the manner contemplated by and in accordance with this Order, the Sale Guidelines, the Disposition Agreement, and any Side Letter Agreement.

13. Nothing in this Order or the Disposition Agreement releases the Debtors or the Consultant from complying with laws and regulations of general applicability, including, without limitation, public health and safety, criminal, tax, labor, employment, environmental, antitrust, fair competition, traffic and consumer protection laws, including consumer laws regulating deceptive practices and false advertising (collectively, "General Laws").

14. The Debtors and the Consultant are hereby authorized to take such actions as may be necessary and appropriate to implement the Disposition Agreement and to conduct the Inventory Sales without the need for a further order of this Court, including, but not limited to, advertising the sale as a "store closing," "sale on everything," "everything must go," or similar themed sale through the posting of signs in accordance with the Sale Guidelines and any Side Letter Agreement, notwithstanding any applicable non-bankruptcy laws that restrict such sales and activities, and notwithstanding any provision in any lease, sublease, license or other agreement related to occupancy, "going dark," or abandonment of assets, or other provisions that purport to prohibit, restrict, or otherwise interfere with the Inventory Sales.

15. Notwithstanding anything herein to the contrary, and in view of the importance of the use of sign-walkers, banners, and other advertising to the sale of the Sale Assets, to the extent that disputes arise during the course of such sale regarding laws regulating the use of sign-

walkers, banners, or other advertising, and the Debtors and the Consultant are unable to resolve the matter consensually with a governmental unit, any party may request a telephonic hearing with this Court pursuant to these provisions. Such hearing will, to the extent practicable, be scheduled initially no later than within two (2) business days of such request. This scheduling shall not be deemed to preclude additional hearings for the presentation of evidence or arguments as necessary.

16. Except as provided in this Order, the Sale Guidelines, or any Side Letter Agreement, no person or entity, including, but not limited to, any Landlord, service providers, utility provider, and creditor, shall take any action to directly or indirectly prevent, interfere with, or otherwise hinder the Inventory Sales or the sale of the Sale Assets, or the advertising and promotion of the Inventory Sales.

17. For a period of twenty-eight (28) days after the Sale Commencement Date, the Consultant shall: (a) accept the Debtors' validly issued gift cards that were issued by the Debtors prior to the Sale Commencement Date in accordance with the Debtors' gift card policies and procedures as they existed on the Petition Date; and (b) accept returns of merchandise sold by the Debtors prior to the Sale Commencement Date, provided that such return is otherwise in compliance with the Debtors' return policies in effect as of the date such item was purchased and the customer is not repurchasing the same item so as to take advantage of the sale price offered by the Consultant. After such period, no gift cards or returns will be accepted at the Sale Locations.

18. The Consultant shall honor customer deposits paid with respect to any Inventory prior to the Sale Commencement Date; *provided, however*, that any Inventory subject to a customer deposit paid prior to the Sale Commencement Date must be delivered to or picked up

by the customer no later than sixty (60) days after order placement.

19. All sales of Sale Assets shall be by cash, merchandise credit, the Debtors' private label credit card to the extent available, debit card, or credit card, and, at the Debtors' discretion, by check or otherwise in accordance with the Debtors' policies. In addition, the Consultant shall be authorized to offer credit terms to wholesale buyers of Sale Assets in accordance with the Debtors' customary practices and credit verification process in place prior to the Sale Commencement Date.

20. All sales of the Sale Assets shall be "as is" and final. Conspicuous signs stating that "all sales are final" and "as is" will be posted at the cash register areas at all Sale Locations.

21. The Debtors remain responsible for the payment of any and all sales taxes. The Debtors are directed to remit all taxes accruing from the Inventory Sales to the applicable governmental units as and when due, provided that in the case of a bona fide dispute, the Debtors are only directed to pay such taxes upon the resolution of the dispute, if and to the extent that the dispute is decided in favor of the applicable governmental unit. For the avoidance of doubt, sales taxes collected and held in trust by the Debtors shall not be used to pay any creditor or any other party, other than the applicable governmental unit for which the sales taxes are collected.

22. Pursuant to section 363(f) of the Bankruptcy Code, the Consultant, on behalf of the Debtors, is authorized to sell all Sale Assets pursuant to the Disposition Agreement and in accordance with the Sale Guidelines and any Side Letter Agreement. All sales of Sale Assets, whether by the Consultant or the Debtors, shall be free and clear of any and all liens, claims, and encumbrances; *provided, however*, that any liens, claims, and encumbrances shall attach to the proceeds of the sale of applicable Sale Assets with the same validity and priority and to the same extent and in the same amount that any such liens, claims, and encumbrances had with respect to

such Sale Assets, subject to any claims and defenses that the Debtors may possess with respect thereto and subject to the Consultant's fees and expenses pursuant to the Disposition Agreement.

23. To the extent that the Debtors propose to sell or abandon Sale Assets that may contain any personal and/or confidential information about the Debtors' employees and/or customers (the "Confidential Information"), the Debtors shall use all commercially reasonable efforts to remove all such the Confidential Information from such Sale Assets before they are sold or abandoned.

24. The Debtors and the Consultant are authorized and empowered to transfer Sale Assets among the Sale Locations. The Consultant is authorized to sell or abandon the FF&E, in accordance with the terms of the Disposition Agreement and the Sale Guidelines; *provided, however*, to the extent any FF&E remains at a Sale Location on the effective date of rejection for the underlying lease, such FF&E shall be deemed abandoned to the affected Landlord at the time of any rejection of the lease with the right of the Landlord to dispose of such property free and clear of all interests and without notice or liability to any person or entity.

25. The Consultant and the Landlord of each Sale Location are authorized to enter into a side letter agreement (a "Side Letter Agreement") between themselves to modify the Sale Guidelines with respect to a Sale Location, as applicable, and to govern the conduct of the Inventory Sales at the applicable Sale Location without further order of the Court, and such Side Letter Agreements shall be binding as among the Consultant and any Landlord. In the event of a conflict between the Sale Guidelines and this Order with respect to a Sale Locations that is subject to a Side Letter Agreement, the terms of such Side Letter Agreement shall control.

D. Resolution Procedures for Disputes Regarding Liquidation Laws

26. To the extent that the Inventory Sales at the Sale Locations are conducted in accordance with this Order and the Sale Guidelines (as may have been modified by any Side

Letter Agreement), and are therefore conducted under the supervision of this Court, such Inventory Sales are authorized notwithstanding any federal, state or local statute, ordinance, or rule, or licensing requirement directed at regulating “store closing” and similar inventory liquidation sales, or bulk sale laws, including laws restricting safe, professional and non-deceptive, customary advertising such as signs, banners, posting of signage, and use of sign-walkers in connection with the sale and including ordinances establishing license or permit requirements, waiting periods, time limits or bulk sale restrictions, or fast-pay laws (collectively, the “Liquidation Laws”) that contain exemptions for court-ordered sales. Given such exemptions, the Debtors shall be presumed to be in compliance with any Liquidation Laws and are authorized to conduct the Inventory Sales in accordance with the terms of this Order and the Sale Guidelines without the necessity of showing compliance with any Liquidation Laws.

27. To the extent that any governmental unit disputes the Debtors’ compliance with any Liquidation Law, such governmental unit may assert a dispute (a “Liquidation Dispute”) by serving written notice (a “Dispute Notice”) of such Liquidation Dispute on the following parties so as to ensure delivery thereof within 14 days following the entry of this Order: (a) counsel for the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: Pauline K. Morgan, Esq., Kenneth J. Enos, Esq., Jaime Luton Chapman, Esq.; (b) counsel for PNC Bank, National Association, in its capacity as Pre-Petition Agent and DIP Agent, Blank Rome LLP, 1201 Market Street, Suite 800, Wilmington, Delaware 19801; Attn: Regina Stango Kelbon, Esq.; (c) the Consultant, SB360 Capital Partners, LLC, 75 Second Avenue Suite 550, Needham MA 02492, Attn : Aaron Miller and Siegfried Schaffer; (d) counsel to the Consultant, CKR Law, 1330 Avenue of the Americas, 14th Floor, New York, New York 10019, Attn: Maura I. Russell, Esq; and (e) proposed counsel to the

Committee, Foley & Lardner LLP, 90 Park Avenue, New York, New York 10016, Attn: Leah M. Eisenberg, Esq. and Whiteford, Taylor, and Preston LLC, The Renaissance Centre, 405 North King Street, Suite 500, Wilmington, Delaware 19801, Attn: Aaron H. Stulman, Esq. If the Debtors, the Consultant, and such governmental unit are unable to resolve the Liquidation Dispute within 14 days of service of the Dispute Notice, such governmental unit may file a motion with this Court requesting consideration and resolution of the Liquidation Dispute (a “Dispute Resolution Motion”), which shall be heard at the next regularly scheduled omnibus hearing in these chapter 11 cases. The filing of a Dispute Resolution Motion shall not be deemed to affect the finality of this Order or to limit or interfere with the Debtors’ or the Consultant’s ability to conduct or to continue to conduct the Inventory Sales pursuant to this Order and in accordance with the Sale Guidelines and any Side Letter Agreement, absent further order of this Court. The dispute resolution procedures relating to any Liquidation Disputes described in this paragraph are referred to as the “Resolution Procedures.”

28. Provided that the Inventory Sales are conducted in accordance with the terms of this Order, the Disposition Agreement, and the Sale Guidelines, and in light of the provisions in the laws that exempt court-ordered sales from their provisions, the Debtors and Consultant shall be presumed to be in compliance with any Liquidation Laws and are authorized to conduct the Inventory Sales in accordance with the terms of this Order and the Sale Guidelines without the necessity of further showing compliance with any such Liquidation Laws.

E. Miscellaneous

29. To the extent the Debtors are subject to any state “fast pay” laws in connection with the Inventory Sales, the Debtors shall be presumed to be in compliance with such laws to the extent, in applicable states, such payroll payments are made by the later of: (a) the Debtors’ next regularly scheduled payroll; and (b) seven calendar days following the termination date of

the relevant employee, and in all such cases consistent with, and subject to, any previous orders of this Court regarding payment of same.

30. The Debtors are authorized, but not directed, to implement and make payments to the employees at the Retail Locations under the Bonus Plan.

31. The Consultant may allow ABG Intermediate Holdings 2 LLC to share in the economics of the Disposition Agreement.

32. Nothing in this Order or the Motion shall be deemed to constitute a postpetition assumption of any agreement under section 365 of the Bankruptcy Code.

33. The Disposition Agreement and related documents may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of this Court.

34. This Court shall retain exclusive jurisdiction with regard to all issues or disputes arising from or relating to the implementation, interpretation, or enforcement of this Order or the Disposition Agreement, including, but not limited to, any claim or issue relating to any efforts by any party or person to prohibit, restrict or in any way limit the Inventory Sales in accordance with the Sale Guidelines, or any other disputes related to the Inventory Sales. No parties or person shall take any action against the Debtors or the Consultant until this Court has resolved such dispute. This Court shall hear the request of such parties or persons with respect to any such disputes on an expedited basis, as may be appropriate under the circumstances.

35. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in respect of payments made in accordance with this Order that are dishonored or rejected.

36. Notwithstanding the relief granted herein and any actions taken hereunder,

nothing contained herein shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any person.

37. Nothing in this Order is intended to affect any rights of any Applicable Governmental Unit to enforce any law affecting the Debtors' conduct of the Inventory Sales prior to the Petition Date.

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

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

Dated: September 27, 2018
Wilmington, Delaware



The Honorable Kevin Gross
United States Bankruptcy Judge

EXHIBIT 1

Disposition Agreement



SB360
CAPITAL PARTNERS
A SCHOTTENSTEIN AFFILIATE

August 29, 2018

To: Robert Albergotti
Heritage Home Group, LLC ("Merchant")
1925 Eastchester Drive
High Point, NC 27265

Re: Store Closing and Asset Disposition
Program - Consulting Agreement

Ladies and Gentlemen:

This letter shall serve as the agreement of SB360 Capital Partners, LLC ("Consultant") and Merchant pursuant to which Consultant shall serve as the exclusive consultant to Merchant to conduct a "store closing," "everything must go," "sale on everything," or other mutually agreed upon themed sale (the "Sale") at Merchant's retail stores identified on Exhibit A attached hereto (each a "Store" and collectively the "Stores") and distribution centers identified on Exhibit B (each a "Distribution Center" and collectively, the "Distribution Centers"), subject to the terms and conditions set forth herein. Subject to the terms of this Agreement, the Merchant may remove any Offered FF&E (as defined below) covered by the Sale at any time and for any reason.

1. **RETENTION**

(A) Subject to the approval of the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), Merchant hereby retains Consultant as its exclusive independent consultant to conduct the Sale during the Sale Term, and in connection therewith, Consultant shall, throughout the Sale Term:

- (i) Recommend appropriate discounting to effectively sell all of Merchant's goods located at or to be delivered to the Stores and Distribution Centers in accordance with a "store closing," "everything must go," "sale on everything," or other mutually agreed upon themed sale, and recommend appropriate point-of-purchase, point-of-sale, and other internal and external advertising in connection therewith. Consultant shall also be permitted to use wholesale channels to sell inventory, provided that, before Consultant can sell any inventory to any affiliated third-parties, Consultant must obtain the consent of Merchant.

- (ii) Provide qualified supervision to oversee the conduct of the Sale, which supervisors, once identified to Merchant, shall not be removed from the Sale event unless Merchant otherwise agrees or requests removal.
- (iii) Maintain focused and constant communication with Store and Distribution Center-level employees and managers to keep them abreast of strategy and timing and to properly effect Store and Distribution Center level communication by Merchant's employees to customers and others about the Sale.
- (iv) Establish and monitor accounting functions for the Sale, including evaluation of sales of Merchant's goods located at the Stores and Distribution Centers by category, sales reporting and expense monitoring, all of which shall be shared with the Merchant's advisors monitoring the Sale.
- (v) Recommend loss prevention strategies.
- (vi) Coordinate with Merchant so that the operation of the Stores and Distribution Centers are being properly maintained including ongoing customer service and housekeeping activities.
- (vii) Recommend appropriate staffing levels for the Stores and Distribution Centers and appropriate bonus and/or incentive programs (to be funded by Merchant) for Store and Distribution Center employees.
- (viii) Assist Merchant to commence the Sale as a "store closing," "sale on everything," "everything must go," or such other themed sale approved by Merchant and the Bankruptcy Court, provided that, the Sale shall not use the "going out of business" sale handle;
- (ix) Assist Merchant in the scheduling and allocation of inventory delivery to the Stores or customers from the Distribution Centers and to and between the Distribution Centers with the goal of minimizing operating expenses for the Sale; and
- (x) Operate the Sale in a manner to preserve and protect the value of Merchant's intellectual property.

2. **SALE TERM; VACATING STORES AND DISTRIBUTION CENTERS**

(A) Subject to Bankruptcy Court approval, the term "Sale Term" with respect to the Sale shall commence on September 14, 2018 (the "Sale Commencement Date") and shall end no later than December 31, 2018, subject to mutual agreement to extend such date (the "Sale Termination Date"); provided, however, that Merchant may decide on an earlier or later "Sale Commencement Date" or "Sale Termination Date" with respect to any one or more Stores or Distribution Centers (on a Store-by-Store and Distribution Center-by-Distribution Center basis), provided further, however, that the Consultant may commence its efforts to plan and prepare the Sale prior to the Sale Commencement Date.

(B) Upon the conclusion of the Sale Term at each Store and Distribution Center, Consultant shall leave such Store and Distribution Center in broom clean condition, subject to Consultant's right pursuant to Section 6 below to abandon in a neat and orderly manner all unsold Offered FF&E and all Retained FF&E.

3. EXPENSES

(A) All expenses incident to the conduct of the Sale and the operation of the Stores and Distribution Centers during the Sale Term (including without limitation all Consultant Controlled Expenses and all other store and distribution center-level and corporate expenses associated with the Sale including the retention or the hiring, subject to Merchant's consent, of key personnel and sales representatives for the Sale) shall be borne by Merchant; except solely for any of the specifically enumerated "Consultant Controlled Expenses" that exceed the aggregate budgeted amount (as provided in Section 3(B) below) for such Consultant Controlled Expenses.

(B) Attached hereto as Exhibit C is an expense budget for the "Consultant Controlled Expenses." Consultant will advance funds for the Consultant Controlled Expenses, and Merchant shall reimburse Consultant therefor (up to the aggregate budgeted amount) in connection with each weekly reconciliation contemplated by Section 5(B) upon presentation of reasonable documentation for such actually-incurred expenses. All Consultant Controlled Expenses shall be billed at cost, without markup, and evidence of incurrence shall be provided, if requested. The parties may from time to time mutually agree in writing to increase or decrease the budget of Consultant Controlled Expenses based upon circumstances of the Sale.

4. CONSULTANT COMPENSATION

(A) As used herein, the following terms shall have the following meanings:

- (i) "Fulfillment Inventory" means those items of inventory located at the Stores or Distribution Centers that have been fully or partially reserved from available inventory and designated by Merchant for fulfillment of retail and wholesale customer orders that were received prior to the Sale Commencement Date. Merchant shall be responsible for fulfilling and delivering any Fulfillment Inventory.
- (ii) "Gross Proceeds" shall mean the sum of the gross proceeds of all sales of Inventory and Raw Materials (including, as a result of the redemption of any gift card, gift certificate or merchandise credit as provided for in the Approval Order) during the Sale Term, net only of sales taxes.
- (iii) "Inventory" shall mean all goods, saleable in the ordinary course, located in the Stores and Distribution Centers on the Sale Commencement Date or delivered thereto after the Sale Commencement Date. "Inventory" does not mean and shall not include: (1) goods that belong to sublessees, licensees or concessionaires of Merchant; (2) owned furnishings, trade fixtures, equipment and improvements to real property that are located in the Stores and

Distribution Centers (collectively, "FF&E"); (3) damaged or defective merchandise that cannot be sold for any price; (4) goods held by Merchant on memo, on consignment, or as bailee; (5) warranty, installation or delivery services ("Warranty/Install Services"); (6) Fulfillment Inventory unless designated as Inventory by Merchant; (7) any Broyhill branded inventory unless designated as Inventory by Merchant; (1)-(7), collectively without the FF&E, the "Non-Inventory"; or (8) gift cards (third party and Merchant branded).

- (iv) "Net Proceeds" shall mean aggregate Gross Proceeds, less Agent's actual expenses for budgeted expenses incurred pursuant to the Consultant Controlled Expenses.
- (v) "Raw Materials" shall mean the various fabrics, leather, wood frames and other items necessary in the manufacturing process for the Inventory as identified by Merchant.

(B) Fee. In consideration of its services hereunder, Merchant shall pay Consultant the following fees (collectively, the "Consulting Fee"):

Inventory (Stores)	2.0% of Net Proceeds of sales made through the Stores whether or not such sales are fulfilled at the Stores
Inventory (Wholesale)	2.4% of Net Proceeds of sales made outside of the Stores
Raw Materials	2.4% of Net Proceeds

At the sole and absolute discretion of the Merchant and its secured lenders, Merchant may pay Consultant a "Performance Fee" up to an additional 1.0% of Net Proceeds based on the overall performance of the Sale. To the extent that the HHG IPCo, LLC, an entity partially owned and controlled by Consultant, is the successful bidder for the assets set forth in and pursuant to that certain Asset Purchase Agreement, dated August 30, 2018, by and among Heritage Home Group LLC, HHG Global Designs LLC, and HHG IPCo, LLC, and consummates such transaction, the Consulting Fee shall be modified as follows:

Inventory (Stores)	3.0% of Net Proceeds of sales made through the Stores whether or not such sales are fulfilled at the Stores
Inventory (Wholesale)	3.25% of Net Proceeds of sales made outside of the Stores
Raw Materials	3.25% of Net Proceeds
Performance Fee	None

(C) Subject to the Approval Order, Agent shall sell Non-Inventory during the Sale at the Stores and Distribution Centers, and in consideration of such services, Agent shall earn a fee equal to the Consulting Fee percentage earned on sales of Inventory as set forth above

multiplied by the aggregate gross receipts, net only of sales taxes, from the sale of Non-Inventory at the Stores and Distribution Centers, provided that, there shall be no fee for Warranty/Install Services, Fulfillment Inventory or Broyhill branded inventory unless designated as Inventory by Merchant.

(D) Gross Rings. For purposes of calculating Gross Proceeds, Net Proceeds and the Consultant's Fee, the parties shall use the "Gross Rings" method, wherein Agent and Merchant shall jointly keep (i) a strict count of gross register receipts less applicable sales taxes, and (ii) cash reports of sales within each Store and Distribution Center. All such records and reports shall be made available to Agent and Merchant during regular business hours upon reasonable notice.

5. CONDUCT OF SALE; OTHER SALE MATTERS

(A) Unless otherwise agreed to by Merchant and Consultant, Merchant shall have control over the personnel in the Stores and Distribution Centers and shall handle the cash, debit and charge card payments for all Inventory and Raw Materials in accordance with Merchant's normal cash management procedures, subject to Consultant's right to audit any such items in the event of a good faith dispute as to the amount thereof.

(B) The parties will meet on each Wednesday during the Sale Term to review any Sale matters reasonably requested by either party; and all amounts payable or reimbursable to Consultant for the prior week (or the partial week in the case of the first and last weeks) shall be reconciled and paid immediately thereafter. No later than twenty (20) days following the end of the Sale Term, the parties shall complete a final reconciliation and settlement of all amounts contemplated by this Agreement (the "Final Reconciliation"). From time to time upon request, each party shall prepare and deliver to the other party such other reports as either party may reasonably request. Each party to this Agreement shall, at all times during the Sale Term, provide the other with access to all information, books and records reasonably relating to the Sale and to this Agreement. All records and reports shall be made available to Consultant and Merchant during regular business hours upon reasonable notice.

(C) Merchant shall be solely responsible for computing, collecting, holding, reporting, and paying all sales taxes associated with the sale of Inventory and Raw Materials during the Sale Term, and Consultant shall have no responsibilities or liabilities therefor.

(D) Although Consultant shall undertake its obligations under this Agreement in a manner designed to achieve the desired results of the Sale and to maximize the recovery to the Merchant, Merchant expressly acknowledges that Consultant is not guaranteeing the results of the Sale.

(E) Merchant acknowledges that (i) the parties are not conducting an inventory of Merchant's goods located at the Stores and Distribution Centers; (ii) Consultant has made no independent assessment of the beginning levels of such goods; and (iii) Consultant shall not bear any liability for shrink or other loss to Merchant's goods located at the Stores and Distribution Centers unless such shrink or loss is primarily attributed to the actions of Consultant. Merchant may, at its election and expense, conduct an inventory at some or all

of the Stores and Distribution Centers and Consultant agrees to cooperate with such inventory taking if and when done.

(F) All sales of under this Agreement during the Sale Term shall be made in the name, and on behalf, of Merchant.

(G) All sales of Inventory and Raw Materials during the Sale Term shall be "final sales" and "as is," and all advertisements and sales receipts will reflect the same.

(H) Subject to compliance with any applicable laws and any order of the Bankruptcy Court, Merchant hereby permits the Sale to be, and shall ensure that the Sale otherwise may be, advertised as a "store closing" or other mutually agreed upon handle throughout the term of the Sale Term.

6. **FF&E**

(A) Following the Sale Commencement Date, Merchant shall inform Consultant of those items of furniture, fixtures, and equipment located at the Stores and Distribution Centers which are not to be sold (because Merchant does not have the right to sell such items, because Merchant wishes to retain such items for itself, or otherwise) (collectively, "Retained FF&E").

(B) With respect to all furniture, fixtures, and equipment located at the Stores and Distribution Centers as of the Sale Commencement Date which is not Retained FF&E (collectively the "Offered FF&E"), Consultant shall have the right to sell such Offered FF&E during the Sale Term on a commission basis equal to fifteen percent (15%) of the gross sales of Offered FF&E, net only of sales tax ("FF&E Commission").

(C) Merchant shall reimburse Consultant for its reasonable expenses associated with the sale of the Offered FF&E based upon a mutually agreed upon budget.

(D) Consultant shall have the right to abandon any unsold Offered FF&E (and all Retained FF&E) at the Stores and Distribution Centers at the conclusion of the Sale Term without liability to Merchant or any third party.

7. **INSURANCE; RISK OF LOSS**

During the Sale Term: (a) Merchant shall maintain (at its expense) insurance with respect to the Inventory and Raw Materials in amounts and on such terms and conditions as are consistent with Merchant's ordinary course operations, and (b) each of Merchant and Consultant shall maintain (at each party's respective expense) comprehensive general liability insurance covering injuries to persons and property in or in connection with the Stores and Distribution Centers, in such amounts as are reasonable and consistent with its ordinary practices, for bodily injury, personal injury and/or property damage. Consultant shall add Merchant as an additional insured with respect to its insurance policies covering Consultant and its supervisors, and (c) each of Merchant and Consultant shall maintain statutory worker's compensation, statutory disability and Employer's Liability coverage of at least \$500,000 covering its own employees. Consultants shall produce evidence of such by the Sale Commencement Date.

Notwithstanding any other provision of this Agreement, Merchant and Consultant agree that Consultant shall not be deemed to be in possession or control of the Stores, Distribution Centers, or the assets located therein or associated therewith, or of Merchant's employees located at the Stores and Distribution Centers; and Consultant does not assume any of Merchant's obligations or liabilities with respect thereto.

Notwithstanding any other provision of this Agreement, Merchant and Consultant agree that Merchant shall bear all responsibility for product liability relating to the products sold under this Agreement, before, during and after the Sale Term.

8. INDEMNIFICATION

(A) Consultant shall indemnify and hold Merchant and its affiliates, and their respective officers, directors, employees, consultants, and independent contractors (collectively, the "Merchant Indemnified Parties") harmless from and against all third-party claims, demands, penalties, losses, liabilities and damages, including, without limitation, reasonable and documented attorneys' fees and expenses, directly or indirectly asserted against, resulting from or related to:

- (i) Consultant's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection herewith;
- (ii) any harassment or any other unlawful, tortious or otherwise actionable treatment of any employees or agents of Merchant by Consultant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives (including without limitation any supervisors);
- (iii) any claims by any party engaged by Consultant as an employee or independent contractor (including without limitation any non-Merchant employee supervisor) arising out of such employment or engagement; or
- (iv) the negligence, willful misconduct or unlawful acts of Consultant, its affiliates or their respective officers, directors, employees, Consultants, independent contractors or representatives, *provided that* Consultant shall not be obligated to indemnify any Merchant Indemnified Party from or against any claims, demands, penalties, losses, liabilities or damages arising primarily from any Merchant Indemnified Party's gross negligence, willful misconduct, or unlawful act.

(B) Merchant shall indemnify and hold Consultant, its affiliates and their respective officers, directors, employees, consultants, and independent contractors (collectively, "Consultant Indemnified Parties") harmless from and against all third-party claims, demands, penalties, losses, liabilities and damages, including, without limitation, reasonable attorneys' fees and expenses, directly or indirectly asserted against, resulting from or related to:

- (i) Merchant's material breach of or failure to comply with any of its agreements, covenants, representations or warranties contained herein or in any written agreement entered into in connection herewith;
- (ii) any claims by any party engaged by Merchant as an employee or independent contractor arising out of such engagement;
- (iii) any consumer warranty or products liability claims relating to any Inventory; and/or
- (iv) the negligence, willful misconduct or unlawful acts of Merchant, its affiliates or their respective officers, directors, employees, agents, independent contractors or representatives, *provided that* Merchant shall not be obligated to indemnify any Consultant Indemnified Party from or against any claims, demands, penalties, losses, liabilities or damages arising primarily from any Consultant Indemnified Party's gross negligence, willful misconduct, or unlawful act.

9. **MISCELLANEOUS**

(A) This Agreement, including retention of Consultant and conduct of the Sale set forth herein, is subject to the approval of the Bankruptcy Court. Merchant shall promptly seek to have this Agreement, and the transactions contemplated by this Agreement approved by the Bankruptcy Court pursuant to an order and terms acceptable to both Merchant and Consultant. The Bankruptcy Court shall have exclusive jurisdiction to resolve any issues arising under this Agreement.

(B) This Agreement constitutes the entire agreement between the parties with respect to the matters contemplated hereby and supersedes and cancels all prior agreements, including, but not limited to, all proposals, letters of intent or representations, written or oral, with respect thereto. This Agreement may not be modified except in a written instrument executed by each of the parties hereto. No consent or waiver by any party, express or implied, to or of any breach or default by the other in the performance of its obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligation of such party. The failure on the part of any party to complain of any act or failure to act by the other party or to declare the other party in default, irrespective of how long such failure continues, shall not constitute a waiver by such party of its rights hereunder. Nothing contained in this Agreement shall be deemed to create any relationship between Merchant and Consultant other than that of Consultant as an independent contractor of Merchant, and it is stipulated that the parties are not partners or joint venturers in any way. Unless expressly set forth herein to the contrary, to the extent that either party's consent is required/requested hereunder, such consent shall not be unreasonably withheld or delayed. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns; *provided however*, that this Agreement may not be assigned by either party without the prior written consent

of the other, provided further, however, subject to Bankruptcy Court approval, Consultant may allow ABG Intermediate Holdings 2 LLC to share in the economics of this Agreement.

(C) Written notices contemplated by this Agreement shall be sent to the following by email:

(i) if to Merchant at the address set forth above with a copy to:

Young Conaway Stargatt & Taylor, LLP
Rodney Square
1000 N. King Street
Wilmington, Delaware 19801
E-mail: cgrear@ycst.com
Attention: Craig D. Grear

Malfitano Partners
Joseph A. Malfitano, PLLC
747 Third Ave., 2nd Floor
New York, NY 10017
E-mail: jm@malfitanopartners.com
Attention: Joseph Malfitano

(ii) if to Consultant:

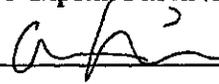
SB360 Capital Partners, LLC
75 Second Avenue Suite 550
Needham MA 02492

Attn: Aaron Miller and Siegfried Schaffer
Email: AMiller@sb360.com and ZSchaffer@sb360.com

[Remainder of Page Intentionally Left Blank]

Very truly yours,

SB 360 Capital Partners, LLC

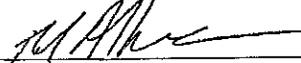
By: 

Aaron Miller

Executive Vice President

Agreed and Accepted:

Heritage Home Group, LLC

By: 

Print Name and Title:

Robert A. Bergotti
CFO

Exhibits:

- A. Stores
- B. Distribution Centers
- C. Budget of Consultant Controlled Expenses

Exhibit A**Stores**

Division / Business Unit / Description	HHG Property Class	Address	City	State	Zip or Postal Code	Country
Thomasville Dublin Retail	Retail	7460 Dublin Boulevard	Dublin	CA	94568-2416	USA
Thomasville Roseville Retail	Retail	1240 Galleria Blvd., Suite 100	Roseville	CA	95678-1951	USA
Thomasville Wilmington Retail	Retail	3090 Brandywine Parkway	Wilmington	DE	19803-1498	USA
Thomasville Boca Raton Retail	Retail	9465 Glades Road	Boca Raton	FL	33434-5900	USA
Thomasville Jacksonville Retail	Retail	4853 Big Island Drive	Jacksonville	FL	32246-7404	USA
Thomasville Tampa Retail	Retail	217 South Dale Mabry Highway	Tampa	FL	33609-2817	USA
Thomasville Alpharetta Retail	Retail	310 North Point Parkway	Alpharetta	GA	30005-4116	USA
Henredon Atlanta (Perimeter Place) Retail	Retail	4550 Olde Perimeter Way, Suite 100	Atlanta	GA	30346-1268	USA
Thomasville Atlanta (Perimeter Place) Retail	Retail	4550 Olde Perimeter Way, Suite 200	Atlanta	GA	30346-1268	USA

Thomasville Kennesaw Retail	Retail	840 Ernest Barrett Parkway Northwest; Suite 340	Kennesaw	GA	30144-4975	USA
Thomasville Oak Brook Retail	Retail	3011 Butterfield Road Suite 102-106	Oak Brook	IL	60523-1390	USA
Thomasville Overland Park Retail	Retail	7000 West 135th Street	Overland Park	KS	66223-4843	USA
Thomasville Rockville Retail	Retail	Congressional Plaza Shopping Center, 1601 Rockville Pike, Unit 210B	Rockville	MD	20852-1665	USA
Thomasville Maple Grove Retail	Retail	12865 Elm Creek Boulevard North	Maple Grove	MN	55369-7044	USA
Heritage Home Group Kirkwood	Retail	10465 Manchester Road	Kirkwood	MO	63122	USA
Thomasville Pineville Retail	Retail	11705 Carolina Place Parkway	Pineville	NC	28134-8819	USA
Thomasville Raleigh Retail	Retail	10200 Little Brier Creek Lane; Suite 100	Raleigh	NC	27617-8419	USA
Thomasville King of Prussia Retail	Retail	640 West Dekalb Pike; Suite 3010	King of Prussia	PA	19406-5031	USA
Thomasville Montgomeryville Retail	Retail	978 Bethlehem Pike	Montgomeryville	PA	18936-9603	USA

Thomasville Whitehall (Allentown) Retail	Retail	2629 Macarthur Road	Whitehall	PA	18052-3818	USA
Heritage Home Group Bluffton Retail	Retail	80 Baylor Drive, Suites 116 - 123	Bluffton	SC	29910	USA
Thomasville Dallas Retail	Retail	13710 Dallas Parkway, Suite D	Dallas	TX	75240-1318	USA
Thomasville Southlake Retail	Retail	1600 East Southlake Blvd	Southlake	TX	76092-6548	USA
Thomasville Alexandria Retail	Retail	3915 Jefferson Davis Highway, Suite 1B	Alexandria	VA	22305-3124	USA
Henredon Hickory Outlet (formerly DH Retail)	Retail	2220 US Highway 70 Southeast Ste 110	Hickory	NC	28602-5192	USA

Exhibit B

Distribution Centers

Division / Business Unit / Description	HHG Property Class	Address	City	State	Zip or Postal Code	Country
HHGroup Asia Ltd./Bonded Warehouse Lease	Foreign	D6 Street, Nam Tan Uyen Industrial Zone, Khanh Binh Ward, Tan Uyen Town	Binh Duong Province	VN	72000	Vietnam
Morrison Avenue Distribution Center	Ops (M/W)	115 Morrison Avenue	Thomasville	NC	27360-4735	USA
Lenoir (Singer Building)	Temp Warehouse	2424 Norwood Street, Unit 200, 2nd Floor	Lenoir	NC	28645	USA
Lenoir Upholstery (Broyhill, Thomasville, Henredon, Drexel Heritage) / BCW	Ops (M/W)	830 Complex Street (Lenoir Campus)	Lenoir	NC	28645-8338	USA
Logistics Center (includes LC1 shipping and HHG Logistics office.)	Ops (M/W)	815 Southwest Complex Street/825 Visionary (Lenoir Campus)	Lenoir	NC	28645-8338	USA
Lenoir Wood (Main Plant and Warehouse)	Ops (M/W)	315 Elizabeth Street Northwest	Lenoir	NC	28645-3961	USA

Exhibit C

Consultant Controlled Expenses

	Total
Supervision (1)	1,506,814
Advertising	
Media, Email, ROP	96,000
Interior Signs and Exterior Banners	97,000
Signwalker Program	645,000
Total Advertising	838,000
Miscellaneous (2)	154,979
Total Consultant Expenses	2,499,793

1. Includes supervision (16 full time / 2 part time) wages, travel, and a standard 50% deferred compensation
2. Includes legal and corporate travel
3. The expense budget contemplates a sale term of September 7, 2018 through December 23, 2018 for Retail Stores and a sale term of September 7, 2018 to December 31, 2018 for Wholesale. The Expense Budget remains subject to modification in the event that this term is extended, or as otherwise agreed to by the parties.

EXHIBIT 2

Sale Guidelines

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

-----X
:
In re: : Chapter 11
:
HERITAGE HOME GROUP LLC, *et al.*, : Case No. 18-11736 (KG)
:
Debtors.¹ : Jointly Administered
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SALE GUIDELINES²

1. The Sales shall be conducted so that the Sale Locations in which Sales are to occur will remain open no longer than during the normal hours of operation or such hours as otherwise provided for in the respective leases for the Sale Locations.

2. The Sales shall be conducted in accordance with applicable state and local “Blue Laws,” where applicable, so that no Sale shall be conducted on Sunday unless the Debtors had been operating such Sale Location on a Sunday prior to the commencement of the Sales.

3. On “shopping center” property, the Consultant shall not distribute handbills, leaflets or other written materials to customers outside of any Sale Locations’ premises, unless permitted by the lease or if distribution is customary in the “shopping center” in which such Sale Location is located; *provided* that the Consultant may solicit customers in the Sale Locations themselves. On “shopping center” property, the Consultant shall not use any flashing lights or amplified sound to advertise the Sales or solicit customers, except as permitted under the applicable lease or agreed to by the landlord.

4. At the conclusion of the Sales, the Consultant shall, subject to the Disposition Agreement, vacate the Sale Locations in broom clean condition; *provided* that Consultant may abandon any FF&E not sold in the Sales at the conclusion of the Sales, without cost or liability of any kind to the Consultant. The Consultant shall notify the Debtors of its intention to abandon any FF&E at least two (2) days prior to the Sale Termination Date. The Debtors will have the option to remove the FF&E at their own cost prior to the termination date. Any abandoned FF&E left in a Sale Location after a lease is rejected shall be deemed abandoned to the landlord having a right to

¹ 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.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Debtors’ Motion for Entry of an Order (a) Authorizing the Debtors to Enter Into the Disposition Agreement; (b) Authorizing and Approving the Conduct of Store Closing or Similar Themed Sales Free and Clear of All Liens, Claims, and Encumbrances; (c) Approving Dispute Resolution Procedures; (d) Authorizing Customary Bonuses to Certain Employees; and (e) Granting Related Relief.

dispose of the same as the landlord chooses without any liability whatsoever on the part of the landlord to any party and without waiver of any damage claims against the Debtors. For the avoidance of doubt, as of the Sale Termination Date, the Consultant may abandon, in place and without further responsibility or liability of any kind, any FF&E.

5. The Consultant and the Debtors may advertise each Sale as a “store closing,” “sale on everything,” “everything must go,” or similar themed sale. The Consultant and the Debtors may also have “countdown to closing” signs prominently displayed in a manner consistent with these Sale Guidelines. All signs, banners, ads and other advertising collateral, promotions, and campaigns will be approved by the Debtors in accordance with these Sale Guidelines.

6. The Consultant shall be permitted to utilize sign walkers, display, hanging signs, and interior banners in connection with the Sales; *provided* that such sign walkers, display, hanging signs, and interior banners shall be professionally produced and hung in a professional manner. The Debtors and the Consultant shall not use neon or day-glo on its sign walkers, display, hanging signs, or interior banners. Furthermore, with respect to enclosed mall locations, no exterior signs or signs in common areas of a mall shall be used unless otherwise expressly permitted in these Sale Guidelines. In addition, the Debtors and the Consultant shall be permitted to utilize exterior banners at (i) non-enclosed mall Sale Locations and (ii) enclosed mall Sale Locations to the extent the entrance to the applicable Sale Location does not require entry into the enclosed mall common area; *provided*, however, that such banners shall be located or hung so as to make clear that the Sales are being conducted only at the affected Sale Location, and shall not be wider than the storefront of the Sale Location. In addition, the Debtors and the Consultant shall be permitted to utilize sign walkers in a safe and professional manner and in accordance with the terms of the Order. Nothing contained in these Sale Guidelines shall be construed to create or impose upon the Debtors or the Consultant any additional restrictions not contained in the applicable lease agreement.

7. Conspicuous signs shall be posted in the cash register areas of each of the affected Sale Locations to effect that “all sales are final.”

8. Except with respect to the hanging of exterior banners, the Consultant shall not make any alterations to the storefront or exterior walls of any Sale Locations, except as authorized by the applicable lease.

9. The Consultant shall not make any alterations to interior or exterior Sale Location lighting, except as authorized by the applicable lease. No property of the landlord of a Sale Location shall be removed or sold during the Sales. The hanging of exterior banners or in-store signage and banners shall not constitute an alteration to a Sale Location.

10. The Consultant shall keep Sale Location premises and surrounding areas clean and orderly consistent with present practices.

11. Subject to the provisions of the Disposition Agreement, the Consultant shall have the right to use and sell all FF&E. The Consultant may advertise the sale of the FF&E in a manner consistent with these guidelines. The purchasers of any FF&E sold during the Sales shall be permitted to remove the FF&E either through the back or alternative shipping areas at any time, or

through other areas after applicable business hours, *provided, however* that the foregoing shall not apply to *de minimis* FF&E sales made whereby the item can be carried out of the Sale Location in a shopping bag. For the avoidance of doubt, as of the Sale Termination Date, the Consultant and the Debtors may abandon, in place and without further responsibility, any FF&E.

12. At the conclusion of the Sales at each Sale Location, pending assumption or rejection of applicable leases, the landlords of the Sale Locations shall have reasonable access to the Sale Locations' premises as set forth in the applicable leases. The Debtors, the Consultant, and their representatives and agents shall continue to have access to the Sale Locations as provided for in the Disposition Agreement.

13. The rights of landlords against the Debtors for any damages to a Sale Location shall be reserved in accordance with the provisions of the applicable lease.

14. If and to the extent that the landlord of any Sale Location affected hereby contends that the Debtors or the Consultant is in breach of or default under these Sale Guidelines, such landlord shall email or deliver written notice by overnight delivery to the Debtors and the Consultant as follows:

If to the Debtors:

- (a) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, DE 19801 (Attn: Pauline K. Morgan, Esq., Kenneth J. Enos, Esq., and Jaime Luton Chapman, Esq.), pmorgan@ycst.com, kenos@ycst.com, jchapman@ycst.com; and
- (b) Malfitano Partners, Joseph A. Malfitano, PLLC, 747 Third Ave. 2nd Floor, New York, NY 10017 (Attn: Joseph Malfitano), jm@malfitanopartners.com.

If to Consultant:

- (a) SB360 Capital Partners, LLC, 75 Second Avenue Suite 550, Needham MA 02492 (Attn: Aaron Miller and Siegfried Schaffer), AMiller@sb360.com and ZSchaffer@sb360.com.
- (b) Counsel to the Consultant, CKR Law, 1330 Avenue of the Americas, 14th Floor, New York, New York 10019, Attn: Maura I. Russell, Esq.