

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

In re:

GRACIOUS HOME LLC, *et al.*,

Debtors.¹

Chapter 11

Case No. 16-13500 (MKV)

(Jointly Administered)

**THIRD AMENDED NOTICE OF POSSIBLE ASSUMPTION AND
ASSIGNMENT OF EXECUTORY CONTRACT OR UNEXPIRED LEASE**

PLEASE TAKE NOTICE OF THE FOLLOWING:

On May 24, 2017, Gracious Home LLC, *et al.*, the within debtors-in-possession (the “Debtors”), filed with the Bankruptcy Court for the Southern District of New York (the “Court”) a motion (the “Motion”) for entry of an order (the “Bidding Procedures Order”) (i) approving (a) procedures (the “Bidding Procedures”)² for submitting bids for the purchase of substantially all of the Debtors’ assets, including assumption of substantially all of their liabilities, as well as other obligations (collectively, the “Assets”), (b) form and manner of sale notices, and (c) sale-related dates, including the bid deadline, auction and sale hearing date; and (ii) subject to the terms of the Bidding Procedures Order, at a hearing to be scheduled by the Bankruptcy Court (the “Sale Hearing”), entry of an order authorizing and approving (a) the sale of the Assets to free and clear of liens, claims, encumbrances, and interests, and (b) assumption and assignment of certain executory contracts and unexpired leases.³

On May 31, 2017, the Bankruptcy Court entered the Bidding Procedures Order. Pursuant to the Bidding Procedures Order, the Court authorized the Debtors to enter into an asset purchase agreement (the “APA”), substantially in the form attached as Exhibit D to the Motion, for the sale of substantially all of the Debtors’ assets, subject to higher or better offers.

At the Sale Hearing, which is scheduled to take place on **June 27, 2017 at 10:00 a.m. (Prevailing Eastern Time)** before the Honorable Mary Kay Vyskocil, U.S.B.J., United States Bankruptcy Court for the Southern District of New York, Courtroom 501, One Bowling Green,

¹ The Debtors in these chapter 11 cases and the last four digits of their tax identification numbers are: Gracious Home LLC (6822); Gracious Home Holdings LLC (3251); Gracious Home Payroll LLC (3681); GH East Side LLC (3251); GH West Side LLC (3251); GH Chelsea LLC (3251) and Gracious (IP) LLC (3251). The latter four entities are disregarded for tax purposes and do not have their own tax identification numbers, but use that of Gracious Home Holdings LLC. The address of the Debtors’ corporate headquarters is 1210 Third Avenue, New York, New York 10021.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures Order.

³ On June 2, 2017, the Debtors filed an amended motion to conform to the Bidding Procedures Order. No changes were made to the substantive relief sought in the Motion.

New York, NJ 10004, the Debtors **may** seek to assume and assign to a purchaser of the Assets certain executory contracts (“Contracts”) or unexpired leases (“Leases”). You have been identified as a party to a Contract or Lease that the Debtors **may** seek to assume and assign. The Contract(s) or Lease(s) with respect to which you have been identified as a non-Debtor party, and the corresponding proposed amount that the Debtors have determined to be necessary to be paid to cure any existing default under such Contract or Lease (the “Cure Amount”), are set forth on Exhibit A annexed hereto.⁴ In the event the Debtors were unable to establish that a default exists, the relevant Cure Amount was set at \$0.00.

In the event that the list of Contracts is changed, by way of addition or removal of executory contracts or unexpired leases from the list, the Debtors shall notify the non-Debtor counterparty to such added or removed executory contract or unexpired lease of any such modification.

Objections, if any, to (i) the proposed Cure Amount (a “Cure Objection”) or (ii) the assumption and assignment of any Assumed Contract to purchaser, including, but not limited to, objections relating to whether Purchaser can provide adequate assurance of future performance (a “Purchaser Assumption Objection”), must be filed seven (7) days before the Sale Hearing; provided, however, that in the event that a Purchaser has not been identified prior to such deadline, or if an executory contract or unexpired lease is added to the list of Assumed Contracts it proposes to be assumed and assigned subsequent to such deadline, any Cure or Purchaser Assumption Objection as to any such added executory contract or unexpired lease shall be filed no later than seven (7) days following service of notice on the non-Debtor counterparty to such added executory contract or unexpired lease. Any Cure Objection or Purchaser Assumption Objection must be served so as to be actually received by on or before the applicable deadline. Any Cure Objection must state with specificity what cure is required (with appropriate documentation in support thereof). If a Cure Objection and/or Purchaser Assumption Objection is timely filed and served, a hearing with respect to the Purchaser Assumption Objection will be held at the Sale Hearing, or such other date set by the Bankruptcy Court. In the event an executory contract or unexpired lease is added to the list of Purchaser Assumed Contracts, or the Purchaser is identified later than seven (7) days before the Sale Hearing, a hearing with respect to a Cure or Purchaser Assumption Objection related to such added executory contract or unexpired lease will not be heard by the Court at the Sale Hearing absent consent of the non-Debtor counterparty; rather, such hearing will be scheduled by the parties to take place as soon as practicable but no later than the Closing Date.

Any Cure Objection or Purchaser Assumption Objection must be filed with the Clerk of the Court, United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 1004-1408, and served on (a) the Debtors, 1210 Third Avenue, New York, New York Attn: Robert Morrison (rmorrison@gracioushome.com); (b) counsel for the Debtors, Trenk, DiPasquale, Della Fera & Sodono, P.C., 347 Mt. Pleasant Ave., Suite 300, West Orange, New Jersey 07052, Attn: Joseph J. DiPasquale (jdipasquale@trenklawfirm.com) and Irena M. Goldstein (igoldstein@trenklawfirm.com); (c) counsel for the Committee, Seward & Kissel LLP, One Battery Park Plaza, New York, New York 10004, Attn: John R. Ashmead

⁴ The inclusion of a Contract or Lease on the annexed exhibit does not constitute a determination that such Contract or Lease is an executory contract and/or unexpired lease under section 365 of the Bankruptcy Code. References to all Contracts and Leases listed on the annexed exhibit include any and all amendments, modifications or replacements related thereto, and any and all related agreements. The Debtors reserve the right to add Contracts or Leases to the annexed exhibit.

(ashmead@sewkis.com), Robert J. Gayda (gayda@sewkis.com) and Catherine LoTempio (lotempio@sewkis.com); and (d) counsel for the Debtors' DIP Lender, Arent Fox LLP, 1675 Broadway, New York, New York 10019, Attn: Robert M. Hirsch, Esq. (Robert.Hirsh@arentfox.com) (collectively, the "Objection Notice Parties") so as to be actually received on or before the applicable objection deadline.

To the extent the Debtors become aware that a Contract or Lease was not included in Exhibit A annexed hereto (a "Missing Contract"), the Debtors will serve a supplemental notice (the "Supplemental Assumption Notice") on the non-Debtor counterparty to such Missing Contract setting forth (i) the title of the Missing Contract, (ii) the name of the non-Debtor counterparty to such Missing Contract and (iii) the Debtors' good faith estimate as to the Cure Amount to cure all existing defaults under such Missing Contract. Any Cure Objection or Purchaser Assumption Objection by a non-Debtor counterparty to a Missing Contract must be filed with the Court and served so as to be actually received by the Objection Notice Parties as set forth above.

If no Cure Objection or Purchaser Assumption Objection is received by the applicable deadline, (a) the Contract or Lease shall be deemed assumed effective as of the date of the closing of the Sale, (b) the Cure Amount set forth in the Assumption Notice shall be controlling, notwithstanding anything to the contrary in any Contract or Lease or any other document, and (c) the non-Debtor counterparty to the Contract or Lease shall be forever barred from asserting any other claims against the Debtors, Purchaser or other Successful Bidder, as applicable, or the property of either of them, as to such Contract or Lease.

Except as may otherwise be agreed to by the parties to a Contract or Lease, upon the closing of the Sale, Purchaser or other Successful Bidder, as applicable, shall pay all Cure Amounts in cash. In the event of a dispute regarding the Cure Amount, and following entry of a final order resolving such dispute, any such payments required shall be made as soon as practicable thereafter.

If you agree with the Cure Amount identified on **Exhibit A** annexed hereto, and have no other objection to the Sale or the potential assumption and assignment of your Contract or Lease to Purchaser or other Successful Bidder, you need not take any further action.

Dated: New York, New York
June 15, 2017

**TRENK, DiPASQUALE,
DELLA FERA & SODONO, P.C.**

By: /s/ Joseph J. DiPasquale
347 Mount Pleasant Avenue, Suite 300
West Orange, New Jersey 07052
(973) 243-8600
-and-
45 Rockefeller Plaza, Suite 2000
New York, New York 10111
(212) 899-5245
Joseph J. DiPasquale
Irena M. Goldstein

Counsel for Debtors and Debtors in Possession

Exhibit A

Schedule of Contracts

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

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**THIRD AMENDED SCHEDULE OF EXECUTORY
CONTRACTS AND UNEXPIRED LEASES²**

Non-Debtor Counter Party to Contract	Contract	Cure Amount
Delve Partners LLC 228 Park Ave. S. Suite 97906 New York, NY 10003	Digital Advertising	\$0.00
LISTRAK 529 East Main Street Litita, PA 17543	Web Platform	\$0.00
LISTRAK 529 East Main Street Litita, PA 17543	SaaS License	\$0.00
BigCommerce, Inc. Attn: Robert Alvarez, CFO 11305 Four Points Drive Bldg II, Third Floor Austin, TX 78726	Web E-Commerce Platform	\$0.00
BrainTree/PayPal 95 Morton Street 5th Floor New York, NY 10014	Payments Processor	\$0.00

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² The inclusion of a Contract or Lease herein does not constitute a determination that such Contract or Lease is an executory contract and/or unexpired lease under section 365 of the Bankruptcy Code. References to all Contracts or Leases listed herein include any and all amendments, modifications or replacements related thereto, and any and all related agreements. The Debtors reserve the right to add Contracts or Leases to this list.

Non-Debtor Counter Party to Contract	Contract	Cure Amount
First Data Merchant Services 5565 Glenridge Connector NE Suite 2000 Atlanta, GA 30342	Payments Processor	\$0.00
Springboard Retail 383 Dorchester Avenue Suite 240 Boston, MA 02127	Point of Sale System	\$0.00
Intuit Inc. Corporate Headquarters 2700 Coast Ave Mountain View, CA 94043	General Ledger System	\$0.00
Right Networks 14 Hampshire Drive Hudson, NH 03051	QuickBooks Hosting	\$0.00
Promevo 808 Lyndon Lane Suite 205 Louisville, KY 40222	Google Applications	\$3,326.43
728024 Canada Inc. d/b/a OPM Pros Inc. 4990 Jean-Talon West Montreal, Quebec H4P1W9 Canada	Affiliate Marketing	\$0.00
Commission Junction, Inc., a Conversant company Attn: Legal Affairs 30699 Russell Ranch Road Suite 250 Westlake Village, CA 91362	Affiliate Marketing	\$0.00
ADP, Inc. One ADP Boulevard Roseland, NJ 07068	Payroll Processor/Human Resources Suite	\$2,499.86
Benefit Resource Inc. 245 Kenneth Drive Rochester, NY 14623-2782	Employee Benefits	\$1,029.50
United Parcel Service 55 Glenlake Parkway Atlanta, GA 30328	Shipping Agreement	\$0.00
Yves Delorme Attn: Oliver Newman, EVP 1725 Broadway Street Charlottesville, VA 22902	Shop in Shop Agreement	\$0.00

Non-Debtor Counter Party to Contract	Contract	Cure Amount
SFERRA Fine Linens LLC Attn: Amy Valentine 15 Mayfield Ave Edison, NJ 08837	Consignment Agreement	\$0.00
Window25, LLC 103 Van Buren Street Newark, NJ 07105	Shop in Shop Agreement	\$0.00
Via Venezia Textiles 5901 N. Forest Glen Ave. Chicago IL 60646 Attn: Dawn Papakyriacou	Consignment Agreement	\$0.00
New York Post 1211 Avenue of the Americas New York, NY 10036	Print Advertising	\$0.00
Adobe Systems Incorporated 345 Park Avenue San Jose, CA 95110	Transfer of Assets	\$0.00
Straus News 20 West Avenue Chester, NY 10918-1053	Print Advertising	\$0.00
Valpak of New York 875 Ave of the Americas #1606 New York, NY 10001	Print Advertising	\$0.00
MegaPath 6800 Koll Center Parkway Suite 200 Pleasanton, CA 94566	Phone System	\$0.00
Direct Energy Business c/o Joseph E. Bain Edison, McDowell & Hetherington LLP 1001 Fannin Street Suite 2700 Houston, TX 77002	Utilities/Energy	\$0.00
ConEdison Cooper Station P.O. Box 138 New York, NY 10276-0138	Utilities/Delivery	\$0.00
VAI 120 Comac Street Ronkonkoma, NY 11779	Maintenance for IBM	\$0.00

Non-Debtor Counter Party to Contract	Contract	Cure Amount
179 East 70th Street Corp. Attention: Eleanor Siegel, Board President 179 East 70th Street New York, NY 10021	Lease for real property located at 1210 Third Avenue, New York, NY	To Be Negotiated
mindSHIFT Technologies, Inc. 158 W. 27 th Street 5 th Floor New York, NY 10001	IT Services	\$0.00
Oracle America, Inc./Dyn 110 Allen Road Suite 400 Basking Ridge, NJ -7920	IT/Cloud Services	\$200.00
Google, Inc. 111 8th Avenue New York, NY 10011	Marketing	\$0.00
EyeMed 4000 Luxottica Place Mason, OH 45040	Employee Benefits	\$0.00
Aetna U.S. Healthcare Attn: Aetna-Middletown P.O. Box 88860 Chicago, IL 60695	Employee Benefits	\$0.00